

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT NYANYA ON THE 27TH DAY OF FEBRUARY, 2020

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO: FCT/HC/ CR/68/15

COURT CLERK: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN:

COMMISIONER OF POLICECOMPLAINANT

AND

CHRISTIAN PILADOR DABU.....DEFENDANT

J U D G M E N T

By a Charge dated 14/12/15, the Defendant is charged on a one count charge of Culpable Homicide punishable with death under Section 211 of the Penal Code.

It states:

“That you Christian Pilador Dabu, male on or about 12/11.15 at about 3:30 p.m at Eden Parks & Garden, Utako FCT Abuja within the Abuja Judicial Division did commit Culpable Homicide punishable with death in that you caused the death of Gabriel Iji Adema, Male adult by stabbing him with a knife in his stomach with the knowledge that his death would be the probable consequence of your act

and you thereby committed an offence punishable under Section 221 of the Penal Code.”

On the 14th day of March 2016, the Defendant pleaded Not Guilty.

The Prosecution opened its case and called two witnesses in proof thereof.

The 1st Prosecution Witness is Ambrose Garba. He stated that he lives in Bwari Abuja. He works at Eden Parks & Garden. He roasts meat at the said Garden.

He knows the Defendant. He also knows the Deceased, Gabriel Iji Adema.

He stated that the Defendant started work in the Garden before him.

On 12/11/15, he was working. He also saw the Defendant and the Deceased working. The Defendant carried charcoal and the Deceased wanted to take the charcoal from him but the Defendant refused.

The Deceased dragged the charcoal from him and put it inside the kitchen.

The Defendant on the other hand dragged the charcoal to his own place. He put the charcoal inside the oven.

The Deceased fetched water and poured it inside the charcoal. They started dragging the charcoal. The Deceased

thereafter slapped the Defendant. The oven fell down. The Defendant went outside. He was trying to raise up the oven. The Deceased went to the kitchen.

As he was trying to raise up the oven, he did not know when the Defendant carried a knife. The Deceased ran, shouting. When he heard the shout, he went there, the Deceased tried to raise up his cloth. He wanted to take him to the Hospital. He now went to tell their General Manager.

The General Manager took him to the Hospital. He was rejected in the first Hospital. Before they got to the second Hospital, he died. There was no other person in the kitchen. When the oven fell, the Deceased went outside. When he was trying to raise up the oven, he did not know when the Defendant entered into the kitchen.

He just heard a shout. The Deceased ran outside. When he went there, he tried to raise up his cloth to show him where he was stabbed with knife. The Defendant carried a knife. The Deceased was stabbed at the back.

He was close to the kitchen, he roasts meat. The incident happened after 2 p.m.

The slapping and dragging took place outside the kitchen.

It is the Defendant that stabbed the Deceased. The Defendant and the Deceased are all workers in the Park roasting fish.

Under Cross-examination by the Defence. PW1 answered as follows:

The Deceased slapped the Defendant in the course of dragging the charcoal.

He remembers making a statement to the Police over the matter.

He cannot remember the date of the statement. He answered he did not say in his statement that oven fell on the Defendant.

He further said, the Deceased did not hit the Defendant with an iron.

To a question, he answered that he was trying to raise the oven because the Defendant was under the oven.

He said it was the Deceased who pulled the oven over the Defendant.

The oven was a heavy iron.

There was a gutter near the oven.

The Defendant fell inside the gutter.

The Deceased did not pour water on the Defendant.

There were other people there but their attention was not on the incident that was happening. He does not know that the Defendant's face was covered with blood and other injuries.

To another question, he answered that it is a busy place.

That there are many workers. People go in and come out.

He does not know if somebody was in the kitchen at the time of the incident.

They were only two in the kitchen.

That before the Deceased ran into the kitchen, he did not go into the kitchen to check.

The kitchen had two doors.

He answered that it is not correct that Deceased did not run into the kitchen.

To another question, he answered that he was trying to cut his meat. He was not involved in separating the fight. He did not have interest in the fight.

They were dragging the charcoal and playing with it so he concentrated on his meat.

