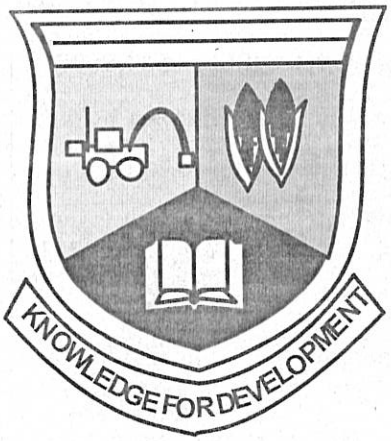
NASARAWA STATE UNIVERSITY

JOURNAL OF PUBLIC AND INTERNATIONAL LAW

PUBLISHER:
DEPARTMENT OF PUBLIC AND INTERNATIONAL LAW
FACULTY OF LAW
NASARAWA STATE UNIVERSITY KEFFI
VOLUME 6 NO. 1 APRIL 2021

NASARAWA STATE UNIVERSITY



JOURNAL OF PUBLIC AND INTERNATIONAL LAW

VOLUME 6 NUMBER 1, APRIL 2021

DEPARTMENT OF PUBLIC AND INTERNATIONAL LAW

FACULTY OF LAW

NASARAWA STATE UNIVERSITY KEFFI

Vol. 6 No. 1

TABLE OF CONTENTS

Pages

EDITORIAL BOARD v

LIST OF CONTRIBUTORS vii

CHALLENGES AND PROSPECTS OF COMBATING ADVANCE FEE FRAUD AND RELATED OFFENCES IN NIGERIA UNDER THE ADVANCE FEE FRAUD AND OTHER RELATED OFFENCES ACT, 2006 AND THE CRIMINAL CODE 1

INTERNATIONAL HUMAN RIGHTS AND RIGHT TO SEXUAL LIFE: IS THERE A LINKAGE? 25

POSTMORTEM ON NIGERIA'S SAME-SEX MARRIAGE (PROHIBITION) ACT AND THE CHALLENGE OF TRANSGENDER MARITAL RIGHTS: NEED FOR LEGISLATIVE REFORM 40

RETHINKING THE DOCTRINE OF THE "*LAST SEEN*" IN MURDER TRIALS 64

THE ROLE OF COMPANY SECRETARIES IN ACHIEVING GOOD CORPORATE GOVERNANCE IN LISTED PUBLIC COMPANIES: A MULTI-JURISDICTIONAL DISCOURSE 80

APPRAISAL OF THE ROLE OF MOBILE COURTS IN PREVENTING THE SPREAD OF THE CORONA VIRUS (COVID-19) IN NASARAWA STATE 104

ANALYSIS OF DECOMMISSIONING AND SUSTAINABLE DEVELOPMENT OF OFFSHORE OIL AND GAS INSTALLATION UNDER THE PETROLEUM INDUSTRY GOVERNANCE BILL 112

MITIGATING UNEMPLOYMENT THROUGH REGURGITATED LEGAL NORM 142

THE CONCEPT OF LEGAL PERSONALITY IN INTERNATIONAL LAW 160

CONSEQUENCES OF ABANDONING, STRIKING OUT AND DISMISSAL OF LEGAL PROCESSES IN NIGERIA 170

THE ROLE OF RESEARCH INSTITUTIONS IN THE DEVELOPMENT OF INTELLECTUAL PROPERTY RIGHTS: COVID-19 IN FOCUS 187

THE LEGAL FRAMEWORK FOR REAL ESTATE MANAGEMENT IN NIGERIA 194

LEGAL ANALYSES OF THE EVOLUTION OF DISPUTE RESOLUTION INSTITUTIONS IN NORTHERN NIGERIA 206

A REVIEW OF THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2018 23

MEN AS HIDDEN VICTIMS OF RAPE IN NIGERIA; AN APPRAISAL 254

ENFORCEMENT OF ACCOUNTABILITY, TRANSPARENCY AND INCORRUPTIBLE LOCAL GOVERNMENT ADMINISTRATION IN NIGERIA: ICT INFUSED FREEDOM OF INFORMATION ACT TO THE RESCUE 268

AN APPRAISAL OF THE DEFENCE OF PROVOCATION IN THE ADMINISTRATIONOFCRIMINAL JUSTICE IN NIGERIA 280

RESEARCHING LAW, POLICY, AND PRECEDENT IN LEGAL WRITING 301

THE USE OF MERCENARIES AND CHALLENGES TO INTERNATIONAL HUMANITARIAN LAW 309

THE INDIGENOUS PEOPLE AND ENVIRONMENTAL CONFLICTS: REFLECTION ON ENVIRONMENTAL DEMOCRACY FOR CONFLICT RESOLUTION 322

THE LEGAL BATTLE BY THE COURTS FOR JURISDICTION TO HEAR AND ENTERTAIN ADMIRALTY MATTERS IN NIGERIA: HOW AND WHETHER FINALLY SETTLED 335

