JOHN ELUSA EHIKWE

V.

THE STATE

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

SC. 873c /2018

MOHAMMED LAWAL GARBA

ADAMU JAURO

OBANDE FESTUS OGBUINYA

STEPHEN JONAH ADAH

ABUBAKAR SADIO UMAR

FRIDAY, 4th JULY, 2025

Criminal Law and Procedure: Proof in criminal cases - where evidence in a criminal trial is susceptible to doubt - whether it does not amount to proof beyond all reasonable doubt - the principle in State vs. Onyeukwu (2004) 14 NWLR (Pt.893)340

Court: Supreme Court - attitude to concurrent findings - whether should not interfere unless an error has occasioned miscarriage of justice

Criminal Law and Procedure: Alibi - meaning - whether must be promptly raised during investigation

Criminal Law and Procedure: Investigation thereof - where there are sufficient evidence fixing the accused to the scene of crime - whether Alibi may not be investigated - the principle in Udo vs. The State (2023)9 NWLR (Pt. 1888)181

Criminal Law and Procedure: Plea of Alibi - where an Appellant claimed that he was in the house of somebody when the offence was allegedly committed - the police invited that somebody and took statement from him - whether the Appellant cannot claim that his plea of Alibi was not investigated

Criminal Law and Procedure: Offence of murder - ingredients thereof - where an appellate court finds that the ingredients of murder were proved against the Appellant - whether the Appellant's appeal is bound to be dismissed.

Practice and Procedure: Evaluation of evidence - meaning - how done - whether primary duty of the trial court - the principles in Yerima vs. Bolami & Ors. (2023) ALL FWLR (Pt. 12206)5 and Lafia Local Government vs. The State & Ors. (2012) 17 NWLR (pt.1328)94

Practice and Procedure: Evaluation of evidence - where the facts are not in dispute - whether evaluation of evidence will not arise

Practice and Procedure: Evaluation of evidence - where evaluation of evidence does not involve credibility of a witness - whether an appellate court is in the same position as trial court to evaluate evidence

Words and Phrases: Proof beyond all reasonable doubt - meaning

Issues:

1. Having regard to the totality of the evidence adduced, was the evidence adduced properly evaluated by the Court of Appeal for it to be held compelling to ground the conviction of appellant? (Distilled from Grounds 1 , 2, 3, 5 and 7).

2. Was the Court of Appeal right in concluding that circumstantial evidence has been sufficiently made out and shown to be irresistibly conclusive and certain that appellant's guilt was proved beyond reasonable doubt? (Distilled from Ground 4 of the Notice of Appeal).

3. Whether the Court of Appeal which affirmed the decision of the trial court gave adequate consideration to the defence of alibi set up by the appellant and was right in rejecting same? (Distilled from Ground 6 of the Notice of Appeal.)

Facts:

The accused /appellant and others were charged and arraigned on a two count charge for conspiracy to commit murder and murder contrary to Section 334 and 319 of the Criminal Code Cap 48 Vol. 11 Laws of the Defunct Bendel State applicable in Delta State respectively.

The case of the prosecution was that the accused /appellant on 29th day of September murdered one Mrs. Esther Uzoka. In proof of their case, the prosecution called several witnesses and tendered exhibits while the accused testified on his behalf and called no additional witness.

At the close of hearing, the trial court convicted the accused /appellant as charged. The Appellant unsuccessfully appealed to the Court of Appeal Benin Division, hence this further appeal to the Supreme Court.

Held (unanimously dismissing the appeal):

1. On meaning and process of evaluation of evidence -

Evaluation of evidence entails the examination of all evidence before the trial judge before making his findings. In the case of Lafia Local Government v. The Executive Governor, Nasarawa State & Ors. (2012) 17 NWLR (Pt. 1328) 94, this court held that evaluation is done by putting all the evidence before the judge on an imaginary scale to see which side appears weighty or outweighs the other. The position and policy of this court on evaluation was elegantly summed up in Yerima v. Bolami & Ors. (2023) All FWLR (Pt. 12206) 5, where my lord, M.L. Garba, JSC held:

"This law is now trite that the evaluation of the totality of evidence adduced by the parties in proof and defence of a case before a court of law, is the primary duty and function of the trial court before which witnesses physically testified or documents are directly tendered and admitted in evidence, in the first instance. The trial court therefore has the unique opportunity and enjoys the privilege of seeing, hearing and observing such witnesses and first considering documents tendered in evidence to enable it to fully and properly appraise the facts in the pleadings and assess the evidence given thereon for the purpose of ascribing probative value, worth or weight, drawing the requisite inferences, making findings and reaching deserving decisions/conclusions in the case. In brief, the trial court places all the evidence adduced by the parties on the two (2) sides of the judicial imaginary scale of justice to weigh; by way of credibility, relevance, probability and conclusiveness on the facts in dispute, and find out which side of the scale outweighs the other, based, not on the quantity, but the quality, in law, of the evidence. That is what the primary duty of evaluation of evidence by a trial court involves and entails. See Mogaji v. Odofin (1978) 4 SCI-91; Woluchem v. Gudi (1981) 5 SC, 291 at 294; Bello v. Iweka (1981) 1 SC, 101; Adeyeye v. Ajiboye (1987) 3 NWLR (Pt.64) 432; Olufosoye v. Olorunfemi (1989) 1 NWLR (Pt. 95) 26; Onwuka v. Ediala (1989) 1 NWLR (Pt. 96) 182 at 208, 209; Baba v. N.L.A.T.C. (1991) 7 SC (Pt. 1) 58,

