IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ACCRA – GHANA

CORAM: ADINYIRA, JSC (PRESIDING)

ASIAMAH, J SC

PIESARE, J.A.

CRIMINAL APPEAL

NO. H2/9/2004

7TH FEBRUARY 2008

KOFI DADIE … APPELLANT

VR.

THE REPUBLIC … RESPONDENT

JUDGMENT

SOPHIA ADINYIRA (Mrs.) JSC:

The main issue for consideration in this case is the principle of inconsistency in the result of a trial by jury of two or more persons tried on the same charge and the same evidence adduced at the trial. The appellant herein Kofi Dadie was on the 31 July 2002 convicted by a Kumasi High Court for the murder of Samuel Tuffuor alias Kofi Sammy and sentenced to death. He was originally charged with three others, 1st, 3rd and 4th accused (hereinafter described as A1, A3, and A4 where necessary)) with the offences of:

1. Conspiracy to commit Murder contrary to sections 23(1) and 46 of Act 29 of 1960.
2. Murder contrary to section 46 of Act 29of 1960 (except A3).
3. Abetment of murder contrary to sections 20(1) and 46 of Act 29 of 1960 against A3 alone.

It is important to mention

here that at the close of the case of the prosecution during the trail at the High Court, counsel for the appellant made a submission of no case for A1, A3 and A4. The trail judge upheld this submission and directed the jury to

return a verdict of not guilty of murder in respect of these three accused persons. The prosecution immediately filed an appeal against this verdict. Unfortunately, I may say, the Attorney- General's office could not prosecute the appeal before the appellant who was called upon to open his defence was convicted for murder.

When the appeal filed by the appellant came on for hearing, counsel in the case filed written submissions in respect of both appeals. On 10/12/ 2004 Counsel for the appellant in this appeal informed the Court that although he undertook to file a statement of case on behalf of A1, A3, and A4, he has not seen them to receive any instructions from them and cannot therefore represent them. Since this Court cannot hear the appeal filed by the state in the absence of A1, A3 and 4, this court arrested its judgment and directed that hearing notice be served on them to appear for the appeal against their acquittal to be heard. Up to date there is no return of service and there is even no proof that the notice of appeal that was filed by the state was ever served on them. In view of these facts the appeal filed by the State, cannot be heard, as the respondents have not been served with notice of the appeal. At the same time this Court cannot arrest its judgment in respect of the appellant herein any longer. So this judgment to be delivered is only in respect of the appeal filed by Kofi Dadie, which, had been delayed due to the non-service of the other appeal the outcome of which might probably have affected the one before us.

The case for the prosecution at the trial was that there was a chieftaincy dispute in Esreso near Kumasi. On 15 February 2001, the chief of Esreso, who gave evidence at the trial as PWI, was holding a meeting with some of his elders when some people belonging to the opposing faction entered the palace. These intruders captured PW1 and severely assaulted him and put him in a taxi to the old palace in order to perform customary rites to destool him. His supporters came to rescue him in a state of unconsciousness. The deceased, Samuel Tuffuor alias Kofi Sammy came to the scene ostensibly to support the chief. According to the prosecution witnesses the appellant and the other accused persons brutally assaulted Kofi Sammy with clubs and cutlass. Kofi Sammy died the next day as a result of the injuries he sustained.

At the close of the case for the prosecution, the trial Judge ruled that there was no evidence against the other accused persons and directed the jury to

return a formal verdict of not guilty of the murder charge. The appellant was called upon to open his defence. His defence was mainly that it was the deceased who was the aggressor and he took the club and cutlass, which fell from the deceased in order to defend himself but never used them on the deceased. The jury returned a verdict of guilty of murder. The appellant being dissatisfied appealed to this Court on the following grounds:

1. "The court failed to appreciate the cause of death having regard to the evidence on record and thereby occasioning a gross miscarriage of justice.
2. The court erred in its consideration of law regarding the ingredients to be proved in a charge of murder."

