



Bello called their office at Gwagwalada Police Division informing the office that there was a fight in front of his business place between defendant and one Saifullah Mohammed. The police rushed to the scene and on getting to the place they met Saifullah Muhammad lying on the ground in a pool of his own blood and the Defendant was held by the people around. The police then arrested the defendant and took him to the police station. PW1 stated also that himself and the relatives of Saifullah Muhammad took deceased to the University of Abuja Teaching Hospital for treatment. PW1 stated that he opened a Hospital folder in the name of Saifullah Muhammad and the Doctor treated him. PW1 was given Radiology X-ray card of Saifullah Muhammad and PW1 later left for the Police Station.

PW1 was detailed to investigate the case based on language barrier. The defendant only speaks and understands Hausa language. PW1 recorded the statement of the defendant under words of caution made in Hausa language and PW1 translated and wrote the statement in English. PW1 read the statement to him in Hausa and that the defendant was not under duress, the defendant thumb printed the statement, while PW1 counter-signed it. PW1 stated that later he took the recorded statement and the defendant before ASP Shehu who asked the defendant whether he made the statement and the defendant answered in the affirmative. The defendant and the superior officer signed the said statement. PW1 also recorded the statements of Musa Yusuf and Namadi Bello under caution.

PW1 testified also that later on the 21<sup>st</sup> February, 2020 at about 0900 hours the relative of Saifullah Muhammad called him to tell him that Saifullah Muhammad died while receiving treatment. PW1 rushed to the Hospital and took photographs of the corpse. The deceased corpse was deposited at the Hospital Mortuary. PW1 stated that the relatives of the deceased demanded for the corpse. PW1 filled a Coroner's Form and sent it to the Magistrate for Autopsy. That the relatives of the deceased came with an application supported by an affidavit praying for the release of the corpse for burial according to Islamic rites. The family decline that autopsy be conducted and the corpse was released for burial in accordance with the Islamic rites.

PW1 then applied for the Medical Report for the deceased and it was given to them, where it was stated that the deceased died due to multiple injury and bleeding. The case file was then transferred to State CID for further investigation.

PW1 testified further that he assisted the State CID in translation of Hausa language in the recording of the statement. The investigation visited the scene of the crime to see if they can recover the knife used in stabbing the deceased, but it was not recovered.

The following documents were tendered through PW1 thus:

1. The University of Abuja Teaching Hospital personal card of Saifullahi Muhammad and the Radiology request/report were admitted as **Exhibits P1a and 1b**.
2. The 3 pictures of the deceased with the Certificate of Compliance were admitted as **Exhibits P2a, b, c and d**.
3. A copy of the Coroner's Form; the Application for the release of the corpse and the supporting Affidavit were admitted as **Exhibits P3, P4a and b**.
4. The Certified True Copy of Medical Report issued by University of Abuja Teaching Hospital, the statement of one Bello Namadi and that of the defendant were admitted as **Exhibits P5, P6 and P7**.

Under cross-examination, PW1 stated that there was no logo on the medical report **Exhibit P5** but the name of the Hospital is there. PW1 stated that he knows the defendant before the incident occurred but he does not know him as a trouble maker. PW1 confirmed he was not there when the incident happened. PW1 stated that he was told what happened. He confirmed the knife used in the alleged incident was not found. The defendant was arrested at the scene of the incident. PW1 stated that while taking the statement, the defendant told us what happened between him and the deceased. PW1 could not remember how many hours it took to take the statement, that it has been long now. PW1 stated further that from the place of incident to the hospital took them only 10 minutes.

**PW2 is Assistant Superintendent of Police, (ASP) Alexander Ayemila** attached to Homicide Section State Criminal Investigation Department (SCID), FCT Police Command. He is a Detective. His evidence was that he knows the defendant; that a case of culpable homicide was reported at Gwagwalada Divisional Police Headquarters and the file and the defendant was subsequently transferred to SCID FCT Police Command on the 26<sup>th</sup> February, 2020 for discrete investigation.