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2. On evaluation of evidence where there is no conflict -

It is of dire necessity to underline the fact that evaluation of evidence is relative to the nature of the case. In civil cases, a case is won on the preponderance of evidence and where a party's case does not measure up in weight and substance, the party's case will fail. In criminal cases, evidence is not valued by weight but by its credibility and quality. In all cases, where the facts are not in dispute, the issue of evaluation is remote or does not arise. It is majorly where there is conflict in the evidence on material issues of fact that the trial judge is expected to review and evaluate the evidence before making a finding. See Agbanelo v. Union Bank of Nigeria Ltd (2000) LPELR – 234 (SC). In all these, it is well settled that the evaluation of evidence remains the exclusive preserve of the trial court because of its singular opportunity of hearing and watching the demeanor of witnesses as they testify and thus, it is the court best suited to assess their credibility. Where a trial court makes a finding on the credibility of a witnesses, the appellate court would not ordinarily interfere.

3. On where evaluation of evidence does not involve credibility of witness -

Where the nature of the case is such that the evaluation would not entail the assessment of credibility of witnesses and would be confined to drawing inferences and making findings from admitted and proved facts and from contents of documentary evidence, the appellate court is in advantage position as the trial court to evaluate or re-evaluate the evidence and make its own findings. This court as an appellate court to the lower court has a duty to re-appraise the evidence on record to see if the findings of the trial court were perverse. See Woluchem v. Gudi (1981) 5 SC. 291; Mogaji v. Odofin (1978) 4 SC 91; Duru v. Nwosu (1989) 4 NWLR (Pt. 113) pg. 24; Akintola v. Balogun (2000) 1 NWLR (Pt. 642) pg. 532; Ebba v. Ogodo (1984) 1 SCNLR 372; Mogaji v. Cadbury (Nig.) Ltd. (1985) 2 NWLR (Pt. 7) pg. 393.

4. On meaning of proof beyond all reasonable doubt -

The requisite standard of prove in criminal matters under Section 135 of the Evidence Act, 2011 , is proof beyond reasonable doubt. It is now settled that proof beyond reasonable doubt is not the proof that is cast in stone as proof beyond every shadow of doubt. It is equally not admitted to be the proof where a reasonable doubt does not mean some light, airy, insubstantial doubt that may flip through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt found upon reasons. See

Ngwuta, JSC, relying on the Indian case of K. Gopal Redding v. State (1979) SC 387, in the case of Egharevba v. State (2016) 8 NWLR (Pt. 1515) 433.

5. On when evidence in a criminal trial is susceptible to doubt -

This court in the case of the State v. Onyeukwu (2004) 14 NWLR (Pt. 893) 340, strategically and directly expressed the intendment of the phrase proof beyond reasonable doubt to mean the following:

"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 the face, no tribunal of justice worth its salt would convict on it having regard to the nature of the evidence led and the law marshalled 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."

6. On attitude of the Supreme Court to concurrent findings -

It should be kept within our focus that our law is settled that when there is concurrent findings of the two lower courts, this court can only disturb concurrent findings of fact by two lower courts where there is clear proof of error of either law or fact on record or that the decision was perverse. Where there is sufficient evidence to support the concurrent findings of fact by the two lower courts, such findings will not be disturbed except there is a significant error which has cause a miscarriage of justice. See Saminu v. State (2019) 1 1 NWLR (1683) 254; Aiguo Khian v. The State (2004) LPELR – 269 (SC).

7. On meaning and nature of Alibi -

"Alibi", under our criminal law and procedural law refers to a defence whereby an accused person claims that he was not at the scene of the crime at the time the crime was committed and therefore, could not have been responsible for the commission of the

offence. If alibi is successfully proven, it exonerates the accused. For this defence to be considered, the accused must raise it early in the case to enable the Police to investigate it and for the court to consider it. This defence of alibi is a defence that explores the difficulty of a person to be found physically at two different locations at the same time.

8. On when to investigate Alibi -

A man by nature, is not immanent or someone who is permanently present and pervading within the universe or nature. So, an accused person pleading alibi, means he is contending that he was at a location other than the scene of crime at the relevant time. It is a cardinal rule that a person intending to plead alibi, must raise the defence at the first possible opportunity 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. In raising it, the accused must be precise and specific in terms of place and time. See Ozaki & Anor. v. The State (1990) 1 NWLR (Pt. 124) 92; Udo v. State (2023) 9 NWLR (Pt. 1888) 181' it should be underlined however, that the defence of alibi does not automatically exonerate an accused person. It is also, not absolutely mandatory that the defence' must be investigated in all circumstances. The position of the law has been well explained by this court in the case of Udo v. The State (supra), where this court per Augie, JSC, held thus:

“Where there is ample evidence to fix an accused at the scene of the crime, there

would be no need for the Police to investigate alibi - See Adewunmi v. State (2015) 10 NWLR (Pt. 1521) 614 wherein Rhodes-Vivour, JSC, observed: “There would be no need for the Investigating Police Officers to investigate an alibi if there is overwhelming evidence against the accused person that he participated in the crime.”

