CRIMINAL LAW MANUAL

CRIMINAL LAW

MANUAL

PRODUCED BY

S. ALIYU
(DIRECTOR, DEPARTMENT OF PUBLIC PROSECUTION OF THE FEDERATION), IN CONJUNCTION WITH HIS DEPUTY, MR. R. N. CHENGE AND WITH THE ASSISTANCE OF THE FOLLOWING PRODUCTION TEAM (ALL OFFICERS OF THE FEDERAL MINISTRY OF JUSTICE, ABUJA):

1. F.L. ABDULLAHI (MRS) - Asst. Chief State Counsel
2. LOLADE ADEDIPE (MRS) - Senior State Counsel
3. R.M.YELDU (MRS.) - Senior State Counsel
4. RACHEAL OLUSONA (MISS) - Senior State Counsel
5. RABI AGORA (MISS) - Senior State Counsel

All right reserved. No part of this publication many be reproduced or transmitted in any form or by any means without prior permission in writing from the publishers.

Criminal Law Manual Vol. 1

1. Criminal Law - Nigeria

1. Aliyu, S.

KR 1433. C929 AACR2 345.669

ISBN 978 - 978 - 565 - 0

Printed in Nigeria by:

BASCORNPRINTS :0803 61535 55, 0802 45257 29

TABLE OF CONTENTS

		Page
FORWARD		iv
PREFACE		vi
ACKNOWLEDGEMENT		viii
REFRENCES		x
INDEX OF REPORTED CASES		xi
INDEX OF SUBJECT MATTER		xv
INTRODUCTION		lxvi
1.	ABETMENT	1
2.	ACQUITTAL	3
3.	ACCIDENT	7
4.	ACCOMPLICE	12
5.	ADMISSIBILITY	13
6.	ALIBI	19
7.	APPEAL	43
8.	ARRAIGNMENT	45
9.	ARMED ROBBERY	61
10.	ASSAULT	65
11.	ATTEMPTS	66
12.	ATTEMPT TO MURDER	68
13.	BAIL	71

14. BURDEN OF PROOF 129

15. CRIMINAL CHARGE 155

16. CONFESSION 175

17. CONSPIRACY 212

18. CORROBORATION 219

19. DEFENCE 221

20. DUTY OF PROSECUTION 244

21. HOMICIDE 247

22. MURDER 252

23. NO CASE SUBMISSION 289

24. PROVOCATION 312

25. RAPE 320

26. STEALING 329

FOREWORD

The decision by the Department of Public Prosecutions of the Federation under the leadership of the Director of Public Prosecutions (DPPF), Mr. Salihu Aliyu, to produce the Criminal Law Manual demonstrates once more the resolve of the Department to position itself not only for its prosecutorial responsibilities but also as an intellectual centre in the development of the Criminal Law of Nigeria. It is a decision which has tremendous capacity to enrich the corpus of literary material available in the field of Criminal Law and by extension, the entire Justice sector in the country.

While there is no doubt that the literary landscape has witnessed the publication and production of several books and journals dedicated to the exposition of various aspects of Criminal Law, there is no doubt that most of such initiatives have been propelled by private scholars and institutions who have as their primary mandate, the promotion of learning and research.

The Federal Ministry of Justice and the States' Ministries of Justice have not been actively involved in this process of building a solid intellectual foundation for the practice of Criminal Law in the country. It is not inconceivable that this trend has a lot to do with the fact that the Ministries of Justice at Federal and State level have been constrained to operate under Military rule for the greater portion of Nigeria's forty-six years of Independence since 1960. This situation invariably created a notion that the Ministries existed merely to service the needs of Government, and could not therefore take on the additional responsibility of acting as resource centers for the production of academic publications for use by all Legal Practitioners, Scholars and Students.

It is therefore refreshing and salutary that the return of Democracy to the country on May 29, 1999 and the consequent reforms in the legal sector by the present administration under President Olusegun Obasanjo, GCFR have generated a fresh momentum and change of perspective in the functions of the Federal Ministry of Justice and other forward-looking State Ministries. The Ministry has increasingly come to re-interpret its role to include the intellectual leadership of the legal community in Nigeria through several reform measures. In addition to the present publication, the Federal Ministry of Justice, for instance, is taking some other steps which include the renewal of the publication of the All Nigeria Law Reports and the 'Justice' Journal,

respectively. I am aware that some of the States' Ministries of Justice have equally taken bold and enviable strides in the above direction.

There is no doubt that the reform of the Criminal Justice sector is an imperative if our society is to retain its pride of place as a respected member of the international community and improve its status as a preferred investment destination in today's increasingly competitive global environment. Residents of Nigeria as well as foreign investors want to be assured that their lives, property and interests will be protected at all times and that infractions against such rights will be punished by the law in a timely and efficacious manner. It is therefore no wonder that the present administration has made it a priority under the on-going reforms of critical national institutions and processes.

Legal Practitioners and Judges are critical in the administration of justice – in both civil and criminal sectors. To be effective and contribute to the credibility of the judicial system, they need information to argue cases effectively and adjudicate justly, respectively.

It is in the above connection that the present publication has come to fill a very useful gap in our legal literature. I will therefore have no hesitation in recommending this manual to all Legal Practitioners, Academicians, Students, Judges and all members of the general public who genuinely seek credible knowledge of the Criminal Law of Nigeria. To aid accessibility of its contents, the Manual has been presented in a language that is both professional and intellectual and yet simple and uncomplicated.

I congratulate the Director of Public Prosecutions and his team on this monumental effort which has projected the Ministry in very positive light and hope that the zeal and industry which has gone into the production of this maiden edition will equally be deployed in producing future updates as well as in other publications the Department may additionally undertake.

CHIEF BAYO OJO, ***SAN, FCIArb. (UK)***
Honourable Attorney-General of the
Federation and Minister of Justice.

PREFACE

The initial impetus for the production of the Criminal Law Manual by the Department of public Prosecution of the Federation was the need to have a concise and credible source of decided cases before the Courts. This was necessary in order to elevate the standard of professional practice by the Department, firstly, by facilitating access to 'quick-reference' legal material to aid the timeous prosecution of cases, and secondly, to standardize the response by the Department's Lawyers to similar legal situations, as is the practice in several advanced jurisdictions.

The Department's efforts have however grown beyond this initial ambition and have ultimately resulted in the production of a Manual which should now be a rich resource material for practitioners and scholars alike. An interesting feature of its production is the fact that it is an entirely in-house effort which has relied on the latent talents of Counsel who are increasingly expanding their role beyond primary prosecutorial function to the academic sphere.

The Manual is therefore the production of an interesting mix of practical experience by the author and his assistants which has resulted in the choice of the most relevant cases as well as position academic interest in equally highlighting certain aspect of Criminal law which however do not come before the Courts with equal regularity.

The cases discussed have been arranged under Twenty-six headings ranging from 'Abetment' through issue such as Admissibility, Armed Robbery, Bail, Burden of Proof, Confession, Murder, No case Submission to Rape and Stealing, among others. The presentation is succinct, direct and reader-friendly without compromising the need to provide adequate information to the professional user who desires to use this Manual either to prosecute or defend an accused person. It is without doubt a truly rich compendium which will aid the practice of Criminal Law in Nigeria and beyond.

In using the Manual, It is however necessary to remind the Practitioner that the Law is dynamic and its contents change on a regular and sometimes dizzy basis. The challenge for the conscientious practitioner is therefore to go beyond the present information in the manual to regularly up-date himself on changes and development in our Criminal jurisdiction. Additionally, Practitioners and Scholars alike must continually exhibit an analytical

disposition to the interpretation of the statutes by our Courts and diligently question and appraise the intellectual basis of some of our current assumptions in the field of Criminal Law. That is the only way we can ultimately improve our laws and bring them to the standard of being truly representative of the aspirations of our people.

The present effort is commendable. It is however expected that future editions will build on the present foundation and ultimately make this Manual an inevitable reference book for all serious practitioners of the law in Nigeria and beyond.

PROF. I. A. AYUA.OFR, SAN, FNIALS
Solicitor General of the Federation and
Permanent Secretary,
Federal Ministry of Justice.

ACKNOWLEDGEMENT

The idea of producing a Criminal Law Manual was conceived in June 2005 at Montreal Canada. At a working visit to the Federal Ministry of Justice Canada, Montreal Zonal Office, our team, led by the Solicitor-General of the Federation and Permanent Secretary, Professor Ignatius Ayua SAN, OFR, Mr. Pius Otteh(PSC) and my humble self were shown a copy of the Criminal Law Manual of the Federal Ministry of Justice Canada. Essentially, it was a quick reference workbook to assist Counsel in the course of work. So impressed were we by the Manual that the SGF/PS directed me to produce one upon our return.

A unit for the production of the Manual was created under the leadership of Mrs. Fatima Abdullahi Lamorde (ACSC) and work started early 2007. The manuscript of the Manual was in fact ready by May 2007. It then was sent to Professor Kharisu S. Chukkol Dean, Faculty of Law Ahmadu Bello University, Zaria for editing. The edited copy was received in December 2007.

This Manual is not intended as a shortcut to research which is the bedrock of all serious and successful prosecution of cases. It is simply a guide to save time when Counsel are to refer to principles of law as decided by the Supreme Court.

It is my hope that it will in fact serve the purpose for which it was produced and be of assistance to Counsel, not only in the Federal Ministry of Justice, but in all other Ministries of Justice and the Private Bar. The Department of Public Prosecution of the Federation is now in the process of producing subsequent volumes of the Manuals on Evidence and Criminal Procedure.

May I thank and appreciate the assistance of Messrs Funmi Quadri Publishers of *Nigerian Quarterly Supreme Court Law Reports* who allowed us to use their researched material.

May I also thank the Leadership of the Federal Ministry of Justice, particularly the then Honourable Attorney-General of the Federation and Minister of Justice, Chief Bayo Ojo SAN who not only approved but insisted that the Manual must be published as a book.

The role of the SGF/PS and, for those of us privileged to have worked with Professor Ignatius Ayua, a scholar, intellectual, administrator and a Senior Advocate of Nigeria, we can only thank him for all his corrections and criticisms when we fall short of his threshold of what our standard ought to be, that at times, we found very hard, but in retrospect, always a blessing and it leads us to continuously improve ourselves and aim for excellence.

The present Honourable Attorney-General of the Federation and Minister of Justice, Chief Michael Kaase Aondoakaa SAN, has been of tremendous assistance. He gave us both his support and encouragement. To him is the credit of publication despite all budgetary constraints. My special thanks go to him.

The members of the production team, headed by the untiring and amiable Fatima Abdullahi Lamorde (Mrs.) and her very IT literate colleagues of Lolade Adedipe (Mrs.), R. M. Yeldu (Mrs.), Racheal Olusona (Miss) and Rabi Agora (Miss) are a source of pride to me and the Department of Public Prosecutions of the Federation. I thank them all. To Patrick Igboh who voluntarily offered his consultancy services; we can but only say thank you.

To all the members of the office of the Director of Public Prosecutions of the Federation, I express and convey my thanks for your support in making this Manual a success. It is my hope that future volumes will be of higher quality, both in terms of the reported cases and publication.

As for the Manuals on Criminal Procedure and Evidence as it relates to Criminal Law, it is hoped they will both be published in 2008. Long live the Department of Public Prosecutions of the Federation as a service Department to humanity.

S. ALIYU
Director, Public Prosecution of the Federation.

INDEX OF REPORTED CASES I

Upahar vs. State	(2003)6NWLR pt 816 pg231	1, 217,220,326.
Olarewaju vs. C.O.P	(2005)1 NCC 331.	3
Emmanuuel Ebri vs. State	(2005)1NCC 1	5
Iromantu vs. State	(1964)1ALL NLR 311	7
Sholuade vs. Republic	(1966)1 ALL NLR 134	7
Dangari vs. State	(1968)1 ALL NLR249	7
Arabi vs. State	(2001)5 NWLR pt 706pg256	8, 93,150,240.
Ekpo vs. State	(1964) 1 ALL NLR 375	12
Idoma vs. State	(2001)1 SC 93	12
Ahmed vs. State	(2001)2ACLR 131	13,284
Godwin Igabele vs. State	(2005)1 NCC 59	17,123,133,286,292
Idris Rabiu vs. State	(2005)1NCC578	18,164,322
Adele vs. State	(2001)2ACLR420	19
Udo Ebre& Ors vs. State	(2001)6 NSCQLR 755	21
Ozaki vs. State	(1998)1 ACLR 27	24,143
Okoduwa vs. State	(2001)1 ACLR319	30
Samuel Bozin vs. State	(1998)1ACLR 1	31
Patrick Ikemson vs. State	(1998)1CALR 80	33.
Sule Ahmed vs. State	(2001)8NSCQLR 273	35.
Theophilius Eyisi vs. State	(2000)4NSCQLR60	36
Monday Odu & anor vs.State	(2001)6NSCQLR385	39
Akpan &ors vs. State	(2002)10NSCQLR 722	40
Sowemimo vs. State	(2002)18NSCQLR 25	41,232,257
Moshood vs. State	(2004)14 NWLR 422	43,139,211.
Amala vs. State	(2004)12 NWLR pt 888pg	45,125,166,319
Ezeze vs. State	(2004)14 NWLR 491	51
Dibie vs. State	(2004)14NWLR 257	52
Ogunye vs. State	(2001)2ACLR 66	54,157
Ude vs. State	(2001)2ACLR 356	56
Durwode vs. State	(2001)2ACLR 503	58
State vs. Duke	(2003)5NWLRpt813 pg394	59,307
Bozin vs. State	(1998)1ACLR 1	61
Alor vs. State	(1998)1ACLR 658	62
Ogidi vs. State	(2003)9NWLR pt824	64,146
COP vs.Igwe	(1961)1ALL NLR 9	65
Okpara vs.IGP	(1961)1ALL NLR 17	65
Ndebelie vs. State	(1965) NMLR253	66

Basharu vs. N.B.A.	(1961)1ALL NLR 664	67
Ozigbo vs. State	(1976)2SC 67	67
Adeosun vs. State	(1975) 9-11 SC 1	67
Queen vs. Nwaugoagwu	(1962)1ALL NLR294	68
Albert vs.State	(1960)WNLR 31	68
Ibo vs.State	(1971)1NMLR 245	69
Agumadu vs. Queen	(1963)1ALLNLR 203	69
Queen vs. Eyo	(1962)ALL NLR 515	70
Ozuloke vs. State	(1965) NMLR 125	70
Omonuju vs. State	(1976)5SC 1	70
Tea vs. COP	(2001)2ACLR 491	71
Ogbhemhe vs. COP	(2001)2ACLR 7	73
Bamaiyi vs. State	(2001)2ACLR467	76
John& anor vs. COP	(2001)2ACLR 495	84
Jammal vs. State	(2001)1CALR530	89
Chinemelu vs. COP	(2001)1ACLR501	96,167
Buwai vs.State	(2005)1NCC 561	101
Ariyo vs. State	(1998)1ACLR 525	103
Anajemba vs.	(2005)1NCC390	105,136
Nwude vs.FGN	(2005)1NCC196	109
Abacha vs. State	(2002)9NSCQLR501	113
Omodara vs.State	(2004)1NWLR 81	118
Obum Osakwe vs. FGN	(2004)14 NWLR305	123
Bulama vs. FRN	(2004)12NWLRpt888pg498	126
Ekwuazi vs. DPP	(2001)2ACLR 488	128
Guobadia vs. State	(2004)17 NSCQLR 222	129,225
Sunday Amala vs. State	(2004)8 NSCQLR834	131,223
Amusa vs.State	(2005) 1 NCC 87	135
Oden vs. FRN	(2005)1 NCC 303	137
Ugheneyovwe vs. State	(2004) 12 NWLR 626	141,219,234.
State vs. Ogbubunjo	(2001)2 ACLR 527	144
Udosen vs State	(2007) 29 NSCQR 646	151
State vs.Onyeukwu	(2004)19NSCQLR231	153,171
State vs. Olatunji	(2005)1NCC 487	155
Idowu vs. State	(2001)2 ACLR 337	160,210
Milton Sam vs.FRN	(2003)13NSCQLR1	162
Nwaduke vs. State	(2005)1NCC 572	163
Muhammad vs. Kano N.A	(2004)1LC588	165
Aruna vs. State	(1998)1ACLR 369	168
Onagoruwa vs. State	(1998)1ACLR 435	169,191,294

Francis Durwode vs. State	(2000)4NSCQLR33	170
Lateef Adeniji vs. State	(2001)6NSCQLR656	174
Egboghonome vs. State	(2001)2ACLR 262	175,203
Nwachukwu vs. State	(2002)11NSCQLR 663	182, 271
Abayomi Olalekan vs. State	(2001)8NSCQLR207	183
Akinmoju vs. State	(2000)2NSCQLR 90	185
Sunday Ihuebuka vs. State	(2000)2 NSCQLR 186	187
Solola vs. State	(2005)22NSCQLR 254	189
Madjemu vs. State	(2001)6NSCQLR394	191
Shande vs. State	(2005)22NSCQLR 756	192,221
Ozana Ubierho vs. State	(2005)21NSCQLR 38	193
Yahaya vs. State	(2005)1NCC120	195
Nwangbomu vs. State	(2001)1ACLR 9	198
Balogun vs. AG Ogun state	(2002)9NSCQLR 287	212
Obiakor vs. State	(2002)10NSCQLR927	213
Abacha vs. State	(2002) 11 NSCQLR 345	215
Oforlete vs. State	(2000)3NSCQLR 243	222
Aiguokhian vs. State	(2004)18 NSCQLR 173	227,267
Okeke vs. State	(2003)13NSCQLR 754	229
Uwaekweghinya vs. State	(2005)21NSCQLR 570	230,313
Ebri vs. State	(2004)18 NSCQLR 445	233
Madjemu vs. State	(2001)2 ACLR 245	235
Sunday Ani vs. The State	(2003)11 NWLR pt 830 p.142	236
Rose Oshodi vs. State	(2001) 12NWLR Pt 726	238,329
Ijioffor vs. The State	(2001)6NSCQLR 209	244
Young Uguru vs. State	(2002)10NSCQLR 38	245,269
Ibeh vs. State	(2001)2ACLR 376	246
Adebayo Amusa vs. State	(2003)13NSCQLR173	247
Ahmed vs. State	(2001) 8NSCQLR 273	248
Ihuebuka vs. State	(2001)2 ACLR183	250,312
Garba vs. state	(2001)2ACLR213	251
Ben vs. State	(2005)1 NCC 268	252
Orji Edward vs. State	(2005)1 NCC 554	255
Esai vs. State	(2004)1 LC	258
Yanor vs. State	(2004)1 LC355	259
Adamu vs. Kano N.A	(2004)1 LC648	260
Idowu vs.The State	(2004)3NSCQLR 96	261
Aiguobarueghian vs. State	(2004)17 NSCQLR442	262
Ejeka vs. State	(2003)14 NSCQLR 82	272
Durwode vs. State	(2003)4NSCQLR 33	273

Festus Amayo vs. State	(2001)8 NSCQLR 431	274
Ubani &ors vs. State	(2003)16 NSCQLR 265	275
Onyegbu vs. State	(1998)1 ACLR386	278
Ilori vs. State	(1998)1 ACLR 267	279
Abieke vs. State	(1998)1 ACLR635	280
Onah vs. State	(1998)1 ACLR642	281
Guobadia vs. State	(2005)1 NCC	287
Emedo & ors vs. State	(2002)11NSCQLR 288	289
Ajiboye vs. State	(1998)1 ACLR 355	296
Aminu Moh'd vs. State	(2007) 29 NSCQR 634	298
Ubanatu vs. COP	(2001)2 ACLR312	300
Akwa vs. COP	(2003)4 NWLR pt 811 pg 461	303
The State vs. Emedo	(2001)12 NWLR131	308
Dan Shalla vs. State	(2005)1 NCC 24	315
Iko vs. State	(2005)1 NCC499	320
Ogunbayo vs. State	(2007) 29 NSCQR 806	325

ACCIDENT- *Section 24 Criminal code-how applied.*
IROMANTU VS. STATE. *(1966) 1 ALL N.L.R. 7*

ACCIDENT- *Section 24 Criminal code-Onus on Prosecution to disapprove.*
SHOLUADE VS. REPUBLIC *(1966) 1 ALL N.L.R.7*

ACCIDENT- *Section 48 Penal Code- Burden of Disproving Accident- Effect of failure to disprove.* ***DANGARI VS. STATE*** *(1968) 1 ALL N.L.R .7.*

ACCOMPLICE- *Person giving money under threat- whether accomplice*
IDOMA VS. STATE *(1973) 1 S.C. 12.*

ASSAULT-*Section 356(2) Criminal Code- Assaulting police officer-what constitutes "acting in execution of lawful duty.*
C.O.P VS. IGWE *(1961)1 ALLNLR 65.*

ASSAULT-*Section356(2) Criminal Code- Assault police officer while on duty-distinction between police officer on duty and one in execution of duty.* ***OKPARA VS. I.G.P*** *(1961) 1 ALL NLR 65.*

ATTEMPTS- *Section 126(2) (Federal) Criminal code. Attempt to pervert course of justice.* ***NDEBILIE VS. STATE****(1965)NMLR.67.*

ATTEMPTS- *Sections 509& 513 Criminal Code-Attempt to commit crime and attempt to procure commission of crime distinguished*
BASHARU VS. B.N.A*(1961)1 ALL NLR. 67.*

ATTEMPTS- *What amounts to .****OZIGBO VS. C.O.P****(1976)2 SC.67.*

ATTEMPTS- *Proof of offence.* ***ADEOSU VS. STATE****. (1975) 9-11.SC.67.*

ATEMPT TO MURDER-*Section 320(1) Criminal Code- proof of offence*
QUEEN VS. NWAUGOAGWU *(1962)1ALL NLR.68.*

ATTEMPT TO MURDER-*Section 320 Criminal Code- proof of offence.*
ALBERT VS. QUEEN *(1960) WNLR.68.*

ATTEMPT TO MURDER*-Section 320 Criminal Code- proof of offence.*
IBO VS. STATE *(1971) 1 NMLR.69*

ATTEMPT TO MURDER*-Section 320 Criminal Code-Particulars of offence- proof of particular by prosecution.* ***AGUMADU VS. QUEEN*** *(1963) 1 ALL NLR.69.*

ATTEMPT TO MURDER*-Section 320(1) Criminal Code-Intention to kill.*
QUEEN VS. EYO *(1962) ALL NLR.70*

ATTEMPT TO MURDER*- Section 320 Criminal Code-Intention necessary to sustain a conviction.* ***OZULOKE VS. STATE*** *(1965) NMLR.70.*

ATTEMPT TO MURDER*- Section 320 Criminal Code-Required intent.*
OMONUJU VS. STATE *(1976) 5 SC.70.*

BAIL*-Accused person not present to stand his trial-forfeiture of bond-surety ordered to be imprisoned without first attempting to recover penalty-impropriety of .****TEA VS.C.O.P*** *(2001)2 ACLR.71*

BAIL*-Accused person no present to stand his trial-Bond not exhibited before trial court-whether there is any evidence that accused had broken any term of the bond.* ***TEA VS.C.O.P*** *(2001)2 ACLR.71*

BAIL*- Appeal from order of forfeiture of recognized-bond not exhibited before appellate court –whether safe for appellate court to act on -bond not before it.* ***OGBHEMHE VS.C.O.P*** *(2001)2 ACLR 71.*

BAIL*-Application unopposed and affidavit evidence not countered-whether accused should be denied bail.* ***OGBHEMHE VS.C.O.P*** *(2001)2 ACLR 72.*

BAIL*- consideration guiding court in the exercise of discretion to ground.*
OGBHEMHE VS.C.O.P*(2001)2 ACLR 72.*

BAIL- *Grant of as discretionary of court.* ***OGBHEMHE VS.C.O.P****(2001)2 ACLR 72.*

BAIL- *Ill-health of an accused- whether amounts to special circumstances to warrant his admission to bail-whether production of medical report is indispensable to prove ill-health.* ***OGBHEMHE VS.C.O.P****(2001)2 ACLR 72.*

BAIL- *Need for court to be cautious in granting bail applications.* ***OGBHEMHE VS.C.O.P****(2001)2 ACLR 72.*

BAIL-*Onus on prosecution to show that an accused be refused bail.* ***OGBHEMHE VS.C.O.P****(2001)2 ACLR 79.*

BAIL *– Application for bail-consideration of criteria for granting.-whether prejudicial to accused .* ***BAMAIYI VS. STATE****(2001)2 ACLR.76.*

BAIL *– Application for bail-probability of accused person appearing to stand trial. consideration of.* ***BAMAIYI VS. STATE****(2001)2 ACLR.76.*

BAIL *– Application for bail-Need for accelerated hearing when refused.* ***BAMAIYI VS. STATE****(2001)2 ACLR.76.*

BAIL *– Application for bail-Proof of evidence.-examination of in considering bail application-whether court can.* ***BAMAIYI VS. STATE****(2001)2 ACLR.76*

BAIL *– Application for bail-Grantor refusal of-criteria governing.* ***BAMAIYI VS. STATE*** *(2001)2 ACLR. 76.*

BAIL- *Bail bond- breach of- proof of- need for bond to be in evidence before court.* ***JOHN & ANOR VS. C.O.P*** *(2001)2 ACLR 84.*

BAIL- *Bail bond-execution of-need to be in writing-****Section 345 Criminal Procedure Code*** *considered.* ***JOHN & ANOR VS. C.O.P*** *(2001) 2 ACLR 84*

BAIL- *Bail bond-forfeiture of – proof of – need for bond to be evidence before court.* ***JOHN& ANOR VS. C.O.P*** *(2001)2 ACLR 84*

BAIL- *Bail bond-forfeiture of –surety present in court-sufficiency of oral notice to surety of –content of -breach o, fact of forfeiture and reasons therefore-sufficiency of oral notice to surety to pay or show cause.* ***JOHN&ANOR VS. C.O.P****(2001)2 ACLR 84*

BAIL- *Bail bond-forfeiture of –surety to show cause-sufficiency cause not shown and penalty not paid-manner of recovery of penalty-****Section 345(2)(4) Criminal Procedure Code*** *considered.* ***JOHN&ANOR VS. C.O.P****(2001)2 ACLR 84*

BAIL- *Bail bond-forfeiture of –forfeiture of – failure of surety to pay penalty-effect of as imprisonment-at whose instance and when imprisonment can be considered.* ***JOHN&ANOR VS.C.O.P****(2001)2 ACLR 84*

BAIL- *Bail bond-forfeiture of –forfeiture of –proof of-need for court to record ground of proof.* ***JOHN&ANOR VS. C.O.P****(2001)2 ACLR 84.*

BAIL- *Bail bond-forfeiture of –forfeiture of –when proved and granted of proof recorded-court may not call upon surety to pay penalty-whether mandatory or discretionary of court to cal upon person bond to pay penalty* ***JOHN&ANOR VS. C.O.P****(2001)2 ACLR 84*

BAIL- *Bail pending appeal-condition for grant-****JAMMAL VS. STATE*** *(1998) 1 ACLR.89*

BAIL- *Bail pending appeal-grant of same is at discretion of the court-need to consider each application on its merit.* ***JAMMAL VS. STATE*** *(1998) 1 ACLR.89*

BAIL- *Bail pending appeal-Need for application to show exceptional circumstances for grant. .* ***JAMMAL VS. STATE****(1998) 1 ACLR.89.*

***BAIL**-Bail pending appeal-probability of applicant serving all or substantial part of sentence before hearing of appeal-when relied on whether same will induce the grant of bail. **JAMMAL VS. STATE**(1998) 1 ACLR.89*

***BAIL**- Bail pending appeal- Illness as a grant of bail? Need for applicant to state The particular ailment. **JAMMAL VS. STATE**(1998) 1 ACLR.89*

***BAIL**-Application for bail- Need for court to adopt a liberal approach to. **ARABI VS. STATE** (2001)5 NWLR pt 706. 93*

***BAIL**-Application for bail-Antecedent of accused-relevance of prosecuting counsel-duty thereon to advice court on probability of accused jumping bail. **OMODARA VS. STATE** (2004)1 NWLR 118.*

***BAIL**-Application for bail-Grant or refusal of-principles guiding, whether court can refuse on its own belief or assumption. **OMODARA VS. STATE** (2004)1 NWLR 118.*

***BAIL**- Murder-accused charge therewith–whether not entitle to bail-rationale therefore-presumption of innocence of accused-duty of court to uphold. **OMODARA VS. STATE** (2004)1 NWLR 118.*

***BAIL**- Objectives of bail- duty on court in respect thereof. **OMODARA VS. STATE** (2004)1 NWLR 118.*

***BAIL**- Revocation of bail-where bail granted- circumstances under which court may revoke. **OMODARA VS. STATE** (2004)1 NWLR 121.*

***BAIL**-Application for bail- Applicant seeking-onus on – what they must show-what court must examine- relevant materials therefore. **OSAKWE VS. STATE** (2004) 14 NWLR. 123.*

***BAIL**-Application for bail-Power of court to grant or refuse-discretionary nature of **Section 341(2) Criminal Procedure Code** considered **OSAKWE VS. STATE** (2004) 14 NWLR. 123.*

BAIL-*Application for bail-Principles guiding-refusal of-whether breaches-presumption of innocence in favour of accused.* ***OSAKWE VS. STATE*** *(2004) 14 NWLR.123.*

BAIL-*Bail pending trial-application for – grant of – principles guiding.* ***OSAKWE VS. STATE*** *(2004) 14 NWLR. 123.*

BAIL-*Application for bail-consideration of principles guiding.* ***BULAMA VS.F.R.N*** *(2004) 12 NWLR pt888.126.*

BAIL- *Bail pending trial-grant or refusal of – discretion of court in respect of-how exercised.* ***BULAMA VS.F.R.N*** *(2004)12 NWLR pt888.126.*

BAIL- *Bail pending trial- grant or refusal of – discretion of court in respect of-exercise of – nature of –factors guiding.* ***BULAMA VS.F.R.N*** *(2004)12 NWLR pt888.126*

BAIL- *Bail pending trial- Principles governing-ill health of accused- medical report in support of-what it should disclose.* ***BULAMA VS.F.R.N*** *(2004)12 NWLR pt888.126.*

CRIMINAL LAW AND PROCEDURE*-Bail- Application for bail - Nature of materials necessary in an application in respect thereof.* ***CHINEMELU VS. COP (2001)1 ACLR 501 . 96.***

CRIMINAL LAW AND PROCEDURE*-Bail-Application in respect thereof – What the Court should consider.* ***CHINEMELU VS. COP(2001)1 ACLR 501 . 96***

CRIMINAL LAW AND PROCEDURE *- Bail - Discretionary Power of court in granting same.* ***CHINEMELU VS. COP (2001)1 ACLR 501 .*** *96*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial - Conditions to consider in granting same.* ***CHINEMELU VS. COP (2001)1 ACLR 501 .*** *96*

CRIMINAL LAW AND PROCEDURE_ *- Bail in a capital offence Need for special circumstances to exist.* ***CHINEMELU VS. COP (2001)1 ACLR 501.*** *96*

CRIMINAL LA W AND PROCEDURE *- Bail - Whether ill health constitutes special circumstances in granting of same.* ***CHINEMELU VS. COP (2001)1 ACLR 501 .*** *96*

CRIMINAL LAW AND PROCEDURE *- Bail - Whether sickness per se entitles applicant to a grant of.* ***CHINEMELU VS. COP (2001)1 ACLR 501 .*** *96*

CRIMINAL LAW AND PROCEDURE *- Bail pending appeal- When Court of Appeal may grant Same* ***BUWAI VS. STATE(2005)1 NCC 561.*** *101*

CRIMINAL LAWAND PROCEDURE *- Bail pending appeal Power and authority of Court of Appeal to grant Same.* ***BUWAI VS. STATE (2005)1 NCC 561.*** *101*

CRIMINAL LAW AND PROCEDURE *- Bail- Discretionary power of Court to grant or refuse consideration of* ***NWUDE VS. FGN (2005)1 NCC 196.*** *109*

CRIMINAL LAW AND PROCEDURE *- Bail- Factors to be placed before court for consideration for grant or refusal thereof. of* ***NWUDE VS. FGN (2005)1 NCC 196.109***

CRIMINAL LAW AND PROCEDURE *- Bail- The general meaning of.* ***NWUDE VS. FGN (2005)1 NCC 196.109***

CRIMINAL LAW AND PROCEDURE *- Question of Bail- Where ill health was alleged – Consideration of.* ***NWUDE VS. FGN (2005)1 NCC 196.109***

CRIMINAL LAW AND PROCEDURE *-Bail- ill - Health as a special circumstance for the grant of bail- Consideration of.* ***NWUDE VS. FGN (2005)1 NCC 196.109***

CRIMINAL LAW AND PROCEDURE*. Presumption of innocence of a person charged with a felony and admission to bail before trial- relationship thereof.* ***NWUDE VS. FGN (2005)1 NCC 196.109***

CRIMINAL PROCEDURE LAW *- Application for Bail - Conditions of-ill- health -Whether weighty enough.* ***ABACHA VS. STATE(2002)9NSCQ 501.112***

CRIMINAL PROCEDURE LAW*- Application for Bail-When it is safe and unsafe to grant Jail. .* ***ABACHA VS. STATE(2002)9NSCQ 501.112***

CRIMINAL PROCEDURE LAW *- Capital offences - Whether it is usual to grant bail.* ***ABACHA VS. STATE(2002)9NSCQ 501.112***

CRIMINAL LAW AND PROCEDURE *- Bail Pending trial - Consideration for its grant.* ***ARIYO VS. STATE (1998)1 ACLR525****.103*

CRIMINAL LAW AND PROCEDURE *- Bail in. murder cases, Factors for consideration.* ***ARIYO VS. STATE (1998)1 ACLR525****.103*

CRIMINAL LAW AND PROCEDURE *- Bail - When granted as a matter of course.* ***ARIYO VS. STATE (1998)1 ACLR525****.103*

CRIMINAL LAW AND PROCEDURE *- Bail- Application for - burden of proof therein - On when lies.* ***ANAJEMBA VS. F.G.N.(2005)1 NCC 390*** *.105*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial - Application for - Whether it is proper for a trial court to presume criminal responsibility of an accused at the stage of.* ***ANAJEMBA VS.F.G.N. (2005)1 NCC 390*** *.105*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial- grant or refusal of What trial court must consider in an application for.* ***ANAJEMBA VS. F.G.N.(2005)1 NCC 390*** *.105*

CRIMINAL LAW AND PROCEDURE *- Bail- When granted* ***ARIYO VS. STATE (1998)1 ACLR525****.103*

CRIMINAL LAW AND PROCEDURE*-Abetment of crime- ingredient of -punishment thereof- whether same with punishment provided for the main offence.* ***UPAIHAR VS. STATE*** *(2003) 6 NWLR pt 816.1*

CRIMINAL LAW PROCEDURE *- Acquittal by a magistrate thereon by the prosecution against it-whether competent.* ***OLANREWAJU VS. POLICE*** *(2005)1 NCC .3*

CRIMINAL LAW AND PROCEDURE*-Discharge and acquittal of an accused person- when may lead to discharge of other accused persons.* ***EMMANUEL EBRI VS. STATE*** *(2005) 1 NCC 5*

CRIMINAL LAW AND PROCEDURE*--Accidental discharge of fire arms- Whether culpable.* ***ARABI VS. STATE*** *(2001) 5 NWLR Pt 706. 8 .*

CRIMINAL LAW AND PROCEDURE*—Caution statement of an accused- How recorded.* ***AHMED VS. STATE*** *(2001)2 ACLR.13*

CRIMINAL LAW AND PROCEDURE*- Defence of intoxication- on whom onus lies to establish-presumption- on whom lies to establish.* ***AHMED VS. STATE*** *(2001)2 ACLR.13*

CRIMINAL LAW AND PROCEDURE*-Doubt arising from contradiction in prosecutions case- need to resolve in favour of accused.* ***AHMED VS. STATE*** *(2001)2 ACLR.13.*

CRIMINAL LAW AND PROCEDURE*- Establishment of quilt of an accused –on whom duty lies- standard of proof required by aw.* ***AHMED VS. STATE*** *(2001)2 ACLR.13.*

CRIMINAL LAW AND PROCEDURE*-Evidence falling short of self defence but showing that accused acted under provocation- accused not having intention to kill-effect.* ***AHMED VS. STATE*** *(2001)2 ACLR.13.*

CRIMINAL LAW AND PROCEDURE *-Evidence favourable to the defence-duty on prosecution to prosecution to produce.* ***AHMED VS. STATE*** *(2001)2 ACLR.13.*

CRIMINAL LAW AND PROCEDURE*-Presumption of intending the Natural consequences of ones act- on whom duty lies to rebut.* ***AHMED VS. STATE*** *(2001)2 ACLR.13*

CRIMINAL LAW AND PROCEDURE*-Admissibility of exhibits- Where no objection by a party at the trial- Whether the party can be heard to complain.* ***GODWIN IGABELE VS. STATE****(2005) 1 NCC .17.*

CRIMINAL LAW AND PROCEDURE- *Admissibility and/ or voluntary confession in a criminal charge without more-whether sufficient to earn a conviction and sentence.* ***IDRISVS.STATE*** *(2005) 1 NCC .18*

CRIMINAL LAW AND PROCEDURE- *Alibi- plea of alibi- nature of onus on prosecution in respect thereof.* ***ADELE VS. STATE*** *(2001)2ACLR .19*

CRIMINAL LAW AND PROCEDURE*-Defence of an accused person- when same is only one of alibi- duty on prosecution in respect thereof.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE- *Discredited evidence of a witness by trial judge- duty on appeal court not to use to convict.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE*-Doubtful evidence of a witness-how treated.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE*-Evidence discredited and rejected- where used to discharge and acquit an accused- effect of the discharge and acquittal on a co-accused against whom the same evidence was led.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE- *Plea of alibi-where there is not much to choose between evidence of prosecution witnesses – treatment of alibi when raised.* ***ADELE VS. STATE*** *(2001) 2 ACLR 19*

CRIMINAL LAW AND PROCEDURE*-plea of alibi raised by accused person-prosecution not investigating same- effect of.*
ADELE VS. STATE *(2001) 2 ACLR .19*

***CRIMINAL LAW AND PROCEDURE**-Alibi –defence of – duty of court to give full consideration thereto. **UDO EBRE& ORS VS. THE STATE** (2001) 6 NSCQLR.21.*

***CRIMINAL LAW AND PROCEDURE**-Alibi- defence of- failure of prosecution to investigate or failure of court give consideration to – consequences thereof. **UDO EBRE& ORS VS. THE STATE** (2001) 6 NSCQLR.21.*

***CRIMINAL LAW AND PROCEDURE**- Alibi defence of- requirement of proof. **UDO EBRE& ORS VS. THE STATE** (2001) 6 NSCQLR.21.*

***CRIMINAL LAW AND PROCEDURE**-Alibi- general defence of without sufficient facts-consequences of. **UDO EBRE& ORS VS. THE STATE**(2001) 6 NSCQLR.21.*

***CRIMINAL LAW AND PROCEDURE**-Alibi-defence of- duty of prosecution to disprove where accused person has furnished particulars of his whereabouts lucidly to the police. **UDOEBRE& ORS VS. THE STATE**(2001) 6 NSCQLR.21.*

***CRIMINAL LAW AND PROCEDURE**-Alibi- burden on prosecution when raised- nature of. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Alibi-defence of alibi-when accused give conflicting stories as to his whereabouts- whether there is any duty to investigate the alibi. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Alibi-establishing same on balance of probabilities- meaning of. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Alibi-failure by the police to investigate same-effect of. **OZAKI VS. STATE** (1998) 1ACLR.24.*

CRIMINAL LAW AND PROCEDURE-*Admissibility of exhibits- Where no objection by a party at the trial- Whether the party can be heard to complain.* ***GODWIN IGABELE VS. STATE****(2005) 1 NCC .17.*

CRIMINAL LAW AND PROCEDURE- *Admissibility and/ or voluntary confession in a criminal charge without more-whether sufficient to earn a conviction and sentence.* ***IDRISVS.STATE*** *(2005) 1 NCC .18*

CRIMINAL LAW AND PROCEDURE- *Alibi- plea of alibi- nature of onus on prosecution in respect thereof.* ***ADELE VS. STATE*** *(2001)2ACLR .19*

CRIMINAL LAW AND PROCEDURE-*Defence of an accused person- when same is only one of alibi- duty on prosecution in respect thereof.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE- *Discredited evidence of a witness by trial judge- duty on appeal court not to use to convict.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE-*Doubtful evidence of a witness-how treated.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE-*Evidence discredited and rejected- where used to discharge and acquit an accused- effect of the discharge and acquittal on a co-accused against whom the same evidence was led.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE- *Plea of alibi-where there is not much to choose between evidence of prosecution witnesses – treatment of alibi when raised.* ***ADELE VS. STATE*** *(2001) 2 ACLR 19*

CRIMINAL LAW AND PROCEDURE-*plea of alibi raised by accused person-prosecution not investigating same- effect of.* ***ADELE VS. STATE*** *(2001) 2 ACLR .19*

CRIMINAL LAW AND PROCEDURE*-Alibi –defence of – duty of court to give full consideration thereto.* ***UDO EBRE& ORS VS. THE STATE*** *(2001) 6 NSCQLR.21.*

CRIMINAL LAW AND PROCEDURE*-Alibi- defence of- failure of prosecution to investigate or failure of court give consideration to – consequences thereof.* ***UDO EBRE& ORS VS. THE STATE*** *(2001) 6 NSCQLR.21.*

CRIMINAL LAW AND PROCEDURE*- Alibi defence of- requirement of proof.* ***UDO EBRE& ORS VS. THE STATE*** *(2001) 6 NSCQLR.21.*

CRIMINAL LAW AND PROCEDURE*-Alibi- general defence of without sufficient facts-consequences of.* ***UDO EBRE& ORS VS. THE STATE****(2001) 6 NSCQLR.21.*

CRIMINAL LAW AND PROCEDURE*-Alibi-defence of- duty of prosecution to disprove where accused person has furnished particulars of his whereabouts lucidly to the police.* ***UDOEBRE& ORS VS. THE STATE****(2001) 6 NSCQLR.21.*

CRIMINAL LAW AND PROCEDURE*-Alibi- burden on prosecution when raised- nature of.* ***OZAKI VS. STATE*** *(1998) 1 ACLR.24*

CRIMINAL LAW AND PROCEDURE*-Alibi-defence of alibi-when accused give conflicting stories as to his whereabouts- whether there is any duty to investigate the alibi.* ***OZAKI VS. STATE*** *(1998) 1 ACLR.24*

CRIMINAL LAW AND PROCEDURE*-Alibi-establishing same on balance of probabilities- meaning of.* ***OZAKI VS. STATE*** *(1998) 1 ACLR.24*

CRIMINAL LAW AND PROCEDURE*-Alibi-failure by the police to investigate same-effect of.* ***OZAKI VS. STATE*** *(1998) 1ACLR.24.*

***CRIMINAL LAW AND PROCEDURE**-Alibi-ipse dixit of accused raising same- whether enough. **OZAKI VS. STATE** (1998) 1 ACLR.24.*

***CRIMINAL LAW AND PROCEDURE**-Alibi-meaning of. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Alibi-when accused discharge evidential burden of alibi- duties on prosecution and trial judge in respect thereof. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Alibi-when does the prosecution discharge its onus of disproving same-onus on the accused. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Alibi-where the prosecution fails to investigate same- effect of. **OZAKI VS. STATE** (1998) 1 ACLR.24.*

***CRIMINAL LAW AND PROCEDURE**-Defence of alibi-duty on accused who raises same. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Defence of alibi-evidential burden on accused raising same-effect of. **OZAKI VS. STATE** (1998) 1 ACLR.24.*

***CRIMINAL LAW AND PROCEDURE**-Defence of alibi-intention to raise defence of alibi-need to give notice of same timeously. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**-Defence of alibi-when an accused raised same during investigation-duty on prosecution. **OZAKI VS. STATE** (1998) 1 ACLR.24*

***CRIMINAL LAW AND PROCEDURE**- Defence of alibi-when raised by the accused-burden on prosecution in respect thereof. **OZAKI VS. STATE** (1998) 1 ACLR.27*

***CRIMINAL LAW AND PROCEDURE**- Defence of alibi-when same have promptly and properly raised-burden on prosecution in respect thereof. **OZAKI VS. STATE** (1998) 1 ACLR.24*

CRIMINAL LAW AND PROCEDURE *-Alibi- Once accused discharges the evidential alibi- Onus on prosecution in respect thereof-Duty on the trial judge .* ***OKODUWA VS. STATE(2001)*** *1ACLR 319. 30.*

CRIMINAL LAW AND PROCEDURE *-Alibi- standard of proof to establish same.* ***SAMUEL BOZIN VS. STATE****(1998)1ACLR.31*

CRIMINAL LAW AND PROCEDURE*-Defence of alibi-meaning and nature of burden on prosecution to investigate and rebut same when raised.* ***SAMUEL BOZIN VS. STATE****(1998)1 ACLR 31.*

CRIMINAL LAW AND PROCEDURE*- Alibi-plea of alibi- duty on accused raising same.* ***PATRICK IKEMSON VS.STATE****(1998) 1 ACLR.33*

CRIMINAL LAW AND PROCEDURE*- Alibi- plea of alibi- once raised by an accused person-duty of prosecution in respect thereof-need for accused to give sufficient particulars of his where about.*
PATRICK IKEMSON VS. STATE*(1998)1 ACLR.33*

CRIMINAL LAW AND PROCEDURE*- Alibi- plea of alibi-effect of evidence of participation on same.* ***PATRICK IKEMSON VS. STATE*** *(1998)1 ACLR.33*

CRIMINAL LAW AND PROCEDURE*- Alibi- plea of alibi-need not to disregard same without over whelming evidence against it.*
PATRICK IKEMSON VS. STATE*(1998)1 ACLR.33*

CRIMINAL LAW AND PROCEDURE*-Defence of alibi-defence when raised for the first time in the witness box-nature of.*
PATRICK IKEMSON VS. STATE*(1998)1 ACLR.33*

CRIMINAL LAW AND PROCEDURE*- Alibi-when logically dismissed.*
SULE AHMED VS. STATE *(2001) 8.NSCQLR.35*

CRIMINAL LAW AND PROCEDURE*- Alibi- meaning of – the law relating to alibi considered.* ***THEOPHILIUS EYISI VS. STATE*** *(2000) 4 NSCQLR.36*

CRIMINAL LAW AND PROCEDURE- *Alibi-whether failure to inve*
is fatal to conviction in all case. ***MONDAY ODU & ANOR VS***
STATE*(2001) 6 NSCQLR.39*

CRIMINAL LAW AND PROCEDURE- *Alibi- Onus of proof- on wh*
lies. ***AKPAN& ORS VS. STATE*** *(2002) 10 NSCLR.40*

CRIMINAL LAW AND PROCEDURE- *Alibi-defence of- whether c*
avail an accused unequivocally pinned down to the locus in q
SOWEMIMO VS. STATE *(2004) 18 NSCQLR.41*

CRIMINAL LAW AND PROCEDURE- *Alibi- meaning of –defence*
when will be considered by the court- when not. ***SOWEMIMO***
VS. STATE *(2004) 18 NSCQLR.41*

CRIMINAL LAW AND PROCEDURE-*Appeal in capital offence c*
attitude of appellate court thereto. ***MOSHOOD VS. THE STA***
(2004) 14 NWLR.43

CRIMINAL LAW AND PROCEDURE- *Retrial order in criminal c*
principles governing- when will not be made. ***MOSHOOD V***
THE STATE *(2004) 14 NWLR.43*

CRIMINAL LAW AND PROCEDURE-*Trial within trial- when ne*
where evidence of accused discloses duress or threat-duty on
*order trial within trial. .****MOSHOOD VS. THE STATE****(2004*
NWLR.43

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirement*
*arraignment-****Section 215,Criminal Procedure Act.****-how con*
AMALA VS. STATE*(2004) 12 NWLR pt 888.SC. 45*

CRIMINAL LAW AND PROCEDURE- *Arraignment-failure of t*
to record plea of accused person in direct speech- whether f
AMALA VS. STATE*(2004) 12 NWLR pt 888.SC. 45*

CRIMIN AL LAW AND PROCEDURE- *Arraignment-requirements of- where accused complains that charge was not read and explain to him to satisfaction of trial court- what he must show.* ***AMALA VS. STATE****(2004) 12 NWLR pt 888.SC. 45*

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirements of valid arraignment- whether trial court must note in record of proceedings that charge was read over and explain to accused to his satisfaction.* ***AMALA VS. STATE****(2004) 12 NWLR pt 888.SC. 45*

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirements of valid arraignment-failure of trial court that charge was read over and explained to accused to his satisfaction-whether vitiates proceedings.* ***AMALA VS. STATE****(2004) 12 NWLR pt 888.SC. 45*

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirements of valid arraignment-* ***Section33(6) (a) 1979 constitution-*** *purpose of – whether relevant in arraignment of accused person.* ***AMALA VS. STATE****(2004) 12 NWLR pt888.SC. 45*

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirement that charge be read over to accused persons jointly charged.* ***AMALA VS. STATE****(2004) 12 NWLR pt888.SC. 45*

CRIMINAL LAW AND PROCEDURE- *proof of crime- circumstantial evidence-nature of required to ground conviction.* ***AMALA VS. STATE*** *(2004) 12 NWLR pt888.SC. 45*

CRIMINAL LAW AND PROCEDURE-*Defence-self defence-fighting-difference between.* ***AMALA VS. STATE****(2004) 12 NWLR pt888.SC. 45.*

CRIMINAL LAW AND PROCEDURE-*Defence- defence self defence-when available to an accused-****Section 286,Criminal Code. AMALA VS. STATE****(2004) 12 NWLR pt888.SC. 45*

CRIMINAL LAW AND PROCEDURE- *Arraignment- procedure therefore- when can be quashed.* ***EZEZE VS. STATE*** *(2004) 14 NWLR. 51*

CRIMINAL LAW AND PROCEDURE- *Arraignment-interpretation of charge to accused person- when may be dispensed with.* ***DIBIE VS. STATE*** *(2004) 14 NWLR.52*

CRIMINAL LAW AND PROCEDURE- *Arraignment-need to read and interpret to accused person-when necessary.* ***DIBIE VS. STATE*** *(2004) 14 NWLR.52*

CRIMINAL LAW AND PROCEDURE- *Arraignment- proper arraignment- presumption of regularity in respect thereof-attitude of appellate court thereto.* ***DIBIE VS. STATE*** *(2004) 14 NWLR.52*

CRIMINAL LAW AND PROCEDURE- *Arraignment-valid and proper arraignment- requirement of –* ***Section 215 Criminal Procedure Law*** *and* ***section 36 (6) (a) of the 1999 Constitution****. considered* ***DIBIE VS. STATE*** *(2004) 14 NWLR.52*

CRIMINAL LAW AND PROCEDURE- *Arraignment-essentials of.* ***OGUNYE VS. STATE*** *(2001)2 ACLR.54*

CRIMINAL LAW AND PROCEDURE-*Valid arraignment- purpose of – mandatoriness of –effect of breach of.* ***OGUNYE VS. STATE*** *(2001)2 ACLR.54*

CRIMINAL LAW AND PROCEDURE- *Arraignment-"block reading" of charge of several accused person charge jointly- whether vitiates criminal trial –whether charge must be read to each of such accused persons separately.* ***UDE VS. STATE*** *(2001) 2 ACLR.56*

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirement of valid arraingment.Sec.215 CPA considered.* ***UDE VS. STATE*** *(2001) 2 ACLR.56*

CRIMINAL LAW AND PROCEDURE- *Arraignment- essentials aspect of* ***DURWODE VS. STATE*** *(2001) 2 ACLR 58*

CRIMINAL LAW AND PROCEDURE- *Arraignment- plea of accused person-how recorded- when must be recorded as nearly as possible in word used.* ***STATE VS.DUKE*** *(2003) NWLR pt 39 59*

CRIMINAL LAW AND PROCEDURE- *Arraignment- requirement that charge be read over and explain to accused-how satisfied.* ***STATE VS.DUKE*** *(2003) NWLR pt 39. 59*

CRIMINAL LAW AND PROCEDURE- *Armed Robbery- what the prosecution must prove to succeed-* ***section 1(2) (a) Robbery and Firearms (special Provision) Decree No.47 0f 1970*** *considered.* ***BOZIN VS. STATE*** *(1998) 1 ACLR 61*

CRIMINAL LAW AND PROCEDURE- *Armed Robbery-whether necessary for "gunshot" to accompany same.* ***BOZIN VS. STATE*** *(1998) 1 ACLR 61*

CRIMINAL LAW AND PROCEDURE- *Offences-Armed Robbery-punishment thereof.* ***OGIDI VS. STATE*** *(2003)9 NWLR pt 824.64*

CRIMINAL LAW AND PRACTICE- *Accused person not present to stand his trial- forfeiture of bond- surety ordered to be imprisoned without first attempting to recover penalty- impropriety of.* ***TEA VS.C.O.P*** *(2001)2 ACLR.71*

CRIMINAL LAW AND PRACTICE- *Accused person not present to stand his trial-Bond not exhibited before trial court- whether there is any evidence that accused broken any term of the bond.* ***TEA VS.C.O.P*** *(2001)2 ACLR. 71*

CRIMINAL LAW AND PRACTICE- *Appeal from order of forfeiture of recognizance- bond not exhibited before appellate court-whether safe for appellate court to act bond not before it.* ***TEA VS.C.O.P*** *(2001)2 ACLR. 71*

CRIMINAL LAW AND PRACTICE- *Application for bail- probability of accused person appearing to stand his trial-consideration of.* ***BAMAIYI VS. STATE*** *(2001)2 ACLR 76*

CRIMINAL LAW AND PRACTICE- *Application for bail-consideration of criteria for granting-whether prejudicial to accused presumed innocence.* ***BAMAIYI VS. STATE*** *(2001)2 ACLR 76*

CRIMINAL LAW AND PRACTICE- *Application for bail-need for accelerated hearing when refused.* ***BAMAIYI VS. STATE*** *(2001)2 ACLR 76*

CRIMINAL LAW AND PRACTICE- *Application for bail- proof of evidence –examination of in considering bail application. whether court can.* ***BAMAIYI VS. STATE****(2001)2 ACLR 76*

CRIMINAL LAW AND PRACTICE- *Application for bail- grant or refusal of-criteria governing.* ***BAMAIYI VS. STATE****(2001)2 ACLR 76*

CRIMINAL LAW AND PRACTICE- *Bail-bail bond-breach of-need for bond to be in evidence before court .****JOHN&ANOR VS. C.O.P*** *(2001)2ACLR.84*

CRIMINAL LAW AND PRACTICE- *Bail-bail bond-execution of –need to be writing-****Section 345 Criminal Procedure Code*** *considered.* ***JOHN&ANOR VS. C.O.P*** *(2001)2ACLR.84*

CRIMINAL LAW AND PRACTICE- *Bail-bail bond-Forfeiture of –proof of – need for bond to be in evidence before court.* ***JOHN & ANOR VS. C.O.P*** *(2001)2ACLR.84*

CRIMINAL LAW AND PRACTICE- *Bail-bail bond-forfeiture of surety to show cause-sufficient cause not shown and penalty not paid-manner of recovery of penalty thereafter-Section 345(2)(4)Criminal Procedure Code considered.* ***JOHN & ANOR VS. C.O.P*** *(2001)2ACLR.84*

CRIMINAL LAW AND PRACTICE- *Bail-bail bond-forfeiture of- proof of – need for court to record ground of proof.*
JOHN & ANOR VS. C.O.P *(2001)2ACLR.84*

CRIMINAL LAW AND PRACTICE- *Bail-bail bond-forfeiture of-when proved and ground of proof recorded-court may call upon surety to pay penalty-whether mandatory or discretionary of court to call upon person bound-to pay penalty.* ***JOHN&ANOR VS. C.O.P*** *(2001)2 ACLR.84*

CRIMINAL LAW AND PRACTICE- *Bail-bail bond-Forfeiture of- surety present in court- sufficiency of oral notice to surety of content of bond, breach of fact of forfeiture and reason therefore- sufficiency of oral notice to surety to pay or show cause.* ***JOHN&ANOR VS. C.O.P*** *(2001) 2ACLR.84*

CRIMINAL LAW AND PROCEDURE-*Bail- bail pending appeal-conditions for grant.* ***JAMMAL VS. STATE*** *(2001) 1 ACLR.89*

CRIMINAL LAW AND PROCEDURE *- Bail pending appeal-grant of same is at discretion of the court-need to consider each application on its merit.* ***JAMMAL VS. STATE*** *(1998) 1 ACLR.89*

CRIMINAL LAW AND PROCEDURE *- Bail pending appeal-Need for application to show exceptional circumstances for grant.*
JAMMAL VS. STATE*(1998) 1 ACLR.89*

CRIMINAL LAW AND PROCEDURE *- Bail pending appeal-probability of applicant serving all or substantial part of sentence before hearing of appeal-when relied on whether same will induce the grant of bail.* ***JAMMAL VS STATE****(1998) 1 ACLR.89*

CRIMINAL LAW AND PROCEDURE *- Bail pending appeal- Illness as a grant of bail? Need for applicant to state the particular ailment.*
JAMMAL VS. STATE*(1998) 1 ACLR.89*

CRIMINAL LAW AND PROCEDURE *-Application for bail-Antecedent of accused-relevance of prosecuting counsel- duty thereon to advice court on probability of accused jumping bail.* ***OMODARA VS. STATE*** *(2004)1 NWLR 118*

CRIMINAL LAW AND PROCEDURE *-Application for bail-Grant or refusal of-principles guiding, whether court can refuse on its own belief or assumption.* ***OMODARA VS. STATE*** *(2004)1 NWLR 118*

CRIMINAL LAW AND PROCEDURE *- Murder-accused charge therewith -whether not entitle to bail- rationale therefore-presumption of innocence of accused-duty of court to uphold.* ***OMODARA VS. STATE*** *(2004)1 NWLR 118*

CRIMINAL LAW AND PROCEDURE *- Objectives of bail- duty on court in respect thereof.* ***OMODARA VS. STATE*** *(2004)1 NWLR 118*

CRIMINAL LAW AND PROCEDURE *- Revocation of bail-where bail granted- circumstances under which court may revoke.* ***OMODARA VS. STATE*** *(2004)1 NWLR 118*

CRIMINAL LAW AND PROCEDURE *-Application for bail- Applicant seeking-onus on – what they must show-what court must examine-relevant materials therefore.* ***OSAKWE VS. STATE*** *(2004) 14 NWLR. 123*

CRIMINAL LAW AND PROCEDURE *-Application for bail-Power of court to grant or refuse-discretionary nature of* ***Section 341(2) Criminal Procedure Code*** *considered.* ***OSAKWE VS. STATE*** *(2004) 14 NWLR. 123*

CRIMINAL LAW AND PROCEDURE *-Application for bail-Principles guiding-refusal of-whether breaches- presumption of innocence in favour of accused.* ***OSAKWE VS. STATE*** *(2004) 14 NWLR. 123*

CRIMINAL LAW AND PROCEDURE *-Bail pending trial-application for - grant of – principles guiding.* ***OSAKWE VS. STATE*** *(2004) 14 NWLR. 123*