PW2 stated also that on receipt of the case file, statement was taken voluntarily in an open hall bigger than the court room, PW2 later discovered that the defendant cannot speak and understand English, PW2 employed the services of PW1 (Insp. Ibrahim Rabi) who took the statement of the Defendant in Hausa language and interpreted to PW2 in English language. PW2 recorded it in English language. PW2 stated further that he recorded it in English, read it over to PW1, who confirmed it to be correct, PW1 then read the Hausa translation to the defendant who confirmed it to be correct. PW2 stated that the defendant thumb printed on both the Hausa and English statements.

PW2 testified that he proceeded to the scene of the crime at Anguwar Godo, Gwagwalada led by one ASP John Otache. That at the scene no exhibit was recovered as the defendant had informed them he threw away the knife in a large crowd and the knife could not be found. PW2 stated that they interviewed independent witnesses who refused to give statements because of fear of police, but the eye witnesses told them that they were there when the defendant stabbed the deceased, Saifullahi Muhammad. PW2 stated further that Bello Namadi, one of the eye witness died early this year, while Yusuf Musa, another witness who volunteered his statement, has since relocated to Kano and all efforts made by the police in concert with Kano State Police Command to see if Yusuf can be called to testify in this case proved abortive.

PW2 confirmed recording the statement of Defendant in English language. The statement form has a police logo and inscription of Nigeria Police for the statement form. The statement of defendant (in English language) dated 26<sup>th</sup> February, 2020 was admitted as **Exhibit P8**.

PW2 stated that their findings in this case is that from the statement of witness and confession of defendant and evidence gathered from independent witnesses that refused to give their names and the medical report obtained from University of Abuja Teaching Hospital showed that the deceased was stabbed severally on his body and a prima facie case of culpable homicide has been established against the defendant.

Under cross-examination by the defence counsel, PW2 confirmed that he was not at scene when the incident happened. PW2 stated that the medical report was dispatched to their office. PW2 stated also that the statement of the defendant was taken the second day after he was brought to their station. PW2 also confirmed that they could not find the knife used in stabbing the deceased.

PW2 confirmed that he was aware of what transpired between the defendant and the deceased. That the defendant was accused of stealing the phone of Musa Yusuf a brother to the deceased. PW2 stated that the deceased then informed the defendant to release the phone if it was with him, then a quarrel ensued between the defendant and the deceased, in the course of the fighting, the defendant who is a butcher had a knife tied to his waist and used the said knife to stab Saifullahi Muhammad, who then became unconscious and was rushed to the University Teaching Hospital at the arrival of the police and they then arrested the defendant at the scene.

PW2 further confirmed that he was informed of all what he said by the independent witnesses. PW2 stated that he was not there and that the deceased was on transit when he visited his brother Musa Yusuf, the nominal complainant.

The prosecution then applied to recall PW1 and the application was granted.

Upon his recall, PW1 further testified that on the 26<sup>th</sup> February, a case file was transferred to the State CID of FCT Command. One ASP Alexander was assigned to investigate the matter. The said ASP Alexander called PW1 that the defendant does not understand English while ASP Alexander the IPO at the State CID does not understand Hausa. ASP Alexander requested for my assistance for the interpretation of the defendant's statement from Hausa to English since PW1 is a Hausa man from Katsina State. PW1 stated that he interviewed the defendant at SCID office and the defendant narrated what transpired to him in Hausa and he cautioned the defendant and recorded his statement in Hausa. PW1 read it over to the defendant to be sure it was what he told him. The defendant acknowledged it as his statement.

PW1 stated also that thereafter he interpreted the statement in English to the IPO, ASP Alexander and he wrote it in English language. PW1 stated further that after writing the statement, he interpreted it to the defendant in Hausa language. PW1 identified the statement he recorded in Hausa, with Police logo and his handwriting.

The statement of defendant recorded in Hausa was admitted as **Exhibit P8**.

PW1 was further cross-examined after he was recalled. He confirmed his name as Ibrahim Rabiou and also confirmed having a signature. PW1 signed his signature on a clean sheet.