LAW AND NATIONAL ORIENTATION: AN EXAMINATION OF THE CONSTITUTIONAL PROVISIONS FOR A UNITED AND INTEGRATED NIGERIA 349

RETHINKING THE DOCTRINE OF THE "*LAST SEEN*" IN MURDER T

BY

MOHAMMED ONYILOKWU AMALI*

Abstract

It is settled under the Nigerian law of crime that the person who was last seen with a deceased is presumed to bear full responsibility for his death. This doctrine necessitates a person charged with murder to proffer explanation on how the deceased met his death solely on the grounds that he was the last person seen with the deceased before death occurred. Without such an explanation, a court will be justified in drawing the inference that an accused person killed the deceased. However, presumption of innocence is a fundamental aspect of the adversarial system of justice in Nigeria, as is the evidentiary burden of proof that naturally behoves the prosecution to discharge in a charge of murder. This paper evaluates the propriety and jurisprudential justification of the doctrine of the last seen and the laid down ingredients that the prosecution must prove before a charge of murder can be established and argues that the doctrine lacks the compulsion and irresistible conclusive features that an accused person/suspect and no one else is the murderer.

Keywords: Last-Seen; Murder Trials; Presumption of Innocence; Burden of Proof; Circumstantial Evidence.

1.1 Introduction

One of the main goals of criminal justice is to avoid the conviction of inno because doing so would undermine the primary objective of criminal law. Moc procedure therefore aims to reduce the risk of

* Ph. D, Research Fellow, National Institute for Legislative and Democratic Studies, National As Email: moamali1979@gmail.com

the innocent.[1] Consequently, the standard of proof in criminal trials is proof beyond reasonable doubt. That is, the prosecution must prove that the accused person is guilty of the crime charged to the extent that no reasonable person could have reasonable doubt about the guilt of such an accused person. The guilt of the accused may be established by direct eyewitness evidence, by circumstantial evidence from which the guilt of a defendant can be inferred, or by a voluntary confessional statement of guilt that is direct and positive, or by a combination of any of the three modes.[2]

While direct evidence establishes a fact without making any inference to connect the evidence to the fact thereby proving or disproving a fact directly, circumstantial evidence requires an inference to be made to establish a fact.[3] This means that when a person is charged with the murder of another person and there is no direct evidence of the killing of the deceased, recourse may be had to circumstantial evidence, and this includes any evidence that tends to connect that person with the probable cause of death.[4] In the event that the facts advanced by the prosecution leaves only one inference that the accused and no other person is responsible for the death of the accused, the court may convict on such circumstantial evidence being the best evidence available in the case, and it is no derogation of evidence to say that it is circumstantial.[5]

The doctrine of the last-seen is one of such instances where the circumstances surrounding the death of a deceased person comes into play, but the one test which such evidence must satisfy is that it should lead to the guilt of the accused person and leave no degree of possibility that other persons could have been responsible for the commission of the offence.[6]

Against the above background, this paper therefore seeks an evaluation of the doctrine of the last-seen as a ground for conviction in murder trials in Nigeria by testing its cogency, completeness, and un-equivocality against the presumption of innocence that avails accused persons vis-à-vis the constitutional provision that the burden of proof lies throughout upon the prosecution to establish the guilt of the accused person beyond reasonable doubt.[7]

1See A. Sanders, R. Young, *Criminal Justice*, (2nd edition, 2000, Butterworths, London) 10.
2*Emeka v State (2001) 14 NWLR 734* @ 666; *Nigerian Navy v Lambert* (2007) 18 NWLR 1066 @300; *Ilodigwe v State* (2012) 18 NWLR 1331 @ 1; *Umar v State* (2014) 13 NWLR 1425 @ 497
3*Lori & Anor v The State* (1980) NSCC (Vol. 12) 269
4See *R v S. Robertson* (1913) 9 CR App R 189
5*Lori v. State* (1980) 8-11 SC 81 at pp. 86-87
6See *Igho v State* (1978) LPELR- 1453 (SC)
7See *Bello v The State* (2007) 10 NWLR PT 1043 @ 564

2.1 Proof of Murder and the Doctrine of the Last-Seen

In a murder trial, the burden of proof is not discharged unless the prosecution establishes the cause of death and that the accused caused the death of the deceased.[8] The law therefore requires the prosecution to establish the following sacrosanct ingredients that must be proved to sustain a charge of murder[9]

(a) That the death of a human being has actually taken place;

(b) That such death has been caused by the accused;

(c) That the act was done with the intention of causing death or that the accused knew or had reason to know that the death will be the probable and not only likely consequence of his act.[10]

