IN THE HIGH COURT OF THE FEDERAL CAPITALTERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS THURSDAY, THE 2ND DAY OF NOVEMBER, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI-JUDGE

CHARGE NO: CR/1036/2020

BETWEEN

COMMISSIONER OF POLICE …… COMPLAINANT

AND

ABDULMALIK HAMZA ……. DEFENDANT

JUDGMENT

The Defendant was arraigned on a one count Amended charge dated 14th January, 2022.

The Amended charge reads as follows:

COUNT ONE

That you Abdulmalik Hamza 'M' 21 years of Angwan Gade, Gwagwalada, FCT, Abuja on or about the 10th day of August, 2020 at about 1930 hours within the Judicial Division of this Honourable Court, did commit a felony to wit: that on or about the aforementioned date and time you had a physical fight with one Mansur Ali and in the process you stabbed him with a scissors on the head which eventually resulted in his death. You did it with the intent that death would be the probable and not likely consequence of your act; You thereby committed an offence of culpable homicide not punishable by death under Section 222 of the Penal Code Law and punishable under Section 224 of the Penal Code.

The Defendant pleaded not guilty to the above charge.

In proof of its case, the prosecution called three (3) witnesses.

The first prosecution witness is Yusuf Sani who testified as PW1. His evidence is that, he lives at Gwagwalada and he is a driver. PW1 knows the defendant. That on the 10th August, 2020, on his way from Lagos when he got to Abaji, he received a call from his wife that one Mansur Ali was stabbed with a scissors by Defendant. PW1 told his wife to call his brothers to take Mansur Ali to the hospital. PW1 on arrival at Gwagwalada visited the victim at Rose Haske Hospital. He saw Mansur Ali (the Deceased) at the Hospital with blood gushing out of his mouth and at the back of his head.

PW1 said he asked the Doctor what is to be done and the Doctor informed him that because he was stabbed on his head, an xray has to be carried out. That he immediately left to arrange for some money and the following day, he took him from the Rose Haske Hospital to the General Hospital, but on their way the blood coming out of the head of deceased was too much, so he decided to take him back to Rose Haske Hospital and on getting to the Hospital the deceased gave up at Rose Haske Hospital on the 11th August, 2020 around 7pm in the evening.

That when the deceased died, he then reported the incident at the Gwagwalada Police Station. He approached the DPO to allow him to release the corpse so as to bury him but the DPO denied saying it is too late in the night to release the corpse. He stated that the following date, the corpse was released and the deceased was buried in accordance with Islamic rites. After the burial, PW1 said he was told that the defendant has run away to Kano, but fortunately, the defendant was arrested by vigilante in Kano and taken to Police Station in Bardawa, Kano. On getting to Kano, he saw the defendant; who begged him and told him that the deceased was his friend and that it was not intentionally.

Under cross-examination, PW1 confirmed that it was his wife that called to informed him of the attack on Mansur Ali. PW1 knows the defendant. He is a neighbor and had known the defendant for a long time. PW1 stated that he met the deceased at the Rose Haske Hospital.

PW2 is Sgt. Oghole Sadiq. He is a Police Officer attached to Gwagwalada Divisional Police Headquarters. He lives in Zuba and he knows the defendant. He stated that on the 11th August, 2020 at about 19:30 hours (7:30pm) one Sani Yusuf reported that on the 10th August, 2020 at about 22 hours (10pm) he received a call from his wife that one Ali Garba instructed Abdulmalik Hamza

(the defendant) to snatch a leather bag of Indian Hemp from Ali Mansur (the deceased) and in the process of carrying out the instruction a fight ensued between the defendant and the deceased. The defendant succeeded in snatching the bag of the Indian hemp and that as he turned back and wanted to leave, he opened a leather bag and removed a scissors and stabbed Mansur Ali on the head and the deceased started bleeding. He was then rushed to a private Hospital, Rose Haske Hospital, Gwagwalada, where the deceased later died. When the defendant was told of the death of the deceased he then ran away from Gwagwalada. Few days later, information reached the police through one Sani Yusuf that the defendant is in Kano and has been arrested and kept at Bardawa Divisional Police Headquarters. PW2 stated further that they arranged and travelled to Kano and he was handed over to them and they brought him back to Abuja.