Counsel for the appellant argued these grounds of appeal together. Counsel's main submission was that there was no admissible evidence as to the actual cause of death. He said:

> *"The court's inability to ascertain the cause of death disabled it from deciding which of the acts documented in the record caused the death of Kofi Sammy."*

It is therefore appropriate at this stage to look at the evidence adduced by the prosecution at the trial as to the cause of death. The best evidence on this was the evidence of the medical officer, PW7 who conducted the postmortem examination on the body of the deceased and prepared the post mortem report itself, which was tendered in evidence as Exhibit A. The essential portion of Exhibit A is as follows:

"Marks of Violence

- ***A sharp edge wound measuring 2.0 cm in diameter at the mid portion of the left scapula region. It is also at a distance of 12.0cm long from the T2 level.***
- ***Multiple compression fractures at the skull.***
- ***A sharp-edge wound 3.3 cm in diameter at the lateral aspect of the right wrist joint.***

Internal Examination

CVS: ***The heart, pericardium and the great vessels are normal.***

RS: *The trachea, bronchi and the lobes of both longs are normal.*

GIT: *The oesophagus stomach, intestines, liver and the gall bladder are normal.*

UGS: *Normal appearance.*

LRS: *The spleen and the lymph nodes are normal.*

CNS: *There are multiple compression fractures involving the left aspect of the frontal bone left parieto-temporal bone and the left aspect of the occipital bone. There is a lineal fracture 15.0 cm long along the front suture of the skull. There is massive subdural and soft tissue bleed. There is a massive bleed in the left parieto-temporal aspect of the brain matter.*

Cause of Death

1. *Multiple compression fractures at the skull. Massive due to assault*
2. *Multiple sharp-edged injuries due to assault.*

   (UNNATURAL)

In his evidence in chief the medical officer gave evidence as follows:

> ***"The fractures on the skull were due to assault. Internal organs were normal. The nervous system was multiple fractures and damaged. The fracture on the head was caused by a blunt object and the other fracture by cutlass."***

During cross-examination he rejected the suggestion that the fractures on the head of the deceased was caused by a fall on the ground. This is what he said:

"Q. ***The injuries that you established could have been caused by a heavy fall on the road***

A. Not true

Q. If somebody hits his head on the street the head could be fractured.

A. That is true.

Q You said the compression fractures could have been sustained by a hit with a blunt object.

A. That is so.

Q. That could also be caused by a heavy fall on a tarred road

A. that is not true because there will be only one place that will be damaged."

From the evidence and cross-examination of the Medical officer, I find unequivocal evidence that Samuel Tuffuor alias Kofi Sammy died an unnatural death due to "*multiple compression fractures at the skull. Massive due to assault; and multiple sharp-edged injuries due to assault*". It was also clear that a blunt object and a cutlass caused those multiple injuries. We accordingly find that the prosecution was able to establish the cause of death of Kofi Sammy.

In relation to evidence on the assault on the deceased by the appellant and the other accused persons, the prosecution called eyewitnesses who corroborated each other on material matters. PW2 said that that when the Chief of Esreso was kidnapped and put in a taxi he and two others chased the taxi with another vehicle and managed to cross the taxi at the old palace. People came to help them to rescue the chief from the1st accused and the appellant. He continued in his evidence that:

> "***One Samuel Tuffuor (the deceased) hearing the noise came towards where we were. I saw one Kwame Ampofo (3rd accused) forced the hands of Samuel Tuffuor behind his back and 1st and 2nd accused (appellant) hit his head with a stick. 3rd accused pushed Kwame Ampofo (sic) down and 1st accused hit his head with a stick for the second time. The distance between where I saw the incident was from the dock to the bar of this court. Whilst this was happening PW1 has been taken to the house by the people who came to help Poku Mensah. A4 raised his stick to hit Kwame Ampofo (sic) again but I rushed on him and took the stick away. Whilst trying to take the stick, Kofi Dadie cut my head with a cutlass. I was sitting on him and had a cut at the back of my head. I got up and the knife was thrown at me and hit me on the hand. I ran backwards and Dadie left me and went to Tuffuor who was on***

