

**IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA**

**SC/713<sup>C</sup>/2019**

Friday, 4<sup>th</sup> July 2025

*Court - whether Supreme Court will not interfere with evaluation of evidence by trial court - exceptions thereto*

*Criminal Law: Murder - ingredients thereof - the principle in Ugochukwu Okereke vs. The State (2016) LPELR -40012 SC*

*Criminal Law: Onus on prosecution thereof*

*Criminal Law and Procedure: Proof of crime - evidence of eye witnesses - whether ranks second in the methodical ladder of proof of crime - the principle in Iliyasu vs. The State (2024) LPELR - 62971(SC)*

*Criminal Law and Procedure: Proof of crime - evidence of eye witness - whether testifies directly on what he saw at the scene - the principle in Owolabi vs. State (2022) LPELR -59985(SC)*

*Criminal Law and Procedure: Weapons used in crime - whether there is no principle of law known which requires the prosecution to tender the weapon used in an alleged crime in order to determine the guilt of the accused person*

*Evidence: Admissibility of a document - whether generally a document should be admitted through the maker - exceptions thereto - sec.83(1) of Evidence Act, 2011 considered*

*Evidence: Admissibility of a document - whether a document is to be tendered by the maker - exceptions thereto - the principle in Umar vs. The State (2024) LPELR -62409(SC)*

*Practice and Procedure: Contradictions - where contradictions are not material - whether such contradictions will be disregarded*

*Practice and Procedure: Concurrent findings - where there are concurrent findings by two lower court- attitude of Supreme Court thereto*

1 . *“Whether the court of appeal was right when it affirmed the decision of the trial court which admitted in evidence and relied on exhibits 1,2,3, and 4 to convict and sentenced the Appellant to death even though the said exhibits did not meet the conditions of admissibility under the Evidence Act, 2011 .*

2. *Whether the court of Appeal was right in affirming the decision of the trial court which convicted and sentenced the Appellant to death on the alleged offence of culpable homicide under section 221 (a) of the Penal Code without taking into consideration the issue of material time of the commission of the alleged offence.*

3. *Whether the Court of Appeal was right when it affirmed the conviction and sentence of the Appellant for the offence of culpable homicide under section 221 (a) of the Penal Code despite the contradictory evidence of the prosecution’s witness as to the nature of the weapon used in the commission of the alleged crime.”*

The Accused/Appellant was arraigned before the High Court of Kastina State on a one count charge of culpable homicide punishable with death under section 221(a) of the Penal Code. Appellant was said to have stabbed one Shafir Muktar with a knife on his chest and neck knowing that death would be the probable consequence of his act. Appellant was tried, convicted and sentenced to death by the trial court. He unsuccessfully appealed to the Court of Appeal Kaduna, hence this further appeal to the Supreme Court.

1. *On ingredients of murder-*

As rightly pointed out by both Counsel in this appeal, the ingredients of the offence of murder, which the prosecution must prove beyond reasonable doubt are well settled by this Court in a chain of judicial decisions including **UGOCHUKWU OKEREKE V. THE STATE 2016** (LPELR-40012) **SC**, where this Court held as follows and I quote:

*"Generally, and it is already established in our criminal justice system that in a charge of murder, the prosecution has the burden to prove certain elements or ingredients of the charge beyond reasonable doubt. These are: That a human being has died; That the death of the deceased was caused by the accused; and That the accused intended to either kill the victim or cause him grievous harm which resulted to death. See; Francis Durwode Vs The State (2000) 12, SC (Pt.1); Akpan Vs State (2001) 7 SC (Pt.11) 29; (2001) FWLR (Pt.56) 7351; Idemudia Vs State (1999) 15 SC (Pt.11) 110; (2001) FWLR (Pt.55) 549 at 564; Sabina C. Madu vs. The State (2012) 6 SCNJ 129; (2012) 15 NWLR (pt.1324) 405; (2012) 50 NSQR 67; (2012) 6 SC (Pt.1) 80."*

2. *On the onus on prosecution in a charge of murder -*

It is therefore settled that to prove murder against an accused person by the prosecution the following must be proved beyond reasonable doubt.

*a. that the deceased died.*

*b. that the death was caused by the accused; and,*

*c. that the accused person intended to either kill the victim or cause him grievous bodily harm.*

See also; DURWODE VS STATE (2000) 15 NWLR (Pt. 691) 467; IDEMUDIA VS STATE (1999) 7 NWLR (Pt. 610) 202; AKPAN VS STATE (2000) 12 NWLR (Pt.682) 607; UBANI VS STATE 2003 18 NWLR (Pt. 851) 2224; and IGABELE VS STATE (2006) (1992) 2 NWLR (Pt. 222) 164.

*3. On nature of evidence of eye witness -*

From the evidence of PW1, PW2, PW3 and PW4, as found from the records of appeal, all the witnesses testified before the trial Court narrating how a fight stemmed between PW1, PW2, PW3 and the deceased on one side and the Appellant on the other side. PW1 narrated in his evidence before the trial court at page 35 of the records of appeal that after the fight, the Appellant came back and asked the deceased if he was also among the people that beat him during the earlier fight which the deceased denied and there after the Appellant brought a white iron and stabbed the deceased on the neck and the deceased started shouting that the Appellant had killed him. PW2 who was also at the scene came and pushed the Appellant aside and carried the deceased, he found that the Appellant died. This piece of evidence was also corroborated by PW3, PW4 and PW5 who were all at the scene and witnessed how the Appellant stabbed the deceased with a white iron. The Appellant also at page 84 of the records of appeal admitted having a fight with

the deceased and PW 1, PW2, PW3, and PW5 which he claimed had beaten him in the night around 10: 30 pm.

From the evidence of record, PW2, PW3, PW4 and PW5, were all at the scene of crime, they saw what happened, they are therefore eyewitnesses to the incident, on the status of evidence of eye witness this Court recently made a pronouncement in **ILIYASU V. STATE**, (2024) **LPELR-62971 (SC)**, my lord and learned brother **OGBUINYA, JSC** said as follows:

*"It admits of no argument that the law now treats and ascribes to the evidence of a victim as that of an eyewitness, see Giki v. State (2018) 6 NWLR(Pt. 1615) 237, Chjdozie v. COP (2018) 6 NWLR (Pt.1615) 373, Ogu v. COP (2018) 8 NWLR (Pt. 1620) 134. In the mind of the Law, an eyewitness denotes a person who can testify as to what he has seen from his personal observations, see Ucle v. State (2016) 14 NWLR (Pt. 1531 }122. The evidence of an eyewitness, in the eyes of the law, qualifies as one of the three ways to prove commission of a crime. An eyewitness testifies to what he has seen or observed personally from any of his senses.It ranks second in the methodical ladder of poof of crimes. It concedes the first rung to a confession."*

#### 4. On nature of evidence of eye witness -

Also, in **OWOLABI V. STATE** (2022) **LPELR-59985 (SC)** this Court emphasized the importance of eyewitness in proving the case of the prosecution in the following words.

