

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 19TH DAY OF APRIL, 2018

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CR/07/2014

BETWEEN

COMMISSIONER OF POLICE --- COMPLAINANT

AND

YAHUZA YUNUSA --- DEFENDANT

JUDGMENT

The one-count charge against the defendant was filed on 16/1/2014. The defendant was arraigned on 5/3/2014 and he pleaded not guilty to the charge. The count reads:

That you Yahuza Yunusa 'm' 30 years of Lugbe Federal Housing by tipper garage Lugbe, Abuja on or about 15th October, 2013, at about 1130hrs at tipper garage Lugbe, Abuja within the Abuja Judicial Division committed culpable homicide punishable with death in that, you caused the death of one Murtala Mohammed 'm' of the same address by stabbing him on the chest with a knife, which resulted to his death when you know that death will be the probable consequence of your act, you thereby committed an offence contrary to section 220 of the Penal Code and punishable under section 221 of the Penal Code.

In proof of the charge, the prosecution called 2 witnesses i.e. Cpl. Ibrahim Abubakar [PW1] and Sgt. Simon Ezekiel [PW2]. The defendant testified alone in his defence. From the date of arraignment, the defendant elected to speak Hausa Language. Thus, throughout the trial, the proceedings were interpreted from English Language to Hausa Language and from Hausa Language to English Language.

Evidence of the prosecution:

The evidence of Cpl. Ibrahim Abubakar [PW1], a Police officer attached to Lugbe Divisional crime branch, is that on 15/10/2013, at about 10.30a.m., while he was on duty, they received a distress call in their office from O/c Federal Housing, Lugbe Police station that there was a case of culpable homicide. He and the DCO [Divisional Crimes Officer] called SP. Raphael Wadyawent to Federal Housing, Lugbe Police station where they met the O/c. The O/c told them that the deceased had been taken to Standard Care Hospital, Federal Housing, Lugbe. When they got to the hospital, the doctor confirmed that the deceased was dead. He [PW1] invited a photographer who took photograph of the deceased. He went to the scene of the crime at tipper garage, Lugbe. The said photographer took photograph of the scene.

PW1 further stated that at the scene, he met one Abubakar Usman, who was an eyewitness. In the course of interview, Abubakar Usman informed him that he went to buy 2 sachets of pure water from the deceased. He heard when the deceased asked the defendant to give him his N400.00. The defendant said he will not pay but the deceased insisted on collecting the

money. They started using abusive words. In the process, the defendant took the knife and stabbed the deceased on the right side of his chest. The deceased fell down and was rushed to Standard Care Hospital, Lugbe. Lawal Mohammed, DanganaDanjuma, BuhariSani and Suleiman Danjumaarrested the defendant and took him to Lugbe station.

Cpl.Ibrahim Abubakar[PW1] also stated that he obtained the defendant's statement on 15/10/2013. In the course of his investigation, he recovered a knife; the knife is Exhibit A. He collected the photograph of the scene and that of the deceased from the photographer. He communicated in English Language with the defendant in the course of his investigation; defendant said he stopped [his education] at JS 3. The witnesses that arrested the defendant from the scene i.e. Mohammed Lawal and AbubakarUsman made statements at Lugbe Police station; he recorded their statements. The statement of Mohammed Lawal dated 18/10/2013 is Exhibit B; while the statement of AbubakarUsmanalso dated 18/10/2013 is Exhibit C. After his preliminary investigation, he transferred the case to State CID, Abuja on 21/10/2013 for further investigation.

I pause to note that in the course of the evidence of PW1 on 17/3/2014, the learned counsel for prosecution applied to tender defendant's statement dated 15/10/2013. The learned defence counsel objected to the admissibility of the statement on the ground that the defendant signed it under duress. The objection necessitated a trial within trial. At the end of the trial within trial, the Court delivered a considered ruling on 14/12/2016; the Court rejected the statement and marked it *Rejected 1*.

