

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT LUGBE – ABUJA
ON, 25TH FEBRUARY, 2019.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO..:-FCT/HC/CR/109/16

BETWEEN:

COMMISSIONER OF POLICE:.....COMPLAINANT

AND

JAMES CLEMENT:.....DEFENDANT

Bankole Akomolafe for the Defence with David Olowoniya and Agnes Ukaforo and Uchena Mbielu.

Mr. Kufuabasi Ebong for the Prosecution.

JUDGMENT.

The Defendant was on 6th December, 2016 arraigned on a one count charge as follows;

Count one:

“That you James Clement “M” 29 years old Mason of Sherriti-Kabusa, Apo, FCT-Abuja within the jurisdiction of this Honourable Court on or about 09/08/2016 at about 19:00hrs in Sherriti-Kabusa, Apo committed culpable homicide not punishable with death by causing death of one Gladys Joy Gabriel “F” 27 years, you thereby committed an offence punishable under Section 224 of the Penal Code law.”

The Defendant pleaded not guilty to the charge and thus, the case proceeded to trial.

The Prosecution opened its case against the Defendant on the 15th day of February, 2017 with the evidence of one Orinya Oche Friday, a brother to the deceased who testified as PW1.

In his evidence in chief, the PW1 told the Court that on the 9th August, 2016, he received a call from a neighbour to the Defendant, telling him that the Defendant killed his sister. That upon receipt of the call, he went to Kabusa Village where his sister resided with the Defendant and from there he was referred to an health care centre where he went and found the dead body of his sister.

He told the Court that the doctor at the healthcare centre told him that the Defendant beat his sister and in the process she fainted and was rushed to the clinic by the Defendant. That the doctor said he tried his best to save her life but that her condition was critical and he instructed the Defendant to take her to the General Hospital. But that while the Defendant took a long time arguing with his brother, the victim died.

The PW1 told the Court that he and the Police took his sister to Asokoro Hospital where doctor pronounced her dead and instructed them to take her body to the mortuary.

He stated that from the hospital, he went to her late sister's house where an eye witness told him that his sister ran to a neighbour's house and the Defendant pushed away the neighbour who tried to save his sister's life and that the Defendant pulled down the said neighbour's burglary proof and that was where his sister died.

The statements made by the PW1 at Apo and "CIID" Police Stations were tendered and admitted in evidence as Exhibits PW1A and PW1B respectively. Under cross examination, the

PW1 admitted he did not witness the beating of his sister by the Defendant.

One Otumba Ismail Lawal also gave evidence for the Prosecution as PW2 on the 16th day of March, 2017. He told the Court in his evidence in chief that the Defendant was his tenant.

He stated that on the night of the incident, he was sleeping after he returned from work, when he heard noise from outside his house. That he went outside and enquired and was told that the Defendant was fighting outside his house. He told the Court that he went to the scene but did not see anybody. That he was told that they had gone to the hospital and when he got to the hospital the doctor told him that the victim had died, and there upon he rushed to Kabusa Police station and made a report and the Defendant was thereafter arrested. His statement to the Police was tendered and admitted in evidence as Exhibit PW2A. The PW2 was duly cross examined by the defence counsel.

On the 13th day of June, 2017, one Inspector Raymond Isama from the Homicide Section (CID) of the Nigeria Police, FCT Command gave evidence for the Prosecution as PW3. He told the Court in his evidence in chief that on the 11th of August, 2016, a case of culpable homicide involving the Defendant was transferred from the Apo Division to his department at the CID. He stated that during the investigation, the Defendant informed him that he came back from work and met his door locked as his wife was not at home. That his wife later came back home but subsequently returned to her girlfriend's house again. That the Defendant traced his wife to her girlfriend's house where a quarrel ensued between them. That the Defendant in the course of the quarrel, slapped his wife and beat her unconscious

and when he rushed her to the hospital, the doctor confirmed her dead, and she was taken to the mortuary.

The statement obtained from the Defendant was tendered and admitted in evidence as Exhibit PW3A.

The PW3 was equally cross examined by the defence counsel during which he told the Court that all he did in respect of the investigation was take the statement of the Defendant and visit the scene of crime.