the ground and cut him further with a knife. He was cut several times at the back with a knife. I told Sammy to stay where he was on the ground because if gets up he will cut him with the knife again. Kofi Dadie said (sic) had set a record and that there is no man in Esreso. He again took a butcher's knife from his pocket and stabbed Sammy at the back. People standing by begged him and a friend of his spoke to him to stop. He gave the knife to the friend and boarded a vehicle away. Yaw Poku and some relatives got a vehicle and put Sammy in it to Pramso Hospital."

In cross-examination PW2 repeated that it was only the appellant and the 1st accused that were holding sticks at the scene and the appellant held a cutlass in addition.

Pw3 corroborated the evidence of PW2. She said PW1 was her brother and she was among the group who rescued PW1 and took him to the palace. Upon hearing a lot of noise from outside she rushed to the street to see the accused persons among a crowd. She continued:

"The accused persons were quarrelling with my brother Anane. Whilst they were quarrelling Kofi Dadie was holding a cutlass, Poku Mensah was holding a stick, Yaw Kagya was also holding a stick. I then saw my brother Sammy emerging from the road. Kwame Ampofo held Sammy and tied his hand behind his back. Yaw Kagya hit his head with a stick. Poku Mensah also hit his head with a stick. He was left to fall on the ground. My brother Anane embraced Poku Mensah and they both fell on the ground. Kofi Dadie cut the head of my brother with a cutlass. He was repeating it when my brother Anane prevented him and rather had a cut on his hand. My brother Anane ran through the crowd. Kofi Dadie then came to Sammy who was lying on the ground. He started cutting him with the knife. *When Sammy tried to standup Kofi Dadie cut him with the cutlass."*

PW5 Yaw Opoku gave evidence that he came to the scene to find the deceased lying on the ground. He saw the appellant standing by the roadside with two women who were trying to pacify him. He also went to plead with him. The appellant was holding a knife and a club but he did not see him use

them. The appellant gave the knife and club to him and boarded a vehicle and left. PW5 then took the deceased to the hospital.

PW6 also gave evidence that he helped to rescue PW1. After that he was standing there when he saw the deceased run out of the palace. When he got to where PW1 was rescued the third accused held him and the 1st accused hit him with a stick. The appellant cut him with a knife and continued to do so while the deceased was still on the ground. He left the scene and came back later to see PW5 take the knife from the appellant. PW5 and others took the deceased to the hospital.

The prosecution tendered in evidence the cautioned statements of the accused persons as part of their case. In the statement of the appellant, Exhibit C, he said he and others were going through the customary process of destooling PW1 as chief of Esreso for failing to outdoor a new Queen mother, when the nephews of PW1 rushed in to interrupt them. He said they were attacked with sticks and cutlasses. He said it was the deceased who hit the head of the 1st accused with a stick and the latter fell down. When the deceased tried to hit the 1st accused again he fell down and the 1st accused had the upper hand and also hit the deceased with a stick. The appellant said he left the scene with the 1st accused to the hospital with bleeding from a head injury. The 1st accused Kwame Kagya, in his statement, Exhibit F, said it was the deceased who first hit and wounded him with a stick before he retaliated with the same stick. He said PW2 also attacked him with a stick and he collapsed. In the case of the 3rd accused Kwame Ampofo, in his police cautioned statement, Exhibit D, he denied being at the scene of the fight. The 4th accused Poku Mensah in his cautioned statement Exhibit E, said the deceased tried to hit him with a stick and he blocked it with his right hand and sustained a fracture. The deceased once again hit his forehead with the stick and he sustained a cut. He left the scene as he was bleeding profusely and he was admitted at the Okomfo Anokye Hospital. My brief comment on the cautioned statements is that the appellant and the three accused persons claimed the deceased was the aggressor and they acted in self-defence.