The doctrine of the last-seen, being within the purview of circumstantial evidence is one of many roots by which the courts attempt to attain justice in murder cases where there are no eyewitnesses and where circumstantial evidence is the only available evidence connecting the accused person to the crime. The doctrine holds that where an accused person was the last person to be seen in the company of a deceased person, he has a duty to give exculpating explanation as to how the deceased met his death. In the absence of such an explanation, a trial court and even an appellate court will be justified in drawing the (rebuttable) inference that he (the accused person) killed the deceased person.[11]

Under the doctrine of the last seen therefore,

> "It is incumbent upon the accused person to give explanation and establish on the balance of probability that there was a parting of ways between himself and the person who was alleged to have been last seen with him. Put differently, it must be shown on the preponderance of evidence that when they parted ways or became separated, the person was still alive and they were not seen together again until the person turned up dead."[12]

The doctrine is operational when the gap between the time when the accused person and the deceased were last seen alive and the time of the death of the deceased is short, such that there is no possibility of any other person other than the accused, committed the offence.

8See *Philip Omogodo v The State* (1981) 5 SC 5 at 26-27

9See *Uguru v State* (2002) 9 NWLR (Pt. 771) 90 at 106; *Gira v State* (1996) 4 NWLR (Pt. 443) 37

10Section 221 of the Penal Code

11 See *Igabele v State* [2004] 15 NWLR, 896 @ 314

12*Ekaidem v. State* (2011) LPELR- 4076(CA)

When the gap in time is long, the courts have held that it is not safe to rely on the doctrine and convict an accused person.[13]

Despite being of global application, the doctrine of the last seen applies in Nigeria without any specific statutory footing.[14] The closest statutory authority for this presumption can be found under the provisions of *Section 167* of the Evidence Act that provides thus:

> "The Court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business in their relationship to the facts of the particular case."

The doctrine of the last seen is therefore a development of case law (an integral part of Nigerian legal jurisprudence), and the Nigerian courts have always deployed its use in the determination of murder trials, and for a proper appreciation of how the doctrine of last seen operates, the following decided cases where the doctrine of last seen formed the basis for convictions will be considered.

In the case of *Esseyin v State*,[15] the appellant was charged before the High Court of Kogi State sitting at Kabba with two counts of rape and culpable homicide punishable with death under Sections 283 and 221(a) of the Penal Code respectively. The appellant pleaded not guilty to the charges. It was the prosecution's case that on 21/11/2011, the appellant invited the deceased, Sefiyat Umoru into the uncompleted building where he was working, under the pretext of buying some of the cow milk which she was hawking and allegedly proceeded to rape, beat and kill her. Her corpse was discovered in a cassava farm a short distance from the uncompleted building.

On the day in question, the deceased was in the company of two other girls who were also hawking cow milk. When the appellant beckoned on the deceased, the other two ladies continued with their journey to Kabba. In the course of the investigation, they identified the appellant as the person who lured the deceased into the uncompleted building. She was not seen alive thereafter. At the conclusion of the trial, the appellant was found guilty of culpable homicide punishable with death.

Upon appeal, the Supreme Court in upholding the judgments of the two Courts below restated the doctrine of last-seen by stating that

---

13 *Kakale v. State*(2018) LPELR-44390 (CA) pp. 17-18, Paras D-C

14An examination of substantive laws on criminal proceedings that includes the Evidence Act, the Criminal Code, Criminal Procedure Code, Acts of the various States, and the Constitution of the Federal Republic of Nigeria 1999 (as amended) reveals that there is no direct statutory provision- See *Dada v State* (2019) LPELR 48454 (CA)

15*(2018) LPELR (SC)*

> "Where an accused person was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusions, there is no room for acquittal. It is the duty of the accused person to give an explanation relating to how the deceased met his or her death. In the absence of an explanation, a trial Court and even an appellate Court will be justified in drawing the inference that the accused person killed the deceased''.[16]

It was therefore the view of the Court that the last-seen doctrine fully applied in the instant case.[17]

In *Archibong v State,*[18] the case of the prosecution was that the deceased and the appellant went to a hotel for drinks after which they checked into a room. The waiter came over to the room and requested money for the services but the appellant asked him to come back. About two hours later, the waiter knocked on the door of the room but there was no response. He opened the door and found that the appellant was no longer in the room but the deceased lay naked and motionless on the floor with foam around her mouth and nose. The Supreme Court applied the doctrine of the last-seen and convicted the appellant and held that

> "the trial Court was perfectly justified in drawing the inference that the appellant killed the deceased.''

