

1. JIMOH ABDULLAHI
 2. SULE ABDULLAHI
 3. SUMONU JIMOH
 4. YUNUSA KARIMU
- V.
THE STATE

COURT OF APPEAL
(KADUNA DIVISION)

UMARU ABDULLAI. J.C.A. (Presided and Head the Leading judgment)

MURITALA AREMU OKUNOLA. J.C.A.

OKWUCHUKWU OPENE, J.C.A.

COURT - Writing of judgment - Duty on judge - Qualities a good judgment must possess.

CRIMINAL LAW AND PROCEDURE - Alibi - Meaning and effect of.

CRIMINAL LAW AND PROCEDURE - Defenses - Alibi - Where raised - Duty on prosecution to investigate Effect - Whether failure to investigate fatal in all cases.

CRIMINAL LAW AND PROCEDURE - Proof of crime - Evidence of prosecution witnesses - Where conflicting Effect - Duty on court in respect thereof.

CRIMINAL LAW AND PROCEDURE-Defence-Alibi-Where raised in evidence at the trial - How prosecution can disprove.

EVIDENCE - Defenses to crime - Alibi - Where raised - Duty on prosecution to investigate - Effect - Whether failure to investigate fatal in all cases.

EVIDENCE - Proof of crime - Evidence of prosecution witnesses - Where conflicting - Effect - Duty on court in respect thereof.

JUDGMENT AND ORDER - Writing of judgment - Duty on judge - Qualities a good judgment must possess.

PRACTICE AND PROCEDURE - H riling of judgment - Duty on judge – Qualities a good judgment must possess.

WORDS AND PHRASES - Alibi - Meaning and effect of.

Issues:

I. Whether the learned trial Judge was right to have reviewed, accepted, believed and acted on the evidence of the prosecution witnesses in particular the 'star' witnesses P.W.2 and P.W. 3; to find the appellants guilty of the serious offence with which they were charged before he attempted to review the defence of the appellants and whether the approach did not lead to a grave miscarriage of justice against the appellants and a truncation of their rights to equal hearing with the prosecution.

2. Whether, having regard to the failure of the police to investigate at all the alibi set up by the 3rd and 4th appellants, the trial Judge was right to have gone ahead to rely on the unreliable testimonies of P.W.2 and P.W.3 to find the alibi not proved when the alibi was not improbable or exaggerated, and same were set up at the earliest opportunity by the appellants.

3. Whether the prosecution proved its case beyond the reasonable doubt standard as required by law having regard to the inconsistencies, material contradictions and irreconcilable testimonies of the prosecution witnesses, moreover when the trial Judge did not properly evaluate or at all, the testimonies of the prosecution witnesses in particular P. W.4 and P. W.5 which were favourable to the defence of the appellants and when there was no credible, positive identification of the appellants.

Facts:

On 21st day of October, 1988 one Abas Akofe's dead body was found by the road side. The matter was reported to the Police and investigations got underway. In trying to find out the killers of Abas Akofe, the clan Chief of the village summoned a clan meeting on the day of the incident, but no one mentioned any name as being responsible for the killing at the meeting. Two people who were later called by the prosecution as eye witnesses to the killing attended that meeting, but they did not mention anybody's name at the meeting. The two people gave evidence as P.W.2 and P.W.3 respectively. Information emerged later on with P.W.2 and P.W.3 as the source that it was the appellants who killed Abas Akofe and they were accordingly arrested and charged for the murder. The prosecution called 8 witnesses, while each of the 4 appellants gave evidence on Oath and called defence witnesses. The 3rd and 4th appellants set up the defence of alibi at the onset of the investigation level by the police, but the alibi was not investigated by the police.

In the charge preferred against the appellants, they were alleged to have committed the offence of culpable homicide punishable with death contrary to section 221(b) of the Penal Code in that they inflicted severe injuries on the head of the said Abas Akofe with machetes. but the evidence offered by the prosecution at the trial came out to establish that there was only one cut on the head of Abas Akofe.

At the end of the trial, in a considered judgment, the learned trial Judge found all the four appellants guilty of the charge and convicted them accordingly.

The appellants were dissatisfied with the decision and they all appealed to the Court of Appeal.

