IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

SUIT NO: FCT/HC/CR/100/2013

BETWEEN:

COMMISSIONER OF POLICE……COMPLAINANT

AND

AMINADAUDA……DEFENDANT

JUDGMENT

The Defendant was charge before this Court to a one count charge of culpable homicide contrary to Section 221 of the Penal Code and punishable by death.

The gist of the offence is that sometimes on or about the 7th of February, 2013 the Defendant deliberately poured premium motor spirit (petrol) on her husband, Muhammed Ibrahim Matazo and set him ablaze as a result of which he was burnt and he died knowing that death would be a probable result of her action. She pleaded not guilty to the offence.

Five witnesses testified for the prosecution in its bid to prove the guilt of the Defendant. The 1st, 2nd and the 5th prosecution witnesses who were involved in the investigation of the offence testified as such.

The PW1 is one Inspector Usman Idoko attached to Life Camp Divisional Police Station. According to him he was at the Police Station on the 07/02/2013 when a case of causing grievous bodily hurt was reported by one Idris Ahmed. The PW1 cautioned the Defendant and recorded a voluntary statement from her. At the end he read over the statement to the Defendant who signed and he then counter signed. He visited the National Hospital where the deceased was taken for treatment but could not see him as he was said to have been taken to Ahmadu Bello University Teaching Hospital, Chika in Kaduna State. The PW1 visited the scene of the incident but did not testify about what he saw!

The PW2 is Assistant Superintendent of Police Godwin Gonam. He investigated the case when it was transferred to the Criminal Investigation Department of the Federal Capital Territory Police Command. He took over the case file and the Defendant on the 25/02/2013. He recorded a voluntary statement from the Defendant under the words of caution. The said Idris Ahmed who reported the case to the Police and Mary Christopher who was

described as eye witness also gave statement to the police. The PW2 also visited the scene of crime but never gave evidence of what he saw! He merely testified that the couples were living in a ONE ROOM apartment and that the space which was used as kitchen was very close to the sleeping area.

The PW3 is one Muhammed Sanni. He was together with the deceased at a joint the night before the incident. He visited the deceased at Ahmadu Bello University Teaching Hospital, Chika where the latter was admitted for treatment. The deceased could not explain what happened to him as he promised to do so if his condition improved.

The PW4 is a Tea Vendor. He was at his sales spot when the deceased ran to him and requested to be taken to the hospital. He asked to know what was wrong but got no explanation. The deceased ran into the house of Idris Ahmed and came out naked. The Defendant went in and procured a dress for him. According to the PW4 people gathered and tried to beat the Defendant. The deceased was taken to Wuse General Hospital and later to the National Hospital and thereafter to Gwagwalada Specialist Hospital from where he was taken to Kaduna State. He never saw the deceased again as he was told that the deceased died three days later.

The PW5 is Salami Glory. She is attached to Life Camp Police Station. At the Police Station she saw the deceased lying naked at the back of a small vehicle severely burnt. She took the deceased to the hospital. Under cross examination she told the Court that she did not investigate the circumstances leading to the death of the deceased and that she could not proceed further with investigation because it was handed over to a more senior officer.

At this stage the case of the prosecution was closed when it became clear that the remaining witnesses one Idris Ahmed and four others listed in the proof evidence could not be produced.

The Defendant on the other hand testified on her behalf and called one witness. In her testimony she told the Court that on the morning of 07/02/2013 she requested for money from the deceased for medical treatment but he refused. That she blocked the door to prevent him from going out. That they started fighting and both of them fell on a stove which she was boiling hot water on. That the deceased was the first to run out and she followed naked. One of the neighbors in the compound called Tony went inside and brought cloth for her to tie. One other neighbor Mama Jerry advised her to follow the deceased to the place of a tea vendor. She later followed the deceased to the General Hospital, Wuse from where they were

referred to the National Hospital. She was arrested in the Hospital and taken to Life Camp Police Station and later charged to Court.