CRIMINAL LAW AND PROCEDURE *-Application for bail-consideration of principles guiding.* ***BULAMA VS.F.R.N*** *(2004) 12 NWLR pt888.126*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial-grant or refusal of – discretion of court in respect of-how exercised.* ***BULAMA VS.F.R.N*** *(2004) 12 NWLR pt888.126*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial- grant or refusal of – discretion of court in respect of-exercise of – nature of –factors guiding.* ***BULAMA VS.F.R.N*** *(2004)12 NWLR pt888.126*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial- Principles governing-ill health of accused- medical report in support of-what it should disclose.* ***BULAMA VS.F.R.N*** *(2004)12 NWLR pt888.126*

CRIMINAL LAW AND PROCEDURE-*On whom lies burden of proof of insanity where it is raised as a defence.* ***GUOBADIA VS. STATE*** *(2004)17 NSQLR 129*

CRIMINAL LAW AND PROCEDURE- *whether mere absence of any evidence of motive for a crime is sufficient to infer mania.* ***GUOBADIA VS. STATE****(2004)17 NSQLR 129*

CRIMINAL LAW AND PROCEDURE- *whether mere evidence of mental disorder per se is enough or satisfactory evidence of insanity.* ***GUOBADIA VS. STATE****(2004)17 NSQLR 129.*

CRIMINAL LAW AND PROCEDURE- *Whether every person presumed sane until the contrary is proved.* ***GUOBADIA VS. STATE*** *(2004)17 NSQLR 129.*

CRIMINAL LAW AND PROCEDURE- *An accused relying on insanity as a defence-what he must prove.* ***GUOBADIA VS. STATE****(2004)17 NSQLR 129*

CRIMINAL LAW AND PROCEDURE- *On whether every form of mental disorder can relieve an accused person from criminal responsibility.* ***GUOBADIA VS. STATE****(2004)17 NSQLR 129*

CRIMINAL LAW AND PROCEDURE-*Onus of proof- whether can shift form the prosecution to the defence.* ***IGABELE VS. STATE*** *(2005)1 NCC 133*

CRIMINAL LAW AND PROCEDURE- *Proof beyond reasonable doubt-meaning of.* ***IGABELE VS. STATE*** *(2005)1 NCC 133.*

CRIMINAL LAW AND PROCEDURE- *Proof beyond reasonable doubt-meaning of identification of the corpse thereof.* ***AMUSA VS. STATE*** *(2005)1 NCC 135*

CRIMINAL LAW AND PROCEDURE- *Bail-application for-burden of proof therein-on whom lies.* ***ANAJEMBA VS. FGN*** *(2005) 1NCC 136*

CRIMINAL LAW AND PROCEDURE- *Criminal trials-burden of proof therein-what the prosecution must prove.* ***ODEN VS. FRN*** *(2005) 1 NCC 137.*

CRIMINAL LAW AND PROCEDURE- *Burden of proof in criminal cases-on whom lies.* ***MOSHOOD VS. STATE*** *(2004)14 NWLR 139.*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-circumstantial evidence-when will ground conviction.* ***MOSHOOD VS. STATE*** *(2004)14 NWLR 142.*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-ingredients of-Need to establish casual link between death and act of accused-stages of such proof.* ***MOSHOOD VS. STATE*** *(2004)14 NWLR 139.*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-burden and standard of proof required-burden of proof-on whom lies-whether shifts-where there is doubt- effect.* ***UGHENEYOVWE VS. STATE****(2004)12 NWLR 141*

CRIMINAL LAW AND PROCEDURE- *Proof of crime- lie- fact that accused person lied- whether proof of quilt-whether evidence of commission of crime.* ***UGHENEYOVWE VS. STATE****(2004)12 NWLR 141*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-suspicion-whether can ground conviction.* ***UGHENEYOVWE VS. STATE****(2004)12 NWLR 141*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-witnesses-duty on prosecution to call witnesses-rationale for.* ***UGHENEYOVWE VS. STATE****(2004)12 NWLR 141*

CRIMINAL LAW AND PROCEDURE- *Burden of proof by the accused-nature of.* ***OZAKI VS.STATE*** *(1998)1 ACLR 143*

CRIMINAL LAW AND PROCEDURE- *Burden on prosecution to proof quilt of accused-standard of proof.* ***STATE VS. GBUBUNJO****(2001)2 ACLR.144*

CRIMINAL LAW AND PROCEDURE- *Burden of proof of accused-on whom lies.* ***STATE VS. GBUBUNJO****(2001)2 ACLR.144*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-burden of proof-on whom lies-standard required-how discharge.* ***OGIDI VS. STATE****(2003)9 NWLR pt824.146*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-circumstantial evidence nature and quality thereof required to ground conviction.* ***OGIDI VS. STATE****(2003)9 NWLR pt824.146*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-contradiction in evidence of witnesses-what amounts to-when sufficient to discredit the evidence-when not sufficient.* ***OGIDI VS. STATE****(2003)9 NWLR pt824.146*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-fact that court regards accused a liar- whether sufficient to ground conviction.* ***OGIDI VS. STATE****(2003)9 NWLR pt824.146*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-nature and quality of evidence that will ground conviction.* ***OGIDI VS. STATE****(2003)9 NWLR pt824.146*

CRIMINAL LAW AND PROCEDURE- *Proof of crime-proof beyond reasonable doubt-purpose of requirement.* ***OGIDI VS. STATE****(2003)9 NWLR pt824.146*

CRIMINAL LAW AND PROCEDURE- *Proof-burden of proof in criminal cases-on whom lies.* ***ARABI VS. STATE*** *(2001)5 NWLR pt 706.150*

CRIMINAL LAW AND PROCEDURE- *Proof-burden of proof of self-defence on whom lies-how discharged- duty of the prosecution.* ***ARABI VS. STATE*** *(2001)5 NWLR pt 706.150*

CRIMINAL LAW-*Burden of proof –As contingent of plaintiff/prosecution- failure to discharge burden effect thereof.* ***UDOSEN VS. STATE*** *(2007) 29 NSCQR 151*

CRIMINAL LAW AND PROCEDURE-*Charge-when altered or substituted-effect thereof.* ***STATE VS. OLATUNJI****(2005) 1 NCC.155*

CRIMINAL LAW AND PROCEDURE- *Innocence-when a good defence to a criminal charge.* ***STATE VS. OLATUNJI****(2005) 1 NCC.155*

CRIMINAL LAW AND PROCEDURE- *Practice interpreting charge to illiterate accused – notoriety of.* ***OGUNYE VS.STATE*** *(2001)2 ACLR.157*

CRIMINAL LAW AND PROCEDURE- *Charge not read to accused or read in a language accused does not understand-validity of-effect.* ***OGUNYE VS.STATE*** *(2001)2 ACLR.157*

CRIMINAL LAW AND PROCEDURE- *Charge-explanation to accused-need for trial court to satisfied with.* ***OGUNYE VS.STATE*** *(2001)2 ACLR.157*

CRIMINAL LAW AND PROCEDURE- *Charge-interpretation of charge to an accused who understands language court-whether necessary.* ***OGUNYE VS.STATE*** *(2001)2 ACLR.157*

CRIMINAL LAW AND PROCEDURE- *Charge of forgery-an essential element of.* ***IDOWU VS. STATE*** *(2001)2 ACLR .160*

CRIMINAL LAW AND PROCEDURE- *Charge of conspiracy, forgery and stealing-specific sums allegedly stolen on specific dates-need to prove individually and separately that accused stole specific amounts on specific dates.* ***IDOWU VS. STATE*** *(2001)2 ACLR .160*

CRIMINAL LAW AND PROCEDURE- *Charge of forgery-accused failing to detect alteration or wrong entries in books of account-whether can ground a charge of forgery.* ***IDOWU VS. STATE*** *(2001)2 ACLR.160*

CRIMINAL LAW AND PROCEDURE- *Charge-duplicity of.* ***IDOWU VS. STATE*** *(2001)2 ACLR .160*

CRIMINAL LAW AND PROCEDURE-*Application to prefer a charge against an accused-conditions for.* ***MILTON VS.FRN****(2003) 13 NSCQLR 162*

***CRIMINAL LAW AND PROCEDURE**-Amendment of a charge-whether would confer the right to recall witnesses that had testified before the amendment was effected. **NDUKWE VS. STATE**(2005) 1 NCC.163*

***CRIMINAL LAW**-Plea of guilt-whether an accused can thereon be convicted and sentence alone-whether necessary to explain facts on the charge sheet to accused-whether where such facts in the charge are explained to the understanding of the accused it is safe to convict and sentence thereon. **IDRIS RABIU VS. STATE** (2005)1 NCC.164*

***CRIMINAL LAW**-Charge –criminal breach of trust-conviction-appeal-whether accused had fair hearing-test-Nigerian constitution Section 22(2).**MOHAMMED VS. KANO N.A** (2004)1 LC.165*

***CRIMINAL LAW AND PROCEDURE**-Whether it is mandatory to write in the records of. **AMALA VS. STATE** (2004) 18 NSCQLR.166*

***CRIMINAL LAW AND PROCEDURE**-A "holding charge"-whether same is known to law. **CHINEMELU VS. COP** (1998)1ACLR 167*

***CRIMINAL LAW AND PROCEDURE**-A Charge- purpose of. **ARUNA VS. STATE** (1998) 1 ACLR.168*

***CRIMINAL LAW AND PROCEDURE**-Charge of stealing-what the prosecution must establish to succeed at the no case submission stage. **ONAGORUWA VS. STATE**(1998)1 ACLR.169*

***CRIMINAL LAW AND PROCEDURE**-Charge of stealing-where evidence led by prosecution as to the nature, number and identity of article stolen is contradictory-How is such evidence treated? **ONAGORUWA VS. STATE**(1998)1 ACLR.169*

***CRIMINAL LAW AND PROCEDURE**-Charge-must be read and explained to the accused. **DURWODE VS.STATE** (2000)4 NSCQLR.170*

***CRIMINAL LAW AND PROCEDURE**-Charge-whether failure to record charge will amount to miscarriage. **DURWODE VS.STATE** (2000)4 NSCQLR.170*

***CRIMINAL LAW AND PROCEDURE**-Join trial of separate charges-what appellant must prove to show that manifest injustice had arisen. **STATE VS. ONYEKWU** (2004)19 NSCQLR.171*

***CRIMINAL LAW AND PROCEDURE**-Join trial of separate charges-when may objection be raised by an accused person. **STATE VS. ONYEKWU** (2004)19 NSCQLR.171*

***CRIMINAL LAW AND PROCEDURE**-Join trial of separate charges-what the attitude of the court should be thereto. **STAT EVS.ONYEKWU**(2004)19 NSCQLR.171*

***CRIMINAL LAW AND PROCEDURE**-Charge-must be read and explained to the accused person. **LATEEF VS. STATE**(2001) 6 NSCQLR 174*

***CRIMINAL LAW AND PROCEDURE**- Charge-Whether necessary to record fact where accused understands the language of the court. **LATEEF VS. STATE**(2001) 6 NSCQLR.174*

***CRIMINAL LAW AND PROCEDURE**-Admission of confession-when same can be vitiated. **EGBOGHONOME VS. STATE** (2001)2 ACLR.175*

***CRIMINAL LAW AND PROCEDURE**-Confession of an accused-whether court can convict on same alone. **EGBOGHONOME VS. STATE** (2001)2 ACLR.175.*

CRIMINAL LAW AND PROCEDURE-*Confession of an accused-whether court can convict on same alone.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Confessions- attitude of court to same.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Confession-nature and treatment of-course opened to court when confession is retracted.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Confessional statement admitted-treatment of.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Hostile witness-previous statement made by him-how used?* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE- *Inconsistency rule-application and extent of.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Inconsistency rule-application of.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Inconsistency rule and confession-whether both should be governed by same rule.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Inconsistency rule-whether decision in Oladejo vs. state (1987) 3 NWLR (pt 61)419 and Asanya vs. state (1991) 3 NWLR (pt 180) 422 made per incuriam.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Involuntary confession and retracted confession-distinction of.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Involuntary confession and retracted confession-distinction of.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE- *On fundamental principle of the administration of criminal justice.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Practice of taking accused persons who confessed to a crime before superior police officer for confirmation-legality of.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE-*Pre-trial recording of accused`s statement-whether same is a legal requirement.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE- *Rule in R vs. Golder (19960)1 WLR 25 1169-effect of application-of same to retracted confession.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE- *Statement of accused inconsistent with testimony at trial-treatment of – whether logical for different rule to apply.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR.175*

CRIMINAL LAW AND PROCEDURE- *Confessional statement-whether conclusive evidence against the maker.* ***NWACHUKWU VS. STATE*** *(2002)11 NSCQLR.182*

CRIMINAL LAW AND PROCEDURE- *Confessional statement-when it is denied-effect thereof.* ***ABAYOMI VS. STATE*** *(2001) 8 NSCQLR 183*

CRIMINAL LAW AND PROCEDURE- *Interpreter-position of in proof of a confessional statement.* ***ABAYOMI VS. STATE*** *(2001) 8 NSCQLR 183*

CRIMINAL LAW AND PROCEDURE- *Confessional statement-Free, voluntary and direct is sufficient to sustain a conviction.* ***AKINMOJU VS. STATE*** *(2000)2 SCNQLR.185*

CRIMINAL LAW AND PROCEDURE- *Confessional statement-Corroboration by circumstantial evidence of prosecution witnesses.* ***SUNDAY IHUEBEKA VS.STATE****(2000)2 NSCQLR.187*

CRIMINAL LAW AND PROCEDURE- *Confessional statement of an accused-what amount to-conditions for its admissibility.* ***SUNDAY IHUEBEKA VS. STATE****(2000)2 NSCQLR.187*

CRIMINAL LAW AND PROCEDURE- Confessional *statement-meaning and effect of in criminal trials.* ***SOLOLA VS. STATE*** *(2005)22 NSCQLR.189*

CRIMINAL LAW AND PROCEDURE- Confessional *statement-whether may be taken to a superior police officer for endorsement in order that the accused may deny or admit making the statement.* ***SOLOLA VS.STATE*** *(2005)22 NSCQLR.189*

CRIMINAL LAW AND PROCEDURE- *Free and voluntary confession or statement-relevancy and admissibility of.* ***SOLOLA VS.STATE*** *(2005)22 NSCQLR.189*

CRIMINAL LAW AND PROCEDURE- *voluntary confessional statement-relevancy and admissibility of.* ***SOLOLA VS. STATE*** *(2005)22 NSCQLR.189*

CRIMINAL LAW AND PROCEDURE- *Confessional statement-When "trial within trial" is relevant.* ***MADJEMU VS.STATE****(2001)6 NSCQLR.191*

CRIMINAL LAW AND PROCEDURE- *Confessional statement-whether becomes inadmissible merely because an accused has resiled from it.* ***SHANDE VS. STATE*** *(2005)22 NSCQLR. 192*

CRIMINAL LAW AND PROCEDURE- *Confessional statement of an accused person-where accused person has resiled from it or completely retracted- whether court can act thereon.* ***SHANDE VS. STATE*** *(2005)22 NSCQLR.192*

CRIMINAL LAW AND PROCEDURE- *Confessional statement of an accused person-where accused person has resiled from it or completely retracted- whether court can act thereon.* ***SHANDE VS. STATE*** *(2005)22 NSCQLR. 192*

CRIMINAL LAW AND PROCEDURE- *Confession-whether a man can be convicted on his own confession.* ***UBIERHO VS. STATE*** *(2005)21 NSCQLR.193*

CRIMINAL LAW AND PROCEDURE- *Confessional statement-where retracted whether the court will not act on it.* ***UBIERHO VS. STATE*** *(2005)21 NSCQLR.193*

CRIMINAL LAW- *Confession-the definition thereof.* ***YAHAYA VS. STATE*** *(2005)1 NCC.195*

CRIMINAL LAW-*Confession-when challenged on the ground that it was not made at all and when challenged on the ground that it was not voluntary made-how treated.* ***YAHAYA VS. STATE*** *(2005)1 NCC.195*

CRIMINAL LAW- *Confession-whether desirable to have some Corroborative evidence outside it?* ***YAHAYA VS. STATE*** *(2005) 1 NCC.195*

CRIMINAL LAW-*Confessional statement-when can sustain a conviction.* ***YAHAYA VS. STATE*** *(2005)1 NCC.195*

CRIMINAL LAW AND PROCEDURE-*Evaluation of accused person`s confessional statement-trial within trial-when required.* ***NWANGBOMU VS. STATE*** *(2001)2 ACLR 198.*

CRIMINAL LAW AND PROCEDURE- *Admission of a confession-when same can be vitiated.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR 203*

CRIMINAL LAW AND PROCEDURE-*Confession of an accused-whether court can convict on same alone.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR 203.*

CRIMINAL LAW AND PROCEDURE-*Confessions-attitude of courts to same.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR 203*

CRIMINAL LAW AND PROCEDURE-*Confession-nature and treatment of- course opened to court when confession is retracted.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR 203.*

CRIMINAL LAW AND PROCEDURE-*Confessional statement once admitted-Treatment of.* ***EGBOGHONOME VS. STATE*** *(2001)2 ACLR 203.*

***CRIMINAL LAW AND PROCEDURE**-Inconsistency rule and confession whether both should governed by same rule. **EGBOGHONOME VS. STATE** (2001)2 ACLR 203.*

***CRIMINAL LAW AND PROCEDURE**-Involuntary confession and retracted confession-Distinction of. **EGBOGHONOME VS. STATE** (2001)2 ACLR 203.*

***CRIMINAL LAW AND PROCEDURE**- Rule in R vs.Gulder (1960)1 WLR 25 11169-effect of application of same to retracted confession. **EGBOGHONOME VS. STATE** (2001)2 ACLR 203.*

***CRIMINAL LAW AND PROCEDURE**- Statement of accused inconsistent with testimony at trial-treatment of – whether logical for different rule to apply. **EGBOGHONOME VS. STATE** (2001)2 ACLR 203.*

***CRIMINAL LAW AND PROCEDURE**-Confession of co-accused-whether and when can be basis of convicting an accused.-**S.27 Evidence Act** considered. **IDOWU VS. STATE** (2001)2 ACLR.210*

***CRIMINAL LAW AND PROCEDURE**- Confession-extra judicial confession of accused-where retracted-how treated-effect-duty of in respect of. **MOSHOOD VS. STATE**(2004) 14 NWLR 210.*

***CRIMINAL LAW AND PROCEDURE**- Conspiracy-whether inappropriate where substantive offence is not proved. **BALOGUN VS. AG OGUN** STATE (2002)9 NSCQLR 212.*

***CRIMINAL LAW AND PROCEDURE**- Conspiracy-whether inappropriate where substantive offence is not proved. **BALOGUN VS. AG OGUN** STATE (2002)9 NSCQLR 212*

***CRIMINAL LAW AND PROCEDURE**- Conspiracy-meaning of. **OBIAKOR VS. STATE** (2002) 10 NSCQLR 213*

CRIMINAL LAW AND PROCEDURE- *Conspiracy-whether automatically fails when substantive offence has failed.* ***OBIAKOR VS. STATE*** *(2002) 10 NSCQLR 213*

CRIMINAL LAW AND PROCEDURE- *Conspiracy-whether husband and wife are criminally responsible for conspiracy between themselves alone.* ***OBIAKOR VS. STATE*** *(2002) 10 NSCQLR 213*

CRIMINAL LAW AND PROCEDURE- *Conspiracy-Offence of –best evidence.* ***ABACHA VS. STATE*** *(2002)11 NSCQLR 215*

CRIMINAL LAW AND PROCEDURE-*Abetment of crime-ingredient of-punishment therefore-whether same with punishment provided for the main offence.* ***UPAHAR VS. STATE*** *(2003) 6 NWLR pt 816 217*

CRIMINAL LAW AND PROCEDURE-*Conspiracy-nature of – what constitutes-how proved.* ***UPAHAR VS. STATE*** *(2003) 6 NWLR pt 816 217*

CRIMINAL LAW AND PROCEDURE- *Criminal conspiracy –what constitutes-Section 96(1), Penal Code.* ***UPAHAR VS. STATE*** *(2003) 6 NWLR pt 816 217*

CRIMINAL LAW AND PROCEDURE-*Proof of crime – conspiracy-how proved-whether may be inferred.* ***UPAHAR VS. STATE*** *(2003) 6 NWLR pt 816 217*

CRIMINAL LAW AND PROCEDURE-*"Corroboration"-meaning of-corroborative evidence-what constitutes.* ***UGHENEYOVWE VS. STATE*** *(2004)12 NWLR 219*

CRIMINAL LAW AND PROCEDURE-*Proof of crime-corroboration-determination of whether evidence corroborative of another-relevant consideration. implicate the accused person.* ***UPAHAR VS. STATE*** *(2003) 6 NWLR pt 816 220*

***CRIMINAL LAW**-Defence of provocation-when will avail an accused.*
***SHANDE VS. STATE** (2005)22 NSCQLR 221*

***CRIMINAL LAW AND PROCEDURE**-Provocation-defence of in a charge of murder or culpable homicide-requirement thereof. **SHANDE VS. STATE** (2005)22 NSCQLR 221*

***CRIMINAL LAW AND PROCEDURE**-Defence of an accused-must be considered. **OFORLETE VS. STATE**(2000)3 NSCQLR 222*

***CRIMINAL LAW AND PROCEDURE**-Self defence-where accused relies upon- effect of. **AMALA VS.STATE** (2004) 8 NSCQLR 223*

***CRIMINAL LAW**-On whom lies burden of proof of insanity where it is raised as a defence. **GUOBADIA VS. STATE** (2004)17 NSCQLR 225*

***CRIMINAL LAW AND PROCEDURE**-Trial judge determining a defence of insanity-what must be taken into consideration. **GUOBADIA VS. STATE** (2004)17 NSCQLR 225.*

***CRIMINAL LAW**-Murder-criminal liability therein-defence of mistake-reliance thereon by an accused person must be based on a true and credible story. **AIGUOKHIAN VS.STATE** (2004)18 NACQLR 238.*

***CRIMINAL LAW**-Murder-criminal liability therein-defence of mistake-reliance thereon by an accused person-what constitutes the test of honest belief. **AIGUOKHIAN VS.STATE** (2004)18 NACQLR 227*

***CRIMINAL LAW AND PROCEDURE**-Murder charge-defence of insanity and intoxication-plea of-Section 18 and 19 Criminal Code,36 Laws of Anambra State-onus of proof where lies. **OKEKE VS. STATE** (2003)13 NSCQLR 229*

***CRIMINAL LAW**-Provocation-defence of –when will reduce murder to manslaughter. **UWAEKWEGHINYA VS. STATE** (2005)21 NSCQLR 230*

***CRIMINAL LAW**-Whether an act of revenge not done in the heat of passion can successfully form the basis of defence of provocation.*
***UWAEKWEGHINYA VS. STATE** (2005)21 NSCQLR 230*

***CRIMINAL LAW**-Alibi-defence of-whether can still avail an accused unequivocally pinned down to the locus in quo. **SOWEMIMO VS. STATE** (2004) 18 NSCQLR 232*

***CRIMINAL LAW-** Alibi-meaning of –defence of –when will be considered by the court-when not. **SOWEMIMO VS. STATE** (2004) 18 NSCQLR 232*

***CRIMINAL LAW AND PROCEDURE** -Alibi-defence of –failure of police to investigate-when will not acquittal of accused person.*
***EBRI VS.THE STATE** (2004)18 NSCQLR.233*

***CRIMINAL LAW AND PROCEDURE** –Defence-accident-accidental discharge of firearm- whether attracts criminal liability.*
***UGHENEYOVWE VS.STATE** (2004)12 NWLR.245*

***CRIMINAL LAW AND PROCEDURE** –Defence-defence of accidental discharge of firearm-where raised by accused-onus on prosecution to negative-failure to so lead-effect. **UGHENEYOVWE VS.STATE** (2004)12 NWLR.234*

***CRIMINAL LAW AND PROCEDURE** –Defence of insanity-element necessary to establish. **MADJEMU VS. STATE** (2001) 2 ACLR.235*

***CRIMINAL LAW AND PROCEDURE** –Defence of automatism-how proved –on whom lies to prove. **MADJEMU VS. STATE** (2001) 2 ACLR.235*

CRIMINAL LAW AND PROCEDURE *–Defence- Defence- alibi-meaning and purport of-standard of proof required.* ***SUNDAY ANI VS. THE STATE*** *(2003) 11 NWLR PT 830 P.142.236*

CRIMINAL LAW AND PROCEDURE *–Defence-Defence-alibi-where raised-duty on prosecution to investigate-where accused person is fixed at scene of crime-effect.* ***SUNDAY ANI VS. THE STATE*** *(2003) 11 NWLR PT 830 P.142.236*

CRIMINAL LAW AND PROCEDURE *–Defence-defence open to accused person charged with capital offence-duty on court to consider.* ***SUNDAY ANI VS. THE STATE*** *(2003) 11 NWLR PT 830 P.142.236*

CRIMINAL LAW AND PROCEDURE- *Defences- alibi-where raised by accused person – onus of establishing same-on whom lies where onus to establish misplaced-effect.* ***ROSE OSHODI VS. STATE*** *(2001) 12 NWLR PT 726.238*

CRIMINAL LAW AND PROCEDURE- *Defences- alibi-where raised by accused person –failure of prosecution to investigate- effect of.* ***ROSE OSHODI VS. STATE*** *(2001) 12 NWLR PT 726.238*

CRIMINAL LAW AND PROCEDURE *–Defence-defence of accident-nature and application of whom lies-when raised by accused person-duty of the prosecution.* ***ARABIVS. STATE****(2001)5 NWLR pt 706.240*

CRIMINAL LAW AND PROCEDURE *–Duty of prosecution to call required number of witness.* ***IJIOFFOR VS. STATE*** *(2001) 6 NSCQLR.244*

CRIMINAL LAW-*Murder charge-what the prosecution must prove where deceased did not immediately.* ***UGURU VS. STATE*** *(2002) 10 NSCQLR.245*

CRIMINAL LAW-*Murder charge-what the prosecution must prove.* ***UGURU VS. STATE*** *(2002) 10 NSCQLR.245*

CRIMINAL LAW AND PROCEDURE *–Duty of prosecution to prove case beyond all reasonable doubt.* ***IBEH VS. STATE*** *(2001) 2 ACLR 246*

CRIMINAL LAW-*Homicide cases-medical evidence-whether most necessary therein.* ***ADEBAYO VS.STATE*** *(2003) 13 NSCQLR.247*

CRIMINAL LAW-*Homicide cases-pathologist- definition of for the purpose of post mortem.* ***ADEBAYO VS.STATE*** *(2003) 13 NSCQLR.247*

CRIMINAL LAW AND PROCEDURE-*Culpable homicide-ingredient to prove same.* ***AHMED VS.STATE*** *(2001)8 NSCQLR.248*

CRIMINAL LAW AND PROCEDURE-*Homicide cases-cause of death known-whether medical evidence of cause of death are necessary.* ***IHUEBUKA VS. STATE*** *(2001) 2 ACLR.250*

CRIMINAL LAW AND PROCEDURE-*Homicide cases-whether provocation renders homicide excusable.* ***IHUEBUKA VS. STATE*** *(2001) 2 ACLR.251*

CRIMINAL LAW AND PROCEDURE-*Homicide trials-failure to produce murder weapon-whether fatal.* ***GARBA VS. STATE*** *(2001) 2 ACLR.251*

CRIMINAL LAW AND PROCEDURE-*Murder-offence of-when medical evidence could be dispensed with in proving the cause of the death.* ***BEN VS. STATE*** *(2005)1 NCC.252*

***CRIMINAL LAW AND PROCEDURE**-Murder-offence of-whether medical evidence essential to prove the cause of death in all murder cases.*
***BEN VS. STATE** (2005)1 NCC.252*

***CRIMINAL LAW AND PROCEDURE**-Murder-offence of-when committed.*
***BEN VS. STATE** (2005)1 NCC.252*

***CRIMINAL LAW**- prosecution duty on to prove cause of death-proximate and remote causes-consideration .**ORJI VS. STATE** (2005) 1 NCC.255*

***CRIMINAL LAW**-Circumstantial evidence-reliance on ,on a charge of murder-requirements thereof. **ORJI VS.STATE** (2005)1 NCC.255*

***CRIMINAL LAW**-Murder charge-essential ingredient needed to be proved to establish thereof. **ORJI VS. STATE** (2005)1 NCC.255*

***CRIMINAL LAW**-Medical evidence-whether always necessary to convict an accused for murder. **SOWEMIMO VS. STATE** (2004)18 NSCQLR.257*

***CRIMINAL LAW**-Murder charge-how proved. **SOWEMIMO VS. STATE** (2004)18 NSCQLR. 257*

***CRIMINAL LAW**-Medical evidence-whether always necessary to convict an accused for murder. **SOWEMIMO VS. STATE** (2004)18 NSCQLR.257*

***CRIMINAL LAW**-Murder charge-how proved. **SOWEMIMO VS. STATE** (2004)18 NSCQLR. 257*

***CRIMINAL LAW**-Murder-Abduction-circumstantial evidence leading to inference- reasonableness of evidence to support conviction.*
***ESAI VS. STATE** (2004) 1 NCC.258*

***CRIMINAL LAW**-Murder trial continued though defending counsel absent.*
***YANOR VS. STATE** (2004)1 LC.259*

***CRIMINAL LAW**-Murder-cause of death inferred from substances where lack of medical evidence. **ADAMU VS.KANO N.A** (2004)1 LC.260*

***CRIMINAL PROCEDURE**-Murder charge-how established-when will it be reduced to manslaughter. **IDOWU VS. STATE**(2000)3 NSCQLR.261*

***CRIMINAL LAW**-Murder charge-ambiguity in the medical certificate tendered and oral testimony of the doctor-effect of.*
***AIGUOBARUEGHIAN VS. STATE** (2004) 17 NSCQLR.262*

***CRIMINAL LAW**-Murder charge-whether can be proved by direct or circumstantial evidence. **AIGUOBARUEGHIAN VS. STATE** (2004) 17 NSCQLR.262*

***CRIMINAL LAW**-Charge of murder or manslaughter –how proved.*
***AIGUOBARUEGHIAN VS. STATE** (2004) 17 NSCQLR.262*

***CRIMINAL LAW**-Law of causation- meaning of. **AIGUOBARUEGHIAN VS. STATE** (2004) 17NSCQLR.262*

***CRIMINAL PROCEDURE LAW**-Medical certificate-whether always necessary to prove a charge or murder. **AIGUOBARUEGHIAN VS. STATE** (2004) 17 NSCQLR.262*

***CRIMINAL LAW**-Murder-criminal liability therein-defence of mistake – reliance thereon by an accused person must be based on a true and credible story. **AIGUKHIAN VS.STATE**(2004)18 NSCQLR.2671*

***CRIMINAL LAW**-Murder-criminal liability therein-defence of mistake – reliance thereon by an accused person-what constitutes the test of honest belief. **AIGUKHIAN VS. STATE** (2004)18 NSCQLR.267*

CRIMINAL LAW**-Murder charge-how to prove cause of death.* ***YOUNG VS.STATE *(2002) 10 NSCQLR.269*

CRIMINAL LAW**-Murder charge-what the prosecution must prove where deceased did not die immediately.* ***YOUNG VS.STATE *(2002) 10 NSCQLR.269*

CRIMINAL LAW**-Murder charge-what the prosecution must prove.* ***YOUNG VS.STATE *(2002) 10 NSCQLR.269*

CRIMINAL PROCEDURE LAW**-Murder charge-conditions for its proof.* ***NWACHUKWU VS. STATE *(2002)11 NSCQLR.271*

CRIMINAL PROCEDURE LAW**-Murder charge-whether can be reduced to manslaughter.* ***EJEKA VS. STATE *(2003)14 NSCQLR.272*

CRIMINAL PROCEDURE LAW**-Murder-mandatory ingredient to sustain the charge.* ***DURWODE VS. STATE *(2003)4 NSCQLR.273*

CRIMINAL PROCEDURE LAW**-Medical evidence-whether always necessary in cause of murder.* ***FESTUS VS. STATE*(2001)8 NSCQLR.274*

CRIMINAL PROCEDURE LAW**-Murder- ingredients proof.* ***FESTUS VS. STATE*(2001)8 NSCQLR.274*

CRIMINAL PROCEDURE LAW**-Murder-whether can be established by direct or circumstantial evidence.* ***UBANI &ORS VS. STATE *(2003) 16 NSCQLR.275*

CRIMINAL PROCEDURE LAW**-Murder-whether conviction can be sustained without corpus delicit.* ***UBANI &ORS VS. STATE *(2003)16 NSCQLR.275*

CRIMINAL PROCEDURE LAW-*Murder-whether medical evidence is a sine quo non to its proof.* ***UBANI &ORS VS. STATE*** *(2003) 16 NSCQLR.275*

CRIMINAL PROCEDURE LAW-*Murder charge-ingredient of.* ***UBANI &ORS VS. STATE*** *(2003) 16 NSCQLR.275*

CRIMINAL LAW AND PROCEDURE-*Murder case-medical evidence as to cause of death-whether same is essential in all cases of homicide.* ***ONYEGBU VS. STATE****(1998)1 ACLR.278*

CRIMINAL LAW AND PROCEDURE-*Murder charge-duty of prosecution to link the act of the accused with death of deceased.* ***ILORI VS STATE*** *(1998)1 ACLR.278*

CRIMINAL LAW AND PROCEDURE-*Murder charge-whether medical evidence is essential to establish same.* ***ILORI VS STATE*** *(1998)1 ACLR.279*

CRIMINAL LAW AND PROCEDURE- *Murder charge-circumstantial evidence in proof of – nature of to ground conviction.* ***ABIEKE VS. STATE****(1990)1 ACLR.280*

CRIMINAL LAW AND PROCEDURE-*Murder charge-need for fact in respect thereof to be proved in circumstance beyond reasonable doubt before conviction of accused.* ***ABIEKE VS. STATE****(1990)1 ACLR.280*

CRIMINAL LAW AND PROCEDURE-*Murder charge-need for fact in respect thereof to be proved in circumstance beyond reasonable doubt before conviction of accused.* ***ABIEKE VS. STATE****(1990)1 ACLR.280*

CRIMINAL LAW AND PROCEDURE-*Murder charge-whether motive sine qua non-when necessary to prove motive.* ***AHMED VS. STATE****(2000)2 ACLR.284*

CRIMINAL LAW- *Murder charge-how proved-ingredient of proof.* ***GODWIN IGABELE VS. STATE*** *(2005) 1 NCC.286*

CRIMINAL LAW AND PROCEDURE-*Murder trial-age of an accused person where relevant-how the court may determine.* ***GUOBADIA VS. STATE****(2005) 1 NCC.287*

CRIMINAL LAW AND PROCEDURE-*Murder trial-age of an accused person where relevant-when it is incumbent on a trial judge to enquire before sentence.* ***GUOBADIA VS. STATE****(2005) 1 NCC.287*

CRIMINAL LAW AND PROCEDURE-*No case submission-guiding principle-consideration of.* ***EMEDO &ORS VS.STATE****(2002)11 NCQLR.289*

CRIMINAL LAW AND PROCEDURE-*No case submission-trial judge-duty of where no case submission is upheld.* ***EMEDO & ORS VS. STATE*** *(2002)11 NCQLR.289*

CRIMINAL LAW AND PROCEDURE-*No case submission-trial judge-duty of when writing a ruling on.* ***EMEDO &ORSVS.STATE****(2002)11 NCQLR.289*

CRIMINAL LAW AND PROCEDURE-*No case submission-when may properly be upheld.* ***EMEDO &ORS VS.STATE****(2002)11 NCQLR.289*

CRIMINAL LAW AND PROCEDURE-*No case submission-whether accused will be discharge where facts adduced calls for an explanation.* ***EMEDO & ORS VS. STATE****(2002)11 NCQLR.289*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-whether accused will be discharge where facts adduced calls for an explanation.* ***EMEDO &ORS VS.STATE****(2002)11 NCQLR.289*

CRIMINAL PROCEDURE LAW-*No case submission-effect of where it fails.* ***GODWIN IGABELE VS. STATE****(2005)1 NCC.292*

CRIMINAL PROCEDURE LAW-*"No case" submission-meaning of-when will be uphold-effect where accused rests his case on a no case submission.* ***GODWIN IGABELE VS. STATE****(2005)1 NCC.292*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-duty on trial judge in resolving same-whether trial judge can consider issue of credibility of witnesses at this stage.* ***ONAGORUWA VS.STATE*** *(1998)1 ACLR.294*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-ruling thereon- ruling delivered outside statutory period-whether same per se occasion a miscarriage of justice.* ***ONAGORUWA VS.STATE*** *(1998)1 ACLR.294*

CRIMINAL LAW AND PROCEDURE-*"No case" submission stage-Manifest unreliability of evidence of prosecution-whether trial judge is bound to resolve same in favour of accused.*
ONAGORUWA VS. STATE *(1998)1 ACLR.294*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-when same can properly be made and upheld.* ***AJIBOYE VS. STATE****(1998)1 ACLR.296*

CRIMINAL LAW AND PROCEDURE-*Ruling no case submission-what court should consider.* ***AJIBOYE VS. STATE****(1998)1 ACLR.296*

CRIMINAL PROCEDURE LAW-*"No case" submission- meaning of-where raised.* ***AJIBOYE VS. STATE****(1998)1 ACLR.296*

CRIMINAL PROCEDURE LAW- *"No case" submission-discharge following a no-case-whether tantamount to an acquittal.* ***AMINU MUHAMMED VS. STATE*** *(2007) 29 NSCQR 634.298*

CRIMINAL PROCEDURE LAW- *"No case" submission- when may be properly upheld.* ***AMINU MUHAMMED VS. STATE*** *(2007) 29 NSCQR 634.298*

CRIMINAL LAW AND PROCEDURE- *"No case" submission-judge over ruling same to satisfy self of existence of prima facie case.* ***UBANATU VS. COP*** *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE- *"No case" submission-judge over ruling same to satisfy self of existence of prima facie case.* ***UBANATU VS. COP*** *(2001) 2 ACLR.3300*

CRIMINAL LAW AND PROCEDURE- *"No case" submission-ruling on-judge to be brief and refrain from commenting on the facts.* ***UBANATU VS. COP*** *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE- *"No case" submission-when can succeed.* ***UBANATU VS. COP*** *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE- *"No case" submission-when can be made instances of.* ***UBANATU VS. COP*** *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE- *"No case" submission-when made out.* ***UBANATU VS. COP*** *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE- *"No case" submission upheld-consequence on an accused.* ***UBANATU VS. COP*** *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE- *"No case" submission-nature of evidence that can sustain.* ***UBANATU VS. COP*** *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE-*Prima facie case-definition of.*
UBANATU VS. COP *(2001) 2 ACLR.300*

CRIMINAL LAW AND PROCEDURE-*"No case" submission- defence making no case submission simpliciter- defence making no case submission and further resting its case on prosecutions case- distinction between –effect of –duty on court on each case.* ***AKWA VS. COP*** *(2003)4 NSCQLR,303*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-where made without more-duty on court to rule before delivering final judgment- where no case submission overruled-duty on court to afford accused opportunity to present his defence-failure to do so-effect on judgment of court-***Section 287(1)(b),Criminal Procedure Law*** *considered.* ***AKWA VS. COP*** *(2003)4 NSCQLR, 303*

CRIMINAL LAW AND PROCEDURE-*No case submission-where made without more-duty on court to rule before delivering final judgment- where no case submission overruled-duty on court to afford accused opportunity to present his defence-failure to do so-effect on judgment of court-***Section 287(1)(b),Criminal Procedure Law*** *considered.* ***AKWA VS. COP*** *(2003)4 NSCQLR ,303*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-where upheld and appealed against-what appeal should focus on.*
STATE VS. DUKE*(2003)4 NWLR pt 813,307*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-ruling thereon- need to be brief.* ***THE STATE VS. EMEDO****(2001)12 NWLR,308*

CRIMINAL LAW AND PROCEDURE-*"No case" submission-ruling thereon- nature and contents of-whether court can discharge and acquit accused at that stage.* ***THE STATE VS. EMEDO****(2001)12 NWLR,308*

CRIMINAL LAW AND PROCEDURE-*"No case" submission- meaning and nature of – principles guiding determination of-duty of court in respect thereof.* ***THE STATE VS. EMEDO****(2001)12 NWLR,308*

CRIMINAL LAW AND PRACTICE-*Whether provocation renders homicide excusable.* ***IHUEBEKA VS. STATE*** *(2001)2 ACLR.312*

CRIMINAL LAW-*Provocation-defence of-when will reduce murder to manslaughter.* ***UWAEKWEGHINYA VS.STATE****(2005)21 NSCQLR.313*

CRIMINAL LAW-*Provocation-whether premeditated intent is compatible with provocation.* ***UWAEKWEGHINYA VS. STATE****(2005)21NSCQLR.313*

CRIMINAL LAW-*Whether an act of revenge not done in the heat of passion can successfully form the basis of defence of provocation.* ***UWAEKWEGHINYA VS. STATE****(2005)21NSCQLR.313*

CRIMINAL LAW-*Proof of the guilt of accused person-additional burden on the prosecution therein where there is evidence of provocation.* ***ABUBAKAR DAN SHALLA VS. STATE****(2005)1 NCC 315*

CRIMINAL LAW-*Proof of the guilt of accused person-additional burden on the prosecution therein where there is evidence of provocation.* ***ABUBAKAR DAN SHALLA VS. STATE****(2005)1 NCC 315*

CRIMINAL LAW-*Provocation- defence of- ingredient thereof.* ***ABUBAKAR DAN SHALLA VS. STATE****(2005)1 NCC 315*

CRIMINAL LAW-*Provocation-what the term donates.* ***ABUBAKAR DAN SHALLA VS. STATE****(2005)1 NCC 315*

CRIMINAL LAW-*Provocation-whether there are specific types of acts that are likely to cause.* ***ABUBAKAR DAN SHALLA VS. STATE****(2005)1 NCC 315*

***CRIMINAL LAW**-Provocation-whether words alone can constitute.*
***ABUBAKAR DAN SHALLA VS. STATE**(2005)1 NCC 315*

***CRIMINAL LAW**-Provocative act or utterance by one-whether can be a ground for killing a third party. **ABUBAKAR DAN SHALLA VS. STATE**(2005)1 NCC 315*

***CRIMINAL PROCEDURE LAW**-Provocation-what constitutes. **AMALA VS. STATE** (2004)18 NSCQLR,319*

***CRIMINAL PROCEDURE LAW**-RAPE-Meaning of – ingredient of –when will an accused be guilty of rape. **IKO VS. STATE** (2005) 1 NCC,320*

***CRIMINAL PROCEDURE LAW**-RAPE-corroboration whether necessary in all cases of rape. **IKO VS. STATE** (2005) 1 NCC,320*

***CRIMINAL PROCEDURE LAW**-corroboration ingredient and purpose of -when is it required to prove the guilt of an accused-whether mandatory in all cases of rape. **IKO VS. STATE** (2005) 1 NCC,320*

***CRIMINAL LAW-** Rape-ingredient of –principal ingredient to prove thereof to sustain a conviction and sentence. **IDRIS RABIU VS. STATE** (2005) 1NCC,322*

***CRIMINAL LAW AND PROCEDURE-** Rape-"hymen"-meaning of. **UPAHAR VS. STATE** (2003) 6 NWLRpt816, 326*

***CRIMINAL LAW AND PROCEDURE-** Rape-attempted rape-power of high court to commit thereof-Section 218,Criminal Procedure Code. **UPAHAR VS. STATE** (2003) 6 NWLRpt816, 326*

CRIMINAL LAW AND PROCEDURE- *Rape-what constitutes-ingredient of.* ***UPAHAR VS. STATE*** *(2003) 6 NWLRpt816, 326*

CRIMINAL LAW AND PROCEDURE- *offence-offences of receiving stolen property-ingredient of* ***Section 427 of the Criminal Code.*** ***ROSE OSHODI VS. STATE*** *(2001) 12 NWLR pt 726,329*

CRIMINAL LAW AND PROCEDURE-*Stealing-doctrine of recent possession- court considering same-duty on to relate time of theft to time of recovery of stolen item.* ***ROSE OSHODI VS. STATE*** *(2001) 12 NWLR pt 726. 329*

CRIMINAL LAW AND PROCEDURE-*Charge of stealing –what the prosecution must establish to succeed at the no case submission stage.* ***ONAGORUWA VS. STATE*** *(1998) 1 ACLR 331*

CRIMINAL LAW AND PROCEDURE-*Charge of stealing – where evidence led by prosecution as to the nature, number and identity of articles stolen is contradictory- How is such evidence treated?* ***ONAGORUWA VS. STATE*** *(1998) 1 ACLR 331*

CRIMINAL LAW AND PROCEDURE- *Offence of stealing – Accused charged with stealing a specific amount – How is a "Prima facie" case is respect thereof established?-Duty of the Court in respect thereof. ?* ***ONAGORUWA VS. STATE*** *(1998) 1 ACLR 331*

CRIMINAL LAW AND PROCEDURE-*Offence of stealing – Accused charged with stealing certain amount of money – charge is indivisible – whether proof of lesser amount is enough for prosecution to sustain conviction.* ***ONAGORUWA VS. STATE*** *(1998) 1 ACLR 331*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing – need for evidence of ownership of thing stolen before an accused is convicted.* ***ONAGORUWA VS. STATE** (1998) 1 ACLR 331*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing – Need for prosecution to prove the existence of the thing stolen to secure conviction.* ***ONAGORUWA VS. STATE** (1998) 1 ACLR 331*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing –Where element of special ownership and value of property stolen is in dispute –Need for charge to contain the name of the owner of the property stolen .* ***ONAGORUWA VS. STATE** (1998) 1 ACLR 331*

***CRIMINALLAW AND PROCEDURE** –Offence of stealing –Where specific sums are stolen on specific dates – What prosecution must prove to succeed.* ***ONAGORUWA VS. STATE** (1998) 1 ACLR 331*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing –Whether 'ownership' is the most indispensable ingredient.* ***ONAGORUWA VS. STATE** (1998) 1 ACLR 331*

INTRODUCTION

HISTORY OF CRIMINAL LAW IN NIGERIA

To better understand Criminal Law in Nigeria it is very crucial to first and foremost ascertain whence that law derives and where it is to be found.

Essentially, Nigerian Criminal Law derives from English Common Law which has for centuries been the basis of English Criminal Law though supplemented by Statutes.

The idea of codifying the law of a sophisticated society is very ancient. For instance, in the development of Roman law, magistrates and parties to a suite or proceeding usually consulted the opinions of jurists and lawyers on difficult points of legal rules. In the course of time, there grew up conflicting opinions on almost every Legal rule and the situation became so unsatisfactory that the emperor had to limit the number of recognized jurists authorized to give legal opinion to five and among these five, the opinion of Papinian was to prevail in case of conflict among the other four.

Eventually the legal opinion of these leading jurists were compiled into a sort of code known as Justinian's Digest. The Roman system of jurisprudential authority is very akin to Nigeria's system of judicial authority.

The primary source of all Nigerian criminal law is Nigerian legislative enactments. Cases, whether Nigerian or English, may help in the understanding, elucidation and interpretation of the statute law and the bare bones of a statutory principle are extremely dull until given flesh and brought to life by the particular circumstances of a criminal case.

In dealing with the historical evolution of Nigerian criminal law, one can not do without considering three periods, i.e. the pre-colonial period, the colonial period and the post –colonial period.

Long before the arrival of the British, our various communities had a system of meting out punishments for wrong doings, over many of the acts that we today call crimes.

In the south for instance, there were numerous relatively simple systems of social norms based on the unit of the family, the village, or the group of villages.

Although the intricate classification and definitions of offences and some of the esoteric concepts such as mens rea and actus reus might not have developed to that of today's standard, certainly what our forefathers then regarded as heinous conduct and deserving punishment remain so today.

In the North, there was in existence the Islamic system of criminal justice with its well defined peculiar rules of procedure and evidence. There were also pagan communities which had in varying degrees retained their own criminal law, or blended them with Moslem law. The outstanding feature of all customary criminal law apart from Moslem Law was that it was unwritten.

In the middle of the 19th century, the white men came to Nigeria, and in order to enhance their trade brought with them English system of criminal justice.

Lagos was ceded to the British Crown in 1861 and by 1863, the English common Law of crime was imported and made applicable to Lagos.

But outside Lagos it was customary criminal law which in its varying forms still obtained, even though occasionally an ordinance was enacted against specific types of conduct like slavery and witchcraft. With the development of centralized government some need began to be felt by the British administration for a clearly worded, concise, and unified set of criminal principles to be applied in British courts. The common law had therefore become unsuitable because it was relatively complicated and not easily ascertainable.

Up in the North where Islamic criminal law held sway, the then Governor-General Lord Lugard introduced the criminal code by proclamation in 1904. This code was based on the draft prepared by Sir James F. Stephen who had failed to have it adopted as the English Criminal code by the British Parliament.

The Criminal Code was extended in 1916 to the whole country after the unification of Nigeria in 1914.

It is pertinent to state that the criminal code even as it exists today in the Southern states is much similar to codes introduced in other British former colonies with the effect that decisions based on the Queensland Code in Australia, for instance are persuasive authorities in our courts.

It can be seen that after the year 1916 the position of criminal law in Nigeria became somewhat uniform throughout the country. Uniformity, however had its price despite apparent advantages because from 1916 onwards many difficulties surfaced which led to the various components of the British-ruled Nigeria to going on somewhat different routes just before independence on 1st October, 1960.

It is important to state that when the criminal code was enacted in 1904 in the Protectorate of Northern Nigeria, and even after the 1916 unification with the south, it operated side by side with Islamic criminal law because the colonial administration felt that Islamic law was already firmly entrenched in the North. This duality of systems of criminal law led to many areas of conflict because Islamic law contained many rules which were not acceptable to those trained in English law. For instance, the offence of culpable homicide punishable with death included any hostile, unjustified assault ending in death, even though this might be unintended or without knowledge that deam was likely.

Also the concept of provocation which is recognized by the Criminal Code as capable of reducing murder to manslaughter was not admitted in Islamic law.

It is important to note that the application of the Northern Criminal Code was at first strictly limited. Section 4 of the Proclamation expressly exempted 'native tribunals' from its operation and it was these native courts that dealt with the vast bulk of criminal cases. Even after the unification in 1916 most criminal cases in Nigeria were still governed not by the code but by 'native law and custom'- Islamic law for these purposes being regarded not as a district system, but merely as a special variety of native law and custom.

In 1933, therefore, when the legal system was overhauled, some were of the opinion that customary criminal law should be abolished. This view was not accepted, but section 4 of the criminal code ordinance was amended by deleting the words 'other than a native tribunal'.

The exact purpose of the 1933 amendment of section 4 immediately became the subject of conflicting opinions. For instance in the case GUBBA VS N.A. (1947) 12W.A.C.A. 141, the West African Court of Appeal held thus:

a. That a native court had jurisdiction to try and sentence an accused person using pure customary law so long as the offence for which he stood charged was an offence known only to customary criminal law.
b. However, if the act complained of was also an offence under the criminal code then he must only be tried under the provisions of that code.

This decision generated a bit of unease and a Commission under Mr. Brookes was established to look into the whole question of the efficacy of customary law vis-à-vis the Criminal Code. The commission came up with a report which could be interpreted as strengthening customary law for it recommended that a customary court could try an offence under customary law notwithstanding contrary provisions in the criminal code.

By 1957, after the leading cases of KANO N.A.VS FAGOJI (1957) N.R.N.LR. 57, TSAMIYA VS BAUCHI N.A. (1957) N.R.N.L.R.73 and MAIZABO VS SOKOTO N.A. (1957) N.R.N.L.R.133, the position was settled that the correct law was that native or customary courts were empowered to apply customary criminal law, even if there was a provision in the Criminal Code on the subject. The only exception was that they could not pass sentence in excess of the maximum that could have been imposed if the case had been tried under the Criminal Code.

The effect of this decision therefore was that for purposes of liability the customary courts could determine guilt under one law but impose punishment under another law. That was clearly unsatisfactory and in one of the constitutional conferences in 1958 a decision was taken to abolish customary criminal law throughout Nigeria.

The relationship between the two systems of criminal law was clearly, at least in the Northern Region, in need of re-examination. Consequently, a Panel of jurists was set up under the chairmanship of the then Chief Justice of the Sudan, Abu Rannat with the task of enacting a code which could apply in a predominantly Moslem setting but which could at the same time meet with the acceptance of the international community.

This panel recommended that Islamic law should in the future be confined to personal and family law of Moslem litigants; criminal law, both in its substantive and procedural aspects, should be codified.

The Code which emerged in the 1959 Code Law, to displaced the Criminal Code was based on a Code which had been working successfully in a Moslem community, namely the code of the Sudan.

It therefore has a strong link with English law because the Sudanese Code was modeled on the 1860 Indian Penal Code, which in turn owed much to a draft prepared almost entirely by Lord Macaulay.

It is important to note that since the Northern legislature did not have power to legislate over certain offence such as treason, Sedition, offences relating to custom, coinage, posts and telegraphs, these were enacted by the Federal Parliament as an addendum to the Penal Code by virtue of the Penal Code (Northern Region) Federal Provisions Act, NO. 25 OF 1960.

It is therefore pertinent to equally note that from September 1960 when the Penal Code became operative in the then Northern Nigeria, the application of customary criminal law throughout Nigeria was abolished. Thus section 3 (2) of the Penal Code Law provides;
"After the commencement of this law no person shall be liable to punishment under native law and custom"

The above quoted provision only re-enacted a similar provision in section 4 of the Criminal Code Ordinance which the north was then jettisoning to the south. In the rest of Nigeria, traditional criminal law was much less firmly entrenched than in the North, and a decision was taken at the 1958 Constitutional Conference to abolish customary criminal law altogether. Thus the following section was written into the 1959 Bill of Right, which later became section 22 (10) of the 1963 Constitution (now section 36 (12) of the 1999 Constitution;

"No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law."

There were also constitutional provisions relating to non- retroactivity of laws and the need not to vary punishment. It can therefore be said that from October 1st 1960 onwards the principle of certainty in the criminal law as

summed up in the Latin Maxim "Nullum Crimen Sine Lege" was firmly entrenched in Nigeria. Thus section 36(8) of the 1999 Constitution provides; "No person shall be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed".

It must be noted however that the many military interventions we had in Nigeria changed this state of affairs. The very first Decree any Military regime passed was a suspension and modification Decree and what remained in the Constitution was so modified that it lost its original meaning.

For instance, under the Constitution (Suspension and Modification) Decree of 1984 all laws including those in the Constitution not abrogated were subject to that Decree or any other Decree. This meant that even the Constitutional provisions modified and contained in the Decree were valid only to the extent that they did not conflict with other subsequent Decrees.

It will be crucial to point out that with the coming of Democratic governance in 1999, some Northern states enacted Shariah Laws which in turn created Shariah courts and vested them with the power to try and convict offenders on matters regarded as crimes under Shariah. These Shariah laws now exist side by side with the Penal Code in those states that enacted them and apply strictly to Moslems.

REFERENCES

1. OKONKWO AND NAISH ON CRIMNINAL LAW IN NIGERIAN SECOND EDITION SPECTRUM BOOKS LIMITED.
2. THE LAW OF CRIMES IN NIGERIA BY KHARISU SUFIYAN CHUKKOL, Ph.D. A.B.U.PRESS LTD. ZARIA.
3. THE NIGERIAN CRIMINAL CODE COMPANOIN BY EMMANUEL OLAWUYI FAKAYODE LL.B ETHIOPE PUBLISHING CORPORATION 1977.
4. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999.
5. NOTES ON THE PENAL CODE LAW (CAP.89 LAWS OF NORTHERN NIGERIA , 1963) FOURTH EDITION (1987) BY S.S.RICHARDSON, A.O.,C.B.E., M.A. (OXON), HON.LL.D (A.B.U.) A.B.U. PRESS.

ABETMENT

UPAHAR VS. STATE (2003) 6 NWLR PT.816 PG231

***CRIMINAL LAW AND PROCEDURE**-Abetment of crime- ingredient of- punishment thereof- whether same with punishment provided for the main offence.*

PRINCIPLE:

***1.On ingredients of abetment**:*

***Section 85 of the Penal Code** requires that apart from the Abetment, the act abetted should have been actually committed. The Section requires the proof not only of the act or omission constituting the abetment but also of the commission of the act abetted in consequence of the abetment {Njovens vs. State (1973) NMLR 331 referred to.} pp.260-261, paras F-G.*

***2.On ingredients of abetment**:*

In the charge of abetment of an offence, the initial element is the instigation or positive act of encouragement to do the act or omission which constitutes the offence. In the instant case, the singular act of the 2nd Appellant in holding the legs of the prosecution astride and pressing them down for the 1st Appellant to insert his penis into the vagina of the prosecution was a positive act of encouragement of the act of the 1st Appellant. Therefore, the 2nd Appellant aided and abetted the 1st Appellant in the commission of the offence of attempted rape on the prosecution.{Njovens vs. State (1973) NMLR 331 referred to.} pp.260-261, paras H-C

3. On the punishment for abetment of crime:

By virtue of ***Section 85 of the Penal Code****, whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by the Penal Code or any other law for the time being in force for the punishment for such abetment, be punished with the punishment provided for the offence.(p.260,paras, E-F)*

2

ACQUITTAL

OLANREWAJU VS. POLICE (2005)1 NCC 331

APPEAL*- A ground of law, a ground of fact and a ground of mixed law and fact-The distinction between them.*

APPEAL*- Acquittal by a Magistrate- Appeals thereon by the prosecution against it.-Whether competent.*

CRIMINAL LAW*- Acquittal by a Magistrate-Appeals thereon by the prosecution against it.-Whether competent.*

PRINCIPLES;

1. On the distinction between a ground of law, a ground of a fact and a ground of mixed law and fact;

The distinction between a ground of law, a ground of fact and a ground of mixed law and fact is often a difficult one which requires a thorough examination of the ground of appeal with its particulars. Where the ground of appeal alleges a misunderstanding of the law by the lower court or its wrong application of the law to the fact already proved or admitted then it's a ground of law. But where the ground complains of or questions the evaluation of the evidence by the lower court before its application of the law, then it is a ground of mixed law and facts. ***Per F. F. Tabai, JCA*** *at page 338.*

2. On when the prosecution can appeal against acquittal by a magistrate;

For appeals by the prosecution against acquittal by a Magistrate, ***Section 68*** *of* ***the Magistrate's Courts Law*** *provides:-*

"Where an accused person has been acquitted or an order of dismissal made by a magistrate the prosecution may appeal to the appeal court from such acquittal or dismissal on the ground that it is erroneous in law or in excess of jurisdiction of the magistrate." ***Per F. F. Tabai, JCA*** *at page 337.*

EMMANUEL EBRI VS. STATE(2005) 1NCC 1

ACQUITTAL

CRIMINAL LAW AND PROCEDURE *- Discharge and acquittal of an accused person –When may lead to discharge of other accused persons.*

PRINCIPLES;

1. On when the discharge and acquittal of a co- accused person would lead to the discharge and acquittal of the other accused persons;

The position of the Law is that where two or more persons are charged with the commission of an offence, and the evidence against all the accused persons is the same or similar, to the extent that the evidence is inextricably woven around all the accused persons, the discharge of one must as a matter of law, affect the discharge of the others. This is because if one or more of the accused persons is discharged for want of convicting evidence, that must automatically affect al the others in the light of the fact that the evidence against all the accused persons is tied together like Siamese twins at the umbilical cord with their mother. ***Per Niki Tobi, JSC*** *at page 10.*

2. On when the discharge and acquittal of a co-accused person would lead to the discharge acquittal of the other accused persons;

For the purposes of exculpating an appellant from criminal responsibility, conviction and sentence, there must be no additional evidence incriminating the appellant. Putting it in another language, the convicting evidence cannot be untied or separated in respect of the appellant vis-à-vis the co- accused persons. In other words, the evidence is joined together like Siamese twins, so much so that all the accused persons must either fall together or stand together. ***Per Niki Tobi, JSC*** *at page 12.*

3. On when a discharge and acquittal of a co-accused would lead to the discharge and acquittal of other accused persons;

The same set of evidence that linked the appellant with the crime tried linked the other accused persons already discharged and acquitted. There is no extra evidence to make the purported role of the appellant different from those the court below held found not proved. The doubt in the proof availing the other accused discharged and acquitted ought to extend to the appellant. ***Per S. M. A. Belgore, JSC,*** *at page 18.*

4. On when the discharge and acquittal of a co-accused would lead to a discharge and acquittal of other persons;

The evidence which the Court of Appeal relied upon to discharge the two co-accused of the appellant was inextricably interwoven with the defence put up by the appellant in trying to exculpate himself from the charge of murder of Egoma Oden Obla. It is not safe under the circumstances to discharge the two co-accused and affirm the conviction of the appellant when there is no separate evidence incriminating him for the offence charged. ***Per Uthman Mohammed, JSC*** *at pages 18-19.*

3

ACCIDENT

LEGAL HEAD **ACCIDENT**
SUBJECT MATTER SECTION 24 CRIMINAL CODE
SUB-SUBJECT HOW APPLIED

PRINCIPLE
Section 24 of the criminal code applies when it is not proved that an act was voluntary or that it showed a reckless disregard for the lives of others.

