IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA AD 2015

CORAM: ADINYIRA (MRS), JSC (PRESIDING)
DOTSE, JSC
YEBOAH, JSC
BONNIE, JSC
BENIN, JSC

CRIMINAL APPEAL NO.J3/5/2015

2ND DECEMBER 2015

NOBLE ADU GYAMFI ... APPELLANT

VRS

THE REPUBLIC ... RESPONDENT

JUDGMENT

ADINYIRA (MRS) JSC-

Your Lordships permit me to start with this preamble:

> *"It has been said that the evidence against the appellant is circumstantial, so it is but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."*

Per Lord Hewart C.J. in *R. v. Taylor* [1928] 21 CR. App. R 20 at 21

On 21 October 2008, Noble Adu Gyamfi (the Appellant) was convicted and sentenced to death for conspiracy, with one other person at large, to commit murder and murder of Paul Feghali a Lebanese national resident in Ghana**.**

On 21 November 2013, the Court of Appeal, quashed the conviction and sentence on the conspiracy charge; but affirmed the conviction and sentence on the charge for murder

The Appellant being dissatisfied appealed to this Court on the grounds that:

i. The conviction for murder is against the weight of evidence.
ii. There was no direct evidence to connect the Appellant to the charge of murder and that the prosecution sought to do so by circumstantial evidence.
iii. The sentence of death by hanging is too harsh.
iv. That the prosecution did not prove beyond reasonable doubt the five ingredients of the crime of murder against the Appellant.

The facts upon which the Appellant was convicted were that, on 7 August 2005, the deceased left his house at Tesano, Accra at about 8.30am in his Nissan Murano car to play golf at the Celebrity Golf Club Tema. At 9 am the Appellant called Reduan Zakour, PW2, a car dealer and whom he used to drive, to come to Rhosanty Hotel to buy a car a friend was selling. Thomas Sogbor, PW4, a caddy at the Celebrity Golf Club said he saw the deceased drive past him at Community 13 not very far from the Celebrity Golf club. When he went to the Club he did not see the deceased and he assumed he was playing golf. When asked about the time he saw the deceased driving past, he said it was around 9.30 am.

Francis Ayamba, PW1, a security man at the Rhosanty Hotel said at about 10.30am the Appellant and another man drove a car later identified as the deceased's to the hotel and parked it behind the building contrary to his instruction that he should park in front at the parking lot, and left. The

appellant and his accomplice brought a taxi and removed two golf bags from the Nissan into it and went out leaving the taxi parked behind the Nissan Murano.

PW2 and his friend Christian King Borrey, PW3, came to the hotel and met PW1 who showed them the car parked behind the hotel. They inspected the car and found a dent and as they were leaving they met the Appellant and his friend at the gate of the hotel and PW2 informed the Appellant that they were not interested in buying the car. The Appellant requested PW2 to keep the golf kits in his house but he refused.

Thereafter, the Appellant's friend left in the taxi they brought and the Appellant drove the Nissan Murano to Community 22 where he saw William Amuzu Avorgbedor, PW5, a mason, and asked him for a place to park the car. Pw5 told him to park the car in an uncompleted house but the appellant preferred the back of the house as he said he did not want anyone to see the car. In the evening of the same day, the Appellant went back to Community 22 and gave PW5 the equivalent of 10 Ghana Cedis for keeping the car safely for him. The following day, at about 4.30 am, PW5 saw the Appellant remove the number plates on the car and threw them into the bush. Pw5 questioned him and he said he did not want anyone to see the number plate and call his father. PW5 asked the Appellant to take the car away and he said he will come for it later. PW5 retrieved the number plates and kept them. In the afternoon, the appellant went back to Community 22 in a taxi to inspect the car; he was chased, and arrested. The appellant took the police to his house at Sakumono village and handed the keys of the Nissan Murano to them. The deceased was discovered the next day lying dead in a bush near Emef Estates near Lashibi and the Appellant was arrested and charged with murder.

The Appellant in his defence denied the charge and said it was PW2 and PW3 who picked him up in a taxi to a drinking spot called On the Run. Afterwards PW2 told him he has a car which he wanted him to pick up and park somewhere else. They went in a taxi to Community 15 where he saw the Nissan Murano parked. He told PW2 that he had never seen that type of car so he cannot drive it. So PW2 drove the car and he joined the two in the

car and the taxi followed them. The Appellant said they drove and parked inside a house which he later got to know was a guest house. The Appellant said PW2 and PW3 went inside and came out and they drove to Community 22 with the taxi still following them. According to the Appellant PW2 received a call and he told him he had to meet a friend, so he should find a place and park the car. He said PW2 called him later to go and remove the number plates to be given to PW5 to throw away. He said PW2 called him again to bring him the car keys at where he parked the car. He went there in a taxi and saw a crowd gathered round and turned back but the taxi was chased and he was arrested and later charged with murder after the body of the deceased was found.