Held (unanimously allowing the Appeal)

1. On Duty on judge in writing judgment -

The writing of a judgment is an art. In carrying out this art, although each Judge is free to follow his own style to produce a good judgment, it is very essential that a Judge must show a clear understanding of the facts of the case, the issues involved, the law applicable and from all these to draw the right conclusion: and make a correct finding on the credible evidence before him. In writing a judgment the underlying factor is fairness to the parties to avoid doing anything that would result in occasioning any miscarriage of justice. [Stephen v. State (1986) 5 NWLR (Pt.46) 978; Onuoha v. State (1988) 3 NWLR (Pt.83) 460 referred to].(P. 125. paras. F-H).

2. On Meaning and effect of alibi -

An alibi is a defence put up by an accused person that at the time that the alleged offence was committed that he was somewhere else. If an alibi is not investigated and rebutted by the prosecution, it creates a doubt that such an offence could have been committed by the accused person. [Ozaki v. State (1990) 1 NWLR (Pt.124) 92 at 109 referred to and followed]. (P. 129, paras D).

3. On Effect of failure of police to investigate alibi -

Where an accused person has disclosed an alibi before his trial and the prosecution has taken no available steps to verify or disprove it, the court may hold that the prosecution has failed to prove its case beyond reasonable doubt. This is because the failure by the police to investigate and check the reliability of an alibi properly and timeously put up by an accused person would raise reasonable doubt in the mind of the court and must in an appropriate case lead to the quashing of a conviction imposed in disregard of this requirement. [State v. Obinga (1965) NMLR 172; Ozaki v. State (1990) 1 NWLR (Pt.124) 92; Onafowokan v. State (1987) 3 NWLR (Pt.61) 538 referred to]. (p. 127, paras. B-D).

4. On Effect of failure of police to investigate alibi -

Where an accused person did not raise the defence of alibi before his trial, but in his evidence at the trial, the prosecution would naturally not be obliged at that late stage of the proceedings to investigate such a plea and would be entitled to rely on the evidence of its witnesses to disprove the alibi. Where the prosecution adduces sufficient, accepted and credible evidence to fix the accused at the scene of the crime at the material time, the plea of alibi would logically be demolished. Even where the prosecution failed to investigate an alibi, which does not necessarily become fatal in every case, the trial court has a duty to consider the credibility of the evidence adduced by the prosecution vis-a-vis the alibi. [Fatoyinbo v. A.G. Western Nigeria (1966) WNLR 4; Ntam v. State (1968) NMLR 86; Njovens v State (1973) 1 NMLR 331; Onyegbu v. State (1995) 4 NWLR (Pt.391) 510 referred to].(P. 127 paras. D-F).

5. On Treatment of conflicting evidence of prosecution witnesses -

Where prosecution witnesses have given conflicting versions of material facts in issue, the trial Judge before whom such evidence is led must make specific findings on the point and in so doing must give reasons for rejecting one version and accepting the other. Unless this is done it will be unsafe for the court to rely on any of the evidence before it. The proper course in the circumstance is to reject both versions of the evidence as unreliable and unsafe for the purpose of determining the material issue before the court. [Onubogu v state 119741 9 S.C. 1; Ikem v. State (1985) 1 NWLR (Pt.2) 378 referred to]. Pp. :28-129,paras. G-A).

Nigerian Cases Referred to in the Judgment:

Fatoyinbo v. A.G. Western Nigeria (1966) WNLR 4 Ikem v. State (1985) 1 NWLR (Pt. 2) 378 Njovens v. State (1973) 1 NMLR 331 Ntam v. State (1968) NMLR 86 Onafowokan v. State (1987) 3 NWLR (Pt.61) 538 Onubogu v. State (1974) 9 S.C. 1 Onuoha v. State (1988) 3 NWLR (Pt.83) 460 Onyegbu v. State (1995) 4 NWLR (Pt.391) 510 Ozaki v. State (1990) 1 NWLR (Pt.124) 92 State v Obinga (1965) NMLR 172 Stephen v. State (1986) 5 NWLR (Pt.46) 978 Nigerian Statutes Referred to in the Judgment:

Criminal Procedure Code. Cap 30, Laws of Northern Nigeria. 1963 S. 269(1) Evidence Act, Cap 112 Laws of the Federation of Nigeria. 1900 S. 138(1)

Appeal:

This was an appeal against the conviction for murder and sentence of death passed on the appellants by the High Court. The Court of Appeal, in a unanimous decision, allowed the appeal, quashed the verdict and discharged and acquitted the appellants.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the Appeal was brought: Court of Appeal. Kaduna.

Names of Justices that sat mi the Appeal: Umaru Abdullahi. J.C.A.