JUSTICE AJEGBO, JSC.
CASE **IROMANTU V. STATE**
APPEAL NO FSC.233/1964
DATE OF JUDGMENT 23RD OCTOBER, 1964
REFERENCE (1964) 1 ALL NLR 311

LEGAL HEAD **ACCIDENT**
SUBJECT MATTER SECTION 24 CRIMINAL CODE
SUB-SUBJECT ONUS ON PROSECUTION TO
DISPROVE

PRINCIPLE
The onus is on the prosecution to disprove accident once the defence is set up by an accused person.

JUSTICE LEWIS, J.S.C.
CASE **SHOLUADE V. REPUBLIC**
APPEAL NO SC.31/66
DATE OF JUDGMENT 20TH MAY, 1966
REFERENCE (1966)1 ALL N.L.R. 134

LEGAL HEAD **ACCIDENT**
SUBJECT MATTER SECTION 48 PENAL CODE
SUB-SUBJECT BURDEN OF DISPROVING
ACCIDENT
SUBSIDIARY SUB-SUBJECT EFFECT OF FAILURE TO DISPROVE

PRINCIPLES
1. Where an accused person puts up the defence of accident, on a charge of culpable homicide, the onus is on the prosecution to disprove accident.
2. Where the accused puts up the defence of accident, on a charge of culpable homicide, and gives an explanation, which could be true and is not proved to be untrue, he is entitled to an acquittal.

JUSTICE LEWIS, J.S.C.
CASE **DANGARI V. STATE**
APPEAL NO SC. 150/68
DATE OF JUDGMENT 11TH OCTOBER, 1968
REFERENCE (1968)1 ALL N.L.R. 249

ARABI VS. STATE(2001) 5 NWLR PT.706 P. 256

ACCIDENT

Accident*- Accidental discharge of fire arms-whether culpable homicide.*

PRINCIPLES:

1. ***On the nature of defence of accident:***

Under and by virtue of ***Section 48 of the Penal Code****, nothing is an offence which is done by accident or omission and without any criminal intention or knowledge in the course of doing a lawful act in careful manner by careful means and with proper care and caution. From the foregoing, the defence of accident presupposes that the accused physically committed the offence with which he is charge but having regard the facts which he admits he should be acquitted all the same because his conduct in the commission of the offence was an accident. In the instance case, the evidence of the appellant on record was that when he corked his rifle and put on slow, only one bullet was expected to come of it. However in the process of dodging, the safety catch shifted to rapid and the appellant did not know this before he started firing, which resulted into the rifle releasing eight bullets. It was an accident.[Chukwu vs. State] (1992) 1NWLR (pt. 217) 255 referred to).*

Per MOHAMMMAD JCA, *at pages 274-275, paras H-B:*

" In the present case it is evidence that while the appellant was waiting for the emergence of the deceased's smuggled Honda vehicle from the diversion to the main road, he was quite conscious that his task in stopping the vehicle would require the shooting at the tiers. However, the manner the deceased approached the appellant with speed which resulted in the appellant jumping from the road and falling on his rifle as a result of which the setting of the rifle shifted from slow to rapid thereby resulting in releasing 8 bullet rapidly into the vehicle when the appellant

fired the rifle, was indeed not intended by the appellant. It was therefore an accident that was not willed by the appellant and without his fault as he merely fired at the zooming vehicle of the deceased without aiming at the deceased while he was still no the ground. Since the prosecution in proving its case against the appellant did not lead any evidence to negative the version given by the appellant, defence of accident in this respect must succeed"

2. ***On the nature of defence of accident:***

Where the ordinary act of an accused person results in an event which was neither intended nor foreseen, the consequence is an accident [Chukwu vs. State (1992) 1 NWLR (pt 217) 255 referred to].

3. ***On the nature of defence of accident:***

An act is considered accidental when the act by which it is caused is not done with the intention of causing it and the occurrence is so astonishing that a person of ordinary caution would not be expected to take reasonable precaution against its occurance. It does happen outside the ordinary course of event. The act leading to the accident must be a lawful act done in a lawful manner and without fault on the part of the appellant, in that appellant, in that the appellant , intentionally set out to kill the deceased.

Per SALAMI, JCA *at page...*

" The appellant did not set out to intentionally kill the deceased. His only intention was to apprehend the deceased and the co-accused of the Honda Accord vehicle, being suspected to be illegally imported into the country, by demobilizing it. He was on his lawful duty patrolling Nigerian border and has authority to shoot in order to, among other things, prevent a smuggler from escaping.The intention of the appellant as can be inferred from the circumstances of this case is evidence from the fact

of the parts of the vehicle hit by the bullets released from the firearm. The shots pierced either the near side door or the tiers of the vehicle. These are consistent to the appellant's defence that he was thrown oh the ground by the dangerous manner the deceased operated the vehicle and the gun, unknown to him, switched from slow to rapid firing. When the appellant apparently pulled the trigger for a release of a gunshot killed the deceased. These pieces of evidence remained unchallenged and uncontroverted. It is also consistent with accident. It would have been different if the gunshots had been directed at the front windscreen of the vehicle as it was approaching the appellant. This he restricted himself from doing notwithstanding that the deceased drove the vehicle menacingly and dangerously towards the appellant.

The appellant did the shooting while he was performing his lawful duty which included the use of firearm to defend himself and his colleagues as well as to prevent suspect smugglers from fleeing justice. There is no iota of evidence showing that the appellant killed whist engaged in an unlawful act. He is for this reason within contemplation of ***Section 48 of the Penal Code*** *and was not criminally liable for the killing."*

4. ***On onus on prosecution where accused raised defence of accident:***

Where an accused person raised the defence of accident, the onus is on the prosecution to prove its case beyond reasonable doubt by leading credible and admissible evidence to negative the defence and convince the trial court that the defence does not avail the accused person. Thus, where the prosecution fails to discharge the onus of proof, the accused person is entitled to an acquittal [sholuade vs. Republic(1966) 1 All NLR 134;Dangari vs. State (1968) 1 All NLR 249 referred to].

5.On the meaning of accident as a crime;

An accident is the result of an unavailed act, and means an event without the fault of the person alleged to have caused it. [Bello vs. AG Oyo

State(1986) NWLR(pt.45) 828; Adelumola vs. State(1988) 1 NWLR (pt.73)683 referred to]

6.On whether accidental discharge of firearm culpable:

A person who discharge a firearm unintentionally and without the attendant criminal malice or negligence will be exempt from criminal responsibility both for the firing and for its consequences.[Iromantu vs. State(1964) 1 All NLR 311 referred]

4

ACCOMPLICE

LEGAL HEAD	***ACCOMPLICE***
SUBJECT MATTER	ACCESSORY AFTER THE FACT
SUB-SUBJECT	MEANING

PRINCIPLE
An accessory after the fact is a person who assists someone whom he knows to be an offender to escape punishment.

JUSTICE	BAIRAMIAN, JSC.
CASE	***EKPO V.STATE***
APPEAL NO	SC.449/1964
DATE OF JUDGMENT	25TH NOVEMBER, 1964
REFERENCE	(1964) I ALL NLR 375

LEGAL HEAD	***ACCOMPLICE***
SUBJECT MATTER	ACCESSORY AFTER THE FACT
SUB-SUBJECT	WHETHER AN ACCOMPLICE

PRINCIPLE
An accomplice includes an accessory after the fact.

JUSTICE	BAIRAMIAN, JSC.
CASE	***EKPO V. STATE***
APPEAL NO	SC.449/1964
DATE OF JUDGMENT	25TH NOVEMBER, 1964
REFERENCE	(1964) I ALL NLR 375

LEGAL HEAD	***ACCOMPLICE***
SUBJECT MATTER	PERSON GIVING MONEY UNDER THREAT
SUB-SUBJECT	WHETHER ACCOMPLICE

PRINCIPLE
A person who pays money to another under threat of unpleasant consequences is not an accomplice but a victim.

JUSTICE	FATAYI-WILLIAMS,J.S.C
CASE	***IDOMA V. STATE***
APPEAL NO	S.C.235/1972
DATEOFJUDGMENT	26TH JANUARY,1973
REFERENCE	(1973) 1 S.C. 93

5

ADMISSIBLITY

AHMED VS. STATE (2001) 2 ACLR 120

CRIMINAL LAW & PROCEDURE *- Caution statement of an accused - How recorded.*

CRIMINAL LAW & PROCEDURE *- Defence of intoxication - On whom onus lies to establish - Presumption - On whom onus lies to establish.*

CRIMINAL LAW & PROCEDURE *- Doubts arising from contradictions in prosecution's case - Need to resolve in favour of accused.*

CRIMINAL LAW & PROCEDURE *- Establishment of guilt of an accused – On whom duty lies - Standard of proof required by law.*

CRIMINAL LAW & PROCEDURE *- Evidence falling short of self defence but showing that accused acted under provocation - Accused not having intention to kill- Effect.*

CRIMINAL LAW & PROCEDURE *- Evidence favourable to the defence – Duty on prosecution to produce.*

CRIMINAL LAW & PROCEDURE *- Murder charge - Whether motive sine qua non - When necessary to prove motive.*

CRIMINAL LAW & PROCEDURE *- Presumption of intending the natural consequences of ones act - On whom duty lies to rebut.*

PRINCIPLES:

1. On whom lies the duty of appraising and ascription of probative values " to oral evidence and on when an appellate court can interfere with the - performance of that duty:

The appraisal of oral evidence and the ascription of probative values to such evidence is the primary duty of a trial court and a Court of Appeal

would only interfere with the performance of that exercise if the trial court had made imperfect or improper of the opportunities of hearing and seeing the witnesses or has drawn wrong conclusions from accepted or proved facts which those facts do not support. If the trial judge draws mistaken conclusions from indisputable facts or wrongly arranges or presents the facts on which the foundation of the case rests, the appeal court should not abdicate its own responsibility and rubber-stamp the error, but should intervene and do what justice requires - see Y. A. Lawal vs. Chief Yakubu Dawodu & Anor. (1972) ANLR 707 at 722; Fatoyinbo and ors. vs. Williams, alias Sanni and_Ors_(1956) 1 FSC 87; (1956) SCNLR 274 and Paul O. Omoregbe vs. Ehigiator Edo SC 142/96 decided on 29th October, 1971. At page 143.

2. ***On whom the onus lies to establish the guilt of an accused AND on the standard of proof required:***

This being a criminal trial for the offence of murder the onus lies throughout upon the prosecution to establish the guilt of the accused beyond reasonable doubt - Amen vs. The State(1978) 6/7 SC. 27 and State vs. Albert_(1982) 5 SC. 6 at 8. At page 143.

3. ***On whether a court can speculate:***

The court is only entitled to rely on the evidence adduced before it and not on speculation - See Okoko vs. The State_(1964) 1 All NLR 423 and Seismograph_Ltd. vs. Ogbeni_(1976) 4 SC 85. It is trite law, where there are contradictions in the evidence of prosecution witnesses on a material fact, such contradictions ought to be explained by evidence by the prosecution. In the absence of such explanation by the prosecution, the court cannot and shall not speculate on an imagined explanation for such contradictions and proceed to choose which of the prosecution witnesses to believe. Arehia vs. The State(1982)146 4 SC 78. At page 146.

4. ***On the ethical duty on the prosecution to produce evidence favourable to an accused:***

In criminal trial evidence which would help the defence in the trial of an accused should be produced by the prosecution. At page 147.

5. ***Per MOHAMMED, JSC, at page 147 on the need for caution and circumspection before acting on circumstantial evidence:***

"As there is no direct evidence on what transpired between the appellant and the deceased before the appellant used his knife to stab (the deceased) the conviction of the appellant in my view was based on circumstantial on evidence. Though circumstantial evidence is admissible in criminal cases to prove the guilt of an accused yet, such evidence must be narrowly examined by the court if only because evidence of this kind may be fabricated to cast suspicion on another. It is necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing Circumstances which would weaken or destroy the inference – Okoro _Marriagbe vs. The State_(1977) 2 SC 89."

6. ***On the resolution of doubt arising from contradictions in prosecution's case in favour of all accused:***

It is a cardinal principle in criminal proceedings that the burden of proving a fact which if proved, would lead to the conviction of the accused is on the prosecution who should prove such fact beyond reasonable doubt. In criminal cases, any doubt, as to the guilt of the accused, arising from the contradictions in the prosecutions evidence of vital issues must be resolved in favour of the accused – Ankwa vs. The State_(1969) 1 All NLR 133. At page 47

7. On the right of an accused who kills in the process of warding off an attack to plead self defence:

Where an accused armed with a lethal weapon is attacked by another who is equally armed with a lethal weapon and during the encounter one kills the other the survivor has a right to put up a defence of self defence. However, if the person attacked exceeds that right and kills the offender when in fact it was unnecessary to cause grievous harm to the attacker the offence committed is manslaughter if the intention of the accused was to do no more harm than he believed necessary in the exercise of his right. Even though there was a reckless criminality in the act of the accused he can succeed in pleading the right to self defence so long as he did not kill with a vengeful motive in the purported exercise of his right. At page 148.

8. On the presumption that a person intends the natural consequences of his act:

The presumption in law is that a person intends the natural consequences of his act; it is for a defendant to rebut this presumption. If intoxication is put forward as a defence, it must be such that would rebut this presumption. See R._vs. Owarev_5 W ACA 66. At page 169

GODWIN IGABELE VS . STATE (2005) 1NCC 59

ADMISSIBILITY

***EVIDENCE**-Admissibility of exhibits-where no objection by a party at a trial –whether the party can be heard to complain.*

***PRACTICE AND PROCEDURE** - Admissibility of exhibits Where no objection by a party at the trial – Whether the party can be heard to complain.*

PRINCIPLE;

1. On whether a party could be heard to complain where there was no objection to the admissibility of exhibits at the trial;

The authority in the case of Chief Etim & Ors v: Chief Ekpe & Ors. (1981) 1 SCNLR 120 is relevant where it was held that:

*".. In respect of exhibits.....Which were admitted without Objection, the plaintiff (or the accused) could not afterwards be heard to complain about their admissibility." Following from the foregoing authority, exhibit "1 ", though, not a confessional statement was nonetheless rightly admitted in evidence. **Per C. B. OGUNBIYI, JCA** at page 84.*

IDRIS RABIU VS. STATE (2005)1 NCC 578

ADMISSIBILITY

***EVIDENCE**-Admission and/or voluntary confession in a criminal charge without more-whether sufficient to earn a conviction and sentence.*

PRINCIPLE:

1.On the guidelines court should follow to evaluate voluntary confession In order to sustain the charge and subsequent conviction.

In the case of Nwaebonyi vs. The State (1994) 5 NWLR 138, the Supreme Court laid some conditions which should guide a trial court in evaluating such admissions /confessions in a criminal trial. These include the following:-

(i) Is there anything outside the confession which shows that it may be true?
(ii) Is it corroborated in any way?
(iii) Are the relevant statements of fact made in it most likely true as far as they can be tested?
(iv) Did the accused have the opportunity of committing the offence?
(v) Is the confession possible?
(vi) Is the alleged confession consistent with other facts which have been ascertained and established?

*Thus, before an accused can be convicted on a plea of guilty, it is my view that the trial court is under a duty to ensure that the accused has admitted all the facts upon which his charge was based as well as guilt in respect of same and unless the accused distinctly admits each and every fact necessary to constitute an offence, he cannot be convicted merely on his plea; It has been laid in the Case of Onuoha - Police (1956) NRNLR 96 that "Where an accused person pleads guilty the court should ask questions to ensure that the accused is admitting the charge and intends to plead guilty." **Per I. T. Muhammad, JCA** at pages 595-596.*

6

ALIBI

ADELE VS. STATE (2001) 2 ACLR 420

CRIMINAL LAW AND PROCEDURE *– Alibi – Plea of alibi- Nature of Onus on prosecution in respect thereof*

CRIMINAL LAW AND PROCEDURE *- Defence of an accused person – When same is only one of alibi – Duty on prosecution in respect thereof.*

CRIMINAL M'W AND PROCEDURE *- Discredited evidence of a witness by trial judge – Duty on appeal court not to use same to convict.*

CRIMINAL LAW AND PROCEDURE *- Doubtful evidence of a witness – How treated.*

CRIMINAL LAW AND PROCEDURE *–Evidence discredited and rejected- Where used to discharged and acquit and accused – Effect of the discharge and acquittal on a co-accused against whom the same evidence was led.*

CRIMINAL LAW AND PROCEDURE *- Plea of alibi - Where there is not much to choose between evidence of prosecution witnesses - Treatment of plea of alibi raised.*

CRIMINAL. LAW AND PROCEDURE *- Plea of alibi raised by – used person – Prosecution not investigating same - Effect of. '*

PRINCIPLES:

1. On nature of plea of alibi and onus on prosecution in respect thereof;

On a plea of alibi, the law is that the court should not disregard the evidence unless there is stronger evidence against it and where a defendant sets up a defence of alibi, the onus of disproving it rests on the prosecution. See Yanor & ors. v. The State (1965) NMLR 337. In this case, the prosecution did not adduce evidence stronger than that of the

appellant in support of his alibi. That being the case the prosecution failed to discharge the onus. At Page. 440

2. On duty of prosecution in respect of defence of an accused person which is solely one of alibi:

It is a well settled principle of law that when the sole defence is one of alibi, identification of the accused person by a single witness must be conducted with great care and the summing up in the judgment must deal with the facts of the identification of the accused at the scene of crime (See Akpan Ikono vs. The State (1973)5 SC 231 at 255/56) where as in the instant case, two independent witnesses in their testimony fix the appellant at the scene of crime, the alibi is naturally and effectively demolished. See Njoven &ors. vs. The State (supra) and Ekpe Iboi vs. The State (1983) 3 SC. 1. At Page 441

3. On effect of prosecution not investigating plea of alibi raised by an accused:

Where as in the instant case, the appellant introduced a plea of alibi which; had not been fully investigated, the prosecution's case would not be said to have been proved beyond reasonable doubt the onus on the appellant beg to introduce evidence of alibi, which indeed he did. See Onaforokan vs. The State (1987)3 NWLR(Pt. 61) 538 at 552. At Page 443.

4. On treatment of plea of alibi where there is not much to choose between evidence of prosecution witnesses:

Where there is not much to choose between the evidence of the witnesses, the alibi cannot be lightly disregarded as the lower court has done in this case, See Ortese Yanor & anor vs. The State (1965) NMLR 337 and Sale Abdul Kwadiya & 4 ors. vs. The State (1977) 1 FCA. 123 at 128. At Page 443.

5. On standard of proof required to establish defence of alibi:

The standard of proof required to establish the defence of alibi is one based on the balance of probabilities. At Page 443.

UDO EBRE &ORS. VS. THE STATE(2001) 6 NSCQ 755

ALIBI

CRIMINAL LAW AND PROCEDURE *- Alibi - Defence of- Duty of court to give full consideration thereto.*

CRIMINAL LAW AND PROCEDURE *- Alibi - Defence of-Failure of prosecution to investigate or failure of court to give consideration to - Consequences thereof.*

CRIMINAL LAW AND PROCEDURE*-Alibi - Defence of- Requirements of proof.*

CRIMINAL LAW AND PROCEDURE *- Alibi - General defence of without sufficient facts – Consequence of.*

CRIMINAL LAW AND PROCEDURE *- Alibi - Defence of - Duty of prosecution to disprove where accused person has furnished particulars of his whereabouts lucidly to the police.*

PRINCIPLES:

1. ***On the defence of alibi in criminal prosecutions;***

The defence of alibi is popular and commonplace today in many criminal prosecutions. In essence, alibi, as a defence, simply put, seeks to establish that at all times material to the commission of the offence, the accused person was no where near the locus ill quo and ordinarily, therefore, he could not be expected to be involved in the physical execution of the criminal offence alleged. ***Per Okay Achike JSC*** *at page 766.*

2. On the duty of court to give full consideration to the defence of alibi raised by the accused person;

Where evidence placed before the court clearly demonstrates that the accused person seeks to rely on alibi, which defence cannot be denied to the accused person. Full consideration should be accorded to whatever plausible defence is relied upon by the defence as if it had been expressly

pleaded or raised by the accused person. This is so because the court is obliged to give due consideration to a defence either raised by the accused person or arising casually or by the tenor of the evidence placed before the court once that evidence raises a reasonable doubt in the 'prosecution' s case. ***Per Okay Achike JSC*** *at page 766.*

3. On the consequence of prosecution's and/or court's failure to investigate or consider the defence of alibi in criminal prosecutions;

Where the prosecution fails to investigate the defence or the court fails to examine or consider such defence and it "is demonstrable that the failure would lead to a miscarriage of justice, then any order of conviction arising in the circumstance, would on appeal, be quashed and substituted with an order of discharge and, acquittal. ***Per Okay Achike JSC*** *at page766.*

4. On the requirements of proof of the defence of Alibi by an accused person;

We must hasten to state quite clearly that the defence of alibi is not readily conceded with levity to the accused person seeing that when properly established it has the far-reaching finality of exculpating the accused person from complete criminal responsibility. To take advantage of this defence, the accused person must give a detailed particularisation of his whereabouts on the crucial day of the offence which will include not just the specific place(s) where he was, but additionally, the people in whose company he was and what, if any, transpired at the said time and place(s). Obviously, such comprehensive information furnished by the accused person must unquestionably, be capable of investigation by the Police should they wish to do so. Furthermore, such defence must be timorously brought to the attention of the Police by the accused person, preferably in his extra-judicial statement to afford the Police an ample ion to the time to carry out its investigation. For the accused person to

raise the defence while testifying at his trial is clearly to deliberately deny the prosecution its right and duty to rely on investigate the defence. Such a ploy cannot avail the accused. ***Per Okay Achike JSC*** *at pages 766 - 767.*

5. On the consequence of a general defence of alibi without sufficient fact;

Where the defence of alibi consists of vague accounts is obliged which are simply placed before the court as mere make- beliefs of plea of that defence, and which are completely devoid of material facts worthy of investigation, the Police in the circumstance would least be expected to embark on a wild good chase, all in the name of investigation. In such a situation, the court would have nothing before it to consider by way of alibi. For example, where the accused person in his extra-judicial statement stated that either that "he was not in town on that day" or that "he traveled to a neighboring town or village - Awka", and nothing more, no reasonable lead to a person would think that a serious plea of alibi has been made out. In other words, a general defence of alibi without sufficient facts to warrant an investigation is clearly porous and vague and cannot avail an accused person. ***Per Okay Achike JSC*** *at page 767.*

6. On the duty of prosecution to disprove the defence of alibi where accused person has furnished particulars not just that of his whereabouts lucidly to the police;

It is the law that there is no duty on the accused to prove or establish his alibi once he has furnished particulars of his whereabouts lucidly to the Police. In fact, once the accused has reasonably and sufficiently furnished information of his whereabouts on the date of the offence alleged, the burden shifts on the prosecution to disprove the defence of alibi sought to be raised by the accused. ***Per Okay Achike JSC*** *at page 768.*

OZAKI VS. STATE (1998) 1 ACLR 27

ALIBI

CRIMINAL LAW AND PROCEDURE *- Alibi - Burden on prosecution when raised - Nature of .*

CRIMINAL LAW AND PROCEDURE *- Alibi - Defence of alibi - When accused give conflicting stories as to his whereabouts - Whether there is any duty to investigate the alibi.*

CRIMINAL LAW AND PROCEDURE *- Alibi - Establishing same on balance of probabilities –Meaning of.*

CRIMINAL LAW AND PROCEDURE *- Alibi - Failure by the police to investigate same - Effect of*

CRIMINAL LAW AND PROCEDURE *- Alibi - Ipse dixit of accused raising same - Whether enough.--*

CRIMINAL LA W AND PROCEDURE *- Alibi - Meaning of*

CRIMINAL LAW AND PROCEDURE *- Alibi - When accused discharges evidential burden of alibi - Duties on prosecution and trial judge in respect thereof.*

CRIMINAL LAW AND PROCEDURE *- Alibi - When does the prosecution discharge its onus of disproving same.*

CRIMINAL LAW AND PROCEDURE *- Alibi - Where evidence has been adduced by prosecution to disprove the accused' s plea of same – Onus on the accused.*

CRIMINAL LA W AND PROCEDURE *- Alibi - Where prosecution fails to*

CRIMINAL LAW AND PROCEDURE *- Defence of alibi - Duty on accused who raises same.*

CRIMINAL LAW AND PROCEDURE *– Defence of alibi - Evidential burden on accused raising same - Effect of.*

CRIMINAL LAW AND PROCEDURE *- Defence of alibi - Intention to raise defence of alibi – Need to give notice of same timeously*

CRIMINAL LAW AND PROCEDURE *- Defence of alibi- When an accused raised same during investigation - Duty on prosecution.*

CRIMINAL LA W AND PROCEDURE *- Defence of alibi - When raised by the accused - Burden on prosecution in respect thereof.*

CRIMINAL LAW AND PROCEDURE *- Defence of alibi - When same has 'promptly and properly raised - Burden on prosecution in respect thereof.*

PRINCIPLES:

1. On meaning of alibi:

It is a defence where an accused alleges that at the time when the offence with which he is charged was committed, he was elsewhere. At Page 46.

2. On need to give notice of intentional to raise defence of alibi timeously:

It is the law that notice of intention to raise it must be given. This is normally done at the first possible opportunity by a suspect in answer to a charge by the police at the investigation stage to enable the truth or falsity of the allegation to be established by the police see R. vs. Lewis (1969) 2 Q.B. 1 Adio vs. The State (1986) 3 N. W .L.R. 714; 30 (1986) 2 N.S.C.C. 815; Adedeji vs. The State (1971) 1 All N.L.R. 75; Gachi vs. The State (1965) N.M.L.R. 333 per Brett, J.S.C. at p. 334; Fatoyinbo sv. Attorney-General, Western Nigeria (1966) W.N.L.R. 4 Eze vs. The State (1976) 1 S.C. 125 ***Per Obaseki, J.S.C.*** *at 130. At Page 46. 35*

3. On burden of prosecution in respect of defence of alibi promptly and properly raised:

Once a defence of alibi has been promptly and properly put up, the burden is on the prosecution to investigate it and rebut such evidence in

order to prove the case against the accused beyond reasonable doubt. Adedeji vs. The State (1971) 1 All. N.L.R. p. 75. At Page 47.

4. *On effect of failure by the police to investigate alibi;*

Failure by the police to investigate and check the reliability of alibi would raise reasonable doubt in the mind of the tribunal and lead to the quashing of a conviction imposed in disregard of this requirement as was done in the case of Onafowokan vs. The State (1987) 7 S.C.; (1987) 3 N.W.L.R. (Part 61) page 538; 2 N.S.C.C. 1101. At Page 47.

5. *On nature of burden on accused raising defence of alibi*:
The accused person only has what is referred to as evidential burden which means the duty of adducing evidence or raising the defence of alibi. Ortese Yanor & Ors. vs. The State (1965) N.M.L.R. 337; Patrick Njovens & Ors vs. The State (1973) 5 S.C. 17 at 85; Wasari Umani vs. VIe State (1988) 1 N. W .L.R. (Pt. 70) 274 Bozin vs. The State (1985) 2 N.W.L. (Pt. 8) 465; (1985) 7 S.C. 450; (1985) 2 N.S.C.C. 1087. At Page 47.

6. *On duty on prosecution and the trial judge when accused discharges* evidential *burden of alibi:*

Once an accused person discharges the evidential burden of adducing evidence of alibi, it is the duty of the prosecution to disprove it. The duty of the learned trial Judge is to test the evidence of alibi against the evidence on the issue adduced by the prosecution and if there is doubt in the mind of the learned trial Judge to resolve it in favour of the accused. At Page, 47.

7. *On nature of onus on prosecution to prove the charge against the accused beyond reasonable doubt:*

The onus on the prosecution to prove the charge against the accused beyond reasonable doubt never shifts and there is no onus on the accused

to prove the alibi beyond that of introducing the evidence of alibi. Bozin v. The State (supra). At Page 47.

8. *On whether there is duty to investigate alibi when accused give conflicting stories as to his whereabouts:*

Where the accused person gives conflicting stories as to his whereabouts at the material time under consideration, there is no duty to investigate the alibi. In such a case, no alibi is established. Agu vs. The State (supra). At Page 47.

9. *On whether ipse dixit of an accused raising alibi is enough proof of same:*

The ipse dixit of the accused, that he was not present there is no enough. To raise the defence he must give particulars of his where about at the particular time. Agu vs. The State (supra) Obiode vs. The State (1970) N.S.C.C. 31. At Page 47.

10. On effect of evidential burden on accused raising defence of alibi:

The effect of such evidence is not dependent upon its preponderance. It may be scanty or minimal but yet very effective in raising reasonable doubt in the minds of the tribunal. It may be abundant yet raise no doubt in the minds of the tribunal. At Page 48.

11. On the rule that alibi must be investigated ;

The rule that alibi must be investigated is therefore inapplicable in the face of credible evidence of two witnesses". There is no such exception to the rule. The two policemen, p.w.2 and p.w.3 were police witnesses and not the investigating police constables whose duty was to investigate the alibi. It is the evidence of investigating constable on the issue that could have provided the measure by which to test the credibility of p.w.2 and p.w.3 on the one hand and the credibility of the appellants on the other if there had been any. It would have enabled the learned trial Judge to

determine the cogency of their evidence and the proper weight to attach to the evidence of each witness. At Page 49.

12. On duty* on *prosecution when* an *accused raise defence* of *alibi during investigation:

The burden is on the prosecution to disprove the alibi and it can only be disproved by adducing evidence which establishes beyond reasonable doubt that the accused was not absent from the scene of the crime as alleged - see ***Section 137(2) of the Evidence Act Cap 62****.At Page 53 .*

13. On burden on prosecution when accused raise defence of alibi:

Where evidence has been adduced by the prosecution to disprove the plea of alibi, then, and only then, the accused has the onus to call evidence. to weaken or discredit the evidence called. by the prosecution. At Page 53.

14. On the duty on accused who raises defence of alibi;

An accused person who raises a defence of alibi does not assume the burden to prove the alibi. See: Adede vs. state (1971)1 ALLN.L.R 75; Ozuloye vs. state (1981) 1 N.L.R 38 At page 64.

15. On duty on accused who raises the defence of alibi;

All that the law imposes on him is an evidential burden to raise the defence of Alibi at the earliest possible opportunity and give particulars of that other place where he was at the time of the crime- such particulars that the police can investigate. At page 64.

16. On nature of burden on prosecution when defence of alibi is raised;

It is the duty of the prosecution to investigate the alibi and call all necessary evidence in rebuttal thereof. The burden of the prosecution is to negative the defence beyond reasonable doubt, Mancini vs. D.P.P 1942 A.C .At page64.

17. On when prosecution discharging its onus of disproving defence of alibi;

That the onus can only be discharged if the prosecution calls evidence of such a quantity and quality as to negative the defence of alibi-beyond reasonable doubt; see Arebamen vs. The State (1972)4 s.c.35 p.40-41; Kono vs. The State (1973) 5 s.c.231; and Yanor vs. The state (1965) N.M.L.R. 337.At page 64.

18.On effect of failure of prosecution to investigate alibi;

Where they all fail to investigate the alibi once the accused has discharge his evidential burden, then they have left a room for doubt, the benefit of which ought to be given to the accused .Ukwunnenyi vs. The State(1989)4 N.W.L.R.(Pt.114)131 at p.149. At page 64.

19. On the proper direction in the instant case regarding the alibi by the 1st and 2nd appellant;

In the instant case, a proper direction should have been that the 2nd appellant who duly raised his defence of alibi as soon as possible in his statement to the police had no duty to prove anything, having discharged his evidential burden; but that the 1st appellant who only raised his alibi in the witness box did not discharge the evidential burden on him and so had to prove it by evidence. At page 65.

OKODUWA VS. STATE(2001)1 ACLR 319

ALIBI

CRIMINAL LAW AND PROCEDURE *- Alibi - Once accused discharges the evidential alibi- Onus on prosecution in respect thereof- Duty on the trial judge*

PRINCIPLES:

1. ***Onus-on prosecution once an accused discharges his evidential burden of alibi****:*

Once an accused person discharges the evidential burden of adducing evidence of an alibi, the onus is on the prosecution to disprove it. At Page 338 .

2. ***On duty on trial judge once an accused discharges his evidential burden of alibi:***

It is equally true, though, that there is a duty on the trial Judge to test the alibi against the evidence adduced by the prosecution. At Page 338.

SAMUEL BOZIN VS. STATE_(1998) 1ACLR 1

ALIBI

***CRIMINAL LAW AND PROCEDURE** - Alibi - standard of proof to establish same.*

***CRIMINAL LAW AND PROCEDURE** - Defence of alibi - meaning and nature of - burden on prosecution to investigate arid rebut same when raised.*

PRINCIPLES;

1. *On standard of proof to establish defence of alibi:*

The standard of proof required to establish an alibi is much, much lower than proof beyond reasonable doubt expected of the prosecution. That standard is merely the favourable balance of probabilities which in this case is more on the side of the Appellants Okputu Obiode & Ors vs. the State (1970)1 All. N.L.R. 35 at p. 40.At Page 16 40 .

2. *On meaning and nature of defence of alibi:*

It is a well established principle that an alibi means that the accused was somewhere other than where the prosecution alleges he was at the time of the commission of the offence. Consequently he could not have committed or participated in the commission of the offence with which he is charged - See Gachi & ors. vs. The 'State (1965) N.M.L.R. 888. At Page 23.

3. *On burden on prosecution to investigate and rebut defence of alibi when raised:*

It is well settled that the accused raised the defence of alibi by the introduction of evidence leading to that conclusion. Once an alibi as been raised the burden is on the prosecution to investigate and rebut such evidence in order to prove its case beyond reasonable doubt. - See Adedeji vs. The State (1971) 1 All N.L.R. 75. At Page 23.

4. *On defence of alibi. –*

Where the prosecution disregards a plea of alibi. does not investigate it and leads no evidence as to its rebuttal, and where the trial Judge

disregards the evidence in his consideration of the guilt of the accused, the prosecution cannot in such circumstances be regarded as having proved its case beyond reasonable doubt. The onus on the accused to establish alibi is merely on introducing evidence .See Yanor vs. The State (1965) N.M.L.R. 341,At Page 235

PATRICK IKEMSON VS. STATE (1998) 1 ACLR 80

ALIBI

CRIMINAL LAW AND .PROCEDURE *- Alibi -plea of alibi - duty on accused raising same.*

CRIMINAL LAW AND PROCEDURE *- Alibi - plea of alibi - once raised by an accused person - duty prosecution in respect thereof - Need for accused to give sufficient particulars of his where about.*

CRIMINAL LAW AND PROCEDURE *- Alibi - plea of alibi - effect of evidence of participation on same.*

CRIMINAL LAW AND PROCEDURE *- Alibi - plea of alibi - need not to disregard same without over whelming evidence against it.*

CRIMINAL LAW AND PROCEDURE *- Defence of alibi - defence raised for the first time in the witness box - nature of .*

PRINCIPLES;

1. *On duty on prosecution once an accused person raises a plea of alibi:*

Once alibi is raised by an accused person, it is incumbent on the prosecution to investigate the alibi to find out if it is true the accused was not at the scene of crime when the crime was being committed; or to rebut the alibi if it was false. Adio vs. The State (1986)3 N.W.L.R (Pt. 31) 714: Onafowokan vs. The State (1987)3 N.W.L.R. (Pt. 61) 538. At Page 91.

2. *On need for the accused raising a plea of alibi to give sufficient particulars of his where about:*

Not enough for the accused just 'to say he was not at the scene, he must give sufficient particulars as to his whereabouts for the prosecution to investigate. Yanor vs. The State (1965)1 All N.L.R. 193; Okosi vs. The State (1989)1 N. W.L.R. (Pt. 100) 642. At Page 91.

3. *On need not to disregard alibi in absence of over whelming evidence against it:*

However incredible an alibi, it should .not be disregarded unless then is overwhelming evidence against it, e.g. having regard to the failure of the accused to supply particulars of his whereabouts. Nwosisi vs. The State (1976) 6 S.C. 109. At Page 91.

4. *On effect of evidence of participation on a plea of alibi:*

Where-there is direct and positive evidence of participation, the alibi, even if raised, will be rebutted by such evidence - See Odididka vs. The State (1977)2 S.C. 21; Njovens vs. The State (1973)5 S.C. 17. At Page 98.

5. *On duty on accused raising defence of alibi:*

It is not sufficient for the purposes of raising an alibi merely for the accused to say that he was not present at the scene of crime. He must go further to give particulars of where he was to give the prosecution an opportunity of verifying the claim. See Ntam vs. State (1968) N.M.L.R. 86. At Page 98 .

SULE AHMED VS. STATE(2001) 8 NSCQLR 273.

ALIBI

***CRIMINAL PROCEDURE LAW - ALIBI** - When logically dismissed.*

PRINCIPLE:

*1 **On when is an alibi logically dismissed;***
It is long settled that where the prosecution adduces sufficient and accepted evidence to fix the accused at the scene of crime at all times material to the commission of a crime, any alibi raised by him is there by physically and logically demolished. ***Per A. I. Iguh JSC*** *at page 299.*

THEOPHILIUS EYISI VS. STATE (2000)6 NSCQLR 60

ALIBI

***CRIMINAL PROCEDURE LAW** - ALIBI - Meaning of- The law relating to Alibi considered.*

PRINCIPLES:

1. On the defence of alibi raised by the persons:-

*The Court below, **Per Nasir P,** considered a similar complaint raised before it and observed"*

The issue raised on alibi can be disposed of easily as it was considered by the learned trial Judge and rightly rejected. The initial responsibility to introduce evidence in support of an alibi is the responsibility of the accused. This is not the type of evidence which an accused person can use as his trump card in his proof of innocence. Any evidence suggesting alibi as a defence must be told to the investigating police officers at the earliest opportunity, (Udo Akpan vs. The State (1986) 3 NWLR (part 27) 258 at 262.

In the present case the learned trial Judge rightly considered all the statements of the appellant to the police and concluded that none of them raised an alibi which could be investigated. While it is not the duty of the accused to prove his defence of alibi nevertheless the accused or his counsel can either ask the court to call the witness on the alibi or he himself can call the witness as part of his, defence.

In the present appeal the alleged defence of alibi which was not put m forward until the appellant went into the witness box to give evidence was met by the evidence of not only identification as discussed earlier but also all the Appellants were at one time or the other during the relevant period linked with Pam Pam Road Onitsha where the property stolen and

weapons used were found. In my opinion the evidence adduced by the prosecution leaves no room for any belated defence of alibi to succeed (Okosun & Ors.vs. Attorney-General Bendel State (1985) 3 NWLR (prt 12) 283 at' 294 In my opinion the complaint in respect of the defence of alibi fails. ***Per M. E. Ogundoare JSC*** *at pages 102 - 103.*

2. On the defence of alibi:-

The defence of Alibi is quite different. The facts of the alibi are known to him and such witnesses as may be available. He should therefore disclose them with necessary details and particulars at the earliest opportunity so as to put the burden on the police to check on them and deal with them with some finality See Esangbedo vs. The State (1989) 4 NWLR (part 113) 57. If he does not, the police cannot be expected to go on a wild goose chase. ***Per S. O. Uwaifo JSC*** *at page 110-111.*

3.On the meaning of alibi:

Alibi is a radical defence and simply means an accused was somewhere else at the material time an offence was committed and could not possibly be at the scene to partake in it if it succeeds. It would mean the accused was in no way involved in the crime, unlike other defence which may still have implicated or connected. him with a particular offence. ***Per S. O. Uwaifo JSC*** *,at pages 110-111.*

4.On the law relating to alibi:-

The law relating to alibi is that an accused person who wishes to raise alibi must raise it at the earliest. " opportunity to enable the police to investigate it and must offer evidence. See Salami vs. The State (1988) 3 , NWLR 760 When there is a positive evidence of the accused' s complicity in the offence, the police need not investigate his alibi. Also in Ekpe Ubor & Anor. vsThe State (1983) SC1 this court held that an alibi can be negatived by eye witness account of the commission of an offence by an accused person. See also Patrick Njovens & Ors. vs. The State NNLR 76.

at 78 (1973) 5 SC where the fixing of the accused at the scene of crime melted away his plea of alibi. It is only where an accused person has adduced evidence in support of his alibi and the police fail to investigate it that it could be construed against the prosecution. Not so in this case. In the above purported alibi of the 1st appellant, he did not offer any evidence in support of his alibi and, therefore has not discharged the onus on him. ***Per S. U. Onu JSC*** *,at pages 83 - 84.*

MONDAY ODU & ANOR VS. THE STATE(2001) 6NSQR385

ALIBI

CRIMINAL PROCEDURE LAW-ALIBI- *Whether failure to investigate is fatal to conviction in all cases.*

PRINCIPLE:

1. On whether every failure to investigate an alibi is fatal to conviction;

Although there are occasions on which failure to check an alibi may cast doubt on the reliability of the case for the prosecution, yet where there is positive evidence which cancels the alibi, the failure to investigate the alibi would not be fatal to conviction. ***Per Uthman Mohammed JSC****, at page 390.*

JEROME APKAN & ORS VS. STATE (2002)10 NSCQR 722

ALIBI

CRIMINAL PROCEDURE LAW *– Alibi- onus of proof- on whom lies.*

PRINCIPLE ;

1. On alibi- on whom lies onus of proof;

Alibi is a radical defence and simply means an accused was somewhere else at the time of the Commission of an offence and could not possibly be at the scene to partake in it: The facts of the alibi are peculiarly within the appellant` s knowledge and such witnesses as may be available. He has the onus therefore to disclose such facts with necessary details and particulars at the earliest opportunity so as to put the burden on the police to check on them and deal with them with some finality. If he does not, as in this case, the police cannot be expected to go on a wild goose chase. ***Per A.I Katsina-Alu JSC,*** *at pages729-730.*

SOWEMIMO VS. STATE(2004) 18 NSCQR25

ALIBI

***CRIMINAL LAW** - Alibi - defence of - whether can still avail an accused unequivocally pinned down to the locus in quo.*

***CRIMINAL LAW** - Alibi - meaning of - defence of - when will be considered by the court - when not.*

PRINCIPLES;

1. On when the court will consider the defence of alibi;

I really fail to see how this Court would seriously consider the so - called defence of Alibi of the 2nd appellant when;

(a) He never raised his defence at the earliest opportunity he had;

(b) When during his evidence he tried to disown his n statement Exhibit K stating that he is an illiterate and could neither read nor write, yet he admitted is having read up to standard ;

(c) When his defence of Alibi contradicts in material particulars in fact completely at variance with Exhibit . ***Per I. C. Pats-Acholonu JSC,*** *at page 33.*

2. *On the meaning of alibi;*

It is a defence which seeks to persuade the court that the accused could not possibly be at the scene of the crime as he was somewhere else where most probably there were those people who could testify that at the time of the alleged act he was not at-the scene of the crime unless he-is capable of being in two places at the same time. ***Per Pats-Acholonu JSC,*** *at page 34.*

3. On whether the defence of alibi can still avail or accused who is unequivocally pinned to the locus in quo;

It is elementary law that where an accused person unequivocally pinned to the locus in quo as one committing the offence, the defence of alibi no more avails the accused this is because the defence by the accused that he was elsewhere at the material time the offence was committed , is destroyed by the unequivocal evidence of witness or witnesses tying him to the locus in quo as one who committed the offence. ***Per Niki Tobi JSC,*** *at page 40.*

7

APPEAL

MOSHOOD VS. THE STATE (2004) 14 NWLR 422

***APPEAL**- Appeal in case of capital offence- attitude of appellate court thereto.*

***APPEAL**- Retrial order in criminal cases- principles governing- when will not be made.*

***CRIMINAL LAW AND PROCEDURE**-Appeal in capital offence cases- attitude of appellate court thereto.*

***CRIMINAL LAW AND PROCEDURE**-Retrial order in criminal cases – principles governing- when will not be made.*

***CRIMINAL LAW AND PROCEDURE**-Trial within trial- when necessary- where evidence of accused discloses duress or threat- duty on court to order trial within trial.*

PRINCIPLES;

1. On when trial within trial necessary in criminal proceeding:

Where an accused person has clearly retracted in court his confessional statement said to have been made voluntarily, by alleging and showing that it was made under duress and threat, the court conducting the trial should conduct a trial within trial to ascertain the truth of the alleged confessional statement. In the trial within trial, if the statement of the confession is found to be true and voluntarily made, direct and positive, it could be admissible in law and the retraction irrelevant. But without a trial within a trail as to the veracity and voluntariness of the confession, it is inappropriate for the court to rely on the retracted confession in order to convict the accused person, because the alleged voluntary confession is not voluntary or true. It is no more than a statement on oath

against oath, which is less than proof beyond reasonable doubt required to secure a conviction. In the instant case, the appellant retracted the confessional statement the prosecution alleged he made and the trial court instead of used conducting a trial within a trial relied on the retracted confession in order to convict the appellant. (Pp 437-438, paras H-D)

2. ***On principles governing retrial in criminal proceedings:***

A trial order is made when there had been an error in law or irregularity in the procedure that does make the trial a nullity nor create a miscarriage of justice. The court must be satisfied that;

(a) the evidence taken may otherwise disclose the commission of the offence substantially.

(b) There is no special circumstance that will render it oppressive to put the accused back on trial and that to refuse a trial would result in a greater injustice. In the instant case, a substantial offence has not been disclosed against the appellant and it would be oppressive to put him through another trial particularly when the evidence of the interpreter to the appellant is unlikely to be produced as his where about is said to be unknown. (Pp.438-439, paras. H-C)

3. ***On attitude of appellate court with respect to cases of capital offence;***

Where there is an appeal in a case of capital offence, the attitude of the appellant court is to consider on liberal ground all available legal and equitable defence open for consideration for the appellant, based on the evidence on printed record. However, it is not the role of an appellant court to re-write the judgment of the trial court and in the process re-evaluate and re-interpret such evidence. [Egbeyom vs. State(2000) 4 NWLR (pt 654) 559; Peter vs. State (1994) 5 NWLR (PT. 342) 45 referred to] (P.439, paras. G-H)

8

ARRAIGNMENT

AMALA VS. STATE (2004) 12 NWLR PT 888 520 SC.

CRIMINAL LAW AND PROCEDURE*-Arraignment- requirement of valid arraignment-****Section 215, Criminal Procedure Act****- how construed.*

CRIMINAL LAW AND PROCEDURE*- Arraignment- failure of trial court to record plea of accused person in direct speech- whether fatal.*

CRIMINAL LAW AND PROCEDURE*-Arraignment- requirement of – where accused complains that charge was not read and explain to him to satisfaction of trial court-what he must show.*

CRIMINAL LAW AND PROCEDURE*- Arraignment- requirement of valid arraignment –whether trial court must note in record of proceedings that charge was read over and explain to accused to its satisfaction.*

CRIMINAL LAW AND PROCEDURE *Arraignment- requirements of valid arraignment –failure of trail court to record that charge was read over and explained to accused to his satisfaction- whether vitiates proceedings.*

CRIMINAL LAW AND PROCEDURE*- Arraignment-****Section 33 (6) (a) 1979 Constitution****-purport of- whether relevant in arraignment of accused person.*

CRIMINAL LAW AND PROCEDURE *Arraignment- requirement that charge be read over to accused persons jointly charge.*

CRIMINAL LAW AND PROCEDURE*-Proof of crime-circumstantial evidence-nature of required to ground conviction.*

CRIMINAL LAW AND PROCEDURE*-Defences- self defence- fighting-difference between.*

CRIMINAL LAW AND PROCEDURE *Defences-defence of self defence-when available to an accused-***Section 286, Criminal Code.**

PRINCIPLES:

1.On requirements of valid arraignment;

By virtue of ***Section 215 of the Criminal Procedure Act,*** *the person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and court finds that he has not been duly served (P.550, paras .F-H)*

2. On the requirements of valid arraignment:

A close study of procedure Act discloses that for a valid arraignment of an accused person before a trial court, three essential requirements must be satisfied. These are as follows;

(a)The accused person shall be placed before the court unfettered unless the court shall see cause otherwise to order;

(b) The charge or information shall be read over and explained to him to the satisfaction of the court by an appropriate officer of such a court; and

(c)the accused person shall then be called upon to plead instantly thereto (unless an objection if n respect of want of service of a copy of the IT information is successfully taken). [Kajubo vs. State (1998) 1 NWLR (pt. 73) 721; Kalu vs State (1998) 13 NWLR (pt 583; Erekamure vs. State (1993) 5 Nwlr (pt.294) 385 referred to] (p.559, paras D-G)

3.On whether trial court required to record that charge was read and explained to the accused to its satisfaction;

It will be stretching the provision of ***Section 215 of the Criminal Procedure Act*** *to a point of absurdity by reading into it that the trial court must , indeed, shall expressly record that the charge was explained to the accused to its satisfaction before taking his plea. This is because, it is inconceivable that any judge shall proceed to take the plea of an accused person arraigned before him if he is not satisfied that the charge was read over and explained to the accused person and that he understood the contents thereof. Court of law must therefore guard against over-stretching the provision of* ***Section 215 of the Criminal Procedure Act*** *by reading into the Section what it has not stipulated either expressly or by necessary implication.)Pp.561-562, paras H-C) .*

4. On whether trial court required to record that charge was read and explained to the accused to its satisfaction;

There is no provision in ***Section215 of the Criminal Procedure Act*** *which stipulates or makes it mandatory that a note shall be made expressly in the record of proceedings to the effect that a charge was read over and explained to an accused person to the satisfaction of the court before his plea was taken. What the law enjoins the trial court to do is to satisfy itself that the accused on the charge being read over and explained to him understands the nature thereof before he pleas thereto. And the test with regard to this requirement is subjective and objective. In the instant case the failure on the part of the trial court to record expressly that it was satisfied that the appellant understood the charge before his plea was taken was not fatal to the proceedings and did not explained to him in his own language before he pleaded thereto. (P.560. paras C-F)*

5.On whether failure of court to record that charge was read over and explained to accused to its satisfaction vitiates proceedings;

Although it is good practice for trial courts to record specifically that a charge was read over and explained to the accused to the satisfaction of the court and that he understood the same before pleading thereto. Where, however, the trial court has recorded that a charge was read over and explained to the accused person in the language he understood before he pleaded thereto, failure to add that this was done to its satisfaction cannot vitiate the proceedings or render the plea invalid, null and void. It is sufficient on the record as a whole if it could be gathered that the accused understood the nature of the charge. In the instant case, there was nothing in the record to establish that trial court was not satisfied that the appellant fully understood the charge before he pleaded thereto. [Ogunye vs. State (1999) 5 NWLR (pt.604) 548 ;Eyisi vs. State (2000) 15 NWLR (Pt.691) 555; Idemudia vs. State (1999) 7 NWLR (pt. 610) 202 referred to] (Pp.561-562, paras E-G).

6.On whether failure of court to record plea of accused person in direct speech fatal:

It is preferable for a trial court to record the plea of each of the accused person in a criminal trial in the direct speech. However, failure to do this cannot be fatal to their plea so long as the charge was read over and explained to them, whether jointly or separately, and they both understood the same and each of them individually entered a plea thereto. It would not matter whether the court's record which described the event was written in direct or reported speech.[Ude vs. State (1999) 7 NWLR (Pt 609) 1;Edun vs. Inspector General of police (1966) 1 All NLE 17 referred to]

Per Iguh, JSC *at page 563, paras B-E:*

" It seems to me ,as was rightly pointed out by the court below, that what learned counsel for the appellant is quarrelling with is the way or manner the learned trial judge had recorded the proceedings or events that legitimately took place before him. Instead of recording the plea of the accused persons separately and in the direct speech, he did so in indirect or reported speech thus describing the event in one single sentence. There is no suggestion that the charge was not read over and explained to the two accused persons. There is also no suggestion that they did not understand the same or that they did not plead thereto. Learned counsel did not attack the correctness of the proceedings to the effect that the charge was "read over and explained to the two accused persons in Igbo language and that both pleaded not guilty to the charge" There can be no doubt that from the record, what the learned trial juage did was to paraphrase the account of what transpired before him without pretending to be making a verbatim report thereof. The charge having been read over and explained to both accused persons in the Igbo language and each of them pleaded not guilty thereto. I find it difficult to conceive how the arraignment of the accused persons can be faulted."

7.On whether charge must be read separately to each of the accused persons jointly charge;

It is absurd to suggest that a charge must be read separately to each of several accused persons jointly charged together. It is therefore not correct to hold that a trial court should state that the charge has been read to each of the accused persons or that only separate reading of the charge meets with the requirements of ***Section 215 of the Criminal Procedure Act****. Notwithstanding the joint reading and explanation of the charge, there is compliance with Section 215 of the Criminal Procedure*

Act. .[Ude vs. State (1999) 7 NWLR (Pt 609) 1referred to and followed .]
(P551,paras C-H)

(8) On what accused complaining on appeal that charge was not read and explained to him to satisfaction of trial court must show;

Where it is contended on appeal that a charge was not read and explained to an accused person to the satisfaction of the trial court, then it must be shown- that the judge in whose presence a charge is read) and explained to the accused person in the language common to all the parties in court did not understand the charge as read and explained to the accused persons (Pp.550-551, paras. H-B)

EZEZE VS. STATE (2004) 14 NWLR 491

ARRRAIGNMENT

CRIMINAL LAW AND PROCEDURE *Arraignment-procedure therefore- when can be quashed.*

PRINCIPLES:

1.On when arraignment of accused person can be quashed:
Once an indictment is before the court, the accused must be arraigned and tried unless;

(a) on a motion to quash it is held defective in substance or form; or

(b) matter in bar is pleaded and the plea is tried or confirmed in favour of the accused; or

(c) a nolle prosequi is entered by the Attorney – General which cannot be done before the indictment is filed; or

(d) the indictment disclose an offence which a particular court as no jurisdiction to try; or

(e) where a particular criminal proceeding constitute an abuse of the court process.(Pp.501-502, paras H-D)

DIBIE VS. STATE (2004) 14 NWLR 257

ARRAIGNMENT

CRIMINAL LAW AND PROCEDURE *Arraignment-interpretation of charge to accused person- when may be dispensed with.*

CRIMINAL LAW AND PROCEDURE *Arraignment-need to read an interpret to accused person- when necessary.*

CRIMINAL LAW AND PROCEDURE *Arraignment-proper arraignment- assumption of regularity in respect thereof-attitude of appellate court thereto.*

CRIMINAL LAW AND PROCEDURE *Arraignment-valid and proper arraignments of –**Section 215 Criminal Procedure law and section 36(6) of the Constitution** considered.*

PRINCIPLES;

1.On requirement of a valid arraignment:

For a valid arraignment of an accused, the under listed requirements must co-exist and must be satisfied because they are mandatory, failing which any subsequent trial and conviction of him will be a nullity. The requirements are;

(a) The accused person must be present in court unfettered unless there is a compelling reason to the contrary.

(b) The charge must be read over to the accused in the language he understands;

(c) The charge must be explained to accused/to the satisfaction of the court;

(d) In the course of explanation, technical language must be avoided;

(e) After satisfying the above requirements, the accused will then be called upon to plead instantly to the charge.

All the requirements must co-exist and must be satisfied because they are mandatory.[Erekanure vs. State (1993) 5 NWLR (Pt. 294) 385; Kajubo

vs. State (1988) 1 NWLR (pt. 73) 721; Effion vs. State (1995) 1 NWLR (Pt 373) referred to](P. 276, paras. C-G)

2. On requirements of a valid arraignment:

The law enjoins a trial court to be satisfied with the explanation of the charge to the accused person before he pleads thereto. Thus , it is good practice that a trial court specifically records that a charge was read over and explained to an accused person to its satisfaction before he pleads thereto. It is, however, not the law that unless the test with regard to this requirement is subjective and not objective. It therefore follows that where a trial court state that a charge was read to its satisfaction, it cannot be faulted simply because it did not state " read and explained to its satisfaction". In the instant case, having regard to the circumstances of the case, including the fact that the appellants understands English, the fact that it was not stated that the charge was explained to the appellant will not vitiate the charge. (Pp. 277-278, paras G-H, 290, paras. G-H).

3 On when unnecessary to interpret a charge to accused person;

The need for interpretation of a charge to an accused person will not arise if the accused person, as in the present case, understands the language of the court which is English.[Ogunye vs. State (1999) 5 NWLR (Pt. 604) 584 referred to] (P.290,paras.F-G)

4 On presumption of regularity in favour of proper arraignment of an accused:

An appellate court is entitled to assume that the correct procedure was adopted by the trial court on the issue of explaining the charge to the accused person until the contrary is proved. That is to say, the presumption of regularity applies.[Lockman vs. State(1972) 5 SC 22; Ogunye vs. State (1999) 5 NWLR (Pt 604) 548 referred to](P 278, para A.)