*"The law is trite that the best form of evidence is where the eye witness is direct and his evidence gives an on the spot narration of the event as it happened. See **AKINLOLU v. STATE (2015) LPELR-25986(SC) (PP. 41-42, PARAS. F-A)**. Eyewitness evidence is atways reliable evidence provided the witness is telling the truth. Such evidence is on what the witness saw. It is almost impossibLe to dislodge such evidence. See **UDO v.***

**STATE (2018) LPELR-43707(SC) (P. 22, PARAS . A-B). ”**

The law is well settled that the evidence of an eyewitness is one of the best evidence available in criminal trials provided it is direct and gives an on-the-spot narration of the event as it happened. See: JOHN V. STATE (2024) LPELR-62864 (SC) (Pg. 14 Parag. A.

*5. On admissibility of a document under section 83(1) of Evidence Act, 2011-*

The law is settled that a document should be tendered through the maker by virtue of section 83(1) of Evidence Act, 2011. This is because, it is only the maker who can answer questions regarding the contents of the document especially under cross-examination. However, there are certain exceptions stipulated by the proviso to section 83(1) of the Evidence Act (supra). The conditions are that, if the maker is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Nigeria and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success. See; **OMEGA BANK (NIG) PLC V. O.B.C. LTD** (2005) LPELR-2636 (SC) (Pg. 36 Parag. B)

*6. On exceptions to the rule that the document is to be tendered by the maker -*

This Court recently in **UMAR V. STATE** (2024) LPELR-62409 (SC) on this point held as follows and I quote:

*“However, by way of an exception to the general proposition of the law under Section 83(1) of the Evidence Act, 2011 (supra), the law is equally trite that a document such as Exhibit I (the Medical Report) may not have to be tendered vide the maker thereof. See Section 55(1) of the Evidence Act, 2011 (supra) which provides unequivocally: ”55(1) Either party to the proceedings in any criminal case may produce a certificate signed by the Government pharmacist, the Deputy Government pharmacist, an Assistant Government pharmacist, a Government pathologist or entomologist or **the Accountant-General, or any other pharmacist so specified by the Government pharmacist of the***

*Federation Of of a State or any pathoLogist or entomologist specified by the Director of Medical Laboratories of the Federation or of a State, oF-any accountant specified by the Account-General of the Federation or of a State (whether any such officer is by that or any other title in the service of the State or of the Federal Government) and the production of any such certificate be taken as sufficient evidence of the facts stated in it. ”*

*The position of the law vis-a-vis Section 55(1) of the Evidence Act (supra) has been adurnbrated upon by this Court in a plethora of fornidable authorities. See PAUL VS. THE STATE (2019) LPELR-47386 (SC), wherein this Court aptly held:*

*”By the provision of Section 249(3)(a) (b) and (c) , (of the Criminal Procedure Code) a medical report is admissible even if it is not tendered through the maker when the Application to tender Exhibit AP2 in evidence was made at the trial Court. Learned Counsel for the Appellant’s objection was not based on the Court’s failure to read Exhibit Ap2 to **the Appellant**. **The objection was that Exhibit AP2 was not tendered through its maker and that the said Exhibit was not certified by a pathologist, entomo[ogist, Accountant\_ Generator Government (he must as provided for under Section 42(1)(a) of the Evidence Act, 2011 ). The trial Court in a considered ruling overruled the Objection. At the lower Court, the only challenge to the trial Court’s ruling was that the maker of Exhibit JiP2 was not catled as a witness.”***

*Per Galumje, iSC @ 19 paragraphs C-F. See also FULANI VS THE STATE (2018) LPELR- 45195(SC) (a 11-14 paragraphs E-C, THE STATE VS. MUSA (2019) LPELR 47541(SC) @ '19-20 paragraphs C-E .*

The argument put forward by the learned Counsel for the Appellant therefore that the exhibits were not tendered through the maker is grossly misconceived, barren and misplaced, the argument is therefore discountenanced.

*7. On effect of contradictions not material -*

On the issue of contradictions in the evidence of prosecution Witnesses, particularly PW1-PW3 and PW4 with regards to the weapon used by the Appellant which led to the death of the deceased, I agree with the findings of the lower and intermediate Courts that the contradictions if any are no material and therefore not fatal to the case of the Respondent.

*8. On tendering of weapon used in crime -*

On whether the deceased died as a result of stab wounds sustained from attack by the Appellant whether with white iron or knife, the fact that remains relevant and fully established remains that the deceased was savagely and brutally attacked by the Appellant and the Appellant died as a result of the wounds inflicted on him by the Appellant as established by the medical report and found by the trial and the intermediate Courts .

I agree with the concurrent findings of the lower Courts that the contradictions as to type of weapon used by the Appellant is no more than a mere slip, and the identity of the weapon left the Appellant in no doubt that he caused the death of the deceased person. There is no principle of law known to me which requires the prosecution to tender the weapon used in an alleged crime to establish the guilt of the accused person.

The law is very well settled that where there is cogent evidence of use of a weapon or weapons in the commission of a crime and cogent evidence linking the accused person with the use of the said weapon or weapons in the commission of the said crime, failure to tender the weapon, or doubt as to the identity of the weapon, in the instant case "white iron or knife" is absolutely of no consequence, such wild goose chase by the Appellant cannot in any way vitiate the Judgment of the lower Court. In the instant case PW2, 3, and 4 saw when the Appellant stabbed the deceased, the identity of the Appellant was not in doubt, it was also clear from the evidence of these witnesses that the Appellant caused the death of the deceased .

Therefore, from the unchallenged evidence of PW1 , PW2, PW3, and PW4 and Exhibit 1, 2, 3, and 4, no reasonable doubt exists in the case before the trial Court that the Appellant was guilty of the offence of culpable homicide as charged.