When the PW1 was cross examined, he said he did not know the deceased before he died. The two witnesses he mentioned earlier brought defendant to the Police station; two of them were present when the defendant stabbed the deceased. The name of the deceased was Murtala Mohammed. The knife was brought by the witnesses along with the defendant. When PW1 read Exhibit C [i.e. the statement of Abubakar Usman to the Police], he said Abubakar Usman did not say he was present when the crime was committed; rather, he said he was informed that somebody stabbed the deceased. PW1 also admitted that Mohammed Lawal, in his statement to the Police [Exhibit B], did not say he was present when the deceased was killed. Mohammed Lawal and Abubakar Usman are alive; but they are out of Abuja now.

In his evidence, Sgt. Simon Ezekiel, a Police officer attached to Homicide Section, FCT Command, Abuja [PW2] stated that on 21/10/2013, a case of culpable homicide was transferred from Lugbe Division to his office and referred to his team led by ASP Godwin Gonnam [now retired]. He recorded the statement of the defendant. The confessional statement of the defendant was recorded in English Language and translated to him in Hausa Language. The defendant signed the statement. The statement was endorsed by his team leader. In the course of his investigation, he found that the defendant confessed that he stabbed the deceased with euro knife. Also, when he visited the scene of the incident at tipper garage, the people there confirmed that the defendant stabbed the deceased with euro knife. He took the defendant before his team leader and he read the statement to

the defendant in English Language and translated it in Hausa Language. The defendant confirmed that it was his statement; and signed it. The statement was endorsed and signed by his team leader.

When the prosecuting counsel applied to tender the defendant's statement in evidence, defence counsel said: *"From the briefing I have with my client, he was severely tortured to get his hand on the statement. The defendant signed the statement under duress. I object to the admissibility of the statement and pray for a trial within trial."* The Court then ordered a trial within trial. After the close of the case of the prosecution in the trial within trial, the defendant gave evidence and retracted the statement. Consequently, learned defence counsel withdrew his objection to the admissibility of the statement. The defendant's statement dated 21/10/2013 was received in evidence as Exhibit D.

The PW2 continued his evidence in the main trial and identified Exhibit A as the euro knife, which was registered as exhibit.

During his cross examination, PW2 stated that two suspects were arrested. The name of the deceased was Murtala. He was not sure of the second name; it has been a long time. ASP Godwin Gonnam recorded statements of Usama M. Yusuf and Abubakar Isah. The statement of Usama M. Yusuf dated 21/10/2013 was tendered through PW2 as Exhibit E; the statement of Abubakar Isah dated 21/10/2013 was tendered through PW2 as Exhibit F. PW2 said Exhibit F was made by Abubakar Isah, the elder brother of Murtala Isah. The defendant spoke with him in Hausa Language.

The evidence of the defendant:

In his evidence, the defendant [as DW1] denied the charge. He stated that on that day, he was sitting on his motorcycle near a tea seller. He was about sleeping on his motorcycle. Policemen came and surrounded him and they said: "he is the one arrest him, do not allow him to run". He cannot remember if that day was 15/10/2013 or 21/11/2013. They handcuffed him, arrested him and put him in their vehicle. He didn't know what happened. He later discovered that people were running. There was no other person around the place where he was arrested. People left him on his motorcycle where he was sleeping and went to the Mosque. When they got to the main road after his arrest, they saw one man called Samaila. The Police also arrested Samaila and took both of them to the station.

Yahuza Yunusa [DW1] also stated that he knew one Murtala Mohammed. Before his arrest on that day, there was nothing between him and Murtala Mohammed. He did not stab or fight Murtala Mohammed; he did not even see Murtala Mohammed on that day. He did not hear that Murtala Mohammed was stabbed on that day. He didn't know anyone called Murtala Isah. When he and Samaila were taken to the Police station, the Police started beating him and Samaila. The Police said Samaila usually gave him [DW1] Indian hemp to sell together with Murtala and because of that he [DW1] had misunderstanding with Murtala which led him to kill Murtala. He told the Police that he did not even see Murtala that day; and that he had never sold Indian hemp.