Under cross examination the DW1 told the Court that she had quarrels with the deceased in the past but it was resolved amicably.

The DW2 is the biological mother of the Defendant. She was in Kaduna when she got information of the problem between the Defendant and the deceased. She came to Abuja and discovered that both parties were burnt. She also saw the carpet which was burnt in the room.

At the end of trial the learned counsel to the Defendant Mr Charles Yoila filed his final address wherein he submitted one issue for determination. The issue is:

> **"Whether having regard to the entire circumstances of this suit (SIC) and evidence before the Court the prosecution has established and/or proved the offence of culpable homicide punishable with death against the Defendant to warrant conviction for the offence charged."**

On the other hand the prosecution submitted two issues which are practically similar as arising for determination:

1. **“Whether the prosecution has proved its case beyond reasonable doubt; and**

2. **Whether the prosecution has proved the offence of culpable homicide punishable with death under Section 221 of the Penal Code against the Defendant beyond reasonable doubt.”**

It is my respectful view that the two issues raised herein are one and the same.

At the end of the day it boils down to the fact that the prosecution and the defence have raised essentially the same issue which is; From the evidence led whether the prosecution has proved the charge against the Defendant beyond reasonable doubt.

The Defendant’s counsel has argued that the prosecution has failed to prove that the Defendant was responsible for the death of the deceased. He submitted that for the Court to convict the Defendant for the offence charged it must be established before the Court:

1. **“That a human being had died,**
2. **that the death was caused by the Defendant; and**
3. **that the act was done by the Defendant with the intention of causing death or bodily injury or that**

death was a probable consequence of the act of the Defendant."

The following cases were called in aid:

1. **GABRIEL OKEKE & ANOR VS THE STATE (1999) 2 NWLR (PT. 590) 246 AT 273;**
2. **OGBA VS THE STATE (1992) 2 NWLR (PT. 222) 64 AND;**
3. **ADARA VS THE STATE (2006) 9 NWLR (PT. 984) 152.**

Counsel also submitted that all the elements of the offence of culpable homicide must be proved cumulatively if the prosecution must succeed. That the obligation to prove the case beyond reasonable doubt is not discharged by admission of the offence by the accused. He cited the case of **ABOKOKUYANRO VS. THE STATE (2012) 2 NWLR (PT. 1285) 50 AT 52.**

Learned counsel referred the Court to Section 19 of the Penal Code which defines "likely" or "probable consequence" as follows:

(1) An act is said to be likely to have a certain consequence or to cause a certain effect if the occurrence of that consequence or effect would cause no surprise to a reasonable man.

(2) An effect is said to be a probable consequence if the occurrence of that consequence would be considered by a

reasonable man to be the natural and normal effect of that act.

According to learned counsel the evidence before the Court is that parties engaged in a fight as a result of which they fell down and accidentally burnt by boiling water. That the prosecution has therefore not proved the culpability of the Defendant or that the Defendant engaged the deceased with the knowledge that death or grievous bodily injuries was probable or a likely consequence.

Learned counsel urged the Court to take what happened to the deceased as an accident and to hold that the Defendant was open to the defence.

Finally counsel urged the Court to invoke Section 167(d) of the Evidence Act against the prosecution as they failed to produce those they claimed were eye witnesses to the event which caused death.

From all the above the learned counsel called on the Court to discharge and acquit the Defendant.

For the prosecution it was argued by Abubakar Musa Esq that the prosecution has proved the offence charged against the Defendant as required by Section 138 of the Evidence Act. Counsel is of the view that exhibits P1, P2 and P3 which are extra judicial statements made by the Defendant constitute a confession to the offence.