One Dou Bayero who told the Court that he is a medical personnel testified for the Prosecution on the 31st day of October, 2017 as PW4. He stated in his evidence in chief that on 9th day of August, 2016, around 9:45pm, the Defendant brought his wife to his medical facility in a state of coma or half dead.

He told the Court that he inquired from the Defendant what happened to his wife and the Defendant told him that he was having misunderstanding with his wife during which he beat his wife and she went into coma and therefore, he rushed her to the medical facility.

The PW4 told the Court that while he was trying to contact a doctor, the Defendant absconded with the motocyclist that brought them, leaving his wife at the facility. He stated that they could not treat the Defendant's wife who was in coma because the Defendant was not there to provide them with necessary information and that when they did not see the Defendant for over an hour, he alerted the Police. That before the arrival of the Police, the woman died and they issued out a death confirmatory note to the Police. The Death Certificate was tendered and admitted in evidence as Exhibit PW4A.

Under cross examination, the PW4 told the Court that he did not perform autopsy on the deceased, but that the cause of death was what the Defendant told him.

Also, that he could not have written Exhibit PW1A if his consultant was around as medical personnels are not allowed to write Death Certificate. He stated however, that he conferred with his consultant who told him to fill the Form in the morning of the following day and that what he filled in the Form (Exhibit PW4A) was what the consultant directed him to write.

In continuation of the evidence of the Prosecution, one ASP John Abuka testified on the 8th day of March, 2018 as PW5. He told the Court that he was on duty at Apo Police Station on the 10th August, 2016 when the Defendant was brought to the station at about 08.00hrs from Kabusa Police Post in relation to a case of culpable homicide. He stated that upon receipt of the case, he in company of other Police Officers moved to the scene of the alleged offence at Kabusa where they saw the lifeless body of one Mrs Gladys Joy Gabriel, said to be the wife of the Defendant lying on a bed in a clinic named Shadalafia.

That the body was taken to the Asokoro general Hospital for autopsy and therefater, statement was obtained from an eye witness, one Miss Sylvia Joy Michael Uyo.

Furthermore, that the Defendant volunteered statement to the Police after words of caution had been administered to him. That the Defendant stated how he beat his wife in the house of Miss Sylvia Michael Uyo where she ran to and how she fell down and became unconscious while he was beating her and he took her to a nearby clininc where she died.

The statements of the IPO, the eye witness and that of the Defendant were tendered and admitted in evidence as Exhibits PW5A, PW5B and PW5C-C1 respectively.

The PW5 was duly cross examined by the defence counsel.

The Defendant opened his defence on the 3rd day of July, 2018. Testifying as DW1, the Defendant told the Court that when he returned from work on the 9th of August, 2016, his wife who was ill at the time, was not at home. He stated that he traced his wife to the house of one of his town's people and a neighbour where she usually visits and where he had warned her not to visit again. That when they opened the door, that he spoke to the wife through the unopened burglary proof and requested for their house keys and his wife asked him to go, that she will come later. That he passed his hand through the protector/burglary proof barricading the door and slapped his wife and a struggle ensued between them. Then his wife held him on the collar and he pushed her to release himself and she hit her waist on a rubber custard container.

The DW1 stated that as he was leaving the scene, the woman in whose house the incident happened, while holding his wife, called him to come back; saying that his wife was not breathing properly. That he went back and found that his wife was struggling to breathe and then went out, got a vehicle and with the help of his brother whom he called, he conveyed his wife to a hospital.

He stated that on getting to the hospital, the medical personnel, "the doctor" exclaimed at seeing him and asked: "you again?" That the doctor asked if his wife was still sick and he told the doctor that she had not fully recovered and the doctor proceeded to administer drip on her while he was asked to wait outside.

Testifying further, the DW1 told the Court that after he had gone home and brought clothes for her to change as she had been wet from the rain that fell on them while they were conveying her to hospital, the Medical Personnel directed him to go and get a vehicle to convey her to Wuse General Hospital because she needed to be administered oxygen and by the time he came with a vehicle after some delays, he was told that she had died. That the medical personnel then invited the Police who came and arrested him.