A copy of specimen signature of PW1 on a clean white paper was admitted as **Exhibit P9**. PW1 looked at **Exhibit P8** and stated he did not sign on it. PW1 confirmed arresting the defendant at the scene of the crime by 11:30pm on the 19<sup>th</sup> February, 2020. PW1 further confirmed that he was not at the scene when the fighting started and was not at the scene when the stabbing happened. But what he told the court was what the defendant told him.

At the end of the evidence of the recalled witness, the prosecution closed its case.

It was at this point in the course of the proceedings, that there was the infamous attack or break in at Kuje Prisons which led to the escape of defendant and many others. All attempts at getting him failed. The court then called upon counsel to address the court on whether we could continue with the hearing or trial. After hearing from counsel, I ruled in favour of continuing with the hearing as mandated by the provision of **Section 352 (4) of the Administration of Criminal Justice Act, 2014**.

The defendant then rested its case and ruled on the case of the prosecution. The case was then adjourned for parties to file their final written addresses.

The defendant's written address was settled by **Ayodele Mosebolatan David Esq.** dated 17<sup>th</sup> April, 2023 and filed same date in the Court's Registry. One issue was raised for the determination of the court thus:

- 1. Whether from the totality of evidence led and tendered, the prosecution has proved all the ingredients of the offence of culpable homicide punishable with death charged against the defendant beyond reasonable doubt as required by law.**

The final written address of the prosecution was settled by **Chinyere Moneme Esq.**, dated 5<sup>th</sup> April, 2023 and filed same date in the Court's Registry. The Prosecution also raised one issue for the determination of the court thus:

- 1. Whether having regard to the totality of the evidence before this Honourable Court, the Prosecution has proven the charge against the defendant beyond reasonable doubt?**

I have carefully considered the charge in the matter, the evidence adduced and the written addresses of both counsel to which I may refer to in the course of this judgment where necessary. It seems to me that the single issue formulated

by the prosecution has captured the crux of the issue that will be shortly determined in this judgment.

It is not a matter of dispute that the charge the defendant is facing involves the alleged commission of culpable homicide, punishable with death under extant provisions of the Penal Code. Under our criminal justice system, the onus is clearly on the prosecution to prove the guilt of the defendant beyond reasonable doubt. See **Section 135 (1) of the Evidence Act**. The position of the law as provided for by **Sections 135 (2) and (3) of the Evidence Act**, needs restatement to the effect that the burden or onus of proving that any person has been guilty of a crime or wrongful act is subject to **Section 139 of the Evidence Act** on the person who assert it, and if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on the defendant.

In shedding light on the statutory responsibility and expectation of the prosecution to prove its case beyond reasonable doubt, the Supreme Court held in the case of **Mufutau Vs The State (1987) 3 SC 1 at 32** per Oputa JSC (of blessed memory) thus:

**“Proof beyond reasonable doubt stems out of a compelling presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of any doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure including the ministration of criminal justice.”**

See also the following cases: **Lortim V State (1997) 2 NWLR (pt.490) 711 at 732; Okere V The State (2001) 2 NWLR (pt.697) 397 at 415 to 416; Emenegor V State (2009) 31 WRN 73; Nwaturocha V The State (2011) 6 NWLR (pt.1242) 170.**

It is also well settled principle that in any criminal trial, the prosecution could discourage the burden placed on it by the provisions of **Section 135 (2 and 3) of the Evidence Act**, to prove the ingredients of an offence, and invariably the guilt of an accused person beyond reasonable doubt, in any of the following well established and recognized manners namely:

1. By confessional statement of the Accused which passes the requirement of the law;

2. By direct evidence of eye witnesses who saw or witnesses the commission of the crime offence; or
3. By circumstantial evidence which links the Accused person and no other person to or commission of the crime or offence charged.

See **Lozi V State (1980) 8-11 SC 18; Emeka V State (2011) 14 NWLR (pt.734) 668; Igabele V State (2006) 6 NWLR (pt.975) 100.**

Being mindful of well established principles as espoused in the foregoing authorities, I shall proceed to examine the instant charge in the light of the evidence adduced by the prosecution in order to determine whether or not the prosecution has established the charges against the defendant beyond reasonable doubt.