PW2 stated that in the course of investigation, the statement of the defendant was recorded by one **Inspector Yerima Vanzaq**. That the defendant confessed in the statement and it was endorsed by a Senior Police Office and the case was then transferred to State CID Force Command. PW2 stated further that Insp. Yerima Vansaq who recorded the defendant's statement is on special duty. PW2 recognised the statement of the defendant as recorded by Insp. Vansaq. PW2 further stated that the original statement was with the former prosecutor. The CTC of statement of defendant dated 27th August, 2020 was admitted in evidence as **Exhibit P1**. The defendant however denied making this statement.

PW2 then stated that the findings after their investigation. PW2 said he visited the scene of the crime and a scissors was recovered. PW2 stated also that during the recording, he discovered culpable homicide was established against the defendant. PW2 further stated that they tried to locate Ali Gombe without success.

Under cross-examination, PW2 denied knowing the role played by Ali Gombe in this case. He confirmed they could not find Ali Gombe, as they searched for him in around Gwagwalada but to no avail. PW2 in the course of investigation visited Rose Haske Hospital where the deceased was treated and died, he did not obtain any record from the Hospital. PW2 also visited the scene where he saw and recovered the scissors used by the defendant against the deceased. He confirmed that the deceased did not die on the spot but died subsequently. PW2 stated that he was told by one Sani Yusuf that the deceased was rushed to the Hospital by one Musa and the available people around.

PW2 stated also that all the people he invited for their statements to be taken refused to come to the station. PW2 further stated that they searched for Ali Gombe without success. PW2 then read page 2, line 11 of **Exhibit P1**. (That the deceased and the defendant were friends) and they had no problems. He stated that the deceased did not fall during the fight with defendant. PW2 further stated that there was a period of 9 days in between when the defendant's recorded statement was made on the 17th August, 2020, while he signed the confessional statements before the senior police officer on the 26th August, 2020. PW2 stated that the deceased was to be released but as he started bleeding, he was told to return. PW2 confirmed that the corpse was released to the relatives of the deceased for burial in accordance with Islamic rites.

PW2 stated that the deceased was not treated and taken home as stated by the defendant in **Exhibit P1**. PW2 stated that he has been a police investigator in the investigation department for 8 years.

PW3 is Sgt. Abubakar Ibrahim. He is an officer with State CID, FCT Police Command. He lives at Maraba, Nasarawa State. He also knows the defendant in this case. His evidence is that on the 27th August, 2020 a case of culpable homicide was transferred from Gwagwalada Division alongside the defendant and a case file to the Homicide Section of the State CID. Upon the receipt of the file, PW3 was assigned to investigate the case and that is how he came to know the defendant. PW3 recorded the statement of the defendant under words of caution which the defendant signed. **PW3 stated that the defendant informed** him that on the 10th August, 2020 at about 19:30 (7:30pm) while they were at a place called One Way Road, Gwagwalada buying and selling Indian Hemp, one of the defendant's Mentor named Ali Gombe instructed the defendant to seize a bag of Indian Hemp from Ali Mansur (the deceased) and that in the process a physical fight ensued. The defendant then brought out a scissors and stabbed Ali Mansur (the deceased) who started bleeding. He was rushed to Rose Haske Clinic by the defendant, Ali Gombe and one Awal. Thereafter, the defendant was called and told that Mansur Ali had died which necessitated the defendant to flee to Kano State and was later arrested by the vigilante in Kano and later handed over to Bardawa Police Station in Kano.

In furtherance to the investigation, PW3 visited Rose Haske Clinic in Gwagwalada and obtain a certificate of cause of death and PW3 also visited the scene of the incident where he met 2 eye witnesses. The 2 witnesses refused to disclose their identity for fear of Ali Gombe; that he is a threat to the 2 eye

witnesses. The statements they volunteered corroborated the statement of the defendant. PW2 recognised the statement of the defendant and the certificate from the Hospital.

The said recorded statement of the defendant dated 27th August, 2020 and the certificate from Rose Haske Clinic dated 31st August, 2020 were admitted as **Exhibits P2** and **P3** respectively.

Under cross-examination, PW3 stated that he has been a police officer for 11 years now. He confirmed that the defendant told him that Ali Gombe instructed him to seize the bag of Indian hemp from the deceased. He confirmed referring to 2 eye witnesses in the course of investigation who refused to disclose their identity because of the threat of Ali Gombe. That he was not told by the two witness that the defendant and deceased belong to rival camps. That he was not told at the hospital that the deceased was treated and discharged before he later returned. That from their investigation, that the defendant told them that he used a scissors from the bag containing the Indian hemp belonging to the deceased and that the two unnamed people he interviewed confirmed this incident.

