

Judge must determine case | No evidence, judge rules | Counsel failure irrelevant | Section 271 imposes duty | Genuine issues require trial | Reasonable minds may differ | One-sided case fails | Proof beyond doubt required | Judge gives reasoned decisions | Practice Direction mandates reasons | Submission denied if prima facie | Standard is high probability | Not fanciful or remote | Defence may raise doubt | Circumstantial evidence admissible | Irresistible inference required | Facts must exclude innocence | Suspicion not sufficient | Police build inference | Indirect evidence acceptable | Blood link unexplained | Lies imply guilt | Reasonable doubt not created | Trial court affirmed | Appeal reheard for error | Miscarriage or wrong law | Verdict must be supported

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

**CORAM: PWAMANG, JSC (PRESIDING)
PROF. MENSA-BONSU (MRS), JSC
KULENDI, JSC
ACKAH-YENSU (MS), JSC
DARKO ASARE, JSC**

**CRIMINAL APPEAL
NO. J3/13/2023**

17TH JULY, 2024

ANTHONY ASOMANI @ ANTHONY AWUAH APPELLANT/APPELLANT

VRS

THE REPUBLIC RESPONDENT/RESPONDENT

JUDGMENT

PROF. MENSA-BONSU JSC:

This is an appeal from judgment of Court of Appeal dated 11th March 2020.

Facts

The appellant (also referred to as 1st accused herein) was a fetish priest whilst the 2nd accused (now late) was unemployed. Both of them were resident at Sefwi Asafo in the

Western Region. The facts of the case on which the prosecution built its charges were that on 10th September, 2007, ten-year old Emmanuel Kwasi Mensah Essah (also referred to as 'Kwesi' or 'Saah') was sent by his mother to sell corn dough at Sefwi Asafo. The appellant purchased three old cedis or thirty Ghana pesewas (30p.) worth of corn dough on credit, and asked the boy to collect his money later in the day. The identity of the person who had bought the corn dough on credit was, then, not known by the parents.

The buyer-on-credit turned out to be the 1st accused. He admitted purchasing the corn dough and using some of it to prepare Banku, which he ate with his friend, the 2nd accused person, Samuel Boah. Later that afternoon, around 3p.m., the evidence showed that the deceased did go to the compound of the appellant to collect the money, but contrary to what the appellant promised, he told the boy that he did not as yet have money to pay him. The boy refused to leave, insisting that if he returned home without the money, his mother would be displeased with him. The 2nd accused left the premises with the boy still demanding payment. That was the last time the boy was seen alive.

When the boy failed to return home at about 5:30pm, his parents began a search for him. A report was also made to the police that the boy was missing, but when no assistance was to be had from the police, a gong-gong was caused to be beaten in the town to announce the disappearance. Despite the best efforts of the community, and the accompanying publicity, Emmanuel was not found that night. The next day, ie 11th September, PW3, the father of the deceased, received information that it was the appellant who had bought the corn-dough on credit, and that it was from him the boy had gone to collect the money. The information turned out to be accurate, for as the evidence showed, Emmanuel was seen on the verandah of the 1st accused at about 4:30pm (according to the 2nd accused) and 6.00 pm (by an account of a friend of Emmanuel's), demanding the money, and refusing to leave the premises.

Having received information on the previous day's sighting of the missing boy, the father, (PW3), mobilized a search party to search the home of the appellant. There, they found some carved figurines supposed to be appellant's "idols", with fresh blood sprinkled on them. The appellant, when questioned, claimed that the blood was the

blood of a chicken, but upon being challenged to produce the carcass of the chicken, what he produced was a dead chicken which had no cuts from which blood could be obtained to do such sprinkling. Therefore, unconvinced by the answers, the search party went further and searched the entire compound. They found a place in the bushy portion of the compound, about ten-and-a-half feet from appellant's bedroom looking freshly cleaned and swept. A search at the place revealed a pit, said to measure about eight-and-half feet, covered with old clothes or rags. A little probing of the pile of rags revealed human legs, and so the police were informed. The body, with a nearly decapitated head, was retrieved and taken to a mortuary. A blood-stained knife (also described as 'half cutlass') was found in the hole. The body found under the rags, was later identified by PW3, as the body of his son Emmanuel Essah.