Now it is indisputable that every criminal allegation which is statutorily provided for has basic and critical ingredients that the prosecution must prove in order to secure a conviction. As already stated at the beginning of this judgment, the defendant was arraigned before this court for the offence of culpable homicide not punishable with death under **Section 224 of the Penal Code**. I had at the beginning of this judgment stated the one count charge.

The charge is critical in this case as the prosecution has delineated clearly the particulars which it must establish to situate the offence. Having regard to the charge, the prosecution is on the authorities required to prove the following important requisite elements to wit:

1. That the death of a human being has occurred
2. That the death was caused by the act of the Defendant; and
3. That the Defendant intended by his act to cause such bodily injury as was likely to cause death.

If any of the above elements are not proved or established to the required standard or threshold, the charge will collapse and the accused or the defendant discharged. See **Jua V The State (2009) 15 NWLR (pt.1181) 217; Usman V State (2013) 12 NWLR (pt.1367) 76; Musa V State (2009) 15 NWLR (pt.1165) 467 and Achuku V State (2014) LPELR-22651- CA**. The threshold of reasonable doubt simply means, proof that drowns the presumption of innocence of the accused. The Court is entitled to convict although there could exist shadow of doubt. The moment however that the prosecution renders the presumption of innocence on the part of the accused valueless and pins him or



her as the owner of the *mens rea* or *actus reus* or both, the prosecution has discharged the burden placed on it by **Section 135 (3) of the Evidence Act**. See **Dibie V The State (2007) All FWLR (pt.382) 83 at 108**.

Having properly set out the above legal template including the key ingredients of the offence charged, the simple albeit delicate task the court is to undertake now is to examine the evidence led by the two prosecution witnesses in the light of the legal ingredients required to establish the offence for which the defendant was charged. It is trite that before a conclusion can be arrived at, that an offence has been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that the acts of the defendant come within the confines of the particulars of the offence charged. See **Amadu V State (1993) 8 NWLR (pt.314) 646 at 664**.

The first ingredient of the offence to be proved is the death of a human being. On this point, there was no dispute on the evidence about the death of one Saifullahi Muhammad, the deceased subject of the extant charge. By the evidence adduced by the two prosecution witnesses before the court, the medical report and pictures of the deceased vide **Exhibits P5** and **Exhibit P2 a-c**, there is no dispute or doubt with respect to the death of the deceased, Saifullahi Muhammad. On this point, parties are ad-idem that a human being died.

The next ingredient is who caused the death of the deceased? There is no doubt that the burden is on the prosecution to establish that the act of the defendant caused the death of the deceased. Here the prosecution presented two witnesses but on the evidence, they did not directly witness the alleged attack on the deceased by defendant with a knife wherein he stabbed the deceased on several parts of his body which made him to bleed to death. The narration of what transpired at the scene of the incident were related to them by persons who were not produced in court to give evidence of what they said or to support the clear particulars of the charge.

I shall deal later in detail with the particulars but even at this early stage, it is obvious that there is no direct evidence of this fight and what happened during the fight.

In law, cause of death is always a fact in issue in case of homicide and that fact in issue may be proved by direct evidence or circumstantial evidence. Contrasted with circumstantial evidence, direct evidence is evidence of fact in

issue. When it is testimonial evidence, it is evidence of the witness who claims personal knowledge of the fact he testified about. Circumstantial evidence on the other hand is evidence of relevant fact(s) from which the existence or non-existence of facts in issue may be inferred. See **Ahmed V State (2001) 18 NWLR (pt.746) 623 at 644 – 645 HA.**

Indeed in relation to cause of death, medical evidence is direct evidence of the cause of death, a fact in issue, when given by the doctor who treated the deceased. There may be other direct evidence, such as, for instance that a witness who saw a deceased person beheaded by another. Circumstantial evidence of cause of death may be relied on where direct evidence is absent. It is in such situation that cause of death may be proved other than by medical evidence. Where medical evidence is not available, case of death can be proved by circumstantial evidence. See **Ahmed V State (supra) 645 B-C.**

The principle of causation dictates that an event is caused by the act proximate to it and in the absence of which, the event would not have happened. Therefore so long as the cause of death is traceable to the action(s) inflicted by the defendant he would be held criminally responsible.