The defendant further testified that he was taken to Lugbe Police station. Later, he and Samaila were taken to SARS. He did not ever own Exhibit A [the knife]; and he is seeing it for the first time. He did not make any statement to the Police admitting that he killed Murtala Mohammed. Throughout the period he was in Police custody until he was brought to Court, he spoke Hausa Language. He did/does not understand English.

When the defendant was cross examined, he stated that the place he was arrested was a business premises. He did not know Usama Yusuf and Abubakar Isah. He is surprised that Usama Yusuf and Abubakar Isah said in their statements to the Police that he was the person that killed Murtala Isah. He is from Bari village in Kano State. He did not attend primary school; he attended Islamic school. There is primary school in Bari. He said he was not the one that supplied information about himself and the schools he had mentioned to the Police. He did/does not know where Murtala Mohammed is because he has been in prison custody.

On 13/12/2017, learned counsel for the defendant tendered the certified true copy of the proof of evidence dated 15/1/2014 from the Bar. It was received in evidence as Exhibit G.

Issues for determination:

At the conclusion of trial, Chief Abdul Olajide Ajana filed the defendant's final address on 14/12/2017. James C. Idachaba Esq. filed the final address of the prosecution on 30/1/2018. Chief Ajana filed a reply on points of law on 6/2/2018. The final addresses were adopted on 6/3/2018.

Chief Ajana submitted one issue for the Court's determination, that is:

Having regard to the totality of the evidence before this Honourable Court, whether the charge of culpable homicide punishable with death filed against the defendant is proved beyond reasonable doubt.

On the other hand, James C. Idachaba Esq. also formulated one issue for determination, to wit:

Whether the prosecution has proved the charge against the defendant as required by law.

It is trite that the prosecution has the duty to prove the charge against the defendant beyond reasonable doubt. As rightly stated by learned counsel for the prosecution, proof beyond reasonable doubt does not mean proof beyond every shadow of doubt. From the evidence before the Court and the submissions of learned counsel, there are two issues for resolution, viz:

1. Whether the prosecution adduced any credible evidence to prove the charge against the defendant beyond reasonable doubt.
2. Can the Court convict the defendant for the offence of culpable homicide punishable with death on the basis of his extra-judicial confessional statement, Exhibit D?.

ISSUE 1

Whether the prosecution adduced any credible evidence to prove the charge against the defendant beyond reasonable doubt.

In Emmanuel Ochiba v. State [2012] 17 NWLR [Pt. 1277] 663, it was held that by virtue of section 221 of the Penal Code, the ingredients of the offence of culpable homicide punishable with death are: [i] that the death of a human being took place; [b] that such death was caused by the accused person; and [c] that the act of the accused that caused the death was done with the intention of causing death or that the accused knew that death would be the probable consequence of his act. See also the case of Maigari v. State [2010] 16 NWLR [Pt. 1220] 439. These elements will be considered one after the other.

[A] That the death of a human being [i.e. Murtala Mohammed] took place:

Learned counsel for the defendant submitted that the prosecution has not proved this ingredient beyond reasonable doubt. He stated that the charge mentioned Murtala Mohammed as the deceased; but in the statements of Usama Yusuf and Abubakar Isah [Exhibits E & F respectively], they mentioned Murtala Isah as the deceased. Abubakar Isah who claimed to be the elder brother of the deceased taken to Kaduna for burial and who inspected the corpse stated that the corpse was that of Murtala Isah. Chief Ajanare referred to Maeze v. State [2004] All FWLR [Pt. 202] 1920 to support the view that in a case of culpable homicide, the deceased must be identified in order for the offence to be proved beyond reasonable doubt. Thus, failure to identify the corpse is fatal to the prosecution's case.