9. *On effect of concurrent findings of facts-*

The trial Court dutifully, properly and rightly reviewed and evaluated the evidence placed before it by the Respondent and the Appellant before reaching the correct decision to convict and sentence the Appellant. The lower Court, after reviewing the totality of the evidence in line with the relevant and extant position of the law, correctly affirmed the decision by the trial Court .

The learned Counsel for the Appellant fought tooth and nail *for* the Appellant but failed woefully to demonstrate that the concurrent findings of facts based on the evidence before the Court are either perverse, made on wrong principles of law; substantive or procedural or that a miscarriage of justice occurred against the Appellant to justify interference. I will therefore let the decision of the lower court remain intact because the Appellant has not established a legitimate claim to interference by this Court. Where there is

proper concurrent findings of facts, Appellate Court must refrain from interfering with such findings, See OSAYAME V. STATE (1966) NWLR, 388, SANYAOLU V. STATE (1976) 5 SC, 37, NWACHUKWU V. STATE (1986) 2 NWLR (Pt. 25) 765, ONUOHA V. STATE (1988) 7 SC (Pt. 1 ) 74, (1 988) 3 (Pt. 83) 460, WANKEY V. STATE (1993) 5 NWLR (Pt. 295) 542 UGWUM8A V. STATE (1993) 5 NWLR (Pt. 296) 660, OMOREGIE V. STATE (2008) 12 SC, (Pt. II1) 80.

Having found that there is no slightest reason for me to tinker with the decision of the lower court, I will resolve all the three issues in favour of the Respondent against the Appellant and in the end hold that the Appellant's appeal is devoid of merit and therefore deserves to be dismissed, it is hereby dismissed.

Names of Justices who sat on the appeal: John Inyang Okoro, Tijjani Abubakar, Habeeb Adewale. O. Abiru, Jamilu YAMMAMA Tukur, Mohammed Baba Idris

Appeal No: SC/713<sup>c</sup>/2019

Date of Judgment: Friday, 4th July, 2025

Names of Counsel: Amanzi F. Amanzi, Esq. with Umar M. Galadima, Esq and Zhokwo J. Jibrin for the Appellant. A. M. Ma'aji, Esq. with Amina K. Ahmed, Esq. for the Respondent.

TIJJANI, JSC(Delivering lead Judgment): This is an appeal against the judgment of the Court of Appeal, Kaduna Division in appeal NO. **CA/K/223<sup>c</sup>/2017** delivered on the 14th day of February, 2019 wherein the lower Court dismissed the Appellants appeal and

affirmed the decision of the trial Court, the Katsina State High Court in charge **No. KTH/FT/12C/13**. In the said Judgment, Appellant was tried, convicted and sentenced to death. Being severely miffed by the Judgment of the trial Court, the Appellant appealed to the lower Court, the Court of Appeal Kaduna Division. Appellant's appeal was unsuccessful at the lower Court, he further appealed to this Court via Notice of appeal filed on the 7<sup>th</sup> day of March 2019 premised on seven grounds of appeal. This is therefore the Appellant's appeal.

Before I resume the sequence in setting out the layout of this appeal, it is imperative to briefly state the facts grounding this appeal. In brief, the Appellant was arraigned before the High Court of Justice Katsina State, Funtua Judicial Division on a one Count charge of culpable homicide punishable with death, punishable under section 221 (a) of the Penal Code. Appellant was said to have stabbed one SHAFIR MUKTAR with a knife on his chest and neck knowing that death would be the probable consequence of his act. Appellant was tried convicted and sentenced to death by the trial Court, his appeal to the Court of Appeal was unsuccessful, he therefore brought this appeal.

The Appellant's brief of argument was filed by Learned Counsel Amanzi F. Amanzi on the 29<sup>th</sup> day of June, 2019 wherein learned Counsel nominated for the determination of this Court the following three issues:

- 1 . "Whether the court of appeal was right when it affirmed the decision of the trial court which admitted in evidence and relied on exhibits 1,2,3, and 4 to convict and sentenced the Appellant to death even though the said exhibits did not meet the conditions of admissibility under the Evidence Act, 201 1 .***
- 2. Whether the court of Appeal was right in affirming the decision of the trial court which convicted and sentenced the Appellant to death on the alleged offence of culpable homicide under section 221 (a) of the Penal Code without taking into consideration the issue of material time of the commission of the alleged offence.***
- 3. Whether the Court of Appeal was right when it affirmed the conviction and sentence of the***

***Appellant for the offence of cutpable under section 221 (a) of the Penal Code despite the contradictory evidence of the prosecution's witness as to the nature of the weapon used in the commission of the alleged crime."***

The Respondent's brief of argument was filed by Learned Counsel A.M.

Ma'aji, Learned Counsel appearing for the Respondent. The Respondents

brief of argument was filed on the 18th day of July 2019, Counsel also

nominated three corresponding issues for determination, the issues are

also reproduced as follows:

***1. "Whether the learned justices of the Court of Appeal were right when their lordships upheld the judgement of the trial court to the effect that the Trial court was right when it admitted in evidence and relied on exhibits 1,2,3 and 4 to convict and sentence the Appellant to death when same were not tendered by the maker in compliance with section 83 of the Evidence Act and when the exhibit 1 and 2 did not comply with the provision of section 84 of the Evidence Act 2011***

***2. Whether the learned justices of the Court of Appeal were right when they upheld the judgement of the Trial Court to the effect that the learned judge was right to have convicted and sentence the Appellant to death on contradictory evidence of the Respondent witnesses as to the nature of the weapon used in the commission of the alleged crime and on the evidence at variance with sole charge upon which the Appellant was tried.***

***3. Whether the learned justices of the Court of Appeal were right when their lordships upheld the judgement of the Trial Court to***

***the effect that the Trial Court was right not to have taken into consideration the issue of the material time of the commission of the alleged offence.”***

The three issues each crafted by the parties in this appeal are substantially and materially the same. Each of the three issues will be capable of erecting concrete pedestal upon which to concrete discourse in this appeal, usually where the Court finds itself in these ambidextrous positions, I always surrender to the issues crafted by the Appellant being the owner or proprietor of the appeal.

I am fully mindful of the fact that this appeal is against concurrent findings of facts.

I will navigate through the submissions of Counsel before I come to the resolution of this appeal.

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In arguing issue 1, Learned Counsel for the Appellant, referred to

page 65 of the records of appeal and submitted that PW 6 through whom exhibits 1,2,3,and 4 were tendered and admitted in evidence clearly stated that he is not the maker of the documents and the learned justices of the lower court erred in law when they affirmed the decision of the trial court which admitted the said

documents in evidence and attached probative value to same in the convicting and sentencing the Appellant to death.