PW3 stated that the defendant told him that they fought and that the deceased stabbed him, but he doesn't know anything about **Exhibit P1** as it was not taken at the State CID Force Headquarters. PW3 stated that he does not know Ali Gombe and he has never seen him. PW3 said he recorded **Exhibit 2**. He said he did not find out whether the deceased was taken to the hospital before he was later returned. PW3 said defendant informed him that there was a fight as the deceased hit him; he felt pain and he took his scissors and stabbed him.

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 along with 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.**

With the evidence of the PW3, the prosecution formally closed its case. Counsel to the defendant then informed the court of his intention not to call any witness in defence of the case and will rely on the evidence of the prosecution. The case was then adjourned for the Adoption of Final Written Addresses.

The defendant's written address was settled by **Okpeahior Lucky Esq**. dated 27th April, 2023 and filed same date in the Court's Registry. Two issues was raised for the determination of the court thus:

1. **Whether the Prosecution has proven all the essential ingredients of culpable homicide not punishable by death under Section 222.**

2. **Whether the defence of accident is disclosed from the defendant's confessional statements tendered in evidence before the court as Exhibits P1 and P2.**

The final written address of the prosecution was settled by **Chinyere Moneme Esq**. dated 12th April, 2023 and filed same date in the Court's Registry. One issue was identified as arising for determination:

1. **Whether having regard to the totality of the evidence before Honourable Court the charge of culpable homicide has been proven beyond reasonable doubt by the prosecution.**

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, not punishable by death under **Section 222 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 as 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 the 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 three 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 Mansur Ali, the deceased subject of the extant charge. By the unchallenged evidence adduced by the three (3) prosecution witnesses before the court and

the defendants placing reliance to the combined evidences of the PW1, PW2 and PW3, there is no dispute or doubt with respect to the death of the deceased, Mansur Ali. 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. In this case, the prosecution called three witnesses, but on the evidence, it is clear that none of these three witnesses saw or directly witnesses the alleged stabbing of the deceased. The narration of what transpired at the scene was related to them by persons who were not presented to give direct evidence of what they saw which in law is obviously hearsay and inadmissible. See **Sections 37 and 38 of the Evidence Act.**

The key particulars of the charge is that the defendant **"… had a physical fight with one Mansur Ali in the process you stabbed him with a scissors on the head which eventually resulted in his death."** This incident was said to have happened on or about 10th August, 2020 at about 19.30 hours. I shall return to this elements later on but it is clear at this early stage that there is no direct evidence of this fight, what happened during the fight and circumstance surrounding the alleged stabbing on the deceased on his head with a scissors.

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 and at the risk of sounding prolix, I have carefully considered the evidence of all the prosecution witnesses, PW1, PW2 and PW3 and there is no where they indicated or stated that they were present or were privy to the circumstances when defendant "stabbed" the deceased with "scissors" which is a key particular of the extant count. All PW1, Yusuf Sani said in relation to the death of the deceased was that on his way from Lagos, he received a call from his wife that the deceased, Mansur Ali was stabbed with scissors by the defendant. This wife allegedly did not testify in court. PW1 wasn't at the scene of the incident where the stabbing of the deceased occured which eventually led to the death of the deceased. The hearsay evidence of PW1 clearly will have no probative value in the circumstances.

Now, apart from the confessional statements of the defendant which I will shortly consider, PW2 and PW3, the police officers who at one point or the other investigated the offence all stated in evidence that they did not witness the stabbing of the deceased and those that claimed to have witnesses the stabbing of the deceased were never produced by the prosecution who had direct knowledge of what ca used or led to the death of the deceased. The reality is that beyond what is at best speculative posturing, there was really no direct evidence of the cause of death.

What is strange in this case, is that no clear medical report situating the cause of death. A medical report may have been tendered by the IPO, PW3 vide **Exhibit P3** but there is nothing in the report indicating that post-mortem or autopsy was conducted on the deceased and then delineating clearly the cause of death.

It is to be noted that the medical doctor who prepared the report was not present to speak to what he did or the contents of his report. What is strange about this report is that in the report date of death of deceased was stated to be 10th August, 2020. In the same report the doctor said he last saw deceased on 11th August, 2020.