He maintained that contrary to the evidence of the Medical Personnel, the PW4, that his wife was brought to the health center half dead and that she was never treated there, that the PW4 administered drip and injection on his wife when he brought her to the hospital.

The DW1 was duly cross examined by the Prosecution during which he maintained that his wife did not die as a result of the fight he had with her.

At the close of evidence the parties filed and exchanged final written addresses.

In his final written address dated and filed on the 31st day of October, 2018, learned counsel for the Defendant, Bankole J. Akomolafe, Esq., raised the following four issues for determination;

1. Whether or not Exhibit PW4A tendered by the Prosecution as Autopsy Report qualifies as one which this Honourable Court can base its conviction?
2. Whether or not the Honourable Court would be willing to convict the Defendant based on hearsay evidence of all the witnesses of the Prosecution?

3. Whether or not there are material contradictions noticeable in the evidence of the Prosecution which makes it manifestly impossible for the Prosecution to discharge the burden of proof on him?
4. Whether or not the Prosecution has been able to prove the ingredients or elements of the offence of culpable homicide not punishable with death, to warrant conviction of the Defendant?

In respect of issue one, learned counsel argued that Exhibit PW4A does not qualify as valid autopsy report as same was not issued by a pathologist or a medical doctor, and that no test was carried out on the deceased before the report was issued.

Relying on **Zubairu v. State (2015) 16 NWLR (Pt 1486) 504 at 526**, he posited to the effect that the said Exhibit PW4A cannot be relied upon as it does not contain the requisite details required by law.

He urged the Court to discountenance Exhibit PW4A as same is fundamentally bereft of the status of both a standard autopsy report and a standard death certificate.

He further contended that an autopsy report is a very important proof for the just determination of this suit especially where death was not instantaneous or nearly instantaneous. That based on the established delicate health condition of the deceased, that other factors other than the scuffle between her and the Defendant could have been responsible for her death and that what could have doused any doubt to that effect was the autopsy report which the Prosecution curiously and wilfully withheld.

On issue two, learned counsel contended that the entire case of the Prosecution is based on mere speculation, suspicion and

hearsay accounts of the witnesses called in the case. Relying on Section 37 and 38 of the Evidence Act, 2011, he contended that hearsay evidence is not admissible in law. He referred to **Odogwu v. State (2013) 14 NWLR (Pt.1373) 74 at 104; Njoku v. State (2013) 2 NWLR (Pt. 1339) 548 @ 568.**

He argued that the evidence of PW1-PW5 all amount to hearsay evidence as none of them was present during the alleged commission of the offence and that the alleged eye witness on whose story their evidence was based was not called to corroborate their evidence. He contended that in the absence of any credible eye witness, the Defendant cannot be convicted on the evidence of the Prosecution.

Learned counsel further contended that the reliance of the Prosecution on the purported extra judicial statement of the Defendant cannot hold water as the Defendant vehemently denied making such statement or supplying information contained in the statement. He asserted that the denial of the Defendant of having made the extra judicial statement was not at any time controverted or rebutted and posited that the law is that uncontroverted fact or evidence amounts to admission. He referred to **Okereke v. State (No.1) (2016) 5 NWLR (Pt.1504) 69 at 90.**

Relying on **Zubairu v. State (supra)**, he submitted that the Prosecution has not made out a case against the Defendant as mere suspicion, no matter how strong, can never ground a conviction.

Learned counsel argued his issues three and four together. Placing reliance on **Emeka v. State (2014) 13 NWLR (Pt 1425) 614 at 629,** he posited that it is a general principle in criminal trial that the Prosecution's case must not be so riddled with material contradictions and inconsistencies that would make it

unsafe to convict the accused person, and that where there are inconsistencies and contradictions in the Prosecution's case triggering reasonable doubt in the Prosecution's case, same has to be resolved in favour of the Defendant.

