



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO: FCT/HC/CR/123/2011

BETWEEN:

COMMISSIONER OF POLICE.....COMPLAINANT

AND

ISA'AC ANDERO.....ACCUSED

RULING

The accused person was arraigned on 24th April, 2012 on a one count charge of culpable homicide contrary to Section 222 of the Penal Code. The Prosecutor was not diligent as no witness was called to prove the charge against the Accused until 30th April, 2013 when one Inspector Diagi Abiodun, an Investigative Police Officer (IPO) testified as the PW1 and tendered Exhibit P1 which is the statement he personally made as an investigator. He was duly cross-examined by the Learned Counsel to the Accused person.

Consequent upon the foreclosure of the case for the prosecution for want of diligent Prosecution and upon the application of the learned counsel to the Accused, the matter was adjourned for Defence.

On 23rd June, 2015, the Learned Police Prosecutor informed the Court that the Honourable Attorney-General of the Federation had taken over the prosecution of this matter. Regrettably no further step was taken by the office of the Honourable Attorney-General of the Federation until the presentation of final written addresses of parties. In other words, the Hon. AGF did not put up a single appearance after the withdrawal of the Police from this matter even though the office of Director of Public Prosecution of the Federation applied for Certified True Copy of the Record of Proceedings for further necessary action.

Mr. P.I. Oyewole of Counsel to the Accused filed a no case submission where he contended that no Prima Facie case was made out against the accused person. He also attacked the testimony of the PW1 as hearsay evidence and Exhibit P1 as documentary hearsay on the sole ground that the PW1 was not part of the team that investigated the case against the accused person. Learned Counsel also submitted that the testimony of the PW1 is replete with contradictions which made his evidence unreliable. He further submitted that the failure of the Prosecution to tender the purported confessional statement of the Accused and put material witnesses in the Box strongly suggest that the Prosecution appreciates the futility of the charge against the Accused person.

In his reply to the *No Case Submission*, Mrs. Hajara Yusuf, a Principal State Counsel urged the Court to discountenance the submission of the Learned Counsel to the Accused person and hold that the case against the Accused is proved. Paragraphs 3.6 and 3.7 of her written submission in my view sufficiently captured her position on this point, to wit:

“3.6 - The Defendant in paragraph 3.11 to 3.16 of his submission argued that the ingredient of the offence the Defendant is charged with is not proved. At this juncture My Lord let us reflect on what needs to be proved for the offence the Defendant is standing trial for;

- a. That the death of a human being has actually taken place.**
 - b. That such death has caused (sic) by the act of the accused.**
 - c. That the accused intended by such act to cause such bodily injury as was likely to cause death or that he knew that such act would be likely to cause death or that he caused the death by a rash or negligent act.”**
- My Lord in this case, all the ingredients have been met. The death of Gbenga Moore was caused by the Defendant and the acts of the Defendant was what**

caused the death of the deceased. My Lord yes the act was not premeditated, but the fact that the Defendant stabbed the deceased on the neck not on the leg, or it is not only likely but probably that death would occur.

“3.7 - Taking into account the instrument with which the homicide was effected, in the cause of the fight, a simple blow is very different from making use of a deadly instrument as a kitchen knife. Further to establish the guilt of the Defendant, My Lord, when he realized that the victim was dead he not only threw the knife away (thereby destroying evidence) he fled the city of Abuja and ran off to his village, it was his relatives in the village that bundled him up and brought him to Karu Police Station to report the crime.”

I am shocked to see this line of submission on the part of the learned Counsel to the prosecution because in the course of trial, I have no evidence before me to support the Counsel’s submission captured above. I will return and deal with this point in the course of this Ruling.

Now the Law is so trite that in a criminal trial at the close of the case for the Prosecution, a submission of no prima facie case to answer

made on behalf of the accused person postulates one or two things or both of them at once:

(a) Such a submission postulates that there is no evidence to prove the essential elements of the offence charged.

(b) That the evidence adduced has been discredited as a result of cross examination or the evidence is so manifestly unreliable that no reasonable Tribunal or Court can safely convict upon it.

See IGABELE VS. THE STATE (2004) 15 NWLR (PT. 896) 314.

My task in this application is to consider the evidence led in this trial by the only prosecution witness for the purpose of determining if any of the conditions stipulated above exist. If it does, then I must arrive at a conclusion that no prima facie case has been established and proceed as a consequence to discharge the Accused. If the condition do not exist then am bound to overrule the submission of the Defence Counsel and put the Accused to his defence.

Furthermore, in the consideration of this application, I must bear in mind that the Court is not called upon at this stage to express any opinion on the credibility or the weight of the evidence led. All that the Court is called upon to Rule upon at this stage is simply whether there exist legally admissible evidence linking the Accused person

with the commission of the offence charged and that there is need to seek some explanation from the Accused.

See AGBO & ORS. Vs THE STATE (2003) 11 NWLR (PT. 1365) 377.

The testimony of the PW1 before the Court and his statement (i.e. Exhibit P1) in my view represent the totality of the case for the Prosecution. In view of the serious nature of the charge against the Accused person, I take the liberty to reproduce the totality of PW1's testimony when he was examined-in-chief:

“My names are Inspector Diagi Abiodun attached to Divisional Headquarters FCT, Abuja.

I know the accused person. He was brought on the 10/5/2011 to the Divisional Police Headquarters, Karu from Kogi State.

Earlier, on the 8/5/2011 a case of sudden and unnatural death was reported at Karu Police Station. I led a team of police detectives to the scene of crime at a place at Karu Site opposite Jimson Hotel where we met a lifeless body of one Gbenga Moore lying in a pool of blood. He was lying by the side of the house. All occupants fled the compound.