The appellant gave an account of his movements on the previous day which implicated his neighbour, with whom he admitted to being on bad terms. The neighbour was arrested, but after investigations, the police discharged him, as his account of his movements on 10th September, as well as those of his witnesses, were inconsistent with the appellant's accusations. Consequently, the appellant and his friend Samuel Kwaku Boah were the ones arraigned on charges of conspiracy to commit murder and murder at the Sekondi High Court. The 2nd accused died in the course of the trial, in August 2012), leaving the 1st accused ie the appellant to complete the trial.

The case of the prosecution rested on circumstantial evidence. The prosecution called four witnesses, but the appellant did not call any witness. The appellant was convicted on 6th February, 2014, by the High Court, Sekondi, presided over by a judge and a seven-member jury for the offences of Conspiracy to commit Murder and Murder. He was sentenced to death by hanging.

Aggrieved by the conviction and sentence, the appellant appealed to the Court of Appeal per the Notice of Appeal filed on 31st May 2018 pursuant to leave granted by the Court on 31st May, 2018. The main grounds of appeal to the Court of Appeal were two: (i) The verdict cannot be supported having regard to the evidence; and (ii.) Misdirection by Non-direction of the jury on the unreliability of the forensic report. In support of these grounds, the appellant submitted that the prosecution's case at the trial rested solely on circumstantial evidence as none of the witnesses produced by the

prosecution gave an eye witness account of the event leading to the disappearance and death of the deceased. It was, thus, the case of the appellant that the evidence led did not meet the evidential standard of 'beyond reasonable doubt' as the circumstantial evidence relied on, could not have led to only one irresistible conclusion. Consequently, he should have been acquitted. The Court of Appeal, having considered all the pieces of evidence in the Record of Appeal, came to the conclusion that the one and only irresistible conclusion that could be drawn from the facts was that the jury's decision was justified and the conviction was proper. The appeal was, therefore, dismissed.

Again, aggrieved by the judgment of the Court of Appeal, the appellant has mounted another appeal to this honourable Court. This time, focusing on a side comment made by the Court that it was noteworthy that at the close of the prosecution's case, counsel for the accused made a submission of no case on behalf of the 2nd accused, but not the 1st accused (ie the appellant). Further, that counsel's posture suggested an acceptance that a case had been made against the 1st accused hence his failure to make a like submission on behalf of 1st accused.

The appellant has appealed to this honourable Court on the sole ground:

"The Court of Appeal erred in relying on the circumstantial evidence when same was not conclusive"

The relief sought by the appellant was to be acquitted and discharged.

The Supreme Court on 4th June 2024 ordered that the respondent ie the State should file submissions to address the Court on the position of the law regarding a statement attributed to Twumasi J in ***Amukyi v. The Republic*** [1982-83] G.L.R 1010 at 1011 that

"Thus the police statement made by an accused person, unless it is a confession statement admitted into evidence, was not to be taken as part of the prosecution's case."

The submissions filed in compliance with this Court's order of 4th June, 2024, will thus be considered as part of this appeal. The sole ground of appeal not lending itself to conventional treatment, the issues raised by the appellant on his submissions will be discussed in order to address the substance of the sole ground of appeal.

Issue 1

Whether the Court of Appeal ought to have come to a conclusion that Counsel for the Appellant's failure to make a submission of no case for the appellant is a presumption that the appellant had a case to answer?

The appellant has challenged the judgment of the Court of Appeal on a number of issues. It is the contention of the appellant,

that the judge failed in his statutory duty, as provided under section 271 of the Criminal Procedure Act, 1960 (Act 30), as he was not required to open his defence;

that the judge was under an obligation to rule on a submission of no case upon the close of the prosecution's case irrespective of whether or not his counsel had made any such submissions on his behalf;

that his counsel's failure to make a submission of no case did not raise any presumption that he believed his client had a case to answer;

These issues are all intertwined and so are discussed in that format.