He identified the alleged contradictions and inconsistencies as follows;

- (a) The time of death; that while PW3 stated that the deceased was already dead before arriving at the clinic, the Community Health Officer of the Clinic testified that the deceased was brought in unconscious but died some hours later.
- (b) The evidence of PW1 who testified that he was called by the Defendant's neighbour and informed of his sister's death, whereas he admitted stating in his extra judicial statement that it was his elder brother in Makurdi who called him and informed him of his sister's death.
- (c) The scene of crime; that the evidence of PW5 was that the scuffle took place in the house of PW2 but PW2 denied same, saying the scuffle took place about 5 houses away from his house.

He argued that in the light of the above contradictions and inconsistencies, the Defendant cannot be convicted on the evidence of the Prosecution.

He further argued that the Prosecution has not been able to discharge the onus of proof on it as it did not prove all the necessary and vital ingredients of the charge. He referred to **Dawai v. State (2018) 5 NWLR (Pt 1613)499 @ 509.**

He urged the Court in conclusion to discharge and acquit the Defendant as the Prosecution has woefully failed to prove its case against the Defendant.

Relying on points of law to the Prosecutor's final written address, learned defence counsel relied on **Kolawole v. State (2015) 8 NWLR (Pt.1460) 134 at 165** to posit that the alleged statement of the Defendant, Exhibit PW5C, cannot be relied on by the Prosecution to prove the charge against the Defendant as the Defendant denied making same and also for the fact that same was not corroborated and was also inconsistent with other facts as ascertained by the evidence of the Defendant.

He further placed reliance on **Mark v. Abubakar (2009) 2 NWLR (Pt. 1124) 79 at 184-185** to submit that Exhibit PW5B, the statement of the eye witness amounts to documentary hearsay as the maker was not called to testify and tender same; and that as such, the Court cannot rely on same. He further referred to **Lambert v. Nigerian navy (2006) 7 NWLR (Pt.980) 547; Section 37 of the Evidence Act, 2011** and **Omega Bank Nig. PLC v. O.B.C. Ltd (2006) 4 WRN 1.**

The Prosecution filed its final written address on 10th December, 2018 wherein learned prosecuting counsel, Kufreabasi Ebong, Esq., raised a sole issue for determination, namely;

“Whether the prosecution proof (sic) his case beyond reasonable doubt by establishing the guilt of the defendant?”

The learned counsel, in proffering arguments on the issue so raised, contended that the prosecution established the ingredients of the charge by proving beyond reasonable doubt that somebody, one Gladys Joy Gabriel, was reported dead,

that the death was unnatural death; that the act of the Defendant caused the death of the deceased; that the deceased died as a result of the injury caused by the Defendant; that the Defendant's action was rash and unlawful; and that the Defendant intended to cause grievous bodily harm to the deceased. He referred to **Jeremiah v. The State (2012) 14 NWLR (Pt. 1320) 248; Okoro v. The State (2012) 4 NWLR (Pt 1290) 351.**

He argued that the Prosecution can prove its case beyond reasonable doubt by either of the following ways;

- i) Eye witness account.
- ii) Confessional Statement of the defendant.
- iii) Circumstantial evidence.

He contended that where a confessional statement has been proved to have been made voluntarily and it is positive, unequivocal and amount to an admission of guilt, that it is sufficient to sustain the conviction of the accused person irrespective of whether or not the maker retracted same in the course of trial. On this proposition, he referred to **Adesina v. State (2001) 5 NWLR (Pt.705) 79; Ifeanyichukwu Akwuobi v. The State (2017) 2 NWLR (Pt. 429).**

On the question of non tendering of autopsy report, he placed reliance on **Jeremiah v. The State (2012) 14 NWLR P.248** to posit that where the cause of death is obvious, medical evidence ceases to be of a practical or legal necessity. He further referred to **Effiong v. The State (1998) 8 NWLR (Pt.562) 32.**

Learned counsel further contended that in addition to the evidence adduced by the Prosecution, the Defendant in his evidence before the Court, testified to how he slapped the

deceased and how the deceased fell down, hit her waist and fainted before he rushed her to hospital where she later died. He posited that these pieces of evidence are sufficient to establish the guilt of the Defendant.