Relying on **SHALATU SHAZALI VS. THE STATE (1988) 3 NSCC 234 AT 245** counsel submitted that the Court should satisfy itself of the following conditions before relying on a confessional statement to convict. These are:

(a) Is there anything outside the confession to show that it is true;
(b) Is it corroborated;
(c) Are the relevant statements made in it of facts true as they can be tested;
(d) Was the prisoner one who had the opportunity of committing the offence;
(e) Is his confession possible;
(f) Is it consistent with other facts which have been ascertained and have been proved?

The prosecution further argued that the circumstantial evidence adduced by the witnesses for the prosecution is overwhelming for the Court to convict. Counsel posited that where circumstantial evidence as in this case is cogent, unequivocal, compelling and points irresistibly to the Defendant as responsible for the offence she could be convicted upon it.

Counsel further argued that the evidence of the PW4 who was an eye witness and PW5 who said the deceased told him that it was the Defendant who poured petrol on him are cogent enough for the Court to convict. The following cases were cited:

1. **KINSLEY OMOREGIE VS THE STATE (1995) 3 NWLR (PT. 334)**
2. **ONUOHA VS THE STATE (1997) 3 NWLR (PT. 496) 625 and**
3. **OKEKE VS THE STATE (1992) 2 NWLR (PT. 590) 246.**

Counsel finally submitted that there was no material contradiction in the testimonies of the witnesses for the prosecution and that the Defendant should be convicted as charged.

Now the charge against the Defendant is that she deliberately poured premium motor spirit (petrol) on her husband, Muhammed Ibrahim Matazo and setting him ablaze with the knowledge that death will be a probable consequence of her action, thus resulting in his death.

The offence is contrary to Section 221 of the Panel Code and if found guilty is punishable by death.

To secure conviction the prosecution must prove all the essential elements of the offence. These are:

(a) Death of a human being

(b) That the death was caused by the Defendant

(c) That the act which caused the death of the deceased was done with intention to cause death or bodily injury or that the Defendant knows that death would be the probable and not a likely consequence of his act.

See:

1. **OGBU & ANOR VS THE STATE (2009) 4 SCM 169 AT 185; AND**
2. **OKEKE VS THE STATE (1999) 2 NWLR (PT. 590) 246 AT 273.**

The standard of proof required of the prosecution to secure conviction is beyond reasonable doubt. See Section 138 of the Evidence Act 2011.

From the evidence before me there can be no doubt whatsoever that there is death of a human being. What would engage the attention of the Court is whether it was caused by the Defendant.

In the determination of this element, I need to remind myself that all the witnesses who testified for the prosecution were not eye witness to the act which led to the grievous injury caused to the deceased leading to his death. The PW1 INSPECTOR USMAN IDOKO, PW2, ASSISTANT SUPERINTENDENT OF POLICE GODWIN GONAM as well as PW5 GLORY SALAMI are police officers who were

involved in the investigation of the case after it was reported by one Idris Ahmed.

The PW3 Mohammed Sanni did not give any useful evidence as such. Although he saw the deceased on his admission bed the deceased only promised to tell him the cause of his predicament when his condition improved. The PW4, the Tea Vendor who lived with the couple also did not witness the incident which caused the injury sustained by the deceased as he merely saw the deceased ran out naked after he was burnt. The effect of this is that there is no direct evidence to suggest that the Defendant poured premium motor spirit (petrol) on the deceased or that he set him ablaze.

To me the investigation of this case by the police leaves much to be desired. In a serious case such as this which resulted in a death of human being and punishable by death one would have expected some level of seriousness and commitment from those who were detailed to investigate the matter. However they did not show any professionalism in the conduct of the investigation. Their effort did not go beyond merely recording the statements of the accused. Although the accused stated that there was a burning stove when they fought and fell upon it thus leading to the fire which burnt the deceased nothing was done to verify this assertion. What this means is that they believed the defence of accident raised by the Defendant.