Now on the above point, I have carefully considered the evidenced the evidence of all the prosecution witnesses, PW1 and PW2 and there is no where they indicated or stated that they were present or were privy to do circumstances when the defendant “stabbed” the deceased with “knife” which is a key particular of the extant count. All PW1 stated was their office was called that a fight broke out and they rushed to the scene and saw the deceased in the pool of his blood and was rushed to the Hospital while the defendant was arrested. As at the time of arrival of PW1 at the scene, the incident that led to the stabbing of the deceased which eventually led to the deceased had been completed. The hearsay evidence of PW1 clearly will have no probative value in the circumstances.

Now in this case, a medical report may have been tendered vide **Exhibit P5** with respect to cause of the death but the maker of the document was not produced to speak to the contents of the report. What is even strange in this case is that the report was prepared by one **Dr. F.O. Ameh** for one **Prof. Yawe KDT** which does not project that the maker of the document Dr. F.O Ameh is taking ownership of the document. The report was prepared by him for another person. There is in this case apparently different levels of hearsay which then

detracts from the probative value that would have ordinarily inured to the report. It must in addition be noted that no autopsy or post mortem was conducted on the deceased. Indeed the medical report vide **Exhibit P5** stated that “patient’s” relations were advised for autopsy which was declined which serves as a strong indicator that **Exhibit P5** on its own is not conclusive as to cause of death. **Exhibit P5** appears to be more of observations made on deceased’s body as distinct from an attempt to discern his cause of death.

The point to underscore is that even where the prosecution relies on direct evidence, such as a medical evidence of a medical doctor who performed an autopsy, such medical evidence must be satisfactory and cogent in establishing that it is the actions or injury inflicted on the deceased that led to the death of the deceased. Thus where medical evidence is inconclusive, the court has a duty to examine the evidence before it and draw the necessary inferences. See **Adekunle V State (1989) 5 NWLR (pt.123) 505 at 515; Thomas V State (2014) LPELR-22989 (CA); Essien V State (1984) 3 SC 14.**

In the absence of direct evidence of the cause of death, what is left is whether from the circumstantial evidence, cause of death can be inferred. The point to reiterate is that although medical evidence as to the cause of death is desirable, but it is not essential in all cases of homicide. See **Adamu V State (2019) LPELR-46902 (SC)**. Where medical evidence is not available as to the cause of death, the court may infer cause of death upon circumstantial evidence adduced before it. See **Ahmed V State (supra) 646 B-C**. The circumstantial must however denote circumstances as to render the commission of the crime certain and leave no ground for reasonable doubt. The circumstantial evidence should be cogent of no rational hypothesis other than the guilt of the defendant.

Let us situate the evidence of the prosecution witnesses.

PW1 was the investigation police officer at Gwagwalada who commenced the investigation. As stated earlier, he had no direct knowledge of what happened to the deceased. All he knows about the incident was what he was told by the eyes witnesses at the scene and of course the alleged confession of the defendant, while recording his statements in **Exhibits P7** and **P8a** respectively, which I shall shortly consider. He also narrated how the deceased was taken to the University of Abuja Teaching Hospital and all efforts he made while in the hospital only to be told that the deceased has died a day after the stabbing. He further narrated the arrest of the defendant at the scene. There is nothing in the

evidence of PW1 to situate circumstantially the stabbing of the deceased by the defendant.

The evidence of PW2, the Police Officer who investigated the case when it was transferred to the State CID Command. His evidence was that he implored PW1 to record the Hausa version of the statement of the defendant and he translated into English and read it over to the defendant before the defendant thumb print the statement. He also narrated what the defendant informed PW1 in Hausa, which was recorded, translated to him in English and he then recorded the statement, **Exhibit P8b**. He also visited the scene and nothing was discovered at the scene.