OGUNYE VS. STATE (2001) 2 ACLR 66

ARRAIGNMENT

CRIMINAL LAW AND PROCEDURE- *Arraignment-Essentials of.*

CRIMINAL LAW AND PROCEDURE- *Valid arraignment-purpose of – mandatoriness of – effect of breach of.*

PRINCIPLES:

1.On the elements or essentials of a valid arraignment in a criminal trial;

For a valid arraignment of an accused person, three essential requirements must be satisfied. These consist as follows;

(i) the accused must be placed before the court unfretted unless the court shall see cause otherwise to order;

(ii) the charge or information shall be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court ; and

(iii) the accused shall then be called upon to plead unless, of course, there exists any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and court is satisfied that he is in fact not duly served therewith. At page 81

2.On the mandatoriness, purpose and effect of breach of the requirements of a valid arraignment;

I need hardly add that the above requirements of the law (i.e. essentials of valid arraignment) are mandatory and must therefore be strictly complied with in all criminal trials. I may also add that they have been specifically provided to guarantee the fair trial and failure to satisfy these requirements will render the trial incurably defective and null and void.

See Sunday Kajubo vs. the State (1988) 1 NWLR (pt. 73) 721 at 732, Samuel Erekanure vs. State (1993) 5 NWLR (pt 294) 285, Onuoha Kalu vs. State (1998) 13 NWLR pt. (583) 531, Azzez Okoro vs. State (1998) 14 NWLR (pt 584) 181 e.t.c. At page 82.

UDE VS. STATE (2001) 2 ACLR 356.

ARRAIGNMENT

CRIMINAL LAW AND PROCEDURE- *Arraignment-"block reading" of charge of several accused persons charge jointly-whether vitiates criminal trial – whether charge must be read to each of such accused persons separately.*

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirements of valid arraignment, Sec 215 CPA considered.*

PRINCIPLES:

1. On whether a charge should be read over as many times as there are accused persons where accused are jointly charge;

It would manifestly absurd to suggest that if there were twenty or more jointly accused persons, the charge should be read twenty times, notwithstanding that the charge may have mentioned each of the accused as joint participant in the criminal charge. The provision of Section 333 provides that the charge shall be read over and explained over to the person to be tried, it does not mean that it is to be read to each of them separately, so that the charge should be read as many times as there are person to be tried. The reasonable view , in my own opinion, is that when persons to be jointly tried on any charge or information are placed before the court, the requirement of Section 333 is complied with by reading and explaining it to the group. What the law requires and what satisfies the purpose of the law is that each of them should plead separately to it. The argument founded on the use of singular person in Section 333 is misconceived having regard to the provisions of Section 41 of the Interpretation Law which has been referred to in this judgment. At page 363.

2. On the features of a valid arraignment;

There will be a valid arraignment of accused persons in a criminal trial if-

(i) they are placed before the court unfettered unless the court otherwise orders;

(ii) the charge or information is read over and explained to them to the satisfaction of the court, and thereafter;

(iii) they are called upon to plead instantly to the charge. See Sunday Kajubo vs. State (1988)1 NWLR 9Pt. 73) 721 at 732;Samuel Erekanure vs. Sate (1993)5 NWLR (PT 294) 385; Onuoha Kalu vs. The Sate (1998) 13 NWLR (pt 583) 531 e.t.c At 367.

DURWODE VS. STATE (2001) 2 ACLR 503

ARRAIGNMENT

CRIMINAL LAW AND PROCEDURE- *Arraignment-essentials aspect of.*

PRINCIPLE;

1. The essential aspect of arraignment;

The most essential aspect of arraignment is the constitutiona requirement that every person who is charge with a criminal offence sha be entitled to be informed promptly in the language he understands i detail of the nature of the offence. See ***Sec 33 (6) (a) of the 197 Constitution*** *which was relevant when the appellant was tried. At pag 513.*

STATE VS. DUKE (2003) 5 NWLR PT 813 P. 394.

ARRAIGNMENT

CRIMINAL LAW AND PROCEDURE- *Arraignment-plea of accused person- how recorded-when must be recorded as possible in words used.*

CRIMINAL LAW AND PROCEDURE- *Arraignment-requirement that charge be read and explained to accused-how satisfied.*

PRINCIPLES;

1. On when court must record plea of accused as nearly as possible in words used by him;

A reading of ***Section 215,217 and 218 of the Criminal Procedure Law*** *will reveal that it is only where an accused person pleads guilty to the charge read and explained to him that the duty is imposed by Section 218 on the trail judge to record his plea as nearly as possible in the words used by him. No such obligation arises where the accused pleads not guilty to the charge as operation of Section 217; by pleading not guilty the accused is deemed to have put himself upon his trial (Pp.424-425, paras F-C)*

2. On whether court must record fact that charge was read over and explained to accused to the court satisfaction:

Although it is good practice and indeed desirable that a trial court specifically records that a charge was read over and explained to an accused person to its satisfaction before he pleads thereto, it is not the law that unless the court so expressly records, such arraignment automatically becomes invalid null and void. The law which enjoins a trial court to be satisfied with the explanation of the charge to the accused person before he pleads thereto is subjective and not objective

and an appellate court is entitled to assume that the correct procedu was adopted by the trial court on the issue of interpretation of the charg to an accused person until the contrary is proved. In the instant cas even though the trial court did not record express and specifically th the charge was read over and explained to each of the respondents to th satisfaction of the court before the plea of not guilty was entered respect of each count, it has to be assumed that the trial court adopte the right procedure of explanation of the charge. The maxim of "omn praesummuntur rite esse acta" applies. [Ogunye vs. State (1999) NWLR (pt. 604) 548; Lookman vs. State(1972) 5 SC 22; Edun vs. IG (1966) All NLR 17 referred to] (Pp. 440-441, paras E-D).

9

ARMED ROBBERY

BOZIN VS. STATE (1998)1 ACLR 1

CRIMINAL LAW AND PROCEDURE; *Armed Robbery- what the prosecution must prove to succeed-* ***Section 1 (2) (a) Robbery and Firearms (special Provision) Decree No. 47 of 1970*** *considered.*

PRINCIPLES:

1. On what the prosecution must prove to established the offence of armed robbery;

For the prosecution to succeed in this case there ought to be proof beyond reasonable doubt;

(i) that there was a robbery or series of robbery,

(ii) that each robbery was an Armed Robbery,

(iii) that the Appellant was one of those who took part in armed robberies. At page 11.

2. On whether there is distinction between evidence of robbery and evidence after robbery;

The learned trial judge, with the greatest respect, flew off at a target when he observed " that a clean line can be drawn between the evidence of the robbery and evidence after the robbery". To test not merely the veracity of the P.Ws 1-6 but also the accuracy of their identification of the Appellant as one of the four armed robbers, the whole incident will be considered together not separately. At page 12.

ALOR VS. STATE (1998) 1 ACLR 658

ARMED ROBBERY.

CRIMINAL LAW AND PROCEDURE; *Armed Robbery-whether necessary for "gun shot" to accompany same.*

PRINCIPLES:

1.On whether necessary for "gun shot " to accompany armed robbery;

Learned appellant's counsel called attention to the fact that it was amazing that it was amazing that no gun shot was fired by any member of the armed robbery group on that ill-fated day. Whether gun shots are fired or not will depend on many factors and the circumstances of each case. The evidence on record showed that the robbery was executed, by and large, devoid of evidence and resistance by the key witnesses, PW1 and PW2. Against such setting, it would be expecting much for the robbers to fire shots. There is no rule of law that enjoins the court to convict on a charge of armed robbery only upon evidence showing that the robbers fired gun shots. After all, a conviction can be sustained under the ***Robbery and Fire Arms (special provisions) Act, 1970*** *even when the accused was merely armed with any offensive weapon, not necessary a gun. At page 666.*

2.On whether it is necessary for "gun shot" to accompany armed robbery;

In the instance case, there was evidence that both PW1 and PW2 saw the gun with one of the robbers from the light of the touch-light, and as earlier noted, the piece of evidence was believed by the trial judge, where that is the case, it is irrelevant that the gun shot or offence weapon was not in fact carried or used by the appellant, so long as there was evidence

before the court, as was the case herein, that they all acted and formed a common intention to rob. See Adekunle vs. State (1985)5 NWLR (PT 123) 505 and Okosi vs. State 91989) 1 NWLR (pt 100) 649. To that extent, the authorities of Okosi vs. State (supra) Eze vs. State (supra) and Madagwa vs. State NWLR (pt 64) 172; 3 NSSC 147 cited. where gun shuts were fired person around the scene of incident injured and the accused apprehended after a chase by appellant, were in the circumstances of this case clearly unhelpful. At page 666.

OGIDI VS. STATE (2003) 9 NWLR PT 824

ARMED ROBBERY.

CRIMINAL LAW AND PROCEDURE; *Offences-armed robbery-punishment thereof.*

PRINCIPLE:

1.On proof of and punishment for armed robbery:

Any person who commits the offence of robbery with a firearm or any offensive weapon or is in company of any person so armed is liable upon conviction to be sentenced to death. All that the prosecution is required to prove by credible evidence is that the person who robbed the victim was either armed with a firearm or any offensive weapon or was in company of any other person so armed. (P.27, paras A-D)

10

ASSAULT

LEGAL HEAD	***ASSAULT***
SUBJECT MATTER	ASSAULTING POLICE OFFICER (SECTION 356 (2) CRIMINAL CODE)
SUB-SUBJECT	WHAT CONSTITUTES 'ACTING IN EXECUTION OF LAWFUL DUTY"

PRINCIPLE

If at the time a policeman is assaulted, he is endeavouring to prevent a crime he reasonably suspects has been committed, or is about to be committed, he is assaulted in the lawful execution of his duty under section 356(2) Criminal Code.

JUSTICE	TAYLOR F.J.
CASE	***C.O.P. vs..IGWE***
APPEAL NO	*FSC.236/1960*
DATE OF JUDGMENT	9TH JANUARY,1960
REFERENCE	(1961) I ALL NLR 9

LEGAL HEAD	***ASSAULT***
SUBJECT MATTER	ASSAUL T ON POLICE OFFICER WHILE ON DUTY (SECTION 356(2) CRIMINAL CODE)
SUB-SUBJECT	DISTINCTION BETWEEN POLICE OFFICER ON DUTY AND ONE IN EXECUTION OF DUTY

PRINCIPLES

1. ***There is a distinction under the Criminal Code between a police officer who is on duty and one who is acting in the execution of his duty.***
2. ***A police officer returning from the scene of a Crime to the Police Station to obtain reinforcements for the purpose of dealing with the Crime is acting in the execution of his duty.***

JUSTICE	BRETT, F.J.
CASE	***OKPARA vs. I.G.P.***
APPEAL NO	*FSC.204/1960*
DATE OF JUDGMENT	23RD JANUARY,1961
REFERENCE	(1961)1 ALL NLR 17

11

ATTEMPTS

LEGAL HEAD — ***ATTEMPTS***

SUBJECT MATTER — ATTEMPT TO PERVERT COURSE OF JUSTICE

SUB-SUBJECT — SECTION 126(2) (FEDERAL) CRIMINAL CODE

SUBS/DIARY SUB-SUBJECT — NATURE

PRINCIPLE

It is an attempt to pervert the course of justice if a person manufactures evidence t show that a crime had been committed by a particular person and brings that evidenc to the attention of someone who may be expected to set the processes of justice i motion.

JUSTICE — BRETT, J.S.C.

CASE — ***NDEBILIE vs. STATE***

APPEAL NO — SC 557/1964

DATE OF JUDGMENT — 21ST MAY,1965

REFERENCE — (1965) NMLR 253

LEGAL HEAD — ***ATTEMPTS***

SUBJECT MATTER — SECTIONS 509 AND 513 CRIMINAL CODE

ATTEMPT TO COMMIT CRIME AND ATTEMPT TO PROCURE COMMISSION OF CRIME DISTINGUISHED

PRINCIPLES

1. There is a distinction between an attempt to commit a crime under S.509 of the Criminal Code and an attempt to procure the commission of an offence within the meaning of S.513 of the code.

2. An attempt to procure the commission of an offence is similar to an offence of incitement to commit a crime under the common law.

3. The evidence of various witnesses as to the actual words used by a person against whom a charge of attempting to procure the commission of an offence is laid need not be identical to secure a conviction; provided that such evidence should be substantially the same.

JUSTICE UNSWORTH, F.J.
CASE ***BASHARU vs. B.N.A.***
APPEAL NO FSC.297/1961
DATE OF JUDGMENT 28TH NOVEMBER, 1961
REFERENCE (1961) I ALL NLR 664

LEGAL HEAD ***ATTEMPTS***
SUBJECT MATTER WHAT AMOUNTS TO

PRINCIPLE
To constitute an attempt, the act must be immediately connected with the commission of the particular offence charged and must be more than a preparation for the commission of the offence.

JUSTICE ALEXANDER, C.J.N
CASE **OZIGBO vs. C.O.P.**
APPEAL NO SC.219/75
DATE OF JUDGMENT 27TH FEBRUARY, 1976
REFERENCE (1976) 2 SC 67

LEGAL HEAD ***ATTEMPTS***
SUBJECT MATTER PROOF OF OFFENCE

PRINCIPLE
No one can be convicted of an attempt to commit an offence, which the prosecution has failed to proved to be an offence.

JUSTICE FATAYI-WILLIAMS, J.S.C.
CASE ***ADEOSUN vs. STATE***
APPEAL NO SC.337/74
DATE OF JUDGMENT 19TH JUNE, 1975
REFERENCE (1975) 9-11 SC I

12

ATTEMPT TO MURDER

LEGAL HEAD — ***ATTEMPT TO MURDER***
SUBJECT MATTER — SECTION 320(1) CRIMINAL CODE
SUB-SUBJECT — PROOF OF OFFENCE

PRINCIPLES

1. ***While an intention to cause grievous harm is sufficient to sustain a convictio for murder if death results, such an intention is not sufficient to sustain conviction for attempted murder.***
2. ***There must be an actual intention to kill to sustain a conviction for attempte murder.***
3. ***The mens rea in attempted murder is intention to kill.***
4. ***The intention to kill may be inferred from the extent of the injury and th instrument used.***
5. ***On a charge of attempted murder, there must be express finding, by the cour as to the intention of the accused.***

JUSTICE — BRETT, F.J.
CASE — ***QUEEN vs. NWAUGOAGWU***
APPEAL NO — FSC.9/1962
DATE OF JUDGMENT — 2ND MA Y 1962
REFERENCE — (1962) 1 ALL NLR 294

LEGAL HEAD — ***ATTEMPT TO MURDER***
SUBJECT MATTER — SECTION 320 CRIMINAL CODE
SUB-SUBJECT — PROOF OF OFFENCE

PRINCIPLE

On a charge of attempted murder an actual intent to kill must be proved. M ere intention to do grievous harm will not do.

JUSTICE — BRETT, F.J.
CASE — ***ALBERT vs. QUEEN***
APPEAL NO — SC.II/1960
DATE OF JUDGMENT — 14TH APRIL 1960
REFERENCE — (1960) W.N.L.R. 31

LEGAL HEAD	***ATTEMPT TO MURDER***
SUBJECT MATTER	SECTION 320 CRIMINAL CODE
SUB-SUBJECT	PROOF OF OFFENCE

PRINCIPLES

1. ***The "mens rea" in attempted murder is intention to kill.***
2. ***A person charged with murder cannot be convicted of attempted murder unless actual intention to kill is established by the prosecution. Mere intention to do grievous harm is not sufficient.***

JUSTICE	LEWIS, J .S.C.
CASE	***IBO vs. STATE***
APPEAL NO	SC27/1971
DATE OF JUDGMENT	25TH JUNE, 1971
REFERENCE	(1971) I NMLR 245

LEGAL HEAD	***ATTEMPT TO MURDER***
SUBJECT MATTER	SECTION 320 CRIMINAL CODE.
SUB-SUBJECT	PARTICULARS OF OFFENCE
SUBSIDIARY SUB-SUBJECT	PROOF OF PARTICULARS BY PROSECUTION

PRINCIPLES

1. ***A charge laid under Section 320(2) of the Criminal Code must state the act or omission alleged.***
2. ***A charge laid under section 320(1) of the criminal code need not state any act or omission of the accused amounting to the offence charged.***
3. ***Where a charge laid under section 320 (1) of the Criminal Code specifies the method by which the accused is alleged to have attempted unlawfully to kill another, then the prosecution must prove the particulars with the same strictness as the other parts of the charge.***

JUSTICE	BRE1T,F.J.
CASE	***AGUMADU vs. QUEEN***
APPEAL	*NO* FSC.I04/1963
DATE OF JUDGMENT	23RD MAY,I963.
REFERENCE	(1963) I ALL NLR 203

LEGAL HEAD — ***ATTEMPT TO MURDER***
SUBJECT MATTER — SECTION 320 (1) CRIMINAL CODE
SUB-SUBJECT — INTENTION TO KILL
SUBSIDIARY SUB-SUBJECT — USE OF LETHAL WEAPONS: EFFECT

PRINCIPLE
The fact that an accused carried lethal weapons or even fired gun shots does not show an intention to kill unless it is further shown that firing at such range could definitely kill a person.

JUSTICE — TAYLOR, F.J.
CASE — ***QUEEN vs. EYO***
APPEAL NO — FSC. 147 1962
DATE OF JUDGMENT — 19TH OCTOBER,1962
REFERENCE — (1962) ALL NLR 515

LEGAL HEAD — ***ATTEMPT TO MUDER***
SUBJECT MATTER — SECTION 320 CRIMINAL CODE
SUB-SUBJECT — INTENTION NECESSARY TO SUSTAIN A CONVICTION

PRINCIPLE
Before an accused can be convicted of attempted murder it must be clearly established that he had an intention to kill and not just an intention to cause grievous bodily harm.

JUSTICE — ONYEAMA, J.S.C.
CASE — ***OZULOKE vs. STATE***
APPEAL NO — SC.574/64
DATE OF JUDGMENT — 29TH JANUARY 1965
REFERENCE — (1965) NMLR 125

LEGAL HEAD — ***ATTEMPT TO MURDER***
SUBJECT MA TTER — SECTION 320
SUB-SUBJECT — REQUIRED INTENT

PRINCIPLE
On a charge of attempted murder, an actual intent to kill must be proved, although if death results an intent to cause grievous harm will be sufficient to sustain a charge of murder.

JUSTICE — IDIGBE, J.S.C.
CASE — ***OMONUJU vs. STATE***
APPEAL NO — SC.175/75
DATE OF JUDGMENT — 7TH MAY, 1976
REFERENCE — (1976) 5 SC I

13

BAIL

TEA VS. COMMISSIONER OF POLICE(2002) 2 ACLR 491

BAIL *- Accused person not present to stand his trial- Forfeiture of bond – Surety ordered to be imprisoned without first attempting to recover penalty - Impropriety of*

BAIL *- Accused person not present to stand his trial - Bond not exhibited Before trial court - Whether there is any evidence that accused had broken any term of the bond.*

BAIL *- Appeal from order of forfeiture of recognizance - Bond not exhibited before appellate court - Whether safe for appellate court to act on bond not before it.*

CRIMINAL LAW & PRACTICE *- Accused 'person not present to stand his trial –Forfeiture of bond - Surety ordered to be imprisoned without first attempting to recover penalty - Impropriety of.*

CRIMINAL LAW & PRACTICE *- Accused person not present to stand his trial – Bond not exhibited before trial court - Whether there is any evidence that accused had broken any term of the bond.*

CRIMINAL LAW & PRACTICE *- Appeal from order of forfeiture of recognizance -Bond not exhibited before appellate court - Whether safe for appellate court to act on bond not before it.*

PRINCIPLES:

1.On forfeiture of bond and on the legality of ordering imprisonment of surety when no attempt had been made to recover the penalty:

The law relating to the forfeiture of a bond is contained in ***Section 354 of the Criminal Procedure Code****. The circumstances in which imprisonment may be ordered are set out in sub-section (4) which provides that "If the penalty is not paid and cannot be recovered in manner aforesaid, the person bound shall be liable by order of the court which issued the warrant under*

Section 304 to imprisonment which may extend to six months." In the present case, when imprisonment was ordered, no attempt had been made to recover the penalty in the manner prescribed. Consequently, the order for imprisonment was unlawful. At page.494

2. *On whether there was evidence in the trial magistrate court indicative . that the appellant had broken any term of the bond when the recognizance was not before the magistrate:*

It was held in McGarry, 30 Cr. App. R.187, that the recognisance must be before the court which is trying the issue whether it should be entreated even though the recognizance was taken in that court. In that case the recognisance was not before the court and the sentence which it imposed for breach of recognisance was set aside "because the Court had no material at all on which to form the opinion that he had broken any term of the recognisance which was not before the Court." In the present vappeal there is no evidence that the recognisance was before the learned magistrate and we cannot assume that it was. At page 494

3. On whether an appellate court can act on a bond that was not before it:

Even if it is assumed that the recognisance was before the learned magistrate, the fact that it is not before us must be fatal to the respondent's case. Without seeing the recognisance we are not in a position to say whether or not we agree with the learned magistrate's finding that there was a breach of it. We cannot make any assumption that it is not before us·must be fatal to the respondents .

OGBHEMHE VS. C. O. P.(2001)2 ACLR7

BAIL

BAIL *- Application unopposed and affidavit evidence. not countered whether accused should be denied bail.*

BAIL *- Considerations guiding court in the exercise of discretion to grant bail.*

BAIL *- Grant of as discretionary of court.*

BAIL *-ill-health of an accused - Whether amounts to special circumstances to warrant his admission to bail - Whether production of medical report is indispensable to prove ill-health.*

BAIL *- Need for courts to be cautious in granting bail applications.*

BAIL *- Onus on prosecution to show that an accused should be refused bail.*

PRINCIPLES;

1. On the discretionary power of courts to grant ball:

The granting of bail to an accused is a discretionary power the court before whom such application is pending. The exercise of that discretion must be judicially and judiciously applied. At page 5

2. On the considerations which guide courts in the exercise of tile discretion to grant bail:

In the exercise of its discretion on whether or not to grant bail pending trial, the usual considerations that guide the Court are;

(a) the nature of the charge

(b) the severity of the punishment

(c) the character of the evidence

(d) the criminal record of the accused and

(e) the likelihood of the repetition of the offence.

See:Dantata vs. Police (1958) NRNLR 3;Eyu_vs. State. (1988) NWLR (Pt 602. At page 5.

3. On the need for courts to be cautious in granting bail application;

A Court hearing an application for bail must be extra cautious in grantin such application because the likelihood of an accused has actu committed the offence escaping from Justice very high; more so whe conviction for the offence carries the death penalty. The likelihood of accused interfering with the investigation is a crucial point to consider the matter as some of the accused said to be at large. ***See Section 1 Criminal Procedure Law Cap 49 Vol. II Laws of Bendel State of Niger*** *1976 (as applicable to Edo State) At page 5.*

4. On whether the ill-health of an accused amounts to speci circumstance to warrant his admission to bail AND on whether productio of medical report is indispensable to the establish of ill-health:

The contention by learned Counsel for the Appellant that it is not necessar for the Appellant to produce the Medical report is well founded.I Chinemelu vs. Commissioner of Police_(1995) 4 NWLR 5 :(Pt.390) 46 where one of the issues raised and considered in the Court of Appeal wa the ill-health of tile appellant after his application for bail for the offences of conspiracy and murder had been refused by the High Court, it was held that if the circumstances of the ill-health are so compelling as to warrant

the release of the applicant and I thereby avert his undue exposure to health hazard or calamity, this will be enough special circumstances to admit the appellant to bail. At page 8.

5.On whom the onus lies to show that an accused should be refused ball:

The application for bail was brought by summons and since the Court presumes in favour of the liberty of the subject the onus is on the prosecution to show that the appellant is one that should be refused bail. See ***Section 36(5) of 1999 Constitution****; Evu vs. State_supra at page 610. Abiola vs. Federal Republic of Nigeria (1995) 1 NWLR (Pt.370) 155 at page 179. At page 8*

6. On whether an accused person whose bail application is unopposed and whose affidavit averment is not countered should be denied bail:

The *alleged offence of robbery against the appellant does not carry the death penalty upon conviction. The respondent did not oppose the bail of the appellant; neither did it counter the averment in the affidavit that the charge against the appellant is a trumped up charged. Added to this is the Police Investigation Report which has not seriously implicated the appellant in the commission of the offence of robbery. If the learned trial judge had taken all these factors into consideration, I have no doubt in my mind that she would have exercised her , discretion judiciously by admitting the appellant to bail. At page 8 .*

BAMAIYI VS. STATE(2001)2 ACLR 469.

BAIL

BAIL. *Application for bail - Consideration of criteria for granting. Whet prejudicial to accused's presumed innocence.*

BAIL. *Application for bail- Need for accelerated hearing when refused.*

BAIL. *Application for bail - Probability of accused person appearing stand his trial . Consideration of.*

BAIL. *Application for bail - Proofs of evidence. Examination of considering bail application - Whether court can.*

BAIL. *Application for bail. Grant or refusal of - Criteria governing.*

CRIMINAL LAW & PRACTICE. *Application for bail - Probability accused person appearing to stand his trial - Consideration of.*

CRIMINAL LAW & PRACTICE. *Application for bail. Consideration criteria for granting - Whether prejudicial to accused's presume innocence.*

CRIMINAL LAW & PRACTICE. *Application for bail –Need fo accelerated hearing when refused.*

CRIMINAL LAW & PRACTICE. *Application for bail - Proofs of evidenc - Examination of in considering bail application. Whether court can.*

CRIMINAL LAW & PRACTICE. *Application for bail - Grant or refusal o - Criteria governing.*

PRINCIPLES

I. On when failure of trial court to consider one of several issues submitted for consideration will amount to denial of fair hearing:

It comes to this, therefore, that the failure by the lower court to consider the said issue in the present case would riot ipso facto be taken as the type of lack of fair hearing under natural justice or ***Section 5 33(1) of the 1979 Constitution*** *to which reference was made in the Nwaokolo case with the consequence that a miscarriage of justice would be conclusively presumed, or even inferred at all, without more. It has to be demonstrated that such a failure, which in essence maybe nothing more than inadequate consideration of the appeal presented by the appellant before the lower court, was in a particular case a fundamental vice associated with lack of a fair hearing. Such was the case in Kotoye vs. C.B.N. (supra). At page 477.*

2. On the relationship of two affidavits, one of which was sworn in furtherance of the other AND on the need for affidavits to contain only facts:

I think the two affidavits must now be read as one since the one later in time was sworn in furtherance of the earlier. It must not be forgotten that the deponent, Olakunle Ligali, deposed that by virtue of his schedule of duties he became conversant with the facts of this case. To be conversant with to have knowledge of matter. Even so, the law requires a deponent of his type to confine himself to facts and circumstances. An affidavit meant for use in court stands as evidence and must as near as possible conform to oral evidence admissible in court. At page 480.

***3.On whether the word conclusion in Section 87, Evidence Act Imports legal and/or factual conclusion*: -**

Besides, I do not think that view has any merit either by way of the interpretation of the said ***S.87 of the Evidence Act*** *or by looking broadly at the word' conclusion' which covers any conclusion based on fact or law as a result of a process of reasoning. It is the same process by which opinion or deduction is arrived at or inference drawn. Therefore to say that the conclusion meant under S.87 is legal conclusion is restrictive and misleading. At page 481*

4. On the contents of affidavits as facts and on legal exclusion of extraneous matter:

I think the legal position clear that in any affidavit used in the court, the law requires, as provided in ***Sections 86 and 87 of the Evidence Act****, that it shall contain only a statement of facts and circumstances derived from the personal knowledge of the deponent or from information which he believes to be true, and shall not contain extraneous matter by way of objection, or prayer, or legal argument or conclusion. .At page 482 .*

5. On the test for discerning the existence of extraneous matter in an affidavit:

The problem is sometimes how to discern any particular extraneous matter. The test for doing this, in my view, is to examine each of the paragraphs deposed to in the affidavit to ascertain whether it is fit only as a submission which counsel ought to urge upon the court. If is, then it is likely to be either an objection or legal ascertain which t to be pressed in oral arguments; or it may be conclusion upon an issue which ought to be left to the discretion of the court either to make a finding or to reach a decision Upon through its

process of reasoning. But if it is in the form of evidence which a witness may be entitled to place before the court in his testimony on oath and is legally receivable to prove or disprove some fact in dispute, then it qualifies as a statement of facts and circumstances which may be deposed to in an affidavit. It therefore means that prayers, objections and legal arguments are matters that may be pressed by counsel in court and are not fit for a witness either in oral testimony or in affidavit evidence; while conclusions should not be drawn by witnesses but left for the court to reach. At page 482

6.On consideration that weigh on the mind of a judge while exercising the discretion to grant or refuse bail:

The learned trial judge listed out a number of factors or criteria that may be taken into consideration by a judge in granting or refusing bail pending trial. These include:

(1) the evidence available against the accused,

(2) availability of the accused to stand trial,

(3) the nature and gravity of the offence,

(4) the likelihood of the accused committing another offence while on bail,

(5) the likelihood of the accused interfering with the course of Justice,

(6) the criminal antecedents of the accused person,

(7) the likelihood of further charge being brought against the accused,

(8) the probability of guilt,

(9) detention fur the protection of the accused,
(10) the necessity to procure medical or social report pending final disposal of the case.

Generally, these are some of the factors that may be taken into consideration. It is by no means expected that all will be relevant in every case. I do not also think they are exhaustive. It may well be any one or others may be applied to determine the question of bail in a Particular case. At page 48.

7. On the likelihood of accused appearing in court to take his trial as a criterion for granting/refusing bail:

It is the essence of the matter that the evidence available (usually by the proofs of evidence) filed by the prosecution in court be examined when considering bail. Further facts and circumstances may be brought forward by way of affidavit evidence. It could well be that, it is the likelihood of the accused making himself available to stand his trial in any given case that may be of paramount concern. There is authority for saying that it is a proper and useful test whether bail, should be granted or refused to consider the probability that the accused will appear in court to take his trial: See R. v. Robinson (1854) 23 L.J.Q.B. 286; Mamuda Dantata vs. Police (1958) NRNLR 3. In that regard it is proper to consider the nature of the offence, the nature of the evidence in support of it, and the severity of the punishment which conviction will entail. At page 485.

8. On whether a consideration of the criteria for granting bail if prejudicial to accused person's presumed innocence:

It is no exaggeration to say that some of the facts are, to say the least, ominous or at any rate thoroughly disturbing. For instance, there are paras.5,6, 7, 8 and 17 which talk of assassination plan, assassination list which the appellant admitted in his statement, the on-going proceedings connected with such assassination conspiracies, the involvement of the

appellant in those crimes. There are paras. 10, 11,18, 19 and 20 which also tend to implicate the appellant as to the procurement of weapons used for committing some of the crimes, the foreboding in the sudden killing in suspicious circumstances of the armourer who was a Vital Witness, and how Proposed Witnesses are now afraid of their safety. These are not matters that should be glossed over. Some of them may not be admissible as evidence in main trial but they are certainly worthy to be taken into account in an application for bail pending trial. That does not necessarily prejudice the presumed innocence of the appellant of the charge brought against him until the contrary is proved, but it at least tries to ensure avoidable interruptions of the trial. At page 485.

9. On the need, when bail is refused, for accelerated hearing:

Our criminal justice system has its stipulations and safeguards for the prosecutor, the accused and the victim. In the proper operation of that system, it can be said that it is in the interest of the society, and within those safeguards, that if in an application for bail pending trial, there is good reason to believe or strongly suspect that the accused will jump bail thereby making himself unavailable to stand his trial and/or will interfere with witnesses thereby constituting an obstacle in the way of justice, the court will be acting within its undoubted discretion to

refuse bail. It may be added that in such a situation, it will be desirable as far as reasonably practicable, to accelerate the trial. At page. 485.

10. On whether non-consideration of appellants issue by the Court appeal occasioned miscarriage of justice:

I need, however, to reiterate that the failure of the Court below to determine Issue (2) before it is not a case of denial of fair hearing in the circumstances

of this case but one of dereliction of duty which may, or may not, be fata a Court's decision depending on whether a miscarriage of Justice occasioned thereby. In the case on hand there was no such miscarriage justice. At page 486.

11. On whether failure of a court to consider one of several issues per se amounts to denial of fair hearing:

On whether the court below was right when it failed to consider a pronounce upon all the issues submitted to it by the appellant for determination, I agree with the submission of the appellant's counsel that court below failed to consider and pronounce upon the second issue determination submitted by the appellant in that court. However, I a unable to hold that the failure to do so led to any miscarriage of justice the circumstance of the case. There was also no denial of fair hearing enshrined in ***Section 33 of the 1979 Constitution****. Failure to consider a pronounce On all issues submitted to a court or tribunal will not, per s amount to a denial of a right to fair hearing having regard to the judici decisions on the principle. In some cases, it may occasion failure of justic which amounts to denial of fair hearing and in others as is the case in th present proceedings, it will not. See Kotoye vs. Central Bank of Nigeria Ors (1989) 1 N. WL.R. (pt. 98) 419. At page 486.*

12. On the ingredients that guide courts while considering ba applications:

The court has in most cases, discretion to admit an accused person to bai pending trial, but, in the exercise of the discretion, the nature of the charge the evidence by which it is supported, the sentence which by law may be passed in the event of a conviction, the probability that the appellant will

appear to take his trial, are the most important Ingredients for the guidance of the court and where these are weighty, an appellate court will not Interfere. See In the matter of Etienne Barronet and Edmond Allian IE and BI; (1852) Dears 51; 118 E.R. 337 and Re Robinson (1854) 23 L.J.Q.B. 286. At page 487.

13. On the relevance of proofs of evidence in the consideration of bail application:

It is the essence of the matter that the evidence available (usually by the proofs of evidence) filed by the prosecution in court be examined when considering bail. Further facts and circumstances may be brought forward by way of affidavit evidence. At page 485.

JOHN & ANOR. VS. COP(2001) 2ACLR 495

BAIL

***BAIL** - Bail bond - Breach of - Proof of - Need for bond to be in evide before court.*

***BAIL** - Bail bond - Execution of - Need to be in writing - Section 3 Criminal Procedure Code considered.*

***BAIL** - Bail bond - Forfeiture of- Proof of- Need for bond to be in evider before court.*

***BAIL** - Bail bond - Forfeiture of - Surety present in court - Sufficiency oral notice to surety of content of bond, breach of, fact of forfeiture a reasons therefore - Sufficiency of oral notice to surety to pay or show caus*

***BAIL** - Bail bond - Forfeiture of - Surety to show cause - Sufficient cau not shown and penalty not paid - Manner of recovery of penalty - **Sectio 354(2)(4) Criminal Procedure Code** considered.*

***BAIL** - Bail bond - Forfeiture of - Failure of surety to pay penalty - Effect as imprisonment - At whose instance and when imprisonment can ordered.*

***BAIL** - Bail bond - Forfeiture of - Proof of - Need for court to recor ground of proof.*

***BAIL** - Bail bond - Forfeiture of - When proved and ground of proo recorded -*
Court may call upon surety to pay penalty - Whether mandatory o discretionary of court to call upon person bond to pay penalty.

***CRIMINAL LAW & PRACTICE** - Bail- Bail bond - Breach of- Proof of Need for bond to be in evidence before court.*

***CRIMINAL LAW & PRACTICE** - Bail- Bail bond - Execution of - Need to be in writing - Section 345 Criminal Procedure Code considered.*

CRIMINAL LAW & PRACTICE *- Bail bond - Forfeiture of - Proof of – need for bond to be in evidence before court.*

CRIMINAL LAW PRACTICE *- Bail bond- Forfeiture of -.Surety to show cause - Sufficient cause not shown and penalty not paid - Manner of recovery of penalty thereafter -* ***Section 354(2)(4) Criminal Procedure Code*** *considered.*

CRIMINAL LAW & PRACTICE *- Bail bond - Forfeiture of - Proof of - Need for court to record grounds of proof.*

CRIMINAL LAW & PROCEDURE *- Bail bond - Forfeiture of - When proved and grounds of proof recorded - court may call upon surety to pay penalty- Whether mandatory or discretionary of court to call upon person bond - to pay penalty.*

CRIMINAL LAW & PRACTICE *- Bail bond - Forfeiture of - Surety present in court - Sufficiency of oral notice to surety of content of bond, breach of fact of forfeiture and reasons therefore - Sufficiency of oral notice to surety to pay or show cause.*

PRINCIPLES:

I. On the need for a court ordering forfeiture of bond to have the bond in evidence before it:

In the case of Tea v. Commissioner . of Police it was held by the High Court of Northern Nigeria in its appellate jurisdiction that the bond must be before the court ordering the forfeiture and also as to the correctness or otherwise of the finding of the lower court that there has been a breach of Its conditions. We respectfully share that view. At page 500

2.On the need for a bond to be in writing:

Now, by ***S.345 of the Criminal Procedure Code,*** *before any person is released on bail he and his surety shall execute a bond on condition that*

such person shall attend at the time and place stated therein and sha continue so to attend until otherwise directed by the court, That statutor provision shows clearly that the bond must be in Shows clearly that the bon must be in writing because it has to be executed. At page 500 .

3.On the need for a bond to be forfeited to be in evidence before the court:

It Will be seen from the above that the bond must be m writing and in a certain form setting out certain conditions. Therefore in the process o proving to the satisfaction of the lower court that a bond has been forfeite as required by ***Section 354(1) of the Criminal Procedure Code,*** *th executed bond must be in evidence. That, in our view, must be the case, ever though the bond was taken before the lower court, because that court mus examine it in order to determine the issues before it, and must form part o the record of appeal to enable the appeal court to form an must examine I m order to determine the Issues before It, and It must form part of the record of appeal to enable the appeal court to form an opinion as to whether or not there was in fact a breach of its conditions. At page 500.*

4.On the need for a court to record the ground of the proof of the forfeiture of a bond:

Where it is proved that a bond has been forfeited, the court must record the grounds of such proof as required by ***S.354(1) of the Criminal Procedure Code.*** *At page 2.91*

5.On whether it is mandatory or discretionary for court to call upon the person bond to pay the penalty of forfeiture:

It is only after the introduction of proof and the recording of the grounds of such proof that the court may call upon any person bound to pay the penalty

thereof. The court is not obliged to so call upon the person bound. The provision is discretionary. There is also a discretionary power, as an alternative to the court calling for payment of the penalty, for the court to ask the person bound by the bond to show cause why It should not be paid. But, whichever course is taken, the notice must be in Form 21 of the Second Schedule to the Criminal Procedure Code Rules if directed to the principal party to the bound, or Form 22 If directed to the surety. At page 501.

6.On whether oral notice of the contents of the bond, the breach thereof, the fact of forfeiture and the reasons therefore is sufficient notice to the person bound to pay the penalty of forfeiture:

However, where the party concerned is actually before the court, it is our view that the law would be satisfied in essence if the contents of the bond before the court, the breach thereof, the fact of forfeiture, and the reasons therefore were orally brought to the notice of that party and he were then orally called upon to pay or to show cause. At page 501

7.On the procedure when sufficient cause is not shown and the penalty unpaid:

Where sufficient cause is not shown and the penalty is not paid then payment shall, by the provisions of ***S.354(2) of the Criminal Procedure Code*** *he recovered - "in the manner laid down in Section 304 for the recovery of fines." By S. 354(4) of the Code. "If the penalty is not paid and cannot be recovered in the manner aforesaid, the person bound shall be liable by order of the court which issued the warrant under Section 304 to imprisonment for a term which may extend to six months." At page 502.*

8.On when failure to pay the penalty will result in imprisonment:

In our view, the provisions of Ss. 354(2) and (4) and 304 of the Crimi Procedure Code read together mean that failure to pay the penalty w result in imprisonment in default of payment only by order of the co issuing the warrant under S.304 and by subs 1 (a), (b) and (C)of S.3 where applied, have been exhausted without success. That is, the movab property, if any, of the person ordered to pay the penalty must be seized a sold; any debt due to him must be attached; and execution must have be levied against his immovable property. Thereafter for the penalty or a portion thereof remaining unpaid, the person ordered to pay will imprisoned in default. At page 502 .

JAMMAL VS. STATE(2001) 1 ACLR 530

BAIL

BAIL *- Bail pending appeal Conditions for grant .*

BAIL *- Bail pending appeal - grant of same is at the discretion of the court - Need to consider each application on its merit.*

BAIL *- Bail pending appeal - Need for applicant to show exceptional circumstance for grant.*

BAIL *- Bail pending appeal - probability of applicant serving all or substantial part of sentence before hearing of appeal - When relied on - Whether same will induce the granting of bail*

BAIL *- Bail pending appeal - Illness as a ground - When will same grant bail? - Need for applicant to state the particular ailment.*

CRIMINAL LAW AND PROCEDURE *-Bail - Bail pending appeal - Conditions for grant.*

CRIMINAL LAW AND PROCEDURE - Bail - *Bail pending appeal - grant of same is at the discretion of the court - Need, to consider each application on its merit.*

CRIMINAL LAW AND PROCEDURE - Bail - *Bail pending appeal - Need for applicant to show exceptional circumstance for grant.*

CRIMINAL LAW AND PROCEDURE - *Bail pending appeal - Probability of applicant serving all or substantial part of sentence before hearing , of appeal - When relied on - Whether same will induce the granting of bail.*

CRIMINAL LAW AND PROCEDURE - *Bail. pending appeal - Illness as a ground - When will same grant bail? - Need for applicant to state the particular ailment.*

PRINCIPLES:

1.On pre-conditions to application for bail pending appeal:

(a) That the applicant has indeed, in fact lodged an appeal to the Cour
Appeal which is pending,

(b) Has complied with the conditions of appeal imposed, and these
show the seriousness of his application.

(c) If he was granted bail during the. trial, that he has not attempted or tr
to jump bail. At Page 535

2. On discretionary power of appeal court on granting of bail pendi
appeal:

The grant of bail pending an appeal is at the discretion of the co
depending on the special facts, circumstances and severity of the offenc
"Every application for bail pending appeal by a convict who is sentenced
a term of imprisonment is considered on its peculiar, special facts a
circumstance. At Page 541.

3. On exceptional circumstances for grant of bail pending:

Applying the principles in the foregoing decided cases; of Rev vs. Tara
(supra); Okoroji vs. The State (supra) and Chief Gani Fawehinmi vs. Th
State (supra) to the facts of the instant case, I am of the view having regar
to the materials placed before us by the applicant's affidavit evidence, an
taking into consideration the length of sentence of 5 years imposed on th
applicant on 26/2/96, the Registrar's letter exhibit 'Q' to the fact, that th
compilation of the record of proceedings in this appeal may be undul
delayed. The appeal his just though promptly been filed, it will take its turn
because, others before it have been awaiting their turn and having regard to
the fact, that in Okoroji's case, it took 4 years for dle records to reach the

Court of Appeal before the appeal was heard, I am of the view, that the position has not improved. If any thing it has deteriorated. Taking therefore, the length of time which must elapse before the appeal can be heard and also the length of the sentence to the appeal (sic) 5 years imprisonment, appealed from in relation one to the other, I am of the firm view based on the affidavit evidence of the applicant which stand out unchallenged, that before the records of appeal are compiled and transmitted to the court of Appeal and it is heard by the Court of Appeal, it is probable that applicant must have served a substantial proportion or whole of the 5 years prison term imposed upon him by the trial court. In my view, this constitutes an exceptional, special or an unusual circumstance on which the applicant should be admitted to bail. At Page541.

4. On Duty on applicant for bail pending appeal to show special circumstances or grant:

Generally, the grant of bail to a convict sentenced to a term of imprisonment is not made as a matter of course. The principle of presumption of applicant's innocence would no longer exist, because of his conviction, he must show special circumstances to be entitled to bail pending the determination of his appeal. At Page 543.

5. On condition for grant of bail pending appeal:

In the absence of special circumstances, bail will not be granted unless, a refusal would have the result of a considerable proportion of the sentence being served before the appeal can be heard. At Page 544 .

6. *Applying the authorities of Fawehinmi vs. The State (supra), and the High Court in Chukwunyere v. C. O.P. (supra), I hold that the special*

serious health condition of the applicant amounts to a special circumsta
This is notwithstanding, submission of learned counsel to the respond
that section 8 (1) of the Prisons Act vol. 21 Laws of the Federation
Nigeria. 1990 Cap. 306 made adequate provision for removal of prison
to hospital. I take judicial notice of the notoriety of the inadequacy of
only our hospitals in terms of drugs and equipment, not to talk of
inadequacies of our prisons conditions and their facilities. It is a notori
fact that no such conducive facilities exist in our prisons today. I reject
submission of learned counsel to the respondents that such conduc
facilities are provided and/or exist in our prisons today. The submission
far- fetched and far from the reality on the ground. They exist on the pag
of the said Prisons Act. ,At Page 546 .

ARABI VS. STATE (2001) 5 NWLR PT. 706 PG. 256

BAIL.

BAIL- *Application for bail- need for courts to adopt a liberal approach to.*

CRIMINAL LAW AND PROCEDURE- *Bail- Application for bail- need for courts to adopt a liberal approach to.*

CRIMINAL LAW AND PROCEDURE- *Bail-where accused person entitled to denial of- consequences of.*

PRINCIPLES;

1.On consequences of court denying bail where accused is entitled;

Per MOHAMMED JCA, *at pages276-277, paras F-A; In the instant case, the treatment suffered by the appellant amount to a miscarriage of justice because since the offence for which he was being tried was a bailable offence, he was entitled to know the result of his application for bail within a reasonable time to enable him renew the same application in this court if his application had been refused by the trial court. This refusal to rule on his application for bail by the trial court was however partly attributed to the ineptitude or irresponsibility of his learned counsel at the court below who abandoned his responsibility to press the case for his client before the lower court. Having regard to the facts and the law in support of the present issue, the complaint of the appellant on the denial of fair hearing setting aside the entire proceedings from 8/12/97 onwards including the judgment without ordering a retrial. It is indeed very difficult to explain the stand of the learned trial judge in this matter of bail in this case. In a criminal trial for an offence which is bail able as in the present case where the application for bail is not opposed by the prosecution, a trial court has no business whatsoever in taking sides in the affair to the extent of refusing it the*

serious health condition of the applicant amounts to a special circumstan
This is notwithstanding, submission of learned counsel to the respond
that section 8 (1) of the Prisons Act vol. 21 Laws of the Federation
Nigeria. 1990 Cap. 306 made adequate provision for removal of prison
to hospital. I take judicial notice of the notoriety of the inadequacy of
only our hospitals in terms of drugs and equipment, not to talk of
inadequacies of our prisons conditions and their facilities. It is a notori
fact that no such conducive facilities exist in our prisons today. I reject
submission of learned counsel to the respondents that such conduc
facilities are provided and/or exist in our prisons today. The submission
far- fetched and far from the reality on the ground. They exist on the pag
of the said Prisons Act. ,At Page 546 .

ARABI VS. STATE (2001) 5 NWLR PT. 706 PG. 256

BAIL.

BAIL- *Application for bail- need for courts to adopt a liberal approach to.*

CRIMINAL LAW AND PROCEDURE- *Bail- Application for bail- need for courts to adopt a liberal approach to.*

CRIMINAL LAW AND PROCEDURE- *Bail-where accused person entitled to denial of- consequences of.*

PRINCIPLES;

1.On consequences of court denying bail where accused is entitled;

Per MOHAMMED JCA, *at pages276-277, paras F-A; In the instant case, the treatment suffered by the appellant amount to a miscarriage of justice because since the offence for which he was being tried was a bailable offence, he was entitled to know the result of his application for bail within a reasonable time to enable him renew the same application in this court if his application had been refused by the trial court. This refusal to rule on his application for bail by the trial court was however partly attributed to the ineptitude or irresponsibility of his learned counsel at the court below who abandoned his responsibility to press the case for his client before the lower court. Having regard to the facts and the law in support of the present issue, the complaint of the appellant on the denial of fair hearing setting aside the entire proceedings from 8/12/97 onwards including the judgment without ordering a retrial. It is indeed very difficult to explain the stand of the learned trial judge in this matter of bail in this case. In a criminal trial for an offence which is bail able as in the present case where the application for bail is not opposed by the prosecution, a trial court has no business whatsoever in taking sides in the affair to the extent of refusing it the*

application because it would be an uphill task for such a court to find rea reasons for refusing the application particularly at this crucial period in thi country when the attention of all courts of law are directed at findin solution to perennial problem of prison congestion. Therefore to my mind by refusing to rule on appellant's application for bail for the entire perio his trial lasted and without any disclosed reason for doing so, the learned trial judge had unwittingly exposed his court to be counted as one of th courts of law being responsible for the perennial prison congestion in thi country. I say no more"

Per SALAMI JCA, at pages 278-279, paras F-A;

On the question of fair hearing , it is interesting to note that on 8th December, 1997, when the learned trial judge was reminded that the reserved ruling in respect of appellant's application for bail was still pending he discountenanced the observation rather he adjourned the case for continuation. Not only did he adjourned the matter for continuation, he directed suo motu that two witnesses be subpoenaed for the prosecution. The relevant portion of the judgment reads as follows- Mr. Daddy we are not objecting to the application but the case was adjourned to today to consider the application for bail of the accused persons which was made earlier at the last adjourned date .Court case is adjourned to the16/12/97 for continuation and witnesses summons to issue against Aliyu Umar Kware and Alhaji Murtala Moh'd " . The refusal of the learned trial judge not to deliver his ruling releasing the appellant on bail for a bail able offence in not only unfair but also a dereliction of duty on his part. It also manifestly demonstrates likelihood of bias to the appellant especially when his co-accused was eventually granted bail in circumstances shrouded in mystery.

The co-accused who were subsequently discharged and acquitted were granted bail and the record of proceedings leading to their bail is nowhere included in the record of this appeal."

2. On need for court to adopt a liberal approach to application for bail in criminal trials;

In a criminal trial for an offence which is bail able, a trial court has no business whatsoever in taking sides in the affairs to the extent of refusing an application for bail as it would be an uphill task for such a court to find real reasons for refusing the application particularly at this crucial period in this country when the attention of all courts of law are directed at finding solution to perennial problem of prison congestion. In the instant case, by refusing to rule on appellant's application for bail for the entire period his trial lasted and without any disclosed reason for doing so, the trial court had unwittingly exposed itself to be counted as one of the courts of law responsible for the perennial problem of prison congestion in Nigeria.

CHINEMELU VS C.O.P. (2001)1 ACLR 501

BAIL

CRIMINAL LAW AND PROCEDURE *- Bail - Application for bail - Nature of materials necessary in an application in respect thereof.*

CRIMINAL. LAW AND PROCEDURE *- Bail - Application in respect thereof - What the Court should consider.*

CRIMINAL LAW AND PROCEDURE *- Bail - Discretionary Power of court in granting same.*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial - Conditions to consider in granting same. .*

CRIMINAL LAW AND PROCEDURE_ *- Bail in a capital offence Need for special circumstances to exist.*

CRIMINAL LAW AND PROCEDURE *- Bail - Whether ill health constitutes special circumst2nces in granting of same.*
CRIMINAL LAW AND PROCEDURE *- Bail - Whether sickness per se entitles applicant to a grant of.*

PRINCIPLES:
1. ***On discretionary power of the court in granting of bail:***
The mere fact that the respondent filed no counter-affidavit nor opposed the application For bail is not conclusive to admit the appellant to bail as a matter of course. The decision to grant or refuse bail lies within the discretionary power of the court which must be exercised judicially and judiciously. The exercise of that power, cannot, in my view, be prejudiced simply by the failure of the respondent to file a counter-affidavit or in fact his failure to oppose the application. Similarly, the fact that the respondent

has filed a counter-affidavit or opposed the application for admission to bail does not conclude the matter rather these acts or omissions are mere indices that will assist in exercise of the said discretionary powers of the court, one way or the other. At Page513.

2. ***On discretionary power of the court in granting of bail:***

The general rule is that a person who has not been tried and convicted by a competent court for an offence known to the law is entitled to be admitted to bail as a matter of course unless some circumstances militate against his admission to bail. But after conviction bail is no longer granted as a matter of course except upon the existence of special reasons raised by the applicant, See Osuji. vs. C. O. P. (1974)Vol. 4 ECSLR 448. Again, in Oladele vs. The State (1993)1 NWLR (Pt. 269) 294 at 308. At Page 514

3. ***On what to consider in an application for bail:***

In an application for bail the following considerations are paramount, namely,

(1) The likelihood of the appellant being available to stand his trial, and

(2) The seriousness of charge preferred against the applicant.

(3) The strength of the evidence. At Page 514 .

4. On whether sickness per se entitles applicant to a grant of bail:

The mere fact that an applicant for bail is sick and without more will not qualify him for bail. At Page 516 .

5. On ill health as special circumstances to granting of bail:

I do not share the view of the learned trial Judge and that of the learned DPP that the circumstances of Gani Fawehinmi's case is exhaustive on the issues to be considered by the court when dealing with the issue of the ill-

health of applicant. Each case, like the problems of human beings, exhibits its peculiar characteristics given its peculiar circumstances, and ought, in justice, be so treated. Therefore, whether the illness relied on as special circumstance predated the applicant's detention or not is of no moment. It is enough if the circumstances of the ill-health are so compelling as to warrant the release of the appellant and thereby avert his undue exposure to health hazard or calamity. At Page 517 .

6. *On whether medical reports or opinion per se entitles applicant to a grant of bail*

After an anxious consideration of the case law and the affidavit evidence placed at the disposal of the trial Judge, including particularly the annexed medical reports or opinions to which reference had earlier been made, I am clearly of opinion that the ill- health of the appellant, coupled with the modus operandi for his treatment and observation, does not elicit any compelling ground or special circumstances for releasing the appellant on bail, beating in mind the undertaking by the respondent to give adequate medical attention to the appellant, including making the services of any doctor of his choice available to him. What is more, the affidavit evidence evinces that appellant had infact since his detention had recourse to medical attention and consulted doctor of his choice. At Page 517

7. *On nature of material necessary in application for bail:*

What is required of the applicant is to challenge his detention in custody and show that in the period for which he was incarcerated the prosecution had had ample time to collate and put forward the evidence relied upon to justify the charge that has been leveled against him. At Page 521 .

8. *On conditions to consider in granting of bail:*

The grants or otherwise of bail pending trial is based on the exercise of discretion by the Court before which an application is properly made. The usual conditions or matters which the Court considers in its exercise of the discretion are:-

(a) Whether the proper investigation of the offence would be prejudiced if the accused persons is granted bail and whether there is a serious risk in the accused persons escape from justice by jumping bail;

(b) The nature of the offence or charge which the accused person is facing before the court and the risk of his interference in the prosecution of the case; and

(c) The strength of the evidence against the accused person See J.S. Tarka & 4 Ors v. *D.P.P. (1961) NNLR 63. At Page 522 .*

9.On need for special circumstances to exist before a grant of bail in a capital offence:

It, is true that bail pending trial is not normally granted ex-debito justitie where the offence is a capital offence as in the present case. However special circumstances may exist to warrant the grant of bail pending trial in a capital offence as in Enwere v. C. O. P. (1993)6 NWLR (Pt. 299) 333. At Page 523 .

10. On the special circumstances in granting of bail in the instant case:

The special circumstance in the present case is the prosecutions delay or failure to prepare the proof of evidence or to file an information against him for the alleged murder. It is important here to re-state the presumption of innocence which is in favour of any person who is accused of a criminal

offence. See Woolmington vs. DPP (1935)A.C. 462; and Ibeziako vs. C.O.P. (1963) 1 All NLR 61. It is a fundamental principle both under the common law and under the constitution - Sec. 33(4) of the 1979 Constitution - that an accused person is entitled to a fair trial within a reasonable time - See Nwafor Okegbu vs. The State (1979)11 SC1 and Garba vs. The State (1)4 SC. 118. At Page 523.

BUWAI VS. STATE(2005)1 NCC 561

BAIL

CRIMINAL LAW AND PROCEDURE *- Bail pending appeal- When Court of Appeal may grant Same*

CRIMINAL LAWAND PROCEDURE *- Bail pending appeal Power and authority of Court of Appeal to grant Same.*

PRINCIPLES;

1. On when the court of appeal may grant Bail pending an appeal;

The law is well settled that the Court of Appeal will not grant an application for bail pending an appeal unless there are exceptional and unusual reasons why bail ought to be granted to the applicants. The following factors will amount to very exceptional circumstances:

(1) If the applicant being a first offender had previously been of good behavior.

(2) If substantial grounds of Law are involved in the appeal, it is useful to see if there is any prospect of success on appeal; and

(3) Where having regard to the very congestion of appeal pending in the Court a refusal of bail to the applicant will have the result of the whole or a considerable portion of the sentence imposed on the applicant being served, before the applicant's appeal can be heard ***.Per B.A. Ba'aba JCA,*** *at page 568.*

2. on the power and authority of the court of appeal to grant bail pending appeal;

By the combined effect of the provisions ***of Section 29 of the Court of Appeal Act Cap 75 Laws of the Federation, 1990 and Order 4 Rule 13(6)***

of the Court of Appeal Rules, 2002, this Court has the power to grant bail to an applicant pending appeal. ***Per B.A. Ba'aba JCA*** *at page 568.*

3. on the duty of every applicant in an application for bail before the court.

It is the duty of every applicant to present the necessary materials before the court in support of his application to enable the court exercise its discretion in his favour. ***Per B.A. Ba'aba JCA*** *,at page 569.*

ARIYO VS. STATE (1998)1 ACLR525

BAIL

CRIMINAL LAW AND PROCEDURE *- Bail Pending trial - Consideration for its grant.*

CRIMINAL LAW AND PROCEDURE *- Bail in. murder cases, Factors for consideration.*

CRIMINAL LAW AND PROCEDURE *- Bail - When granted as a matter of course.*

CRIMINAL LAW AND PROCEDURE *- Bail- When granted.*

PRINCIPLES:

1.On grant of an application for bail pending trial the consideration are:

(a) The magnitude of the offence.

(b) The quality of the evidence in support of the charge. This must be strong as to have an effect of inducing the accused to flee from Justice if released on bail.

(c) The extent of the punishment for the offence.

(d) The probability of delay in the trial of the case. The court must take judicial notice of the fact that criminal trials are not always immediate due to the process of investigation, issuing of legal advice, filing proofs of evidence and applying for consent to try a particular person in court. Olugbusi vs. C.O.P. (1970)2 All NLR. At Page...

2. On whether bail is granted to an applicant as a matter of course:

The grant of bail application in murder cases pending trial is at the discretion of the High Court and no Judge will grant bail to an applicant as

a matter of course since this unfettered discretion will be prompted by a number of factors. At Page...

3. On grant of bail pending trial:

Where there is an assurance that the accused/applicant is in a position to produce men of substance who will ensure his appearance at his trial as his surety and where no cogent reason from the respondent that the applicant would abscond if admitted to bail, his application for bail pending trial ought not to be refused. At Page 45.

4. On presumption of accused person's innocence:

It is pertinent under ***Section 33(5) of the 1979 Constitution*** *that an accused is supposed to be innocent until proved guilty, particularly in a circumstance where the evidence against him cannot be said to be strong and overwhelming? At Page 50 .*

5. On grant of bail in murder cases pending trial:

As a matter of general principle bail is not granted in murder case except by a Judge of High Court. At Page....