The Deceased did not tell him who stabbed him.

He did not follow the General Manager to the Hospital.

The 2nd Prosecution Witness is ASP Madu Obinwah. He is presently at the Life Camp Division of the Nigerian Police Force but on 12/11/15 he was serving at Utako Divisional Police Headquarters. His work includes intelligent gathering and investigation.

He said on 12/11/15, there was a distress call from Eden Parks & Garden about a fight and that somebody was stabbed.

He went to the scene with one Asuquo.

On getting there, the employer of the Defendant narrated that the Defendant stabbed one of his colleagues called

Daniel and that he was rushed to the Hospital. They arrested the Defendant alongside the knife he used in stabbing the Deceased.

He made a statement under caution. He wrote the statement himself. The said Sgt. Asuquo has been posted to Ogun State. He was detailed to be the IPO.

He was posted immediately after the case was assigned to him. The statement was brought before him after it was obtained by Asuquo. He endorsed it.

That immediately they returned from the scene of accident, not quite 35 minutes, some of the Deceased colleagues returned from the Hospital to inform them that the Deceased has given up the ghost.

They subsequently transferred the case to the State CID for discreet investigation. The knife was recorded as an Exhibit and was transferred along with the case file.

That it is difficult to get Asuquo to Court because of logistics. That he supervised him and they did the investigation jointly. The confessional statement of the Defendant made on 12/11/15 was admitted and marked Exhibit A after a trial within trial.

The above is the case of the Prosecution.

The 1st Defence witness is Christian Pilador.

He was staying in Gwarinpa Estate behind Kado Kuchi.

He was working at Anso International Hotel Wuse Zone 6, Abuja before he moved to Eden Parks & Garden where he started his private business of pulp corn.

The owner of the Garden later employed him as a staff in the Fish Department. He was roasting fish.

On 12/11/15, he went to work by 3 p.m. in accordance with the rule of the Company to remove their items from the store. The Deceased also came. They all went in to remove their items they were to use that day.

When they brought the items, a customer of his called him to prepare take away fish for him. He went in to carry charcoal to set the fire for the preparation of the fish.

The Deceased came and held the charcoal insisting he would not use it. He explained to him but he dragged the charcoal away from him.

He took it and dropped it. He went there to take it. He did not say anything. He prepared fire on the oven but the Deceased went, fetched water in a rubber paint bucket which he poured on the fire.

He asked him if he took Indian hemp or gin. He was scraping the Crocker fish then. He felt insulted. He slapped him on the face and was beating him. He hit the oven against his face and he fell down. The oven was on top of him. The oven was heavy. He also fell on the oven. He

stood up and the guy (Ambrose) doing 'ASUN' lifted up the oven.

That Ambrose carried him to a corner. He was unconscious. That it was later the Deceased came out from a side of the kitchen shouting that he was injured. The said Ambrose called the Manager and the Manager called the Police.

The Police came and arrested him and the Deceased. When they realized that the Deceased's injury was more, they took him to the Hospital. He has not seen him since then. The Police told him to admit stabbing the Deceased since he was the person using the knife. He did not want to rust in prison so he signed.

The incident happened all of a sudden.

He also sustained injury on his neck, eyes and hand. He has scars on his neck and hands.

The Prosecution failed, refused and or neglected to cross-examine the witness severally despite affording it a number of opportunities.

It was consequently foreclosed.

The 2nd Defendant's witness is Kingsley Onyekachi Ugwu. He lives at Apo, Abuja. He is Manager of a Park. That the Defendant used to be his staff at City Park Wuse 2, He used to be a nice boy, diligent and consistent.

He called him that he needed fish to give to his wife. He got there and he told him to wait at the main gate. It was about 3:30 p.m.

He noticed that there was an argument as to who should take fire and who should not take fire. He heard voices coming out. He got there and asked what the problem was.

That Deceased also worked with him prior to that date.

The Deceased poured water into the fire kindled by the Defendant. There were series of talk. That later Deceased pushed the Defendant. That the machine which they used in roasting Crocker fish fell on both of them.

The Manager of the Garden came and separated them.