This was the main evidence that the prosecution led at the close of its case in support of the charges of conspiracy to commit murder and murder and abetment of murder respectively, against the appellant and 3 others. The appellant and the three others were represented at the trial by the same

counsel. But interestingly, Counsel made a submission of no case on behalf of the other three and left out the appellant. The trial judge upheld the submission of no case as follows:

> ***"I have carefully considered the evidence adduced by the prosecution witnesses, the submission made and come to the conclusion that the evidence adduced is weak and cannot support a charge of conspiracy and murder against the 1st, 3rd and 4th accused persons***.''

The trial judge failed to point out any weaknesses discovered in the prosecution case, but went on to hold that:

> ***"The submission of no case to answer submitted on their behalf is therefore sustained. I therefore direct the jury to enter a verdict of not guilty against the 1st, 3rd and 4th accused and I accordingly acquit them."***

I find this ruling quite incredible as from the evidence led by PW2, PW3, and PW6 they saw the appellant and the three other accused persons assaulting the deceased on his head and body and that PW2 even got injured on the head when he tried to assist the deceased. Though there were some discrepancies in the testimonies of all these witnesses yet the post mortem report and the evidence of the medical office were clear that the deceased suffered multiple injuries on his head, body and wrist which led to his unnatural death. I am not surprised that the prosecution immediately filed an appeal.

Our present concern in this case is whether upon the acquittal of the other three accused persons on the charges of conspiracy to commit murder and murder, these same charges could be sustained against the appellant alone? For it is trite law that where several persons are indicted on a charge of conspiracy and the jury acquit all the accused persons but one, they must acquit the other also unless it is charged in the indictment that he conspired with some other persons not tried upon that indictment. See Archibold; Criminal Pleadings, Evidence and Practice, Section 5at page 200

Obviously the conspiracy charge against the appellant could not stand upon the acquittal of his alleged co-conspirators. See R. v. Manning 12 QB 241, R. v. Plummer, [1902] 2KB 339. I noticed the trial judge even failed to formally

acquit the appellant on the conspiracy charge and no further mention of that charge was made during the trial. He is therefore acquitted and discharged on the charge of conspiracy to commit murder, as there is nothing in the indictment that he conspired with others at large.

Did the trial judge err in law in calling upon the appellant to open his defence? Although this point was not urged on this Court, I find it necessary to consider it.

The available evidence at the close of the case of the prosecution clearly showed that it was not the appellant alone who inflicted all the injuries on the deceased that caused the death of the deceased but that he acted together with the other accused persons who also beat him with sticks that caused the other injuries which together contributed to the death of the deceased. In contrast to the evidence of the prosecution witnesses were also the caution statements of the appellant and the three accused persons, which, was to the effect that the deceased and PW2 attacked them. Even though no submission was made on behalf of the appellant, (for reasons hard to fathom) the trial judge was bound to consider whether the prosecution has made a case against him. This is a requirement of the law under section 271 of Act 30 and a positive duty is cast upon the trial judge to comply. This Court and the Supreme Court in several cases have restated the law on this and I refer for instance to the cases of **State v. Ali Kassena [1962] 1 G.L.R. 144, S.C. Moshie v. The Republic [1977] 1GLR 287 C.A.**, which were discussed in the case of **Gyabaah v. The Republic [1984-86] 2 GLR 461 C.A.** where the court held at pp 471 to 472 as follows:

> ***"In considering this duty under section 271 of the Criminal Procedure Code, 1960 (Act 30), the judge should not leave a case to the jury if he was of opinion that any of these conditions was evident in the case for the prosecution: (a) there had been no evidence to prove an essential, element in the crime; or (b) the evidence adduced by the prosecution have been so discredited as a result of cross-examination; or (c) the evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it: see State v. Ali Kassena [1962] 1 G.L.R. 144, S.C. and Moshie v. The Republic (supra). It was indeed explained in Moshie's case that section 271 of Act 30 cast a positive duty on***