It is my view that although the Defendant differed in her extra judicial statements made in exhibits P1 to p3 to the police she does not have any duty in law to explain her innocence. The burden on the prosecution to prove the guilt of the Defendant never shifts. It is only when the evidence adduced by the prosecution in a criminal trial is tested, scrutinized and accepted by the Court and it conclusively points to the accused as the perpetrator of the crime charged that she would be required to proffer an explanation by way of defence in rebuttal of the case for the prosecution. On this point of law see:

1. **IGABELE VS. STATE (2006) 6 NWLR (PT.975) 100;**
2. **CHINUAGO V. STATE (2002) 2 NWLR (PT.750) 225;AND**
3. **EGWUMI VS. STATE (2013) LPELR- 20091(SC)**

The prosecution has argued in his final written address that the extra judicial statements in exhibits P1, P2 and P3 amount to confessional statements. He proceeded on this premise to conclude that the confessions made therein are sufficient to convict the accused.

The question then turns on whether exhibits P1, P2 and P3 amount to a confession.

Section 28 of the Evidence Act 2011 defines confession as an admission made at anytime by a person charged with a crime stating or suggesting an inference that he committed the crime.

The law is also clear that in the absence of an eye witness the Court can still convict upon a confession if the said confession is positive direct and proved.

In **IDOWU V. STATE (2000) 7 S.C (PT.II) 50; (2000)12 NWLR (PT.680) 48,** Iguh, JSC captured the law as follows:

> **"It is well settled that a free and voluntary confession, whether judicial or extra-judicial, so long as it is direct, positive and properly proved, is sufficient proof of guilt and conviction could be based entirely on such evidence. It is however important that the court should not act on the confession without first testing the truth thereof."**

See also:

1. **JIMOH YESUFU V. THE STATE (1976) 6 S.C. 167;**
2. **NWANGBONU V. THE STATE (1994) 2 NWLR (PT. 327) 380; AND**
3. **KANU AND ANOTHER V. KING 14 WACA 30.**

Now I need to examine the statements of the Defendant made to the police and admitted as exhibits P1, P2 and P3 to determine if there was an admission within the meaning of Section 28 of the Evidence Act.

In exhibit P1 the accused stated that the deceased slept outside the house on the night of 06/02/2013 and returned to the house around 8:00am on the 7th of February, 2013. That she requested for money to go to Kaduna but the deceased refused to give her. She stated as follows:

> **"The deceased went and took a knife and stated that unless I allowed him to go where he wanted to go he will kill himself. Then I left him smoking inside the room and I stood outside. In some minutes later I saw him coming outside with fire all over his body and he pushed me with fire all over his body. When he pushed me I fell down and the flame of the fire burnt me, then our neighbors came out and stopped the fire in the room and that of the generator."**

In exhibit P2 she gave no doubt a different account of what caused injuries to the deceased. The relevant portion of the statement goes thus:

"Before the incident of 07/02/2013 my husband left home and he did not come back home for about three days. On the 07/02/2013 at about eight 0800 hours he came back home that he is travelling to Kaduna State. I then asked him why should he travel while I am not well. I told him that why should he travel without giving me any money for feeding. On that juncture he slapped me, we started fighting ourselves and his shirt were tored while we were already there there was a water on the stove which I wanted to use it for my bathing and also there was a generator with fuel inside the room while fighting we both fell on the generator and the fuel inside it spilled and the generator catches fire at the spot and we were burnt."

In exhibit P3 which she made to the police on 26/02/2013 she said:

"I told him that I have not been feeling fine and I needed money to go to the Hospital for treatment and he said he does not have money to give me. I repeated my demand again and he slapped me on my face then I too slap him back. From there the two of us started fighting ourselves and eventually both of us fall down on the floor of our room. It happened that I was

boiling water on stove inside the room and also a petrol for our generator was equally kept inside the room in a jerrican so immediately we fell down as stated above the petrol suddenly poured on the floor with the hot water from the stove and the carpet went on fire and both of us ran outside with a portion of my left hand got burnt by the fire. I was naked when I ran out and one of my neighbor saw me, his name is Tony while my husband's trouser was seriously burning too….. I did not pure fuel or put fire on him. It was during our fight that both of us fall on the petrol which catch fire. It was not intentional."