ANAJEMBA VS. F.G.N.(2005)1 NCC 390

BAIL

CRIMINAL LAW AND PROCEDURE *- Bail- Application for - burden of proof therein - On when lies.*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial - Application for - Whether it is proper for a trial court to presume criminal responsibility of an accused at the stage of.*

CRIMINAL LAW AND PROCEDURE *- Bail pending trial- grant or refusal of What trial court must consider in an application for.*

PRINCIPLES:

1. On whether it is proper for a trial court to presume criminal responsibility of an accused at the stage of seeking for bail pending trial;

Presumption of criminal responsibility at the stage of seeking for bail of an accused pending trial is in my view, a factual presumption which is quite rebuttable. It is not a conclusive presumption that the accused is found guilty of the offence(s) levied against him/her. A trial Judge is entitled to make such prima facie presumption from the set of facts before him upon which evidence will be led by the prosecution at the actual trial of the accuse. ***Per I. T. Muhammad JCA,*** *at page 398.*

2. On grant or refusal of bail pending trial- what the trial g court must consider before granting or refusing bail.

Where an accused is facing charges on offences which carry severe punishment exceeding 3 years imprisonment to capital punishment, it is not

ordinary for the trial court to admit such a person to bail. Bail in that circumstance is not a mere matter of course. However, where the offence committed by the accused falls within the range of punishment with a sentence of imprisonment not exceeding three years. the accused may be admitted to bail as a matter of course. But even under this circumstance, if there are reasons which must be recorded in writing by the Judge which can deprive the accused right of bail, the trial court can refuse him bail. Other relevant criteria that must be considered in the grant or refusal of bail are well adumbrated in a plethora of authorities. Such criteria include among others -

(i) the nature of the charge;

(ii) the strength of the evidence which supports the charge;

(iii) the gravity of the punishment in the event of conviction;

(iv) the previous criminal record of the accused if any;

(v) the probability that the accused may not surrender himself for trial;

(vi) the likelihood of the accused interfering with proposed witnesses or may suppress any evidence that may incriminate him.

(vii) the likelihood of further charge being brought against the accused;

(viii) the probability of guilt;

(ix) detention for the protection of the accused;

(x) the necessity to procure medical or social report pending final disposal of the case. ***Per I. T. Muhammad JCA*** *,at pages 398-399.*

3. On Burden of Proof in an Application for Bail- On Whom lies.

Now, turning to the requirements placed by law on an applicant for a bail, the law is certain that the burden of proof is on the person who would loose if no evidence were given. Circumstances must exist which entitle the

accused /appellant to be admitted to bail. It is for the accused to lead evidence on such circumstances. ***Per F I. T. Muhammad JCA,*** *at page401.*

4. On factors for grant or refusal of bail pending trial;

In an application for bail pending trial, a trial judge is being called upon to exercise his discretion judicially and judiciously on the materials placed before him both in the proof of evidence and respective affidavits of the parties. Some of the factors which judicial precedent has laid down for the consideration of the trial judge are as follows:

(a) the evidence available against the accused;

(b) availability of the accused to stand trial;

(c) the nature and gravity of the offence;

(d) the likelihood of the accused committing another offence while on bail;

(e) the likelihood of the accused interfering with the course of justice;

(f) the criminal antecedents of the accused person;

(g) the likelihood of further charge being brought against the accused;

(h) the probability of guilt;

(i) detention for the protection of the accused;

(j) the necessity to procure medical or social report pending final disposal of the case. Some of these factors may not be relevant in all cases and they are not exhaustive. ***Per A. G. Oduyemi JCA,*** *at page 404.*

5. On whether the refusal to grant bail to an accused pending trial negates the principle of presumption of innocence on section 36 (5) of the 1999 constitution of the federal republic of Nigeria.

It is true that ***section 36(5) of the constitution of the federal republic of***

Nigeria, 1999 makes a presumption of innocence in favour of every person who is charged with a criminal offence. However, there is in the same section the proviso that nothing in the section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts .

In an application for bail on an allegation of a serious offence, the onus is placed upon the applicant to show among other things, that the proper investigation of the offence would not be prejudiced; that no serious risk of escaping from justice would be occasioned thereby. In contesting the application; it behoves upon the prosecution to show from the proof of evidence or otherwise by affidavit evidence facts which may show a strong probability of the guilt of the accused person or that the accused may not be available to take his trial. The learned trial judge is then expected to weigh such facts in the light of the considerations laid down by judicial precedent.

It is within a proper exercise of his discretion if he considers that F in the light of such circumstance, the prosecution has shown prima facie in the proof of evidence or the affidavit evidence that there is a strong probability of guilt on the accused or inter alia, that there is a likelihood of the accused interfering with the course of justice. This, in my respectful view is not inconsistent with the provision of Section 36(5) of the Constitution. ***Per A. G. Oduyemi JCA*** *,at pages 404-405.*

NWUDE VS. FGN (2005)1 NCC 196

BAIL

CRIMINAL LAW AND PROCEDURE *- Bail- Discretionary power of Court to grant or refuse consideration of*

CRIMINAL LAW AND PROCEDURE *- Bail- Factors to be placed before court for consideration for grant or refusal thereof.*

CRIMINAL LAW AND PROCEDURE *- Bail- The general meaning of.*

CRIMINAL LAW AND PROCEDURE *- Question of Bail- Where ill health was alleged – Consideration of.*

CRIMINAL LAW AND PROCEDURE *-Bail- ill - Health as a special circumstance for the grant of bail- Consideration of.*

CRIMINAL LAW AND PROCEDURE*. Presumption of innocence of a person charged with a felony and admission to bail before trial- Relationship thereof.*

PRINCIPLES;

1. On the meaning of bail generally;

I think the whole concept of bail generally is about surety or sureties taken by a person duly authorized for the appearance of an accused person at a certain day and place to answer charges levied against him and be justified by law. See Brett & Mclean, paragraph 253 quoting Arch bold paragraph 201. In Kenny's Outlines of Criminal Law, 19th Ed., the word has been defined as a "contract" whereby an accused person is delivered to his surety or also the contract of the surety himself. The primary object of it in

any event, is to ensure that the accused person will attend court to stand his trial. ***Per I. T. Muhammad JCA*** *,at page 206*

2 .On the import of Section 340(1) of the Criminal Procedure Code on bail.

Granting of bail in the language of ***Section 340(1) of the Criminal Procedure Code*** *i.e. if bail is sought for in respect of an offence which is ordinarily bailable i.e. where punishment provided by law is a sentence of imprisonment for a period not exceeding three years, with or without fine, the Section suggests mandatoriness in granting such an accused person bail. But even here, if there are reasons which must be recorded in writing by the Judge which can deprive the suspect of his right to bail, the court can refuse him bail as the court has no inherent power in matters of bail. See: Lala Jairam Das v. Emperor A. (1945) P. C. 94.* ***Per I. T. Muhammad JCA****, at page 210*

3. On the issue of admission to bail of a person who has contravened Section 341(2) CPC - whether discretionary;

This Section leaves the issue of bail in the hands of the trial Judge as discretionary. Although the discretion must be exercised judiciously and judicially, its exercise under this Section must be guided further by the requirement of the law that all the three conditions as in (2) (a) - (c) of the Section must co-exist. See: Tarka & Ors vs. DPP (1961) NNLR 63. ***Per I. T. Muhammad JCA*** *,at page 211*

4. On the factors to be considered before granting or refusing bail.

Granting of bail to an accused person at pre-trial stage is not automatic. While the court is bound to consider weight of facts deposed to in affidavit evidence placed before it for granting or refusing to grant bail, ***Section 341***

*(2) of the **Criminal Procedure Code** must be related to other considerations on matters of granting or refusing bail at pre-trial. These include inter alia:*

(i) the nature of the charge;

(ii) the strength of the evidence which supports the charge;

(ill) the gravity of the punishment in the event of conviction;

(iv) the previous criminal record of the accused if any;

(v) the probability that the accused may not surrender himself for trial;

(vi) the likelihood of the accused interfering with proposed witnesses or may suppress any evidence that incriminate him.

(vii) the likelihood of further charge being brought against, the accused. ,

(viii) the probability of guilt;

(ix) detention for the protection of the accused.

*(x) The necessity to procure medical or social report pending final disposal of the case. **Per I. T Muhammad JCA** ,at page 211.*

5. On the issue of presumption of innocence in a pre- trial application for bail;

I agree with learned counsel for the respondent that raising the issue of presumption of innocence in a pre-trial bail matter is premature. And I will add that it will not in any way facilitate the cause of the applicant as pretrial bail and presumption of innocence are, if at all, remotely related. ***Per I. T. Muhammad JCA**, at page 213.*

6. On proof of ill-health as a Special Ground for Granting Bail and not mere Allegation of Same.

Although I agree with the learned SAN in his submission before this Court and the lower court that ill-health can be a special circumstance for the

grant of bail to an accused person detained in custody, mere allegation of ill-health will not be sufficient as special circumstance for the grant of bail. It must be appreciated that the special ground upon which bail would be granted for ill health is when the continued stay of the detainee poses a possibility of a real health hazard to other inmates of the place in which the accused has been detained and there are no quarantine facilities of the authorities for the type of sickness alleged. See: Chinemelu vs. COP (supra).

***Per I. T. Muhammad JCA** ,at pages 216-217.*

ABACHA VS. STATE(2002)9NSCQLR 305

BAIL

CRIMINAL PROCEDURE LAW *- Application for Bail - Conditions of-Ill-health -Whether weighty enough.*

CRIMINAL PROCEDURE LAW*- Application for Bail-When it is safe and unsafe to grant Jail.*

CRIMINAL PROCEDURE LAW *- Capital offences - Whether it is usual to grant bail.*

PRINCIPLES;

1. On whether ill-health is weighty enough to be considered for bail;

However, it does seem accepted that whatever the stag eat which bail is sought by an accused person, ill-health of the accused is a consideration weighty enough to be reckoned as special circumstance. ***Per E. O. Ayoola JSC,*** *at page 508.*

2. On whether it is the law that a person in custody is entitled to be treated by a Doctor of his own choice;

The applicant argued that the appellant was entitled to be treated by a medical practitioner of his choice. He did not cite any authority for the right he claims for the applicant. Were it the law that an accused person remanded in custody to await trial is entitled to be granted bail pursuant to a right to have access to a medical practitioner or medical facility of his choice, hardly would any accused person remain in custody to await trial. There is no general principle of law affording that right to an accused

person remanded in custody. The duty of the state to ensure that the medical needs of persons in custody are met does not create such extravagant right as claimed that a person in custody is entitled to be treated by a doctor of his own choice. ***Per E. O. Ayoola JSC****, at page 511.*

3. On when special medical need of an accused will be a ground for granting bail;

The special medical need of an accused person whose proven state of health needs special medical attention which the authorities may not be able to provide is a factor that_may be put before the court for consideration in the exercise of discretion to grant bail to the accused person. Such need is not brought before the court by he mere assertion of the accused or his counsel, but on satisfactory and convincing evidence. ***Per E. 0.Ayoola JSC,*** *at page 512.*

4. On whether Supreme Court is the proper venue for an application for bail;

There is nothing to show that an application has been made to for to the trial court for bail. The appeal before this court is an interlocutory appeal. In this circumstances at the appropriate time, should the matter be raised, the true ambit of ***Sections 31(I) of the Supreme Court Act,*** *which empowers this court, if it thinks fit on the application of an applicant to admit the appellant to bail pending the, determination of his appeal will be determined in view of subsections (2) and '(3) of that Section Which seemed to envisage the exercise of power to grant bail upon conviction.* ***Per E. 0 Ayoola JSC,*** *at page 512.*

5.On whether it is usual to grant bail in capital offences.

It is not usual to grant bail in capital offences or where the applicant has been convicted and sentenced and his appeal is pending. This can only be done where exceptional circumstances are shown and of the four grounds upon which this application is based. ill-health appears to be the only ground worthy of consideration: ***Per E. O. Ogwuegbu JSC,*** *at page 514.*

6. On when it is not safe to grant bail application for bail.

Having regard to the nature of the charge, the evidence by which it is Supported as disclosed in the further and better counter-affidavit of Olabisi Ogungbesan, Assistant Director of Public prosecutions in the Lagos State Ministry of Justice, the fact that some of the prosecution witnesses are in protective custody for the safety of their lives the sentence which by law may be passed in the event of conviction, it will be unsafe to grant this application. ***Per E. O. Ogwuegbu JSC,*** *at page 517.*

7. On whom lies the responsibility to provide proper medical facility to an accused in custody;

It must be made quite clear that everyone is entitled to be offered access to good medical care whether he is being tried for a crime or has been convicted or simply in detention. When in detention or custody, the responsibility of affording him access to proper medical facility rests with those in whose custody he is, invariably the Authorities. But it ought to be understood that the mere fact that a person in custody is ill does not entitle him to be released from custody or allowed on bail unless there are really compelling grounds for doing so. ***Per S. O. Uwaifo JSC****, at page 520.*

8. On when bail will he granted on ill-health;

An obvious ground upon which bail would be granted for ill-health is when the continued stay of the detainee poses a possibility of a real health hazard to others, and there are no quarantine facilities of the Authorities for the type of illness. ***Per S. O. Uwaifo,*** *JSC at page 520.*

9. On when the court will refuse to grant bail;

A person being tried' or who has been convicted for a serious offence will Normally be kept or maintained in , custody while he receives available medical treatment. There is always the discretion to refuse bail if the court is satisfied that there are substantial grounds for believing that the applicant for bail pending trial would abscond, or interfere with witnesses or otherwise obstruct the course of justice. The crucial factor is the existence of substantial ground for the belief that he would do so, In arriving at the conclusion that there exists substantial ground for so believing, strict rules of evidence are inappropriate. ***Per S. O. .Uwaifo JSC,*** *at page 520.*

10. On whether Supreme Court is the proper venue for an application for bail.

I wish to express my agreement with the remarks of my learned brother Ayoola JSC as to the proper venue for an application of this nature and the scope of this court in bail matters. I think this was an unusual application and it is hoped that the fact that it was entertained by this court in order to quickly examine the alarm raised as to the health of the applicant (which has turned out to be unjustified) with not be regarded as a precedent for the future. ***Per S. 0 Uwaifo JSC****, at page 522.*

11.On conditions for granting bail to an accused.

Therefore in the exercise of the discretion to grant bail to the applicant in such circumstances, the court has to consider the nature of the charge, the severity of the punishment and the character of the evidence and the criminal record of the accused and the likelihood of the repetition of the offence. Bail may also be refused the applicant where there is evidence that should the applicant be granted bail, the witnesses or the prosecution may be, Interfered with or prevented from appearing to testify. The court may also have to consider whether the applicant if granted bail would fail to attend court to face his trial. ***Per A. j . O. Ejiwunmi JSC*** *at page 529.*

12. On where ill health is relied upon - What must be proved.

In this regard, I think it is the law that where it is sought to lay claim to ill health in circumstances such as this, credible evidence given by an expert in that branch of medicine ought to have been made available. ***Per A. O. Ejiwunmi JSC,*** *at page 531.*

13.On whether tampering with witnesses should be a ground for refusing bail.

It is manifest from the several paragraphs of the said affidavit that there exist a measure of anxiety that the applicant might interfere with some of the witnesses who are still to testify in the case to be presented against the applicant. There has been no reaction of any kind to the assertion made by the respondent. Be that as it may, I take the view that regard ought to be had to this anxiety of the respondent on this aspect of tile matter. ***Per A. O. Ejiwunmi JSC,*** *at page 532.*

OMODARA VS. STATE(2004) 5 NWLR 81

BAIL

BAIL *- application for bail- antecedent of accused- relevance of- prosecuting counsel- duty thereon to advice court on probability of accused jumping ball.*

BAIL *- application for bail-grant or refusal of – principles guiding- whether court can refuse on its own belief or assumption.*

BAIL- *murder- accused charge therewith- whether not entitled to bail- rationale therefore- presumption of innocence of accused- duty on court to uphold.*

BAIL- *Objective of bail- duty on court in respect thereof.*

BAIL- *revocation of bail- where bail granted- circumstances under which court may revoke.*

CRIMINAL LAW AND PROCEDURE- *Bail- accused charge with murder- whether entitled to bail- Rationale therefore- Presumption of innocence of accused- Duty on court to uphold.*

CRIMINAL LAW AND PROCEDURE- *Bail- application therefore- antecedent of accused- relevance of- prosecuting counsel- duty thereon to advice court on probability of accused jumping ball.*

CRIMINAL LAW AND PROCEDURE- *Bail- application therefore- grant or refusal of – principles guiding- whether court can refuse on its own belief or assumption.*

CRIMINAL LAW AND PROCEDURE- *Bail- Objective of bail- duty on court in respect thereof.*

CRIMINAL LAW AND PROCEDURE- *Bail- revocation of bail- where bail granted- circumstances under which court may revoke.*

PRINCIPLES:

1. On Objective of bail- duty on court in respect thereof;

The main objective of bail is to ensure that the accused person does present himself for trial. To grant bail or not is discretionary matter for which the trial judge in the exercise of his discretion must act judicially and judiciously. He must therefore act only on evidence placed before him. The grounds for refusing bail must be upon facts on the records. The trial judge must not cat on his instinct on which there is no evidence in support. In the instance case, there was no fact to justify the trial court's conclusion that there was likelihood that the application would abscond if granted bail.(Pp. 89-90, paras F-A) Per GALADIMA, J.C.A at page 90, paras A-D;" I agree With the learned counsel for the application that the conclusion of the learned trial judge has no foundation in view of available facts on the records. Deposition in paragraphs 3, 4, 14 and 18 of the affidavit in support of summons for bail, which were not controverted by the respondent, clearly do not support the conclusion of the learned trial judge. First , the appellant is a public officer in the State Security Service. On record he had been previously granted bail since 10/10/2000 by Alogba (j) and he fulfilled all the conditions attached to that bail until he was re-arraigned. He faithfully kept to the terms of the bail. He never absconded. The prosecution would always be in the best position to advice or suggest to the court on the antecedent or probability or even the tendency of the appellant to escape from being tried. In the instant case they did not advice or suggest that the accused if granted bail he would run away. This conclusion of the court was not supported by any evidence from the prosecution.

2. On principles guiding grant or refusal of bail pending trial;

The fundamental principles that guide a court in granting or refusing an application for bail trial are;

(a) the nature of the charge;

(b) the strength of the evidence put up in support of the charge;

(c) the severity of the punishment in the event of conviction;

(d) the record of conviction, if any, of the suspect. A suspect with a long record of convictions will generally not be admitted to bail unless the trial judge has a real doubt as to his guilt;

(e) the likelihood of the repetition of the offence;

(f)) whether there is real danger that the accused will abscond and thereby not surrender himself for trial;

(g) the risk that if released, the suspect may interfere with witnesses or suppress the evidence which may be adduced to incriminate him.

{Chinemelu vs. C.O.P.(1995) 4 NWLR (pt.390) 467; Danbaba vs. State (2000) 14 NWLR (pt.687) 396; Olatunji vs. F.R.N. (2003)3 NWLR (pt.807) 406 referred to.}

In the instant case, the pre-arraignment materials placed before the court for granting appellant bail were the same as the ones for the application pending trial. The trial court, therefore, ought not have refused same. (Pp. 92-93, paras H-E)

3. On whether accused standing trial for the offence of murder is entitled to be granted bail;

An accused person who stands trial for the offence of murder is not ordinarily entitled to be granted bail. The reason for this is clear; murder is regarded as the highest crime under the law which attracts the most severe

punishment. In spite this, however, court have strived to uphold the constitutional presumption of innocence by creating case law which have provided some conditions under which an accused standing trial for murder may be admitted to bail pending his trial. (P.89, paras D-E).

4. On whether court can refuse bail based on its belief or assumption;

Unless the court finds any evidence from the prosecution which contradicts or controverts the claim of an application why he should be granted bail and that he would not interfere with the any prosecution witness or jump bail, then the court would have no basis to refuse bail on extraneous consideration or upon an unsubstantiated belief or assumption In the instant case, the decision of the trial court to refuse bail to the appellant was not rioted in the evidence before the court. The appellant ought to have received favourable consideration for his bail. [Bamaiyi vs. State(2001) 8 NWLR (Pt 715) 270 referred to and distinguished] (P, 91, paras B-D).

5.On duty of prosecution to furnish court with antecedent of an application;

The prosecution would always be in the best position to advise or suggest to the court on the antecedent or probability or even the tendency of an applicant to escape from being tried. In the instant case , the prosecution did not so advise or suggest that the accused , if granted bail , would run away. (P90, para C).

6. On when court will refuse bail;

When the evidence of the prosecution against the accused are strong and direct, his chances of being set free are remote because the temptation of jumping bail and escaping justice is high. In the instant case, this aspect is

not considered by the trial court before it concluded that the prosecution has presented a prima facie case and therefore, bail must be refused. (P 92,paras. C-D) .

7. On whether and when court can revoke bail;

Once a trial court grants bail to an accused person the court ought not in law revoke such bail unless there is evidence of some changed circumstances placed before it. (P.91, para G).

OBUM OSAKWE VS. F.G.N. (2004) 14 NWLR PG 305

BAIL

BAIL- *Application for bail- applicant seeking- onus on – what they must sl'ow- what court must examine- relevant materials therefore.*

BAIL- *Application for bail-power of court to grant or refuse- discretionary nature of* ***Section 341(2), Criminal Procedure Code*** *considered.*

BAIL- *Application for bail-principles guiding- refusal of- whether breaches presumption of innocence in favour of accused.*

BAIL-*Bail pending trial- application for- grant of – principles guiding.*

PRINCIPLES:

1. On principles guiding grant of application for bail;

By virtue of ***Section 341(2) of the Criminal Procedure code****, person accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be released on bail, but the court mat upon application release on bail a person accused as foresaid if it considers;*

(a) that by reason of the granting of bail the proper investigation of the offence would not be prejudiced; and

(b) that no serious risk of the accused escaping from justice would be occasioned; and

(c) that no grounds exist for believing that the accused if released would commit an offence. (P. 314, paras. F-H)

2. On principles guiding grant of application for bail;

The court in determining an application for bail considers the following;

(a) nature of the charge;

(b) the severity of the offence;

(c) the character of the evidence;

(d) the criminal record of the accused;

(e) the likelihood of the repetition of the offence;

(f) the severity of punishment in the event of conviction

(g) the probability that the accused may not surrender himself for trial, thus not bringing himself to justice;

(h) the risk that if released the accused may interfere with witnesses or suppress the evidence likely to incriminate him;

(i) the necessity to procure medical or social report pending the disposal of the case.[Dantata vs. Police(1958) NRNLR 3; Eyu vs. State (1988)2 NWLT(pt.78) 602;Danbaba vs. State (2000)14 NWLR (Pt . 687) 396; Ogbemhe vs. C.O.P (2001) 5 NWLR (Pt.706)215; Olatuji vs. F.R.N. (2003) 3 NWLR (pt.807)406 referred] (P315, paras. A-E).

3.On onus on applicant seeking bail;

An applicant in an application for bail in a criminal offence that is punishable by more than three years has to place such material before the court to show that he is entitled to it. The first burden is thus placed on him and the prosecution will thereafter show that the applicant is not entitled to grant of the application. In the instant case, the applicant had placed before the court an affidavit of 20 paragraphs and a reply to the counter-affidavit of 5 paragraphs, but did not place sufficient reasons before the court to oblige him grant of the application for bail. (P.315, paras E-F).

4. On relevant material court may examine in considering an application for bail;

In its consideration of an application for bail, a court must examine all the available material that is before it. In the instant case , the court had the affidavit evidence of the parties, the charge itself and the proof of evidence which referred to the video recording and it was referred to in the submission before the trial court. If the court referred to it in its ruling, it cannot be speculative or be based on possibilities but tangent evidence before it. Thus , it was not wrongly used by the trial court. (P.321, paras. C-E)

5. On whether refusal of bail amounts to breach of presumption of innocence in favour of an accused;

Al though the constitution provides that every person who is charge with a criminal offence shall be presumed innocent until he is proved guilty, ma consideration of the nature of the offence and the nature of the evidence in support thereof does not necessarily breach the said presumption. In the instant case, this constitutional provision has not been breached against the appellant as it is not an absolute right in the consideration of the application for bail; all favour have to be considered by the court. [Bamaiyi vs. State (2001) 8 NWLR (Pt.715) 270 referred to.] (P.320, paras A-E)

BULAMA VS. F.R.N (2004)12 NWLR PT 888Pg498

BAIL

***BAIL**-application for bail- consideration of principles guiding;*

***BAIL**- Bail pending trial- grant or refusal of-discretion of trial court in respect of-how exercised.*

***BAIL**-Bail- pending trial- grant or refusal of-discretion of trial court in respect of-exercise of- nature of- factors guiding.*

***BAIL**-Bail- pending trial-principles governing- ill health of accused- medical report in support of- what it should disclose.*

***CRIMINAL LAW AND PROCEDURE**- Bail application for bail- grant or refusal of-discretion of court in respect of-how exercised- need to exercise judicially and judiciously.*

***CRIMINAL LAW AND PROCEDURE**- Bail application for- consideration of- principles guiding.*

***CRIMINAL LAW AND PROCEDURE**- Bail- pending trial- ill health of accused- medical report in support of- what it should disclose.*

PRINCIPLES;

1. On rules governing exercise of discretion by court ;

A judicial discretion ought to be found upon the facts and circumstances presented to the court from which it must draw a conclusion governed by law. Discretion must be exercised honestly and in the spirit of the statute otherwise , that act done would not fall within the statute. In the instant case, a careful study of the record of proceedings shows that the exercise of the trial court's discretion was proper.

2. On principles guiding grant of bail;

Where a medical report tendered in support of an application for bail is not persuasive and lacks evidential value it would not advance the case of their application and the court may refuse to exercise its discretion to grant bail. In the instant case, exhibit the medical report submitted by the applicant had no evidential value and the trial court was right to have rejected it. (Pp.511-512, paras. G-B).

3. On attitude of appellate court to exercise of discretion by trial court;

An appellate court would not make a practice of interfering with the exercise of discretion by trial court unless it is evident on the face of the court expounding that discretionary power that the trial court did in the course of making his order, proceed on wrong principles[Mobil oil vs. F.B.I.R(1977) 3 SC 97 referred to] (P.509,paras G-H) ***Per CHUKWUMAH-ENEH, JCA,*** *at page 512, paras , E-G;*

" Considering the material facts of this matter, against the backdrop of the principles for the consideration of an application for bail, that is to say, including the nature of the charge, of the punishment and of the evidence supporting the charge as well as the applicant's antecedent of the likelihood of jumping bail and evading trial and of interfering with the prosecution of witnesses as distilled from the decision of the court, I do not see the justification, short of this court interposing its discretion over that of trial court rather arbitrarily, for contending what the trial court founded its reasoning and conclusions for refusing the instant application for bail in this matter cannot be faulted.

EKWUAZI VS. DPP (2001) 2 ACLR 488

BAIL

CRIMINAL LAW AND PROCEDURE- *Charge of failure/ refusal of surety to produce accused person- whether an offence known to law- constitutionality of* ***Section 33(12) of the 1979 Constitution*** *considered.*

PRINCIPLE;

1. On whether a criminal Charge of refusal or failure of surety to produce accused person is constitutional;

A criminal charge against a surety for refusal to produce an accused is unknown to law and it is unconstitutional of the Federal Republic of Nigeria, 1979. The prosecution of the appellant under ***Section 137 of the Criminal Procedure Act Cap 43, Laws of Nigeria, 1945*** *is unconstitutional, null and void, at page 490.*

14

BURDEN OF PROOF

GUOBADIA VS. STATE(2004) 17 NSQLR 222

CRIMINAL LAW *- On whom lies burden of proof of insanity where it is raised as a defence.*

CRIMINAL LAW *- Whether mere absence of any evidence motive for a crime is sufficient to infer mania.*

CRIMINAL LAW *- Whether mere evidence of mental disorder per se is enough or satisfactory evidence of insanity.*

CRIMINAL PROCEDURE LAW *- Whether every person presumed sane until the contrary is proved*

CRIMINAL PROCEDURE LAW*- An accused relying on insanity as a defence -What he must prove.*

CRIMINAL PROCEDURE LAW *- On whether every form of mental disorder can relieve an accused person from criminal responsibility.*

PRINCIPLES ;

1. On provision of law that every person is presumed sane until the contrary is proved - consideration of.

It is well to bear in mind that there is a general presumption that every person is sane until the contrary is proved. In this connection, ***Section 27 of the Criminal Code Law of Bendel State*** *applicable in Edo State Provides that everyone is presumed to be of sound mind and to have been of sound mind at the time he committed the offence charged.* ***Per D.O. Edozie, JSC,*** *at page 232.*

2. On whom lies the burden of proof of insanity where it is raised as a defence.

Therefore, an accused person who pleads insanity as a defence to an offence with which he is charged has the burden of proving that he was suffering from insanity or insane delusion at the time the offence with which he was charged was committed. The burden of proof on the accused is on the balance of probability or preponderance of evidence and not on the basis of proof beyond reasonable doubt. ***Per*** **D. O. Edozie, JSC,** *at page 232.*

3. On whether it is every form of mental disorder that can relieve an accused person from criminal responsibility ;

It must also be borne in mind that it is not every form of mental disorder that can relieve an accused person from criminal responsibility. The law requires that such metal disorder that can avail an accused person as a defence must fall within the ambit of Section 28 of the Criminal Law. ***Per D. O. Edozie JSC,*** *at page 232.*

4. On what an accused person relying on insanity as a defence must prove;

For an accused person to successfully rely on the first limb of Section 28 of the Criminal Code supra, he must prove that at the time the offence was committed, he lacked:

(a) The capacity to understand what he was doing

(b) Capacity to control his action

(c) Capacity to know that he should not do the act or make the omission. ***Per D. O. Edozie JSC,*** *at pages 232 - 233.*

SUNDAY AMALA VS. STATE (2004) 18 NSCQR 834

BURDEN OF PROOF

EVIDENCE *- Presumption that judicial acts have been done rightly and regularly until the contrary is proved.*

EVIDENCE *- Proof beyond reasonable doubt - Meaning of.*

PRINCIPLES:

1. On whom lies the burden of proof in criminal cases:

Now, there is no question that the established principle in all criminal cases tried by any court within this jurisdiction is that the prosecution must establish the guilt of the accused beyond reasonable doubt upon the established evidence before the trial court. That burden on the prosecution never shifts. ***Per A. O. Ejiwunmi JSC*** *at page 848.*

2.On presumption that judicial acts have been done rightly and regularly until the contrary is proved ;

The arraignment of the appellant before the trial court was not only a judicial and an official act, it was ex facie also carried out in a manner which was substantially regular. In these circumstances, it seems to me that the legal maxim, omnia praesumuntur rite et solemniter esse acta donee probetur in contranym pursuant to which there is a legal presumption that judicial and official acts have been done rightly and regularly until the contrary is proved seems to me fully applicable in this case. In as much' as it may be desirable that a trial court expressly records that a charge was read over and explained to the accused person to its satisfaction before he pleaded thereto, the law is not that unless this is done, the arraignment ipso

facto becomes invalid and null and void. In the present case, there is nothing on record to establish that the learned trial Judge was not satisfied that the appellant fully understood the charge before he pleaded thereto. I think that this is a proper case where the presumption of regularity must dislodge the speculation and conjecture upon which the appellant's submission in this regard hangs. ***Per A. I. Iguh JSC*** *,at pages 863-8*

GODWIN IGABELE VS THE STATE(2005) I NCC 59

BURDEN OF PROOF

CRIMINAL LAW *- Murder Charge - How Proved – Ingredients of proof.*

CRIMINAL LAW *- Onus of Proof - Whether can shift from the prosecution to the defence.*

CRIMINAL PROCEDURE LAW *- "Proof beyond reasonable doubt" – Meaning of.*

PRINCIPLES:

1.On charge of murder - ingredients to be proved by the prosecution:
In a charge of murder, the prosecution must prove -

(a) the death of the deceased;

(b) the act or omission of the accused which caused the death, and

(c) that the act or omission of, the accused was intentional with knowledge that the death or grievous bodily harm was its probable consequence. See ***Okeke vs. State*** **(1999) 2** ***NWLR (Pt. 590)*** **246** ***at page*** **273;** ***Abogede vs. State*** **(1996) 5** ***NWLR (Pt.*** **448)** ***270 at page*** **276.** ***Per J. A. Fabiyi JCA,*** at page 75.

2. On the meaning of proof beyond reasonable doubt.
Proof beyond reasonable doubt does not mean `proof to the hilt` to use the words of Denning, M. R. See Miller vs. Minister of Pensions (1947) 3 All ER. 373. It does not mean proof beyond all iota or shred of doubt. I still stand by stance that the golden thread rule which was postulated within the realm of reason, it must not be stretched beyond reasonable limits as most

criminal law lawyers want to do. Otherwise, it will cleave. It should only be employed in deserving cases. I certainly believe that this is not one of the deserving cases where it can be rightly employed. To my mind, the prosecution in this matter proved same beyond reasonable doubts. ***Per J. A. Fabiyi JCA****, at page 78.*

3.On whether onus of proof can shift from the prosecution to the defence in a criminal case;

Having established a prima facie case against the accused, the prosecution had thereafter shifted the ball into his court for rebuttal, and in consonance to the rule in Okoko & Anor vs. The State (1964) 1 All NLR 423, wherein the Supreme Court held inter alia, in substance that:

> *"A trial court must decide a case on the evidence and although the burden of proof is on the prosecution, it must rest with accused when he cannot elicit the material from the prosecution witnesses, to give evidence of matters peculiarly within his knowledge if he, (the accused) wants them. (i.e. the matter) to be considered by the court."* ***Per C. B. Ogunbiyi JCA,*** *at page 83.*

AMUSA VS. STATE(2005) 1 NCC 87

BURDEN OF PROOF

CRIMINAL LAW *- Proof beyond reasonable doubt - Meaning of identification of the corpse thereof.*

PRINCIPLE:

1. On what is proof beyond reasonable doubt means;

On the issue of standard of proof in criminal cases - what is Proof beyond reasonable doubt? The phrase which is of common law origin, and also re-enacted in ***Section 138(1) of the Evidence Act*** *or Law which provides that whenever the commission of a crime by a party or person is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt. Superior courts of record have been faced with the duty of interpreting it and they have held in a number of cases that the expression "Proof beyond reasonable doubt" does not mean proof beyond all shadow of doubts. Thus if the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but in least probable'' the case is said to be proved beyond reasonable doubt* . Per ***O.O. Adekeye JCA*** *,at page 102-103.*

ANAJEMBA VS F. G. N (2005)1 NCC 390

BURDEN OF PROOF

CRIMINAL LAW AND PROCEDURE *- Bail- Application for- Burden of proof therein - On when lies.*

PRINCIPLE:

1. On burden of proof in an application for bail- on whom lies ;

Now, turning to the requirements placed by law on an applicant for a bail, the law is certain that the burden of proof is on the person who would loose if no evidence were given. Circumstances *must exist which entitle the accused /appellant to be admitted to bail. It is for the accused to lead evidence on such circumstances .* ***Per I. T. Muhammad JCA*** *,at page 401.*

ODEN VS. F.R.N (2005)1 NCC 303

BURDEN OF PROOF

CRIMINAL LAW AND PROCEDURE *- Criminal trials - Burden of proof therein - What the prosecution must prove.*

PRINCIPLES:

1. On what the prosecution must prove against an accused charged under Section 10 (c) of the NDLEA Decree No. 48:

It is clear from the express provisions of Section 10 (c) of the Act that the prosecution must prove that an accused person charged under that sub-section was either selling or buying or offering for sale any of the prohibited drugs without lawful authority. It is therefore erroneous to say that the prosecution could discharge the onus of proof placed on it by merely proving that the accused was in possession of the prohibited drugs. ***Per S.A. Akintan JCA****, at page322.*

2. On burden of proof in criminal cases -what the prosecution must prove:

In our adversarial system of criminal justice the burden is on the prosecutions to prove their case beyond reasonable doubt. ***Section 138 of the Evidence Act Cap 112 Laws of the Federation****. Fatoyinbo vs. Attorney-General Western Nigeria (1966) 12. R WRNL page 4 Okeke vs. State (1995) 4NWLR (Pt392)page .676 Akinyemi vs. State (1999) 6 NWLR (Pt 607) page 449 at pages 463-464. In the process the prosecution has to prove all the essential elements of an offence as contained in the charge. While*

discharging the responsibility of proving all the ingredients of the offence charged, the prosecution must produce vital material evidence and vital witnesses to testify during the proceedings before a trial court comes to the conclusion that an offence had been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that acts of the accused come within the confines of the particulars of the offence charged. ***Per O. O. Adekeye JCA,*** *at pages 327-328.*

MOSHOOD VS. STATE (2004) 14 NWLR 422

BURDEN OF PROOF

CRIMINAL LAW AND PROCEDURE *- burden of proof in criminal cases- on whom lies.*

CRIMINAL LAW AND PROCEDURE- *proof of crime- circumstantial evidence-when will ground conviction.*

CRIMINAL LAW AND PROCEDURE- *proof of crime –murder- ingredients of- Need to establish casual link between death and act of accused-stages of such proof.*

PRINCIPLES;

1. On onus of proof in criminal cases;

In a criminal charge and trial the onus is on prosecution to prove the charge against the accused person beyond reasonable doubt. In the instant case, the prosecution failed to prove the offence of murder against the appellant beyond reasonable doubt. What the prosecution established is statement on the oath against ought which is less that proof beyond reasonable doubt, required to secure a conviction for murder as prescribed by law. The appellant is entitled to the benefit of the doubt. [Aigbadio vs. State (2000) 7 NWLR (PT. 666)686; Nwosu vs. State (1998) 8 NWLR (Pt. 562)433; Idowu vs. State (2000) 12 NWLR (Pt.680) 48; Innebeke vs. State (2000) 7 NWLR (Pt.655)404; Rvs. Oledima (1936) 6 WACA 202; Alonge vs. Police (1959) SCNLR 516; R vs. Abengowe (1936)3 WACA 85; referred to] (Pp.437, para,D,438, paras. C-F)

2. On nature of circumstantial evidence that will ground conviction of accused;

The prosecution may establish the guilt of an accused person upon proof on

a circumstantial evidence which evidence must be true, cogent, compelling and unequivocally leading to the irresistible conclusion of the guilt of the accused person. In the instant case, the sole testimony relating the appellant to the crime is the evidence of the 2nd prosecution witness and the identification of the appellant as the person who he last saw talking to the deceased when she was alive. This by itself is not evidence of the guilt or commission of an offence of murder that the appellant is charged with and it clearly does not point to the guilt of the appellant. [Durwode vs. State(2000)2 NWLR (Pt.645) 392; Akinmoju vs. State (2000) 6 NWLR (Pt. 662) 608 referred] (P.437, paras. E-H)

3. On ingredients of murder and need for prosecution to established casual link between cause of death and the act of the accused;

In every case where it is alleged that death resulted from the act of the accused person, a casual link between the death and the act must be established and proved in a criminal proceedings beyond reasonable doubt. The logical stage in the process of such proof beyond reasonable doubt are;

(a) that the deceased has died,

(b) the cause of death,

(c) that the death resulted from the act of the accused, and

(d) that the accused knew that his act would result in the death of the deceased.

These are factual questions to be answered by a consideration of the evidence. [Idowu vs. State (2000) 12 NWLR (Pt. 680) 48; Oforlete vs. State (2000) 12 NWLR (Pt.681) 415; R vs. Nwakocha (1949) 12 WACA 453; Owe vs. Queen (1961) 2 SCNLR 354 referred to] (p.440, paras. B-D)

UGHENEYEOVWE VS. STATE (2004) 12 NWLR PG 626

BURDEN OF PROOF

CRIMINAL LAW AND PROCEDURE- *proof of crime-burden and standard of proof required-burden of proof- on whom lies- whether shifts- where there is doubt-effect.*

CRIMINAL LAW AND PROCEDURE- *proof of crime-Lie- fact the accused person lied- whether proof of guilt- whether evidence of commission of crime.*

CRIMINAL LAW AND PROCEDURE- *proof of crime-suspicion- whether can ground conviction.*

CRIMINAL LAW AND PROCEDURE- *proof of crime-witnesses- duty on prosecution to call witnesses- rationale for.*

PRINCIPLES;

1. On rationale for onus on prosecution call witnesses to prove its case;

The need for the prosecution to call witnesses arises form the duty the law impose on the prosecution to prove the essential ingredients of the crime alleged.[Adekunle vs. State (2002) 4 NWLR (Pt. 756) 169 referred to] (P. 647, paras,G-H)

2. On whether the fact that an accused lied is proof of guilt;

The fact that an accused person lied is not proof of his guilt. It is also not evidence of his commission of any offence. In the instant case , the evidence of the prosecution witnesses on the whereabouts of the appellant on the night of 17th March, 1990 only raised the suspicion that the appellant was

lying about his whereabouts that night; but that , itself, is not evidence of the fact that the appellant committed the crime alleged.[Durwode vs. State(1000) 2 NWLR (Pt. 645)392; Isibor vs. State(2002)3 NWLR (Pt.754) 250 referred to] ((Pp.649-650, paras. G-A

3. On whether mere suspicion can grant conviction;

Mere suspicion, no matter how strong, can never found a conviction in the absence of cogent and compelling evidence which must be strong as to leave no room for reasonable doubt. Instant case, the evidence adduced by the prosecution which contradict the appellant's evidence as to his whereabouts on the night of the crime alleged only raise the suspicion that the appellant was lying about his whereabouts that night; but that suspicion is not sufficient to prove his guilt of the crime alleged.[Oshodin vs. State(20001) 12 NWLR 9Pt. 134) Onah vs. State (1985)3 NWLR (Pt.12) 236 referred to.] (P.649, paras. G-H)

4. On burden and standard of proof of a crime;

Any allegation of commission of crime in a proceeding, whether civil or criminal, must be proved beyond reasonable doubt and the burden of so proving that any person committed a crime is on the person who asserts it. If the prosecution proves such commission beyond reasonable doubt, the burden of proof then shifts to the accused, but if the court is left in a state of doubt, the effect is that the prosecution failed to discharge the onus which the law lays on it and the accused is entitled to an acquittal. (Pp.652-653. paras. G-A)

OZAKI VS. STATE (1998) 1 ACLR PG 2.

BURDEN OF PROOF

CRIMINAL LAW AND PROCEDURE- *burden of proof by the accused-nature of.*

PRINCIPLE;

1.On the nature of burden on accused raising defence of alibi;

The accused person only has what is referred to as evidential burden which mean the duty of adducing evidence or raising the defence of alibi. See Ortese Yanor vs. the State (1965) NMLR 337; Patrick Njoven vs. State (1973)4 S.C 450; (1985)2 NSCC 1087. At page 47.

STATE VS. OGBUBUNJO (2001) 2 ACLR PG 527.

BURDEN OF PROOF

***CRIMINAL LAW AND PROCEDURE**-burden on prosecution to proof guilt of accused – standard of proof.*

***CRIMINAL LAW AND PROCEDURE**-burden of proof of guilt of accused-on whom lies.*

PRINCIPLES;

1. On the burden on prosecution to prove the guilt of an accused beyond reasonable doubt;

The burden on the prosecution is to prove the guilt of the accused in respect of the offence charged beyond reasonable doubt and that there are no other co-existing circumstances which will weaken the inference of drawing the guilt of the accused. See Omogodo vs. State (1981) 5 S.C. 5. At page 552.

2. On the course open for the court when the prosecution's evidence fall short of the requisite legal standard of proof;

There is no doubt in my mind that the evidence relied upon by the learned trial judge not being unequivocal, cogent and compelling, and not pointing directly at the respondents as those who only could have committed the offence of murder of the deceased with which they were charge, fell short of the standard of proof required for their conviction. See Abieke vs. State (1975) 9-11 SC 97. Queen vs. Moses (1960) 5 SC 189. The prosecution having failed to prove the legal standard of proof required for conviction of the respondents the only course open to the court is to acquit and discharge the respondent, at page 533 .

3. On whom the burden of proof of the guilt of the accused lies;

It is firmly established that the burden of proof of the guilt of the accused in every criminal trial remains on the prosecution; See Patrick Njoven & Ort vs. State (1973) 1 NWLR 331. There is very little difference if the guilt is being substantiated by the prosecution in reliance on eye- witness evidence or circumstantial evidence, at page 558.

OGIDI VS. STATE (2003) 9 NWLR PT 824

BURDEN OF PROOF

CRIMINAL LAW AND PROCEDURE*- Proof of crime- burden of proof-on whom lies- standard required- how discharged.*

CRIMINAL LAW AND PROCEDURE*- Proof of crime-circumstantial evidence nature and quality thereof required to ground conviction.*

CRIMINAL LAW AND PROCEDURE*- Proof of crime-contradiction in evidence of witnesses- what amounts to- when sufficient to discredit the evidence- when not sufficient.*

CRIMINAL LAW AND PROCEDURE*- Proof of crime-fact that court regards accused a liar- whether sufficient to ground conviction.*

CRIMINAL LAW AND PROCEDURE*- Proof of crime-nature and quality of evidence that will ground conviction.*

CRIMINAL LAW AND PROCEDURE*- Proof of crime-proof beyond reasonable doubt- purport of requirement thereof.*

PRINCIPLES;

1. On purport of requirement of proof beyond reasonable doubt in criminal trial;

Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful

possibilities to deflect the course of justice. If the evidence is so strong against a man to leave only remote possibility in favour which can be dismissed with the sentence of course, it is possible of the but not in the least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice. In the instant case, on the evidence along before it, the trial court was right in its conclusion that the prosecution discharged the burden on it of proving the charge against the appellant beyond reasonable doubt.(P.27, paras . D-G)

2. On validity of proof of crime by circumstantial evidence;

In a criminal trial, an issue may be proved either by direct evidence or circumstantial evidence, and it is not derogatory to say that evidence is circumstantial. Circumstantial evidence is as good as and sometimes better that any other evidence. What is meant by circumstantial evidence is that there is a number of circumstance which are accepted to make a complete unbroken chain of evidence. Also witnesses may lie but circumstance do not lie. [Adie vs. State (1980) 1-2 SC 116 referred to] (p.25,paras. E-G)3

3.On validity of proof of crime by circumstantial evidence;

A piece of circumstantial evidence, which stands on its own, may not suffice for conviction could in the conjunction with other pieces of evidence, acquire such Potent relevance against the possessor as would be lead to his conviction. In other words, there could be other circumstances strong enough to justify holding with some degree of certainty that the accused person committed the offence for which he was charged. In the instant case, there were other circumstances strong enough to justify with a high degree of certainty the trial court's finding that the 1st appellant took part in the

robbery for which he was charge. [Omogodo vs. State(1981)5 SC 5 referred to] (P.40, paras. D-H)

Per IKONGBEH, JCA. At page 41-42, paras.H-E;

The judge as a fact that there was such a link. He then made the presumption, provided for in Section 149 (a), that the link established by evidence between the appellant and the goods recently stolen in a robbery operation was suggestive of the fact that either he stole them or received them form the robber who stole them. The application of the paragraph was, in the circumstances, automatic. Although counsel for the parties, while addressing the court on this point, did not refer to the paragraph by citation, they were clearly, however, in effect arguing for and against its applicability. Once the judge found as a fact, as he did in this case, that the appellant was found in possession of the recently stolen goods, he was at liberty to resort to the paragraph without again asking counsel whether he should . There was no breach of the appellant's right to fair hearing.

For these reasons , I see no merit in the argument that the judge was not justified in using the identification of the 1st appellant by PW2 and the fact the items of property recently stolen were found in his house a sufficient evidence fixing him with the robbery that took placed in the house of PW1 at around midnight on 01/06/97.

On the whole, I cannot, in the circumstances, fault the decision of the learned trial judge to convict the 1st appellant. I fully agree with his reasoning and conclusion. Even without the evidence of PW1 , which I discounted, the combined effect of the other facts and circumstances

highlighted and considered by the learned judge indeed led to the irresistible the conclusion that the 1st appellant participated in the robbery in the house of PW1 and the attack on the house of PW2..

4. On burden and standard of proof of crime;

By virtue of the provision of ***Section 138(1) of the Evidence Act****, the prosecution has the burden of establishing the guilt of the accused person beyond reasonable doubt. (P.26, paras. H)*

5. On nature of contradiction sufficient to discredit evidence of witnesses;

It is not every contradiction that would be sufficient to discredit a witness. The contradiction that would make a court disbelieve a witness has to be a material point in the case. What is material depends on the facts of each case. It must be such contradiction that one of the witnesses contradicting the other on a material point is discredited and could as a result not be believed as witness of truth on the point in issue.(P.23, paras.E-G)

ARABI VS. STATE (2001) 5 NWLR PT 706 PG. 256

BURDEN OF PROOF.

CRIMINAL LAW AND PROCEDURE*- Proof- burden of proof in criminal cases- on whom lies.*

CRIMINAL LAW AND PROCEDURE*- Proof- burden of proof of self-defence on whom lies- how discharged- duty of the prosecution.*

PRINCIPLES:

1. On burden of proof on proof on prosecution in crime in criminal cases;

In any criminal case involving the trial of an accused person, the burden is always on the prosecution to prove its case against the accused person beyond reasonable doubt. In the instance, there is barely any doubt that the prosecution have succeeded in proving the first two ingredients of the offence with the appellant was charge by establishing that it was the act of the appellant that caused the death of the deceased, who died as a result of the wound he received from the bullet fired from the appellant's riffle. [Onafowokan vs. State (1987) 3 NWLR (Pt. 61) 538; and Akalezi vs. State (1993) 2 NWLR(Pt.273) 1 referred to)

2. On burden of proof of self defence;

The onus is on the prosecution to disprove an accused person's plea of self defence and not on the accused person to establish this defence . In the instant case, as the prosecution on whom the onus of discharging the defence of self-defence raised by the appellant vested had failed to dislodge the defence, the defence must succeed, meaning that the prosecution had failed to prove one of the ingredients of culpable homicide. [Amako vs. State (195) 6 NWLR (Pt.399)11 referred to.

UDOSEN VS. STATE (2007) 29 NSCQR 646

BURDEN OF PROOF

CRIMINAL LAW-*Burden of proof–As contingent of plaintiff/prosecution-failure to discharge burden effect thereof.*

PRINCIPLES:

1.On the who asserts has the Burden of prove his assertion:

It must always be born in mind and this is settled, that the burden of proving that any person is guilty of a crime, rest on the prosecution. The cardinal principle of law, is that the commission of a crime by a party, must be proved beyond reasonable doubt. This is the law laid down in ***Section 138(1) of the Evidence Act*** *, the burden never shifts. Therefore, if on whole of the evidence, the court is left in a state of doubt (as I am in this instant case leading to this appeal), the prosecution, would have failed to discharge the onus of proof which the law lays upon it and the prisoner/accused person ,is entitled to acquittal.* ***Per I. F. Oguagu JSC*** *at pages 685-687.*

2.On the effect where prosecution has not discharge the burden on it:

It is firmly established that if an appellant asserts that the prosecution has failed to prove the prisoners guilt beyond reasonable doubt before conviction, it is for him to establish that it is so and it is the duty of an appeal court to examine the assertion against the whole background of the case and in particular, against the evidence leading to the quilt of the appellant. I have, so painstakingly, examined the assertion of the appellant against the whole evidence of the said prosecution witnesses. it is so settled

that if at the end of and the whole of the case, there is reasonable doubt created by the evidence given either by the prosecution or the prisoner, as to whether the offence was committed by him, the prosecution, has not made out the case and the prisoner, is entitled to an acquittal. ***Per I.F. Ogbuagu JSC*** *at page 686.*

STATE VS. ONYEUKWU (2004)19 NSCQR 231

BURDEN OF PROOF

EVIDENCE *– Criminal Trials – Standard of proof beyond all reasonable doubt.*

EVIDENCE *– Criminals Trials – Burden of proof therein – Onus therein on prosecution.*

PRINCIPLES:

1. On Burden of proof in Criminal Trial- Onus on the prosecution to prove its case.

In criminal trials, the onus is on the prosecution to prove its case beyond reasonable doubt. ***PerA. I. Katsina - Alu, JSC*** *at page 259.*

2. On standard of proof in Criminal Trials- the Meaning or Import of "Proof beyond all Reasonable doubt".

It must be stated and emphasized that proof beyond all reasonable doubt does not mean or import or connote beyond any degree of certainty. The term strictly means that within the bounds of evidence adduced and staring the Court in face no tribunal of justice worth its salt would convict on it having regard to the nature of the evidence led and the law marshaled out in the case. It can be said that evidence in a criminal trial that is susceptible to doubt cannot be said to have attained the height or standard of proof that can be said to be beyond all reasonable doubt. Regardless of what one might think in a given state of affairs in a given case, neither suspicion nor speculation or intuition can be a substitute for a proof beyond all reasonable doubt. It is a proof that precludes all reasonable inference or assumption

except that which it seeks to support and must have the clarity of proof that is readily consistent with the guilt of the person. The expression beyond all reasonable doubt should not be susceptible to any ungainly and abstract construction or understanding. A priori, it is a concept founded on reason and rational and critical examination of a state of facts and Law rather than a fanciful, whimsical or capricious and speculative doubt. **Per *I. C. Patsy-Acholonu, JSC*** *at page 269.*

15

CHARGES

THE STATE VS. OLATUNJI(2005) NCC 478

CRIMINAL PROCEDURE LAW *- Charge - When altered or substituted - Effect thereof.*

CRIMINAL PROCEDURE LAW *- Innocence - When a good defence to a criminal charge.*

PRINCIPLES;

1. On the effect where a charge is substituted or altered;

Therefore, substitute will have the same meaning and effect with alteration. And according to Section 164 of the said Act, where a charge or count is altered all that is required to be done is to read the new charge or count to the accused and record his or her plea thereto. The proceedings are deemed to be continued and not disturbed as a result of the alteration. This in my view, is the correct position in the instant appeal immediately after the original counts were struck out". Per **S. O. Uwaifo, JSC,** at pages 491-*493*

2. On when innocence will be a good defence in a criminal charge;

There is no doubt that it is an established principle of criminal Law of that, an honest and reasonable belief in the existence of circumstances which if true, would make the act for which the accused is charged an innocent act, has always been held to be a good defence. This is because of the state of his or her mind at the time of the commission or omission of the act which must

not only be honest but must also be reasonable in the circumstances.

Per S. O. Uwaifo, JSC, *at pages 493-494.*

3. ***On when innocence is a good defence in a criminal charge;***

This section emphasizes that in order to afford a defence to Criminal liability or responsibility the act must be done or omitted to be done honestly and reasonably in the belief of the existence of the state of things which made the act or omission possible. ***Per S.O. Uwaifo, JSC*** *at page 494-494.*

4. On whether the dishonest and unreasonable belief of the Respondent can entitle him to the defence of innocence;

Also, as pay master, the respondent was the holder and person in charge of the account from which this money was raised when the money was brought to him by the Cashier and was told that it was for welfare gift from ***C.A.S,*** *he knew that the money could not be not transferable to the welfare account since the approval of Exhibits 9A-9C was not for that purpose. And so when he agreed to disregard the financial procedure by sharing the money meant for a1 short payment of salaries etc and shared it as welfare gift with full knowledge of what it was meant for, the respondent must be acting dishonestly and unreasonably. His belief in the so called orders of the* ***C.A.S****, even if it is true at that time, could not be honest having regard to the circumstances. I find that the respondents a1leged belief in the so called orders of the* ***C. A. S,*** *does not entitle him to any defence to the charge of stealing in this case.* ***Per S. O. Uwaifo,*** *JSC at pages 494-495.*

OGUNYE VS. STATE (2001) 2ACLR 66

CHARGE

CRIMINAL LAW & PRACTICE *- Practice interpreting charge to illiterate accused - Notoriety of.*

CRIMINAL LAW & PROCEDURE *- Charge not read to accused or read in a language accused does not understand - Validity of - Effect*

CRIMINAL LAW & PROCEDURE *- Charge -Explanation to accused - Need for trial court to satisfied with.*

CRIMINAL LAW & PROCEDURE *- Charge - Interpretation of charge to an accused Who understands language court - Whether necessary.*

PRINCIPLES:

1. On the effect of not reading and explaining a charge to an accused or/of reading charge over to accused person in a language he does not understand:

It is beyond dispute that if, indeed, there was a concession on behalf of the 35 respondent that the charge was not read over or explained to the appellants or that although it was read over to both appellants, this was in a language they did not understand before they pleaded thereto, then obviously, there would have been a most flagrant breach of both the mandatory provisions of section 215 of the Republic of Nigeria. 1979.

Such breach, without doubt. Would render their arraignment invalid and erroneous on point of law thus rendering their subsequent trail null and void n9 of no effect. See Sundav Kajubo vs. The State (1988)_ NWLR (pt.73)721 t 731 and 737. Samuel Erekanure vs. The State(1993) 5 NWLR (pt.294) 85, Edet Effiom vs. The State_(1995) 1 NWLR (pt373) 507, Akpiri Ewe vs. he State_(1992) 6NWLR (pt.246) 147 etc. At page 145.

2. *On whether there is need to interpret a charge to an accused person who understands the language of the court*:

The need for interpretation hardly arises if an accused person such as the 5th appellant, understands the language of the court which admittedly is English. At page 83.

3. *On the need for a charge to be explained to an accused to the satisfaction of the court:*

The law enjoins a trial court to be satisfied with the explanation of the charge to the accused person before he pleads thereto. At page83.

4. *On the notoriety of the practice of interpreting a charge to an illiterate accused person:*

"As I have repeatedly stressed, the language of the court is English. It is plain to me that the charge would have been read over and explained to the appellants in English language by the registrar of court as directed. Thereafter, the same charge would be read over, explained and interpreted to the appellants in Hausa by a sworn interpreter before their respective pleas would be taken. This court procedure is a matter of common knowledge and notoriety and I conceive I am entitled to take judicial notice thereof." ***Per IGUH, JSC, at page* 85.**

5. *On whether the presumption of regularity under s.150(l) Evidence Act was applicable to this case:*

"It seems to me that the issue under consideration is both an official and judicial act to which the protections afforded by section 150(l) of the evidence Act and the maxi, omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium are fully applicable with regard to the

procedure adopted by the learned trial Judge in the absence of any proof to the contrary. See also Peter Lockman and Another vs. The State (1972) 5 SC and James Edun and others vs. Inspector-General of Police (1966) 1 All NLR 17 at 21". ***Per IGUH, JSC, at page* 85.**

IDOWU VS. THE STATE(2001)2 ACLR 337

CHARGE

CRIMINAL LAW & PROCECURE *- Charge of forgery - An essential element of.*

CRIMINAL LAW & PROCEDURE *- Charge of conspiracy, forgery and stealing - Specific sums allegedly stolen on specific dates - Need to prove individually and separately that accused stole specific amounts on specific dates.*

CRIMINAL LAW & PROCEDURE *- Charge of forgery - Accused failing to detect alteration or wrong entries in books of account - Whether can ground a charge of forgery.*

CRIMINAL LAW & PROCEDURE *- Charge - Duplicity of.*

PRINCIPLES:

1. ***On one essential element requiring proof in a charge of forgery:***

In a charge of forgery, an essential ingredient to be proved is that the accused person forged the documents in question. At page 347.