***the trial judge to ensure that the accused was not deprived of this protection through either mistake or ignorance. This section, we firmly believe, aims at forestalling the possibility of perverse verdicts. Having regard to the nature of the evidence before the court at the close of the case for the prosecution, we find that the learned trial judge ought not to have called on the appellant to defend and he was wrong in law in giving that decision. The appellant was thus deprived of the protection provided by this essential step in criminal procedure. This deprivation, in our view amounted to or led to a miscarriage of justice*."(Emphasis mine)**

It is my considered opinion then that upon the upholding of the submission of no case against the other three accused persons whether rightly or wrongly, (as the appeal by the state has not been heard yet) the trial judge ought to have acquitted and discharged the appellant too, as there was no distinction between the cause of the multiple injuries and the cause of death as between the appellant and the other accused persons. There was also no charge in the indictment or proof that he conspired with some other persons not tried with him upon that indictment. The trial judge in the circumstances erred in calling upon the accused to open his defence.

The State Attorney in his submission argued that where two or more persons by their act bring about an event they together are liable for the event. This is trite law as provided under section 13(2) of Act 29 on causation, and it is also trite law that where two or more persons are indicted jointly and tried jointly together for conspiracy they must be either convicted or acquitted upon the same evidence. The trial judge did not give any example of the weakness she found in the case presented by the prosecution. Did she consider that the statements of the accused persons that the deceased was the aggressor and so they acted in self-defence raised some doubts in the prosecution case? If that were so, was the statement of the appellant not the same as that of the 1st accused for him to enjoy the benefit of doubt just as the other three? The case for the prosecution was that the appellant and the three others acted in concert for a common purpose. In that case any act of one in the course of that concert and in the execution of the common purpose was the act of them all and conversely any defence arising out of the act of one person was open to the others. I therefore hold that the trial judge erred in law in calling upon

the appellant to open his defence after acquitting the other accused persons with whom he was standing trial on the same offence of conspiracy to commit murder and murder respectively when at that stage the evidence led by the prosecution showed the cause of death was caused by multiple injuries inflicted on the deceased by the other accused persons acting together with the appellant. Once the judge was of the view that there was doubt in the case of the prosecution, she ought to have directed the jury to acquit them all. I might add that counsel for the appellant failed in his duty to his client for not making a submission of no case on his behalf as well.

On the most serious charge of murder, counsel for the appellant urged upon this court that although there was evidence of multiple injuries on the deceased which constituted harm under section 76 of Act 29, the trial judge directed the jury in such a way as to exclude the possibility of the acts of the other accused persons which could have caused or contributed substantially to the cause of death.

I find great weight in this submission and these are my reasons. There was cogent evidence on the record of multiple fractures on the body of the deceased. The medical officer in his evidence clearly stated that a blunt object caused the fracture on the head and the other fracture by a cutlass. In cross-examination he ruled out the possibility that the fracture on the head was caused by a fall. Although there was evidence that the appellant cut the deceased repeatedly with a cutlass, there was also ample evidence that the other accused persons used sticks or clubs on the head of the deceased. These pieces of evidence are consistent with the marks of violence or fractures found on the head and body of the deceased, which the medical evidence indicated resulted in the death of the deceased. See Exhibit A and evidence of PW7

The appellant opened his defence in which he denied assaulting the deceased. He called two witnesses who testified that they did not see the appellant inflict any injuries on the deceased. They corroborated the evidence of the appellant, though the prosecution tried to discredit them.

The trial judge in the course of her summing up indicated to the jury that she was dealing with the third and fourth ingredients of murder that are required to be proved by the prosecution together, by stating that:

"The third ingredient of murder is that the harm, which caused the death of the deceased, was unlawful, and the fourth is that it was the accused that inflicted or caused the unlawful harm."