In *Igabele v State,*[19] the appellant and the deceased person were respectively employed as a driver and conductor for the commercial vehicle of the third prosecution witness in that case. The last time the deceased was seen was when he went out together with the appellant as they often did on a daily basis. The corpse of the deceased was later found in a riverbank with his tongue and genitals removed. The appellant's defense that the deceased disembarked along the way did not avail him because he did not state the exact place the deceased person disembarked. The Supreme Court upheld the appellant's conviction of murder on the basis of the last seen doctrine.

Having considered these three cases in the light of the application of the doctrine of the last seen, it is pertinent to examine the implications of the doctrine within the context of the constitutional provision of presumption of innocence and the evidentiary burden of proof beyond reasonable doubt.

16*Madu v The State* (2012) LPELR - 7867 (SC) 66 - 67 D - A
17Per Kekere Ekun in *Esseyin v State* (2018) LPELR (SC)
18*(2006) 14 NWLR Pt.1000 Pg. 349*
19*[2004] 15 NWLR, 896 @ 314*

3.1 Presumption of Innocence, and the Evidentiary Burden of Proof Beyond Reasonable Doubt

Presumption of innocence, and proof beyond reasonable doubt are an essential component of criminal justice in Nigeria. The central theme from the above three cases discussed was that the appellants were convicted because they could not proffer explanations as to how the deceased persons met their deaths having been the last persons seen with them alive. That is the basis for the application of the last-seen doctrine. It must be noted however, that the last-seen doctrine was not the sole basis for conviction in those three cases because aside the fact that the deceased were last seen with the accused persons before death, the court utilized other factors in evidence before arriving at the decisions. For the scope of this paper however, it is imperative to stay within the confines of the doctrine and its application in murder trials.

Critics of the doctrine of last seen argue that the application of the doctrine seems to subjugate the principle of presumption of innocence that is a constitutional requirement for fair criminal trials. The Constitution of the Federal Republic of Nigeria 1999 categorically states that

> "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty; provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts."[20]

The Supreme Court of Nigeria in explaining this principle held that

> "The constitutional provision on the presumption of innocence of an accused person is sacrosanct and settled. The burden is always on the prosecution to prove the guilt of the accused and not his business to prove his innocence. He can decide to keep mute from beginning of the trial right through to the end. It is for the prosecution to make out a prima facie case against the accused through credible evidence that must be laid bare before the Court. It is the proof of hard facts that would lead to the conviction of the accused. Without any case made out against the accused, he cannot be called upon to enter his defense because in doing otherwise would undermine the constitutional presumption of innocence."[21]

The same court held in the case of *Williams v State*[22] thus;

20Section 35 (5) CFRN 1999 (As amended)
21*COP v Amuta*(2017) LPELR-41386 (SC)
22 (1992) LPELR- 3492 SC

> "There is no doubt whatsoever that under our system of criminal justice, an accused person is presumed innocent until proven guilty. There is therefore no question of an accused proving his innocence before a law court. For the duration of a trial, an accused may not utter a word, and he is not bound to say anything. The duty is on the prosecution to prove the charge against an accused person beyond reasonable doubt''.

In what critics of the doctrine of last seen may construe to be a contradiction of the above stated position, the Supreme Court in the case of *Esseyin v State,*[23]criticized the defense for resting its case on that of the prosecution thereby inviting the prosecution to prove its case beyond reasonable doubt, rather than the defense proving its innocence as was rightly stated in *Williams v State* (Supra). The Supreme Court however held that the defense had failed to rebut convincing circumstantial evidence adduced by the prosecution. On why the Appellant's conviction based on the last seen doctrine was upheld, the Supreme Court emphasized the strength of circumstantial evidence in the determination of criminal cases describing it as

> "Evidence of surrounding circumstances which by undersigned coincidence is capable of proving a proposition with the accuracy of mathematics.''[24]

It must be noted at this juncture however, and to dispel any perception regarding a possible violation of the constitutional provision of presumption of innocence, that the presumption of the guilt of an accused under the doctrine of the last-seen has been held to be a rebuttable one, and the position of the law as decided in *Esseyin v State*[25] is that the case of the prosecution can be made-up based on compelling circumstantial evidence that will form a basis for a prima-facie proof that the accused is responsible for the death of the deceased. Once this is achieved, the burden is said to automatically shift to the accused to enter his defense.