On issue (i) that the judge failed in his statutory duty, as provided under section 271 of the Criminal Procedure Act, 1960 (Act 30), as the offence had not been made out, and he was not required to open his defence.

It would be appropriate to examine the provision in section 271 to determine the issue raised by the appellant.

"Section 271. The Justice may consider at the conclusion of the case for the prosecution whether there is a case for submission to the jury, and if of the opinion that a case has not been made that the accused has

committed an offence of which the accused could be lawfully convicted on the indictment on which the accused is being tried, the Justice shall direct the jury to enter a verdict of not guilty and shall acquit the accused."

From the reading of this provision, as well as on the authorities, it is a question of law for the judge to make the determination of whether a case has been made against an accused. This is a legal duty placed on the shoulders of the judge, and should not be neglected whether or not counsel makes such submission. Thus, the fact that Counsel for the two accused persons made a submission of no case on behalf of 2nd accused, but not of 1st accused did not relieve the judge of his duty to make a determination in the process of assessing the evidence at the close of the prosecution's case. See also ***Tsinowope v The Republic*** [1989-90] 1 GLR 114 at p117, the Court of Appeal per Osei-Hwere J.A restated the position that "*It is a question of law for the trial judge to decide on this matter and not one of fact for the jury.*"

ii. Counsel has contended that it is completely erroneous for the Court of Appeal to state that because Counsel for the two accused persons made a submission of no case on behalf of 2nd accused, but not on behalf of 1st accused, it could be presumed that he believed his client had a case to answer. Counsel for appellant submitted in the Statement of Case that

"the discretion competence or ability of a lawyer for an accused should not be the determinant factor as to whether or not a case to answer has been made against an accused. The duty is on the Judge by statute".

In ***Tsatsu Tsikata v. The Republic*** [2003-2004] 2 SCGLR 1068 at p.1097, Prof Ocran JSC explained the function of the submission of no case thus:

"It does appear to us that on a submission of no case, the judge's function is essentially to determine whether there is a genuine case for trial. The inquiry has to focus on the threshold question whether the evidence presents a sufficient disagreement to require submission for a full trial, or whether it is one-sided that one party must prevail as a matter

of law. Put another way, the *inquiry is whether there are any genuine or factual issues that can be properly resolved only by a finder of fact because they may reasonably be resolved in favour of either party.*

We therefore hold that where reasonable minds could differ as to the import of the evidence presented in a motion for submission of no case, that motion should be upheld. If, on the other hand, there can be but one and only one reasonable conclusion favouring the moving party, even assuming the truth of all the prosecution has to say, the judge must grant the motion. Where the submission is rejected and the case goes to trial, it is then that the judge or jury as appropriate, being the trier of facts, is called upon to determine whether or not the guilt of the accused has been proved beyond reasonable doubt."

In ***Moshie v The Republic*** [1977] 1 GLR 287 when the point arose over the failure of counsel to make a submission of no case, Azu-Crabbe CJ at pp.290-291 stated that:

"It is thus a question of law for the trial judge whether or not 'there is no evidence' to establish that the accused has committed any offence known to our law. The duty to decide this question is cast on the judge whether or not a submission of no case' is made to him by the defence... The law now seems to be that in considering his duty under section 271 of the Criminal Code 1960 (Act 30) , the judge should not leave a case to the jury if he is of the opinion that(a) there has been no evidence to prove an essential element in the crime charged, or (b) the evidence adduced by the prosecution had been so discredited as a result of cross-examination, or (c) the evidence is so manifestly unreliable that no reasonable tribunal could safely convict upon it, or (d) the evidence is evenly balanced, that is to say, the evidence is susceptible to two likely explanations, one consistent with guilt, one with innocence...Section 271 casts a positive duty on the trial judge to ensure that the accused is not deprived of this protection through either mistake or ignorance. And in this case, the

failure of counsel for the defence to make a submission of no case could not absolve the learned trial judge of his responsibility under the section."