After directing the jury on the law on unlawful harm the trial judge directed the jury on the facts as follows:

"Exhibit A is the postmortem report sic Dr Osei Sampene. The marks of violence are given as follows:

- ***A sharp edge wound measuring 2.0 cm in diameter at the mid portion of the left scapula region. It is also at a distance of 12.0cm long from the T2 level.***

Cause of Death

- ***Multiple compression fractures at the skull.***

  A sharp-edge wound 3.3 cm in diameter at the lateral aspect of the right wrist joint.

- ***(UNNATURAL)''***

: **"*Dr Sampene is emphatic that there was a sharp edged wound on the deceased. At the same time the report talks of fractures. The prosecution is silent on the instrument used to cause these fractures and wounds. No implement was tendered to that effect. There is doubt here and members of the Jury you are called upon to decide whether the injuries were caused by a sharp knife or not. In addition to Exhibit A, the evidence of PW2 and PW3 who witnessed the incident talk of the accused cutting the deceased with a cutlass and a butcher's knife. The cutting was not done once but repeatedly. They also said the deceased was lying in a pool of blood. The investigator who visited the scene testified there were no bloodstains at the scene. You are called upon to decide whether the evidence of PW2 and PW3 should be relied on or there is doubt as to what really happened on the day in question."***

Clearly this was misdirection as it gave the impression that the appellant was the only person indicted for causing the death of the appellant by unlawful harm. It was not case of the prosecution that the deceased died from injuries

caused by knife wounds inflicted by the appellant. Apparently the trial judge realized that it was the same evidence upon which she acquitted the other accused persons that she had to rely on to direct the jury on the cause of death and the person who caused the unlawful harm resulting in the death of the victim. These were the decisive issues that the jury needed proper direction from the judge in order to be certain as to the cause of death of the victim and who on the facts caused the unlawful harm resulting in the death. I believe that having acquitted the others, the trial judge tried to focus only on the injuries the prosecution alleged they saw the appellant inflict on the deceased with a cutlass and she thereby failed to direct the jury on the other injuries found on the deceased. This inevitably, in my opinion led to a misdirection to the jury on the cause of death, as there was clear evidence that the cause of death was not solely from knife wounds but from a combination of other multiple injuries caused by the other accused persons with whom the appellant had been charged with conspiring or acting together with intent to cause the death of Samuel Tuffuor alias Kofi Sammy. I therefore agree with counsel that the trial judge directed the jury in such a manner as to exclude the possibility of the acts of the other accused persons which could have caused or contributed substantially to the cause of death.

Another issue that comes up in this appeal and cannot be glossed over is whether the judge adequately addressed the jury on intent i.e. whether the accused intended to cause the death of the deceased. The law on intent that is mens rea is very technical and a more complicated ingredient and yet a very important ingredient to be established by the prosecution in an indictment for murder. There are various forms of intent as can be seen from the various provisions under section 11 of Act 29. It is therefore very essential that in the direction to the jury a trial judge carefully explain the ingredient of intent as the failure of the prosecution to establish an intention to kill should automatically lead to an acquittal on a charge of murder. In this appeal before us the trial judge utterly failed to direct the jury on intent. She merely said:

> **"Ladies and gentlemen, if you come to the conclusion that it was the accused who caused the unlawful harm you would still have to decide whether the fifth ingredient has been proved, that is whether the accused inflicted or caused the harm intentionally".**

This direction, with respect to the trial judge is totally wrong. The jury at this stage of summing up is not required to consider whether the appellant intentionally caused harm to the deceased but whether the appellant intentionally caused the death of the deceased. This failure of the trial judge to direct the jury properly on intent is misdirection of law, and in my opinion amounted to a gross miscarriage of justice. For if the jury is properly directed that at the time of the commission of the act the appellant had no intention to kill, or if the jury were in doubt as to whether the necessary intention to kill, or if the jury were in doubt as to whether the necessary intention to kill existed at the material time, then the appellant could be adjudged guilty not of murder but of a lesser offence for example manslaughter.