(Presided and Read the Leading Judgment): Muritala Aremu Okunola

J.C.A. Okwuchukwu Opene, J.C.A. Appeal No: CA/K/180/C/94. Date of Judgment: Tuesday. 11th July. 1995.

High Court:

Name of the High Court: High Court Omu-Aran. Counsel:

Yusuf O.Aili Esq. (With him. Adelodun) -for the Appellants

M.A. Sanni. Attorney-General. Kwara State (with him.M.A. Akoje. Director of Public Prosecution) -for the

Respondent

ABDULLAHI, J.C.A. (Delivering the Leading Judgment): The four appellants

were arraigned and charged before the High Court of Kwara State, sitting at Omu-Aran with the offence of culpable homicide punishable with death, contrary to section 221 (b) of the Penal Code.

Briefly, the facts of the case are that on 21st day of October, 1988 one Abas Akofe's dead body was found by the road side. The matter was reported to the Police and investigations got underway. In trying to find out the killers of Abas Akofe, the clan Chief of the village summoned a clan meeting on the day of the G incident, but no one mentioned any name as being responsible for the killing at the meeting. Two people who were later called by the prosecution as eye witnesses to the killing attended that meeting, but they did not mention anybody's name at the meeting. The two people gave evidence as P.W.2 and P.W.3 respectively.

Information emerged later on with P.W.2 and P.W.3 as the source that it was the appellants who killed Abas Akofe and they were accordingly arrested and H charged for the murder.

The prosecution called 8 witnesses, while each of the 4 appellants gave evidence on Oath and called defence witnesses.

The 3rd and 4th appellants set up a defence it! alibi at the onset of the investigation level by the police, but the alibi was not investigated by the police.

It is also pertinent to mention that in the charge averred against the appellants, they were alleged to have committed the offence of culpable homicident punishable with death in that they inflicted severe injuries on the head of the said Abas Akofe with matchets, but the evidence offered by the prosecution at the trial came out to establish that there was only one cut on the head of Abas Akofe. See evidence of P. W.6 and P.W.8. P.W. 6 is the police investigator while P.W.8 is the doctor, who performed the post mortem examination on the body of the deceased.

Be that as it may at the end of the day, in a considered judgment, the learned trial Judge found all the four appellants guilty of the charge and convicted them accordingly.

The appellants were not satisfied with the decision and they all appealed to this court. The Island 2nd appellants filed 8 similar grounds of appeal, while 3rd and 4th appellants filed 10 similar grounds of appeal. On close examination of all the grounds of appeal filed by the appellants, grounds 1 -7 are common to all the appellants.

Grounds 8 and 9 are peculiar to the 3rd and 4th appellants which deal with the defence of alibi. For the 1st and 2nd appellants, ground 8 is the Omnibus ground, while ground represents the Omnibus ground for 3rd and 4th appellants.

Be that as it may, the learned counsel for appellants identified 4 issues for on behalf of all the appellants.

The issues read as follows:-

(1)Whether the learned trial Judge was right to have reviewed, accepted, believed and acted on the evidence of the prosecution witnesses in particular the 'star' witnesses. P.W.2 and P.W.3: to find the appellants guilty of the serious offence with which they were charged before he attempted to review the defence of the appellants and whether this approach did not lead to a grave miscarriage of justice against the appellants and a truncation of their rights to equal hearing with the prosecution?

(2)Whether the learned trial Judge was right to have convicted the appellants of the serious offence with which they were charged on the incredible, contradictory and worthless testimonies of the prosecution witnesses, in particular, P.W.1, P.W.2 and P.W.3 on material facts when the trial Judge failed totally to advert to the material contradictions which he never resolved and which were never explained by the prosecution.

(3)Whether the prosecution-proved its case beyond reasonable doubt as required by law having regard to the inconsistencies, material contradictions and irreconcilable testimonies of the prosecution witnesses, moreover when the trial Judge did not properly evaluate or at all the testimonies of the prosecution witnesses in particular P.W.4 and P.W.5 which were favorable to the defence of the appellants and when there was no credible positive identification of the appellants.

(4) Whether having regard to the failure of the police to investigate at all the alibi set up by the 3rd and 4th appellants, the trial Judge was right to have gone ahead to rely on the unreliable testimonies of P.W.2 and P.W.3 to find the alibi not proved, when the alibi was not improbable or exaggerated and same were set up at the earliest opportunity by the

appellants.