9. On whether the plea of Alibi was investigated by police -

In the instant case, the appellant was well located at the scene of the crime at the material time. The evidence of the PWI is that the offence was committed at about 8:00am on 29th September, 2008. The appellant in his plea to the Police stated that he went to Sunday Agholor’s house at 7:30 am and spent one hour there. Sunday Agholor, in his own testimony said the appellant was at his house at 7:00 am on that date and left about 7:10 am. The appellant did not call Sunday Agholor as a witness. Agholor’s statement to the Police was in response to the investigation activities of the Police on the plea of alibi by the appellant. The allegation of the appellant that his plea of alibi was not investigated by the-.Police is completely unfounded. The alibi raised by the appellant was investigated by the Police and the Police found it to be untrue.

10. On where the ingredients of murder was proved against the appellant-

In this case, all the necessary ingredients of the offence of murder for which the appellant had been convicted were proved beyond reasonable doubt. The findings of the lower court from the record before us, are unassailable. It follows therefore, that this issue is resolved against the appellant.

From the foregoing, it is my conclusion that this appeal is lacking in merit. The appeal is hereby dismissed.

History of the case:

Supreme Court:

Names of Justices who sat on the appeal: MOHAMMED LAWAL GARBA, ADAMU JAURO, OBANDE FESTUS OGBUINYA, STEPHEN JONAH ADAH, ABUBAKAR SADIQ UMAR

Appeal No. SC. 873c /2018

Date of Judgment: Friday, 4th July, 2025

Names of Counsel : Jim Okodaso, Esq., with Aken Adedeji, Esq., and O. Umokoro Esq., for the Appellant. Omamuzo Erebe, Esq., (S.G. Delta State) with C.O Agbagwu, Esq., (Director of Appeals) Ministry of Justice Delta State, for the Respondent.

JONAH, JSC (Delivering leading Judgment) : This appeal is against the decision of the Court of Appeal, Benin Judicial Division in Appeal No:CA/B/455c/2013, delivered on the 14th day of June, 2018. The lower court, in its decision, dismissed the appeal of the appellant and affirmed the judgment of the trial court delivered on the

11th day of March, 2011, in Charge No. HCY/9C/2009, wherein the appellant along with three other accused persons were convicted for the offence of conspiracy to commit murder and murder, and sentenced to death by hanging.

The prosecution's case before the trial court, was that the appellant herein alongside three other accused persons conspired and murdered one Mrs. Esther Uzoka on the 29th day of September, 2008 at Owa-Ofie Village in the Owa- Oyibu.

Following an eyewitness' report which implicated the appellant and other three accused persons, the Nigerian Police Force arrested them and upon conclusion of investigation, they were arraigned before the trial court for the offences of conspiracy

to commit murder and murder punishable under Sections 324 and 319 of the Criminal Code Cap 48 Vol. II Laws of the defunct Bendel State applicable in Delta State, respectively.

The appellant, as the 1st accused person alongside three others were arraigned on a two-count charge on which they entered a non-guilty plea. The prosecution now respondent called five (5) witnesses who testified as PWI to PW5. The respondent/prosecution closed her case. Thereafter, each of the accused persons testified in their defence, respectively.

In a judgment delivered on the 11th March, 2011, the trial court found the appellant alongside his three co-accused persons guilty. The trial court then convicted them on the two counts charge and sentenced them to death by hanging.

Being dissatisfied with the judgment of the trial court, the appellant appealed to the lower court. The appeal was duly heard by the lower court, and in a judgment, delivered on the 14th June, 2018, the lower court dismissed the appeal and affirmed the judgment of the trial court. (See pages 197 - 226 of the Record).

Still dissatisfied with the decision of the lower court, the appellant has now appealed to this court via a seven (7) ground Notice of Appeal filed on the 12th day of July, 2018; wherein he prayed this court for an Order setting aside the judgment of the lower court which affirmed the trial court's judgment by which the appellant was convicted and sentenced to death on a 2-count charge of conspiracy to murder and murder.

Thereafter, the parties, through their counsel, filed and exchanged their respective briefs of argument in line with the procedure regulating the hearing of criminal appeals in this court.

Learned counsel for the appellant, Jim E. Okodaso, Esq. distilled three (3) issues for the determination of this appeal in the Amended Appellant's Brief of Argument filed on the 14tt day of September, 2022 and deemed properly filed and served on the 13th October, 2022. The three (3) issues are worded as follows:

1. Having regard to the totality of the evidence adduced, was the evidence adduced properly evaluated by the Court of Appeal for it to be held compelling to ground the conviction of appellant? (Distilled from Grounds 1 , 2, 3, 5 and 7).

2. Was the Court of Appeal right in concluding that circumstantial evidence has been sufficiently made out and shown to be irresistibly conclusive and certain that appellant's guilt was proved beyond reasonable doubt? (Distilled from Ground 4 of the Notice of Appeal).

3. Whether the Court of Appeal which affirmed the decision of the trial court gave adequate consideration to the defence of alibi set up by the appellant and was right in rejecting same? (Distilled from Ground 6 of the Notice of Appeal.)

In response, learned counsel for the respondent, Omamuzo Erebe, Esq., distilled a sole issue, in the Respondent's Amended Brief of Argument filed on 22nd day of January, 2024, and deemed properly filed and served on the 18th day of December, 2024, to wit:

Did the Court of Appeal correctly affirm the trial court's conviction of the appellant for conspiracy to commit murder and murder, respectively?

The sole issue raised by the respondent is subsumed in three (3) issue distilled by the appellant. I adopt the three (3) issues as raised by the appellant. I shall take issues 1 and 2 together.

