IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 13

CASE NUMBER : CHARGE NO: CR/356/18

DATE: : WEDNESDAY 29TH JANUARY, 2025

BETWEEN

COMMISSIONER OF POLICE .... RESPONDENT

AND

ALIYU ABUBAKAR .... APPLICANT

JUDGMENT

The Defendant is standing trial for the offence of culpable homicide under Section 221 of the Penal Code.

The Defendant was arraigned on the 14th day of November, 2018. He pleaded not guilty to the one (1) count charge, and the case proceeded to hearing.

The Prosecution opened its case on the 2nd day of November, 2023 (Binbol Bongtim).

It is the testimony of PW1 that on the 3rd day of March, 2018 at about 1830hr, while on duty, one Sanusi Usman, from Zuba, Fruit Market, came to Zuba Police Station, where he alleged that, while in the Fruit Market, the Defendant had argument with one Usman Sani (Deceased), which eventually resulted into a fight and at that process, the Defendant picked a stone on the ground and hit it on the Deceased's head, and the Deceased fell down, and on rushing the victim to Suleja General Hospital, the victim was confirmed dead by the Doctor, due to the impact of the injury caused on the Deceased by the victim.

It is further evidence of PW1, that he visited the scene of crime, and also conducted further investigation by carrying out

interview, people from the scene of crime, and also proceeded to Suleja General Hospital, where the corpse of the Deceased was deposited after the incident.

Prosecution tendered the extra-judicial statement of the Defendant through PW1, and it was admitted in evidence and marked Exhibit "A". Also, the coroner's form was tendered in evidence and marked Exhibit "B".

PW1 was cross-examined and subsequently discharged.

The Defendant opened his defence on the 7th day of May, 2024.

DW1 (the Defendant himself) testified and stated as thus;

When he came to their business place in morning he found that Usman carried all his baskets which he use for selling oranges. When he refused to surrender his baskets, he then emptied the baskets and Usman suddenly started insulting him and there was a fight between them. Afterward Usman and his people pounced on him and started beating him. In the process of trying to run away, he pushed Usman who was then taken to the hospital and he was then taken to the Police Station.

Seven days afterwards, the family of Usman came to the Police Station to tell him that Usman had died, but that he had always had asthma from birth.

DW1 was cross-examined, and he stated during cross-examination as follows;

That he knew Usman Sani very well. That before the incident, they have been doing business together for about 4 – 5 years. That he has never taken Usman to the hospital in these 4 -5 years of being together. That Usman always showed sign of Asthma as he coughed. That he was informed of Usman's death after one week of detention at the Police Station.

That he did not write any statement at the Police Station. That his father's name is Abubakar Aminu. That his father is from Jos. That he was born in Zamfara. That he has never attended any school since he was born. That he was not feeling fine and hence he did not say anything at the Police Station. That he has a wife and five children. That he never said anything to the Police in any statement to the Police. That he did not hit Usman Sani with a stone which resulted to his death.

The Defendant closed its case after cross-examination and the suit was adjourned for the adoption of final written addresses.

The Prosecution formulated two (2) issues for determination to-wit;

1. ***Whether the Prosecution has successfully discharged the burden of prove placed on him, to warrant this Honourable Court convict the Defendant, in a case of culpable homicide punishable with death?***

2. ***Whether the confessional statement of the Defendant that was unequivocally made by the Defendant, which was never denied nor objected to by the Defendant, should not be relied upon by this Honourable Court and convict the Defendant?***

On issue 1, Learned counsel submits, that the Prosecutor has successfully discharged this burden beyond all reasonable doubt in this case.

Learned counsel also submits; that Section 220 of the Penal Code, defines culpable homicide, to mean:

Section 220 whoever causes death;

a. ***"By doing an act with the intention of causing death or such bodily injury as is likely to cause death; or***

b. By doing an act with the knowledge that he is likely by such act to cause death, or

c. By doing a rash or negligent act, commit the offence of culpable homicide.