2. ***On whether mere failure to detect alteration or wrong entries in accounts books can ground a charge of forgery:***

"Merely failing to detect the alterations or wrong arithmetical entries of the cash balances in the cash sheets by the appellant cannot in my view be a proper ground for finding him guilty of the offence of forgery along with the co-accused. This would largely have depended on the kind of tools or materials or instruments made available to the appellant by the company for

*detecting such wrong arithmetical mistakes or entries and of which there was no evidence here". **per KUTIGI, JSC., at page 346:***

3. *On the duplicity of counts in this instant case:*

The "alterations" or "forgeries" occurred on different dates, months and even years. Each alteration or forgery should have been a subject of a separate count or charge and provide separately. That was not done! This is intolerable. The counts are therefore bad for duplicity to say the least. (See R. vs. Aniemeke (1961) 1 All NLR 43; R.vs. Achie 12 WACA. 209. At page 348.

4.*On the need to prove separately the specific sums of money allegedly stolen and the specific dates where these are part of the charge:*

It is further clear as daylight that the prosecution failed to prove separately the specific sums of money alleged to be stolen by the Appellant whereas, the conviction of the Appellant for forgery, conspiracy and stealing was based on entries in Exhibit 'E'. I am of the firm view therefore that since each item of the entries was made at different times and dates, the prosecution must prove individually ,and separately that the Appellant as an accomplice, forged the items in the entries in Exhibit E and stole specific amount/s on a specific date/s. See I the case of Onagoruwa vs. The State (1993) 7 NWLR (Pt.303) 49 at 'I page 91, paragraph D in which the Court of Appeal held, allowing the appeal, that where specific sums were allegedly stolen on specific dates, the prosecution must prove that the various sums for which the accused was charged actually got into his hands before he could be properly convicted. At page 352.

MILTON SAN VS. F R N.(2003) 13 NSCRQ

CHARGE

CRIMINAL PROCEDURE LAW *- Application to prefer a charge against an accused - Conditions for.*

PRINCIPLE:

1.On conditions precedence to making an application to prefer a charge against an accused:

An application for such leave is made pursuant to the provision of the Criminal Procedure Code (Application to prefer a charge in the High Court) Rules 1970. Under the said rules, the application must be accompanied by a copy of the charge sought to be preferred, names of witnesses who shall give evidence at the trial, proof of evidence (written statements) which shall be relied upon at the trial. The applicant must also inform the court that no application for such leave has been made previously in the case and that no-preliminary inquiry is being conducted in the matter by any magistrate court. By virtue of the said rules, the learned trial judge had the discretion to grant or refuse the application. **U. A. Kalgo, JSC at page 10.**

NWADUKE VS. THE STATE(2005) ICC 572

CHARGE

CRIMINAL LAW *- Amendment of a Charge - Whether would confer the right to recall witnesses that had testified before the amendment was effected.*

PRACTICE AND PROCEDURE *- Amendment of a Charge-Whether would confer the right to recall witnesses that had testified before the amendment was effected.*

PRINCIPLE:

I. On whether the amendment of a charge would confer the right to recall witnesses that had testified before the amendment was affected:

Although it is provided in section ***165 of the Criminal Procedure law****, inter alia, that "the prosecution and the accused shall be allowed to recall or summon any witness who may have been examined and examine or cross-examine such witness with reference to such alteration", it is clear that the addition of the phrase "with reference to such alteration" has created a condition which must be met before a recall of such witnesses could be made. The condition so attached is that the examination or cross examination must have reference to the alteration made by the amendment. It follows therefore that it will not be out of place for a trial Judge to refuse an application for a recall of witnesses without satisfying the court that the recall was necessary having regard to the alteration of the charge.* ***S. A. Akintan JCA*** *at page 577.*

IDRIS RABIU VS THE STATE(2005) ICC 578

CHARGE

CRIMINAL LAW *- Plea of guilt - Whether at accused can thereon convicted and sentenced alone - Whether necessary to explain facts on the charge - sheet to accused - Whether where such facts in the charge are explained to the understanding of the accused it is safe to convict and sentence thereon.*

PRINCIPLES:

1. On the Need to establish that there was actual Penetration in order to sustain Charge:

Authorities are agreed on the general principle of the law of rape that there must be proof of PENETRATION no matter how slight before the offence of rape can be said to be proved. In the D recent case of Iko V State (2001) 14 NWLR (Pt. 732) the Supreme Court, ***per Kalgo, JSC****, stated, inter alia:*

> *"The essential and most important ingredient of the offence of rape is penetration and unless penetration is proved the prosecution must fail (See R vs. Hill East P.C 439). But penetration however slight is sufficient and it is not necessary to prove any injury or the rupture of the hymen to constitute the crime of rape. Even where the prosecrutrix testified that the accused inserted his penis into her virginal, the law requires such evidence to be corroborated by an independent witness* ***.Per I. T. Muhammad, JCA at page 594****.*

MOHAMMED VS. KANO(2004) N. A.1 LC 588

CHARGE

***CRIMINAL LAW** - Charge - Criminal breach of trust-Conviction – Appeal - Whether accused had fair hearing – Test - Nigerian Constitution Section 22 (2).*

PRINCIPLES:

(1) The true test of a fair hearing is the impression of a reasonable person who was present at the trial whether, from his observation, justice has been done in the case. The burden is on the appellant to show that the irregularity and the conduct of the trial complained of led to a failure of justice. In this case the appellant had discharged the onus which the law placed on him. ***Ademola, CJN*** *at pages 590-591.*

(2) In this case the conduct of Inspector Markifa must leave an observer with the impression. that the appellant had been denied a fair trial. Further it could not be said that justice was done to an accused person whose statement was admitted in evidence and relied on by the Urban Area Court when that statement was made after he had been taken to an army barracks from the police charge office and there beaten up by soldiers. ***Ademola, CJN*** *at pages 593-594.*

(3) The Court of Appeal, in its judgment, referred to irregularities in the investigations and the conduct of the trial but at the same time upheld the conviction with some reluctance. That court also expressed grave doubt whether a jury would, in the circumstances have convicted the appellant. These were sufficient and enough reasons for the court to have discharged the appellant . ***Per Ademola, CJN*** *at Page 594*

AMALA VS. STATE(2004) 18 NCSQR 834

CHARGE

CRIMINAL PROCEDURE LAW *- Whether it is mandatory to write in the records of .*

PRINCIPLE:

1. On whether it is mandatory by the Judge to make a note in the Records of proceedings that a charge was read and explained to an accused:

I need to stress that there is no provision of ***Section 125 of the Criminal Procedure Act.*** *which stipulates or makes it mandatory that a note shall be made in the record of proceedings to the effect that a charge was read over and, explained to an accused person to the satisfaction of the trial court before his plea was taken. What the law enjoins the trial court to do is to satisfy itself that the accused on the charge being read over and explained to him understands the nature therefore before he pleaded thereto. In my opinion, the test with regard to this requirement is subjective and not objective.* ***Per A. I. Iguh, JSC*** *at page 861.*

CHINEMELU VS C.O.P.(1998) 1 ACLR 501

CHARGE

CRIMINAL LAW AND PROCEDURE *- "A holding charge" - Whether same is known to law.*

PRINCIPLES *:*

1. ***On whether "a holding charge" is known to law:*** *That appellation is unknown to the CPL or any law for that matter. It is a misconception and a misnomer to label a procedure carried out in compliance with the express provisions of section 243 as "a holding charge" At Page 512 .*

2. ***On duty on prosecution once accused raised validity of his charge:***

Once a person accused of an offence has raised the validity of his charge and requests for bail, the prosecution is obliged within a reasonable time to justify the accusation by preferring an information with the proof of evidence in support thereof for the consideration of the Court. At Page 521".

ARUNA VS. STATE (1998) 1 ACLR 369

CHARGE

CRIMINAL LAW AND PROCEDURE *- 'Charge' - Purpose of*

PRINCIPLE:

1. ***On the purpose of a charge:***

The purpose of a charge is to give to the defence (i.e. the accused persons) due notice of the case they are to meet in court. At Page 38)

ONAGORUWA VS. STATE(1998) 1 ACLR 435

CHARGE

CRIMINAL LAW AND PROCEDURE- *Charge of stealing –What the prosecution must establish to succeed at the no case submission stage*

CRIMINAL LAW AND PROCEDURE- *Charge of stealing –where evidence led by prosecution as to the nature, number and identity of article stolen is contradictory-How is such evidence treated?*

PRINCIPLES:

1. On what the prosecution must establish in a charge of stealing in order to succeed at the no case submission stage:

from the wordings of Section 383 of the Code, in order to succeed in the charge, at the no case submission stage, the prosecution must establish a prima facie case in respect of the following essential elements:

(a) The owner of the thing stolen.

(b) That the thing stolen is capable of being stolen.

(c) That it was fraudulently taken or fraudulently converted. At Page 46.

2. On need for charge to contain the name of the owner of property stolen where element of special ownership and value of property stolen is in dispute:

Although the law recognises certain instances when an accused may be charged with what was stolen as property of persons unknown (if that real situation), where the element of special ownership and value of the property is not only important, but also in dispute, as in the instance case, the charge must contain the name of the owner of the property. See Adewusi v. The Queen 91963) 2 SCNLR 245; (1963) 1 All NLR 316; Hibbert v. Mckienan 1948) 1 All E.R. 860. At Page 470.

FRANCIS DURWODE VS. STATE(2000) 4NSCQR 33

CHARGE

CRIMINAL PROCEDURE LAW - CHARGE - *Must be read and explained to the accused.*

CRIMINAL PROCEDURE LAW - CHARGE - *Whether failure to record charge will amount to miscarriage.*

PRINCIPLES:

1. On whether failure of the trial court to record that it into the charge has been read and explained to the accused will amount to a miscarriage of justice: -

A strict observance of the provisions of ***Section 33(6) (a) of the Constitution*** *and* ***Section 215 of Criminal Procedure Law*** *is however more seriously looked into in a case where the accused is not literate in English language. Even if he is not, in my view, where a charge is of one count and the appellant had earlier made a statement to the police on the allegation of the crime which he has been arraigned for trial, the failure of the trial judge to record that the charge has been read and explained to the accused will not amount to a miscarriage of justice once the trial court is satisfied that the accused understood the nature of the charged framed against him.* ***Uthman Mohammed JSC*** *at page 43 .*

2. On mandatory ingredients to maintain a charge of murder.

In the case of Nwaeze vs. The State (1996) 2 NWLR (part 428) I Where ***Adio. JSC*** *of blessed memory made a dichotomy and ex-ray of the said ingredients as follows:-*

"In a charge of murder, the burden is on the prosecution to prove that:

(a) the deceased had died ,

(b) the death of the deceased was' caused by the accused:

*(c) the act or omission of the accused causing the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probably consequence". **Per S. U. Onu J S C** at page 53.*

CHARGE

***CRIMINAL LAW AND PROCEDURE** - Joint trial of separate Charges - What appellant must prove to show that manifest injustice had arisen.*

***CRIMINAL LAW AND PROCEDURE** - Joint trial of separate Charges - When may objection be raised by an accused person.*

***CRIMINAL LAW AND PROCEDURE** - Joint trial of separate Charges - What the attitude of the court should be thereto.*

PRINCIPLES:

1.On joint trial of separate charges - when may an objection be raised by an accused person.

*On the issue of whether or not the Respondent was properly tried jointly along with others by virtue of **Section 155 of the Criminal Procedure Act** when each of them was separately charged. I think **Section 168 of the same Criminal Procedure Act** provides the answer when it says under objections sured by verdict that –*

No judgment shall be stayed or reversed on the ground of any objection which if stated after the charge was read over to the accused or during the progress of the trial might have been amended by the Court ...

t is clear that in the instant case an objection could have been taken to the eparate indictments being tried together jointly soon after the charge had een read or during the progress of the trial. No such objection was ever aised even though the Court had discretion to order separate trial or trials s the case may be. Having thus gone through the trial without objection, it eems to me that it was not open to the Respondent to take the objection

after verdict. The Court of Appeal therefore erred when on this score it declared the judgment of the Court Martial a nullity. ***Per I. L. Kutigi, JSC*** *at page 257.*

2. On joint trial of separate charges - what the attitude of the court should be:

From English procedural point of view joint trials must be based on joint charge. It is trite law that our Criminal procedural law to a great extent mirrors what is obtainable in English Courts. Where such a Joint trial of separate charges does not show a miscarriage of justice, prudence and judicial progressivism should affect the minds of the Court to be elastic in the consideration of the matter and I dare say a liberal attitude be shown to such issue under consideration. In a sub title of "Consolidated or Separate Trials" the authors of Vol. 24 of the 2nd Edition of Corpus Juris Secundum state as follows;

"Consolidation of indictments or information's against accused with indictments or information's against others, or of separate indictments or information's against accused, cannot be objected to for the first time on appeal. Likewise, accused cannot complain on appeal that he was unduly prejudiced by being tried with a co-defendant, in the absence of a timely request for a severance; and in the absence of a showing to the trial court as to how he would be prejudiced by a joint trial. accused cannot complain on appeal of the denial by the trial court of a severance. Even where a motion for severance was made. accused, if he intended to rely on the motion. should have called it to the attention of the trial court before the trial started and asked the court to rule on it. Conversely, where accused raised no objection thereto, and was unable to show wherein he was harmed thereby, he cannot complain of an order granting a severance as to a co-defendant".

On the other hand ***Section 168 of the Criminal Procedure Act*** *states:*

"No judgment shall be stayed or reversed on the ground of any objection which if stated after the charge was read over to the accused or during the progress of the trial might have been amended by the Court". Although in the cases of DPP Crane, and also ***R. v Dennis*** *and* ***R. v Parker*** *Supra it was held that no Court has the jurisdiction to try persons separately charged or under separate indictment jointly, it seems to me that with such a stand where there is no manifest injustice and where equally too neither the prosecution nor the accused raised an objection at the earliest opportunity, this Court should lower the tempo of such a hard stance and temporize the method adopted as a mere aberration in the procedural .law and show more robust understanding in determining any complaint arising from there.* ***Per I. C. Pats-Acholonu, JSC*** *at pages 266-268 .*

3. On joint trial of separate charges - what the appellant must prove to show that manifest injustice had arisen:

In this case there is a complaint that by the joint trial procedure used, manifest injustice resulted. But, it must be said that, there was no complaint made initially and prompting by a Counsel representing any of the parties that the Court should first rule on the objection raised. There was nothing like that m this case. The Appellant must show how it has been adversely affected by the method adopted by the Martial Court. The Respondent's conviction which was later quashed by the Court of Appeal must be related to the alleged seeming unorthodox procedure which led to what the appellant has daubed or described as a manifest miscarriage of justice. ***I. C. Pats-Acholonu, JSC*** *at page 268.*

LATEEF ADENIJI VS. STATE (2001) 6 NSCQR 656

CHARGE

CRIMINAL PROCEDURE LAW - CHARGE *- Must be read over and explained to the accused person.*

CRIMINAL PROCEDURE LAW - CHARGE *- Whether necessary to record fact where accused understands the language of the court.*

PRINCIPLES:

1. On the need to read and explain the charge accused person in the language he understands.

The requirement that the charge must be read and explained to the accused in the language he understands, in my opinion, presupposes that the accused does not understand English which is the language of the Court. If he does not the Court has a duty to put on record the language spoken by the accused. However, if accused understands English, then it is not necessary to record this fact. ***A. I. Katsina-Alu JSC at page 663.***

16

CONFESSION

EGBOGHONOME VS. STATE (2001) 2 ACLR 262

CRIMINAL LAW AND PROCEDURE *- Admission of a confession – While same can be vitiated.*

CRIMINAL LAW AND PROCEDURE *- Confession of an accused - While court can convict on same alone.*

CRIMINAL LAW AND PROCEDURE *- Confessions - Attitude of court to same.*

CRIMINAL LAW AND PROCEDURE *-Confession - Nature and treatment of – Course opened to court when confession is retracted.*

CRIMINAL LA W AND PROCEDURE *- Confessional statement admitted – Treatment of.*

CRIMINAL LAW AND PROCEDURE *-Hostile witness - Previous statement made by him - How used?*

CRIMINAL LAW AND PROCEDURE *- Inconsistency Rule – Application and extent of.*

CRIMINAL LAW AND PROCEDURE *- In consistency Rule –of Application.*

CRIMINAL LAW AND PROCEDURE*- Inconsistency Rule and Confession whether both should be governed by same rules.*

CRIMINAL LAW AND PROCEDURE *– Inconsistency Rule - Whether decision in Oladejo v. State (1987)3 NWLR (Pt. 61) 419 and 10 Asanya v.*

State (1991)3 NWLR (Pt. 180) 422 made per incuriam. - Involuntary confession and retracted confession - Distinction of.

CRIMINAL LA W AND PROCEDURE *- On fundamental principle of the administration of criminal justice.*

CRIMINAL LAW AND PROCEDURE *- Practice of taking accused persons who confessed to a crime before superior police officers for confirmation - Legality of.*

CRIMINAL LAW AND PROCEDURE *- Pre-trial recording of accused's statement - Whether same is a legal requirement.*

CRIMINAL LAW AND PROCEDURE *- Rule in R v. Golder (1960) 1 WLR 25 1169 - Effect of application- of same to retracted confession.*

CRIMINAL LAW AND PROCEDURE *-Statement of accused inconsistent with testimony at trial- Treatment of - Whether logical for different rule to apply.*

PRINCIPLES:

1. On application and extent of the inconsistency rule:

Since its adoption in Nigeria, the operation of the inconsistency rule has been limited to the statement of a witness *and his inconsistent testimony. It was for the first time in 1985 extended to the statement and evidence of the accused person in Owie v. State (supra). The judgment of this court in ado*

vs. The Queen (supra) delivered by ***Brett, J.S.C****. made it clear that the rule did not apply to the previous confession of an accused person and his evidence in court. At Page 284.*

2. On when the Supreme Court would overrule its previous decision: *It is trite law that this court will depart from or overrule its previous decision if the decision was made per in curiam or its application to future cases will perpetuate injustice. At Page 292*

3. On whether the decisions in Oladejo v. State and Asanya v. State as they apply to the inconsistency rule were made per incuriam:

It is obvious that the decision Oladejo and Asanya were undoubtedly a departure from the long established principle laid down in Udo v. State j since 1964 and the several decisions of this court thereafter that inconsistency does not apply to retracted extra-judicial confession of an accused person. At Page 292 .

4. On effect of application of the rule in R v. Golder to retracted confessions*:*

In my considered view, grave miscarriage of justice would also be occasioned by the extension. It may perpetuate injustice to the society as murderer would be at large simply because after a second thought, they have retracted their confessions. At Page 292.

5. On effect of the extension of the rule in R. v. Golder to retracted confession of an accused:

The extension would occasion grave injustice to the accused as it would result to depriving him of the right to due consideration of his defence. At Page 291.

6. On resolution of confession and testimony of an accused by trial judge: *Confession and testimony of the accused person shall be evaluated and assessed by the trial Judge together. with the totality of the evidence in order to reach a just decision. For the foregoing reasons, I conclude that the decisions in 01adejo and Asanya should be overruled and are hereby overruled. Accordingly, the trial court was right to rely on the confession of the appellant in convicting him of murder. The Court of Appeal was also right in affirming .that the trial Judge was entitled to act on the confession. At Page 294*

7. On legality of the practice of taking accused person who confessed to a crime before a superior police officer for confession:

The practice of taking accused persons, who confessed to the commission of serious offences, before superior Police officers for confirmation of the voluntariness of the confession, is not required by any role of law or procedure. The practice was developed by the police, and had been highly commended by this Court as it ensures fair play and justice to the accused. However, failure to call the attesting officer as a witness will not per se be fatal to a conviction: R. v. Nwigboke (1959) SNCLR 248; (1959)4 FSC 101. At Page295.

8. On whether pre-trial recording of accused statement is a legal requirement:

In some parts of the country the procedure for pre-trial recording of the accused person's statement is not law but were strict procedural practice based on Judge's Rules 1912 of England. But it is the law in some parts of the country (Criminal Procedure (Statement to Police Officer) Rules Cap. 30

Laws of Northern Nigeria, 1963 made pursuant to ***section 373 of Criminal Procedure Code Law****). At Page 306*

9. On attitude of courts to confessions*:*

"In all criminal cases before a court, there are always two sides; that is to say, the case for the prosecution and that for the defence. The statement of the accused person to police officer made under the caution, whether the statutory caution as exists in the laws of Northern States or as in the practice based on Judges Rules 1912 of England as adopted in the Southern States the attitude of courts must remain the same. The voluntary statement of the accused person is a part of the case for the prosecution whether it contains confession or not and whether the accused resiles it or not during trial. It is when the court treats such statement as part of the defence of an accused person that the confusion arises as to consistency of the accused person's testimony. The most important aspect of the words of caution should not be overlooked, it says:

"and may be given in evidence".

This prima-facie refers to evidence at trial by the prosecution that" decided to make a complaint against (accused) before a court. (brackets mine). If in the trial before a court of law the accused person asserts in his evidence that he never made the statement voluntary (in which case the voluntariness will be decided in a trial within trial), or that he never made the statement at all where by voluntariness is not involved and the court can admit the statement subject to the weight to be attached to it in general consideration of all the evidence at the trial, the statement should always be viewed as part of the case for the prosecution. A fortiori if the accused does not challenge the statement. Such a statement, once legally admitted in evidence, will be

juxtaposed with all the evidence in court including the defence so as to decide the general merit of the case. But such statement is always a part of the case for the prosecution. The Court should not regard the voluntary statement as "what will be your evidence at trial "but only" may be given in evidence by the prosecution". At Page 307.

10. On when the admission of a confession can be vitiated:

*The admission of a confession in evidence can only be vitiated if in making the confession to a police officer before trial, it appears to trial court that it was obtained by inducement, threat, or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient to give the accused person grounds which would appear to him reasonable for supposing that making it he would gain any advantage or avoid any evil of a temporal nature (**see Section 28 Evidence Act).** At Page 307.*

11. On conviction of an accused based on his confession:

*Under **Section 27 of the Evidence Act** an accused person can be, convicted on the confession made by him once it is properly proved and admitted in evidence: Rex vs. Ajayi Omokaro (1941)7 WACA 146; Ogoala vs. The State (1991)2 NWLR (Pt. 175)509; Queen vs. Obiasa (1962)2 SCNLR 410; (1962)2 All NLR 465. At Page 308 .*

12.On treatment of confessional statement:

Once a confessional statement is admitted in evidence, and this is done during the case for the prosecution, it becomes part of the case for the prosecution. Until the accused gives evidence retracting the statement, the inconsistency rule does not come into play. But having formed part of the

case for the prosecution, the Judge is bound to consider its probative value when considering the retraction made subsequently. At Page 309.

13. On distinction between involuntary confession and retracted confession:

A confession which is being impugned on the ground that it was not voluntary is different from a retraction of the confession. In the case of the former depending on the ground adduced a trial within a trial would have been held, and once admitted it forms part of the proceedings. It will be considered along with the evidence led in the whole proceedings. The defence of an accused person includes his evidence in court and his extra-judicial statement notwithstanding his attempt to disown any portion of it. A voluntary confessional statement precedes the trial of the case in respect of which it is made, it is therefore part of the case of the prosecution. The mere fact it is retracted at the trial does not affect its admissibility. The court can act on it. At Page 319.

NWACHUKWU VS. STATE(2002) 11 NSCOR 663

CONFESSION

CRIMINAL PROCEDURE LAW - *Confessional statement - Whether conclusive evidence against the maker.*

PRINCIPLE:

1. On whether statement and admission are conclusive evidence against the maker.

Statements whether oral or written made by a party to a proceeding or by an accused person in a criminal prosecution which are against his interest are admissible against him as evidence of the facts thus asserted and they are termed informal admissions. However, such admissions, unlike formal admissions, are not conclusive evidence against their maker. They are only prima facie evidence which may be contradicted or explained in appropriate cases. An admission or confession has been said to be like any other evidence and it is the duty of the trial court to consider the circumstances under which it was given and to decide what weight that may be attached to the alleged confession. ***A. I. Iguh JSC*** *at pages 681-682.*

ABAYOMI OLALEKAN Vs STATE(2001) 8 NSCQR 207

CONFESSION

CRIMINAL PROCEDURE LAW *- Confessional Statement - When it is denied - Effect thereof.*

CRIMINAL PROCEDURE LAW *- Interpreter - Position of in Proof of a confessional statement.*

PRINCIPLES:

1. On when a confessional statement is made voluntarily or when the voluntariness is being denied - Effect thereof:

"When the voluntariness of a confession is being denied. a trial within trial will be held, but if the statement is voluntarily made - then it is admissible by virtue of ***Section 27 of the Evidence Act****. It is however noteworthy that when an accused person alleged that the confessional statement credited to him is made under duress or not made voluntarily by him, objection must then be raised to its admission when the statement is sought to be tendered in evidence and not after it has been admitted in evidence."* **Per *M. E. Ogundare JSC*** *at pages 218 - 219.*

2. On the position of an interpreter in proof of a confessional statement;

It is not enough in my respectful view, that the interpreter is called to testify that he acted as an interpreter between the accused and the police interviewer he must testify as to the question or questions he put to the accused on behalf of the interviewer and the answers given to him by the accused person in the latter's language and which he interpreted to the

interviewer in English language. Without this evidence the prosecution would not have proved that the statement sought to be tendered by the interviewing police officer was more than just hearsay. It is not for the defence to establish what went on between the accused and the interpreter. The burden of proving that fact is on the prosecution and not on the defence. Per ***M. E. Ogundare JSC*** *at pages 220 - 221.*

3. On whether an accused can be convicted on confessional statement alone.

It is well settled that an accused can be convicted on is confessional statement which is consistent with other ascertained facts which had been proved. Per ***A. G. Karibi- Whyte JSC*** at page 230.

4. On whether a confessional statement becomes inadmissible on denial by an accused.

A confessional statement does not become inadmissible merely because the accused subsequently denies making it, and the fact that the accused took the earliest opportunity to deny having made it may lend weight to his denial, but it is not sufficient reason for ignoring the statement. Per ***A. G. Karibi-Whyte*** *JSC at page 230*

AKINMOJU VS. THE STATE(2000) 2 SCNOR 90

CONFESSION

***CRIMINAL LAW AND PROCEDURE**: Confessional statement - free, voluntary and direct is sufficient to sustain a conviction.*

PRINCIPLES:

1. On whether confessional statement alone can sustain a conviction.

The law is firmly settled that a free and voluntary confession which is direct and positive and properly given proved is sufficient to sustain a conviction without any corroborative evidence, so long as the court is satisfied of with its truth. **A. I. Iguh JSC at Page 118.**

2. On duty of a trial court in dealing with confessional statement:

It must, however, be stressed that there is a duty on a trial judge to test the truth of a confession by examining it in the light of the other credible evidence before the court See .Jafiya Kopa vs. The State (1971) 1 All NLR 150. ***A I. Iguh JSC at Page 118.***

3. On confessional statement:

A confession must be direct, clear, unambiguous and positive (relying on Afolabi vs. C.O.P.(l96l) ALL NLR 654; Nwaebony vs. State (1994) 5 NWLR (Pt.343) P.138.

There is nothing outside the purported confession rendering it probable that the confession was true Salawu vs. State (1971) NMLR 249. ***A. G. Karibi-Whyte JSC at Page 111.***

4. On the test to be applied by the court in cases where the accused person has retracted his confession:

The important consideration is whether it falls within the test laid down in Nwaebonyi vs.The State (1994) 5 NWLR. 138 where the following

considerations have been laid down for the weight to be attached to a retracted confession.

(i) Is there anything outside the confession, which shows that, it is true?

(ii) Is it corroborated in any way?

(iii) Are the relevant statements of facts made in it most likely to be true as far as they can be tested?

(iv) Did the accused have the opportunity of committing the offence?

(v) Is the confession possible?

(vi) Is the alleged confession consistent with other facts which have been ascertained and established? ***Per A.G. Karibi –Whyte JSC*** *at page 115*

SUNDAY IHUEBEKA VS. THE STATE(2000) 2 SCNQR 186

CONFESSION

CRIMINAL LAW AND PROCEDURE*-Confessional Statement-*

Corroboration by circumstantial evidence of prosecution witnesses.

CRIMINAL LAW AND PROCEDURE*- Confessional Statement of an accused- What amount to- conditions for its admissibility.*

PRINCIPLES:

1. On what is confessional statement in law:

It is simply a statement of an accused person charge with a criminal offence, which is a confession. At Page 198.

2. Definition of Confession*:*

See Osborn's Concise Law Dictionary, sixth Edition Page 87 *"An 'admission Of made to another by person charged with a crime. It is admissible only if free and voluntary, i.e. if it is not forthcoming because of the inducement, or threat, held out by a person in authority. It must not be made under hope of reward (other than spiritual) or fear of punishment in relation to the proceedings. The onus of proof that a confession was used voluntary is on the crown (D.P.P.V PinLin (1915) 3 In of W.L.R 419) Admission may be obtained from a person s his by questions fairly and properly put to him by a police and officer"* ***U.A. Kalgo JSC at page 198-199.*** *There was nothing on the face of Exhibit 1 itself or from the evidence in trial court to indicate that the appellant the was induced, threatened or forced into making Exhibit 1 and held out by a person in authority. See R vs. Marsha- Graham (1967) 2 WLR 1094.* ***Per U.A. Kalgo JSC*** *at page 199-200.*

3. On conviction based on confessional statement:

In the case of Silas Ikpo V The State (1995) 33 LRCN 587 at 589" a free and voluntary confession of guilt whether judicial or extra-judicial, if it is direct and positive and properly established is sufficient proof of that guilt and enough to sustain a conviction so long as the court is satisfied with the truth of such confession." ***Per U.A Kalgo JSC. at page 189-199.***

Where the statement of an accused is voluntary as ill the instant case and it was properly admitted, for which, see R. V Obiasa (1962) 1 AUNLR 651, the fact that the statement was later retracted, which was also not the case here is immaterial. See R. V Kanu 14 WAC 70. ***Per S.U.Onu JSC*** *at page 217.*

SOLOLA VS. STATE(2005) 22 NSCOR

CONFESSION

CRIMINAL LAW AND PROCEDURE *- Confessional Statement - Meaning nd affect of in criminal trials.*

CRIMINAL LAW AND PROCEDURE *- Confessional Statement - Whether ay be taken to a superior Police Officer for endorsement in order that the ccused may deny or admit making the statement.*

CRIMINAL LAW AND PROCEDURE *-Free and Voluntary confession or atement - relevancy and admissibility of.*

CRIMINAL LAW AND PROCEDURE *- Valid arraignment of an accused erson Essential requirements thereof.*

CRIMINAL LAW AND PROCEDURE *-Voluntary Confessional statement Relevancy and admissibility of.*

PRINCIPLES:

On whether a confessional statement must be taken to a superior police fficer for endorsement in order that the accused may deny or admit aking the statement:

is not a rule of law that the confessional statement of the accused person hould be taken to a superior police officer in order that the accused may eny or admit making the statement R. vs. Omerewufe Sapele (1957) 2 FSC 4. Per D.O. Edozie at page 276.

2. On the relevancy and admissibility of a voluntary confession or statement of an accused person:

It is well settled that a voluntary confession or statement of an accused is deemed to be relevant and admissible against its maker and not against another. ***Per D.O. Edozie,*** *at page 276.*

3. On whether conviction can be sustained on a free and voluntary confession of an accused notwithstanding that he later retracted the confession:

The trial court stated the law correctly that a conviction can be sustained on a free and voluntary confession of an accused notwithstanding that he retracted the confession. It then found that the charges against the Appellants were established from their confessional statements. The statement that the confessional statement of the 1st Appellant corroborates those of the 2nd Appellant is merely an innocuous mistake. It is the law that it is not every mistake that will lead to the reversal of a judgment. It is only where such a mistake is substantial and has occasional a miscarriage of justice that it becomes fatal to the judgment. ***Per D.O. Edozie*** ,at page 277.

MADJEMU VS. THE STATE (2001)6 NSCOR 394

CONFESSION

CRIMINAL PROCEDURE LAW *- Confessional Statement - When "trial within trial" is relevant.*

PRINCIPLE:.

. On when the court will conduct trial within trial where the confessional tatement of an accused is sought to be tendered:

The point must be made that it is not in all cases where the confessional tatement of an accused person is sought to be tendered and objected to that trial court must conduct a mini trial or trial within trial before such a tatement may be admitted in evidence or its admissibility is taken on the round of involuntariness that a trial court must conduct a trial within trial o determine its voluntaries and consequent admissibility or otherwise in vidence. Where, however, an accused is merely disputing the correctness of he contents of the statement or that he made no statement at all, it not ecessary in law to have a trial within trial. ***Per A. I. Iguh JSC,*** *at pages 13 - 414.*

he only issue raised for a decision was whether indeed he wrote the tatement or not. That did not call for a trial within a trial. Such proceeding necessary only when a confessional statement is objected to on the rounds of duress, coercion, promise etc which may be alleged, on being ndered, calling for the trial judge's determination as to whether the atement was voluntarily made. ***Per S. O. Uwaifo JSC*** *,at page 417.*

SHANDE VS. STATE(2005) 22 NSCQR 756

CONFESSION

CRIMINAL LAW *- Confessional Statement - Whether becomes I*
admissible merely because an accused has resiled from it.

CRIMINAL LAW AND PROCEDURE *- Confessional Statement of a*
accused person - Where accused person has resiled from it or completel
retracted - Whether court can act thereon .

PRINCIPLES:

1. On confessional statement of an accused person- whether a court ca
set on it to convict an accused person even where she has resided from o
completely retracted the statement :

Once a confessional statement is proved to have been made voluntarily, a
in this instant case and it is direct, positive, unequivocal and clearl
amounts to an admission of guilt, it can still ground a conviction regardles
of the fact that the maker resiled there from or retracted the same completel
at trial, as such retraction does not make it inadmissible or that the tria
Court should not act on it ***Per A.O Ejiwunmi, JSC*** *at page 765 .*

2. On whether a confessional statement becomes inadmissible merely because an accused has denied making it:

A confession does not become inadmissible merely because the accused person denies having made it and in this respect a confession contained in a statement made to the police by a person under arrest is not to be treated differently from any other confession. R v. *Philip Kanu & Anor* 14 *W.A.C.A.* 30. *[Underlining mine]* ***Per A.O Ejiwunmi, JSC*** *at page 766*

OZANA UBIERHO VS. STATE(2005)21 NSCQR 38

CONFESSION

CRIMINAL LAW AND PROCEDURE *- Confession - Whether a man can be convicted on his own confession.*

CRIMINAL LAW AND PROCEDURE *- Confessional Statement - where retracted - Whether the court will not act on it.*

PRINCIPLES:

1. On whether a man can be convicted on his own confession:

Now a confession is an admission made at any time by a man charged with a crime stating or suggesting that he committed the crime - Saidu vs. The State (1982)4 *SC41: Sunday Onungwa* vs. *The State* (1976)2 *SC.169. It is now settled law that a man may be convicted solely on his confession. There is surely no law against it. It is however desirable to have some evidence of circumstances which make it probable that the confession was true.* ***Per K. Alu JSC*** *,at pages 45-46.*

2. On whether a man can be convicted on his own confession:

I dare say that there is nothing sacrosanct about a retraction of a confession. The law is that a man may be convicted on his own confession alone provided that there is anything outside it to show that it was true. ***Exhibit K*** *gave a detailed and graphic description of how the deceased was killed. The account of those events could only be recounted by a person who was an active participant of what happened on the fateful day.* ***Per K. Alu JSC*** *at pages 46-47.*

3. On whether a court will not act on a retracted confessional statement:

Now, it is settled law that the fact that an accused has retracted a confessional statement does not mean that the court cannot act upon it. It is however desirable to have some evidence outside retracted confession before a conviction is recorded base on the retracted confession. ***Per G.A. Oguntade JSC*** ,at page 54.

4. On how to access the quality of a confessional statement:

i. *"Is there anything outside the confession which shows that it may be true?*

ii. *Is it corroborated in anyway?*

iii. *Are the relevant statement of fact made in it most likely true as far as they can be tested?*

iv. *Did the accused have the opportunity of committing the offence?*

v. *Is the confession possible?*

vi. *Is the alleged confession consistent with other facts a that have been ascertained and established?"* ***Per G.A. Oguntade JSC*** *at page 55.*

YAHAYA VS. STATE (2005)1 NCC 120

CONFESSION

***CRIMINAL LAW** - Confession - The definition thereof.*

***CRIMINAL LAW** - Confession - When challenged on the ground that it was not made at all and when challenged on the ground that it was not voluntarily made - How treated.*

***CRIMINAL LAW** - Confession - Whether desirable to have some corroborative evidence outside it.*

***CRIMINAL LAW** - Confessional statement - When can sustain a conviction.*

PRINCIPLES:

1. On when a confession is challenged on the ground that it was not made at all and when challenged on the ground that it was not voluntarily made - how treated:

It is in accord with the principle of fairness and justice that I consider the circumstances of making the said statement and to confirm the truth or otherwise of its contents. It is settled law and a well established practice in this country that where, there is a challenge against a confessional statement on the ground that it was not made at all, the question as to whether , or not it was made at all or in the manner represented by the prosecution (as in the present case) is a matter to be decided at the conclusion of the case, (i.e. the hearing) by the trial judge. Consequently whatever objections or arguments are raised against such confessional

statement would not at that stage affect its admissibility since the issue of voluntariness of the said confessional statement does not arise and there will be no need for a trial within trial. Thus there is a distinction in this regard under our criminal procedure and practice between a confession challenged on the ground that it was not made at all by the accused (i.e. retracted) and the one challenged on the ground that it was not voluntarily made. Queen vs. Igwe (1960) 5 FSC 55, Godwin Ikpasa vs. Bendel State (1981) 9 SC 7 at 28 – 30 Ikemsom vs. State (1989) 3 NWLR (Pt. 110) 455 at 467, 476. Thus a voluntary confession as is in the present case which also complies with the rules governing the method of taking it and tendered without objection at the trial until it is admitted in evidence is then a good evidence and no amount of subsequent arguments against it or retraction will vitiate its admissibility as a voluntary statement and its mere denial by the accused will not be a reason for rejecting it. ***Per Dalhatu Adamu, JCA*** *at pages 133-134.*

2. On the definition of a confession;

A confession has been defined as an admission made at any time by a person charged with a crime stating or suggesting that he committed the crime. If voluntarily made such a confession is considered as a relevant fact against the person who made it. ***Per Dalhatu Adamu, JCA*** *at page 134.*

3. On when confessional statement can sustain at conviction:

The law is trite and very clear as regards the confessional statement whether it is judicial or extra judicial. Once it is free and voluntary and it is direct and positive and properly established, it is a sufficient proof of guilt of the accused person and it is enough to sustain a conviction so long as the court is satisfied with the right of such a confession. ***Per Dalhatu Adamu, JCA*** *at page 134.*

4. On desirability to have some corroborative evidence outside the confession:

It is however desirable to have outside the confession some corroborative evidence no matter how slight of some circumstances which make it probable that the confession is true and correct because the Courts are not generally disposed to act on a confession without testing the truth thereof.

***Per Dalhatu Adamu, JCA** at page 134.*

NWANGBOMU VS. STATE (2001) 2 ACLR 9

CONFESSION

CRIMINAL LAW & PROCEDURE *- Evaluation of accused person's ' Confessional statement - Trial within trial - When required.*

PRINCIPLES:

1. On the methods of resiling from a confessional statement and whether accused's denial of confessional statement affects the admissibility of such statement and on what the trial court ought to do in the circumstances ;

An accused person can resile on his statement to police officer in one of two ways. Either that he never made the statement at all, in which case it is matter of fact to be resolved by the evidence before the Court or that he made the statement or signed it but not voluntarily. In the former case, the mere denial by an accused of having made a statement inadmissible, it must however be considered along with the entire evidence and the circumstances of the case for the weight to be attached to it For example, in cases where the accused merely challenges the correctness of the statement as recorded or the signature or thumb impression, that will be a question of fact to be decided by the Court of trial, but not an issue for the procedure known as "trial within trial". See Obidiozo vs. The State (1987) 4 NWLR (Pt.67) 748, 751; Akinfe vs. The State(1988) 3 NWLR (Pt 85) 729; Oiegele vs. The State (1988) 1 NWLR (pt.71) 414; ***Section 27 Evidence Act****. At page 18 .*

2. On the need to conduct a trial within a trial to establish the voluntariness of a confessional statement where an accused challenges its voluntariness:

A confession made by an accused person is relevant in a criminal Proceeding, If the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain advantage or avoid any evil of a temporal nature.- At page18

3. On when trial within trial is required:

It is thus not in every case the accused challenges his statement confessing he commission of the offence that a trial within trial must be held; it is only held where the Issue is voluntariness but not the making of the statement impliciter. It is therefore not required in law to hold trial Within trial to test confession unless the issue of voluntariness is clearly failed. See R vs. Kassi & Ors 5 W ACA 154; R vs. Onabanjo 3 W ACA ,43; R vs. Igwe 1960) 5 FSC 55; Queen vs. Eguabor (1962) 1 All NLR 287,292; Obidiozor s. State (1987) 4 NWLR 748,760,761 - 763. At page 19 .

. On when trial within trial is required:

t is trite law that where the admissibility of a statement is challenged on he ground that it was not made voluntarily, it is incumbent on the Judge ('to all upon the prosecution to establish that it was voluntarily made by onducting a trial-within-trial. See R vs. The Francis and Murphy (1959) 43 . App. R 174; R vs. Omokaro 7 WACA 146, Ogoala vs. The State . (1991) 2 .

NWLR (pt. 175) 509,; Joshua Adekanbi vs. A.G. Western (1966) 1 All NLR 47; Paul Ashake vs. The State (1968) 2 All NLR 198 and Auta vs. The State (1975) NNLR 60 at 65. At page 23 .I

5.On whom the onus of proof in a trial within trial lies:

In a trial within trial the onus is on the appellant to establish evidence whereby it will shown that either by inducement, threat or promise having regard to the charge the accused person faces, and proceeding from a person in authority as to

give him reason to believe that he would gain advantage from the evil now confronting him. Evidence will then be led by the accused to establish the involuntariness of the statement and prosecution will lead evidence to rebut whereby the judge will rule on voluntariness. at page 15

6. On whether confessional statement can be admitted in evidence even when same is denied by the accused:

Where an accused person challenges a confessional statement credited to him on the ground that he did not make it, the statement can be admitted in evidence when tendered by the prosecution. See The Queen vs. Nwango Igwe (1960) 5 FSC 55 and R vs. Udo Eka Ebong_12 WACA 45 139. At page 23 .

7. On whether the failure of the superior police officer who verified and confirmed a confessional statement to give evidence at the trial if fatal to the prosecution 's case:

That. Mr. Ndunagu, the superior police officer before whom Exh. B B1 was verified and confirmed as the correct and voluntary statement of the appellant did not give evidence at the trial would neither affect the I admissibility or credibility of the statement The procedure is only desirable

and is yet to attain the force of law in the Southern States of Nigeria where both the Criminal Procedure Act and the Criminal Code apply. See EgboQhonome vs. The State (1973) 7 NWLR (pt. 306) 383 at431. At page 24 15 .

8. On the probative value to be attached to voluntary statement retracted by the accused:

Retraction of a voluntary statement per se by the maker, will not render it nadmissible against him It may, having regard to the circumstances it. the case go down to affect the weight to be attached to it. No such circumstances exist in this case. See R vs. Itule (1961) ALL NLR 462 and R vs. SaQele & Anor. (1957) 2 FSC. 24. At page 24

9. On the applicability of Section 27(1) and (2) of the Evidence Act:

Section 27(1) and (2) of the Evidence Act provides as follows:-

(1) A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

(2) Confession if voluntary, are deemed to be relevant facts as against the persons who make them only" At page 24.

10. On whether it is mandatory to corroborate involuntary confessions before the court can convict on it:

Subsection 2 of Section 27 of Evidence Act, shows that a voluntary confession by an accused person is evidence against him at his trial for the offence confessed to. The section does not strictly require any direct or circumstantial evidence to corroborate the confession before a conviction is solely based on it But decided cases make it desirable to look for such corroborative evidence outside the confession where it is retracted. See ,

Salawu vs. The State (1971) 1 NWLR 249, Otufale & Ors vs. The State (1968) NMLR 261 and The Queen vs. Chukwuji Ohiasa (1962) 2 ALL NLR 645. Where it is well proved, it will be treated as the best evidence , R vs. Baldry (1952) 5 Cox 523. At page 24

11. On whether circumstantial evidence can necessarily be resorted to for the corroboration of a confessional statement:

It is not always possible to get any eye witness to corroborate the voluntary confessional statement of an accused person in all cases of murder. In such a situation, the prosecution will resort to circumstantial evidence. At page 25 .

12. On when a confessional statement can ground a conviction:

where an extrajudicial confession has been proved to have been made voluntarily end it is positive and unequivocal and amounts to an admission of guilt, it will suffice to ground a finding of guilt regardless of the fact that the maker resiled 1herefrom or retracted it altogether at the trial, in as much as such a U-turn does not necessarily make the confession inadmissible vide R vs. Kanu{1952)14_WACA 30; The Queen vs. Itule 1-" (1961) 2 S.C. N.L.R 183; The Oueen vs. Obisa (1962) 2 S.C. N.L.R 402; Murnuni vs. The State (1975) 6 SC. 79, Akpan vs. The State (1992) 4 NWLR (pt233) 19; Aremu vs. The State (1984) 6 SC. 85; Eiinima vs. The State (1991) 6 NWLR (pt.200) 627 and Akinfe vs. The State (1988) 3 NWLR (pt.8S) 729. At page 29

EGBOGHONOME VS.THE STATE(2001) 2 ACLR 262

CONFESSION

***CRIMINAL LAW AND PROCEDURE** - Admission of a confession - When same can be vitiated.*

***CRIMINAL LAW AND PROCEDURE** - Confession of an accused - Whether court can convict on same alone.*

***CRIMINAL LAW AND PROCEDURE** - Confessions - Attitude of courts to same.*

***CRIMINAL LAW AND PROCEDURE**- Confession - Nature and treatment of - Course opened to court when confession is retracted.*

***CRIMINAL LAW AND PROCEDURE**- Confessional statement once admitted - Treatment of.*

***CRIMINAL LAW AND PROCEDURE**- Inconsistency Rule and Confession Whether both should be governed by same rules.*

***CRIMINAL LAW AND PROCEDURE** - Involuntary confession and retracted confession - Distinction of.*

***CRIMINAL LAW AND PROCEDURE** - Rule in R v. Golder (1960) 1 WLR 5 I 1169 - Effect of application. of same to retracted confession.*

CRIMINAL LAW AND PROCEDURE- *Statement of accused inconsistent with testimony at trial - Treatment of - Whether logical for different rule to apply.*

PRINCIPLES:

On effect of application of the rule in R v. Golder to retracted confessions:

my considered view, grave miscarriage of justice would also be occasioned by the extension. It may perpetuate injustice to the society as murderer would be at large simply because after a second thought, they have retracted their confessions. At Page 292 .

2. On effect of the extension of the rule in R. v. Golder to retracted confession of an accused:

The extension would occasion grave injustice to the accused as it would result to depriving him of the right to due consideration of his defence. At Page 292.

3. On resolution of confession and testimony of an accused by trial Judge:

Confession and testimony of the accused person shall be evaluated and assessed by the trial Judge together. with the totality of the evidence in order to reach a just decision. For the foregoing reasons, I conclude that the decisions in Oladejo and Asanya should be overruled and are hereby overruled. Accordingly, the trial court was right to rely on the confession of the appellant in convicting him of murder. The Court of Appeal was also right in affirming that the trial Judge was entitled to act on the confession. At Page 294.

4. On when circumstantial evidence sufficient to establish crime:

This is a proper case where the court may infer the cause of death without medical evidence, Kumo vs. State (1968) NMLR 227 and Lori vs. State (1980)8-11 S.C. 81 at 7. The fact that the deceased left her house hail and hearty to her farm and her body was found immersed in swamp pinned down with sticks and her hunch-back cut off clearly established that she was murdered. At Page 294

5. On legality of the practice of taking accused person who confessed to a crime before a superior police officer for confession:

The practice of taking accused persons, who confessed to the commission of serious offences, before superior police officers for confirmation of the voluntariness of the confession, is not required by any role of law or

procedure. The practice was developed by the police had been highly commended by this Court as it ensures fair play and justice to the accused. However, failure to call the attesting officer as a witness will not per se be fatal to a conviction: R. s. Nwigboke (1959) 5 SNCLR 248; (1959)4 FSC 101. At Page295.

6. On whether pre-trial recording accused statement is a legal requirement:

In some parts of the country the procedure for pre-trial recording of the accused person's statement is not law but were strict procedural practice based on Judge's Rules 1912 of England. But it is the law in some parts of the country (Criminal Procedure (Statement to Police Officer) Rules Cap. 30 Laws of Northern Nigeria, 1963 made pursuant to Section 373 of Criminal Procedure Code Law). At Page 306.

7. On attitude of courts to confessions:

In all criminal cases before a court, there are always two sides; that is to say, the case for the prosecution and that for the defence. The statement of the accused person to police officer made under the caution, whether the statutory caution as exists in the laws of Northern States or as in the practice based on Judges Rules 1912 of England as adopted in the Southern states the attitude of courts must remain the same. The voluntary statement of the accused person is a part of the case for the prosecution whether it contains confession or not and whether the accused resiles it or not during trial. It is when the court treats such statement as part of the defence of an accused person that the confusion arises as to consistency of the accused person's testimony. The most important aspect of the words of caution should not be overlooked, it says" and may be given in evidence".

This prima facie refers to evidence at trial by the prosecution that decided to make a complaint against (accused) before a court (brackets mine). If in the trial before a court of law the accused person asserts in his evidence that he never made the statement voluntary (in which case the voluntariness will be decided in a trial within trial), or that he never made the statement at all (whereby voluntariness is not involved and court can admit the statement subject to the weight to be attached to it in general consideration of all the evidence at the trial, the statement should always be viewed as part of the case for the prosecution. A fortiori if the accused does not challenge the statement. Such a statement, once legally admitted in evidence, will be juxtaposed with all the evidence in court including the defence so as to decide the general merit of the case. But such statement is always a part of the case for the prosecution. The Court should not regard the voluntary statement as "what will be your evidence at trial" but only" may be given in evidence by the prosecution" At Page 307 .

8. On when the admission of a confession can be vitiated:

The admission of a confession in evidence can only be vitiated if in making the confession to a police officer before trial, it appears to trial court that it was obtained by inducement, threat, or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient to give the accused person grounds which would appear to him reasonable for supposing that making it he , would gain any advantage or avoid any evil of a temporal nature (see, Section 28 Evidence Act). At Page 307 .

9. On conviction of an accused based on his confession:

Under ***section 27 of the Evidence Act,*** *an accused person can be convicted*

on the confession made by him once it is properly proved and admitted in evidence: Rex vs. Ajayi Omokaro (1941)7 WACA 146; 41 Ogoala vs. The State (1991)2 NWLR (Pt. 175)509; Queen vs. Obiasa (1962)2 SCNLR 410; (1962)2 All NLR 465. At Page 308.

10. On treatment of confessional statement:

Once a confessional statement is admitted in evidence, and this is done . during the case for the prosecution, it becomes part of the case for the Prosecution until the accused gives evidence retracting the statement, the nconsistency rule does not come into play. But having formed part of the ase for the prosecution, the Judge is bound to consider its probative value vhen considering the retraction made subsequently. At Page 309.

11. On distinction between involuntary confession and retracted onfession:

confession which 1s being impugned on the ground that it was not oluntary is different from a retraction of the confession. In the case of the ormer depending on the grounds adduced a trial within a trial would have een held, and once admitted it forms part of the proceedings. It will be onsidered along with the evidence led in the whole proceedings. The efence of an accused person includes his evidence in court and his extra- udicial statement not Withstanding his attempt to disown any portion of it. voluntary confessional statement precedes the trial of the case in respect f. which it is made, it is thereof part of the case of the prosecution. The here fact it is retracted at the trial does not affect its admissibility. The ourt can act on it. At Page 310.

DISSENTING VIEWS OF KARIBI-WHYTE, J.S.C.:

1. On whether a confession should be govern by the inconsistency rule:

The inconsistency rule was developed in the interest of justice and to ensure that the Evidence received is credible. It is for the same consideration that a confession should be governed by the same rules. At page 302.

*2.**On nature and treatment of confession:***

Confession are relevant and are therefore admissible in evidence. Confession are evidence upon which the court can act once admitted in evidence even if subsequently retracted. See Obosi vs. The State (1965)NMLR.119;Durugo vs. State (1992)7 NWLR (pt. 255)525; Ejinima vs. State (1991)6NWLR (pt. 200)637. At Page 302

3. *On course opened to the court when confession is retracted:*

It would seen to me that where the extra-judicial confession of the accused is allowed to co-exist side by side with its retraction, the retraction of the confession casts doubt both on the veracity of the confession, and the credibility of the accused. This is because the existence of two inconsistent versions of the same story can hardly induce credibility in respect of any of them. It is in this regard that the court will turn to other facts outside the confession rendering it probable that it is true- See Ndo vs. The Queen (1953) 14 W ACA. At Page 302 .

4. *On nature of confession:*

Confession is not defence. It only strengthens the case of the prosecution.

and in a proper case reduces the problems in establishing the guilt of the accused. At Page 303.

5. *On whether the accused should be convicted on his confession alone:*

I regard it an infringement of the constitutional protection of the accused to found his conviction on his own confession alone except where this is based on his plea of guilty on arraignment or anytime during the trial, or supported by evidence outside the Confession. At Page 303.

6. *On whether the Inconsistency rule should apply to confession:*

The ratio decidendi of R. vs. Golder (supra) and R. vs. Ukpong (supra) is that the evidence in court of a witness where inconsistent with his extra-judicial statement is to be regarded as unreliable. The previous inconsistent statement of such witness is not evidence of the truth of the matters stated therein. Therefore by analogical reasoning of the fact that an accused person is a witness, and an extra-judicial confession is an extra-judicial statement, a retracted naturally falls within the scope of the inconsistency rule and ought to be caught by the principle. At Page 304.

IDOWU VS. STATE (2001) 2 ACLR 337

CONFESSION

CRIMINAL LAW & PROCEDURE *- Confession of co-accused - Whether and when can be basis of convicting an accused - S.27 Evidence Act Considered.*

PRINCIPLES:

1.On whether and when the confession of a co-accused can be the basis of finding an accused guilty of the same offence:

Nor can the confession of the co-accused upon which he (co-accused) was convicted for stealing be the basis for finding the Appellant guilty of the same offence. Indeed, voluntary confessions are deemed to be relevant facts as against only the persons who make them. See ***Section 27(2) of the Evidence Act, Cap. 112, Laws of the Federation, 1990****. See also Saidu vs. The State (1982) 13 NSCC 70 at 78. They are not ordinarily evidence against co-accused persons. See Utufale vs. The state(1968) MNLR 261; Ohuka vs. The State (No.2) (1988) 2 NWLR (Pt.86) 36 at 51 charged jointly with a criminal offence in the presence of the orders implicating them and any of such other persons adopted the said statement by words or conduct, the court shall take such statement into consideration as against any such other persons.* ***See Section 27(3) Evidence Act*** *(ibid) and Enitan vs. The State (1986) 3 NWLR 604 at 611.At page 354.*

MOSHOOD VS. THE STATE (2004) 14 NWLR 422

CONFESSION

***CRIMINAL LAW AND PROCEDURE**-Confession- extra- judicial confession of accused- where retracted – effect- duty of court in respect of .*

PRINCIPLE:

1. On treatment of retracted confessional statement:

Where an accused retracts his confessional statement, the court has to consider the statement along with other testimony in order to determine whether the confession was voluntary or not . Mere retraction does not render a voluntary confessional the statement by an accused statement may be sufficient to ground a conviction notwithstanding its retraction by the accused . All the court will need to do is to consider both the confession and the evidence in retraction and decide where the truth lies. Thus, retraction of confessional statement places an extra burden on the prosecution to establish the veracity of the contents of the statement. In the instant case, the trial court failed to find out where the truth lay in the statement as there was no trial within trial held in the course of the trial.{Egbeyom vs. State (2000) 7 NWLR (Pt.654) in a 559; Ukut vs. State (1995) 9 NWLR (PT. 420) 3921 referred to (pt.441, paras.A-D)

***Per Omade, J.C.A.** at page 439, paras. C-D: "The confessional statement relied upon to secure the conviction of the accused person is not voluntarily made, and it is founded on hearsay evidence, it is therefore unreliable and inadequate to prove the guilt of the accused person . Consequently it should not have been admissible in evidence. The statement of confession is incompetent"*

17

CONSPIRACY

BALOGUN VS. A.G. OGUN STATE (2002)9NSCQR 287

CRIMINAL PROCEDURE LAW *Conspiracy–Whether inappropriate where substantive offence is not proved.*

PRINCIPLE:

1. On whether conspiracy to commit an offence becomes inappropriate when the substantive offence is not proved:

Conviction for conspiracy does not become inappropriate I simply because the substantive offence has not been successfully proved. It is a known principle of law that conspiracy to commit an offence is a separate and distinct offence and is independent of the actual commission of the offence to which the conspiracy is related. The offence of conspiracy may be fully committed even though the substantive offence may be abandoned or aborted, or may become impossible to commit. ***Per S. O. Uwaifo, JSC*** *at page 297.*

OBIAKOR VS. STATE (2002) 10 NSCQR 927

CONSPIRACY

***RIMINAL PROCEDURE** - Conspiracy - Meaning of.*

***RIMINAL PROCEDURE** - Conspiracy - Whether automatically fails en substantive offence has failed.*

***RIMINAL PROCEDURE** - Conspiracy - Whether husband and wife are minally responsible for conspiracy between themselves alone.*

INCIPLES:

On whether husband and wife are criminally responsible conspiracy ween themselves alone:

o I do not agree with the learned counsel for the 1st appellant that the ***tion 34 of Criminal Code*** *affects the jurisdiction of the trial court or the urt of Appeal to entertain the case.* ***Section 34 of the Criminal Code*** *rely provides that "a husband and wife of a Christian marriage are not minally responsible for conspiracy between themselves alone" This vision, in my respectful view, only gives a defence to a Christian couple rged and tried for conspiracy between the two of them only. This is based the common law presumption that a husband and wife are one, each ng part of the other, and since conspiracy requires the agreement of at t two persons to commit an offence such husband and wife cannot mit the offence. It is therefore not a question affecting the jurisdiction of courts as such but creates a complete defence to the Christian husband wife. Therefore as jurisdiction is not involved, to raise it is a fresh point done as in this case, leave is necessary.* ***Per U. A. Kalgo, JSC****., at page*

2. On whether a conviction for conspiracy fails because the conviction f the substantive charge had failed:

I also agree with the submission of the learned counsel for the respondent the brief that a conviction of conspiracy charge does not fail merely becau the conviction on the substantive charge had failed. ***Per U. A.Kalgo, JSC*** *pages 937 - 938.*

3. On the meaning of conspiracy:

Conspiracy as an offence is the agreement by two or more persons to do cause to be done an illegal act or legal act, by illegal means. The actu agreement alone constitutes the offence and it is not necessary to Prove th the act has in fact been committed. Because of the nature of the offence conspiracy, it is rarely or seldom proved by direct evidence but circumstantial evidence and inference from certain proved acts. But whe persons are charged with conspiracy and with offence committed pursuance of it as in the instant case, care must be taken in considering t evidence relevant to conspiracy and keep the several issues clear. ***Per A. Kalgo, JSC*** *at page 938.*

ABACHA VS. STATE(2002) 11 NSCQR 345

CONSPIRACY

RIMINAL LAW - Conspiracy - Offence of - Best evidence.