Now even if it is taken that there was a typographical error, it is clear however from the evidence that, the defendant after the attack was taken to the Rose Haske Hospital and was with them to the following date when he was

discharged to be taken to another hospital or the General Hospital. Indeed it is clear from the evidence of PW1 that when he went to the Rose Haske Hospital on 10th August, 2020, the doctor told him that because the injury was to the head, an xray had to be carried out. PW2 then left to go and arrange for money and only came back the following day to take him to the General Hospital but on the way because much blood was coming out from the head of the deceased, they had to return him back to the Rose Haske Hospital where he later died around 7 pm.

Flowing from the above, it is clear that the deceased was in Rose Haske Hospital for nearly a day before his death and there is no clarity with respect to what actions if any that they took when deceased was presented with the serious head injury. If an Xray was to be conducted because of the severity of the injury, why did the hospital not order for referral to another hospital with the requisite capacity instead of keeping him till the following day without any discernable medical treatment.

Indeed if an Xray was required *ab initio*, it meant the hospital could not have even determined the precise nature of the injury and what could have caused the death of the deceased.

The bottom line and consistent with other evidence or record shows clearly that no autopsy was conducted to positively and medically establish that the deceased died as a result of "stabbing to the head" and the link, if any with defendant. There is here really no cogent medical report on the cause of death of deceased on terms as framed in the charge sheet.

It is equally to the noted that PW1, stated that the **scissors** used in the stabbing was recovered but this was not tendered. Although the failure to tender the murder weapon is not imperative in all cases but where it is available, it may be helpful to present it and situate whether any forensic examination was carried out on it or not. PW1 did not inform the court that any forensic examination was carried out on the murder weapon to situate any link between defendant and the weapon used in the alleged stabbing.

The column in the report on cause of death reads thus:

"Severe head injury 2^0 stabbed injury"

This report appears deliberately ambiguous. There are obviously different parts to the head. Where or what part of the head was stabbed? Is it the front or the back or the side?

The Oxford Advanced Learners Dictionary (new 8th Edition) on page 691 defined head as **"the part of the body on top of the neck containing the eyes, nose, mouth and brain."**

In the clear context of this definition of head, the medical report is thus grossly insufficient in explaining the nature of the injury or in particular the part of the head that was "stabbed."

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 a post mortem, 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 and compelling to convince the court of no rational hypothesis other than the guilt of the defendant.

Let us situate the evidence of the prosecution witnesses.

PW1 as stated earlier, had no direct knowledge of what happened to the deceased. All he knows about the incident was what his wife told him, which I held to be hearsay and inadmissible. I had earlier referred to his meeting with the doctor at the hospital who stated that an xray had to be conducted and he had to leave deceased till the following day. He also narrated how he tried to

transfer the deceased from the private clinic to the general Hospital and returned the deceased back to the private clinic because of high loss of blood and that he later died at about 7pm on the 11th August, 2020 a day after the stabbing. PW1 stated further that when the defendant was arrested in Kano, the defendant begged him and told him that he did not attack the deceased intentionally as the deceased was his friend. There is nothing in evidence of PW1 to situate circumstantially the stabbing of the deceased by the defendant.

PW2 was the investigation Police Officer that commenced investigation into the death of the deceased at Gwagwalada Divisional Police Station before the transfer of the case file and the defendant to the State CID. He equally testified in evidence of what PW1 told them in respect to what he was told as regards the stabbing and eventual death of the deceased. The narration of PW2 is equally hearsay and thus inadmissible. Now in respect to the action, PW2 was directly involved with, he stated going to Kano, where the defendant was arrested and handed to them and brought the defendant to Abuja. The statement of the defendant was taken by Insp. Yerima who was not available and who is in custody of the defendant original statement. He also visited the scene and discovered a scissors which was alleged to be used by the defendant in stabbing the deceased. He stated visiting the Hospital where the deceased died. He further testified that he tried to locate one Ali Gombe without success.

On the basis of the evidence analysed above, it is difficult to situate circumstantial evidence of value and cogency linking the defendant with stabbing of the deceased.