Chief Abdul Olajide Ajana also argued that PW1 & PW2, who identified the deceased as Murtala Mohammed, admitted that they did not know the

deceased before his death. Their evidence as to the name of the deceased is what they were told by other people; thus, their evidence is hearsay. He referred to **Ayo v. State [2015] 16 NWLR [Pt. 1486] 531**. He also pointed out that PW1 testified that he took photograph of the corpse; but this was not tendered in evidence. Learned counsel stated that the photograph and autopsy of the body of the deceased [which was not carried out] may have helped in "*resolving the riddle*" of the identity of the deceased. Chief Ajana urged the Court to resolve the obvious doubt as to the identity of who died and whether Murtala Mohammed died in favour of the defendant.

For his part, the learned counsel for the prosecution stated that from the evidence of the PW1 & PW2 and the evidence elicited from the defendant through cross examination, it has been established that the death of a human being actually took place on 15/10/2013 at tipper garage Lugbe, Abuja whose name was one Murtala. Also, in his statement [Exhibit D], the defendant clearly stated the identity of the person he stabbed to death as Murtala. He submitted that Exhibits B, C, E & F positively identified the deceased as Murtala. At no time did the prosecution tender any other evidence to the contrary. Mr. Idachaba concluded that the argument of the defence counsel that the identity of the deceased was not proved beyond reasonable doubt is misleading and misconceived.

Now, Exhibit B is the statement of Mohammed Lawal to the Police where he stated the name of the deceased as Murtala Mohammed. Exhibit C is the statement of Abubakar Usman to the Police where he stated the name

of the deceased as Murtala Mohammed. Exhibit E is the statement of Usama M. Yusuf to the Police where he stated that the name of the deceased is MurtalaIsah. Exhibit F is the statement of AbubakarIsahto the Police where he stated that the name of the deceased is MurtalaIsah. He added that he is the elder brother of the deceased. PW1 & PW2 are Police officers and, as rightly stated by learned defence counsel, their evidence is based on what people told them. In Friday UdoEkpov. The State [2001] 7 NWLR [Pt. 712] 292, it was held that where a Police officer testified about what a prospective witness told him in the course of investigation, that evidence is hearsay. Thus, the evidence of PW1 & PW2 on the name of the deceased based on what people told them is hearsay evidence.

In the charge, the defendant is alleged to have killed Murtala Mohammed contrary to the name of the deceased stated by AbubakarIsah [the elder brother] and Usama M. Yusuf. It is true that "Murtala" is common in the names; but Murtala Mohammed and MurtalaIsah are not the same. The prosecution did not make any effort to reconcile these names; perhaps to show that Murtala Mohammed and MurtalaIsah refer to the same person. It is noteworthy that Cpl. Ibrahim Abubakar [PW1] who said he saw the body of the deceased at Standard Care Hospital did not know the deceased before he died. PW1 also said he got a photographer to take photograph of the deceased; but the photograph was not tendered. There is no record from Standard Care Hospital to confirm the name of the deceased.

As it stands, there is nocogent or credible evidence to prove the identity of the person that the defendant allegedly killed; or to prove that Murtala

Mohammed died on 15/10/2013. To my mind, the evidence of someone who knew the deceased in his life time is necessary to prove the name or identity of the deceased especially as AbubakarIsah [the deceased elder brother] stated a name different from the name on the charge. In **Maeze v. State [supra]**, it was held that the failure to identify the corpse is fatal to the case of the prosecution as it is the law that in a case of culpable homicide, the deceased must be identified in order for the offence to be proved beyond reasonable doubt. I hold that the prosecution failed to prove the first element of the offence of culpable homicide punishable with death i.e. that the death of Murtala Mohammed took place.

[B] That such death was caused by the defendant:

The submission of Chief Ajana is that there is no evidence linking the defendant with the death of the deceased as the PW1 & PW2 are Police officers. Learned defence counsel argued that contrary to the evidence of PW1 that AbubakarUsman and Mohammed Lawal were eye witnesses to the commission of the crime, both of them [in their statements to the Police] did not say that they saw when the defendant stabbed the deceased with a knife. He urged the Court not to attach any probative value to Exhibit B [statement of Mohammed Lawal] and Exhibit C [statement of AbubakarUsman]. It was further submitted that failure of the prosecution to call AbubakarUsman and Mohammed Lawal, who were referred to as eye witnesses to the commission of the crime, is fatal to the case of the prosecution. Chief Ajana cited the case of **State v. Nnolim [1994] 5 NWLR**

[Pt. 345] 394to support the view that failure of the prosecution to call a vital witness is fatal to the charge.