Arguing that there are no contradictions in the evidence of the Prosecution as alleged by the defence counsel, he urged the Court to find for the Prosecution on the basis of the evidence adduced before the Court and to convict and sentence the Defendant accordingly.

The Defendant was charged with the offence of culpable homicide not punishable with death by causing the death of one Gladys Joy Gabriel, who evidence adduced during trial revealed was cohabiting with the Defendant before her death.

The offence of culpable homicide is defined in Section 220 of the Penal Code law as follows;

“220. Whoever causes death –

- (a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or***
- (b) by doing an act with the knowledge that he is likely by such act to cause death; or***
- (c) by doing a rash or negligent act, commits the offence of culpable homicide.”***

Section 222 of the Penal Code law provides for instances when culpable homicide will not be punishable by death; while punishment for culpable homicide not punishable with death is provided for in Section 224 of the same law.

In the determination of this case, this Court will adopt the issue for determination as raised by the learned prosecution counsel in his final written address, to wit;

“Whether the prosecution has proved the offence of culpable homicide not punishable with death beyond reasonable doubt by establishing the guilt of the Defendant?”

To prove its case, the prosecution is required to establish beyond reasonable doubt by credible and compelling evidence that the Defendant caused the death of the deceased under any of the conditions listed under Section 222 of the Penal Code Law. Thus the Prosecution is expected to prove the ingredients of the offence to wit;

- (a) That the person in question was dead
- (b) That the death was unlawfully caused by the act of the Defendant and
- (c) That the Defendant intended to kill or cause grievous harm to the deceased.

See **Young Oke Uwa v. State (2002) 4 SCNJ 3282.**

The Defendant was alleged to have slapped and beaten the deceased during an argument which then led to a scuffle that resulted in the deceased falling down and thereby going into a coma from which she died. It was therefore argued by the prosecution that it was the act of the Defendant that led to the death of the deceased. The learned defence counsel argued that the prosecution failed to provide autopsy report to prove that the death of the deceased was caused by the Defendant and not by any other factor. The burden on the prosecutor is to prove that the act on the Defendant not caused grvious harm but that it certainly did cause the death of deceased.

In **Sansani & Anor v. State (2016) LPELR-40257(CA)**, the Court of Appeal, per Abiru, J.C.A held thus;

“Culpable homicide not punishable with death is akin to the offence of manslaughter. In Shosimbo vs. The State (1974) All NLR 603, the Supreme Court stated that ‘for the offence of manslaughter, it is not necessary to prove any intent to kill or do grievous bodily harm provided there is proof that the act of the accused caused some harm to the deceased which harm caused his death’...

Thus, to sustain a charge of culpable homicide not punishable with death, it is sufficient if the Respondent proved that the said act of the Appellant was unlawful, unauthorized and inexcusable in law and/or that it was rash and reckless without due regard or consideration for its consequences and/or that it was negligent”.

In the instant case, in attempt to establish its case against the Defendant, the Prosecution tendered among others, Exhibits PW3A and PW5C, both of which were statements of the Defendant made to the Police at CIID and Apo Police Station respectively, and Exhibit PW5B, the statement of an eye witness, Sylvia Michael Eyo, obtained by the Police during investigation of the case. I do not attach much weight to the Exh PW5A statement of Sylvia Michael Eyo who never came to give evidence. Her statement does not sway me even though it forms part of the evidence of the prosecutor.

The learned defence counsel contended that Exhibits PW3A and PW5C are inadmissible in evidence and should be discountenanced by the Court because the Defendant denied making them. Contrary to this assertion, when the Prosecution

sought to tender Exhibit PW3A, the same was shown to the Defendant and the Court asked him: "Is that your statement?" In response, the Defendant answered: "Yes, it is". The defence counsel at that point sought to raise objection to the admissibility of the document, but realizing that the Defendant had already acknowledged same as his statement, he withdrew his objection, and thus the statement was admitted in evidence.

Subsequently, during the evidence of PW5, the Prosecution sought to tender another statement made by the Defendant to the Police at Apo, Police Station. When same was shown to the Defendant and asked if that was his statement, he responded that he did not write it, that the IPO wrote it, and that he did not sign it. The learned defence counsel told the Court he had no objection to its admissibility and thus, the statement was admitted in evidence as Exhibit PW5C.