4.1 The Seeming Uncertainties of the Doctrine of the *Last Seen* and Criticisms of the Practice

Section 36(5) of the Constitution of the Federal Republic of Nigeria (1999) provides that "*every person who is charged with a criminal offence shall bepresumed to be innocent until he is proved guilty.''*Critics of the doctrine of the last-seen could in the light of this

---

23*Esseyin v State (Supra)*
24*Ijioffor v State* [2001] 9 NWLR (Pt. 718) 371, 385
25*Esseyin v State* (*Above*)

constitutional provision, argue that it may seem simplistic and contradictory to convict a accused person for not being able to discharge an evidential burden on him, or if h intentionally chooses not to. And juxtaposing the above stated constitutional provision wit Section 1(3) of the 1999 CFRN (as amended) that states that "*if any other law is inconsister with the provisions of this Constitution, this Constitution shall prevail, and that other la shall, to the extent of the inconsistency, be void*" may also lay credence to this presumptio What the courts have repeatedly maintained however is that the doctrine of last seen is a exception to those watertight constitutional provisions.[26]

Nevertheless, there appears to be uncertainties regarding the application of the doctrin because of seeming contradictions from the interpretations of the courts that seem to render an unreliable premise upon which to grant or warrant a conviction for murder. This was th line of argument advanced by the appellants in the case of *Esseyin v State* (Supra) whe relying on the case of *Aigbadion v State* (Supra), the appellants argued that the supreme cou held per Ejiwunmi JSC (as he then was) that "*bearing in mind that the evidence o record revealed that it was only the appellant and the deceased that were together in the room on the fateful night, and that it was the appellant who carried the deceased to th hospital where she was pronounced dead, it is manifest that suspicion must naturally fall o the appellant as the murderer. But suspicion, no matter how grave cannot amount to proo that the appellant committed the offence for which he was charged. What this means is that is not enough for the prosecution to suspect a person of having committed a criminal offenc there must be evidence that identified the person accused with the offence and that it was h act that caused the offence.*"

It was the contention of the appellants therefore that based on the dictum above, the burden o proving the guilt of the accused rested throughout on the prosecution. This position wa equally stated in the case of *Igabele v State* (Supra), where the court held that "*the burden o proof lies on the prosecution and it never shifts, and if on the whole evidence the court is le in a state of doubt, the prosecution would have failed to discharge the onus of proof whic the law lays upon it and the prisoner is entitled to an acquittal.*" This was however dispelle by the Supreme Court per Eko JSC in the case of *Esseyin v State* (Supra) where it was hel that "*the Aigbadion case does not say that the defendant does not bear the burden of refutin or rebutting the prosecutions case. Rather, it affirms the defense burden of rebuttal. It say*

26*Madu v State* (2012) LPELR-7867 (SC)

that evidential burden befalls the defense only after the prosecution had led evidence proving prima facie the guilt of the defendant accused of committing an offence.''

The learned JSC cited *Sections 131(2)* and *136(1)* of the Evidence Act as laying the burden of proving a particular fact on the person who wishes the Court to believe in its existence. Consequently, according to His Lordship, Eko JSC, when the defense is unable to refute evidence marshaled against him by the prosecution, it means that the defense in criminal proceedings bears the evidential burden of casting reasonable doubt on the prosecution's case.

However, cases such as the aforementioned *Esseyin v State* begs the question whether it would be mathematically accurate to draw presumptive conclusions from the fact that a deceased was last seen alive with an accused person considering the fact that certainty is an essential element of proof in criminal liability.[27] The possibility remains that the deceased may have left the premises of the appellant alive and met her death in the hands of someone else that the two witnesses who were with the deceased when the appellant called her into his work site did not see. Would this possibility not have rendered the testimonies upon which the last-seen doctrine was founded questionable? This possibility also brings into doubt, the cogency and strength of the presumption that an accused being seen last with a deceased leads indubitably to the conclusion that the act, conduct or omission of the accused person caused the death of the deceased person. This possibility equally remains even when an accused is adjudged to have failed to discharge the evidentiary burden on him.

5.1 The Doctrine of the *Last Seen* as A *"Stand-Alone''* Ground for Conviction

The application of the doctrine of the last seen throws up the question whether the doctrine can be the sole basis for conviction in murder trials. This is because the Courts have not made a clear distinction in this regard. By the pronouncements of the Courts in the cases cited above, convictions were occasioned by the utilization of the doctrine of last seen together with a combination of other factors towards establishing the guilt of the accused. Should the doctrine however, without the combination of such and sundry factors (solely) ground a conviction for murder? It is therefore important to determine the cogency of the doctrine of the last seen regarding granting a conviction by clearly delineating what weight the doctrine carries on its own without the support of other ingredients of evidence.

27*Uyov AG Bendel State* (1986) LPELR-3452 (SC)

In *Esseyin v State (above),* apart from being the last person to be seen with the deceased, th convict actually led the police to a shallow grave from where the body of the deceased wa recovered. This meant that the doctrine of last seen was not the sole factor considered i establishing the guilt of the accused. Similarly, in *Archibong v State* (Supra), the accuse went into a hotel room with his paramour and after asking the staff on duty to return late when the staff knocked on the door to receive payment for the room, he allegedly snuck ou of the room leaving behind the lady he had come into the premises with. Hotel staff late discovered her dead body with ligature wounds to the neck and foam in the mouth. The accused person swore in court that on the day he allegedly murdered the deceased, he took his child to a native doctor for treatment for an enlarged spleen and only got home at about 3PM. He said he did not go to any other place that day. The Court however held this alibi to be of no merit to the accused because it had been "*logically and physically demolished*" and thus affirmed the conviction of the accused by the lower Courts.