Learned counsel cited the decisions in **OPOLO V. STATE (1977)** 11 SC at 6, **OKPARA V. F.R.N (1977)** 4 S.C AT 53 and **SUNDAY ONUNOJU V. THE STATE (1976)** 5 **S.C** AT 1, as well as the provision of section 83 of the Evidence Act, 2011 to submit that the Court do not attach probative value to documentary evidence not tendered by their makers.

Learned counsel contended that in this case, the trial judge did not only admit exhibits 1,2,3, and 4 which were not tendered by their maker but also attached strong probative value to them and thus relied on same to convict the Appellant. Counsel added that the lower court was in error to have affirmed such decision. Learned Counsel for the Appellant submitted that the law is well settled that a maker of a document is expected to tender the document in evidence except where the maker is dead or cannot be procured to tender the document without incurring substantial expense.

Learned counsel submitted as to the admissibility of exhibits 1 and 2 specifically as it relates to the provisions of section 84 of the Evidence Act, 2011 that amalgamated reading of the section means that documents and computer are computer generated evidence in the instant case photographs must with all intents and purpose comply with the strict and mandatory provisions of section 84 (1 ), (2) and (4) respectively and any iota of noncomptianc,e renders same inadmissible and must be expunged without more. Counsel relied on the decisions in DICKSON V. SYLVA & ORS (2016) LPELR-41257 pp 50-52, KUBOR V. DICKSON (2013) 4 NWLR (Pt. 1345) Pg 534, 577- 578 and OMISORE V. AREGBESOLA (2915) 15 NWLR (Pt. 1482) PG. **205 at 295**. In support of his contention.

Learned Counsel argued that it is not the law that once documents are admitted without objection, the court must rely on same in its judgement, it is elementary that documents wrongly admitted, or which ought not be admitted in evidence can be expunged by the court in its judgement. Reliance being placed on the case of OKONJI V. NJOKANMA (1999) 14 NWLR (PT. 638) 250 by the learned Counsel for the Appellant counsel.

Learned counsel contended that exhibits 3 and 4 tendered by PW 6 without explanation are nothing but documentary hearsay as held in NIMASA V. HENSMOR (NIG) LTD (2005) 5 NWLR (Pt.1452) **PG. 278 at 312-- 313**. Learned Counsel for the Appellant submitted that the findings of the two lower Courts on the contents of exhibits 3 and 4 upon which the Court relied in ascertaining the cause of death is erroneous and denied the Appellant his right to fair hearing as clearly demonstrated by the evidence of PW6 through whom the Respondent tendered the exhibits. Learned Counsel submitted that the two exhibits are just documentary hearsay and nothing more and he urged this Court to so find. Where the maker of the document is not called upon to tender it in evidence, the evidence so generated therefrom remains hearsay. Learned Counsel for the Appellant urged this Court to resolve this issue in favour of the Appellant against the Respondent

## ISSUE TWO

The contention of the learned counsel for the Appellant under this issue is that the time when the fight leading to the alleged commission of the crime by

the Appellant took place is very fundamental and germane to the determination of the issue of cause of death of the deceased and the guilt of the Appellant.

Learned counsel argued that from the entire circumstances of this case, including the testimonies of all the prosecution witnesses, especially PW 1 to PW5, it will show that the incident took place at night and not only it occurred at night but also that there was no electricity at the material time, thus if as testified by all the prosecution witnesses that the fight took place at night and in the dark, the trial court ought to have been wary of the evidence of the so called eye witnesses who claimed to have seen everything, even in the dark, Moreover, none of the witnesses who testified for the Respondent prosecution at the trial stated that he saw when the Appellant purportedly stabbed the deceased .

Learned counsel contended that even PW5 who was the purported first hand eye-witness testified that he did not see when the Appellant purportedly stabbed the deceased, he only heard the deceased crying out from a distance and given the fact that the incident took place at night, there is no way PW1 would have seen anything from a distance. Learned counsel added that had

the learned trial judge investigated further as to how the prosecution witness saw everything in the dark, the Court would have seen that PW1 – PW4 were not saying the truth and were desperate to see that the Appellant got convicted and sentenced at all costs. Counsel therefore urged this Court to resolve this issue in favour of the Appellant against the Respondent.

### ISSUE THREE

Learned counsel for the Appellant submitted that the Prosecution at the trial Court failed to prove the particulars of the sole charge of Culpable Homicide under Section 221 (a) of the Penal Code Act beyond reasonable doubt. Thus, the Court of Appeal was in error when it affirmed the conviction and sentence of the Appellant.

Learned counsel submitted that in the sole charge against the Appellant, the prosecution with all sense of certainty made a Knife an element of the offence, a weapon with which the Appellant was alleged to have caused the death of the deceased. However, the Respondent failed to show the knife that was allegedly used, all the witnesses testified to the effect that they did not see the knife used by the Appellant to stab the deceased. Counsel added that not

even the PWI whom the prosecution specifically stated to come to court to give evidence of how the Appellant purportedly stabbed the deceased with knife gave evidence of any knife as expected. Counsel further contended that PW2 who was called to corroborate the evidence of PW 1 ended up contradicting the evidence of PW 1 when he said he cannot describe the object or that object is known to him. Learned counsel submitted that from the evidence of PW1 -PW4 none of them gave evidence in support of the charge as to the use of the knife in stabbing the deceased as the PW5 who gave evidence in support of the use of knife was unequivocal when he said in examination in chief that he only saw the Appellant holding a knife and under cross examination, PW5 stated it is true I did not know the cause of the cry of the deceased.

Learned counsel argued that the entire evidence of PW 1 – PW4 are at variance with the charge as laid and if their evidence is anything to go by there should have been an application to amend the charge in line with the evidence led by the prosecution.

Learned counsel submitted that the nature of the weapon used by the accused person is an essential ingredient in establishing the three ingredients of the offence of culpable homicide. Counsel further contended that it is the nature of the weapon used that defines the intention of the accused person. Counsel concluded that the finding of the lower court that the cause of death was established without regarding the contradictory nature of the evidence of the prosecution's witnesses as to the nature of the weapon contained in the charge.