The standpoint of Mr. James C. Idachaba is that the prosecution adduced cogent, credible, positive and incontrovertible evidence to prove beyond reasonable doubt that defendant and no one else was directly responsible and intentionally caused the death of the deceased, Murtala, by stabbing him to death. This can be seen from the testimonies of PW1, PW2 and the oral confessional statement made by defendant to the hearing of Woman Sgt. Deborah Samuel who gave evidence as PW2 in the trial within trial thus: *"I was there when the accused voluntarily gave his statement on how he killed the deceased with a knife. The accused was so sober in his explanation."* The counsel for the prosecution also relied on the confessional statement of the defendant [Exhibit D]. He concluded that the case of the prosecution was *"materially fortified and given additional probative momentum"* by the evidence of the defendant.

Now, Mr. Idachaba relied on what he referred to as the oral confessional statement and the written confessional statement of the defendant to the Police. I will consider the evidential weight or the probative value to be attached to the defendant's confessional statement under Issue No. 2. Let me first evaluate the evidence of the PW1 & PW2 to the effect that the defendant stabbed the deceased to death on 15/10/2013.

The evidence of PW1 is that when he went to the scene of the crime, he met one Abubakar Usman, an eyewitness. Abubakar Usman told him *inter alia*

that the defendant used a knife and stabbed the deceased on the right side of his chest. In his evidence, PW1 also stated that Mohammed Lawal was another eyewitness to the commission of the offence by the defendant.

In his statement [Exhibit B], Mohammed Lawal stated:

At about 10.30 a.m. on 15/10/2013, somebody rushed to my workshop and told me to come in time, that Mr. Yahuza Inusa [Duna] chuck somebody called Murtala Mohammed with knife, that I should come before he run away. Immediately, I heard that, I ran toward the area that the incident took place, opposite Video House tipper garage. When I reached there, I saw people surround Yahuza Inusa but nobody touch him. I then asked what's the problem, people then told [me] that Yuhuza Inuza killed somebody, but they rushed him to hospital. I then jack Yahuza trouser and order all my boys to support me so that we take him to the station which they did, and we got a car and carry him to Lugbe Police station and hand him over to Police.

In Exhibit C, Abubakar Usman stated in part:

On the 15/10/2013 at about 1030 hrs, I had a visitor from Masaka. Then I went to deceased, Murtala Mohammed by name, his shop and I bought two pure water and two mineral. After I bought what I wanted to buy, I now left but before my leaving, I overheard the said Yahuza Yunusa asking the deceased to give him his four hundred Naira only. I went into my house, then ...I saw people ran and they said, somebody stabbed person to death. However, I could not waste time, I ran to the scene which I saw him lied

down, while I was with him, one okada man came and I pleaded with him to avail me to carry the deceased to hospital for treatment. ...

It is evident from Exhibits B & C that Mohammed Lawal and AbubakarUsman did not say that they saw when defendant stabbed the deceased with a knife. What could be seen from the foregoing is what I may refer to as multiple degrees of hearsay evidence; someone told Mohammed Lawal, some people told AbubakarUsman, and thenAbubakarUsman toldPW1. Unfortunately, PW1 did not say what Mohammed Lawal and AbubakarUsman told him. I reiterate the position of the law that the testimonies of PW1 & PW2 constitute hearsay evidence, which the Court cannot rely upon. I need to add that the knife [Exhibit A] was not recovered from the defendant and there is no nexus between the defendant and the knife.