RINCIPLE:

On the best evidence in a charge of conspiracy;

e best evidence of conspiracy is usually obtained from 'one of the nspirators or from inferences. See this Court's remarks in the case of trick Njovens & Ors. vs.The State (1973) NNLR 76 at page 95:

"When it is proposed to give evidence of the happenings inside hell it is only a matter of common sense to call one of the inmates of that place or one whose business is carried out in reasonable propinquity to hell and it must be surprising indeed to find even a lone angel fit and qualified for the assigt1ment. Indeed, it would be preposterous to look for such evidence in other directions.." The overt act or omission which evidence conspiracy is the actus reus and the actus reus of each and every conspirator must be referable and very often is the only proof of the criminal agreement which is called conspiracy. It is not necessary to prove that the conspirators like those who murdered Julius Caesar, were seen together coming out of the same place at the same time and indeed conspirator s need not know each other. They need not all have started the conspiracy at the same the time for a conspiracy started by some person may be joined at a later stage or later stages by others. The gist

of the offence of conspiracy is the meeting of the conspirator
This is hardly capable of direct Proof for the offence
conspiracy is complete by the agreement to do the act or mak
the omission complained about. Hence, conspiracy is a matte
of inference from certain criminal acts of the parties concerne
done in pursuance of an apparent criminal purpose in commo
between them and in proof of conspiracy the acts or omissio
(and or commissions) of any of the conspirators in furtherance
of the common design may be and very often are given
evidence against any other or others of the conspirators. It
therefore, the duty of the court in every case of conspiracy
ascertain as best as it could the evidence of the complexity
any of those charged with that offence.''

Per S. U. Onu, JSC *at pages 404-405.*

UPAHAR VS. STATE (2003) 6NWLR PT.816 PG. 231

CONSPIRACY

CRIMINAL LAW AND PROCEDURE– *Abetment of crime – ingredients of – punishment therefore – whether same with punishment provided for the main offence.*

CRIMINAL LAW AND PROCEDURE–*Conspiracy- nature of – what constitutes – how proved.*

CRIMINAL LAW AND PROCEDURE *– Criminal conspiracy – what constitutes –* ***Section 96 (1), Penal Code.***

CRIMINAL LAW AND PROCEDURE *– Proof of crime – conspiracy – how proved – whether may be inferred.*

PRINCIPLES:

1. On what constitutes criminal conspiracy:

By virtue of ***Section 96(1) of the Penal Code****, when two or more persons agree to do or cause to be done an illegal act or by illegal means an act which is not illegal, such an agreement is called a criminal conspiracy. P. 262, paras. A – B).*

2. On nature of offence of conspiracy:

Conspiracy is distinguished from other offences in that the crime consists simply in the agreement or confederacy to do some act, no matter whether it is done or not. In other offences, the intention to do a criminal act is not a crime itself until something is done amounting to the doing or attempting to do some act to carry out the intention. (P. 262, paras. C – D).

3. On proof of conspiracy:

In proving the offence of conspiracy, sometimes there is direct and distinct evidence on the hatching of the plot, in which case an accomplice or informer is called by the prosecution and he gives evidence of it. In some other times, it is open to the trial court to infer a conspiracy from the fact of doing things towards a common end. In the instant case, the trial court was right to have inferred conspiracy from the acts of the appellants and to have convicted them of same. This is because evidence abound in support of a common design by the appellants. Onochie vs. Republic (1966) NMLR 307 referred to. (P. 262 – 263, paras. D – B.)

18

CORROBORATION

UGHENEYOVWE VS. STATE (2004) 12 NWLR 626

CRIMINAL LAW AND PROCEDURE*-"Corroboration"-meaning of-corroborative evidence.*

PRINCIPLES:

1. On meaning of corroboration:

The word corroboration means the confirmation of a witness's evidence by independent testimony. [Nwambe vs. State (1995) 3 NWLR(Pt. 384) 385; Ogunbayo vs. State (2002) 15 NWLR (Pt 789) 76 referred to] (P. 648, para A)

2.On what constitutes corroborative evidence;

While corroborative evidence must be independent and capable of implicating the accused in relation to the offence charge, it must also be credible and must go to confirm and support that evidence which is sufficient, satisfactory and credible.[Iko vs. State (2001) 14 NWLR] (Pt.732) 221 referred to](P. 684, para. B)

UPAHAR VS. STATE (2003) 6 NWLR PT.816 PG.231

CORROBORATION

CRIMINAL LAW AND PROCEDURE-*Proof of crime- corroboration-determination of whether evidence corroborative of another-relevant consideration. Implicate the accused person.*

PRINCIPLE:

1.On relevant consideration in determining whether evidence corroborative of another;

In considering whether some evidence is corroborative of some other, the court must take all the little items of the former together and consider whether they all add up to corroboration as a whole.[Queen vs. Omisade (1964) NMLR 64 referred to](P.257, paras C-D)

19

DEFENCE

SHANDE VS. STATE(2005) 22 NSCQR 756

CRIMINAL LAW - *Defence of Provocation - When will avail an accused*

CRIMINAL LAW AND PROCEDURE - *Provocation- Defence of in a charge of murder or culpable homicide- Requirement thereof*

EVIDENCE *- Confessional Statement - Whether becomes Inadmissible merely because an accused has resiled from it*

EVIDENCE *- Defence of Provocation - When will avail an accused*

EVIDENCE *- Provocation - Defence of in a charge of murder or culpable homicide - Requirement thereof.*

PRINCIPLE:

1. on the defence of provocation in a charge of murder or culpable homicide - requirement thereof - when will avail an accused;

It is settled law that to avail himself of the defence of provocation, the appellant must have done the act for which he is charged

(i) in the heat of passion;

(ii) The act must have been caused by sudden provocation;

(iii) The act must have been committed before there was time for passion to cool;

(iv) The mode of resentment must be proportionate to the provocation offered.

These four requirements must co-exist before the defence can succeed." ***Per A. O. Ejiwunmi, JSC*** *at pages 767 -768 .*

OFORLETE VS. THE STATE(2000) 3 NSCQR 243

DEFENCE

CRIMINAL PROCEDURE *- Defence of an accused - Must be considered.*

PRINCIPLES:

1. on the duty of the Court to consider any defence raised by the accused person in a criminal trial: *-*

It is trite law that in a criminal trial, any defence raised by an accused person must be considered however slight. ***Per U A. Kalgo JSC*** *at page 254.*

2. It is also settled law that any defence to which an accused person is on the evidence entitled to, should be considered however stupid or unreasonable. ***Per U. A. Kalgo JSC*** *at page 254.*

SUNDAY AMALA VS. STATE(2004) 8 NSCQR 834

DEFENCE

CRIMINAL PROCEDURE LAW *- Self defence - Where accused relies upon - Effect of.*

PRINCIPLES:

1. On when can an accused rely on self defence as defence.

To my mind where the circumstances of the unproved attack was sudden and unavoidable and the accused cannot escape the probable fight due to where he was such as in this case when he was climbing down, when the unprovoked attack began, and escape was impossible, it is to my mind only reasonable for him to defend himself. ***Per I. C. Pats- Acholonu, JSC*** *at page 870.*

2. On when can an accused rely on self defence - effect of ;

It cannot be doubted that a man is entitled to defend himself from an unprovoked assault from which he has an apprehension of possible death or great violence to his person likely to result to grievous bodily harm, that he should effectively defend himself with any weapon available to him . ***Per I. C. Pats-Acholonu, JSC*** *at page 870 .*

3. On whether facts as stated in this case compel the appellant to defend himself.

A careful review of all the evidence convinces me that the conviction of the Appellant in the Court of first instance affirmed by the Court below cannot with greatest respect, stand. There was in this case essential elements of

self- defence and fear experienced by the accused that if he did not defend himself he would be dead. That, to my mind should raise a reasonable doubt of the guilt of the Appellant. To my mind this was a killing done in self defence and nothing else. ***Per I. C. Pats-Acholonu, JSC*** *at page 874.*

GUOBADIA VS. STATE(2004) 17 NSCQR 222

DEFENCE

***CRIMINAL LAW** - On whom lies burden of proof of insanity where it is aised as a defence.*

***CRIMINAL PROCEDURE LAW** –Trial judge determining a defence of nsanity- What must be taken into consideration*

PRINCIPLES:

. On whom lies the burden of proof of insanity it is raised as a defence;

herefore, an accused person who pleads insanity as a defence to an offence ith which he is charged has the of proving that he was suffering from nsanity or, insane delusion at the time the offence with which he was harged was committed. The burden of proof on the accused is on the alance of probability or preponderance of evidence and not on the basis of roof beyond reasonable doubt. ***Per D. O. Edozie, JSC,*** *at page 232.*

On what an accused person relying on insanity as a defence must rove.

or an accused person to successfully rely on the first limb of Section 28 of e Criminal Code supra, he must prove that at the time the offence was ommitted, he lacked:

) The capacity to understand what he was doing

) Capacity to control his action

c) Capacity to know that he should not do the act or make the omission.

er D. O. Edozie, JSC, *at pages 232 - 233.*

3. On what an accused person relying on insanity as a defence must prove;

For the second limb of ***Section 28 of the Criminal Code*** *to avail an accused person as a defence, he must show* that *there is a set of facts which does not actually exist but which he imagines to exist, that as a result of his belief that the set of facts actually exists as he imagined them, he commits an act of omission or commission which has resulted in the charge on which he stands trial and that if those facts had existed as so imagined by him they would have amounted to a complete defence to his act which is called in question even though the factual situation was not real.* ***Per D. O. Edozie, JSC,*** *at page 233.*

4.On what a trial judge determining the defence of insanity must take into consideration;

In determining the defence of insanity, the trial Judge is enjoined to take into consideration any admissible medical evidence and the whole of the facts and the surrounding circumstances of the case which will include the nature of the killing, the conduct of the accused before, at the time as well as after the killing and any history or mental abnormality. ***Per D.O. Edozie. J.S.C,*** *at page 235.*

AIGUOKHIAN VS. THE STATE(2004) 18 NSCQR 173

DEFENCE

***RIMINAL LAW** - Murder- criminal liability therein - defence of mistake - eliance thereon by an accused person must be based on a true and credible ory.*

***RIMINAL LAW** - Murder- criminal liability therein - defence of mistake - eliance thereon by an accused person - What constitutes the test of honest elief.*

RINCIPLES:

On the defence of mistake in criminal liability - accused relying thereon ust present a true and credible story.

is the law that where an accused acted under an honest and reasonable lief in a given state of situation which if true would have justified the act, may set up such a credible defence. But the story must be true, in other rds, capable of being believed and not an insult to intelligence. See R. vs. lson 23 Q.B.D. /68. In that case the Respondent was convicted of bigamy the Court of first instance having undergone a second marriage after an nest belief that her husband who had deserted her for a such honest and sonable belief would entitle her to an acquittal. There may be a relief m criminal liability or guilt unless the mistake arose from lack of proper e expected from a reasonable man of average intelligence. ***Per I. C. Pats-holonu, JSC*** *at page 178.*

2. On the defence of mistake in criminal liability - what constitute the tes

of honest belief ;

The test of honest belief which should shore up a defence case in the High
Court, an issue arose as of mistake rests a priori on whether the accused
honestly and in good faith and without any fault or negligence made , a
mistake in the nature of the situational premise prevailing as at the time
and that, shall be determined and related to the circumstances as migh
reasonably to be expected to affect his mind to induce belief or otherwise o
the defence of mistake. ***Per I. C. Pats-Acholonu, JSC*** *at page 179.*

OKEKE VS. STATE(2003) 13 NSCQR 754

DEFENCE

CRIMINAL LAW AND PROCEDURE *- Murder charge - defences of insanity and intoxication - Plea of - Sections 18 and 19 Criminal Code 36 Laws of Anambra State - onus of proof where lies.*

PRINCIPLE:

1. On the defences of insanity and intoxication in a charge of murder in Sections 18 and 19 of Criminal Code cap. 36 laws of Anambra State - onus of proof where lies ;

If the appellant wanted to avail himself of the defences in sections 18 and 19 above, the onus was on him to establish same on a balance of probability – Udofia vs. The State (1981) 11-12 SC 49; Madjemu vs. The State(2000) 5 SCNJ 31; (2001) 9 NWLR 349. This is because every person is presumed to be of sound mind and at any time which comes into question, until the contrary is proved - ***Section 17 Criminal Procedure Law of Anambra State; Section 27 Criminal Procedure Act****. Insanity is a question of fact which must be established either by calling direct evidence or through cross- examination of prosecution witnesses and it is dependent on the previous or contemporaneous acts of the accused person.* ***Per M. E. Ogundare, JSC*** *at pages 796 - 797.*

UWAEKWEGHINYA VS STATE (2005) 21 NSCQR 570

DEFENCE

CRIMINAL LAW *- Provocation - defence of - when will reduce murder to manslaughter.*

CRIMINAL LAW *- Whether an act of revenge not done in the heat of passion can successfully form the basis of defence of provocation.*

PRINCIPLES:

1. On whether a weak and stupid defence must be considered by courts ;
Now, it is settled law that in a trial of murder it is the duty of the court to consider all the defences raised by the evidence whether the person charged specifically put up such defences or not. See Apishe vs. The State (1971) 1 ALL NLR 50. And no matter how weak or stupid a defence raised by an accused may appear, it must be properly and adequately considered. ***Per D. Musdapher, JSC,*** *at page 584.*

2. on whether a premeditated intent is compatible with defence of provocation;

Premeditated intent is incompatible with the defence of provocation, so that an accused who kills another cannot be said to have been "provoked". Inyama vs. The State (1972) 3 SC 94. ***Per D. Musdapher, JSC,*** *at page 585.*

3. On whether an act of revenge, not done in the heat of passion can successfully form the basis of a defence of provocation;

It is also settled law that an act of revenge, not done in the heat of passion cannot successfully form the basis of a defence of provocation. See Chukwu

vs. The State [1966] NMLR 274; or where the accused had sufficient time to cool down before doing the act complained of. See Ashimiyu vs The State [1982]10 SC ***Per D. Musdapher, J S C*** *at page 586.*

4. On when defence of self-defence will be available to an accused ;

But the defence of self-defence in my view is different. Before the defence as available, it must be shown by the person relying upon it that he reasonably believed that there was no other way of saving himself from death or grievous bodily harm other than by using such force is he did and that he tried to disengage from the event which led to the application of such force or in the instant case the use of cutlass. ***Per D. Musdapher, JSC,*** *at page 587.*

5. On when defence of self-defence will be available to an accused ;

For an accused to avail himself of the defence of self-defence, he must show by evidence that he took reasonable steps to disengage from the fight or make some physical withdrawal. But the issue of disengagement depends on the peculiar circumstances of each case. ***Per D. Musdapher, JSC,*** *at page 587.*

SOWEMIMO VS. STATE (2004) 18 NSCQR 24

DEFENCE

CRIMINAL LAW *- Alibi - defence of - whether can still avail an accused unequivocally pinned down to the locus in quo.*

CRIMINAL LAW *- Alibi - meaning of - defence of - when will be considered by the court - when not.*

PRINCIPLES:

1. On when the court will consider the defence of alibi ;

I really fail to see how this Court would seriously consider the so - called defence of Alibi of the 2nd appellant when;

(a) He never raised his defence at the earliest rail opportunity he had;

(b) When during his evidence he tried to disown his statement Exhibit K stating that he is an illiterate and could neither read nor write, yet he admitted having read up to standard ;

(c) When his defence of Alibi contradicts in material particulars in fact completely at variance. with Exhibit K. ***Per I. C. Pats-Acholonu, JSC,*** *at page 33.*

2. On whether the defence of alibi can still avail on accused who is unequivocally pinned to the locus in quo;

It is elementary law that where an accused person is unequivocally pinned to the locus in quo as one committing the offence, the defence of alibi no more avails the accused. This is because the defence by the accused that he was else where at the material time the offence was committed is destroyed by the unequivocal evidence of witness or witnesses tying him to the locus in quo as one who committed the offence. ***Per Niki Tobi, JSC*** *at page 40.*

EBRI VS. THE STATE (2004)18 NSCQR 445

DEFENCE

IMINAL LAW AND PROCEDURE *- Alibi- defence of - failure of police nvestigate - when will not result into acquittal of accused Person.*

INCIPLE:

On when a failure to investigate an alibi by the police will not result in acquittal of the accused person ;

ere evidence of prosecution witnesses specifically and unequivocally pins n an accused person to the scene of crime and says that he committed offence, failure to investigate the alibi by the police will not result in an uittal; of the accused. In such a situation, the failure to investigate the i is not only superfluous but also otiose. In the light of the evidence of 1, PW2, andPW3, specifically pinning him to the murder of the deceased, as, with the greatest respect, not available to the Court of Appeal to charge and acquit the 2nd appellant on the so-called alibi,. ***Per Niki i, JSC*** *at pages 458-459.*

UGHENEYOVWE VS. STATE (2004) 12 NWLR 626

DEFENCE

CRIMINAL LAW AND PROCEDURE *-Defence – accident- accident discharge of firearm-whether attracts criminal liability.*

CRIMINAL LAW AND PROCEDURE *–Defence-defence of accident discharge of firearm- where raised by accused- onus on prosecution to lea evidence to negative- failure to so lead- effect.*

PRINCIPLES;

1.On whether accidental discharge of firearm attracts criminal liability;

Where a person discharge a firearm unintentionally and without th attendant criminal malice or negligence, he will be exempted from crimina responsibility both for the firearm and its consequence.[Oguonzee vs. Stat (1998) 5 NWLR(Pt. 551) 521; Sholuade vs. The Republic (1966) 1 ANL 134; Chukwu vs. State(1992) 1 NWLR (Pt.217)255; Ajose vs. State(2002) NWLR (Pt.766)302 referred to] (P.650,paras. E-F)

2.On duty of prosecution where accused raises defence of accidental discharge of firearm;

Whenever an accused person raises the defence of accidental discharge of firearm, the onus still remains on the prosecution to prove its case beyond reasonable doubt by leading credible and admissible evidence to negative the defence. In the instant case, he evidence that was established before the trial court bore out the appellant's defence of accidental discharge of firearm. In the circumstance, his conviction and sentence for murder are unsustainable [Ajose vs. State (2002) 7 NWLR (Pt. 766) 302 referred to] (Pp.650, paras F-G, paras C-D) 459.

MADJEMU VS. STATE (2001) 2 ACLR 245.

DEFENCE

IMINAL LAW AND PROCEDURE *–Defence of insanity- element essary to establish.*

IMINAL LAW AND PROCEDURE *–Defence of automatism-how ved- on whom lies to prove.*

INCIPLES:

n the element necessary to establish the defence of insanity;

rder to establish the defence of insanity, the defence must prove;

that at the relevant time of committing the offence, the accused was suffering either from mental disease or from natural mental infirmity;

and

that the mental disease or infirmity was such that at the relevant time the accused was, as a result deprived of capacity;

(i) to understand what he was doing: or

(ii)to control his action; or

(iii)to know that he ought not do the act or make omission. See R vs. Omoni (1949)12 WACW, 511 at page 512-513; Sanusi vs. State(1984)10 SC 166 AT 77. At page 254

n how and whom the burden lies, to prove the defence of automatism;

to the defence of automatism, the burden of proving it is also on the ellant. To discharge this burden it is enough for the appellant to merely "I was confused" or that "I did not know why I did it". There must be dence of the cause of the unconsciousness e.g. a person suffering from ebral tumor or epilepsy.

SUNDAY ANI VS. THE STATE (2003) 11 NWLR PT 830 P.142

DEFENCE

CRIMINAL LAW AND PROCEDURE *–Defence- Defence- alibi-meani*
and purport of-standard of proof required.

CRIMINAL LAW AND PROCEDURE *–Defence-Defence-alibi-whe*
raised-duty on prosecution to investigate-where accused person is fixed
scene of crime-effect.

CRIMINAL LAW AND PROCEDURE *–Defence-defence open to accuse*
person charged with capital offence-duty on court to consider.

PRINCIPLES:

1. On when court bound to consider all defences open to an accuse
person:

In all cases attracting capital punishment, it is incumbent upon the tria
court to consider all the defences put up by the accused person, express o
implied in the evidence before the trial court. However trivial the defence
must be looked into, and however fanciful, stupid or doubtful, it deserves
consideration. In the instant case, the trial court considered all defences
available to the appellant. [Njoku vs. State (1993) 6 NWLR (Pt. 299) 272; R
vs. Barimah (1945) 11 WACA 49. (Pp. 166, para. G, paras. A-B).

2. On purport of defence of alibi:

An alibi means that the accused was somewhere other, than where the
prosecution alleged he was at the time of the commission of the offence
alleged. Consequently, he could not have committed or would have
participated in the commission of the offence with which he is charged. Alibi

is the commonest of all defences and does not require ingenuity but ordinary common sense to conceive that a person charged might say he was not there at the scene and at the time the alleged offence was committed. [Ntam vs. State (1968) NMLR 86; Gachi vs. State (1965) NMLR 333 referred to.] (Pp. 166, paras. G-H, 167, paras. B-C).

. On Duty on prosecution to investigate where defence of alibi is raised:
t is the duty of the prosecution to disprove the defence of alibi set up by an ccused person and to this end to investigate the alibi. However, where here is an eye-witness evidence of participation by an accused person in the rime, it is an issue of credibility and if the evidence of the witness is elieved by the court, it displaces the defence of alibi. Once an accused erson is fixed at the scene of crime, his defence of alibi must fail. In the nstant case, the trial court believed the evidence of PWI that the appellants hom he knew very well before the date of the robbery were the two persons ho robbed him. That the evidence displaces the appellant's defence of alibi nd it is immaterial that the police did not investigate the alibi. [Ntam vs. tate (1968) NMLR 86; Gachi vs. State (1965) NMLR 333; Yanor vs. State 965) NMLR 337; Adedeji vs. State (1971) 1 All NLR 75; Ozulonye vs. ate (1982) 2 NCR 343; Akpan vs. State (1991) 3 NWLR (Pt. 182) 646; Odu . State (2000) 7 NWLR (Pt. 664) 283 referred to.] (Pp. 167-168, paras. 1 -D, 172, paras. C-F)

ROSE OSHODI VS. STATE (2001) 12 NWLR PT 726

DEFENCE

CRIMINAL LAW AND PROCEDURE- *Defences- alibi-where raised by accused person – onus of establishing same-on whom lies where onus to establish misplaced-effect.*

CRIMINAL LAW AND PROCEDURE- *Defences- alibi-where raised by accused person –failure of prosecution to investigate- effect of.*

PRINCIPLES:

1. On duty on prosecution to investigate alibi where raised by an accused and effect of failure to investigate:

Once an alibi has been raised by an accused person, the burden is on the prosecution to investigate and rebut such evidence in order to its case beyond reasonable doubt. Thus, a duty is cast on the prosecution to disprove the same. In the instant case plea of alibi was tantamount to an admission on the part of the prosecution. [Adedeji vs. State (1971)1 All NLR 75; Ozaki vs. State (1990)1 NWLR (Pt. 124) 92; Musa vs. State (1996) 8 NWLR (Pt . 468) 610; Yanor vs. Sstate (1965) NMLR 337 referred to (Pg.228, paras.H)

2. On whom lies onus to establish alibi and effect of misplacing same:

It is not the duty of the defendant to establish his alibi once it is raised and where the accused person is put in a position to prove his plea, the onus is misplaced. Such misplacement of the onus of proof is sufficient to vitiate the trial. In the instant case, to suggest as the trial court had done in its finding that the I.P.O. was never cross-examined as to whether or not he took out

he appellant from prison custody, for investigation is to cast the onus of establishing the appellant's alibi on the appellant (accused) contrary to law. [Alabi vs. The State (1993) 7 NWLR (Pt. 307) 511 referred to.] (p.231, paras. D-F).

ARABI VS. STATE (2001) 5 NWLR PT. 706 P.256.

DEFENCE

CRIMINAL LAW AND PROCEDURE *–Defence-defence of accident – nature and application of whom lies- when raised by accused person-duty of the prosecution.*

PRINCIPLES;

1. On nature of defence of self- defence;

Under and by virtue of ***section 59 of the Penal Code****, nothing is an offence which is done in careful exercise of the right of private defence. Under* ***Section 65 of the Penal Code****, the right or defence of private defence of the body extents to the voluntary causing of death only when the cat o be repelled is of any of the following descriptions, namely;*

(a) an attack which causes reasonable apprehension of death or grievous hurt; or

(b) rape or assault with the intention of gratifying unnatural lust or

(c) abduction or kidnapping.

In the instance case, there is no doubt from the evidence before the trial court that the appellant must on objective reasoning had come to a conclusion that his own life was in danger, indeed serious danger of death or grievous hurt from the attack by the deceased with the car intending to run down the appellant together with his gum even before it could be fired at or upon.[R. vs. Igwe (1938) 4 WACA 117; Kwaghshir vs. State (195) 3 NWLR (PT. 386) 651 referred to)

. On nature of defence of accident;

Under and by virtue of ***Section 48 of the Penal Code****, nothing is an offence which is done by accident o9r misfortune and without any criminal intention or knowledge in the course of doing a lawful act in careful manner by careful means and with proper care and caution. From the foregoing, the defence of accident presupposes that the accused physically committed the offence with which he is charge but having regard to the facts which he admits he should with which he admits he should be acquitted all the same because his conduct in the commission of the offence was an accident. In the instant case, the evidence of the appellan5t on record was the when he worked his rifle and put on slow, only one bullet was expected to come out of it. However, in the process of dodging, the safety catch shifted to rapid and the appellant did not know this before he started firing, which resulted into the rifle releasing eight bullets. It was an accident.[Chukwu vs. State(1992) 1 NWLR (PT.217) 255 referred to].*

Per MOHAMMAD, JCA. *at page 274-275, pares H-B;*

In the present case it is in evidence that while the appellant was waiting for the emergence of the deceased's smuggled Honda vehicle from the diversion to the main road, he was quite conscious that his task in stopping the vehicle would require the shooting at the tiers. However, the manner the deceased approached the appellant with speed which resulted in the appellant jumping from the road and falling on his rifle as a result of which the setting of the rifle shifted from slow to rapid thereby resulting in releasing 8 bullet rapidly into the vehicle when the appellant fired the rifle, was indeed not intended by the appellant. It was therefore an accident that was not willed by the appellant and without his fault as he merely fired at the zooming

vehicle of the deceased without aiming at the deceased while he was still no the ground. Since the prosecution in proving its case against the appellant did not lead any evidence to negative the version given by the appellant, defence of accident in this respect must succeed"

2.On the nature of defence of accident:

An act is considered accidental when the act by which it is caused is not done with the intention of causing it and the occurrence is so astonishing that a person of ordinary caution would not be expected to take reasonable precaution against its occurance. It does happen outside the ordinary course of event. The act leading to the accident must be a lawful act done in a lawful manner and without fault on the part of the appellant, in that appellant, in that the appellant , intentionally set out to kill the deceased.

Per SALAMI, JCA *at page...*

" The appellant did not set out to intentionally kill the deceased. His only intention was to apprehend the deceased and the co-accused of the Honda Accord vehicle, being suspected to be illegally imported into the country, by demobilizing it. He was on his lawful duty patrolling Nigerian border and has authority to shoot in order to, among other things, prevent a smuggler from escaping. The intention of the appellant as can be inferred from the circumstances of this case is evidence from the fact of the parts of the vehicle hit by the bullets released from the firearm. The shots pierced either the near side door or the tiers of the vehicle. These are consistent to the appellant's defence that he was thrown oh the ground by the dangerous manner the deceased operated the vehicle and the gun, unknown to him, switched from slow to rapid firing. When the appellant apparently pulled the trigger for a release of a gunshot killed the deceased. These pieces of

vidence remained unchallenged and uncontroverted. It is also consistent with accident. It would have been different if the gunshots had been directed t the front windscreen of the vehicle as it was approaching the appellant. This he restricted himself from doing notwithstanding that the deceased drove the vehicle menacingly and dangerously towards the appellant.

The appellant did the shooting while he was performing his lawful duty which included the use of firearm to defend himself and his colleagues as well as to prevent suspect smugglers from fleeing justice. There is no iota of evidence showing that the appellant killed whist engaged in an unlawful act. He is for this reason within contemplation of ***Section 48 of the Penal Code*** *and was not criminally liable for the killing."*

.On onus on prosecution where accused raised defence of accident:

Where an accused person raised the defence of accident, the onus is on the prosecution to prove its case beyond reasonable doubt by leading credible and admissible evidence to negative the defence and convince the trial court that the defence does not avail the accused person. Thus, where the prosecution fails to discharge the onus of proof, the accused person is entitled to an acquittal [sholuade vs. Republic(1966) 1 All NLR 34;Dangari vs. State (1968) 1 All NLR 249 referred to].

.On the meaning of accident as a crime;

An accident is the result of an unavailed act, and means an event without the fault of the person alleged to have caused it. [Bello vs. AG Oyo State(1986) NWLR(pt.45) 828; Adelumola vs. State(1988) 1 NWLR (pt.73)683 referred o]

20

DUTY OF PROSECUTION

IJIOFFOR VS. THE STATE (2001) 6 NSCOR 209

CRIMINAL LAW AND PROCEDURE *- Duty of prosecution to call required number of witness.*

PRINCIPLES:

1. On the duty of the prosecution in criminal cases.

The prosecutorial responsibility is to establish its case beyond reasonable doubt in order to secure the conviction of the appellant. How they get around achieving this is entirely the business of the prosecution. Whether they field one, two or more witnesses in satisfaction of such proof will surely depend on the circumstances of each case. But under no circumstances will the accused person dictate to the prosecution regarding the person or number of persons that they must field as witness or witnesses. ***Per Okay Achike, JSC*** *at page 237.*

2. The prosecution's duty lies in calling such witnesses as they would require to establish their case against accused person. ***Per A. O. Ejiwunmi, JSC*** *at page 229.*

YOUNG UGURU VS. STATE (2002) 10 NSCQR

DUTY OF PROSECUTION

CRIMINAL LAW *- Murder charge - what the prosecution must prove where deceased did not die immediately.*

CRIMINAL LAW *- Murder charge - what the prosecution must prove.*

PRINCIPLES:

1. On what the prosecution must prove in a murder charge wherein the deceased did not die immediately ;

The deceased was treated in two hospitals following his encounter with the appellant and died four days after. There was therefore an actus novus interveniens, which must be accounted for by the prosecution. To be able to do this, there must be evidence of the type of attention and treatment given by each hospital. In the absence of that, there is likely to be a break in the chain of causation. In the present case, the link between the appellant's act and the cause of death was broken with dire consequences, particularly as there is no autopsy report. It is therefore impossible to conclude with certainty what the deceased died from, in which case the appellant must be acquitted of the offence of murder with which he is charged. The burden on the prosecution is to prove not only that the act of the appellant could have caused the death of the deceased but that it certainly did. If there is the possibility that the accused died from other causes than the act of the appellant, the prosecution has not established the case against the appellant.

Per S. O. Uwaifo, JSC *at page 55.*

2. On the duty of the prosecution in a criminal trial.

It is the duty of the prosecution in a criminal trial to prove the charge beyond reasonable doubt. ***Per Uthman Mohammed, JSC*** *at page 54.*

IBEH VS. STATE (2001) 2 ACLR 376

DUTY OF PROSECUTION

CRIMINAL LAW AND PROCEDURE *–Duty on prosecution to prove case beyond all reasonable doubt.*

PRINCIPLES:

1. On duty of prosecution to prove all material facts of its case beyond reasonable doubt;

The principle of our legal system in respect of criminal prosecution is that the prosecution must prove its case beyond reasonable doubt on all material facts. At page 386.

2. On burden of prosecution to prove the guilt of an accused beyond reasonable doubt in all cases;

The burden remains the same for the prosecution to prove the guilt of an accused person beyond reasonable doubt whether the accused is a civilian or a person in one of the disciplined uniform forces. At page 388.

21

HOMICIDE

ADEBAYO AMUSA VS. STATE (2003)13 NSCQR 173

CRIMINAL LAW - Homicide cases - medical evidence. whether most necessary therein.

CRIMINAL LAW -Homicide cases - pathologist - definition of for the purpose of post mortem.

PRINCIPLE:

. On whether medical evidence is most necessary in homicide cases. (Citing Karibi-Whyte JSC in Edwin Ogba V. The State (/992) 2 NWLR (pl. 222)199)

t has long been established that medical evidence as to the cause of death is ot an invariable essential requirement in all cases of homicide. In the bsence of medical evidence the court can infer cause of death from the ircumstances of the evidence adduced before it. In the instant case, the roof of cause of death was not left to inference but death having been aused instantaneously following the accident. The cause of death could be nferred to be due to the accident. ***Per S. U. Onu, JSC*** *at page 183.*

AHMED VS. STATE (2001)8 NSCQR 273

HOMICIDE

CRIMINAL PROCEDURE LAW *- Culpable Homicide:- Ingredients to prove same.*

PRINCIPLES:

1. On the ingredients to prove a charge of homicide;

In a charge of homicide, therefore, the cause of death of the deceased must be established, admittedly beyond reasonable doubt, and the onus lies on the prosecution to discharge this burden of proof. It must also be established that it was the act of the accused person that caused such death of the deceased. Where, however, the deceased died in circumstances which leave no doubt as to the cause or manner of death, medical evidence can be dispensed with. ***Per A. I. Iguh JSC*** *at page 302.*

2. On the most important ingredient to prove a case of homicide.

At all events, what is of paramount importance for decision in homicide cases is whether from_the legal point of view_the death of the deceased was caused by injuries or wound he sustained through the act of the accused and not whether from the medical point of view the death of the deceased was caused by such injuries. ***Per A. I. Iguh JSC*** *at page 309.*

3. On the meaning of culpable homicide under section 220 of the Penal Code;

The offence of culpable homicide punishable with death under Section 220 of the Penal Code is committed where a person causes the death of another

doing an act ,with the intention of causing his death or such bodily injury is likely to cause death or by doing an act knowing that he is likely by ch act to cause death or by doing a rash or negligent act. ***Per A. I. Iguh SC*** *at page 310.*

IHUEBEKA VS. STATE (2001)2 ACLR 183

HOMICIDE

CRIMINAL PROCEDURE LAW *- Homicide cases- cause of death known whether medical evidence of cause of death are necessary.*

CRIMINAL PROCEDURE LAW *- Homicide cases-whether provocation renders homicide excusable*

PRINCIPLES;

1.On whether medical evidence of cause of death in homicide cases necessary where the cause of death is obvious;

Where the cause of death is obvious as in the instant case medical evidence ceases to be of practical legal necessity. See Enewoh vs. State (1989) 4 NWLR (pt. 119) 98. At page 196.

2.On whether provocation renders homicide excusable;

Even though the accused set up the defence of provocation no amount of provocation can excuse homicide or render it excusable by virtue of ***Section 318 of the Criminal Code*** *which provides;*

> *" when a person unlawfully kills another in circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for his passion to cool , he is guilty of manslaughter only". At page 196.*

GARBA VS. STATE(2001) 2 ACLR 213

HOMICIDE

***RIMINAL PROCEDURE LAW** - Homicide trials – failure to produce urder weapon-whether fatal.*

RINCIPLES:

On whether failure to produce a murder weapon during a criminal trial fatal;

he failure to produce the murder weapon during the trial is, in my view, consequential. At page 221.

On whether delivery of a violent blow on a vulnerable part of the body n be deemed as intending to cause bodily injury;

person delivering a violent blow with a stick or club on a vulnerable part the body such as the head must be deemed to have intended to cause such dily injury as he knew that death would be the probable consequence of act. At page 221.

22

MURDER

BEN VS. STATE (2005)1 NCC, 268

CRIMINAL LAW AND PROCEDURE *- Murder - offence of- when medical evidence could be dispensed with in proving the cause of the death.*

CRIMINAL LAW AND PROCEDURE *- Murder - offence of - whether medical evidence essential to prove the cause of death in all murder cases.*

CRIMINAL LAW AND PROCEDURE *- Murder - offence of- when committed.*

PRINCIPLES:

1. On when the offence of murder is committed in the cause of fighting ;

The offence of murder is committed when a person is killed in the cause of fighting; not made in self defence as in the case of R. vs Maye Nungu (1953 14 WACA if the testimony of the appellant is believe to the effect that the appellant struck the now deceased Ndukwe in the course of a fight. ***Per V.A.O. Omage JCA*** *at page trial 274.*

2. On when medical evidence could be dispensed with in proving the cause of death;

The Appellant in his brief had submitted that Ndukwe could have died from other causes than the beating. It is trite in law that the onus is on the prosecution to prove the cause of death beyond reasonable doubt. In proving the cause of death beyond reasonable doubt, it is not only by production of

medical evidence that the proof may be made. Where the victim of a beating died and the evidences leaves no doubt as to the manner and cause of death, medical evidence can be dispensed with. See (i) Famara Buhari vs. The State 1965 NMLR 16.2; (ii) Ademo Kano vs. The State (1968) NMLR222. ***Per V.A.O. OmageJCA*** *at page 275.*

3. On whether medical evidence is essential in all murder cases to prove cause of death ;

In the instant appeal the circumstantial evidence which lead irresistibly to the conclusion of the cause of death may lead to the inference of the cause of death and dispense with medical evidence. ***Per V.A.O. Omage JCA*** *at page 276.*

4. On whether where death results as a result of grievous bodily harm this will constitute murder ;

The learned trial court below considered the defence of the appellant and correctly came to the conclusion that if death results from the committal of a grievous bodily harm to another, it constitutes a murder. ***See Section 316(2) of Criminal Code Laws*** *of the Federation and the facts tendered by PWI shows that the said Ndukwe received grievous harm, which resulted in his death The injury has been proved beyond reasonable doubt to have been caused by the appellant; and an irresistible circumstantial evidence makes the cause of death referable to the serious injury caused to the deceased by the appellant. It is therefore admissible in law as proof of cause of death as held by the court below, I have no reason to hold otherwise. I affirm therefore the conclusion.* ***Per V.A.O. Omage JCA*** *at page 276.*

5. On whether medical evidence is essential in all murder cases to prove cause of death;

I wish to make a little contribution by way of emphasis. It is trite law that although medical evidence as to the cause of death is lead desirable; it is not essential in all cases of murder. Where no medical to the evidence is available or sought there must be, in order to establish the cause of death, evidence compelling the inference that the deceased died as a result of an act or omission of the person charged with causing his death. ***Per P. O Aderemi, JCA*** *at page 278.*

ORJI EDWARD VS. STATE(2005)1 NCC pg554

MURDER

CRIMINAL LAW *- Prosecution duty on to prove causes of death. - proximate and remote causes - consideration of.*

CRIMINAL LAW *– Circumstantial Evidence - reliance on, on a charge of murder-requirements thereof.*

CRIMINAL LAW*-Murder charge - essential ingredients needed to be proved to establish there of.*

PRINCIPLES:

1. On the essential ingredients to be established beyond reasonable doubt, for a conviction of murder to stand;

For an accused to be rightly convicted of murder there must be evidence by the prosecution beyond reasonable doubt that the accused intended to kill the deceased or do him grievous bodily harm or that the act of the accused was such that it was likely to endanger human life. See the case of Udo vs. The Queen (supra). The cause of death must relate directly to the act of the accused. See the case of Achibong vs. The State (1972) 10 SC 37. ***Per J.O Ogebe JCA*** *at page 559.*

2. On where the conviction for murder is founded on circumstantial evidence requirements thereof. :

Where the prosecution relies on circumstantial evidence such evidence must be cogent, unequivocal and compelling as to lead to irresistible conclusion that the accused killed the deceased. See Lori vs. The State (1980) 8-11 SC 81, ***Per J.O. Ogebe JCA****, at page*

3. On the duty on the prosecution to always establish the cause of death of the deceased by proving both the proximate and remote causes (fresh wounds and old wound in this case),where necessary and where this is not so, effect of:

It would appear that the trial judge was carried away by the hearsay evidence regarding the escape of the deceased from the hospital that he failed to avert to the direct evidence given in the prosecution's case that tile deceased was seen with fresh wounds in the hospital. It was the duty of the prosecution to explain how those wounds came about and what effect they had on the death of the deceased. Their failure to do so was fatal to the case, ***Per J,O Ogebe JCA*** *at page 560.*

SOWEMIMO VS. STATE(2004)18 NSCQR24

MURDER

CRIMINAL LAW-Medical evidence – whether always necessary to convict

n accused for murder

CRIMINAL LAW - Murder charge - How proved.

PRINCIPLES;

. On whether medical evidence is always necessary to convict an accused

or murder ;

*There is no law known to me that an accused person cannot be convicted for murder where medical evidence is discredited or where there is no medical evidence at all. **Per Niki Tobi, JSC** at page 38.*

. On charge of murder - how proved ;

*To sustain a conviction for the offence of murder, it must be established beyond reasonable doubt that it was the act of the accused that caused the death of the deceased. In every case where it is alleged that death has resulted from the act of a person, a causal link between the death and the act must be established and proved in a criminal proceeding beyond reasonable doubt. **Per Niki Tobi, JSC** at page 39.*

ESAI VS. STATE(2004) 1 LC

MURDER

CRIMINAL LAW *- murder - abduction - circumstantial evidence leading, to inference - reasonableness of evidence to support conviction.*

PRINCIPLES;

I. On Whether Evidence in this case incriminates the appellants.

That there is no evidence that 2nd, 3rd, and 4th appellants took part in the abduction of Monday Nimme, on the contrary there was overwhelming evidence that the said three appellants were not among the abducting parties. ***Per Bello, JSC*** *at page 117.*

2. On whether evidence in this case incriminates the appellant ;

With regard to the appellant, there was evidence to support the finding of the trial Judge that the appellant. and his co-assailants made a concerted assault on Monday Nimme at the time of his abduction and to justify the, inference that the appellant and his co-assailants abducted Monday Nimme with a common intention to at least do to him grievous harm and that they caused his, death in the prosecution of that common intention. ***Per Bello JSC*** *at page 116.*

YANOR VS. STATE(2004) 1 LC 345

MURDER

***CRIMINAL LAW** - Murder trial continued though defending counsel absent.*

PRINCIPLE:

*1. It was counsel's duty to see that some other member of the bar held his brief and was in a position to represents the defendants; the complaint about the hearing of constable's evidence on 1st February, 1965 in counsel's absence was without substance. R. vs. Mary Kingston 32Cr:4po. R. 183, 187-188. **Per Idigbe, JSC** at page 351 with the trial.*

ADAMU VS. KANO NATIVE AUTHORITY (2004)1LC648

MURDER

CRIMINAL LAW- *Murder - Cause of death inferred from substances where lack of medical evidence*

PRINCIPLE:

On whether cause of death can be inferred from the circumstances without medical evidence.

Cases frequently occur, here and elsewhere, in which the Court is asked to infer the cause of death from the circumstances, because of lack of medical evidence, and in cases such as this it is perfectly proper to do so. ***Per Sutton, FCJ*** *at page 650.*

IDOWU VS. THE STATE(2000) 3 NSCQR 96

MURDER

CRIMINAL PROCEDURE- *Murder charge- how established- when will it be reduced to manslaughter.*

PRINCIPELS:

1. On evidence to establish, a charge of murder ;

In order to establish, a charge of murder under the code, there must be evidence of:

1. *The fact of death;*
2. *Death within a year and a day of the act:*
3. *The act or omission on the part of the accused directly causing the death of the deceased; and*
4. *The intent to kill or to do grievous bodily harm; or to do an act likely to endanger human life the while pursuing an unlawful purpose." **Per M. E. Ogundare JSC** at page 114*

2. On securing a conviction for murder under Section .316 (3) of the criminal code ;

*To secure a conviction for murder under Section 316(3), the prosecution must prove that the death of the deceased was caused by means of an act done in the prosecution of an unlawful purpose and that the act is of such a nature as to be likely to endanger human life. **Per M.E Ogundare JSC,** at page 117.*

3. On when an accused person will be found guilty of manslaughter;

*An accused person will be found guilty of manslaughter if it is proved that he intentionally committed an act which is unlawful and dangerous and which d inadvertently caused death. **Per A. B. Wali JSC** ,at page 146.*

AIGUOBARUEGHIAN VS. STATE(2004) 17 NSCQR 442

MURDER

CRIMINAL LAW *- Murder charge - ambiguity in the medical certificate tendered and oral testimony of the doctor - effect of.*

CRIMINAL LAW *- Murder charge - whether can be proved by direct or circumstantial evidence.*

CRIMINAL LAW *-Charge of murder or manslaughter - how proved.*

CRIMINAL LAW *-Law of causation - meaning of.*

CRIMINAL PROCEDURE LAW *- Medical certificate - whether always necessary to prove a charge of murder.*

PRINCIPLES;

1. Where there is ambiguity in the death certificate issued and testimony of the doctor - effect of.

I am therefore inclined to the view expressed by the learned counsel for the 1st Appellant that there is no certainty as to the actual cause of the death of the deceased. This is because the deceased was admitted, treated and died at the U.B.T.H and medical certificate as to the cause of death was issued. This fact was admitted by both PW l and PW4. According to PW I UBTH put the cause of death as "Liver Cirrhosis". In his (PW 1 's) testimony there was no "liver cirrhosis" but that the cause of death was "liver abscess of faulty change."

In the light of the foregoing, I agree with the submission of learned counsel of 'the 1st Appellant that the divergence of opinion between the Death Certificate issued by UBTH and the testimony of PWI, (Dr. Abu) leads me to arrive at the firm view that this Court is duty bound to resolve the ambiguity

thus created in favour of 1st Appellant. See Valentine Adie vs. State (1980) ANLR 39;' see also Adio vs.State (1979) 12 NSCC 51. This Court has held in appeals to it that where there is ambiguity, it ought to be resolved in favour of the accused. See Onotaire vs. Onokpasa (1984) 12 SC 19 at 88 and Ebba vs. Ogodo (1984) 4 SC 84 at93 - 103. ***Per S. U. Gnu, JSC*** *at pages 462 - 463.*

2. On whether a medical certificate of death is always necessary in a case of murder;

I agree with learned counsel for the 1st Appellant when he conceded that a medical certificate as to cause of death is not always required in cases where death occurred instantly. Put in another way, it is an acceptable principle of law in homicide cases that where the cause of death is obvious, medical evidence ceases to be of practical necessity. See Enewoh vs. State (1989) 4 NWLR (Part 119) 98. Ditto where the deceased died almost immediately from the voluntary act of the accused. However, where as in the instant case death occurred three (3) months later and the medical evidence as to cause of death and responsibility of the 1st Appellant is uncertain and doubtful, then a medical certificate as to the actual cause of death becomes a necessity and failure to produce same would be fatal to the prosecution's case. See (I) Bande vs. State (1972) ANLR E 811; (2) Uguru vs. State (Supra). ***Per S. U. Gnu, JSC*** *at page 463.*

3. On whom lies the onus to prove cause of death.;

For this reason, I agree with learned counsel for the 1st Appellant's submission that the court below was duty bound to uphold the well-established principle that the onus of proving the cause of death rests squarely on the prosecution not the defence. ***Per S. U. Gnu, JSC*** *at page 464.*

4. On charge of murder or manslaughter - how ;

Proved. In Uyo vs. Attorney-General Bendel State (1986) 1 NWLR (Pt. 17)

4/8, the court held that

(i) 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;

(ii) to establish a charge of murder or manslaughter, it must be proved not merely that the act of the accused could have caused the death of the decease date cause, but that it did; and

(iii) the important consideration for the determining responsibility is whether death of the deceased was caused by injuries he sustained through the act of the to denote accused and not whether from the medical point of view death was caused by such injuries, ***Per Niki Tobi JSC*** *at page 482.*

5. On charge of murder or manslaughter - how proved.

In Oguntolu v: The State (1996) 2 NWLR (Pt. 432) 503, this court held that in a charge of murder, the death of the victim must be caused by the act of the accused. See also Ononuju vs. State (1976) 5 SC 1.The cause of the death of the deceased should be established , with certainty because the act which caused the death is in most cases a certain act. See Adekunle vs. State (1989) 12 SC 203; Oforlete vs. State (2000) 7 SC (Pt. 1) 80. There are however instances where cause of death could be inferred from the circumstances of the case. ***Per Niki Tobi*** *at page 482.*

6. On charge of murder or manslaughter - how Proved;

In Onyenakeya vs. The State (1964) NMLR 31, it was held that to establish a charge of murder or manslaughter, the evidence must be such as to show

that the death of the deceased was caused by the act of the accused. The fact that the defence did not suggest that death arose from other causes is not confirmation of evidence which falls short of showing that death did arise as a result of the appellant's acts, the onus to establish this being not on the defence but on the prosecution. ***Per Niki Tobi JSC*** *at page 486.*

7. On charge of murder or manslaughter - how proved;

In the State vs. Osuagwu (1974) 4 ECSLR 358. it was held that the courts have always viewed with seriousness murder or the requirement that in the case of murder or manslaughter the cause of the death must be positively proved either by direct evidence or by such circumstantial evidence that leaves no room either for doubt or for speculation. In order to draw an inference of the accused person's guilt from circumstantial evidence, there must be no other co-existing circumstances which would weaken or destroy that inference. Absence of proof of cause of death as attributable to the act of an accused person is fatal to the conviction of an accused person. ***Per Niki Tobi JSC*** *at page 486.*

8. On whether an accused could still be guilty of murder even if the period between the act and the death of the deceased is long;

In determining the cause of death, the duration between the suspected act of the death (i.e. the actus reus) and the death is not important. Accordingly, an accused could be guilty of the offence of murder or manslaughter even if the duration is long. In so far as the court comes to the conclusion correctly that the act of the accused caused the death of the deceased, a conviction and sentence will be proper in law. Conversely, even if the period between the act and the death of the deceased are proximate, a court can still not find the

accused guilty if there are more than one possible cause of death. What is essential is that there must be evidence that the act of the accused resulted in the death of the deceased. ***Per Niki Tobi JSC*** *at page 487.*

AIGUOKHIAN VS. THE STATE (2004)18 NSCOR 173

MURDER

***CRIMINAL LAW** - Murder- criminal liability therein - defence of mistake - eliance thereon by an accused person must be based on a true and credible tory.*

***CRIMINAL LAW**-Murder-criminal liability therein-defence of mistake - eliance thereon by an accused person - what constitutes the test of honest elief.*

RINCIPLES:

On the defence of mistake in criminal liability - accused relying thereon ust present a true and credible story ;

is the law that where an accused acted under an honest and reasonable elief in a given state of situation which if true would have justified the act, may set up such a credible defence. But the story must be true, in other ords, capable of being believed and not an insult to intelligence. See R. vs. olson 23 Q.B.D. 168. In that case the Respondent was convicted of bigamy the Court of first instance having undergone a second marriage after an nest belief that her husband who had deserted her for a such honest and asonable belief would entitle her to an acquittal. There may be a relief om criminal liability or guilt unless the mistake arose from lack of proper re expected from a reasonable man of average intelligence. ***Per I. C. ts-Acholonu, JSC*** *at page 178.*

2. On the defence of mistake in criminal liability *;*

The test of honest belief which should shore up a defence of mistake rests a priori on whether the accused honestly and in good faith and without any fault or negligence made a mistake in the nature of the situational premise prevailing as at the time, and that, shall be determined and related to the circumstances as might reasonably to be expected to affect his mind to induce belief or otherwise of the defence of mistake. ***Per I. C. Pats-Acholonu, JSC*** *at page 179.*

YOUNG UKAUWA UGURU VS. STATE (2002)10 NSCQR 38

MURDER

CRIMINAL LAW *- Murder charge - how to prove cause of death.*

CRIMINAL LAW *- Murder charge - what the prosecution must prove where deceased did not die immediately.*

CRIMINAL LAW *- Murder charge - what the prosecution must prove.*

PRINCIPLES:

1. On what the prosecution must prove in a murder charge;

In a murder charge, for the prosecution to discharge its burden of proving the case beyond reasonable doubt, It must be prove:-

(a) The death of the deceased

(b) The act or omission of the accused which caused the death; and

(c) , That the act or omission of the accused stated in (b) above was Intentional with Knowledge that death or grievous bodily harm was its probable consequence, ***Per U. A. Kalgo, JSC*** *at page 50.*

2. On how to prove cause of death;

Cause of death can be proved by direct or circumstantial evidence. It can also be inferred where the person injured or attacked died immediately on him. But in the instant appeal, there is no evidence medical or otherwise as to what type of injury was suffered by the deceased as a result of the attack on him or that the act of the appellant was the cause of his death. The direct evidence required to prove the cause of death must be such as would connect the death of the deceased person with the act of the accused. This may include tile evidence of a medical officer who examines or performed

postmortem examination on the deceased and certifies that the injuries inflicted on the deceased by the accused are those that caused the death of the deceased, particularly if the deceased did not die in the course of the act of his assailant. This is what is always referred to as medical evidence which is not essential in all cases to prove the cause of death. ***Per U. A. Kalgo,*** ***JSC*** *at page 51.*

3. On what the prosecution must prove in a murder charge wherein the deceased did not die immediately ;

The deceased was treated in two hospitals following his encounter with the appellant and died four days after. There was therefore an actus novus intervenient, which must be accounted for by the prosecution. To be able to do this, there must be evidence of the type of attention and treatment given by each hospital. In the absence of that, there is likely to be a break in the chain of causation. In the present case, the link between the appellant's act and the cause of death was broken with dire consequences, particularly as there is no autopsy report. It is therefore impossible to conclude with certainty what the deceased died from, in which case the appellant must be acquitted of the offence of murder with which he is charged. The burden on the prosecution is to prove not only that the act of the appellant could have caused the death of the deceased but that it certainly did. If there is the possibility that the deceased died from other causes than the act of the appellant, the prosecution has not established the case against the appellant.

Per S. O. Uwaifo , JSC *at page 55.*

NWACHUKWU VS. STATE (2002)11 NSCQR 663

MURDER

CRIMINAL PROCEDURE LAW *- Murder charge - conditions for its proof.*

PRINCIPLE:

1. ***On whether an accused can still be convicted for murder where the body of the deceased is not found*** *;*

So too, where there is a positive evidence that the deceased had died but the body was not discovered, the accused may still be convicted of murder based on his confessional statement or other circumstantial evidence pointing to the fact that the accused caused the death. ***Per A. I. Iguh, JSC*** *at page 683.*

EJEKA VS. STATE (2003)14 NSCOR 82

MURDER

CRIMINAL PROCEDURE LAW *- Murder charge - whether can be reduced to manslaughter.*

PRINCIPLE:

1.Murder charge–whether can be reduced to manslaughter ;

Section 179(2) of the Criminal Procedure Law of Eastern Nigeria. By the subsection, a trial court can, in appropriate cases, reduce the charge of murder to manslaughter. Manslaughter is an unintentional killing of a human being. Such a killing is not pre-meditated but accidental, in the sense that it was not intentional. ***Per Niki Tobi, JSC*** *at page 93.*

DURWODE VS THE STATE (2003) 4 NSCQR 33

MURDER

RIMINAL PROCEDURE LAW *- Murder - mandatory ingredients to*

stain the charge.

RINCIPLE:

On mandatory ingredients to maintain a charge of murder ;

the case of Nwaeze vs. The State (1996) 2 NWLR (part 428) I Where

dio. JSC of blessed memory made a dichotomy and ex-ray of the said

gredients as follows:-

n a charge of murder, the burden is on the prosecution to prove that:

) the deceased had died

) the death of the deceased was caused by the accused:

) the act or omission of the accused causing the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probably consequence. ***Per S.U.Onu JSC*** *at page 53.*

FESTUS AMAYO VS. THE STATE (2001)8 NSCQR 431

MURDER

CRIMINAL PROCEDURE LAW *– Medical evidence - whether always necessary in cases of murder.*

CRIMINAL PROCEDURE LAW *- Murder -ingredients proof.*

PRINCIPLES;

1. On whether medical evidence is always a necessity in a case of murder;

It is a principle of law that where the cause of death is obvious, medical evidence ceases to be of any practical or legal necessity in homicide cases. This is usually so where death came by violent means and was instantaneous or nearly so. ***Per S. O. Uwaifo JSC*** *at page 445.*

2. On the elements of murder ;

One of the elements of murder as provided for in Section 316(a) or (b) is that the act done must be with the intent to kill or to inflict grievous bodily harm. This is what is known as "specific intention" which is necessary for sustaining a murder charge. ***Per S. O. Uwaifo*** *JSC at page 447.*

UBANI & ORS VS. THE STATE (2003)16 NSCOR 265

MURDER

RIMINAL PROCEDURE LAW *- Murder - whether can be established by rect or circumstantial evidence.*

RIMINAL PROCEDURE LAW *- Murder - whether conviction can be stained without corpus delicti.*

RIMINAL PROCEDURE LAW *- Murder - whether medical evidence is a ne qua non to its proof.*

RIMINAL PROCEDURE LAW *- Murder charge - ingredients of.*

RINCIPLES:

On the ingredients of proof of murder;

rom a long line of decided cases, it is settled beyond controversy that to cure a conviction on a charge of murder, the prosecution must prove;

a) that the deceased had died

b) that the death of the deceased was caused by the accused and

c) that the act or omission of the accused which caused the death of the ceased was intentional with knowledge that death or grievous bodily harm as its probable consequence. ***Per D. O. Edozie, JSC,*** *at page 276.*

On whether charge of Murder can be established by direct or ircumstantial evidence.

he evidence relied upon to establish a charge of murder may be direct or rcumstantial. Whether the evidence is direct or circumstantial, it must tablish the guilt of the accused beyond reasonable doubt. The onus in this nnection on the prosecution as a general rule never shifts and

misdirection on the question of onus of proof is fatal unless it can be shown that on a proper direction the result would be the same. ***Per D. o. Edozie, JSC,*** *at pages 276-277.*

3. On whether medical evidence is a sine qua non to prove a case of murder.

To establish cause of death, the position of the law is that much as medical evidence is desirable, it is clearly not a sine qua non as cause of death may be established by sufficient, satisfactory and conclusive evidence other than medical evidence showing beyond reasonable doubt that the death in question resulted from the particular act of the accused person. ***Per D. O. Edozie, JSC****, at page 277.*

4. On whether proof of motive is a sine qua non to a conviction for the offence of murder;

Although proof of motive on the part of the accused on a charge of murder is not a sine qua non to his conviction for the offence, yet if evidence of motive is available it is not only a relevant fact but also admissible under Section 9 of the Evidence Act. ***Per D. O. Edozie, JSC,*** *at page 279.*

5. On whether medical evidence is a sine qua non to establish a case of murder ;

It is settled law that although medical evidence is desirable to ascertain cause of death, it is not a sine qua non in cases of culpable homicide where the cause of death could be established by other evidence. In cases where a man was attacked with a lethal weapon and he died on the spot, it is not necessary to prove cause of death by medical evidence since it can properly be inferred that the wound inflicted thereby caused the death. ***Per D. O. Edozie, JSC,*** *at page 283.*

6. On whether conviction for murder can be sustained without corpus delicti ;

Where as in the instant case the deceased was savagely attacked by his assailants who carried away and disposed of his body rendering medical evidence impossible, the court is at liberty to draw the necessary inference of cause of death based on the established facts. It has long been judicially recognized that conviction for murder can be sustained in the absence of corpus delicti where there it is strong direct evidence. ***Per D. O. Edozie, JSC,*** *at page 283.*

7. On whether conviction for murder can be sustained without corpus delicti.

It is also well established by a plethora of authorities in this court that the offence of murder of a person can be proved without actually seeing or producing the body of the person (i.e. corpus delicti). ***Per U. A. Kalgo, JSC,*** *at page 285.*

ONYEGBU VS. STATE (1998) 1 ACLR 386

MURDER

CRIMINAL LAW AND PROCEDURE *- Murder case - medical evidence as to cause of death - whether same is essential in all cases of homicide.*

PRINCIPLE:

1. ***On whether medical evidence as to cause of death is essential in all cases of homicide:***

Medical evidence as to the cause of death is desirable, but it is not essential in all cases of homicide. See Lori vs. The State (1980) 8 - 11 S.C. 81 at 97. Akpuenya vs. The State (1976) 11 S.C. 269 at 278 and Essien vs. The State (1984) 3 S.c. 14- 18. At Page 407

ILORI VS. STATE (1998) 1 ACLR 267

MURDER

CRIMINAL LA W AND PROCEDURE *- Murder charge - duty on prosecution to link the act of the accused with death of deceased.*

CRIMINAL LAW AND PROCEDURE *- Murder charge - whether medical evidence is essential to establish same.*

PRINCIPLES:

1. *On duty on prosecution to establish cause of death in murder cases:*

In a charge of murder the cause of death of the deceased must be established unequivocally and the burden rests on the prosecution to establish this and if they fail the accused must be discharged see Rex vs. Samuel Abengowe 3 W ACA 85; R. vs. Oledima 6 W ACA 202. At 30 Page 278

2. *On duty on prosecution to link the act of the accused with death of deceased in murder cases:*

It is also settled law that the death of the victim must be caused by the act of the accused or put differently it must be shown that the deceased died as a result of the act of the accused. See Sunday Ononuju vs. The State (1976)5 S.C.l ; Frank Onyenank vs. The State(1964) N.M.L.R. 34. At Page 278

3. *On whether medical evidence is essential in all cases of murder:*

It is conceded that medical evidence is not always essential. Where the victim dies in circumstances in which there is abundant evidence of the manner of death, medical evidence can be dispensed with. See Adamu Kano vs. The State (1968) NMLR 227 and Tonara Bakuri vs. The State (1965) NMLR 163. At Page 297 .