Learned counsel argued that the two lower courts did not even examine, not to talk of resolving the material contradictions in evidence of the Respondent's witnesses as clearly pointed out by the Appellant in line with the decisions in **STATE V. AZEEZ (2008) 14 NWLR ( Pt. 1108) Pg. 437** at 482-483, **CHUKWU V. STATE (1996) 7 NWLR (Pt. 463) Pg 686** and **ADEBAYO V. IGBODALO (1996) 5 NWLR (Pt.450) PG 507**. There is contradiction as to whether the Appellant stabbed the deceased because PW1-PW4, said they saw the Appellant stabbing the deceased with iron object whilst PW5 only saw the Appellant holding a knife. Counsel submitted that none of the contradictions were explained

or cleared by the Respondent either by way of re-examination of the prosecution witnesses who gave this contradictory evidence. Relying on the decision in **COP V**. Ah4UTA (2017) 4 NWLR (Pt. 1556) Pg 379 at 399. Counsel argued that the lower court lacks the power to pick between the two versions of the testimonies of the prosecution witnesses.

Learned counsel finally submitted that the prosecution was unable to prove their case beyond reasonable doubt as required by law, and the lower court was wrong to have affirmed the conviction and sentence of the Appellant. Learned counsel urged this Court to resolve this issue in favour of the Appellant against the Respondent and allow the Appellant's appeal.

SUBMISSIONS OF COUNSEL FOR THE RESPONDENT  
ISSUE ONE

Learned counsel *for* the Respondent submitted that the lower Court was right when it affirmed the decision of the trial court admitting and relying on exhibits 1,2,3, and 4. Counsel said the contention of the Appellant that exhibits 1 and 2 are not admissible based on Section 83 (1 ) of the Evidence Act is grossly misconceived. Counsel added that section 83 of the Evidence Act, 2011 is not

automatic and does not operate in vacuum, a community reading of the conditions and proviso attached to section 83 of the Evidence Act, 2011 relied upon by the Appellant will reveal that the lower Court was right when it affirmed the decision of the trial court in admitting exhibits 1 to 4.

Learned counsel submitted that PW6 while giving evidence, laid foundation by testifying that the photographer was nowhere to be found and his whereabouts were not known to him being the IPO at the Divisional Police level. Counsel contended that going by the provisions of section 83 (2) of the Evidence Act, 2011, the admission of the evidence of PW6 did not contravene the Evidence Act. Counsel also argued that the admission of exhibits 3 and 4 never in any way contravened the provisions of the law.

Learned counsel submitted that from the community reading and combined effect of sections 55 (1) of the Evidence Act and section 249 (3) CPC, the tendering of medical report through the IPO and admission of same by the trial court was sufficient and effectively dispensed with the attendance of its maker in Court.

See *ACHUKU V. STATE* (2016) 6 NWLR (P.1456) P425 at 438.

Learned Counsel submitted that when the said documents were sought to be tendered at the trial court, the Court asked the Counsel whether he had any objection to its admissibility which he answered in the negative. Counsel further relied on **DA'U V. STATE (2016) NWLR (pt.1510) p 83.** to argue that an objection to the admissibility of legally admissible document sought by a party to be put in evidence is taken when the document to be tendered in evidence, consequently, when objection is not raised by the opposing party to the reception of such document, the document will be admitted in evidence and the opposing party cannot afterward be heard to complain about its admission.

Learned counsel contended that proof of cause of death through exhibits 3 and 4 is not a mandatory requirement of the law.

Counsel further said that the lower Court was right when it affirmed the holding of the Trial Court in the absence of the medical report, the court may infer the cause of death from the evidence of the Respondent's witnesses and circumstances of the case. Counsel cited a host of authorities in support of his argument.

Learned Counsel for the Respondent submitted that assuming without any iota of concession that PW6 was not led to adduce oral evidence to Link the contents of exhibits 3 and 4 to the Respondent's case on the cause of death, such a procedure was not fatal to the case of the Respondent. Counsel relied on **AKPA V. STATE 14 NWLR (Pt. 1 1 06) P 72 at 99**. Learned Counsel urged this Court to resolve this issue in favour of the Respondent.

## ISSUE TWO

Learned counsel submitted that it is not every inconsistency or contradiction in the case of the prosecution that can warrant reversal of the decision of the trial court and by extension the Court of Appeal. Such contradiction must be material to the extent of causing serious doubt in the case presented by the Respondent against the accused. Counsel argued that contrary to the contention of the Appellant to the effect that the Respondent made a knife as an ingredient or element of the offence and by implication has the burden of proving same, the Respondent cannot make ingredient of offence, each offence has its own ingredients or elements which the Respondent must prove beyond reasonable

doubt and weapon used in the commission of crime is not an ingredient or element that is required to be proved by the Respondent.

Learned counsel submitted that the contention of the Appellant that the Respondent made a knife as an element or ingredient of the offence and has the duty of proving same is wrong. Counsel cited GALADIMA V. STATE (2017) 12 NWLR (Pt.1580) where the Court listed the ingredients of culpable homicide which Counsel argued knife was not among them. Counsel submitted that the evidence of PW1 -PW4 did not support the charge as to the use of knife and that it was only PW5 that supported the charge in that respect, Counsel argued that the contradictions as to the object used in committing the offence are not fundamental and substantial to the main issue in question which is causing the death of the deceased intentionally.

Learned Counsel cited **ASUQUO V. STATE** 14(NWLR (Pt. 1532) **309 at 333** to argue that it is not every inconsistency in the evidence of Respondent witnesses that is fatal to its case. Only such inconsistencies that are fundamental to the main issue and necessary to create some doubt in the mind

of the trial court that an accused is entitled to benefit therefrom. Counsel added that the discrepancies did not in any way mislead the Appellant or his counsel and same did not occasion any miscarriage of justice to the Appellant .

Learned Counsel submitted on the contention of the Appellant that the Respondent ought to have amended its charge that the provision of section 206 of the Criminal Procedure Code had cured the defect. Counsel relied on **OKPA v. STATE (2017) NWLR (pt.1587) 1.**

ReLaying on the decision in **EZEUKE V. STATE (2016) 6 NWLR (Pt.1509) 529 at 535**, Counsel argued that contradiction in evidence of two or more persons that witness the same event is inevitable, in fact if their evidence tallies in all respect, the law will consider such evidence suspicious. Counsel further argued that mere contradiction on the weapon used is minor and immaterial and does not affect the fundamental issues or root of the offence. Counsel said PWI -5 gave corroborating testimonies that a weapon was used by the Appellant, it was the use of that weapon that led to the death of the deceased.