In using circumstantial evidence to determine the guilt of an accused person, it must be shown by credible evidence that a number of circumstances co-exist and which are accepted by credible evidence so as to make a complete and unbroken chain of evidence and thus constitute sufficient and cogent proof that an accused committed an offence.[28] The standard of proof required is very high, and the evidence required must be reliable and credible and must be consistent with no other co-existing circumstances arise which would weaken the inference.[29]

Does the doctrine of the last-seen satisfy these requirements enough to ground a conviction for murder being the sole ground? The Nigerian Courts seem to think so. It is submitted however, that the courts have inadvertently failed to state this in express terms and the implication could be that we find ourselves one day in unchartered territory where the circumstances of a case render the doctrine of last seen probable for adoption but hampered at the same time by the absence of other factors that the courts seem to have always utilized in grounding a conviction for murder.

Naturally, there is a general desire in the dispensation of justice to err on the side of innocence because as the preeminent English jurist William Blackstone once wrote, *"it is better that ten guilty persons escape, than that one innocent suffer."*[30] This principle can also

---

28*Archibong v State* (2006) LPELR- 537 (SC)
29*Ukorah v State* (1977) 4 SC 167
30A. Volokh, *n Guilty Men*, (146, 1997 *University of Pennsylvania Law Review*) 173-216.

be found in religious texts and in the writings of the American founders.[31] Benjamin Franklin went further arguing "*it is better a hundred guilty persons should escape than one innocent person should suffer.*"[32] This position was restated within Nigerian jurisprudence in the case of *Ukwunnenyi v State*[33] where Oputa JSC while admitting the limitations of human justice, held that "*it is not given to human justice to see and know as the great eternal knows the thoughts and actions of all men. Human justice has to depend on evidence and inference. Dealing with the irrevocable issues of life and death, she has to tread cautiously, lest she sends an innocent man to an early and ignoble death. In our system, it is therefore better that nine guilty persons escape than for an innocent man to be condemned. And that is why the Court gives the benefit of any reasonable doubt to accused persons*''.

A death penalty once executed is an irreversible act, and like the learned JSC Oputa stated above, is the reason courts are usually very careful at arriving at the pronouncement of such sentences. This careful attitude of Nigerian courts towards crimes that carry the death penalty accounts for why in such trials, even where an accused person pleads guilty, a "*not-guilty*" plea is to be recorded. To this end, Section 187[2] of the CPC directly provides that "*if the accused pleads guilty, the plea shall be recorded and he may in the discretion of the court be convicted thereon, unless the offence charged is punishable with death, when the presiding judge shall enter a plea of not guilty on behalf of the accused.*'' And although there is no equivalent of this provision in the CPA, a plea of guilty is never recorded for an accused in a murder case even when he so pleads in error. A plea of not guilty is entered on his behalf.[34]

This is unlike in non-capital offences where on an accused person's plea, the court is at liberty to adopt a summary trial procedure and convict and sentence the accused person based on facts presented by the prosecution. The law does not require a full trial in the circumstances.[35] The reasoning behind this is that a full trial must always be conducted in cases that carry the capital punishment.[36]

This careful approach from the courts is further exemplified where in murder trials, the law is sacrosanct that the judge must consider in his judgment, not only the defenses specifically

---

31A. Volokh, *n Guilty Men*, (146, 1997 *University of Pennsylvania Law Review*) 173-216; John Adams made similar arguments in defending British soldiers after the Boston Massacre, *"[W]e are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer,"* (p. 176).

32Benjamin Franklin, "Letter from Benjamin Franklin to Benjamin Vaughn (Mar. 14, 1785)," *The Works of Benjamin Franklin (11*, ed. 1904, John Bigelow), quoted in A. Volokh, *n Guilty Men*, (146, 1997 *University of Pennsylvania Law Review*) 173-216.

33(1989) 5 NWLR (Pt.113) 137 at 156

34 See *R. v. Kofi Mansu* (1947) 12 WACA 113.

35*Tobby v. The State* (2001) 4 SC (PT II) 160 @168

36See *FRN v Mohammed*(2014) LPELR-22465 (SC)

raised by the accused, but other possible defenses in the circumstance of the case.[37] The law in the circumstances of this type of criminal case places special duty or responsibility on the judge that before convicting an accused of murder and thereafter proceeding to sentencing him to death, the judge must look for all possible exculpatory evidence in favor of the accused.[38]

From the foregoing, whatever the circumstances, however prima-facie case is established against an accused person in a crime that carries the capital punishment, based on the earlier discussed principles of proof beyond reasonable doubt and an accused being innocent until proven guilty, the prosecution must prove the guilt of the accused person, and not the other way round. Juxtaposing this with the doctrine of the last seen seems to put the doctrine on a collision course with two of the sacrosanct principles of our criminal jurisprudence, i.e. the presumption of innocence, and proof beyond reasonable doubt.