For their part, the respondents formulated three issues for the determination of the appeal. The three issues read as follows:-

(1) Whether the learned trial Judge was right to have reviewed, accepted, believed and acted on the evidence of the prosecution witnesses in particular the 'star' witnesses P.W.2 and P.W. 3; to find the appellants guilty of the serious offence with which they were charged before he attempted to review the defence of the appellants and whether the approach did not lead to a grave miscarriage of justice against the appellants and a truncation of their rights to equal hearing with the prosecution?

(2) Whether, have (sic) regard to the failure of the police to investigate at all the alibi set up by the 3rd and 4th appellants, the trial Judge was right to have gone ahead to rely on the unreliable testimonies of P.W.2 and P.W.3 to find the alibi not proved when the alibi was not improbable or exaggerated, and same were set up at the earliest opportunity by the appellants.

(3) Whether the prosecution proved its case beyond the reasonable doubt standard as required by law having regard to the inconsistencies, material contradictions and irreconcilable testimonies of the prosecution witnesses, moreover when the trial Judge did not properly evaluate or at all. the testimonies of the prosecution witnesses in particular P.W.4 and P.W.5 which were favorable to the defence of the appellants and when there was no credible, positive identification of the appellants.

Having examined the 3 issues identified by the respondents and the 4 issues identified by the appellants, I find that they substantially covered the same grounds. The 3 issues identified by the respondents represent in a more condensed form the crucial issues for the determination of this appeal, and I shall adopt them.

I shall however alter the sequence of presentation and start with issue 3.

Issue 3 as set out above deals with whether, the prosecution had produced credible and cogent evidence before the trial court to meet the standard of proof beyond reasonable doubt to justify the finding of the trial court, particularly having regard to the inconsistencies and material contradictions in the testimonies of the prosecution witnesses, some of which are irreconcilable.

The learned counsel for appellants treated this under his issues 2 and 3. G Learned counsel in his attack referred to the evidence of P.W.2 and P.W.3 who claimed to be eye witnesses to the commission of the crime. The evidence of these two witness is to the effect that they were eye witnesses and they were around when they heard the deceased crying for help and they hid at a vantage point where they saw 1st and 3rd appellants gave machet cuts to the deceased on the head while 2nd and 4th appellants were beating the deceased with sticks until the deceased fell to H the ground. It is also the evidence of these two witnesses that they reported the incident to Omu-Aran Police on 22/10/88. These witnesses did not inform the meeting of the clan held on the same day of the incident, 21/10/88. They also stated in their evidence that they were not arrested as a result of the incident.

Substantial part of this evidence turned out to be in direct conflict with the evidence of the other prosecution witnesses. Learned counsel then touched also on the evidence of P.W.I who claimed to be the first to reach the place where the dead body of the deceased was lying, and in his evidence stated that he saw many machet cuts on the head of the deceased. This piece of evidence as in direct conflict with the evidence of P.W.6 and P.W.8, the police investigator and the doctor who performed the post mortem examinations on the dead body: who in their evidence stated that there was only one sharp cut on the head of the deceased.

There was evidence from the prosecution witnesses that P.W.2 and P.W.3 were also arrested by the police along with the appellants and many other people who owned farm lands around the area.

P.W.2 and P.W.3 were also contradicted by the evidence of P.W.4 that they were not the people, who reported the matter to Omu-Aran, Police Station. It was also highlighted by the learned counsel that these two witnesses could not agree amongst themselves the types of dresses being worn by the appellants on the day of the incident.

It is the contention of the learned counsel for appellants that with these glaring contradictions on material facts in the prosecution's case, particularly the evidence of P.W. 1. P.W.2 and P.W.3 the so called eye witnesses, on the one hand, and the evidence of P.W.6 and P.W.8 on the other hand, the learned trial Judge was J) in error to hold that the prosecution had proved its case beyond reasonable doubt against the appellants.

It is also the contention of the learned counsel for appellants that the learned trial Judge left so many issues unresolved, particularly the irreconcilable evidence given by the prosecution witnesses. Learned counsel cited an example of where the learned trial Judge found that there was only one cut on the head of the deceased E and from the evidence before him could not resolve which one of the appellants inflicted the cut. but in spite of this, the learned trial Judge went ahead to hold that there was a common intention among the appellants to inflict the wound. Learned counsel contended that this finding was based on speculation.