That both of them were injured and were bleeding.

That's all for the witness.

The Prosecution still failed to cross-examine the witness. He was subsequently foreclosed.

Parties were ordered to file and serve their Final Written Addresses on the 16/10/19 while the case was adjourned to 25/11/19 for Adoption of Final Written Addresses.

On 25/11/19, the Court did not sit due to the ALL NIGERIAN JUDGES CONFERENCE.

On 10/12/19 when the case came up for Adoption of Final Addresses, both Counsel were absent.

The Court therefore adjourned for Judgment.

The issue for determination in my view is whether the Prosecution has proved its case against the Defendant beyond reasonable doubt.

Section 221 of the Penal Code under which the Defendant is charged states:

“Except in the circumstances mentioned in Section 222 Culpable Homicide shall be punished with death-

(a) If the act by which the death is caused is done with the intention of causing death or

(b) If the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause whether death was the probable or only a likely consequence of an act or of any bodily injury is a question of fact.”

By virtue of Section 221 of the Penal Code, the ingredients of the offence of culpable Homicide punishable with death are:

1. That the death of a human being took place.
2. That such death was caused by the Defendant.
3. That the act of the Defendant that caused the death was done with the intention of causing

death or that the Defendant knew that death would be the probable consequence of his act.

All the ingredients must be proved or co-exist before a conviction could be secured.

Failure to establish any of the ingredients would result in an acquittal.

The onus of proof is on the Prosecution throughout and it does not shift.

See ***ADNA VS STATE 2006 9 NWLR (PT 984) 152 AT 167 SC.***

AKPA VS. STATE 2007 2 NWLR (PT.1019) 500.

UWAGBOE VS. STATE 2007 6 NWLR (PT.1031) 606.

The standard of proof is proof beyond reasonable doubt by virtue of Section 135(1) of the Evidence Act.

I have earlier summarized the evidence of the two Prosecution Witnesses.

The law is that the guilt of a Defendant in a criminal trial such as this can be proved.

1. The confessional statement of the Defendant.
2. Circumstantial evidence.
3. The evidence of eye witness of the crime.

See ***IGABELE VS. STATE (2006) 6 NWLR (PT.975) 100 SC.***

In the instant case, the only eye witness is PW1. He gave evidence of the altercation between the Deceased and the Defendant which led to the dragging of the charcoal and the subsequent falling of the oven on the Defendant.

He said he was trying to raise up the oven when the Deceased went to the kitchen.

He did not know when the Defendant carried a knife.

That the Deceased ran out shouting. He heard the shout and went there, the Deceased tried to raise up his cloth. He died on his way to the second Hospital.

He further said that Defendant carried a knife.

That the Deceased was stabbed at the back. He saw a wound.

He did not tell him who stabbed him.

Under Cross-examination, he stated that the Deceased did not hit the Defendant with iron.

He was trying to raise the oven because the Defendant was under it. The Deceased pulled the oven over the Defendant.

That the oven was a heavy iron. There was also a gutter near the oven. The Defendant fell inside the gutter.

It is clear that the PW1 did not witness the stabbing. However, the PW1's evidence also shows that the Deceased Gabriel Iji Adema died.

He did not witness the death. It is the General Manager who took him to the Hospital.

The evidence of PW2 is that he had a distress call from Eden Park or Garden. He went there with Asuquo. He did not witness the incident. It is the employer, Managing Director who narrated that the Defendant stabbed one of his colleagues and was rushed to the Hospital.

The Defendant was arrested along with the knife used in stabbing the Deceased.

That immediately they returned to the Police Station from the scene of crime, the colleagues of the Deceased returned from the Hospital to inform them that the Deceased had given up the ghost.

No medical certificate of death or autopsy report was tendered.

However, the ascertainment of death is not within the exclusive preserve of medical experts.

Unlike an expert, an adult may not know the real cause of death but he can appreciate that a person is dead.

See ***AKINYEMI VS. STATE (1999) 6 NWLR (PT.607) 449.***

From the evidence before me, there is no doubt that the death of Gabriel Iji Edema took place.