Citing the decision in **OKIEMETU V. STATE (2016) 14 NWLR (Pt.1535)**

**297**, Counsel contended that the inconsistency rule does not apply to evidence of the witness and make it incredible, unreliable particularly when such inconsistencies are of minor nature that do not affect live issues.

Learned Counsel for the Respondent argued that by the provisions of section 135 (1 ) of the Evidence Act, 2011, and the decision of the Court in **ESENE V.**

**STATE (2017) 8 NWLR (Pt.1568)** and **MUSA V. STATE (2013) 2 S.C.N.P 431**

at 452, the Respondent is saddled with the duty of proving the ingredients of the offence beyond reasonable doubt, nevertheless, proof beyond reasonable doubt does not connote proof beyond all shadow of doubt. Learned Counsel submitted that the Court of Appeal and the Trial Court were right when they accepted the evidence of the Respondent as the assessment of the witness is a matter within the province of the trial Court which has the advantage of seeing, watching and observing the witness in the witness box. Learned Counsel urged this Court to resolve this issue in favour of the Respondent against the Appellant.

### **ISSUE THREE**

Submitting on this issue, learned Counsel for the Respondent said while it is conceded that there was no electricity at the material time when the Appellant killed the deceased, however, the question that readily comes to mind is are all offences committed when there is electricity? is electricity the only source of light, was there *proof* of any such sources before the trial court? Counsel argued that offence can be committed in a place where there was nothing like electricity. Similarly, there are other sources of light apart from electricity which include torch light, lantern, bush lamp, moon light etc.

Learned counsel argued that incontrovertible evidence was led to establish that there was bright moon light at the scene, hence the defence failed to discredit that piece of evidence.

Learned counsel finally submitted that without any sources of light at the scene, no one can say what happened. Counsel urged the court to resolve all the issues in this appeal against the Appellant in favour of the Respondent and dismiss this appeal.

## RESOLUTION

As rightly pointed out by both Counsel in this appeal, the ingredients of the offence of murder, which the prosecution must prove beyond reasonable doubt are well settled by this Court in a chain of judicial decisions including **UGOCHUKWU OKEREKE V. THE STATE 2016** (LPELR-40012) **SC**, where this Court held as follows and I quote:

*"Generally, and it is already established in our criminal justice system that in a charge of murder, the prosecution has the burden to prove certain elements or ingredients of the charge beyond reasonable doubt. These are: That a human being has died; That the death of the deceased was caused by the accused; and That the accused intended to either kill the victim or cause him grievous harm which resulted to death. See; Francis Durwode Vs The State (2000) 12, SC (Pt.1); Akpan Vs State (2001) 7 SC (Pt.11) 29; (2001) FWLR (Pt.56) 7351; Idemudia Vs State (1999) 15 SC (Pt.11) 110; (2001) FWLR (Pt.55) 549 at 564; Sabina C. Madu vs. The State (2012) 6 SCNJ 129; (2012) 15 NWLR (pt.1324) 405; (2012) 50 NSQR 67; (2012) 6 SC (Pt.1) 80."*

It is therefore settled that to prove murder against an accused person by the prosecution the following must be proved beyond reasonable doubt.

- a. that the deceased died.*
- b. that the death was caused by the accused; and,*
- c. that the accused person intended to either kill the victim or cause him grievous bodily harm.*

See also; DURWODE VS STATE (2000) 15 NWLR (Pt. 691) 467; IDEMUDIA VS STATE (1999) 7 NWLR (Pt. 610) 202; AKPAN VS STATE (2000) 12 NWLR (Pt.682) 607; UBANI VS STATE 2003 18 NWLR (Pt. 851) 2224; and IGABELE VS STATE (2006) (1992) 2 NWLR (Pt. 222) 164.

The learned Counsel for the Appellant in this appeal submitted that the Respondent failed to establish beyond reasonable doubt the death of Shafir Mukhtar and the cause of his death contrary to the findings by the trial Court and its erroneous affirmation by the lower Court. Learned Counsel gave reasons for so submitting, I have already reproduced the reasons advanced by learned Counsel for the Appellant in this Judgment. The only question one must ask is whether the submission by the learned Counsel for the Appellant is right.

From the evidence of PW1, PW2, PW3 and PW4, as found from the records of appeal, all the witnesses testified before the trial Court narrating how a fight stemmed between PW1, PW2, PW3 and the deceased on one side and the Appellant on the other side. PW1 narrated in his evidence before the trial court at page 35 of the records of appeal that after the fight, the Appellant came back and asked the deceased if he was also among the people that beat him during the earlier fight which the deceased denied and there after the Appellant brought a white iron and stabbed the deceased on the neck and the deceased started shouting that the Appellant had killed him. PW2 who was also at the scene came and pushed the Appellant aside and carried the deceased, he found that the

Appellant died. This piece of evidence was also corroborated by PW3 PW4 and PW5 who were all at the scene and witnessed how the Appellant stabbed the deceased with a white iron. The Appellant also at page 84 of the records of appeal admitted having a fight with the deceased and PW 1, PW2, PW3, and PW5 which he claimed had beaten him in the night around 10: 30 pm.

From the evidence of record, PW2, PW3, PW4 and PW5, were all at the scene of crime, they saw what happened, they are therefore eyewitnesses to the incident, on the status of evidence of eye witness this Court recently made a pronouncement in **ILIYASU V. STATE, (2024) LPELR-62971 (SC)**, my lord and learned brother **OGBUINYA, JSC** said as follows:

***"It admits of no argument that the law now treats and ascribes to the evidence of a victim as that of an eyewitness, see Giki v. State (2018) 6 NWLR(Pt. 1615) 237, Chjdozie v. COP (2018) 6 NWLR (Pt.1615) 373, Ogu v. COP (2018) 8 NWLR (Pt. 1620) 134. In the mind of the Law, an eyewitness denotes a person who can testify as to what he has seen from his personal observations, see Ucle v. State (2016) 14 NWLR (Pt. 1531 }122. The evidence of an eyewitness, in the eyes of the law, qualifies as one of the three ways to prove commission of a crime. An eyewitness testifies to what he has seen or observed personally from any of his senses.It ranks second in the methodical ladder of poof of crimes. It concedes the first rung to a confession."***

Also, in **OWOLABI V. STATE (2022) LPELR-59985 (SC)** this Court emphasized the importance of eyewitness in proving the case of the prosecution in the following words:

***“The law is trite that the best form of evidence is where the eye witness is direct and his evidence gives an on the spot narration of the event as it happened. See AKINLOLU v. STATE (2015) LPELR-25986(SC) (PP. 41-42, PARAS. F-A). Eyewitness evidence is always reliable evidence provided the witness is telling the truth. Such evidence is on what the witness saw. It is almost impossible to dislodge such evidence. See UDO v. STATE (2018) LPELR-43707(SC) (P. 22, PARAS . A-B). ”***

The law is well settled that the evidence of an eyewitness is one of the best evidence available in criminal trials provided it is direct and gives an on-the-spot narration of the event as it happened. See JOHN V. STATE (2024) LPELR-62864 (SC) (Pg. 14 Parag. A.