The evidence of PW3, the Police Officer who investigated the case when it was transferred to the State CID Office. His evidence is that he recorded the statement of the defendant under words of caution which he stated the defendant signed. PW3 stated further that the defendant informed him that on the 10th August, 2020 at about 19:30 hours (7:30) while at a place in Gwagwalada, where they carry out business of buying and selling of Indian Hemp, one of the Defendant's mentor, named Ali Gombe instructed the Defendant to seize a bag of Indian hemp from the deceased and in the ensuing struggle between the deceased and the defendant; he, the defendant stabbed the deceased which resulted to the deceased bleeding and he was immediately rushed to a Private Hospital where he later died the following day, that is on the 11th August, 2020.

It is worthy of note that this narration by PW3 apart from the "confessional statement" falls along the same trajectory with that of PW1 and PW2 respectively. PW3 stated that defendant confessed that he stabbed the deceased with a scissors in the ensued struggle to snatch the bag of Indian hemp from the deceased.

There is nothing here to support this alleged stabbing of the deceased by defendant. He confirmed under cross-examination that all he said above was what the defendant told him. Also, the evidence of PW3 just like the evidence of both PW1 and PW2 did not situate any circumstantial evidence to support the deceased.

Again, PW3 said he visited the scene of the alleged incident, and met two eye witnesses, but they refused to disclose their identity for fear of one Ali Gombe. He further stated that the 2 eye witnesses statements corroborated the statement of the defendant; the said eye witnesses were never produced and their statements not tendered. PW3 is certainly not a qualified medical practitioner. The question then is beyond the alleged confession, how did he come to the conclusion that the deceased was stabbed with a scissors by the defendant and this led to the death of the deceased. The best to make out this piece of evidence is essentially in the realm of speculation not grounded on facts or forensic analysis.

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 alleged 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.

Given the above situation, it is really difficult on the materials to circumstantially see cogent evidence situating the cause of death and the clear link with defendant. At different levels, this case suffers from serious evidentiary challenges which I have demonstrated. There is really no physical and clear evidence to situate cause of death and how the defendant has a hand in it. Circumstantially, any link is at best tenous and does not unequivocally situate that the defendant caused the death of the deceased by stabbing.

The point to perhaps underscore is that the duty on prosecution to prove cause of death cannot be established by speculation or conjectures cause of death must

be established by the prosecution either by direct evidence or circumstantial evidence that creates no room for doubt or speculation. See **Adetola V State (1992) NWLR (pt.253) 267 at 275 E-F.**

In this case there is no direct evidence supported by medical evidence. The circumstantial evidence is equally not clear and unequivocal. What was presented created profound room for doubt and speculation and that is fatal to the case of the prosecution with respect to cause of death.

At the risk of prolixity, it is the burden duty of prosecution to establish the cause of death with certainty and show that it was the act of the defendant that caused the death of the deceased. See **Adekunle V State (1989) 5 NWLR (pt.123) 505 at 515 D**. The threshold was not crossed by the prosecution in this case.

This now leads me to the alleged confessional statements tendered in evidence as **Exhibits P1** and **P2**. It is true as earlier alluded to that the first confessional statement, **Exhibit P1** may have been retracted by defendant but it still remains evidence to be evaluated along with all other available evidence on record. The court has to be satisfied as to the truth of the confessional statement. In the two statements, **P1** and **P2**, the defendant alluded to the instruction of one Ali Gombe to collect "Indian hemp" from the deceased. This then led to a fight between them and in the process, defendant said he took a scissors and stabbed the deceased on his head and blood was gushing out. They then rushed deceased to the clinic. The defendant in both statements indicated that the deceased was treated and he went back home only to be subsequently returned to the hospital.

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 of the confession allegedly made in the statements **Exhibits P1** and **P2.** The question that has agitated my mind, I must confess is whether this admission is direct in view of the specifics of the particulars of the charge which specifically indicated cause of death to be that **"…you had a physical fight with one Mansur Ali and in the process you stabbed him with a scissors on the head which eventually resulted in his death…"**

During the evidence in Chief of both PW2 and PW3 who tendered **Exhibits P1** and **P2** they made the point that the defendant confessed to stabbing of the deceased with a scissors, but that stabbing on the evidence did not immediately and conclusively result in the death of the deceased.

I had earlier situated that he was in a hospital for nearly 24 hours after the alleged stabbing with no clarity with respect to what actions the hospital carried out after he was presented. It would also appear clear that the hospital did not have the necessary capacity to take care of the injury and one really wonders why they did not immediately refer him to the General Hospital when they knew *ab initio* that an Xray was required to determine the nature of the injury and the intervention required.