On the other hand, the Hon. Attorney-General who appeared for the ' respondent gallantly conceded to the points raised by the learned counsel for p 'appellants with regards to the various contradictions in the evidence of the 1

prosecution, particularly the evidence of the star witnesses, P.W.2 and P.W.3, whose evidence were materially contradicted by the evidence of P.W.4, P.W.6 and P.W.8 on crucial issues.

It is the contention of the learned Attorney that if there are contradictions in the evidence of the prosecution and the contradictions go materially to the charge, doubt will be created and the benefit of it must be given to the accused persons. The case of *Ikemson and Others v. The State* (1989) 2 NSCC 471 (1989) 3 NWLR (Pt. 110) 455 and *Stephen v. The State* (1986) 5 NWLR (Pt.46) 978 were cited in support.

The learned attorney contended further that with the contradictory testimonies of P.W.2 and P.W.3 as to what happened at the scene of crime and the consequent f-J result, it could not be said with certainty, that they actually witnessed the incident. Also with the failure of P.W.2 and P.W.3 to report the matter at the clan meeting called by the clan chief on the day of the incident even though they were in attendance, as well as their failure to report the incident to the police and in fact made no report at all at the earliest opportunity that it was the appellants that committed the offence, the court ought to be careful in accepting the evidence given by the witnesses implicating the appellants, unless a satisfactory explanation is given. In this case none was given by the witnesses. The cases of *The State v. Abudu* (1985) 1 NSCC 16 (1985) 1 NWLR (Pt. 1) 55 and *Ikemson* (supra) were referred to in support.

It is also the submission of the learned attorney that the evidence adduced of the prosecution contradicted essential ingredients in the charge in that the charge mentioned of infliction of severe injuries on the head of Abas Akofe with matchets. While P.W.2 and P.W.3 claimed to have seen 1st and 3rd appellants striking the deceased with their matchets on the head. P.W.1 said in his evidence that he saw four cuts on the head. On the other hand P.W.6 and P.W.8 said there was only one cut on the head.

The learned trial Judge disbelieved the evidence of P.W.1, P.W.2 and P.W.3 but accepted the evidence of P.W.6 and P.W.8. This discrepancy submitted learned attorney between the charge and the evidence accepted by the trial court is prejudicial to the case of the prosecution. It is not open to the trial court in criminal trial to pick and choose between testimonies of witnesses to credit some and discredit the others when no foundation was laid for such a course. The case of *Aruna v. The State* (1990) 10SCNJ 1 at 10-13: (1990)6NWLR(Pt. 155) 125 was cited in support.

The learned attorney submitted finally that the contradictions in the evidence of the prosecution witnesses have far reaching effects to the case for the prosecution in this case, in that even the identification of the victim allegedly seen by P.W.2 and P.W.3 becomes doubtful, in the circumstances the case of the prosecution has not been proved beyond reasonable doubt as required by law.

Considering the conflicting and contradictory evidence adduced by the prosecution on material issues as highlighted above, I agree with both the learned counsel for the appellants and the respondent that the learned trial Judge was wrong to hold that the prosecution had proved its case beyond reasonable doubt against the appellants. In the circumstances the conviction of the appellants cannot be allowed to stand.

This now disposed of issues No. 2 & 3 in the appellants brief and issue No 3 in the respondent brief.

Ordinarily this would have been the end of this matter, but I think, it will be expedient to deal briefly with the other two issues raised.

I shall now consider issue 1. This issue mainly complained about the manner in which the learned trial Judge reviewed the evidence before arriving at his conclusion. In his submission on this issue the learned counsel for appellants conceded that there is no hard and fast rule in judgment writing. A Judge is free to adopt any method that suited him as long as that method adopted will enable him to do justice to the parties.

Learned counsel for appellants contended however that the judgment of the court must reflect a clear demonstration of the understanding of the facts and the application of the facts to the law as well as a perfect understanding of the cases for the parties. In other words the review of the evidence and ascription of probative value must be even handed and fair.

Learned counsel for appellants maintained that these requirements are even more desirable and in fact necessary in criminal trial, where the court must avoid a situation where it would believe and act on the evidence of the prosecution before considering the case for the defence as it happened in this case.

Learned counsel referred to a passage in the judgment at page 113 lines 1 -13: where the learned trial Judge made the following findings.