The learned Counsel for the Appellant urged this Court to fault the admission of exhibits 1,2,3, and 4 which the trial court used in sentencing and convicting of the Appellant, counsel contended that such exhibits did not meet the conditions for admissibility under the Evidence Act as they were not tendered by their maker. For th Respondent, learned counsel argued that the lower court was right when it affirmed the decision of the trial court in admitting exhibits 1 to 4. For clarity, exhibits 1 and 2 are photographs of the decease

when he was lying on the ground, while exhibits 3 and 4 are postmortem examination report and the doctor's medical report respectively.

The law is settled that a document should be tendered through the maker by virtue of section 83(1) of Evidence Act, 2011. This is because, it is only the maker who can answer questions regarding the contents of the document especially under cross-examination. However, there are certain exceptions stipulated by the proviso to section 83(1) of the Evidence Act (supra). The conditions are that, if the maker is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Nigeria and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success. See; **OMEGA BANK (NIG) PLC V. O.B.C. LTD (2005)** LPELR-2636 (SC) (Pg. 36 Parag. B)

This Court recently in **UMAR V. STATE (2024)** LPELR-62409 (SC) on this point held as follows and I quote:

***“However, by way of an exception to the general proposition of the law under Section 83(1) of the Evidence Act, 2011 (supra), the law is equally trite that a document such as Exhibit I (the Medical Report) may not have to be tendered vide the maker thereof. See Section 55(1) of the Evidence Act, 2011 (supra) which provides unequivocally: “55(1) Either party to the proceedings in any criminal case may produce a certificate signed by the Government pharmacist, the Deputy Government pharmacist, an Assistant Government pharmacist, a Government pathologist or entomologist or the Accountant-General, or any other pharmacist so specified by the Government pharmacist of the Federation Of a State or any pathologist or entomologist specified by the Director of Medical Laboratories of the Federation or of a***

**State, of any accountant specified by the Account-General of the Federation or of a State (whether any such officer is by that or any other title in the service of the State or of the Federal Government) and the production of any such certificate be taken as sufficient evidence of the facts stated in it. ”**

*The position of the law vis-a-vis Section 55(1) of the Evidence Act (supra) has been adurnbrated upon by this Court in a plethora of formidable authorities. See PAUL VS. THE STATE (2019) LPELR-47386 (SC), wherein this Court aptly held:*

**”By the provision of Section 249(3)(a) (b) and (c) , (of the Criminal Procedure Code) a medical report is admissible even if it is not tendered through the maker when the Application to tender Exhibit AP2 in evidence was made at the trial Court. Learned Counsel for the Appellant’s objection was not based on the Court’s failure to read Exhibit Ap2 to the Appellant. The objection was that Exhibit AP2 was not tendered through its maker and that the said Exhibit was not certified by a pathologist, entomologist, Accountant\_ Generator Government (he must as provided for under Section 42(1)(a) of the Evidence Act, 2011 ). The trial Court in a considered ruling overruled the Objection. At the lower Court, the only challenge to the trial Court’s ruling was that the maker of Exhibit JiP2 was not called as a witness.”**

**Per Galumje, iSC @ 19 paragraphs C-F. See also FULANI VS THE STATE (2018) LPELR- 45195(SC) (a 11-14 paragraphs E-C, THE STATE VS. MUSA (2019) LPELR 47541(SC) @ '19-20 paragraphs C-E .**

The argument put forward by the learned Counsel for the Appellant therefore that the exhibits were not tendered through the maker is grossly misconceived, barren and misplaced, the argument is therefore discountenanced.

On the issue of contradictions in the evidence of prosecution Witnesses, particularly PW1-PW3 and PW4 with regards to the weapon used by the Appellant which led to the death of the deceased, I agree with the findings of the lower and intermediate Courts that the contradictions if any are no material and therefore not fatal to the case of the Respondent. On whether the deceased died as a result of stab wounds sustained from attack by the Appellant whether with white iron or knife, the fact that remains relevant and fully established remains that the deceased was savagely and brutally attacked by the Appellant and the Appellant died as a result of the wounds inflicted on him by the Appellant as established by the medical report and found by the trial and the intermediate Courts .

I agree with the concurrent findings of the lower Courts that the contradictions as to type of weapon used by the Appellant is no more than a

mere slip, and the identity of the weapon left the Appellant in no doubt that he caused the death of the deceased person. There is no principle of law known to me which requires the prosecution to tender the weapon used in an alleged crime to establish the guilt of the accused person.

The law is very well settled that where there is cogent evidence of use of a weapon or weapons in the commission of a crime and cogent evidence linking the accused person with the use of the said weapon or weapons in the commission of the said crime, failure to tender the weapon, or doubt as to the identity of the weapon, in the instant case “white iron or knife” is absolutely of no consequence, such wild goose chase by the Appellant cannot in any way vitiate the Judgment of the lower Court. In the instant case PW2, 3, and 4 saw when the Appellant stabbed the deceased, the identity of the Appellant was not in doubt, it was also clear from the evidence of these witnesses that the Appellant caused the death of the deceased .

Therefore, from the unchallenged evidence of PW1 , PW2, PW3, and PW4 and Exhibit 1, 2, 3, and 4, no reasonable doubt exists in the case before

the trial Court that the Appellant was guilty of the offence of culpable homicide as charged. The trial Court dutifully, properly and rightly reviewed and evaluated the evidence placed before it by the Respondent and the Appellant before reaching the correct decision to convict and sentence the Appellant. The lower Court, after reviewing the totality of the evidence in line with the relevant and extant position of the law, correctly affirmed the decision by the trial Court .