Issues One and Two:

These issues are:

1. **Having regard to the totality of the evidence adduced was the evidence adduced properly evaluated by the Court of Appeal for it to be held compelling to ground the conviction -of appellant; and —**
2. **Was the Court of Appeal right in concluding that circumstantial evidence has been sufficiently made out and shown to be irresistibly conclusive and certain that appellant's guilt was proved beyond reasonable doubt.**

Arguing these issues, learned counsel for the appellant submitted that the entirety of the evidence adduced by the prosecution is one of equivocation, uncertainties, hearsay and mere suspicion which is grossly insufficient to establish the crime of murder beyond reasonable doubt against the appellant.

Counsel submitted that the lower court was in error to have held to be right the findings of the trial court that cogent and compelling circumstantial evidence which sufficiently proved the guilt of the appellant was made out by the evidence of PWI which the lower court found to be 'direct and devoid of any cloudiness with regards to his account of what he saw and observe on the 29/09/2008. He referred the court to page 211 lines 18 – 20 of the record of appeal. He submitted that though, this court will not interfere with Concurrent findings of the two lower courts but this court will set aside such findings where such are perverse or when they will result in a miscarriage of justice or are a violation of some principles of law or procedure. He relied on the cases

of Overseas Construction Co. Ltd v. Creek Enterprises Nig. Ltd (1985) 3 NWLR (Pt. 13) 407; Sanyaolu v. The State (1976) 5 SC 37; lgbikis v. The State (2017) LPELR – 4'1667 (SC); Shehu v. The State (2010) All FWLR (Pt. 523) 1841 ; OSayeme v. The State (1966) NMLR 388.

Counsel maintained that the trial court failed in its duty to so consider the evidence of PWI as it did not evaluate all the evidence adduced, therefore, it was in error when it paid little or no attention to the evidence of PW4 and out rightly jettisoned the evidence of PW2 and PW3.

Arguing further, learned counsel for the appellant canvassed that a critical examination of the evidence of PWI shows relevant facts that makes it unreliable probable that either PWI participated in the crime or was the actual perpetrator of the crime. He referred the court to Section 9(b) of the Evidence Act 2011. He canvassed that the lower court failed to advert its mind or attention to the foregoing and thus, reached a wrong conclusion. He referred the court to page 218 lines 9 – 20 of the record of appeal. He stated that the findings of the two lower courts that PWI is not a tainted witness cannot be sustained and is gravely erroneous as the PW1 had issues with all accused persons including appellant He submitted that from the totality of the evidence adduced that PWI was patently on a self-serving mission or persona vendetta against the appellant. He urged the court to so hold as same cannot be relied upon being laden with inconsistencies, conflicts and material contradictions and ought to have been out rightly rejected. He cited the cases of: Ankwa v. The State (1969) 1 All NLR 129, Onuchukwu v. The State (1998) 4 NWLR (Pt. 547) 576; Ozaki v. The State (1990) 1 NWLF: (Pt. 124) 92; Onafowokan v. The State (1987) 3 NWLFt (Pt. 61) 538. He urged the court to resolve this issue in favour of the appellant.

On the second issue, learned counsel for the appellant submitted that the evidence of PWI cannot be considered to be sufficient and conclusive to constitute circumstantial evidence. He highlighted the ingredients in a charge of murder; and conceded that the death of the deceased is not in issue, however, he submitted that it was not the act of the appellant that caused the death of the deceased. He cited Abirifon v. The State (2013) 13 NWLR (Pt. 1372) 587 ; Egboghonome v. The State (1993) 7 NWLR (Pt. 306) 383, Adio v. The State (1986) 5 SC 194 @ 194 @ 219 - 220. He noted that the burden of proof is on the prosecution and such does not shift. He referred the court to Section 135 of the Evidence Act 2011. He argued that the appellant did not confess to the crime and that there was no accepted direct evidence of how the deceased died. That before the accused can be convicted on circumstantial evidence, the fact of the cause of death should be proven by such circumstances as render the commission of the crime certain and leave no ground for reasonable doubt. He cited Ajaegbo v. The State (2018) LPELR – 44531 (SC); Uwe Idighi Esai & Anor. v. The State (1976) 11 SC 39; Stephen Ukorah v. The State (1977) 4 SC @ 176. He maintained that the prosecution is to establish the guilt

of the accused with compelling and conclusive evidence with a degree of compulsion which is consistent with a high degree of probability. He relied on the cases of:

Lori v. The State (1980) 12 NSCC 259, Nwaturuocha v. The State (2011) 6 NWLR (Pt. 1242) 170. Furthermore, he contended that to support a conviction on the question of circumstantial evidence, it must not only be cogent, complete and unequivocal but also compelling and should lead to the irresistible conclusion that the prisoner and no one else is the murderer as it must leave no ground for reasonable doubt. He therefore, submitted that the lower court was in serious error to affirm the findings of the trial court as no act of appellant was established by the evidence adduced by the prosecution as the actus reus or act resulting in death of the deceased. He relied on Ajaegbo v. The State (supra).

The learned counsel for the appellant submitted also, that the there being no direct evidence that appellant was seen to cut the deceased, and the cut was not stated to be knife cut nor was bicycle or knife processed for finger prints, the blood stains on the knife or the grass with it were allegedly cleaned having not been shown to be blood of deceased. Moreover, that the deceased's husband was not called though listed as a witness and vital one. That such omission makes the case against the appellant to remain on the level of suspicion. He cited the case of Ahmed v. The State (1999) 7 NWLR (Pt. 612) 644 @ 673.