"Both P.W.2 and P.W.3 claimed to be eye witnesses to the killing of the deceased by the accused persons. Lamidi Adesipe and Balogun Tiamiyu both of whom gave evidence as P.W.2 and P.W.3 respectively testified that they saw the four accused persons (all of whom they had known prior to the incident) attack the deceased on 21st October, 1988. These two witnesses were not shaken during cross-examination. Their evidence was direct and unequivocal as to who killed the deceased. They impressed me as witnesses of truth. They both saw the deceased shouting and screaming for help so that he would not be killed over his property. Those pursuing and (sic) deceased were the accused persons two of whom held cutlasses while the remaining two held sticks."

It is the contention of the learned counsel for appellants that this finding was made even before the learned trial Judge concluded the review of the prosecution's evidence let alone to consider and review the defence evidence. Learned counsel cited many authorities to support his contentions, these include *Theophilus Onuoha v. The State* (1988) 3 NWLR (Pt.83) 460; *Duru v. Nwosu* (1989) 14 NWLR (Pt. 113) 24; *Isaac Stephen v. The State* (1986) 5 NWLR (Pt.46j) 978 in which *Oputa J.S.C.* set out the stages to be followed in writing a good judgment, particularly in criminal cases. The four stages outlined by the learned Justice are as follows:-

Stage 1: If the plea of the accused is guilty no issues arise and no evidence is required. The trial court can proceed straight to judgment. But if the plea is not guilty (as it is bound to be in murder trials) then all the constituent elements of the offence charged are put in issue. And the onus lies heavily on the prosecution to prove the offence charged beyond reasonable doubt.

Stage 2: Issues are thus joined, evidence is led in proof or disproof of each issue. At this stage, the duty of the trial court is merely to record the evidence led and observe the demeanor of the witnesses called by either party.

Stage 3: This is the most important and crucial stage as it deals with the perception of facts, evaluation of facts belief or disbelief of witnesses and findings and conclusions based on the evidence accepted by the trial court.

At this stage, the trial court will briefly summarize the case of either party. This does not mean producing verbatim the evidence of the prosecution witnesses and of defence witnesses one by one but it does mean using such evidence to tell a coherent and connected story. Having done this, the trial court will then decide which story to believe.

Here it is important to emphasize that the overworked expressions "I believe" or "I do not believe" have no extrinsic magic power or potency. There is nothing wrong in believing one side and disbelieving the other if either the belief or disbelief is in consonance with the natural drift of the evidence and the probabilities which on the totality of what evidence it is natural to expect.

Stage 4: Having exercised his prerogative to believe or disbelieve having made his findings of fact, the trial court will then draw the necessary inference or conclusion from the facts, would then discuss the applicable law against the background of the facts as found. Any judge that follows the above pattern or something similar to it will be of invaluable help to the Courts of Appeal as well as to parties to the appeal. One would only wish that our trial courts do approach the difficult task of writing judgments in some methodical and orderly fashion."

It is the contention of the learned counsel for appellants that the trial Judge having believed the prosecution's case before considering the defence of the appellants negated a fair trial and that led to a grave miscarriage of justice.

For his part, the learned counsel for respondents contended that this issue must be relative to the provisions of section 269 (1) of the Criminal Procedure Code, which is the only section that makes provisions for the contents of a Judgment, which must be complied with by trial judges:-

The section provides as follows:-

"S.269(1) - Every judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed or sealed by the court in open court at the time of pronouncing it."

It is the contention of the learned counsel for respondents that for all intent and purpose the provisions of S.269 (1) CPC had been complied with by the learned trial Judge in this case. Learned counsel maintained further that writing of a judgment is an art in itself and there are more than one way of going about it. What is essential is that a judge should show a clear understanding of the facts in the case, of the issues involved, the law applicable and from all these, draw the right conclusions and make a correct finding on the evidence before him. It is the contention of the learned counsel for respondents that authorities cited by the learned counsel for appellants only gave guidelines and that had been fairly followed by the trial court, therefore this court should not interfere.

I accept the view that writing of a judgment is an art. I also accept the view that in carrying out this art, each Judge is free to follow his own style to produce a good product. But it is very essential that a Judge must show a clear understanding of the facts in that case, the issues involved, the law applicable and from all these to draw the right conclusions and make a correct finding on the credible evidence before him.

Even though the provisions of S.269(1) CPC is relevant to the issue, it appears to me that what the section provided is a minimum requirement. It is clear that the cases of *Stephen v. The State* supra; *Onuoha v. The State* had expanded and clarified in no uncertain term, the approach to writing a good judgment and what it should contain. In my view the underlying factor is fairness to the parties to avoid doing anything that would result in occasioning any miscarriage of justice. Each case must therefore be considered on its own special circumstance.