From the statements reproduced about it is clear that in no one did the Defendant admitted the offence charged. While it is true that the Defendant contradicted herself in her accounts of what took place leading to the injuries sustained by the deceased, there is nothing in the statements to suggest an inference that she admitted the offence charged. To me the submissions of the learned prosecution to the effect that exhibits P1, P2 and P3 were confessional is not borne out of evidence before the Court. When a submission of counsel is at variance with the evidence before the Court such submission goes to nothing and is liable to be ignored. On this point see **OFORISHE VS.**

NIGERIAN GAS CO. LTD (2017) LPELR-42766 (SC) where Rhodes-Vivour, JSC stated as follows:

> **"I must remind counsel that the main purpose for address is simply to assist the Court. Cases are decided not on address or alluring closing speeches but on credible evidence. So no amount of brilliant address can make up for lack of evidence to resolve any issue before the Court."**

Clearly what emerged from all the extra judicial statements the Defendant made to the police including her viva voce before the Court is a categorical denial of responsibility for the misfortune that befell the deceased.

The learned prosecution has also submitted that there is overwhelming circumstantial evidence leading to a conclusion that the accused is guilty for the death of the deceased. There is no doubt that circumstantial evidence is sometimes said to be the best of evidence which may in appropriate case establish the guilt of the accused with mathematical accuracy. However, in **MOHAMMED V. STATE (2007) 11 NWLR (PT.1045) 303** Tobi, JSC (of blessed memory) warned that:

> **"Before an accused person can be convicted for murder on circumstantial evidence, the fact of death should be proved by such circumstances as to render the commission of the crime certain and leave no ground for reasonable doubt. The circumstantial evidence should be cogent and compelling as to convince the court that no rational hypothesis other than murder can the facts be accounted for. See *Esai v. The State (1976) 11 SC 39*. A conviction for murder on circumstantial evidence must point to the guilt of the accused with the accuracy of mathematics…. A court cannot convict on circumstantial evidence, especially in a case of murder where such evidence points in more than one direction. See *The Queen v. Iromachi* (1963) 1 SCNLR 8."**

The prosecution has also submitted an argument that there is overwhelming circumstantial evidence to ground a conviction for the offence charged. He relied on the testimonies of the prosecution's witnesses and the extra judicial statements of the accused (i.e. exhibits P1, P2 and P3).

There is no doubt that circumstantial evidence is often times the best evidence. It is evidence of surrounding circumstance which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial. It may also be noted that there is no yardstick by which any circumstantial evidence may be measured before a conviction may be entered against an accused person charged with the offence for which the circumstantial evidence is the only one available.

Each case depends on its own facts 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 to possibility or chance that other persons could have been responsible for the commission of the offence. There are so many authorities for this proposition but two would suffice.

See:

1. **EBENEHI & ORS VS THE STATE 2-3 SC (PT. 1) 109; and**
2. **LORI & ANOR VS THE STATE (1980) 8-11 SC 81.**

In the case of **IGABELE V. STATE (supra)** Oguntade, JSC stated as follows:

> **"...But the circumstantial evidence sufficient to support a conviction in a criminal trial especially murder must be cogent, complete and unequivocal. It must lead to the irresistible conclusion that the prisoner and no one else is the murderer. The facts must be incompatible with innocence of the accused and incapable of an explanation upon any other reasonable hypothesis than that of his guilt."**

Now the only stories of what happened to the deceased in this case leading to severe burnt of his body were the ones told by the accused herself. The police investigators who were detailed to investigate the case did a mockery of it. They did nothing apart from taking statements from the accused. The accused stated in her extra judicial statements that there was a generator containing petrol in the room where the couples fought and allegedly fell down. She also stated that there was a petrol in jerrican in the room, as well as a boiling water on the stove which was also burning. If the police investigated all these they possibly would have a story to tell about the location and condition of the stove and the item with which water was being boiled. They would have found the condition of the room generally.