He contended that the appellant was somewhere else at the time the crime was committed. He submitted that the appellant discharged the burden not only by mere denial of not been near the crime scene, but gave particulars of many persons and parts of his Owa-Ofie village he visited and was with at between the hours from 6:3G)am and up to IO:30 am that morning. That the said persons/places within the Owa- Ofie village were not investigated by the prosecution. That the failure of the prosecution in these circumstances raises doubt which amount to failure of the prosecution to prove beyond reasonable doubt the guilt of-the appellant. He cited Dogo v. The State (2001) FWLR: (Pt. 39) 1388); Oyebola v. The State (2008) All FWLR (402) 1175 2 1 184 Para. E - F. He urged the court to resolve this issue in appellant's favour and set aside the conviction and sentence of the appellant.

Reacting to these issues, learned counsel for the respondent submitted that the uncontroverted evidence presented by the respondent stands unfettered and supports the judgments of the two lower courts. Counsel pointed out that a trial court will not reject evidence simply because it raises a doubt, rather, that a trial court would assess whether the prosecution has established the offence's ingredients against the accused to a high degree of probability. Counsel reproduced the ingredients of murder and argued that, where the said ingredients co-exist, the prosecution has proved the charge against the accused. More so, that in order to prove the said ingredients, that the trial court can rely on either the direct evidence of witnesses, circumstantial evidence or admission and confessions of the person(s) accused for the crime. He relied on the cases of: Ogba v.

The State (1992) 2 NWLR (Pt. 222) at 164 and Ogunze v. State (1998) 58 LRCN 3512 at 3551 SC. Counsel submitted that p\A/1's uncontroverted eyewitness account proves the ingredients of the offence of murd6t against the appellant beyond reasonable doubt. He referred the court to the findings of the trial court at page 85, lines 23 – 30 of the record of appeal. He maintained that the lower court was right in affirming the decision of the trial court and that based on the evidence before the trial court, there was no basis for the lower court to disturb the trial court's verdict

Learned counsel for the respondent further canvassed that the contradictions raised by the appellant goes to no issue1 as it does not affect the action or evidence and findings of the two lower courts. He referred the court to the findings of the trial court at page 85, lines 6 – 15 and submitted that PW1's identification of the appellant was direct, unequivocal and uncontroverted. Moreover, that appellant counsel's failure to impeach PW1's identification of the appellant under cross-examination amounts to acceptance of the evidence. He relied on the cases of: Oforlete v. State (2000) LPELR – 2270 (SC) at 328; Ifeanyi Chukwu Osondu Company Ltd. v. Akhigbe ('1999) LPELR – 1433 (SC) at 17P. He noted that statements are contradictory, not where they entail minor discrepancies on peripheral details but where they assert the opposite of a material fact in issue. He cited the cases of: Bassey v. State (2012) LPELR-78'13 (SC) at 23; Awopejo v State (2001) 18 NWLR (Pt. 745) 430. He maintained that the lower court's finding was not perverse as the evidence they relied upon was not fraught with any reasonable doubt or material inconsistency.

It was further argued by the counsel for the respondent that the appellant has not established that PWI has an ulterior purpose to serve. He stated the trial court could not infer existence of a personal purpose by PWI when none existed. That neither the appellant nor any other accused person adduced evidence to show PW1's alleged vindictive disposition towards them. Counsel submitted that PW1's relationship with the appellant does not in any way and of itself weaken his credibility. He cited: State v. Usman (2005) NWLR (Pt. 906) 81 at 133. He urged the court to resolved these issues in favour of the respondent and dismiss the appeal.

On issues I and 2, the main focus of the counsel's submission is out rightly, the evaluation of the evidence before the trial court by the trial court. Evaluation of evidence entails the examination of all evidence before the trial judge before making his findings. In the case of Lafia Local Government v. The Executive Governor, Nasarawa State & Ors. (2012) 17 NWLR (Pt. 1328) 94, this court held that evaluation is done by putting all the evidence before the judge on an imaginary scale to see which side appears weighty or outweighs the other. The position and policy of this court on evaluation was elegantly summed up in

Yerima v. Bolami & Ors. (2023) All FWLR (Pt. 12206) 5, where my lord, M.L. Garba, JSC held:

"This law is now trite that the evaluation of the totality of evidence adduced by the parties in proof and defence of a case before a court of law, is the primary duty and function of the trial court before which witnesses physically testified or documents are directly tendered and admitted in evidence, in the first instance. The trial court therefore has the unique opportunity and enjoys the privilege of seeing, hearing and observing such witnesses and first considering documents tendered in evidence to enable it to fully and properly appraise the facts in the pleadings and assess the evidence given thereon for the purpose of ascribing probative value, worth or weight, drawing the requisite inferences, making findings and reaching deserving decisions/conclusions in the case. In brief. the trial court places all the evidence adduced by the parties on the two (2) sides of the judicial imaginary scale of justice to weigh; by way of credibility, relevance, probability and conclusiveness on the facts in dispute, and find out which side of the scale outweighs the other, based, not on the quantity, but the quality, in law, of the evidence. That is what the primary duty of evaluation of evidence by a trial court involves and entails. See Mogaji v. Odofin (1978) 4 SCI-91; Woluchem v. Gudi (1981) 5 SC, 291 at 294; Bello v. Iweka (1981) 1 SC,