In this case, it has been clearly shown from the passage of the judgement quoted above that, the learned trial Judge made some serious findings in the middle of his review of the case for the prosecution. At that stage, the learned Judge did not touch the defence evidence at all. It is also clear that as he went along considering the remaining part of the evidence of the prosecution particularly, evidence of P.W.6 and P.W.8 as opposed to the evidence of P.W.2 and P.W.3 on which he based his serious findings, the learned trial Judge had a lot of difficulties in having to pick and choose between the evidence of these two sets of witnesses which resulted into his disbelieving a portion of the evidence

given by P.W.1, 1 P.W.2 and P.W.3 after having already made a finding believing the evidence of the same witnesses. Having taken this position, there is tendency that the learned trial Judge would not bother to give adequate consideration to the defence evidence, which would if given adequate consideration alter the finding already made. In my view, this would undoubtedly occasion a miscarriage of justice. It is my view therefore, that the approach adopted by the learned trial Judge in this case is erroneous and had resulted in a miscarriage of justice. Issue 1 is resolved in favour of the appellants.

The next issue I will consider briefly again is issue No 2. Which is issue No 4 in the appellants' brief. This issue relates to the defence of alibi raised by the 3rd and 4th appellants. It is common ground that this defence was raised by the 3rd and 4th appellants timeously in their respective statements made to the police. It is also a common ground that no investigation was conducted by the police.

It is clear from the statement of the 3rd appellant to the police that on that particular day, he woke up feeling sick, he went to Ona-Ara clinic where he was attended to and given some drugs by the attendant in the clinic, then he returned home and slept.

The 4th appellant also stated in his statement that he attended the early morning prayers in a mosque with other people and that being a Friday, he does not go to farm, instead he went to look for one Joseph, who is a health worker who wanted to buy some yam seeds from him. These stories of the appellants were confirmed by D.W.6 and D.W.7 respectively.

The learned trial Judge himself found in his judgment that the defence of alibi set up by the 3rd and 4th appellants was never investigated by the police. See F page 1 19 lines 4 and 5 of record. He however later on at page 120 of the record found again as follows:-

"I find that the alibi of the 3rd accused is a ruse. The 4th accused woefully failed to give particulars of his whereabouts as to assist in any meaningful investigation of his alibi."

It is the submission of the learned counsel for the appellants that from the way the learned trial Judge gave the alibi a snappy treatment, the inescapable conclusion is that he was placing on the appellants a higher burden than they were required under the law to discharge on their alibi. It is the contention of the learned counsel for appellants that where an accused person named some persons in his statement to the police, whom he alleged saw him elsewhere during the commission of the offence charged, the police must call such persons and failure to do so makes the alibi proved without much ado. The case of *Opayemi V. The State* (1985) 2 NWLR (Pt.5) 101 was cited in support.

Learned counsel contended further that the evidence of P.W.2 and P.W.3 which allegedly fixed the 2 appellants at the scene of the crime was put in doubt by the trial Judge himself. Learned counsel maintained that failure to investigate the alibi at all is fatal to the case of the prosecution.

On the other hand, it is the contention of the learned counsel for respondent that once an accused presents his alibi he must give full particulars of the alibi and then the prosecution must investigate it to confirm it or disprove it.

It is also the contention of the learned counsel for respondent that the particulars given by the appellants in this case are ambiguous and not sufficient to give the police enough lead to carry out investigation. In the circumstances the appellants had not discharged the onus on them.

I think the law is fairly settled in this field. It is the law that where an accused person has disclosed an alibi before his trial and the prosecution has taken no available steps to verify or disprove it, the court may hold that the prosecution has failed to prove its case beyond reasonable doubt. This is because failure by the police to investigate and check the reliability of an alibi properly and timeously put up by an accused person, would raise reasonable doubt in the mind of the court and must in an appropriate case lead to the quashing of a conviction imposed in disregard of this requirement see *State v. Obinga* (1965) NMLR 172; *Ozaki v. State* (1990) 1 NWLR (Pt.124) 92; *Onafowokan v. State* (1987) 3 NWLR (Pt.611) 538).