He narrated how he met independent witnesses who refused to give statement because of the fear of police, but the independent witnesses told them that they were there when the defendant stabbed the deceased. All these independent were never produced to testify in court as Namadi Bello one of the eye witness died early this year, while the 2<sup>nd</sup> eye witness could not be reached as he has relocated to Kano. Under cross-examination, PW2 stated that he was not at the scene.

It is noteworthy that all these narration by PW2 apart from the “confessional statement” falls along the same trajectory with that of PW1. PW2 stated that the defendant confessed that he stabbed the deceased with a knife. He however reiterated under cross-examination that all he said above was what the defendant told him. Both the evidence of PW1 and PW2 did not situate any circumstantial evidence to support the cause of death in this case.

In law, the cause of death as a general rule is a medical question to be established on the evidence of a registered medical practitioner. See **State V Okpala (2013) 3 NWLR (pt.1287) 388 at 408 A-B**. As stated earlier in this judgment and beyond the confession, none of the prosecution witnesses was there when the deceased was stabbed and later died and the eye witnesses who narrated the details of the stabbing were never called to testify.

The photographs of deceased vide **Exhibit P2 a-c** may show wounds or lacerations but the pictures do not speak or tell the court who or what caused the wounds.

This now leads me to the confessional statements tendered in evidence as **Exhibits P7 and P8a and 8b**. **Exhibit P7** is the first confessional statement

taken by PW1. He indicated that the defendant speaks and understand only Hausa and that he took his evidence in Hausa and translated same into English Language. He did not however tender the Hausa version of **Exhibit P7** as they ought in law to be tendered together. In the absence of the Hausa version or **Exhibit P7**, the said Exhibit will lack any probative value and will be discountenanced. Indeed the legal implication of failure to tender the Hausa version meant that the English version is essentially documentary hearsay evidence.

The prosecution having realized this error now subsequently produced the 2 versions of the confessional statements defendant made when he was transferred to the FCT C.ID Office vide **Exhibits P8a** and **P8b**. In these Exhibits, defendant stated that he was accused of stealing a phone which resulted in an argument with the deceased. That the deceased then pushed him to the ground and that he had a butchers knife on his waist. That the deceased removed the knife from his waist with the intention to stab him but he overpowered him, collected the knife and stabbed him in different places in his body and he fell down. That after he stabbed the deceased, he threw away the knife into the crowd.

In law, a free and voluntary confession of guilt by an accused person if it is direct and positive and it is satisfactorily proved should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. That is why in law, such a confession by itself alone is sufficient without further corroboration to warrant conviction. Also, there cannot be such a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt. See **Ada V The State (1986) NWLR (pt.24) 581 at 593 – 594 H-A**.

Indeed, the point perhaps need be underscored that a court will be remiss if it fails to convict on such positive confessional statement but to do so, the confession must be on the evidence be seen to have been made voluntarily and it must be direct, positive, true and unequivocal and made out of conscience and necessity to uphold the truth even in the face of death. See **Ada V The State (2008) 12 NWLR (pt.1103) 149 at 166 G-H**.

In this case, I had earlier stated the specifics or particulars of the charge. The narrative by the defendant of how he stabbed the deceased at different parts of his body is in clear tandem with the particulars of the charge. The pictures of

the deceased vide **Exhibit P2 a-c** situates clearly the knife attack on different parts of the body of the deceased. The evidence of PW1 who saw the deceased after the attack and who took him to the hospital where he died equally situated the attack on deceased.

Now when these statements were tendered, they were not objected to on any ground. If there was an objection on grounds for example that the documents were not voluntarily obtained, a trial within trial would have then been conducted to determine the voluntariness or otherwise of the taking of the statements. In the circumstances, I hold that **Exhibits P8a** and **8b** were made voluntarily and they are direct, positive and unequivocal and must thus be accorded probative value.