101; Adeyeye v. Ajiboye (1987) 3 NWLR (Pt. 64) 432; Olufosoye v. Olorunfemi (1989) 1 NWLR (Pt. 95) 26; Onwuka v. Ediala (1989) 1 NWLR (Pt. 96) 182 at 208, 209; Baba v. N.L.A.T.C. (1991) 7 SC (Pt. 1) 58, (1991) 5 NWLR: (Pt. 192) 388; Anyegwu v. Onuche (2009) 3 NWLF: (Pt. 1129) 659, Ayuya v. Yonrin

(2011) 2 LPELR – 686 (SC); Sha (Jnr.) v.Kwan (2000) 8 NWLR (Pt. 670) 685)"

It is of dire necessity to underline the fact that evaluation of evidence is relative to the nature of the case. In civil cases, a case is won on the preponderance of evidence and where a party's case does not measure up in weight and substance, the party's case will fail. In criminal cases, evidence is not valued by weight but by its credibility and quality. In all cases, where the facts are not in dispute, the issue of evaluation is remote or does not arise. It is majorly where there is conflict in the evidence on material issues of fact that the trial judge is expected to review and evaluate the evidence before making a finding. See Agbanelo v. Union Bank of Nigeria Ltd (2000) LPELR – 234 (SC). In all these, it is well settled that the evaluation of evidence remains the exclusive preserve of the trial court because of its singular opportunity of hearing and watching the demeanor of witnesses as they testify and thus, it is the court best suited to assess their credibility. Where a trial court makes- a finding on the credibility of a witnesses, the appellate court would not ordinarily interfere. Where the nature of the case is such that the evaluation would not entail the assessment of credibility of witnesses and would be confined to

drawing inferences and making findings from admitted and proved facts and from contents of documentary evidence, the appellate court is in a vantage position as the trial court to evaluate or re-evaluate the evidence and make its own findings. This court as an appellate court to the lower court has a duty to re-appraise the evidence on record to see if the findings of the trial court were perverse. See Woluchem v. Gudi (1981) 5 SC. 291; Mogaji v. Odofin (1978) 4 SC 91; Duru v. Nwosu (1989) 4 NWLR (Pt. 113) pg. 24; Akintola v. Balogun (2000) 1 NWLR (Pt. 642) pg. 532; Ebba v. Ogodo (1984) 1 SCNLR 372; Mogaji v. Cadbury (Nig.) Ltd. (1985) 2 NWLR (Pt. 7) pg. 393.

The origin of this case was that on 29th day of September, 2008, when the deceased was murdered in her residence along Owa Ofile Abavo/Warri Road, Delta State. The medical evidence indicated that the cause of death was “a sharp laceration below the deceased’s jaw”. The eye witness locates the appellant and three others at the scene of crime. The evidence of the eye witness is to the effect that the appellant was seen hurriedly leaving the scene of crime with blood-stained hands and holstering a dagger.

The prosecution had called five (5) witnesses in proving its case. The appellant was the 1ST accused person in the charge before the trial court. The requisite standard of prove in criminal matters under Section 135 of the Evidence Act, 2011, is proof beyond reasonable doubt. It is now settled that proof beyond reasonable doubt is not the proof that is cast in stone as proof beyond every shadow of doubt. It is equally not admitted to be the proof where a reasonable doubt does not mean some light, airy, insubstantial doubt that may flip through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt found upon reasons. See Ngwuta, JSC, relying on the Indian case of K. Gopal Redding v. State (1979) SC 387, in the case of Egharevba v. State (2016) 8 NWLR (Pt. 1515) 433. This court in the case of the State v. Onyeukwu (2004) 14 NWLR (Pt. 893) 340, strategically and directly expressed the intendment of the phrase proof beyond reasonable doubt to mean the following:

“It must be stated and emphasized that proof bey-and 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 the face, no tribunal of justice worth its salt would convict on it having regard to the nature of the evidence led and the law marshalled 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."

This explanation is to settle what is the ultimate boundary to locate, as far as the evidence gathered in the trial court is concerned.

In the instant case, the star witness of the prosecution is the Pw1 by name, Kenneth Dumbir. He testified before the trial court as follows:

I am a farmer. I know the accused persons. On 29/9/2008, 1 went to check the trap I set along Abavo/Warri Road. I saw two motorcycles. As I was trying to come out of the bush to the road, I saw the 2nd accused person. The 2nd accused hid under a palm tree in the compound of the deceased women. The 2nd accused person whistled, and Felix and Friday jumped over the fence of a petrol filling station. The filling station is along Abavo road and shares common boundary with the house of the decease. Felix and Friday are the 3rd and 4th accused in the dock. Felix's father's name is Amechi. Friday's name is Okwufurueze. Friday also bears Ugbobor. I later saw the 1st accused running out of the compound of the deceased, and his hands were blood stained, He also had a knife with him. The knife is like dagger. He cleaned the knife with the grass on the field along the new road Abavo road. He put the dagger in his waist behind his waist belt. When the accused persons left, I went to the compound of the deceased and saw the decease in the pool to her blood and a bicycle was laid on her body. Felix and Friday (3rd and 4th) accused boarded a motor-cycle and move towards Agbor and the 1st and 2nd accused persons boarded motorcycle towards Abavo.

This witness was extensively cross-examined but the evidence was not controverted and the integrity of the witness was not impugned. The lower court found that this witness was truly not a tainted witness and that he adduced cogent and compelling evidence fixing the appellant and his accomplices at the scene of crime. The lower court agreed with the trial court that the PWI, gave the evidence that is positive and devoid of any cloudiness with regard to his account of what he saw and observed on 29/09/2008.