It is clear that the hospital could have done much more in the circumstances, particularly since the deceased did not die on the spot but about 24 hours later. This then raises the important question of causation.

In the case of **Uyo V Attorney General of Bendel State (1986) 1 NWLR (pt.17) 418,** the Apex court stated instructively as follows:

i. **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;**

ii. **In order to establish culpable homicide (whether punishable with death o not), it must be established not merely that the act of the accused could have caused the death of the deceased but that it actually did; and**

iii. The important consideration for determining responsibility is whether death of the deceased was caused by injuries sustained through the act of the accused and not whether death of the deceased form a medical point of view was caused by such injuries.

See also, the cases of **R.V. Effanga (1969) 1 All NLR 339, Aiguobarueghian V State (2004) 3 NWLR (pt.860) 367**.

It is of the essence that in order to hold an accused person (defendant) criminally responsible in a charge of culpable homicide, the chain of causation must not be broken as this implicates the ***actus reus*** of the offence. Where there is a break in the chain of causation, otherwise known as ***novus actus interveniens***, it would be resolved in favour of the defendant. Also, where there is more than one possible cause of death, the benefit of the doubt is always given to the defendant because the available evidence in such a situation hardly pins the defendant down to the death of the deceased. See the cases of **Uyo V Attorney General, Bendel State (supra), Ahmed V State (2001) 18 NWLR (pt.746) 622, Aiguobarueghian V State (supra) at 414 and Ochuko Tegwonor V State (2007) LPELR – 467 (CA).**

On the facts of this case, the burden was on the prosecution to demonstrate by credible evidence that the deceased died as a result of the action of the defendant since the deceased did not die where the stabbing allegedly occurred. There is thus no evidence of what happened to the deceased between when he was stabbed on 10th August, 2020 and when he died on 11th August, 2020. These are important gaps that must be sufficiently explained by the prosecution. The evidence on cause of death in this case is weak and tenous and indeed unreliable.

The point to make particularly in a criminal trial where the threshold of proof is beyond reasonable doubt is that any finding of fact cannot be made outside the accepted relevant document or be seen to fly in the face of the document before the court. The confessional statements in **Exhibits P1** and **P2** clearly project a scenario which in the absence of clear evidence cannot aggregate to the particulars of stabbing which was clearly delineated in the Amended Charge as cause of death. In such unclear circumstance, such confession cannot be said to be positive, direct and unequivocal.

Since the confession is not clear or unequivocal, the requirement to test the confessional statement does not really arise. In the event that I am wrong and

the confession is positive, then 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, there is really nothing in the evidence of PW1-PW3 as already demonstrated delineating strong, cogent and credible that shows the confessional statement to be true. At the risk of prolixity, there is nothing outside **Exhibits P1** and **P2** in evidence to situate stabbing as the clear cause of death and the link if any, with defendant.

In addition, the key 2 eye witnesses according to PW3 who witnesses the stabbing refused to identify themselves and refused to come and testify. All these eye witnesses were never produced to give evidence and add credibility to the case that the defendant killed the deceased.

By the nature of the evidence in this case, it is difficult to answer the first question in the affirmative with respect to whether confessions are true. 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 demonstrated earlier, there is really nothing outside the confessional statements that confirms them. There is absolutely no corroboration of the essential elements of the charge as already demonstrated. Apart from absence of eye witness, the scissors used was not tendered or examination and forensics of what it contains tendered or presented to situate a link with defendant.

Furthermore, the statements in so far as they can be tested, they have not been found to be true. There is nothing outside the confessions to add further credibility and value to the confessions beyond largely hearsay evidence and speculations.

On the evidence, there is really nothing on the evidence situating that the defendant had the opportunity to commit the offence. Under cross-examination of PW2, he stated that the deceased and defendant were friends. The question then that arises is why would the defendant just kill his friend? There is nothing to situate motive of the alleged crime.

On the question of whether the confession is possible. From the evidence and the facts before this court, it is difficult to situate clear and positive facts to support the alleged confession. The failure of the prosecution to present critical eye witnesses and the absence of important materials like the murder weapon, a report of the examination of the weapon and a clear medical report has cast doubt on the alleged confession. The alleged confessions are in no way in tandem or consistent with other facts ascertained and proved. **Exhibits P1** and **P2** are clearly not reliable and providing sufficient foundation to be used in determining the guilt of the defendant.

