temporary and repairable injury would be a liability to the lessees. I would not have allowed even the four items.

I have already said that there is no cross-appeal by the respondents and this was pointed out by the court to Mr. Harding during his argument. He made no application of any sort to us. Consequently, we have not heard any argument as to whether we could and, if so, should make any order as to the four items which were allowed, and I do not consider that question.

There is another ground of appeal, with leave, about the order as to costs. It is: "(e) The learned trial judge's order as to costs was wrong as palpably the said order was made without exercise of discretion or on wholly wrong principles." The learned judge's reasons were: "The judgment is therefore limited to the claim for damage to the reversion and as the plaintiff has lost in the main issue, there will be no order as to costs." This suggests to me that the learned judge exercised his discretion in a proper and judicial manner. The appellant failed in more than that in which he succeeded.

I would dismiss the appeal.

DOVE-EDWIN, J.A. and COLE, J. concurred.

Appeal dismissed.

KPOMEH, BOANDA and JONJO *v.* REGINA

COURT OF APPEAL (Ames, Ag. P., Bankole Jones, C.J. and Dove-Edwin, J.A.): March 19th, 1964
(Cr. App. Nos. 1/64, 2/64 and 3/64)

[1] **Criminal Law—degrees of complicity—knowledge of offence—knowledge without participation or counselling not enough:** Mere knowlege of a murder without actual participation or counselling is not enough to support a conviction for murder (page 15, lines 22–24).

[2] **Criminal Law—murder—degrees of complicity—knowledge of murder—knowledge without participation or counselling not enough:** See [1] above.

The appellants were charged in the Supreme Court with murder.

The child of one of the appellants was murdered for the purpose of making a *borfima* for the benefit of the appellants and to cure the illness of the appellant Jonjo.

The appellant Jonjo was not present at the scene of the murder though she knew it was likely to occur. The Supreme Court found that she was concerned in the common purpose to murder as she knew the child was to be killed for the purpose of making the *borfima*. The Supreme Court convicted the three appellants of murder and sentenced them to death. All appealed against the conviction and sentence.

Browne-Marke, Ag. Sol.-Gen., for the Crown;
Anthony for the first appellant;
Richards for the second appellant;
Gelaga-King for the third appellant.

DOVE-EDWIN, J.A., delivering the judgment of the court:

The first and third appellants are husband and wife, the second appellant a herbalist and a stranger in the village of the first and third appellants. The first appellant has another wife, by name Hawa, and she was the mother of the first appellant's child with whose murder the three appellants were charged.

On September 8th, 1963, the first appellant decided that his son Alieu should be sacrificed in order to make *borfima* for his benefit and also to cure the illness of the third appellant. This was done and the corpse of his child was discovered with both its ears removed, the neck twisted, the right temporal bone fractured and the first, second and third cervical vertebrae fractured and dislocated. The appellants were charged with the murder, convicted and sentenced to death. Against their convictions and sentences they have appealed to this court.

The appellants were each defended by counsel both at their trial and before this court.

The appeals of the first and second appellants can be quite easily disposed of, as they lack substance.

These appellants were each convicted and sentenced on the clearest evidence and despite the efforts of counsel their appeals must be dismissed.

The third appellant is in another category altogether and her case requires careful consideration. The case against the third appellant was that when her husband, the first appellant, told her that efforts were being made to procure a cure for her illness and infertility she said that she would be grateful for anything done. This was before the first appellant announced what he intended to do, namely, that his son

Alieu should be taken and sacrificed to make *borfima* for the cure of the third appellant.

Another point in the evidence that could be said to be against her was, that she left the house and followed in the direction the child Alieu had been taken; but here there is a definite finding by the learned trial judge that the third appellant was not present at the killing. So whatever inference could be drawn from this action of the third appellant, this finding of fact was in her favour. Again there is evidence that the third appellant actually hid what was referred to as *borfima* but there is no evidence that the *borfima* consisted of human remains. In his evidence before the court, Police Sergeant No. 74 Gbassay Massaquoi said that the third appellant told him that the child was to be killed and used in making *borfima.*

Of all this, the learned trial judge said:

> "I am satisfied that the third accused [appellant] was not present at the scene of the crime [meaning the murder] but she was concerned in the common purpose and knew that the boy was to be killed and used in preparation of the *borfima* . . . . I find the common purpose was to kill a human being for the preparation of *borfima* and to this purpose all three accused [appellants] were concerned."

We think that mere knowledge by the third appellant, apart from some evidence of actual participation or counselling, is not enough. She was the wife of the first appellant, and there was nothing she could do to prevent the killing of the child. True, she would benefit from the medicine but so would the first appellant, at least so he thought. We think the evidence against the third appellant was not sufficient to make her guilty as a principal and feel her conviction and sentence should be set aside.

The appeal of the first and second appellants is dismissed and that of the third appellant allowed. Her conviction and sentence are set aside and a verdict of not guilty substituted.

Order accordingly.