Photographs of the corpse were taken and the corpse removed and deposited at General Hospital Asokoro.

We relayed a signal to the FCT Command. During investigation it was discovered that there was a fight between the deceased and the accused around 11:30pm on the 7/5/2011. The accused fled to his village in Kogi State. He was apprehended from the village and brought to us at Karu.

He made a confessional statement to the Police.

At a point in our investigation the case was transferred to the State CID and I made a statement in respect of what we did. I also handed over the accused and two wrap of weeds suspected to be Indian hemp, two long wood. The accused told me he threw the knife away. At Karu Police the IPO who specifically handled the case is Sergeant Oguche.”

When he was cross examined by the Learned Counsel to the Accused person, the PW1 stated inter alia that:

“At the scene I saw the deceased person. The point of impact on the deceased was on the neck around the epiglottis.

It is true that all the occupants in the house where this thing happened fled.

Outside the person who came to report the case I did not see anybody at the scene to tell me what happened between the accused and deceased. However the accused himself told me in the course of investigation that he killed the deceased and threw the knife used away.”
(underlining supplied for emphasis)

Now from the proof of evidence the Accused and the deceased both reside at Flat 7, Block 78, Karu Site, Abuja. It was alleged that the accused and the deceased had a fight around 11:30pm on 8th May, 2011. The deceased's lifeless body was later found close to the house. People living in that vicinity were said to have fled their homes. The police was invited and the Corpse was evacuated and deposited at the Asokoro General Hospital. As at the time of trial, no Autopsy was conducted. The Accused person fled to his Village in Kogi State where his Kinsmen arrested him and brought him to Karu Police Station. He was said to have made a confessional statement to the Police that he killed the deceased with a Kitchen knife and subsequently throw away the knife. These are the facts contained in the proof of evidence.

It is however worrisome that the Police did not lead any direct evidence to establish the facts captured in the proof of evidence. The testimony of the PW1 who is not an eye witness is grossly unhelpful. I agree with the learned counsel to the Accused that the testimony of the PW1 is hearsay evidence. As a matter of fact, the PW1 who stated that he was part of the team that recovered the Corpse of the deceased informed the Court under cross-examination that:

“I did not see anybody at the scene to tell me what happened between accused and deceased. However the accused himself told me in the course of investigation that he killed the deceased and threw the knife he used anyway “

By the showing of the PW1 he cannot give any direct oral evidence of the circumstances which led to the death of the deceased not being an eye witness. Although, the PW1 stated that the Accused confessed to him that he committed the crime vide his confessional statement, it is unfortunate that the alleged confessional statement made by the Accused was not tendered by the Prosecution. It beats my imagination that the Prosecution who has no direct witness in this case will still find it comfortable to withhold the alleged confessional statement of the accused if indeed the statement was confessional in nature.

In my view, the Prosecution has woefully failed to put forward any valuable legal evidence upon which the Court may enter a prima facie case against the accused. The Learned Counsel to the Prosecution got it all wrong and twisted when she submitted that the case against the accused is proved with cogent and convincing evidence before the Court. I have none of such evidence before me and I wonder the record that serve as a guide for the counsel to the prosecution since the record of this Court does not support her submission! At the risk of repetition, the point must be made that the submission of learned counsel to the Prosecution is not supported by the evidence led at trial. Although, the business of this Court at this stage is not to establish the guilt of the accused person I must state with considerable haste that counsel cannot manufacture evidence through written submission.

See **OFORISHE Vs NIGERIAN GAS COMPANY LTD (2017) LPELR-42766 (SC)** where Rhode-Vivour, JSC re-echoed the Law as follows:

“I must remind counsel that the main purpose for address is simply to assist the Court. Cases are decided not on address or alluring closing speeches but on credible evidence. So no amount of brilliant address can make up for lack of evidence to resolve any issue before the Court.”

See also **OKWEJIMINOR Vs GBAKEJI (2008) 5 NWLR (PT.1079) 172** and **OKULEYE V. ADESANYA (2014) 6-7 S.C (PT.1) 1.**

Arising from the foregoing, the painful and unfortunate conclusion I must reach as I should is that the Prosecutor has not made out a prima facie case against the Accused person.

In my view the quality of investigation and Prosecution in this case left a sour taste in the Criminal Justice System. There is no doubt that life was lost. It is also not in doubt that the Accused person possibly knows something about the circumstances leading to the death of the deceased person. The Accused was said to have made a statement which is confessional in nature, but the Prosecution refused to tender that statement. To say the least I am not impressed with the quality of investigation and Prosecution in this matter. In the circumstance, I refer to the case of **IDOWU Vs STATE (2000) 7 S.C (PT.II) 50; (2000)12 NWLR (PT.680) 48** where the apex Court held thus:

“But before concluding this Judgment, I wish to comment on the way and manner the prosecution conducted the investigation of this case. The method adopted left much to be desired. With the number of police officer trained as lawyers in the Police Force, the quality of the police investigation, particularly in this case, is far below the

quality and standard one would expect in this age of technological developments. The Ministry of Justice, which has the responsibility of supervising investigation of criminal cases, particularly those involving human lives, are also not free from blame. Prosecutions of cases are more often than not, conducted in a loose and unsatisfactory manner, resulting in acquittal of criminals who should have been convicted.

At the end of the day, the no case submission is upheld and the Accused is discharged on the lone count charge of culpable homicide. He is set at liberty pursuant to Section 357 of the Administration of Criminal Justice Act 2015.

**SIGNED
HON. JUSTICE HUSSEINI B. YUSUF
(PRESIDING JUDGE)
21/01/2021**