On whether the said death was caused by the Defendant, cause of death can be proved by direct or circumstantial evidence. It can also be inferred where the person injured or attacked died immediately.

The PW1, the only eye witness is not conclusive. He did not witness the stabbing. He did not know when the Defendant went to the kitchen to meet the Deceased. All he heard was a shout. He saw the Deceased rushing outside. He did not know when the Defendant carried a knife.

The deceased did not tell him the person who stabbed him. The evidence of PW1 is that the Defendant and the Deceased are the only persons in the kitchen. There was no other person in the kitchen.

For circumstantial evidence to ground a conviction, it must lead only to one conclusion namely the guilt of the Defendant.

Where therefore, there are other possibilities in the case than that it was the Defendant who committed the offence and that others than the Defendant had the opportunity of committing the offence with which he was charged, such a person cannot be convicted.

From the evidence before me, I cannot see the possibility of another person or persons committing the offence in the circumstance of this case even though the weapon used in committing the offence was not tendered.

Exhibit A is the Confessional statement of the Defendant. It is dated 27/11/15.

A free and voluntary confession of guilt whether judicial or extrajudicial as in this case, if it is direct and positive, is sufficient proof of guilt and is enough to sustain a conviction.

In the said statement, he stated thus:

“He then slapped me, hit the iron stand on my head and face and injured me any how. That was when the devil in me used knife and stabbed him by the side of the belly (belle) and blood started coming out.”

It was the knife he was using to prepare fish.

The Confessional statement is free and voluntary. It was signed by the Defendant personally.

I have equally examined it in the light of other pieces of evidence by the 1st and 2nd Prosecution Witnesses. It is direct and positive. I am therefore satisfied of its truth.

In my view, it is properly proved.

The defence of the Defendant before the Court is that the oven fell on him during the altercation.

That the oven is heavy. The Deceased also fell on the oven.

The Deceased stood up and left while Ambrose lifted up the oven on him. That it was later the Deceased came out of the side of the kitchen shouting that he was injured.

The Deceased did not shout when he stood up. The Defendant upon whom the oven fell was not injured.

I do not believe the evidence of the Defendant. It is customized and embellished.

There is no evidence stronger than a person's own admission or confession. There are also pieces of evidence outside the confession to suggest equivocally that the Defendant committed the offence of culpable Homicide. It is probable that the confession is true.

See ***DIBIE VS. STATE (2007) 9 NWLR (PT. 1038) 30 SC.***

NWAEBONYI VS. STATE (1994) 5 NWLR (PT.343) 130 SC.

The Prosecution has proved beyond reasonable doubt that the Defendant committed the offence of culpable Homicide.

However, the evidence before me is that he was provoked. The evidence of PW1 was that the Defendant was under the oven. That the Deceased pulled the oven over him. That Deceased slapped the Defendant.

In Exhibit A, the Confessional Statement of the Defendant, the Defendant also said the Deceased slapped him, hit the iron stand on his head, face and injured him any how, he then lost control.

By Section 222(1) of the Penal Code, culpable Homicide is not punishable with death if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation or cause the death of any other person by mistake or accident.

For the totality of evidence before me, it is my view and I so hold that although the Defendant is charged with the offence of culpable Homicide punishable with death under Section 221, what was proved beyond reasonable doubt was the offence of culpable Homicide not punishable with death.

I therefore find the Defendant guilty of culpable Homicide not punishable with death contrary to Section 222 of the Penal Code. He is accordingly convicted.

See Section 223 of the Administration of Criminal Justice Act.

Defendant: I plead with you to temper justice with mercy. I have learnt a lot. I ask that you temper justice with mercy. I have a family I am taking care of. I will be a better person if I am freed. I beg you sir.

SENTENCE:

I have taken into consideration the moving plea of the Defendant.

He seems to be sober and remorseful. The deed is done. The Deceased cannot be brought back.

The Defendant is still alive. He can be rehabilitated and reformed.

I hereby sentence the Defendant to 7 (Seven) years imprisonment.

The sentence shall run from the date of arraignment which is 14/03/16.

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HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

27/02/20