Therefore, it was not the predilection of counsel, or counsel's belief in the guilt of the accused that was in issue, but the failure of the judge, in breach of his statutory duty, to have ruled on a submission of no case, even if it had not been made by counsel.

However, the fact that the judge in the instant case did not articulate any reasons in writing did not mean that a determination was not made. It appeared to be a common practice at the time, and well-known enough to draw the ire of the Supreme Court. In ***Tsatsu Tsikata v. The Republic***, supra, at p.1100 this honourable Court, per Prof Ocran JSC had this to say about the practice of not assigning reasons for overruling a submission of no case:

"The Ghana Supreme Court sitting today ...wishes to encourage this sound policy of articulating reasons for judicial decisions and orders as a matter of judicial best practice. There is always a reason for a judicial decision, even if the reason is not articulated or clearly unmeritorious. If the reason is without merit, the appellate court will promptly overrule that decision. ... Decisions without articulated reasons often give the possibly unwarranted impression of thoughtlessness, bias, or even malice on the part of the decision maker. At the same time, we know that the lack of articulated reasons does not always lead to a miscarriage of justice.

Despite these weighty observations, the practice did not cease, as the instant appeal shows. However, the need for a trial judge to assign reasons in writing is now the subject of the '**PRACTICE DIRECTION (DISCLOSURES AND CASE MANAGEMENT IN CRIMINAL PROCEEDINGS)**' of 30th of October, 2018, which states at Section 5(2)(a) as follows:

"At the close of the case for the Prosecution, the Court shall, on its own motion or on a Submission of No Case to Answer, give a reasoned decision as to whether the Prosecution has, or has not, led sufficient

evidence against the Accused person as to require the Accused person to open his defence.”

At the time this case was tried, there was no specific requirement for such writing after a judge’s determination of whether enough of a case had been made against an accused, and therefore there was no wrongdoing on the part of the judge, for not having done so.

iii. The Court of Appeal, therefore, erred in placing any weight on what it presumed was the reason for counsel not having made a submission of no case on behalf of one client. In the instant appeal, the 2nd accused died before the judge could rule on the submission of no case made on his behalf and so the ruling was not read, but he was discharged for the trial of the 1st appellant to continue. Having given no written reason why the appellant was called upon to open his defence thereafter, whatever reason is assigned by others would be mere conjecture. Even though the appellant obviously held the view that the evidence at the end of the prosecution’s case did not warrant the court calling upon him to open his defence, it was not up to him to make the determination. Nor was there an automatic right for the submission of no case once made, to be upheld. It could be overruled as the judge was within his rights to do, for the trial to proceed.

In the instant case, the trial judge must have made a determination that a prima facie case had been made, hence his calling upon the 1st accused to open his defence. The statement as to the whys and wherefores of the decision by counsel for 1st accused to move such a motion on behalf of the one, but not the other, made by the Court of Appeal could only be conjecture or at best, informed guesswork. Therefore, it is impossible to know for sure, the reasons why counsel acted in that manner. What is clear is that the judge was within his rights to call upon the 1st accused to open his defence, and so the statement made by the Court of Appeal neither affected the course of the trial, nor did it occasion a miscarriage of justice.

Issue 2

Whether the Court of Appeal ought to have acquitted and discharged the Appellant at the end of prosecution's case as the evidence adduced did not meet the requisite standard.

Under this second issue, the appellant submits that the trial court should have discharged and acquitted him at the end of the prosecution's case because there was insufficient evidence upon which to convict. However, it was because the court erroneously relied on the police statements (exhibits E and F) given by the appellant after his arrest on 12th and 13th September respectively, that it could conclude that he had a case to answer. The appellant cited the position of the law by Twumasi J in **Amukyi v. The Republic** [1982-83] G.L.R 1010 at 1011 that,

"Thus the police statement made by an accused person, unless it is a confession statement admitted into evidence, was not to be taken as part of the prosecution's case."