6.1 Agenda Setting for Nigeria; *A Case for Scientific Proof*

The crime of murder carries the death penalty in Nigeria, and this is founded on the wordings of Section *33 (1) of the 1999 Constitution* (as amended) that provides that

> "Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria".[39]

By this provision, lawful killing is legally permissible in Nigeria as an exception to the constitutional right to life for every Nigerian citizen.

Consequently, and for reasons already advanced in this paper regarding the application of the doctrine of the last-seen in murder cases and its downsides, there is need for careful review of the procedural rules applicable to cases that carry the death penalty so that there is no margin for error in making pronouncements that may occasion the wrongful execution of an accused person. This is an area where administration of criminal justice (and in this case the doctrine of the last seen) and forensic science can be interfaced to enhance the objective of criminal justice system.

37See *Uyo v A.G Bendel State* (Supra); See also, *Umani v The State* (1988) I NWLR, 70 @ 274
38See *Uyo v A.G Bendel State* (Supra); See also, *Umani v The State* (1988) I NWLR 70 @ 274
39*Okoro v State (2007) 2 NWLR (Pt. 1019) p. 530*

Knowledge of forensic tools and services provides the investigator with the recognize and seize on evidence opportunities that would not otherwise be Forensic analysis takes many forms namely physical matching, fingerprint matchin fiber analysis, ballistic analysis, blood splatter analysis, DNA analysis, forensic chemical analysis, and forensic anthropology. Other forms are forensic entomolog odontology, forensic engineering, criminal profiling, geographic profiling, for analysis, and forensic document analysis.[41]

Various types of physical evidence are found at almost every crime scene, and th sorts of evidence that can assist an investigator by directing them to develop a se the crime was committed. Tool marks where a door was forced open can indicate entry, shoe prints can show a path of travel, and bloodstains can indicate an a conflict occurred.[42] Each of these pieces of physical evidence is a valuable exhibit providing general information about spatial relationships between objects, people, In addition, the application of forensic examination and analysis could turn an exhibits into a potential means of solving the crime.[43]

DNA analysis is another form of science that is very vital to criminal investigators large role in advanced societies in convicting the guilty and exonerating thos accused or convicted.[44] DNA evidence is a powerful tool because with the ex identical twins, no two people have the same DNA. Bodily substances containi material, such as blood, semen, seminal fluid, saliva, skin, and even hair root tissu be compared and matched back to its original owner with high statistical prob comparison.[45] Therefore DNA evidence collected from a crime scene can be suspect or can eliminate a suspect from suspicion.

Similarly important in the course of investigations are ballistic analysis because it if a particular gun was the originating source of an unknown bullet or cartridg When a firearm is discharged, it leaves unique microscopic markings on the surf projectiles (commonly referred to as bullets) and cartridge cases. These markings

---

40Gehl, Rod & Plecas, Darryl, *Introduction to Criminal Investigation: Processes, Practices and Thinking.* (20 Westminster, BC: Justice Institute of British Columbia

41 See M. Amali and N. Nwafor-Orizu, *Need for Forensic Science in Criminal Investigation Process in Niger* NILDS JLR, Vol. 1, No 2, 181-197

42Gehl, Rod & Plecas, Darryl, *Introduction to Criminal Investigation: Processes, Practices and Thinking.* (20 Westminster, BC: Justice Institute of British Columbia

43Gehl, Rod & Plecas, Darryl *(Supra)*

44Understanding DNA Evidence: A Guide for victim service providers- Available online at: https://www.ncjrs.gov/pdffiles1/nij/bc000657.pdf (Accessed 25/03/2019)

45 S Lindsey, R Hertwig, & G Gigerenzer, *Communicating Statistical DNA Evidence,* (2003), Jurimetrics J, 1

46See Gehl, Rod & Plecas, Darryl, *Introduction to Criminal Investigation: Processes, Practices and Thinking* Westminster, BC: Justice Institute of British Columbia

be compared to link cartridge cases and projectiles to crime scenes and recovered firearms.[47] Also, tracing the flight path of a bullet significantly helps investigators recreate the events of a crime because the trajectory of a bullet helps forensic ballistic experts deduce the direction from which a projectile is fired.[48]