For his part, the evidence of PW2 is that when he visited the scene of crime weeks after the incident, *“the people there confirmed that the defendant stabbed the deceased with euro knife.”* The PW2 did not obtain statements from these people; and none of *“the people there”* was called as a witness. In the light of the foregoing, I hold that if the deceased was Murtala Mohammed, the prosecution has not adduced any credible evidence to prove that the defendant stabbed the deceased and caused his death.

[C] That the defendant's act was done with the intention of causing death:

Flowing from the decision of the Court above, I agree with the learned counsel for the defendant that the prosecution failed to prove this

ingredient of the offence as there is no credible evidence of any act done or omitted to be done by defendant which led to the death of the deceased.

The decision of the Court under Issue No. 1 therefore is that prosecution failed to prove the elements of the offence of culpable homicide punishable with death beyond reasonable doubt.

ISSUE 2

Can the Court convict the defendant for the offence of culpable homicide punishable with death on the basis of his extra judicial confessional statement, Exhibit D?

Let me first consider the argument of learned counsel for the prosecution that defendant made oral confession at Lugbe Police station. He referred to the evidence of Woman Sgt. Deborah Samuel who gave evidence as PW2 in the trial within trial to the effect that she was there when the defendant voluntarily gave his statement on how he killed the deceased with a knife. He posited that even though at the end of the trial within trial the Court rejected the said statement in its ruling of 14/12/2016, the oral confession made to the hearing of Woman Sgt. Deborah Samuel remains independent from the rejected written statement. He also stated that the defendant made oral confession to PW2 in the main trial [i.e. Sgt. Simon Ezekiel] that he stabbed the deceased with euro knife.

The learned counsel for the prosecution referred to the case of **Oseni v. State [2011] 6 NWLR [Pt. 1242] 138**, where it was held that the evidence of

the prosecution witnesses of what they heard the appellant say at the Police station was admissible and the trial court was right when it relied on same in convicting the appellant. He also referred to the opinion of the learned Author, J. A. Agaba, in his Book: *Practical Approach to Criminal Litigation in Nigeria*; and section 15[5] of the Administration of Criminal Justice Act, 2015 to support the view that oral confession of a suspect is admissible in evidence. Mr. Idachaba urged the Court to act on the oral confessional statements made by the defendant, which were not in any way contradicted.

In his reply on points of law, Chief Ajana submitted that trial within trial is a full trial on its own. The only purpose it serves is to determine the admissibility or otherwise of a confessional statement alleged to have been made by an accused person freely and voluntarily. Therefore, facts elicited during trial within trial are useful only for the trial within trial. He urged the Court to discountenance the above submissions of the prosecution.

I agree with Chief Ajana that the evidence adduced in the trial within trial is to enable the Court determine whether the confessional statement of the defendant dated 15/10/2013 made at Lugbe Police station was admissible in the light of the objection raised by the defence counsel. As rightly stated by Mr. Idachaba, at the end of the trial within trial, the Court rejected the statement. It is pertinent to remark that the Court considered the evidence of Woman Sgt. Deborah Samuel before it rejected the statement. The Court cannot now rely on the said evidence of Woman Sgt. Deborah Samuel to convict the defendant. The evidence of PW2 in the main trial [Sgt. Simon

Ezekiel] relates to the confessional statement of the defendant [Exhibit D], made at SCID, FCT Command, which is the focus under Issue No. 2.

In the trial within trial, the defendant retracted his confessional statement. The statement was admitted in evidence as Exhibit D. Now, can the Court convict the defendant on the basis of Exhibit D? Exhibit D reads in part:

I could remember on the 15th of October, 2013 at about 11.30 a.m. after the Sallah prayer. I, the deceased Murtala and two others whom I cannot remember their names because by then I was totally drunk with Indian hemp, with hard drug by name diazepam, and I cannot remember the number of tablets I took. We were chatting, I don't know what entered me. I saw a sugar cane loaded in a wheelbarrow with a knife without the owner and I don't know where the owner is. I went straight and removed the knife and stabbed the deceased. His name is Murtala and unknown people to me took him to National Hospital before he was confirmed dead by a medical doctor. ...