This position by a High Court that unless a caution or charged statement to the police was a confession statement it was not to be regarded as part of the prosecution's case is not good law. In **Nagode v The Republic** [2011] 2 SCGLR 975 at p.973, Anin Yeboah JSC (as he then was) stated the law thus:

In criminal justice, the accused persons statements made to the police should be considered by a trial court to ascertain whether it raises any defence in law; and the failure to consider the accused cautioned statement may be viewed as a rejection of a defence raised by the accused. ... In this case the learned trial judge, after examining the evidence given by the appellant, went ahead to consider the two statements made by the appellant when he was arrested...

In the statement he admitted going to the house of the complainant with the others and it was only when he engaged the services of counsel that he sought to repudiate the earlier statement he made to the police. The only intention in rejecting his earlier statements was designed to escape justice."

A like scenario has unfolded in the instant appeal, for the 1st accused, denied every material part of his statements to the police both in his evidence-in-chief and cross-examination. He even claimed to be suffering mental health issues but he failed to establish that fact as required under section 15(3) of the Evidence Act, 1975. It was thus clear, that he was only seeking to confuse issues with his bizarre answers.

Having claimed that he was a fetish priest on both Exhibits 'E' and 'F' who performed rituals for others and received gifts of sheep (as from John Three), and money (as from Kramo) he denied being a fetish priest in his evidence-in-chief on 13th November, 2012, which he continued on 13th June, 2013. Under cross-examination, he denied that there was anyone in the town called John Three; and even denied ever eating a meal with 2nd accused. The question that jumps to mind is that if he received no money from Kramo (Amadu?) for rituals he performed, how did he come by the money for the soup for Banku, which he had admitted buying from the market on 10th September? In Exhibit 'F' he stated that he and Boah went to Asafo market to buy the ingredients for the soup; he indicated after the meal that he was going (back) to Asafo town to demand a debt; At about 7.00 he went to the house of Kwaku Boah and took him on an outing where they drank one thousand old cedis worth of Akpeteshie and that he returned home around 10.00pm. On 13th November, 2012 however, he testified thus:

"On that day in question, I had been tied up and put into a room,...I had been tied up upon the complaint by the neighbours in the area because I was disturbing the neighbours and my father. So I was tied up bound and put me in a room and that I was not to go out until after my father had finished performing the funeral of my mother because I may cause some disturbance. When I was tied up 2nd accused (now deceased) and my nephew bought corn dough from late Kwesi Mensah the victim in this case to prepare meals for me. I now say that the corn dough was bought by Kojo Samuel from the victim of this case and said he was going to tell 2nd Accused now deceased to come and use the corn dough to prepare food for me..."

The person who, in Exhibit F, claimed he made at least three trips to Asafo town that day (of 10th September, 2007), including a trip to drink Akpeteshie free of charge, now declared that he had been tied and bound in a room the whole time and could not move.

The appellant's denial of everything in his statement after 2nd defendant died, except the vehicles he recalled parked in his neighbour's house showed clearly he was uncomfortable with admissions he had made to the police under caution on 12th and 13th September 2007, hence his determination to have any such information excluded. The court was right to rely on information in the police statements because the statements were properly before the court under section 11(2) of the Evidence Act 1975 (NRCD 323) which requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt. "all the evidence", means all that is admitted in evidence.

Appellant contests the use of police statements because Twumasi J. had said they were not to be used unless they were confession statements. The respondent has traced the roots of the rights of accused persons to the Miranda rules and the use of those in the caution administered to arrested persons when charged. What, indeed, is the use of statements taken from the accused at the time of arrest unless the information could be put to some use in the trial? What point would there be in administering a caution to the accused in a carefully-worded formula in the following manner:

"You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence..."?

prior to taking his statement, if it was a mere ritual that was not to be taken seriously? The respondent has submitted that the taking of statements from accused persons upon arrest is not a fanciful ritualistic procedure but a procedure of law. We cannot help but agree with those submissions. Clearly, whatever the merits of the statement attributed to Twumasi J. it did not represent section 11(2) of the Evidence Act, 1975. The trial court and Court of Appeal were right to rely on the statements in the Exhibits

'E' and 'F'— particularly the gross inconsistencies in both statements and his answers in court, to hold that a prima facie case had been made against the appellant.