A case in point that highlights the need for the presence of forensic analysis within Nigeria's investigative and prosecutorial bodies was the case of *Ikomi v. State*.[49] In this case, the appellants were charged with the murder of one Mr. UanlieAgbede, a Police Constable assigned to guard and protect the 1st appellant who was a Judge of the High Court of Bendel State and at the material time the Chairman of the Bendel State Armed Robbery and Firearms Tribunal Benin. The 2nd appellant lived in the 1st appellant's official quarters and ran errands for him while the 3rd appellant was the 1st appellant's cook/steward. Their indictment was consequent upon the consent given on the 16th December 1985 by the Chief Judge of Bendel State pursuant to an application by the Attorney-General of Bendel State under section 340(2)(b) of the Criminal Procedure Law of Bendel State 1976.[50]

The depositions in support of the application revealed the following facts:

(a) That the deceased Police Constable (Agbede) duly reported for duty on the fateful night on the 4th of July, 1983 at the official residence of the 1st appellant at No. 3 Obahon Street, GRA Benin;

(b) That the deceased was let into the premises by the 2nd appellant who opened the gate;

(c) That the gate of that premises was locked and the key was held by either the 2nd or 3rd appellant;

(d) That the premises was fenced round and had two exit gates permanently locked when not in use;

(e) That there was nothing to indicate that those gates were opened on that fateful night;

(f) That when the gate was opened by the 2nd appellant the next morning, the deceased Police Constable was found in a pool of blood clearly murdered;

47See A Morgan & P Jorna, *Impact of Ballistic Evidence on Criminal Investigations. Trends & Issues in Crime and Criminal Justice* (2018) No 584, Canberra: Australian Institute of Criminology)

48See *Forensic Ballistics – Reconstructing a Crime using Bullets*, Available online at: https://ifflab.org/the-application-of-forensic-ballistics-in-criminal-investigations/ (Accessed 23/03/2019)

49(1986) 3 NWLR (Pt. 28) 340

50 See M. Amali and N. Nwafor-Orizu, *Need for Forensic Science in the Criminal Investigation Process in Nigeria,* (Supra)

(g) That during that night only the deceased, the appellants and the two daughter the 1st appellant were known to be in the 1st appellant's premises;

(h) That the medical evidence showed that the deceased was found in a pool of blo that there were signs of violence, loss of most of deceased's penis and scrotum; there were incised wounds on his neck and chin; that his death was consistent w manual strangulation and sharp cutting object in respect of peno-scrota injuries.

In a nutshell, Justice Ikomi was accused of murdering his police guard in the early hours 5th of July 1985. The prosecution team amongst other pieces of evidence insisted that circumstances of the case as itemized above, pointed to an inside job. The Prosecution rel strictly on circumstantial evidence to charge him to Court, and although the learned Jud would later be found not guilty, discharged and acquitted, he had already lost his place on t Bench and he died a few years afterwards, a broken man. Admittedly, this case happen when forensic tools like DNA analysis were still in infancy. Nevertheless, it gives credence the need for science in criminal investigations because scientific analysis in the instant ca would have either strengthened the strong circumstantial case the prosecution had, completely eliminated the appellants from being physically capable of committing t murder.

From the foregoing, it is imperative that modern police agencies embrace new technologie as a way of overcoming the limitations of traditional methods or old-fashioned policing an crime control.[51] In this case, the deployment of science will remove every iota of doubt fro sentences handed out on the basis of the doctrine of the last seen.

7.1 Conclusion

The doctrine of the last-seen holds the tendency to create doubts on the guilt of an accused person, and under our criminal jurisprudence, where such doubts exist in the mind of th court, the courts are regularly urged to acquit and discharge the accused. Consequently, being circumstantial evidence, and for reasons already advanced in this paper, the doctrine of last seen leaves a lot to be desired regarding the ingredients of cogency, completeness and un equivocality that must be present to ground a conviction in a murder trial.

This paper finds that the doctrine (especially as a stand-alone ground) lacks the compulsion and irresistible conclusive features that an accused person/suspect and no one else is th murderer. The doctrine does not also align totally with the practice that the facts must be

51See M. Amali and N. Nwafor-Orizu, *Need for Forensic Science in the Criminal Investigation Process in Nigeria*, (Supra

incompatible with innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.[52]This paper therefore proposes the adoption of a more holistic approach towards solving crimes by the adoption of a more scientific approach in the process that brings about a guilty verdict. Specifically, this can be achieved through the use of forensic examination because a person cannot be at the scene of a crime without leaving something behind, and cannot leave the scene of a crime without taking something with them.[53] Such a process will add credence to the doctrine of the last seen by irrefutably linking a defendant with the death of a deceased.

52 See M. Amali and N. Nwafor-Orizu, *Need for Forensic Science in the Criminal Investigation Process in Nigeria,* (Supra)
53 Petherick, W. A. "*Forensic Criminology.*" (2010), London: Elsevier Academic Press