Where however an accused person did not raise the defence of alibi before

his trial, but in his evidence at the trial, the prosecution would naturally not be obliged at that late stage of the proceedings to investigate such a plea and would be entitled to rely on the evidence of its witnesses to disprove the alibi. Where the prosecution adduces sufficient, accepted and credible evidence to fix the accused at the scene of crime at the material time, the plea of alibi would logically be demolished. Even where the prosecution failed to investigate an alibi, which does not necessarily become fatal in every case, the trial Judge has a duty to consider the credibility of the evidence adduced by the prosecution vis-a-vis the alibi. See *Fatoyinbo v. A.G. Western Nigeria* (1966) NMLR 4; *Ntam v. State* (1968) NMLR 86; *Njovens v. State* (1973) 1 NMLR 331. see also the recent case of *Onyegbu v. The State* (1995) 4 NWLR (Pt.391) 510.

In this case, the 3rd appellant made it known to the police timeously that on the day in question he woke up feeling sick and around 7.30 am he went to Ona Ara hospital Oda-Owe where he was attended to and treated and then returned home and slept away. P.W.6 gave evidence to support this alibi.

While 4th appellant disclosed to the police that that morning he attended the early morning prayers at their mosque and

later on went to look for one Joseph, who G was to buy some yam seeds from him and that by his practice, he does not go to farm on Fridays. He also called a witness to support his alibi.

The learned trial Judge, after making a finding that the alibi of the appellants was not investigated, went on shortly afterwards to find that the alibi of the 3rd appellant is a ruse and that the 4th appellant woefully failed to give particulars of his whereabouts.

It is my view that the learned trial Judge did not discharge his duty to consider adequately the credibility of the evidence adduced by the prosecution, which is the evidence of P.W.2 and P.W.3 vis-a-vis the alibi raised by the 3rd and 4th appellants. Particularly that the learned trial Judge was himself in doubt as to the veracity of the evidence of those two witnesses, to their claim that they were eye witnesses to the commission of the crime, because he disbelieved their evidence when he found it in conflict with the evidence of P.W.6 and P.W.8 on material

Issues, that is the injuries inflicted on the body of the deceased. If the learned trial Judge had discharged his duty properly, he would not have dismissed the alibi with a wave of a hand, the way he did. In the circumstances, I hold the view that the Prosecution had failed to prove its case beyond reasonable doubt and the learned Trial Judge made an error to hold that the prosecution had proved its case beyond reasonable doubt. This issue is also resolved in favor of the appellants.

On the whole, the appeal has merit and it succeeds. The appeal is allowed. The decision of the lower court is set aside. The convictions and sentences of death imposed on the appellants is according quashed. The appellants are discharged and acquitted.

OKUNOLA, J.C.A.: I agree.

OPENE, J.C.A.: I have read in advance the lead judgment just delivered by my learned brother Abdullahi J.C.A. I agree with the reasoning and the conclusions reached.

I also agree with him that the appeal is meritorious and ought to be allowed.

I will like to add some few words by way of emphasis. A perusal of the record of proceedings clearly shows that there are many contradictions in the case for the prosecution. The star witnesses in this case are P.W. 1, P.W.2 and P.W.3. P.W.1 the brother of the deceased said that he found 4 deep cuts on the head of the deceased and it was P.W.1 that identified the corpse to P.W.8, the medical doctor who performed the post mortem examination on the corpse but P.W.8 and P.W.6. the police sergeant to whom the report was made said that there was only the deep cut on the head of the deceased.

P.W.2 and P.W.3 said that they were not arrested in connection with the offence but P.W.6 said that P.W.2 and P.W.3 were arrested in connection with the offence.

P.W.2 and P.W.3 stated that it was themselves that reported the incident at Omu-Aran Divisional Police Headquarters on 22.10.88 while P.W.6 said that the report was made by both P.W.1 and corporal Segun Adelola on 21.10.88.

I have just highlighted those few contradictions among others who had been imply stated in the lead judgment. It was in the midst of these inconsistencies and contradictions that the learned trial Judge stated that he disbelieved P.W. 1, P.W.2 and P.W.3 and that he accepted the evidence of P.W.6 and P.W.8.

It is well settled that where prosecution witnesses have given conflicting conversions of material facts in issue that the trial Judge before whom such evidence as led must make specific findings on the point and in so doing must give reasons rejecting one version and accepting the other.

Unless this is done it will be very unsafe for the court to rely on any of the incidence before it. The proper course in the circumstance is to reject both versions of the evidence as unreliable and unsafe for the purpose of determining the material issue before the court.

See: Onubogu v. The State (1974) 9 S.C. 1; Albert Ikem v. The State (1985) WLR (Pt. 2) 378.