In ***Tsatsu Tsikata v The Republic*** supra, on the standard of proof that would suffice as satisfying the requirement of 'prima facie case', for an accused to be called upon to open his or her defence, Prof Ocran, JSC stated that the standard of proof at that stage could not be at the same level of 'proof beyond reasonable doubt' as required at the end of the case. As he pointed out,

"Indeed, if the submission of no case is made just at the close of the prosecution's case and cross-examination of its witnesses, how could one seriously speak of proof beyond reasonable doubt when the defence has not had a full chance of punching holes in the prosecution's case to possibly raise doubt in the mind of the trier of facts by calling its own witnesses and presenting counsel's address? It seems as if we have to look for a lower standard of proof at this preliminary stage in the criminal proceedings."

On this exposition of the law, we cannot fault the conclusion of the Court of Appeal that a prima facie case was, indeed, made against the appellant.

The meaning of this phrase of 'proof beyond reasonable doubt' has been the subject of many authorities, the most cited being the statement by Lord Denning in ***Miller v Minister of Pensions*** [1947] 2 All ER 372 when he explained the standard of proof at p.373 thus:

"It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed in a sentence of course it is possible but not the least probable, the case is proved beyond reasonable doubt, but nothing short will suffice."

This is a very high standard indeed. What was the evidence produced against this appellant? It was largely circumstantial, but he did not help himself by failing to mount any defence (as he was entitled to do), or to call any witnesses (as was his right), even though he had served prior notice on the court that he intended to call at least one witness.

Perhaps, it was his (and/or his counsel's) strategy to "Deny everything, and admit nothing" as they believed they had nothing to prove. As Gbadegbe JSC in his dissenting judgment in ***Gabriel Joanne v. The Republic*** [2012]¹ SCGLR560, at p.609 pointed out, adopting a defence strategy was a part of the responsibilities of counsel

"In my thinking", he said, "even guilty persons are entitled to be advised of strategies for their defence in the conduct of criminal cases in the same way as innocent persons and as such the violation of this fundamental right when properly asserted must result in setting aside any conviction that is founded thereon. When people are accused of crimes and going through trials, the role of counsel is of utmost importance in ensuring that they are properly advised in preparing their defence and all the options that are available to them are explained to them to ensure that the trial process is fair and also to uphold the integrity of the judicial process by which their right to personal liberty might be curtailed following their conviction."

The strategy could backfire, as it did in this case, for it undermined the credibility of the appellant himself. He failed to raise any "reasonable doubt" as he was required to do under section 13(2) of the Evidence Act, 1975.

Circumstantial evidence

The appellant has attacked the basis of his conviction on circumstantial evidence because none of the witnesses of the Prosecution saw the crime being committed.

The relevance and importance of circumstantial evidence is that it can be used to put together a very credible case capable of securing conviction for the prosecution. In the

old case of **State v Anani Fiadzo** [1961] GLR 416, the Supreme Court at p.418, held on the issue of circumstantial evidence as follows:

"Presumptive or circumstantial evidence is quite usual as it is rare to prove an offence by evidence of eye-witnesses and inference from the facts may prove the guilt of the appellant. A presumption from circumstantial evidence should be drawn against the Appellant only when that presumption follows irresistibly from the circumstances proved in evidence, and in order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the Appellant, and incapable of explanation upon any other reasonable hypothesis other than guilt. A conviction must not be based on probabilities or mere suspicion."