The learned Counsel for the Appellant fought tooth and nail *for* the Appellant but failed woefully to demonstrate that the concurrent findings of facts based on the evidence before the Court are either perverse, made on wrong principles of law; substantive or procedural or that a miscarriage of justice occurred against the Appellant to justify interference. I will therefore let the decision of the lower court remain intact because the Appellant has not established a legitimate claim to interference by this Court. Where there is proper concurrent findings of facts, Appellate Court must refrain from interfering with such findings, See OSAYAME V. STATE (1966) NWLR, 388, SANYAOLU V. STATE (1976) 5 SC, 37, NWACHUKWU V. STATE C1986) 2 NWLR (Pt. 25)

765, *ONUOHA V. STATE* (1988) 7 SC (Pt. 1 ) 74, (1 988) 3 (Pt. 83) 460,

*WANKEY V. STATE* (1993) 5 NWLR (Pt. 295) 542) *UGWUM8A V. STATE* (1993) 5

NWLR (Pt. 296) 660, *OMOREGIE V. STATE* (2008) 12 SC, (Pt. II1) 80.

Having found that there is no slightest reason for me to tinker with the decision of the lower court, I will resolve all the three issues in favour of the Respondent against the Appellant and in the end hold that the Appellant's appeal is devoid of merit and therefore deserves to be dismissed, it is hereby dismissed. The judgment of the lower court delivered on the 14<sup>th</sup> day of February, 2019 in appeal No. CA/K/223<sup>o</sup>/2017 is affirmed.

Appeal dismissed.

IDRIS, JSC: I had a preview of the judgment delivered by my learned brother, Lord Justice **Tijjani Abubakar, JSC**. I completely agree with the reasoning, conclusions, decisions and orders therein .

INYANG, JSC: My learned brother, **Tijjani Abubakar, JSC**, availed me a draft of the lead judgment just delivered which I read before now. I agree entirely with his reasons and conclusion arrived therein that the appeal be dismissed.

The offence of culpable homicide punishable with conviction, is well provided for under section 221 of the penal code as follows:

***“ Except in the circumstances mentioned in section 222 culpable homicide shall be punished with death-***

***(a)- if the act by which the death is caused is done with the intention of causing death; or***

***(b)-if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause<sup>1</sup> .***

Against the backdrop of the above provision, the law is trite that to prove the offence against an accused person, the prosecution must establish the following ingredients beyond reasonable doubt: (a) that the deceased has died, (b) that the accused person caused the death of the deceased, and (c) that the accused person intended either to kill the deceased or cause him grievous bodily harm. See *Sani Vs. State (2017) LPELR- 43475 (SC); Akpa Vs. The State (2007)2 NWLR (Pt.1019)509;*

*Sule Ahmed (Alias E:za) Vs. State (2001)18 NWLR (Pt.746)622; Isah Vs State (2 17) LPELR-43472 (SC).*

From the facts of this case, and particularly the evidence as adduced by the prosecution, it is indubitable that Shafir Muktar is dead, The Appellant has put up a vigorous attempt, albeit unsuccessfully, to puncture the eye witness evidence of PW1, PW2, PW3 and PW4 who all testified that they saw the Appellant stabbed the deceased with a weapon, thereby causing his death. The first and second ingredients *for* the offence having been firmly established, I am convinced beyond reasonable doubt that Appellant intended **to** either kill the deceased or cause him grievous bodily harm.

The ingredients of the offence having been established against the Appellant, the arguments that Exhibits 1, 2, 3 and 4 were wrongly admitted in evidence and that failure to tender the homicide weapon is fatal to the case of the prosecution are of no moment, The Exhibits in question were pictures showing that the deceased actually died. Putting them in evidence did not in any way alter the probity and cogency of the

evidence that the deceased had died. On the second argument, the well settled position of the law is that failure to tender weapon used in commission of crime would not affect the proof once other parameters exist in the evidence. *See Adamu Vs. State (2017) LPELR-41436 (SC)* .

In summary, this appeal is lacking in merit and is hereby dismissed by me. I affirm the judgment of the court below delivered on 14<sup>th</sup> February, 2014 which upheld the conviction and sentence passed on the Appellant by the trial court.

Appeal Dismissed.

JAMILU, JSC: I read before now the draft of the lead judgment prepared

by my learned brother **TIJJANI ABUBAKAR JSC** and I agree that the appeal lacks merit and should be dismissed.

Appeal dismissed.

This appeal is against the judgment of the Court of Appeal, Kaduna Judicial Division, delivered on the 14<sup>th</sup> of February, 2019 in Appeal No CA/K/223<sup>c</sup>/2017, and which affirmed the conviction and sentence of the Appellant for the offence of culpable homicide punishable with death by the High Court of Katsina State in a judgment delivered on the 29<sup>th</sup> of December, 2016 in Charge No KTH/FT/1 2<sup>c</sup>/2013.

The question calling *for* determination in this appeal is whether the learned Justices of the Court of Appeal were right when they upheld the findings of the High

Court that the Respondent led sufficient and adequate cogent and credible evidence to prove the offence of culpable homicide punishable with death charged against the Appellant beyond reasonable doubt. I have had the privilege of reading before now the lead judgment delivered by my learned brother, Tijjani Abubakar, JSC. His Lordship has ably considered and resolved the all contentions of the parties in the appeal. I agree with the reasoning and abide the conclusion in the lead judgment that the appeal lacks merit and is very deserving of an order of dismissal.

In proving the charge against the Appellant, the Respondent called five witnesses who were present when the Appellant attacked the deceased and inflicted the fatal injuries on the deceased and they gave eye witnesses' accounts of the attack. The evidence of the witnesses were not challenged, disparaged or dented under *cross* examination. The law is trite that the best form of evidence is where the eye witness is direct and his evidence *gives* an on the spot narration of the event as it happened. Eyewitness evidence is always reliable evidence provided the witness is telling the truth. Such evidence is on what the witness saw. It is almost impossible to dislodge such evidence – **Owolabi Vs State** (2022) LPELR 59985(SC), **Osuji Vs State** (2024) LPELR 62989(SC). In view of these pieces of unchallenged eye witnesses' accounts, the Appellant had an uphill task in convincing this Court that the judgments of the two lower Courts convicting him were perverse. The Appellant, in fact, failed woefully to make out a case warranting this Court interfering with the concurrent findings of the two lower Courts on his guilt.

I too hereby find no merit in the appeal. I dismiss the appeal and affirm the judgment of the Court of Appeal, Kaduna Judicial Division, delivered on the 14<sup>th</sup> of February, 2019 in Appeal. No CA/K/223<sup>c</sup>/2017.