It should be kept within our focus that our law is settled that when there is concurrent findings of the two lower courts, this court can only disturb concurrent findings of fact by two lower courts where there is clear proof of error of either law or fact on record or that the decision was perverse. Where there is sufficient evidence to support the concurrent findings of fact by the two lower courts, such findings will not be disturbed except there is

a significant error which has cause a miscarriage of justice. See Saminu v. State (2019) 1 1 NWLR (1683) 254; Aiguo Khian v. The State (2004) LPELR – 269 (SC).

The appellant in this case, has failed flat in showing any cause for this court to interfere with the decisions of the two lower courts. These issues are therefore, resolved against the appellant.

ISSUE THREE (3)

This issue is - **Whether the Court of Appeal which affirmed the decision of the trial court gave adequate consideration to the defence of alibi set up by the appellant and was right in rejecting same?**

Arguing the third issue, learned counsel for the appellant submitted that his defence of alibi was improperly considered and wrongly rejected by the lower court as well as the trial court. He canvassed that it is the duty of the prosecution to investigate same carefully and that failure to investigate thoroughly will invariably lead to the acquittal of the accused person. He referred the court to Dogo v. The State (supra) and Shehu v. The State (supra). Counsel submitted that the trial court failed in its duty to give adequate consideration in evaluating the evidence of alibi put in by appellant when it out rightly dismissed same. Learned counsel made reference to the evidence of PWI and PW2 and canvassed that the prosecution did not lead evidence to establish or fix the approximate time of death to be 'about 8am' save that the deceased was killed in the morning. He contended that 'early in the morning' did not mean any specific time. He pointed out that the evidence led does not establish with certainty as to the exact time the crime was committed. He observed that this is one case where the seconds, minutes and hours would count if appellant's alibi were to be dislodged.

Counsel noted that the evidence of the appellant has beer consistent with his statement to the Police. He stated tha1 from the evidence of the appellant, it is instructive to note that he was with 7 persons at different time and places that morning in Owa-Ifie village. He referred the court to pages 27 to 29 of the record of appeal. Counsel argued that time has become very important in establishing and/or demolishing of the alibi, However, that the time of murder was not expressed in the charge neither should any acceptable findings be made from the evidence led by the prosecution because none was made. He argued that the lower court was in error when it put appellant in a position to defend the alibi as to where he was at 'about 8am'. That this 'about 8am' held to be the time of murder of the deceased clearly is a surprise sprung on the appellant from nowhere and it is not supported by the evidence adduced. He stated that such failure has occasioned a miscarriage of justice and amounts to putting the burden of proof on the appellant to prove his innocence which is in breach of Section 36(5) of the 1999 Constitution and the established principle that the burden of proving appellant's guilt rest with prosecution and does not shift. He urged the court to resolve this issue in favour of the appellant.

In response to this issue, counsel for the responden1 submitted that PWI's eyewitness account supersedes the appellant's alibi . He argued that the appellant's alibi assertion is not believable and unavailing. He noted that the lower courts were correct to disregard it. He referred the court to the cases of: Dagaya v. State (2006) LPELR 912 (SC) at 30 – 31; Lawali v. State (2020) All DQLE (Pt. 1036) 268 at 293 – 294 Paras G – A; Ozaki v. State (1990) 1 NWLR(Pt. 124) 92; Nwabueze v. State (1998) 4 NWLR (Pt. 86) 16; Ebri v. State (2004) All FWLR (Pt. 216) 420. It was further stated by counsel for the respondent, that the cumulative effect of Sunday Agholor's statement and PWI's unimpeached eyewitness account nullifies the appellant's defence of alibi. That the imaginary scale, PWI's testimony fixing the appellant at the scene of the crime at the time of the victim's murder remains unscathed. Also counsel observed that the appellant did not call Sunday Agholor as a witness to support his defence. Counsel argued, contrary to the appellant's assertion, that the PW4 investigated the defence of alibi through Sunday Agholor. He referred the court to the findings of the lower court at page 222 of the record of appeal.

He urged the court not to interfere with the concurrent findings of the lower courts as the appellant has not shown any special circumstance to require any interference by this court. "Alibi", under our criminal law and procedural law refers to a defence whereby an accused person claims that he was not at the scene of the crime at the time the crime was committed and therefore, could not have been responsible for the commission of the offence. If alibi is successfully proven, it exonerates the accused. For this defence to be considered, the accused must raise it early in the case to enable the Police to investigate it and for the court to consider it. This defence of alibi is a defence that explores the difficulty of a person to be found physically at two different locations at the same time. A man by nature, is not immanent or someone who is permanently present and pervading within the universe or nature. So, an accused person pleading alibi, means he is contending that he was at a location other than the scene of crime at the relevant time. It is a cardinal rule that a person intending to plead alibi, must raise the defence at the first possible opportunity 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. In raising it, the accused must be precise and specific in terms of place and time. See Ozaki & Anor. v. The State (1990) 1 NWLR (Pt. 124) 92; Udo v. State (2023) 9 NWLR (Pt. 1888) 181' it should be underlined however, that the defence of alibi does not automatically exonerate an accused person. It is also, not absolutely mandatory that the defence' must be investigated in all circumstances. The position of the law has been well explained by this court in the case of Udo v. The State (supra), where this court per Augie, JSC, held thus:

"Where there is ample evidence to fix an accused at the scene of the crime, there would be no need for the Police to investigate alibi - See Adewunmi v. State (2015) 10 NWLR (Pt. 1521) 614 wherein Rhodes-Vivour, JSC, observed: "There would be no need for the Investigating Police Officers to investigate an alibi if there

is overwhelming evidence against the accused person that he participated in the crime."