The Post mortem report and the evidence of the pathologist, PW8 was conclusive that Paul Feghali died as a result of a blunt head injury. The thrust of the Appellant's submission is that there was no direct evidence that he caused the death of the deceased.

Indeed, there is no evidence by an eye witness that the Appellant hit the head of the deceased with a board or a flat object that resulted in his death. The evidence against the Appellant is purely circumstantial; drawn from evidence proved or established against him at the trial.

Section 18 of the Evidence Decree provides that:

(1) A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in an action.
(2) An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action.
(3) A presumption is either conclusive or rebuttable.

In our instant case, the presumptive or circumstantial evidence relied on must be conclusive of guilt and incompatible with the innocence of the

Appellant. Circumstantial evidence has often been described as the best evidence.

Lord Hewart C.J. *R. v. Taylor* (1928*)* 21 CR. App. R. 20 at p. 21, C.C.A applied in *The Republic v. Affail* (1975) 2 GLR 69 said:

> "It has been said that the evidence against the appellant is circumstantial, so it is but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."

In the case of *State v. Anane Fiadzo* [1961] GLR 416 at 417, Sarkodee-Adoo, JSC delivering the judgment of the Supreme Court said:

> Presumptive or circumstantial evidence is quite usual, as it is rare to prove an offence by evidence of eye-witnesses, and inferences from the facts proved 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 than that of guilt. A conviction must not be based on probabilities or mere suspicion.

The Supreme Court also referred with approval to the oft cited case of *R. v. Onufrejczykk* [1955] 1 Q.B. 388 at p. 394, C.C.A. Goddard C.J. adopted the statement of law made in *R. v. Horry*, that on a charge of murder,

> "The fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found and that the accused has made no confession of any participation in the crime. Before he [the accused] can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent

and compelling as to convince the jury that upon no rational hypothesis other than murder can the facts be accounted for."

In the present case the conduct and activities of the Appellant shortly after the deceased was seen driving his car to play golf by PW4, were certainly suspicious and the evidence led at the trial pointed conclusively to his complicity in the murder of the deceased. Within an hour that the deceased was seen alive driving his car; the Appellant who was no longer a caddy for the deceased was in possession of the deceased's car with his golf bags still in the car; and offered the car for sale to Pw2. He drove and parked at the Rhosanty Hotel. He parked it behind the hotel to hide from public view then removed the deceased's golf bags and put them in a taxi to be taken away by an accomplice at large; After PW2 refused to buy the car, the Appellant went and hid the car behind an uncompleted house at Community 22 and removed the number plates and threw away.

Although there was discrepancy of the timing of events as to when the deceased was seen by PW4 driving his car and the time the Appellant called PW2 and offered to sell him the deceased's car; at the trial, it was clear that the witnesses were merely giving approximation of time. The trial judge elaborated on the inconsistencies in the timing by the prosecution witnesses to the jury; but they found him guilty

It was clear from the evidence that the deceased was not seen alive after 9.30 am on 7 August 2005, until his dead body was found abandoned in the bush the next day. There was evidence that the Appellant was in possession of the car one hour later offering it for sale. PW1 said the car was dirty as if it was from the bush.

When the deceased's body was discovered the next day in the bush all these pieces of the puzzle fitted which lead to the irresistible conclusion that the Appellant was the one who killed the deceased and stole his car which he tried to sell.

Though the Appellant claimed he acted under the instruction of PW2 through phone calls he received at a communication centre, the police investigation showed there was no such communication between them.

Though he said at the time he was arrested he had returned to where he had hidden the car to give the car keys to PW2 ,this was untrue as the car keys were not on him at the time of his arrest but was retrieved from his house by the police.

The Supreme Court in *Logan & Laverick v The Republic* [2007-2008] SCGLR 76 quoted with approval the dictum by Lord Wright in *Caswell v Powell Duffryn Associated Collieries Ltd* [1940] AC 152 at 169 by as follows:

> "There can be no inference unless there are objective facts from which to infer other facts which it is sought to be established. In some cases the other facts can be inferred with certainty as if they had actually been observed. In other cases the inferences does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation and suspicion."

We are satisfied that the activities of the Appellant on the 7th and 8th August 2005 were such that it can be inferred with certainty that the Appellant murdered the deceased. His actions were certainly not that of an innocent person but also inconsistent with any other rational conclusion. The evidence against the Appellant is strong and overwhelming and it pointed conclusively to his guilt.

The jury was adequately directed and we are of the view that the conviction was amply supported by the evidence.

For these reasons the appeal is dismissed.

(SGD) S. O. A. ADINYIRA(MRS)

JUSTICE OF THE SUPREME COURT

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

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