On the authorities, that is however not the end of the matter. There is another aspect of procedure that a confessional statement must be tested to see if it is true. The court is required to answer certain questions as follows:

- a. Is there anything outside to show it was true?
- b. Is it corroborated?
- c. Are the statements in so far as they can be tested be true?
- d. Was the prisoner a man who had opportunity of committing the offence?
- e. Is the confession possible?
- f. Is it consistent with other facts ascertained and proved? See **Nsofor v State (2004) 18 NWLR (pt.905) 292 at 310 – 311 para. E-B per Oguntade JSC, Danielo V The State (1991) 8 NWLR (pt.212) 715 at 729.**

I shall address these questions by doing a recap of the essential features and findings in this case. On the record, while PW1 and PW2 may not have been direct witnesses to the incident, it is however not in dispute that after defendant attacked the deceased, he was held down by people while a report was made to the police. PW1 therefore met defendant at the scene of the incident with deceased on the ground in a pool of his blood.

PW1 then arrested defendant and then arranged for the transportation of the deceased to the Hospital. The defendant was at the scene of the crime and accordingly the confessional statement cannot be said to be untrue. The pictorial evidence again situates or strengthens the credibility of the confession.

The bottom line here is there is nothing from the defendant to controvert the narrative that he stabbed the deceased on different parts of his body which led to

his demise and in the absence of any other evidence indicating otherwise, the court will have no option but to accept as established the fact that the defendant indeed stabbed the deceased on different parts of his body causing injuries that led to the death of deceased.

The next issue has to do with corroboration of the essential elements of the charge. The question here is whether the confession is corroborated. What is even corroboration? Corroboration is a technical term which means no more than evidence tending to confirm, support and strengthen other evidence sought to be corroborated.

The kind of evidence that would have supported the extant charge would include the following:

- a. Cogent and compelling evidence showing that the accused committed the offence as charged.
- b. Independent evidence which connects the defendant with offence charged.
- c. Evidence that implicates the defendant in the commission of the offence charged.

As already demonstrated, I have referred to different aspects of the case outside of the confessional statement which confirms the elements of the charge. The defendant was right at the scene of the attack where he was apprehended by other persons at the scene before he was arrested by the police. PW1 effected the arrest there and saw the deceased in a pool of blood after the attack and arranged for him to be transported to the Hospital.

The pictures of the deceased situates the knife attack and the defendant himself confirmed he attacked the deceased with a knife. There was therefore corroboration of essential elements of the charge.

Furthermore, the statement in so far as they can be tested, I have found to be true. The surrounding unchallenged facts or elements particularly the arrest of defendant right at the scene of the attack after he was apprehended by good citizens who witnessed the attack adds further credibility of the confession of defendant.

The evidence on record also shows that he has the opportunity to commit the offence. He stated that he tied the butcher's knife to his waist and the question to ask here is why go about with a butcher's knife? It certainly cannot be for mere partying!!

On the question of whether the confession is possible, I incline to the view that on the basis of the surrounding facts of this case, that the confession is wholly possible. There is nothing on the side of defendant challenging the case made out by the prosecution. The confessional statements vide **Exhibits P8a** and **8b** were in my opinion satisfactorily proved and a conviction can be founded on such unchallenged and positive confession.

There is in this case clear evidence, by the unequivocal confession of defendant that he attacked the deceased with a knife and using same on different parts of deceased and this on the evidence led ultimately to the death of the deceased. The entire circumstantial evidence in this case cannot be said to be weak or tenuous. For circumstantial evidence to ground a conviction, it must be lead to one conclusion, the guilt of the accused person. In this case, there are no other possibilities to situate that it was not the attack by defendant on deceased that led to his death or that apart from him, others had the opportunity to commit the offence, with which he was charged. The offence clearly was fixed at the door steps of the defendant and nothing as stated earlier was presented by him to debunk or impugn this narrative. In such a situation, a conviction will be valid.