In **Kwaku Frimpong, alias Iboman v. The Republic** [2012] 1 SCGLR 297, at p 314, Dotse JSC stated that

What must be noted is that a crime is always investigated after the act had been committed, However, during the investigation, the police are able, to put together strings of activities and draw the necessary inferences and conclusions. Some of the evidence might be direct and therefore quite conclusive, but others might be indirect, and referred to as circumstantial. Some crimes are investigated solely upon circumstantial evidence: as, apart from the accused, there might not be any living eye witness of the crime. But courts of law will not throw their hands in despair only because there is no other eye-witness account of the crime. This is the relevance and importance of circumstantial evidence which can be used to put together a very strong credible case capable of securing conviction for the prosecution."

The only caveat is that the evidence must lead to one irresistible conclusion. See: **R. v. Onufrejczyk** [1955]1QB 388; and **Bosso v. Republic** [2009] SCGLR 420 etc. There

is, thus, nothing novel about reliance on circumstantial evidence, provided the caution is observed.

The appellant submits that the Court of Appeal, having admitted that the blood stains in the cloth, towel and bedsheets were not of human origin, should have held that the prosecution had failed to make its case. In the view of the appellant, this should have negated the human blood sample found on the walls of the Appellant's home, and on the carved "idols", not to mention on the knife or half cutlass. This is selective argument indeed. It is unclear why the appellant believed the forensic tests that showed that the blood samples in those fabrics were of non-human source, were more important than those that showed human blood. This point is easy to dispose of, for even if the forensic tests done were less than adequate, the fact that the appellant did not claim the blood was his own, still left him with a substantial question of how he came by the fresh human blood that had been sprinkled on his idols. It did not help matters that he lied about the source of the blood, first claiming it was from a chicken, and then later a sheep, but which was proved by forensic evidence to be of human origin. The Court of Appeal listed other pieces of evidence which, together with these, built a case against the appellant. For instance, a boy, who was last seen on appellant's verandah demanding that a bill owed him be paid, had since disappeared. A search for him revealed "idols" on which blood (which turned out to be of human origin) had been sprinkled. The nearly decapitated body of the boy was subsequently found in a deep hole covered by rags on the premises of the appellant. A blood-stained knife was also found in the hole, which was alleged to belong to appellant although he denied ownership. No one could be faulted for connecting the dots and putting the responsibility at the door of the appellant. Even though it was the contention of the appellant that a satisfactory forensic examination should have been conducted in order for a doubtless connection to have been made between the appellant and the crime, the prosecution was required to make a prima facie case, and it did so. It is true the appellant had no obligation to prove his innocence, but he, at least had the obligation to himself to create reasonable doubt as required under section 13(2), that he had been wrongly accused. He had the opportunity to punch holes in the case made by the prosecution, and he failed to do so. The conclusion of the Court of Appeal that all these

pieces of evidence led to one conclusion only, was right, and so its judgment affirming the trial court's decision based on the circumstantial evidence was the right one.

It is trite law that an appeal is by way of re-hearing and an appellate court is expected to put itself in the place of the trial court and first appellate court in doing what they may have failed to do. See: **Tuakwa v. Bosom** [2001-2002] SCGLR 61; and **Apaloo v. Republic** [1975] 1 GLR 156 at 169.

The appellant's attempts to impeach the judgment of the Court of Appeal through pointing out procedural defects has not been successful, for whatever defects existed did not cause a miscarriage of justice.

Section 31(1) and (2) of the Courts Act, 1993(Act 459) which was cited by the respondent, put paid to any hopes the appellant might be nursing thus:

(1) Subject to subsection (2), an appellate court on hearing an appeal in a criminal case shall allow the appeal if the appellate court considers that the verdict or conviction or acquittal ought to be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment in question ought to be set aside on the ground of a wrong decision of any question of law or fact or that on any ground there was a miscarriage of justice and in any other case shall dismiss the case

(2) The court shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred or that the point raised in the appeal consists of a technicality or procedural error or defect in the charge or indictment but that there is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused could have been convicted upon the charge or indictment."

See also **Dexter Johnson v. Republic** [2011] SCGLR 601.

There being no evidence of a miscarriage of justice occasioned to the appellant, the judgment of the Court of Appeal is affirmed.

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