The bottom line is that the confessional statements, **Exhibits P1** and **P2** in this case were not satisfactorily proved and a conviction founded on such confession without more cannot have legal validity. See **Idowu V The State (2001) FWLR (pt.16) 2672 at 2703.**

As demonstrated above, there is no clear evidence of the cause of death of deceased and also no evidence situating that the act of the defendant caused the death of the deceased and this has fatally undermined the extant charge. On the other hand, the circumstantial evidence was not cogent and compelling. For circumstantial evidence to ground a conviction, it must lead only to one conclusion, namely the guilt of the accused person. However, where there are other possibilities in the case such a person cannot be convicted. See **Esai V State (1976) 26 NSCQR (pt.2) 1367 at 1381-1382.**

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.**

At the risk of prolixity, the cause of death on the charge was stabbing. No such cause was **established** at all beyond the alleged confession which the court found to lack probative value. In the absence of cause of death, it will be a futile exercise to seek to link the **cause** to any person alleged to have caused it, especially where there is no evidence to support such conclusion.

The case as stated earlier suffers from serious evidentiary challenges. Critical witnesses and documentary evidence that would have shed light to what actually happened to the deceased were not presented in court and this served to undermine the relative quality and strength of the case of prosecution.

I agree with the prosecution that proof beyond reasonable doubt does not mean proof beyond the shadow of any doubt. That is correct and 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 however 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. In **Mbanengen Shande V. The State 22 NSCQR 756 at 772-773;** *Pats Acholonu J.S.C (of blessed memory)* instructively stated as follows:

"When an accused is being tried for any case whatsoever, because of the principle of law ingrained in our Constitution that he or she shall be presumed innocent, it behoves of the Court to subject every item of facts raised for or against him to merciless scrutiny. Nothing should be taken for granted as the liberty of the subject is at stake. Where there is a doubt in the mind of the Court either as to the procedure adopted or failure to address on very important latent issues that assail or circumscribe the case, the Court should acquit and discharge. Although the standard of proof is not that of absolute certainty (that should be in the realm of heavenly trials) the Court seised of the matter must convince itself beyond all proof that such and such had occurred. It is essential to stress times without number that the expression proof beyond all reasonable doubt- a phrase

coined centuries ago and even ably applied by the Romans in their well developed jurisprudence and now verily applicable in our legal system, is proof that excludes every reasonable or possible hypothesis except that which is wholly consistent with the guilt of the accused and inconsistent with any other rational conclusions. Therefore it is safe to assume that for evidence to warrant conviction, it must surely exclude beyond reasonable doubt all other conceivable hypothesis than the accused's guilt. The accused should be acquitted if the set of facts elicited in the evidence is susceptible to either guilt or innocence in which case doubt has been created".

I need not add to the above eloquent admonition by the revered jurist. From the evidence, adduced on record by the prosecution, I have not been put in a commanding height by the prosecution to comfortably hold that the case has been proved beyond all reasonable doubt. Here there is clearly reasonable doubt as to the culpability of the accused in relation to the offence charged. The implication therefore is simply that the prosecution has failed to discharge the onus of proof placed upon it by **Section 138 of the Evidence Act**.

I cannot end this judgment without saying that it is clear that justice has not been served in this case particularly to the deceased whose life was unnecessarily and cruelty cut short. Much more ought to have been done by the investigation teams in terms of thorough analysis of the facts and forensic evaluation of the scene of the murder and the murder weapon allegedly used in the act to put the court in a commanding height to resolve the important questions raised by this case in their favour. Without these critical foundational evidence, there is really not much the prosecution could have done in the circumstances. The days of relying solely on confessional statements that are often not voluntarily obtained as sole basis to secure a conviction are now long gone. I leave it at that.

On the whole and in the light of the foregoing and in summation, the evidence adduced by the prosecution falls far short of proving the one count charge against the defendant beyond reasonable doubt. Having failed to do so, the defendant is accordingly not found guilty of the offence as charged and he is hereby discharged and acquitted.

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Chinyere Moneme, Esq. with Charity Unogwu, Esq. and Mukeng Nathan, Esq. for the Prosecution.***

2. ***Okpeahior Lucky, Esq. for the Defendant.***