The learned counsel for the defendant stated that PW2 [Sgt. Simon Ezekiel] admitted that the defendant communicated with him in Hausa Language. He submitted that where a defendant speaks any language other than the official language [English Language], and makes a statement, the original statement is the statement in which he spoke; while the English Language interpretation is a secondary copy of the original statement. Both the original statement and the secondary copy must be tendered in evidence for the statement to have any evidential value. He referred to **Ahmed v.**

State [1999] 7 NWLR [Pt. 612] 641 in support of his view. He argued that the failure of the prosecution to tender the Hausa Language version of the statement of the defendant makes the statement [Exhibit D] inadmissible. He urged the Court to expunge Exhibit D from its records.

Chief Ajana also argued that even where the confessional statement is not expunged, the Court is enjoined to determine its veracity. He referred to Aliu v. State [2015] All FWLR [Pt. 782] 1706 and Mbang v. State [2013] 7 NWLR [Pt. 1352] 48 to support the view that a confessional statement must be tested and examined in the light of other pieces of evidence outside the confession. He also cited the case of Odunayo v. State [2014] 12 NWLR [Pt. 1420] 1 for the view that where a confessional statement is retracted, it is desirable to have corroborative evidence, no matter how slight, before convicting on such statement. It was submitted that there is no evidence to corroborate Exhibit D.

On the other hand, counsel for prosecution pointed out that a confessional statement is the best evidence as it is an admission of guilt by an accused person. He relied on Nwangbomu v. State [2001] 2 ACLR 9 to support the view that where it is proved that an extra-judicial confession was made voluntarily; and it is positive, unequivocal and amounts to an admission of guilt, it will suffice to ground a finding of guilt regardless of the fact that the maker resiled therefrom or retracted it at the trial.

In Odunayo v. State [supra], the law was restated that a court can convict on a free and voluntary confession of guilt by an accused person whether

judicial or extra-judicial if it is direct, positive and is duly made and satisfactorily proved. Where a confessional statement is denied or retracted it is desirable to have corroborative evidence, no matter how slight, before convicting on such confessional statement. The court has a duty to test the veracity or otherwise of the confessional statement by comparing it with other facts outside the statement to see whether they support, confirm or correspond with the statement. It was further held that in determining whether a confession is true, the following tests should be adopted:

- i. whether there is anything outside the confession to show that it is true;
- ii. whether the statement is corroborated, no matter how slightly;
- iii. whether the facts contained therein, so far as can be tested, are true;
- iv. whether the accused person had the opportunity of committing the offence;
- v. whether the confession of the accused person was possible; and
- vi. whether the confession was consistent with other facts which have been ascertained and proved in the matter.

See also the cases of Ogedengbe v. State [2014] 12 NWLR [Pt. 1421] 338 and Olude v. State [2014] 7 NWLR [Pt. 1405] 89 on the above principle.

I have applied the above six tests. I adopt the decisions of the Court under Issue No. 1 that there is no credible evidence to prove that the defendant caused the death of the deceased; and that the testimonies of PW1 & PW2

that the defendant caused the death of the deceased are hearsay evidence. I also hold that there is nothing outside the confessional statement to show that it is true; there is nothing, no matter how slight, to corroborate the statement in Exhibit D; there is no evidence that the defendant had the opportunity of committing the offence; and the confession is not consistent with any other fact which has been proved or ascertained in the matter. In the light of the foregoing, the decision of the Court is that it cannot convict the defendant for the offence of culpable homicide punishable with death on the basis of Exhibit D, his extra-judicial confessional statement.

CONCLUSION

The prosecution has failed to prove the offence of culpable homicide punishable with death against the defendant beyond reasonable doubt. The defendant, Yahuza Yunusa, is discharged and acquitted.

HON. JUSTICE S. C. ORIJ
(JUDGE)

Appearance of Counsel:

1. E. O. Ochayi Esq. for the prosecution; holding the brief of James Idachaba Esq.

2. Chief A. O. Ajana for the defendant.