It has long been settled that great care must be taken by the court in drawing an inference of guilt of an accused person from circumstantial evidence so as not to fall into serious error. Circumstantial evidence therefore, must be narrowly examined and for it to form the basis of a conviction, the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been the offender. See **Udedebia V State (1976) 11 SC 133; Ache V State (1980) 12 SC 116.**

The law has always been that the circumstantial evidence must be cogent, complete and unequivocal but must equally be compelling and lead to the irresistible conclusion that the accused and no one else committed the offence. The evidence must leave no ground for reasonable doubt particularly as any such doubt must by law be resolved in favour of the accused.

The law is settled that in every case where it is alleged that death has resulted from the act of a person, a causal link between the death and the act must be established and proved, in a criminal proceeding, beyond reasonable doubt. The first and logical step in the process of such proof is to prove the cause of death. Where there is no certainty as to cause of death, the enquiry should proceed no further. Where the cause of death is ascertained, the next step in the inquiry is



to link the cause of death with the act, (or omission) of the person alleged to have caused it. See **Oforlete V the state (2000) 7 WRN 86 at 111.**

In this case, the cause of death on the charge was the action of multiple stabbing. The defendant himself confessed to this act and which the court found to have probative value. The evidence here situates the cause of death to the multiple stabbing effected by defendant on the deceased. There is no escaping this reality.

The point to underscore is that proof beyond reasonable doubt does not mean proof beyond the shadow of any doubt. That is a settled principle. See **Mufutau Bakare V. The State (1987)3 SC 1 at 32; Sule Ahmed (Alias Eza) V. The State 8 NSCR 273; Miller V. Minister of Pensions (1947)2 AII ER 372.**

It is equally firmly established that the burden of the prosecution is only discharged when the essential ingredients of the offence have been established and the accused is unable to bring himself within the defences or exceptions countenanced by the law generally or the statute creating the offence. See **Oteki V. A.G Bendel State (1986)2 NWLR (pt.24)658.**

Therefore while proof beyond reasonable doubt needs not attain the degree of absolute certainty, it must however attain a high degree of probability excluding any other conceivable hypothesis than the accused guilt. The authorities are clear that the accused be acquitted if the set of facts elicited in evidence is susceptible to either guilt or innocence in which case doubt has been created. Mere allegations, no matter how believable, does not amount to proof required in law to prove such allegations. See **Mbanengen Shande V. The State 22 NSCQR 756 at 772-773.**

In this case on a calm evaluation of the unchallenged evidence of the prosecution, I am convinced that the evidence led and particularly the unqualified and positive confession of excludes every other reasonable possible hypothesis except that which is wholly consistent with the guilt of the defendant.

I incline to the view that for evidence to warrant a conviction, it must exclude beyond all reasonable doubt all other conceivable hypothesis than the guilt of the defendant. There is nothing before me situating facts susceptible to either

guilt or innocence which would have then created doubt to the benefit of the defendant.

On the whole, there is nothing by defendant to impugn or challenge the case made by prosecution in establishing the case beyond reasonable doubt. There is therefore no reasonable doubt as to the culpability of the defendant in relation to the gruesome attack on deceased. He also confessed to the crime which was corroborated by supporting evidence on record. The prosecution has therefore discharged the onus of proof placed upon it by **Section 138 of the Evidence Act**. I therefore find the defendant guilty on the one count and convict accordingly.

In the final analysis and for the avoidance of doubt, the judgment of the court is that the prosecution has succeeded in proving the charge laid against the defendant in this proceedings and accordingly I hereby find and pronounce defendant guilty as charged on the one (1) Count. With the conviction of defendant, the matter logically ought to proceed to sentencing but since the defendant is not available, the court must have recourse to **Section 352 (4) and (5) of the Administration of Criminal Justice Act (ACJA) 2015** and reserve his sentence until the defendant is arrested or he surrenders himself to the custody of the court.

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*Hon. Justice A.I. Kutigi*

*Appearances:*

- 1. Chinyere Moneme, Esq. with Charity Unogwu, Esq. and Mercy Afolayan, Esq. for the Complainant.*
- 2. A.O. Ayodele, Esq. for the Defendant.*