In the instant case, the appellant was well located at the scene of the crime at the material time. The evidence of the PWI is that the offence was committed at about 8:00am on 29th September, 2008. The appellant in his plea to the Police stated that he went to Sunday Agholor's house at 7:30 am and spent one hour there. Sunday Agholor, in his own testimony said the appellant was at his house at 7:00 am on that date and left about 7:10 am. The appellant did not call Sunday

Agholor as a witness. Agholor's statement to the Police was in response to the investigation activities of the Police on the plea of alibi by the appellant. The allegation of the appellant that his plea of alibi was not investigated by the-.Police is completely uh-founded. The alibi raised by the appellant was investigated by the Police and the Police found it to be untrue.

In this case, all the necessary ingredients of the offence of murder for which the appellant had been convicted were proved beyond reasonable doubt. The findings of the lower court from the record before us, are unassailable. It follows therefore, that this issue is resolved against the appellant.

From the foregoing, it is my conclusion that this appeal is lacking in merit. The appeal is hereby dismissed. The judgment of the lower court in Appeal No: CA/B/455c/2043, delivered on the 14th day of June, 2018, is affirmed.

Appeal Dismissed.

JAURO. JSC: I am in full agreement with the erudite reasoning and conclusion of my learned brother Stephen Jonah Adah, JSC in the judgment just delivered, a draft of which I had the opportunity of reading before now.

Consequently, I also dismiss this appeal and affirm the judgment of the court below

GARBA, JSC: I have read a draft of the Lead Judgment written by my Learned Brother S. J. Adah, JSC in this appeal and agree with the views on the three (3) issues submitted by the Appellant for determination as well as the conclusion that the appeal is bereft of merit for the reasons setout therein.

The cogent, credible and unchallenged evidence of PWI ; an eye witness, had dispelled any iota of reasonable doubt that the Appellant was not only physically at the scene of

the murder of the deceased at the material time, but also, was a *participe criminis* in the commission of the heinous crime.

The purported plea and defence of alibi were totally displaced and effectively disproved such that it was not available to the Appellant in the circumstances of the case, as very ably demonstrated in the Lead Judgment.

Failure by the police to investigate the said plea of alibi is not fatal to the Respondent's case since the Appellant was factually fixed at the scene of the offence by credible and sufficient evidence of eye witnesses. Olatinwo v. State (2013) All FWLR (pt. 685) 312, Idemudia v. State (2015) 17 NWLR (pt. 1488) 375, Ikumonalan v. State (2018) 14 NWLR (pt. 1640) 456, Jiya v. State (2020) 13 NWLR (Pt. 1740) 159.

The appeal, in the above premises, is dismissed by me too in terms of the Lead Judgment.

SADIQ, JSC: I have a preview of the judgment delivered by my learned brother Adah, JSC and I agree with his reasoning and conclusion.

From the history of this suit the appeal had seemed doomed to failure. It is a concurrent finding of courts below. By several authorities of this Court, it has been settled that there would be no interference with concurrent finding of two courts below unless there were exceptional circumstances to justify such interference. Nor would this court interfere with concurrent judgment of two courts unless there are substantial errors in law or procedure leading to miscarriage of justice. See A. M. Akinloye V. Bello Eyiyola & Ors 1968 (NMLR) 92 at 95.

The appellant had strenuously raised the defence of7Uibi. In Njovens & Ors V. the State (1973) N. M. L. R. 331 at 351 Coker, JSC said:

"There is nothing extraordinary or esoteric in a plea of alibi. Such a plea of alibi postulates that the accused person could have been at the scene of the crime and only inferentially that he was not there. Even if it is the duty of the prosecution to check on a statement of alibi by an accused persons and disprove the alibi or attempt to do so, there is no inflexible and/or invariable way of doing this. If the prosecution adduce sufficient and acceptable evidence to fix the person at the scene of crime at the material time, surely his alibi is thereby logically and physically demolished".

In the instant case the appellant was well axed at the scene of the crime. The evidence of the PW. I was direct and the trial court accepted same. The allegation of the appellant that this plea of alibi was not investigated by the Police is an afterthought.

For all the reasons, I too will dismiss the appeal. Accordingly, the appeal is hereby dismissed and the court below affirming the decision of the trial court is affirmed.

OBANDE, JSC: I had, in advance, a thorough preview of the leading judgment

deliberated by the learned brother, Stephen Jonah Adar, JSC. I concur fully with the judicial reasoning and conclusion therein.

It is a rudimentary law that the defence of alibi which the law bequeathed to an accused person, is a complete defence because where it is established, an accused will absolved of the alleged crime. However, the defence is disabled in the face of unchallenged evidence that locates an accused as the perpetrator of a crime. In the instant case, which midwifed the appeal, the evidence of PWI, one of the respondent's star witnesses, fixed the appellant at the locus in quo and as one of the *participes criminis* of the heinous offence of murder. Thus, the defence of alibi, which the appellant erected, brandished and paraded as a shield to castrate the respondent's case, flies in the face of the law and evidence on the record – the soul of the appeal. In the consequence, the confirmatory decision of lower court did not, in the least, fracture the law, substantive or adjectival, as to magnet any ounce of reprobation from this court. Per contra, I accord it an unfiltered endorsement

It is for this lean reason, coupled with the legal dissections marshalled in the leading judgment, that I, too, penalize the appeal with a deserved order of dismissal.

Appeal dismissed.