A meticulous look at Exhibits PW3A and PW5C shows that they contain similar or same facts about the Defendant as well as the account of the event that transpired, leading to the death of the deceased. Regarding how the deceased died, the facts in both exhibits have it that on the day in question, the Defendant came back from work in the evening and met the door to his house locked. He waited until the deceased came back, and opened the door and when he questioned her on her whereabouts, she got angry and returned to her friends house where she was coming from. In anger, the Defendant went after her to her friend's house, and demanded that they both go home. When the deceased refused, the Defendant forced himself into the said friend/neighbour's house who happened to be Sylvia Michael Eyo maker of Exh PW5B and slapped the deceased that led to her falling down and in the process of beating her, while lying on the ground. She became unconscious and the Defendant then took her to a medical facility where she

eventually gave up the ghost. In furtherance to Exh PW3A Defendant said ***“I traced her to her friend’s house and slapped her and there she fell down and fainted I rushed her to hospital for treatment where she gave up the ghost”***.

There is no discrepancy in the accounts as contained in Exhibits PW3A and PW5C. The Defendant having admitted that Exhibit PW3A is his statement, I have no doubt that he also supplied the information recorded by the IPO in Exhibit PW5C. Furthermore, the Defendant in his oral testimony in his defence, gave the similar account of how he came back from work and did not see his wife at home, and then he went to one of his towns people’s house where his wife frequently visits and where he had warned her to stop visiting. That he found her there and demanded that they go home but the wife refused and he reached through the protector and slapped her and a scuffle ensued between them in the course of which his wife fell down and hit her waist on a plastic bucket. That when he later realized that his wife, who was pregnant at the time, was gasping for air, he rushed her to a medical facility for treatment and there she later died.

To my mind, the Defendant’s evidence in his defence further confirms the accounts in Exhibit PW3A and PW5C to the effect that the Defendant was angry with his wife’s conduct; that he slapped his wife causing her to fall down during the scuffle and lost consciousness, and then he took her to a medical facility where she was eventually confirmed dead. In both Exh PW3A and PW5C when the incident was still fresh in the mind of the Defendant, the Defendant did not state that any treatment was administered to the wife immediately he brought her to the health centre called Shadalafya. That goes to confirm the evidence of PW4, the medical personnel, that the deceased was presented to the clinic in a state of coma and that while

trying to contact the doctor, that the Defendant absconded and immediately after the victim died. That PW4, he alerted the Police as the Defendant was no where to be found. This goes to confirm the evidence of the Defendant that he delayed in returning to the clinic after bringing the wife to the clinic. PW4 said that on arrival of the Police, a confirmatory death certificate was issued to the Police; Exh PW4A.

The learned defence counsel has urged the Court to discountenance the said Exhibit PW5B for the prosecution's failure to call the maker thereof to testify. It is the law however, that an investigating authority can tender any object they obtained in the course of investigation and same would be admissible in evidence. It is the duty of the Court to attach any or no weight to the said statement. Moreso, it is a general rule that a party has discretion as to who or who not to call as a witness. It is my conclusion that the evidence of the maker of Exh PW5B would have added more credence to the prosecution's case; but her absence is not also fatal to the prosecution's case.

The fact that exist both in the statements of the Defendant which is so probable that a prudent man, in the circumstances of this case, may act upon is that the Defendant admitted beating the deceased and she became unconscious and thus led to her death. This I am convinced of and I believe. It is noteworthy that the confessional statement of the Defendant stands independent of Exhibit PW5B. Obviously, the two statements of the Defendant are materially consistent, the totality of which is acceptable to this Court. I attach no weight to Exh PW5B.