ABIEKE VS. STATE (1998) 1 ACLR 635

MURDER

CRIMINAL LAW AND PROCEDURE *– Murder charge – circumstantial evidence in proof of - nature of to ground conviction.*

CRIMINAL LAW AND PROCEDURE *- Murder charge - need for fact in respect thereof to be proved in circumstance beyond reasonable doubt before conviction of accused.*

PRINCIPLES;

1. *On need for fact of death to be proved by circumstance beyond reasonable doubt before an accused is convicted of murder:*

Before a defendant can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime certain and leave no ground for reasonable doubt. At Page 641

2. *On nature of circumstantial evi4ence in proof of murder:*

Circumstantial evidence should be so cogent and compelling as to convince a jury that on fit rational basis other than murder can the facts be accounted for: See R. vs. Onufrejezyk 39 Cr. App.. R.I. At Page 641 .

ONAH VS. STATE (1998)1 ACLR 642

MURDER

***CRIMINAL LAW AND PROCEDURE** - Murder charge - how the prosecution should establish a case of murder against the accused.*

***CRIMINAL LAW AND PROCEDURE** - Murder charge - Police investigation Failure to send blood stained materials to the forensic laboratory for analysis - Whether fatal to prosecution's case.*

***CRIMINAL LAW AND PROCEDURE** - Murder charge – what the prosecution must prove to succeed.*

***CRIMINAL LAW AND PROCEDURE** - Murder charge - when Prosecution fails to link accused with the murder of deceased - whether court can consider special defences raised on behalf of accused.*

PRINCIPLES:

On what the prosecution must prove in a murder charge to succeed:

To succeed in a charge of murder, the prosecution must prove:-

That the appellant killed the deceased. This is the actus rems.

That the killing was unlawful.

That the appellant unlawfully killed the deceased under one or the other of the six circumstances enumerated in S. 316 of the Criminal Code Cap 30 Laws of Eastern Nigeria applicable to Anambra State of Nigeria. This is our equivalent of mens rea. At Page 656

2. On how the prosecution should establish a case of murder against the accused:

To establish that the appellant killed the deceased, the prosecution should adduce evidence linking the appellant with the death of the deceased. This means that there should be evidence of some positive act or negative omission of the appellant which caused injury to the deceased, and that the death of the deceased was the direct result of that injury or those injuries. At Page 656

3.On when the circumstantial evidence available in the instant case can grind ;

But even at this stage, the most apparently incriminating pieces of evidence are blood stains found around the compound and the blood stained matchet found in the room. To link these blood stains found in the compound, and the blood stains found on the matchet with the blood of the deceased, and then ultimately, with her murder, there ought to be evidence to show that those stains (around the compound and on the matchet were human blood stains of the same blood type and grouping as that of the deceased. At Page 656

4.On whether the circumstantial evidence in the instant case can ground conviction:

Talking about blood stains, there was evidence that some stains presumably blood stains were found on a wrapper worn by the appellant. That wrapper was not sent for analysis and there was therefore no nexus between the blood stains found on the wrapper of the appellant and human blood let alone the blood of the deceased. This ought to have been established by positive evidence. There is no evidence to show that the "blood" stains found

on the wrapper worn by the appellant was not only human blood but also human blood of the deceased, that is blood of the same type and grouping as that of the deceased. Again, the matchet was not examined for finger prints and here too there was no nexus between the appellant and the matchet. At Page 657 .

AHMED VS. STATE (2001)2 ACLR 131

MURDER

CRIMINAL LAW & PROCEDURE *– Murder charge – whether motive sine qua non – when necessary to prove motive.*

PRINCIPLES:

1. On the relevance of motive when considering the offence of murder;

There was no previous quarrel or misunderstanding between them and none could arise from the facts. The appellant would therefore have no intention whatever to kill the deceased. And although motive is not a sine qua non to the offence of murder, sometime it is necessary for the prosecution to prove it in order to succeed, because evidence of motive is always admissible in order to show that it is more probable that the accused committed the offence charged. 1911 AC 47HL; R vs. Buckley 13 Cox 293._See R vs. Ball Therefore since the appellant did not stab the deceased as a result of any altercation in his house, and there was nothing to indicate motive or premeditation to kill deceased on his part, what happened that night must have been sudden and unexpected. At page 156.

2. On when the defence of self defence can be properly raised:

Under our criminal law, an accused person can properly claim the defence of self-defence where, as in this case, the accused admits that he did the act which caused the death of the deceased but was justified in doing so, to protect his own life and would have been killed or was in such fear when he committed the act. At page 158.

3. On circumstances when an accused may be convicted of manslaughter instead of murder:

Even if the defence of self-defence is rejected, the appellant may still be convicted of the lesser offence of manslaughter. Again where the accused had no intention to kill or cause grievous bodily harm as in this case, and the facts proved show that he acted under provocation, but fell short of proving self-defence, the accused could be found guilty of manslaughter only. At page 159.

4. On the defenses that may reduce an unlawful killing to manslaughter;

Where, however, any of the following defenses are available to the appellant, to wit, provocation, self-defence, defence of property and defence of intoxication. The

unlawful killing may be reduced to manslaughter. At page 175.

5. On whether the defence of provocation is an outright excuse for the charge of murder:

Where this defence is successfully established the effect is that the offence of murder is reduced to manslaughter in other words, under no circumstances will the defence avail or excuse him for the charge of murder. At page 178.

GODWIN IGABELE VS. STATE (2005) 1 NCC 59

MURDER

CRIMINAL LAW- *Murder charge- how – ingredient of proof.*

PRINCIPLE;

1. On charge of murder- ingredient to be proved by the prosecution;

In a charge of murder, the prosecution must proved;

(a) the death of the deceased;

(b) the act or omission of the accused which caused.

(c) That the act or omission of the accused was intentional with knowledge that the death or grievous bodily harm was its probable consequence. See Okeke vs. State (1999) 2 NWLR (pt 590)246 at page 273; Abogede vs. State (1996)5 NWLR (pt 448)270 at page 276. ***Per J.A. FABIYI, JSC*** *at page 75.*

GUOBADIA VS. STATE (2005) 1 NCC 255

MURDER

CRIMINAL LAW & PROCEDURE *– Murder trial- age of an accused person where relevant- how the court may determine.*

CRIMINAL LAW & PROCEDURE *– Murder trial- age of an accused person where relevant-when it is incumbent on a trial judge to enquire before sentence.*

PRINCIPLES;

1. How the court may determine the age of an accused person in a murder trial;

If the person who has been arraigned before the court is infant or a child, the court is usually faced with no difficulty because the visual appearance of the accused would put the trial judge on enquiry as to the accused's age. In such a case, even if neither the prosecution nor the defence raised the issue of age in their evidence, the court on its own motion will want to ascertain the age of the accused, because of the advantage which has been recorded in science and medicine the trial judge need not base the age of the accused on presumption but could order that a DNA test be carried out. In such a way the result of the test will give an accurate age of the accused. ***Per K.B. Akaahs JSC*** *at page 263.*

2.On when it is incumbent on a trial judge to enquire into the age of an accused person in a murder charge before sentence;

I must confess that I find some difficulty in interpreting Section 208 of the

Criminal Procedure Law, where like it is the case in the present matter the issue of the age of the accused was not raised during the trial. Does it mean that the court must still go ahead to determine the age of the accused, even if he is an adult, I want to believe that an enquiry can be made if age is made an issue or the trial judge is not certain in his mind about the accused especially when passing sentence in a capital offence. Thus in the case of Modupe vs. State (1988) 4 NWLR (PT. 87) 130 the appeal on sentence was allowed because the appellant gave evidence about his age which the trial judge disbelieved proceed to estimate his age which was not based on any evidence whatsoever. In the legal judgment, Oputa JSC held at page 137; " when there is one version of an essential fact and that version is not patently and obviously improbable, a trial court is not left with any option than to believe that which has not been controverted or contradicted in anyway". He went on observe that-" If the learned trial judge was in any doubt as to age , when as in this case evidence of the proper age is material, he was obliged and obligated by the provision of Section208 of the Criminal Procedure Law, not to estimate in vacuo the age of the appellant but to make due enquiry as to the age of that person and for that purpose may take such evidence as may be forthcoming at the time or at the time to which the enquiry may be adjourned……if the trial judge felt that the appellant put his age rather low, he was at liberty to adjourn the case and call a medical witness to testify to the age of the appellant as was done in Olatunji vs. R (1964) 1 ALL NLR 131 . ***Per K.B. Akaahs JSC,*** *at page 264.*

23

NO CASE SUBMISSION

EMEDO & ORS. VS. STATE(2002)11NSCQR288

CRIMINAL PROCEDURE LAW *– "No case" submission - guiding Principle -Consideration of.*

CRIMINAL PROCEDURE LAW *- "No case" submission - trial judge - duty of where no case submission is upheld.*

CRIMINAL PROCEDURE LAW *-"No case" submission - trial Judge - duty of when writing a ruling on.*

CRIMINAL PROCEDURE LAW *- "No case" submission - when may properly be upheld.*

CRIMINAL PROCEDURE LAW *- "No case" submission whether accused will be discharged where facts adduced calls for an explanation.*

PRINCIPLES;

. On a "no-case" submission.

f a judge upholds a submission for any of the counts the accused should during the rest of the trial be regarded as no longer being charged on that ount even though no formal verdict of Not Guilty has been taken. ***Othman Mohammed, JSC*** *at page 293.*

. On when a "no case" submission may properly be upheld;

A submission of no case to answer may properly be upheld;

a) when there has been no evidence to prove an essential element in the alleged offence and

(b) *when the evidence adduced by the prosecution has been so discredited as a result of cross-examination, or is so manifestly unreliable that no reasonable tribunal could safely convict on it.* ***Per Uthman Mohammed, JSC*** *at page -293.*

3. On guiding principles in upholding a "no case" submission ;

The decision to uphold or reject the submission should not depend upon whether the adjudicating tribunal would at that stage, convict or acquit, but upon whether the evidence is such that a reasonable tribunal might convict. Although those considerations were expressed to be for the guidance of judges during criminal trials it is clear that they are of general applicability. ***Per Uthman Mohammed, JSC*** *at page 293.*

4. On whether an accused should be discharged after a "no case" submission when the facts adduced disclose ;

some explanation from the accused person. There are several decisions of this court warning against , the discl1arge of accused persons after a submission of no case to answer, particularly when it is clear from the evidence adduced that the facts disclose some explanation which the accused has to make in view of what the prosecution has so far established from the evidence. ***Per Uthman Mohammed, JSC*** *at page 293.*

5. On duties of judges to discharge an accused when a "no case" submission is upheld ;

Abbott F. J. in Ogucha vs. the Queen (1959) 4 F, S'C 64.

It is the judge's duty however, when a submission of no case to answer is made to discharge an accused where the evidence adduced by the prosecution does not disclose the necessary minimum evidence establishing the facts of the crime charged. In doing so the judge does not write a

judgment". It is not the judge's job, at that stage, to weigh and evaluate evidence or decide who is telling the truth or who is lying and he is not to conclude that what the A prosecution has adduced is unreliable. ***Per Uthman Mohammed, JSC*** *at pages 293 - 294.*

. On duty of judges when writing a ruling on "no case" submission.

n considering a submission of no-case the correct procedure is to write a rief ruling and make no observation on the facts. ***Per Othman Mohammed, JSC*** *at page 294.*

. On what evidence the court should consider when deciding on a no case ubmission.

f a submission of no case is made it is the judge's duty not only to consider hether there is some scintilla of evidence which in law would lead to onviction, but also whether it would be safe to convict on the evidence as it tands. ***Per Othman Mohammed, JSC*** *at page 294.*

GODWIN IGABELE VS. STATE(2005)1NCC 59

NO CASE SUBMISSION

***CRIMINAL PROCEDURE LAW** - "No case" Submission - Effect of where it fails.*

***CRIMINAL PROCEDURE LAW** - "No case" Submission - meaning of- when will be upheld - effect where an accused rests his case on a no case submission.*

PRINCIPLES;

1.On the meaning of "No case" Submission.

It is instructive to state it here that in R. vs. Coker & Ors. 20 NLR 62, Hubbard, J. put it clearly that a submission that there is no case to answer means that there is no evidence on which the court would convict even if the court believed the evidence given by the prosecution. ***Per J. A. Fabiyi, JCA*** *at page 74.*

2.On when a "No case" submission will be upheld ;

It is also proper to call to mind -the Practice Direction of Lord Parker, Lord Chief Justice of England in (1962) 1 WLR. 227. No case submission may be upheld where:

(a) There was not evidence to prove an essential element of the alleged offence, and

(b) The evidence adduced has been so discredited as a result of cross-exanimation.

(c) The evidence is so manifestly unreliable that no reasonable tribunal can safely convict on it and, further if, however, a reasonable tribunal can convict on evidence so far led, there is a case for the accused to answer. ***Per J. A. Fabiyi, JCA*** *at page 74.*

2.On the effect where an accused rests his case on a "No Case" submission ;

compelling as to convince a jury that on no rational hypothesis other than the inference can the fact be accounted for. ***Per J. A. A Fabiyi, JCA*** *at page 75.*

3.On the effect where submission of "no case" fails ;

From the evidence garnered, the Appellant was sufficiently linked to the cause of death of the deceased. The trial court was perfectly right in holding that a prima facie case was established against the Appellant. To my mind, the no-case submission advanced on behalf of the Appellant failed to hit the target. A prima facie case which means a presumption of guilt was made out against the accused/Appellant. The facts as adumbrated above called for explanation but none was forth coming from the accused/appellant. There is no doubt that the deceased was last seen alive with the Appellant before he embarked upon his pranks. I form the firm view that circumstantial evidence sufficiently proved beyond reasonable doubt, the guilt of the Appellant. ***Per J. A. Fabiyi, JCA*** *at page 76.*

ONAGORUWA VS. STATE (1998) 1 ACLR 435

NO CASE SUBMISSION

CRIMINAL LAW AND PROCEDURE-*"No case" submission- duty on trial judge in resolving same-whether trial judge can consider issue of credibility of witnesses at this stage.*

CRIMINAL LAW AND POCEDURE-*"No case" submission- ruling thereon-ruling delivered outside statutory period-whether same per se occasion a miscarriage of justice.*

CRIMINAL LAW AND PROCEDURE-*"No case" submission stage-manifest unreliability of evidence of prosecution –Whether trial judge is bound to resolve same in favour of accused.*

PRINCIPLES;

1. On meaning of "No case" submission':

No case submission means what it says and it is that from the evidence adduced by the prosecution the accused has no case to answer and should not therefore be called upon to defend himself. By a no case submission, the accused submits that the prosecution has not made a prima facie case against him that that he should not be made to face the ordeal of defending himself. At Page 464 '

2. On whether the trial Judge can consider issue of credibility of witnesses at the "No case" submission stage:

Another position of the law is that at the stage of ruling on a no case submission, the trial Judge should not consider the issue of credibility of the witnesses. He should not look at that side of the matter. It is a forbidden

area; a no man zone, at least for the purpose of the no case submission. At Page 467 .

3. On what the prosecution must establish in a charge of stealing in order to succeed at the "no case" submission stage:

from the wordings of Section 383 of the Code, in order to succeed in the charge, at the no case submission stage, the prosecution must establish a prima facie case in respect of the following essential elements: (a) The owner of the thing stolen. (b) That the thing stolen is capable of being stolen. (c) That it was fraudulently taken or fraudulently converted. At Page 469.

4. On whether the trial judge is bound to resolve manifest unreliability of evidence of prosecution in favour of accused at the "no case" submission stage.

At the level of no case submission, a trial judge is bound to resolve manifest unreliability of evidence of prosecution witnesses in favour of the accused .This is consistent with the presumption of innocence of the accused as provided for in ***Section 33(5) of the 1979 Constitution****. At page 480 .*

AJIBOYE VS . STATE(1998) 1 ACLR 355

NO CASE SUBMISSION

***CRIMINAL LAW AND PROCEDURE** - "No Case" submission - when same can properly be made and upheld.*

***CRIMINAL LAW AND PROCEDURE** - Ruling on "No Case" submission- what court should consider.*

***CRIMINAL LAW AND PROCEDURE** - "No Case" submission - meaning of - where raised.*

PRINCIPLES;

1. On the legal meaning of "No Case" submission:

A submission that there is no case for an accused person to answer is that there is, no evidence on which, even if the court believes it, it could convict. The question whether or not the court does believe the evidence does not arise, nor is the credibility for the witness in issue at this stage". At Page 35

3. On when a submission of "No Case" to answer can properly be made and upheld:

It is also settled by a chain of authorities that a submission ,of" no case" it to answer may be properly made and upheld in the following circumstances as correctly stated by the lower courts:-

1. *When there has been no evidence to prove an essential elements in the alleged offence;*
2. *When the evidence adduced by the prosecution has been so*

discredited as a result of cross-examination or is so manifestly unreliable' that no reasonable tribunal could safely convict on It. See Ibeziako vs. Commissioner of Police (1963) 1 All NLR 61 (1963) NNLR 88: (1963) 1 SCNLR 99: Ajidagba & Ors vs. !.G.P. (1958) 3 FSC5; (1958) SCNLR 60;, Okoro vs. The State (1988) 5 NWLR (Pt. 94) 255: Adeyemi vs. The State (1991) 6 NWLR (Pt. 195)1.

4. On appropriate steps to consider in a "No Case" submission:

What has to be considered in a no case submission is not whether the evidence against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring at least some explanation from the accused. See Queen vs. Ojuwa Ogucha (1959)4 F.S.C. 64; (1959) SCNLR 154. At Page .

5. On appropriate consideration when ruling on a "No Case" submission:

It must be recognised that at the stage of a no case submission, the trial of the case is not yet concluded. At that stage therefore, the court should not concern itself with the credibility of witnesses or the weight to their evidence even if they are accomplices. The court should also at this stage be brief in its ruling as too much might be said which at the end of the case might fetter the court's discretion. The court should again at this stage make no observation on the facts. See for example R vs. Ekanem (1950) 13 WACA 108, Olief Odofin Bello vs. The Stare (1967) NMLR 1, R vs. Coker & Ors 20 NLR 62). At Page...

AMINU MUHAMMED VS. STATE (2007) 29 NSCQR 634

NO CASE SUBMISSION

CRIMINAL PROCEDURE LAW-*"No case" submission-discharge following a no-case-whether tantamount to an acquittal.*

CRIMINAL PROCEDURE LAW-*"No case" submission- when may be properly upheld.*

PRINCIPLES:

(1) On whether a discharge following a "no case" submission is tantamount to an acquittal:

And a discharge following a "no case" submission has been held to be tantamount to an acquittal. See Nwali vs. I.G.P (1956) 1 ERMLR 1; I.G.P vs. Marke 2 FSC 5. It is my respectful view therefore that if this court sustain the no case submission and substitutes therewith, a ruling discharging the Appellant, can no longer be tried denovo by Ogunmekan J or any other Judge of the High Court of Lagos State. A plea of autrefois acquit would then be successfully raised to terminate the trial denovo. ***Per F.F.Tabai, JSC,*** *at page 640.*

(2) On when a submission of "no case" may properly be upheld;

The English Practice Notice of the Queen's Bench Division at the High Court of England(supra) state'.....without attempting to lay down any principle of law.....as a matter of practice justices should be guided by the following considerations; A submission of no case may properly be upheld (a) when there has been evidence to prove an essential element of the alleged offence; (b) when the evidence adduced by the prosecution has been

*so discredited as a result of cross-examination, or is manifestly unreliable, that on reasonable tribunal could safely convict on it. The decision to uphold or reject the submission should not depend upon whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit, but upon whether the evidence is such that a reasonable tribunal convict," **Per F.F Tabai JSC,** AT PAGES 642-643.*

UBANATU VS C.O.P. (2001) 2 ACLR 312

" NO CASE" SUBMISSION

***CRIMINAL LAW & PROCEDURE**-"No case" submission- judge over ruling*

same satisfy delft of existence of prima facie case.

***CRIMINAL LAW & PROCEDURE** –"No case"-ruling on – judge to be brief and*

refrain from commenting on the facts.

***CRIMINAL LAW & PROCEDURE-** "No case" submission- when can succeed.*

***CRIMINAL LAW & PROCEDURE**-"No case" submission –when can be made instances of .*

***CRIMINAL LAW & PROCEDURE-** "No case" submission –when made out .*

***CRIMINAL LAW & PROCEDURE-** "No case" submission upheld- consequence on an accused.*

***CRIMINAL LAW & PROCEDURE-** "No case" submission –nature of evidence that can sustain.*

***CRIMINLA LAW & PROCEDURE**-Prima facie case- definition of.*

PRINCIPLES:

1. On when a "no case" submission will succeed:
A submission of "no case" to answer will succeed where there has been no

evidence to prove an essential element of the offence. See Ibeziako vs. Comnol (1963) 1 SCNLR 101 at page 327.

2.On the need to be brief and refrain from commenting on the facts when ruling on a "no case" submission:

On a submission of "no case to answer" it is wiser for a judge or a magistrate to be brief in his ruling and make no remarks or observations on the facts. See R vs. Ekanem 13 WACA 108. This is because in a ruling of an inordinate length, too much might be said which at the end of the case might fetter the discretion of the judge or magistrate. See Odofin Bello vs. The State (1967) NMLR 1, R vs. Coker & ors 20 NLR 62; Akinuelu Ajani vs. Queen 3WACA 3. At page 329.

3. On a judge overruling a "no case" submission to satisfy self that prima facie case exists:

Whether a judge or magistrate overrules a "no case" submission , he must be satisfied that a prima facie case has been made against the accused .At page 329

4. On the consequence on an accused of a successful "no case" submission:

It is well settled that after a successful submission of "no case" to answer has been made an accused is no longer to be regarded as charge with that offence of which he was charged and must be discharge on the merits. See Adeyemi vs. The State (1991) 6 NWLR (PT 195) 1 at page 38, Police vs. Markeu (1957)2 FSC 5. At page330

5.On when a "no case" submission can be made:

It follows that a submission that there is "no case" to answer may properly be made when there has been no evidence to grove an essential element in that alleged offence in the sense that the appellant did not threaten to kill. See Ibeziako vs. C.O.P.(1963) NSCC47 AT 53; (1963) 1scnlr 99 AT 107; Adevemi vs. The State (1991) 6 NWLR (pt 195) 1 at 35; Ajiboye vs. The State (1995) 8 NWLR (pt 414) 408 at page 334.

6.On instances when a "no case" submission can be made:

A submission of "no case" to answer may be properly made and upheld when there has been no evidence to prove an essential element in the alleged offence or even when evidence has been adduced on the essential elements, the evidence has been so discredited as a result of cross- examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it. At page 335.

AKWA VS C.O.P (2003) 4 NWLR PT 811 PG 461

"NO CASE" SUBMISSION

***CRIMINAL LAW AND PROCEDURE**-"No case" submission- defence making no case submission simpliciter- defence making no case submission and further resting its case on prosecution's case- distinction between – effect of – duty on court on each case.*

***CRIMINAL LAW AND PROCEDURE**-"No case" submission – where made without more- duty on court to rule thereon before delivering final judgment- where no case submission overruled – duty on court to afford accused opportunity to present his defence – failure to do so – effect on judgment of court –**Section 287(1) (b), Criminal Procedure Law** considered.*

***CRIMINAL LAW AND PROCEDURE**-"No case" submission*

Meaning and applications of –procedure for making – when may be made and implied.

PRINCIPLES:

1.On meaning and implication of "no case" submission:

"No case" submission means that there is no evidence on which the court could convict even if it believes all that the prosecution's witnesses have said and the question whether such witnesses are credible or not whether any weight should be attached to their testimony is not relevant at that stage. After the submission ,the prosecutor, if he is a lawyer normally replies. (Queen vs Ogucha (1959) SCNLR 158; R vs Coker 20 NLR 62, Bello vs State (1966) 1 All NLR 223 referred to) (p.488, paras E-F)

2.On procedure for making "no case" submission and effect of defence resting its case on that of prosecution:

After the submission of "no case" to answer by counsel to the accused person , the prosecutor if he is a lawyer normally replies. Thereafter, the court makes a brief ruling without making any observation on the facts. If the submission is upheld, the accused must be discharged. If it is overruled because a prima facie case is made out against the accused sufficiently to require him to make a defence, then by virtue of Section 287 of Criminal Procedure Law, the court shall call upon him for his defence. However, where the defence, in making a "no case" submission states that it is resting his case on the prosecution's case a different consideration applies. By resting its case on the prosecution's case , the accused adopts the evidence led by the prosecution in its entirety and declines to give evidence or call witnesses in his defence . Where this procedure is adopted, the accused or his counsel addresses the court on all relevant matters ranging from the insufficiency of evidence to the credibility of the witnesses or weight of their testimony as well as on the applicable law. The procedure is appropriate where the case for the prosecution is apparently weak. The court does not make a ruling in such a case, but delivers a final judgment encompassing all aspects of the case. (Bello vs. State (1988) 5 NWLR (PT 94) 25; Peter vs. State (1992) 9 NWLR (pt.265) 323; Ajidagba vs. IGP (1958) fit SCNLR 60; Okoro vs. State (1988) 5 NWLR (pt.94) 25 referred to} (pp. 488-489. paras. H-D)

3.On when "no case" submission may be made and upheld:

A submission of "no case" to answer may be properly made and upheld when there has been no other evidence to prove an essential element in the alleged offence or when the evidence adduced by the prosecution has been

so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it [Ibeziako vs. C.O.P (1963) SCNLR 95; Ajidagba vs. IGP (1958) SCNLR 60; Okoro vs. State (1986)5 NWLR (pt.84) 255; Adeyemi vs. State (1991) 6 NWLR (pt.175) Ajiboye vs. State (1995) 8 NWLR (pt.414) 408 acts referred to] (p.488 .paras F-H.

4. On distinction between defence making a "no case" submission simpliciter and resting its case on of prosecution's case:

Whereas an accused who makes a "no case" submission simpliciter may afterwards call witnesses for his defence if the submission is overruled pursuant to Section 287 of the Criminal Procedure of Cross River State, the accused who rests his case on the prosecution's case cannot subsequently and in the proceedings have an opportunity of calling his witnesses. Thus, it s a misconception of the legal position to argue as the appellants did in the nstant case that even if the appellants rested their case on the prosecution's ase, they ought to have been called upon to make their defence upon their "no case" submission being overruled. If , as contended by the counsel to he respondent, the appellants in making their "no case" submission rested n the prosecution's case, then the trial court acted well within the law when proceeded as it did to deliver a final judgment based on the "no case" ubmission (p. 489, paras E-G).

. On propriety of court passing final judgment after hearing "no case" ubmission:

he court is bound to rule on a "no case" submission when the accused is ot relying on the prosecution's case. If the submission is overruled , then by irtue of Section 287 (1) (b) of the Criminal Procedure Law, if the accused is

represented by a lawyer, the court shall call upon the legal practitioner to proceed with the defence. The trial court cannot without ruling on the "no case" submission and without affording the accused the opportunity to defend himself proceed to pass judgment against him. Such a procedure which violates the accused person's constitutional right to fair hearing would amount to a nullity. In the instant case, the appellant's complaints that they did not rest their case on that of the prosecution when the trial court proceeded to enter final judgement against them raised issues with far reaching consequences. (pp.491-492, paras H-C)

STATE VS. DUKE (2003) 5 N.W.L.R. PT 813 PG394

"NO CASE" SUBMISSION

***CRIMINAL LAW AND PROSEDURE**-"No case" submission –where upheld and appealed against –what appeal should focus on.*

PRINCIPLE:

1. On meaning of "no case" submission:

A submission of "no case" means that there is no evidence on which the court could convict even if it believes all that the prosecution's witnesses have said. Where in its ruling the court upholds the submission and the prosecution appeals against it , the appeal should center on whether or not the prosecution had made a prima facie case against the accused person and in respect of the offence charged. {Queen vs. Ogucha (1959) F.S.C. 58; Ibeziako vs. C.O.P. (1963) 1 SCNLR 99; Nwosu vs. State (1990) 7 NWLR (PT.162) 322 referred to. } (p. 438,paras. A-C).

THE STATE VS EMEDO (2001) 12 NWLR 131

"NO CASE" SUBMISSION

CRIMINAL LAW AND PROCEDURE- *"On case" submission – ruling thereon-need to be brief.*

CRIMINAL LAW AND PROCEDURE- *"No case" submission – ruling thereon –nature and contents of – whether court can discharge and acquit accused at that stage.*

CRIMINAL LAW AND PROCEDURE- *"No case" submission – meaning and nature of – principles guiding determination of – duty of court in respect thereof.*

PRINCIPLES:

1. O n principles guiding determination of "no case" submission:

A submission that there is "no case" to answer may properly be made and upheld;

(a) When there has been no evidence to prove an essential element in the alleged offence.

(b) When the evidence adduced by the prosecution has been so discredited as a result of cross- examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it . Apart from these situations a tribunal should not in general be called on to reach a decision as a conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it . If , however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage

convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it , there is a case to answer.{Ibeziako vs C.O.P.(1963) 1 SCNLR 99 referred to} (pp.149,para C. 149-150,paras G-B)

2. On duty on court in the determination of "no case" submission :

In determination of a submission of "no case" to answer, a trial court should appreciate the fact that there is a difference between the requirements for making out a prima facie case and those for establishing or proving the guilt of the accused person . At this stage, the court is not required to write a judgment but merely to rule in as few words as possible whether or not there is any evidence at all linking the accused to the crime charged. In the instant case, none of the cases cited by the trial court dealt with" no-case" submission. It was therefore wrong for the trial court to have adopted the approach adopted in those cases, which dealt with the guilty of the accused(P. 146, PARAS. A-D).

3. On duty of court in the determination of " no- case" sub-mission:

When a submission of no case to answer is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charge. If the submission is based on discredited evidence, such discredit must be apparent on the face of record. If such is not the case, then he submission is bound to fail. Thus, when counsel makes a submission of no to answer ,the meaning is that in law, there is no evidence on which, even if

believed is immaterial and does not arise. Similarly, the credibility of witness in not in issue. In the instance case, the trial court seriously misdirected itself in its approach to the matter before it. It ought not to have involved itself in the evaluation of evidence as it did and should not have considered the credibility of the prosecution witnesses. All that the law required and permitted it to do at that stage in the proceedings was to see if a prima facie case had been made out.[Daboh vs. State (1977) All NLR 146; Adeyemi vs. State (191) 6 NWLR (PT. 195) 1 referred to and adopted] (Pp. 150-151, paras, H-G)

4. On duty on court to be brief in its ruling on " no- case" submission;

As a rule, where a submission that there is "no case" to answer is to objected or upheld by the trial court, its observation should be confined to the ruling, as it is desirable that there should be no observation on the facts of the case at that stage at all. Thus, it is improper to deliver any ruling of inordinate length in a submission of "no case" to answer. Too much might be said which, at the end of the case, might fetter the court's discretion. It is wiser to be brief and make no observation on the facts. All that the court is expected to ascertain is whether or not there is any evidence at all no matter how slightly linking the accused with the offence charge. Since this cannot involve evaluation of evidence, the cannot be reason for any length writing. In the instance case, a review of the ruling of the trial court shows that it adopted the wrong approach since its decision was not just a ruling on the no-case submission but a judgment on the entire case. [Ekanem vs. King1950) 13 WACA 108; Bello vs. State (1967) NMLR 1 referred to and adopted](Pp. 146-147, paras. F-G) ***Per IKONGBEH JCA****, at page 147-148, paras D-H;*

5. On propriety of court discharge accused person on ruling on "no case" submission ;

At the end of the case of the prosecution, it will be wrong for a trial court to discharge an accused person in its ruling on a no-case submission. At that stage, it is not for the trial court to consider if the evidence is sufficient to justify a conviction, but to be satisfied that there is a prima facie case requiring at least some explanation from the accused person .{ Ogucha vs. Queen (1959) SCNLR 154 referred to.(p. 149, paras.A-C)

24

PROVOCATION

IHUEBEKA VS. STATE (2001) 2 ACLR 183

CRIMINAL LAW AND PRACTICE- *Whether provocation renders homicide excusable.*

PRINCIPLE:

1. on whether provocation renders homicide excusable:

Even though the accused set up the defence of provocation no amount of provocation can excuse homicide or render it excusable except by virtue of section 318 of the Criminal Code which provides;

" When a person unlawfully kills another in circumstances which , but for the provision of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation, and before there is time for his passion to cool, is guilty of manslaughter only" at page 196.

UWAEKWEGHINYA VS.THE STATE 21 (2005)NSCQR 570

PROVOCATION

***CRIMINAL LAW** - Provocation - defence of - when will reduce murder to manslaughter.*

***CRIMINAL LAW** - Provocation - whether premeditated intent is compatible with provocation.*

***CRIMINAL LAW** - Whether an act of revenge not done in the heat of passion can successfully form the basis of defence of provocation.*

PRINCIPLES:

1. On whether a premeditated intent is compatible with the defence of provocation.

Premeditated intent is incompatible with the defence of provocation, so that an accused that kills another intentionally cannot be said to have been "provoked". See Inyama vs. The State (1972) 3 SC 94. ***Per D. Musdapher, JSC,*** *at page 585.*

2. on whether a act of revenge, not done in the heat of passion can successfully form the basis of a defence of provocation;

It is also settled law that an act of revenge, not done in the heat of passion cannot successfully form the basis of a defence of provocation. See Chukwu vs. The State

(1966) NMLR 274; or where the accused had sufficient time to cool down

*before doing the act complained of. See Ashimiyu vs. The State (1982) 10 SC 1. **Per Musdapher JSC,** at page 586.*

3. on when provocation will reduce a charge of murder to manslaughter;

*Provocation which could reduce what otherwise amounted to murder to manslaughter is a legal concept made up of a number of co-existing elements. It is of paramount importance in the consideration of this concept that the act is held out as a natural and justifiable reaction of the provoked person and was not done in self-revenge but in ventilation of a natural, sudden and contemporaneous feeling of anger caused by the circumstances of the occasion. **Per D.Musdapher, JSC,** at page 586.*

ABUBAKAR DAN SHALLA VS. STATE (2005) I CC 24

PROVOCATION

CRIMINAL LAW - Proof of the guilt of the accused person - Additional burden on the prosecution therein where there is evidence of provocation.

CRIMINAL LAW - Provocation - Defence of - Ingredients thereof.

CRIMINAL LA W - Provocation - What the term donates.

CRIMINAL LA W - Provocation - Whether there are specific types of acts that are likely to cause.

CRIMINAL LA W - Provocation - Whether words alone can Constitute.

CRIMINAL LA W - Provocative act or utterance by one - Whether can be a ground for killing a third party.

PRINCIPLES:

. On the additional burden on the prosecution in proving the guilt of the ccused person where there is evidence of provocation.

he onus lies on the prosecution to prove the guilt of the accused person eyond reasonable doubt and in that process where there is evidence of rovocation either from the evidence adduced by the prosecution (as in the nstant case) or from the defence, the prosecution has the additional burden prove the absence of such provocation. ***Per D. Adamu, JCA*** *at page 46.*

. On whether words alone can constitute Provocation.

t is now settled that words alone can constitute provocation, this depends n the actual words used and their effect or what they may mean to a easonable person having a similar background or position with the accused erson. Where the

exact words are not known or disclosed, it is not possible to determine whether or not they are sufficient to raise the defence of provocation. ***Per D. Adamu, JCA*** *at page 53.*

3. On Whether a provocative act or Utterance by one can be a ground for killing a third part:

It is also a settled law that a provocative act or utterance offered or reported by one person cannot be a ground or justification for killing a third party (or person) who did not offer the act or was not heard to have uttered the alleged words against the accused person. ***D. Adamu, JCA*** *at page 53.*

4. On where there is evidence of premeditated intention to kill or a desire for vengeance, the Defence of Provocation would be defeated.

It is the law that where there is evidence of premeditated intention to kill as in the instant case that is not consistent with the defence of provocation and such evidence would consequently defeat the defence. Similarly where there is a desire for vengeance whether justified or otherwise that will defeat the defence of provocation. ***D. Adamu, JCA*** *at page 53.*

5. On what the Term Provocation denotes.

The term provocation has been defined by the Supreme Court to denote some acts or series of acts. (or utterance) done or said by the deceased to the accused person which would cause in any reasonable person and which actually caused in the said accused person, a sudden and temporary loss of self control, rendering him (i.e. the accused) so subject to passion as to make him for a moment not a master of his mind. The definition is however to be considered in the light of the peculiar facts and circumstances of each case. These include inter-alia the station in life of the accused person and

*the society in which he lives as well as his primitive condition or nature.***Per D. Adamu, JCA** *at page 54.*

6. For the Defence of Provocation to avail, the act or utterance of the deceased must be directly offered against the Accused:

*It is clear that for the defence of provocation to avail the accused person (or the appellants in the instant case) the act or utterance of the deceased must be directly offered or directed against them.***Per D. Adamu, JCA** *at page 54.*

7. On whether words said to be uttered to another person who merely reported to the accused is capable of causing provocation on the accused against the alleged utterer:

However in no way under our law can words said to be uttered to another person who merely reported to the accused be capable of causing provocation on the said accused against the alleged utterer (deceased) who was not even around at the time of the report of the said words to the accused by the third party. If any loss of self control can occur from the words allegedly uttered by the deceased, the act of the accused should have been directed on the reporter if the appellants had acted in the heat of passion and without self control. **Per D. Adamu, JCA** *at page 54.*

8. On whether there are specific types of acts that are likely to cause provocation;

It is also the law that what acts constitute provocation under our law (i.e. Section 221) (1) of the Penal Code) is a question of fact and the law does not tabulate the types of acts that are or likely to cause provocation. It is mainly

concerned with the creation or existence of provocation. ***D. Adamu, JCA at pages C the 54-55.***

9. On the ingredients of the defence of provocation.

In law for the plea or defence of provocation to succeed, it must be shown by the accused person that: -

(a) The act relied upon by the accused is obviously provocative;

(b) The provocative act deprived the accused of self control; that he is the provocative act is such as to let the accused person or actually and reasonably lose self control:

(c) The provocative act came from the deceased.

(d) The retaliatory act to provocation must be shown to be instantaneous to the act reacted against; and

(e) The force used by the accused in repelling the provocation is not disproportionate in the circumstances ...

These ingredients must co-exist to ground a plea of or provocation. ***Per D. Adamu, JCA*** *at page 55.*

AMALA VS. STATE (2004) 18 NSCQR 834

PROVOCATION

CRIMINAL PROCEDURE LAW *- Provocation – What constitutes.*

PRINCIPLE*:*

1.On What constitutes Provocation.

The case of Lee Chun - Chuen vs. .R (1962) 3 WLR. 146 B where the Privy Council held as follows at 148 "Provocation in law consists mainly of three elements - the act of provocation, the loss of self-control, both actual and reasonable and the retaliation proportionate to the provocation. The defence cannot require the issue to be left to the jury unless there has been produced a credible narrative of events suggesting the presence of these three elements. They are not detached. Their relationship to each other" particularly in point of time, whether there was time for passion to cool - is of the first importance. The point that their Lordships wish to emphasise is that provocation in law means something more than a provocative incident. That is only one of the constituent elements. The Appellant's submission that if there is evidence of an act of provocation, that of itself raises a jury question, is not correct. It cannot stand with the statement of the law which their Lordships have quoted from ***Holmes V Director of Public Prosecutions (1946) A.C. 585****. In* ***Mancini v. Director of Public Prosecutions (1942) A.C. 1*** *the House of Lords proceeded on the basis that there was an act of provocation the aiming of a blow with the fist - but held that it was right not to leave the issue to the jury because the use of a dagger in reply was disproportionate"* ***per I. C. Pats-Acholonu, JSC*** *at pages 871-872.*

25

RAPE

IKO V. STATE (2005) 1NCC 499

***CRIMINAL PROCEDURE LAW** - RAPE - Meaning of - Ingredients of - When*

will an accused be guilty of rape.

***CRIMINAL PROCEDURE LAW** - RAPE - Corroboration whether necessary in all cases of rape.*

***CRIMINAL PROCEDURE LAW** - Corroboration - Ingredients and purpose of - When is it required to prove the guilt of an accused - Whether mandatory in all cases of rape.*

PRINCIPLES:

1. On the meaning of rape:

"Rape" in legal parlance means a forcible sexual intercourse with a girl or a woman without her giving consent to it. The most important and essential ingredient of the offence is penetration and consent of the victim is a complete defence to the offence. ***A. Kalgo JSC*** *at page 508.*

2. On the most important ingredient of rape:

The essential and most important ingredient of the offence of rape is penetration and unless penetration is proved the prosecution must fail. But penetration however slight, is sufficient and it is not C necessary to prove an injury or the rupture of the hymen to constitute the crime of rape. ***Per U. A. Kalgo JSC*** *at page 514.*

3. On when an accused will be guilty of rape.

In legal parlance, any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act is guilty of the offence of rape. Sexual intercourse is deemed complete upon proof of penetration of the penis into the vagina. ***Per A. I. Iguh JSC*** *at page 519,*

4. On the essential ingredient of the offence of rape:

*Undoubtedly for the offence of rape to be established by the prosecution, it is a cardinal requirement that the prosecutrix did not give her consent to the act of the appellant. In other words the unlawful carnal knowledge of the prosecutrix by the appellant must be proved beyond a shadow of doubt that it was without the consent of the prosecutrix .****Per A. O. Ejiwunmi JSC*** *at pages 529.*

5. On whether it is an established practice that in cases of Rape, the evidence of the complainant must be corroborated:

It is now a well established practice, by the Courts in Nigeria that, in cases of rape, the evidence of the complainant must be corroborated. The nature of the corroboration must necessarily depend on the peculiar facts of each case. Where rape is denied by the accused, the sort of corroboration the courts must look for is medical evidence showing injury to the private part of the complainant, injury to other parts of her body which may have been occasioned in a struggle, seminal stains on her clothes or the clothes of the accused or on the place where the offence is alleged to have been committed, or other witnesses. ***Per A. I. Katsina- Alu JSC*** *at page 527.*

IDRIS RABIU VS. STATE (2005)1 NCC 578

RAPE

CRIMINAL LAW *- Rape - Ingredients of - Principal ingredient to prove thereof to sustain a conviction and sentence.*

PRINCIPLES:

1. On the definition of rape - literal and statutory:

Rape is the unlawful carnal knowledge of a woman by a man forcibly and against her will. Or, put more tersely, it is the act of sexual intercourse committed by a man with a woman not his wife and without her consent, committed when the woman's resistance is overcome by force or fear, or under other prohibitive conditions. It is a serious offence and attracts severe penalties under the various Criminal Codes operating in Nigeria. ***Section 282 (1) of the Penal Code, Cap.89, Laws of Northern Nigeria, 1963****, provides that a man is said to commit rape who, save where he had sexual intercourse with his wife, has sexual intercourse with a woman in any of the following circumstances:*

(a) against her will;

(b) without her consent;

(c) with her consent when her consent has been obtained by putting her in fear of death or of hurt;

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(e) with or without her consent, when she is under fourteen years of age or of unsound mind. ***Per I. T. Muhammad, J CA*** *at page 590.*

2. On Whether Prosecution's burden to prove a case of rape is Static:

But for a conviction to stand where the accused person is alleged to have committed an offence of rape, the law places the burden of proof on the prosecution and it never shifts. See: ***Section 138 of the Evidence Act, Cap. 112, Laws of the Federation, 1990;*** *Obiakor v. State (2002) 10 NWLR Pt (2002) 4 NWLR (Pt 758) 74.* ***Per I. T. Muhammad, JCA*** *at page 593.*

3. On the Ingredients of Rape to be proved by Prosecution under section 282 (1) of the Penal Code:

The ingredients of this offence which the prosecution is under duty to prove as per the provision of ***Section 282(1) of the Penal Code, Cap. 89, Laws of Northern Nigeria, 1963****, is as follows -*

(a) That a man, the accused, had sexual intercourse with a woman, the victim.

(b) That the act of intercourse was unlawful not being between husband and wife.

(c) That in giving the evidence of intercourse, complete penetration is proved.

(d) The accused must also be proved to have had the requisite mens rea, that is, intention to have intercourse with a woman without her consent or that the accused acted recklessly not caring whether the woman consented or not.

(e) Also the prosecution must adduce evidence to corroborate the complaint made by the victim, and although this is not required as a matter of law, ,it is required in practice. ***Per I. T. Muhammad, JCA*** *at pages 593-594.*

4. On the Need to establish that there was actual Penetration in order to sustain Charge:

Authorities are agreed on the general principle of the law of rape that there must be proof of ***PENETRATION*** *no matter how slight before the offence of rape can be said to be proved. In the recent case of Iko v. State (2001) 14 NWLR (Pt. 732) the Supreme Court,* ***per Kalgo, JSC,*** *stated, inter alia:*

> *"The essential and most important ingredient of the offence of rape is penetration and unless penetration is proved the prosecution must fail (See R v. Hill East P.C 439). But penetration however slight is sufficient and it is not necessary to prove any injury or the rupture of the hymen to constitute the crime of rape. Even where the prosecution testified that the accused inserted his penis into her vagina, the law requires such evidence to be corroborated by an independent witness.* ***Per I. T. Muhammad, JCA*** *at page 594.*

5. On the Need to Always follow the Rules of Natural Justice, in a Serious Offence as Rape;

The offence of rape is such a complicated issue that requires the attention of an expert for handling. One basic point we must always bear in mind is that fair hearing incorporates a trial done in accordance with the rules of natural justice. Natural justice in the broad sense is justice done in circumstances which are just, equitable and impartial. ***Per I. T. Muhammad, JCA*** *at page 598.*

OGUNBAYO VS. STATE (2007) 29 NSCQR 806

RAPE

CRIMINAL LAW AND PROCEDURE- *Rape – Meaning of.*

CRIMINAL LAW AND PROCEDUER *–Rape- Charge of – Whether an accused thus charged can not be convicted on the uncorroborated evidence of the prosecution.*

CRIMINAL LAW AND PROCEDURE*-Rape-Offence of- ingredients thereof.*

PRNICIPLES;

1. On the meaning of "Rape";

Kalgo, JSC, in his lead judgment in the case of Iko vs. State (supra) at page 393 of the SCNJ a forcible sexual intercourse with a girl or a woman without her consent to it. That the most important and essential ingredient of the victim is a complete defence to the offence. ***Per I. F. Ogbuagu, JSC*** *at page 823-824.*

2.On Whether an accused in a charge of rape cannot be convicted on the uncorroborated evidence of the prosecution:

It need be stressed that corroboration, is not a rule of law that an accused person in a charge of rape, cannot be convicted on the uncorroborated evidence on the prosecution. ***Per I.F. Ogbuagu, JSC*** *at page 825.*

UPAHAR VS. STATE (2003) 6NWLR PT.816 PG.231

RAPE

CRIMINAL LAW AND PROCEDURE *–Rape-' hymen'- meaning of.*

CRIMINAL LAW AND PROCEDURE*-Rape –attempted rape- power of high court to commit therefore – Section 218, criminal procedure code.*

CRIMINAL LAW AND PROCEDURE *–Rape- what constitutes- ingredients of .*

PRINCIPLES:

1.On what constitutes offence of rape:

By virtue of ***Section 282(1) of the Penal Code*** *, a man is said to commit rape who, save in the case referred, to in sub-section (2) thereof has sexual intercourse with a woman in any of the following circumstances:*

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believe that he is another man to whom she is or believe herself to be lawfully married

(e) with or without her consent, when she is under fourteen years of age or of unsound mind.(Pp.249-250, Paras H-B)

2. On ingredients of rape;

In a charge of rape or unlawful; carnal knowledge of a female without her consent, it is the duty of the prosecution to prove the following;

(a) that the accused had sexual intercourse with the prosecution;

(b) that the act of sexual intercourse was done in circumstances falling under anyone of the five paragraphs in ***Section 282(1) of the Penal Code****,*

(c) that the prosecution was not the wife of the accused , or if she was his wife , she had not attained puberty;

(d) that the accused had the mens rea, that is , the intention to have sexual intercourse with the prosecution without her consent or that the accused acted recklessly, not caring whether the prosecution consented or not; and

(e) there was penetration.[Ibo vs.. Zaria N.A. (1962) NNCN 30; Okoyomon vs. State (173) NMLR 292; Jos N.A. vs. Allan na Gani (1967) NNLR 107; State vs. Ojo (1980)2 NCLR 391; R vs. Kufi (1960) NNLR 1 referred to](Pp. 250, paras B-D; 252-253, PARAS H-C)

3. On meaning of hymen:

Hymen is the piece of skin partly covering the vagina of a woman who has never had sex. In the instant case , exhibits "C" states that a perinea examination of the prosecution revealed that her hymen was lax and lacerated with no active bleeding. Thus, exhibits "c" does not say that the hymen of the prosecution was broken. It could not have been possible for the hymen to be lax if there had been a complete penetration. (P 254, paras B-C)

*4. **On the power of court to convict for attempted rape;***

*Under **Section 218 of the Criminal Procedure Code**, the high court has power to convict an accused for , attempted rape in so far as the ingredient of the full offence of rape are not satisfactorily established.(P.260, paras B-C)*

26

STEALING

ROSE OSHODI VS. STATE (2001) 12 NWLR PT 726

RIMINAL LAW AND PROCEDURE**-Offence–offences of receiving olen property-ingredient of **–Section 427 of the Criminal code.

***RIMINAL LAW AND PROCEDURE**-Stealing- doctrine of recent ossession-*

ourt considering same- duty on to relate time of theft to time or recovery of olen item.

RINCIPLES:

On ingredient of offence of receiving stolen property;

*y virtue of **Section 427 of the Criminal Code, Cap 48 Vol. 11, Laws of endel State** applicable in Edo State, in establishing the case of receiving olen property, the prosecution must prove the following ingredients;*

) that the goods were stolen

) that the goods were found in the accused's possession; and

) that the appellant knew them to have been stolen.

the instant case, ingredient(a) and (c) stated above were not proved yond reasonable doubt against the appellant. (see paras F-G) Per owland JCA, at page 232, paras C-F;

I agree with the learned counsel for the respondent as stated at page 4 of e respondent's brief that in establishing the case receiving stolen property e prosecution has to prove the following elements;

that the good were stole;

(ii) that the goods were found in the accused's possession ; and

(iii) that the appellant knew them to have been stolen. I hold the view that the fact the appellant claimed that an exhibit (dress) was her own as it was given to her by her boyfriend or boy friends does not in any way ipso facto lead to the conclusion that she committed the offence of receiving. I hasten to add that there was no conclusive evidence adduced by the prosecution at the trial that the goods allegedly stolen were found in possession of the appellant and that the appellant knew or had reason to know that they were stolen properties. Thus at least elements (ii) and (iii) stated above by the learned counsel for the respondent were not proved beyond doubt against the appellant by the prosecution. Infact, from the records he appellant offered an explanation over how she came about the exhibits but unfortunately Napo and Wisdom the robbery suspects whom she explained gave her the exhibits died in the hands of the Police. In order words Napo and Wisdom did not testify to incriminate the appellant". Per Ibiyeye JCA, at page 233, paras B-E;

" I have had a preview of the judgment just delivered by my learned brother, Rowland, JCA. I agree with him that want of evidence that the goods in point were stolen and the inadvertence of the prosecution to procure the evidence of Inspector Okon (the investigating Police Officer) who was alleged to have investigated the complaint of receiving stolen goods coupled with the fact that the prosecution failed to perform its duty to investigate the defence of alibi raised by the appellant, no doubt, created lacunae in the respondent's case. Such lacunae are enough to work serious doubts on the mind of any reasonable tribunal or court such as this court. I agree entirely with the conclusion in the lead judgment that these overt doubts should be resolved in favour of the appellant.

ONAGORUWA VS. STATE (1998) 1 ACLR 435

STEALING

***CRIMINAL LAW AND PROCEDURE**-Charge of stealing –what the prosecution must establish to succeed at the no case submission stage.*

***CRIMINAL LAW AND PROCEDURE**-Charge of stealing – where evidence led by prosecution as to the nature, number and identity of articles stolen is contradictory- How is such evidence treated?*

***CRIMINAL LAW AND PROCEDURE**- Offence of stealing – Accused charged with stealing a specific amount – How is a "Prima facie" case is respect thereof established?-Duty of the Court in respect thereof.*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing – Accused charged with stealing certain amount of money – charge is indivisible – whether proof of lesser amount is enough for prosecution to sustain conviction.*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing – need for evidence of ownership of thing stolen before an accused is convicted.*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing– Need for prosecution to prove the existence of the thing stolen to secure conviction.*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing –Where element of special ownership and value of property stolen is in dispute –Need for charge to contain the name of the owner of the property stolen .*

***CRIMINALLAW AND PROCEDURE** –Offence of stealing –Where specific sums are stolen on specific dates – What prosecution must prove to succeed.*

***CRIMINAL LAW AND PROCEDURE**-Offence of stealing –Whether '*

ownership' is the most indispensable ingredient.

PRINCIPLES;

1. On what the prosecution must establish in a charge of stealing in order to succeed at the no case submission stage:

From the wording of Section 383 of the Code, in order to succeed in the charge, at the no case submission stage , the prosecution must establish a prima facie case in respect of the following essential elements: (a) The owner of the thing stolen . (b) That the thing stolen is capable of being stolen.(c) That it was fraudulently taken or fraudulently converted. At page 469.

2. On the most indispensable ingredient of the offence of stealing:

Ownership is a most vital and indispensable, essential or ingredient of the offence of stealing. It is prop upon which all other essential or ingredients stand. It is the baseline of the offence of stealing . At page 469.

3.O n need for evidence of ownership of thing stolen before an accused is convicted of stealing:

Before an accused could be convicted of the offence of stealing property, there must be evidence that the property is owned by a person. The person could be a natural person or an artificial person . The person could be known or unknown but the property must be owned or capable of being owned. After all, no person can be charged with stealing air, nature's most precious free gift to mankind, a gift which is available to the rich and the poor equally. At page 469.

4. On need for charge to sustain the name of the owner of property stolen where element of special ownership and value of property stolen is in dispute:

Although the law recognizes certain instances when an accused may be charged with what was stolen as property of persons unknown (if that is the real situation), where the element of special ownership and value of the property is not only important, but also in dispute, as in the instance case, the charge must contain the name of the owner of the property. See Adewusi vs. The Queen (1963) 2 SCNLR 245; (1963) 1 All NLR 316;Hibbert vs. Mckienan (1948) 1 All E.R.860. At page 470

5. On need for prosecution to prove the existence of the thing stolen to secure conviction on charge of stealing:

A person can only be charged with stealing what is in existence. Therefore, before a court of law can convict an accused person for stealing, the prosecution must prove the existence of the thing allegedly stolen. At page 472

6.On how a "prima facie" case is established against an accused charged with stealing a specific amount:

Where an accused is charged with stealing a specific amount, the prosecution has the burden to prove that the amount alleged was stolen. And for the purpose of establishing a prima facie case, there must be some evidence linking the accused with the specific amount alleged in the charge. Where there is no such evidence , a court of law is bound to discharge the accused. At page 475

7.On what prosecution must prove to succeed in an offence of stealing where specific sums are stolen on specific dates:

Where specific sums are allegedly stolen on specific dates, the prosecution must prove that the various sums for which the accused was charged actually got into his hands before he could be properly convicted. See Gbolarumi vs. Commissioner of police (1971)NMLR 69.At page 475.

8.On treatment of contradictory evidence of prosecution as to the nature, number and identity of articles stolen in a charge of stealing:

Where in a stealing charge, the evidence led by the prosecution as to the nature, number and identity of the articles stolen is contradictory, such contradiction ought to result in the rejection of such evidence. See Eze vs. State (1992) 7 NWLR(Pt.251) 75. At page 475

9. On whether proof of lesser amount is enough for prosecution to sustain conviction of an accused charged with stealing certain amount of money where the charge is indivisible:

I am in very grave difficult to go along with the submissions of learned counsel for respondent that proof of a lesser amount is enough too sustain conviction in this case. While that may well be so in a case where the charge or count is divisible. I do not agree that it applies in this case where the charge is indivisible. I do not think that is the proper function of the criminal law in the instant case. At page 478.

10. On whether proof of lesser amount is enough for prosecution to sustain conviction of an accused charged with stealing certain amount of money where the charge is indivisible:

If an accused is charged with stealing a particular amount or named amount, the prosecution must stands or fall by proving the particular

amount or by failing to prove same, respectively. The legal position is as exact as that. A contrary position will not only be oppressive to the accused but will certainly run against the provision of ***Section 33(5) of the1979 Constitution of the Federal Republic of Nigeria*** *where the accused is presumed innocent until he is proved guilty. How can an accused be proved guilty if evidence is not led on the exact amount of money stolen in an indivisible charge such as the one the appellant faced? That will be tantamount to reversing justice and we, in this court, cannot be party to such reversion. At page 487.*