Nothing was done by the police to further the hypothesis that the accused poured petrol on the deceased and set him ablaze. The accused for example stated in her evidence that as a result of the fight between her and the deceased they fell on the floor and that she ran out naked. The fact of rushing out naked is in my view quite consistent with a situation of emergency where one is stampeded from the room for safety.

If some of the stories the accused told in exhibits P1, P2 and P3 were verified by the prosecution, perhaps it would have helped the Court in reaching a conclusion that the accused was responsible.

As it is now, an evaluation of the evidence before the Court has left me with a speculation that the accused may have committed the offence or that what happened to the deceased was an accident. Once that is the case then it is safe to hold that there is no cogent and unequivocal evidence against the accused upon which to convict.

In the same way, the story of the PW5 that the deceased told her that the accused poured petrol on him and set him ablaze does not impress me. First his statement does not find any corroboration from any of the witnesses who testified for the prosecution. Secondly upon been told of such unnatural happening neither she nor the other investigating policemen deemed it necessary to

procure any material evidence to support the case of the prosecution.

In the same way I do not agree with the learned counsel to the prosecution that the story of how the accused allegedly set the deceased ablaze constitutes a dying declaration. This is because the PW3 in his evidence told the Court that when he visited the deceased on his Hospital bed in Kaduna State he told him he would explain to him how he got burnt when his condition improves.

This was sometime around four days before his death on the 14/02/2013 and days after the incident. For a statement of a deceased to be admissible as a dying declaration it must have been made with a believe that the deceased was in danger of approaching death. See Section 40 (1) of the Evidence Act 2011.

See also **AKPAN VS THE STATE (1992) 6 NWLR (PT. 248) 439; and R. V OGBUEWU (1949) 12 WNCA 483.**

On the account of the foregoing it is my respectful view that the story of what the deceased told the PW5 Constitute an inadmissible hearsay.

At the end of this case it is clear to me that the prosecution has not proved the guilt of the Defendant through eye witnesses account of how the fire which burnt the deceased was caused and neither is

there strong circumstantial evidence to nail the accused. She is liable to an Order of discharge and acquitted.

In rounding up I must comment on the attitude of the prosecution in the conduct of this case which to me showed crash ignorance of the duties of an investigating police officer. As I said earlier in this Judgment they did nothing other than recording of statements from the accused person. They did not gather any evidence from the scene of crime to help detect the real cause or what happened to the deceased.

I must state, that the detection of crime which is the responsibility of the police falls into three distinguishable phases; the discovery that a crime has been committed; the identification of the suspect in the crime and the collation of sufficient evidence to indict the suspect before a Court.

I need to also refer to the admonition of His Lordship Wali, JSC to the Police in a similar situation where their conduct fell below expectation. Thus in **IDOWU V. STATE (supra)** His Lordship stated as follows:

> **"But before concluding this Judgment, I wish to comment on the way and manner the prosecution conducted the investigation of this case. The method adopted left much**

to be desired. With the number of police officer trained as lawyers in the Police Force, the quality of the police investigation, particularly in this case, is far below the quality and standard one would expect in this age of technological developments. The Ministry of Justice, which has the responsibility of supervising investigation of criminal cases, particularly those involving human lives, are also not free from blame. Prosecutions of cases are more often than not, conducted in a loose and unsatisfactory manner, resulting in acquittal of criminals who should have been convicted."

In this case no genuine effort was made to gather materials to indict the accused. This careless or reckless attitude of the investigation must be deprecated in strong terms. Here, a case that looks very straight forward has been mishandled leading to a verdict of acquittal of the Defendant. A word is enough for the wise.

As bad as it is I do not have an option than to discharge the accused person. She is therefore discharged and acquitted.

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
07/06/2019