It is my considered opinion that upon the acquittal of the other accused persons it was a requirement of law that the jury be directed to return a verdict of guilty of murder only if there is admissible evidence which left no doubt in the minds of the jury that it was the unlawful acts of the appellant that caused the death of the deceased. Short of such a direction any conviction based on the same charge and the same evidence would result in an inconsistent verdict that cannot be allowed to stand. I refer to the case of **Lodonu v. The Republic [1973] GLR 355 C.A**, where the appellant and four others were charged with manslaughter. At the close of the case for the prosecution the trial judge ruled that there was no evidence against the second and the third accused persons and he directed the jury to return a formal verdict of not guilty. The appellant, the fifth accused, and two others (the first and fourth) were accordingly called upon. All of them gave evidence. Their evidence in the main was the same and the gist of their defence was that the deceased had attacked the first and the fourth accused persons in the bush with a cutlass in the course of a search for the deceased and these two persons had struck back in self-defence. The appellant who was also a member of the search party had come on the scene later and had gone to the aid of his friends. It was the contention of all the three accused persons at the trial that whatever injuries were inflicted on the deceased were in self-defence. On this aspect of the defence there was substantial unanimity in the evidence of the three accused persons. By their verdict the jury found two of the accused persons not guilty of manslaughter or of any other offence. They, however, found the appellant guilty of manslaughter.

On appeal the appellate court per Annan J.A. was that:

> **"*In our view where two or more accused persons are tried on the same charge and the evidence adduced before the court with regard to all the accused persons is substantially the same the conviction of some and the acquittal of others of the accused persons would be an inconsistent result unless it be shown that the apparent inconsistency in the result of the trial is attributable to some significant difference either as to matter of fact or law which affects some and not the others of the accused persons. Where there are no such matters of difference the results are inconsistent and cannot stand together. Where a person convicted in such circumstances appeals against his conviction the proper decision we think is that the conviction is unreasonable or that it cannot stand having regard to the evidence which the court or jury had, or must be taken to have accepted.*
>
> *In the result we allow the appeal, quash the conviction and set aside the sentence. The appellant is acquitted and discharged."*

In Gyedu v. The Republic [1980 GLR 480, the Court of Appeal endorsed the decision in the Lodonu case and observed at page **485** that:

> ***"We think the principle of law is sound and subscribe to it. It is to be observed that to invoke that principle of inconsistency the emphasis is to be placed on all the several accused facing substantially the same evidence."***

We endorse the decision in the above two cases. In the appeal before us the appellant and the other accused persons faced the same evidence and I find no distinction with regard to the evidence relating to the commission of the substantive offence as between the appellant and the other accused persons that could justify the verdict arrived at. The cause of death was due to multiple injuries inflicted on the deceased by appellant and the accused persons who stood on trial with him. There was nothing in the indictment that he conspired or acted in concert with some others who were not tried upon that indictment. There was no other evidence different from what was based upon to acquit the other accused person to convict the appellant. Having

directed the jury to acquit the other accused person on this same evidence, the verdict of guilt returned by the jury is therefore inconsistent with the acquittal of the others. Had the trial judge considered the case of the appellant at the close of the prosecution case, she would have forestalled this conflicting or perverse verdict. Accordingly the verdict of guilty of murder cannot stand and ought to be set aside.

In the circumstances we will allow the appeal, quash the conviction and set aside the sentence. The appellant is acquitted and discharged on the charge of murder.

(SGD) SOPHIA O.A. ADINYIRA (MRS.)
JUSTICE OF THE SUPREME COURT

I agree

(SGD) S.K. ASIAMAH
JUSTICE OF THE SUPREME COURT

I also agree

(SGD) E. K. PIESARE
JUSTICE OF APPEAL

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