The question at this point is whether the above pieces of evidence are sufficient to ground the conviction of the

Defendant? The law is trite that the burden on the Prosecution to prove the guilt of the accused person beyond reasonable doubt can be established in any one of the following ways; circumstantial evidence, confessional statement voluntarily made, or evidence of an eye witness. See **Anim & Ors v. FRN (2014) LPELR-23219 (CA); Buba v. State (2016) LPELR-40201 (CA).**

To prove the charge of culpable homicide not punishable with death, the Court of Appeal in **Sansani & Anor v. State (supra)**, held that it is sufficient if the Prosecution proved that the act of the Defendant was unlawful, unauthorized and inexcusable in law and/or that it was rash and reckless without due regard or consideration for its consequences and/or that it was negligent.

The act of the Defendant was unquestionably unlawful, unauthorized and inexcusable in law to slap and beat a pregnant woman. The consequences of his act on his wife who was pregnant at the time was rash and inexcusable.

Further, the learned defence counsel had argued to the effect that the failure of the Prosecution to tender a medical or autopsy report is fatal to its case as, according to him, the Prosecution in the absence of that, could not establish that the act of the Defendant and not any other factor, caused the death of the deceased.

I am unable to agree with the learned counsel. It is the law that the cause of death can be inferred by the Court from the evidence before it even in the absence of medical report. In **Ali v. The State (2011) LPELR-3728 (CA)**, it was held by the Court of Appeal, per Orji-Abadua, J.C.A that;

“... with or without medical report; a trial Court can still infer the cause of death provided there is clear and sufficient evidence that death of the deceased was the direct result of the unlawful act of the accused person to the exclusion of all other reasonable possible causes.”

Also in **Zubairu v. State (supra)**, Ngwuta, JSC had this to say,

“Medical Certificate as to the cause of death may be dispensed with where death occurred instantly or almost immediately from the voluntary act of the accused.”

From the evidence before this Court, the Defendant, driven with rage, beat his pregnant wife to a state of unconsciousness. There is no credible evidence before this Court that the deceased revived from that unconscious state before her eventual death. There is therefore, no doubt in my mind that the voluntary act of the Defendant caused the death of the deceased.

This Court has viewed with seriousness the requirements that in a case of murder or manslaughter the cause of death must be positively proved either by direct evidence or by circumstantial evidence that has left no room either for a doubt or speculation. That it was the direct act and result of the act of the Defendant that caused the death of the deceased Gladys Joy Gabriel.

Having regard to the foregoing this Court is satisfied that the prosecution has proved its case beyond reasonable doubt against the Defendant.

The Defendant is pronounced guilty of culpable homicide not punishable with death under Section 224 of the Penal Code Law.

ALLOCUTUS:

I plead that the Defendant being a first offender, that the Court would temper justice with mercy.

Court:

I refer you to Section 310 (1) and (2) of the Administration of Criminal Justice Act before the Defendant is sentenced.

Defence counsel:

I have his brother who is here to testify to his character.

Witness testifying to character of the Defendant.

Witness as to character; Sworn on the Holy Bible, and states: My name is Clement Jerry. I reside in Karo by City College. I am a businessman.

Defence counsel:

Who is the Defendant to you and how long have you known him?

Witness as to character:

He is my younger brother and I have known him from birth.

Defence counsel:

What does he do?

Witness as to character:

He does menial jobs like building.

Defence counsel:

How often does he involve in scuffle?

Witness as to character:

I do not know him as a troublesome person.

Defence counsel:

Do you know the deceased?

Witness as to character:

I met her once. I do not know my brother to be a violent person.

Defence counsel:

I urge the Court to be merciful. He has been in detention since 2016. I urge the Court to consider all that.

At this stage, Mr. Kufuabasi Ebong appear, for the Prosecution.

Prosecution counsel:

Having complied with the Section 310 of the Administration of Criminal Justice Act, we urge the Court to sentence the Defendant maximally.

Court:

Having complied with the 310 Administration of Criminal Justice Act and also having heard the plea of Allocutus, the Court considers it very irresponsible of the Defendant to slap or beat a pregnant wife of whom he is responsible for.

The Defendant having been found guilty is hereby sentenced to 10 years imprisonment without option of fine.

The Defendant has been in custody since August, 2016. He has spent 3 years in custody.

Court considers the 3 years the Defendant has spent in custody and subtracts it from the 10 years.

HON. JUSTICE A. O. OTALUKA
25/2/2019.