<u>While Section 221 of the Penal Code provide thus:</u>

a. "If the by which the death is caused done with the intention of causing death," or

b. "If the doer of the act knows or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause. Counsel further submits, that in law the principle is that the guilty mind (mens rea) instigates the guilty act (actus reus) and this can be proof from the declared intent of the Defendant or by inferentially through the Overt act of the Defendant. Therefore, in a case of culpable homicide, the Defendant is taken to intend the consequences of his voluntary action, when he knew and foresee that his action will probable result to the death of another person or cause grievous bodily

harm. MOHAMMED VS. STATE (1991) 5 NWLR (Pt. 192 – 438);

ABEKE VS. STATE (2007) 9 NWLR (Pt. 1040) 411 were cited***.***

In the case of ***IKONO VS THE STATE (2021) 13 NWLR (Pt. 1792) 185 AT 203 TO 204 Paras C-E,***

It was held that in Order to hold a Defendant criminally responsible, the chain of causation must not be broken.

In the instant case, learned counsel also submits, that the chain of cause of the deceased death was not broken, and that the deceased person died as a result of the Defendant act, that his death was caused by the Defendant; and that the Defendant know his action by heating a big stone on the deceased head would probable killed the deceased or caused grievous bodily harm, which eventually resulted to the deceased death the same day.

On the meaning of proof beyond reasonable doubt; in the case of ***VICTOR ISONGUYO VS. STATE (2023) 3 NWLR (Pt. 1872) at 527,*** the Supreme Court held that proof beyond reasonable

doubt does not mean proof beyond all doubt or all shadow of doubt 'It simply' establishing the guilt of the accused person with compelling and conclusive evidence a degree of compulsion which is consistent with a high degree of probability.

On issue 2, it is the submission of learned counsel, that on the admissibility of confessional statement in the case of ***ALIYU VS. STATE (2023)18 NWLR (Pt. 1915) at P.2,*** the Supreme Court held that, the confessional statement of an accused person where same is found to be voluntary and unequivocal provides the best evidence of the person's guilt, Section 28 of the Evidence Act, 2011. Thus, a confessional statement made at anytime by a person charged with a crime, stating or suggesting the interference that he committed that crime, such confession is relevant. ***ORI VS. STATE (2020) LPELR 49554 REFERRED TO (P. 69 PARAS C – G).*** was cited.

Learned counsel contends, that the Defendant had the opportunity to object to the admissibility of Exhibit "A" being the Confessional Statement of the Defendant, but the defence counsel never did, and during cross-examination of PW1.

Learned counsel concludes by urging this Honourable Court to convict the Defendant and punish same as provide under Section 221 of the Penal Code.

On their part, Defence Counsel formulated lone issue for determination to-wit;

> ***"Considering the totality of evidence placed before the Court by the Prosecution vis-à-vis viva voce of PW1, documentary evidence tendered and admitted at trial and other documents in the Court file, whether or not the Prosecution has not failed to prove their case beyond reasonable doubt as required by law.***

It is the submission of learned counsel, that the burden of proof in our adversarial system of criminal justice is for the Prosecution to prove its case beyond reasonable doubt before the Court can evaluate and decide on decision of acquittal or conviction. This position that been given legal imprimatur by the constitutional presumption of innocence enshrined in our law particularly **Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended);**

ADEKOYA VS. STATE (2012)9 NWLR (Pt. 1306) 539. The Evidence Act has also given prescription on the standard of proof in criminal proceedings when the Act in Section 135(1).

Learned counsel further submits, that under the second ingredient, the law squarely places on the Prosecution the duty to establish that the death of the victim was the responsibility of the Defendant by intentional act or omission of the defendant with the clear knowledge that the act or omission could cause grievous body harm or death. Here, it is imperative that the Prosecution must prove that the act or omission of the Defendant complained of actually caused the death. ***MADU VS. STATE (2012) 15 NWLR (Pt. 1324) 405*** was cited.

Where there is any intervening force or factor, a court of law will not find the Defendant guilty of the offence of culpable homicide. ***IDIOK VS. STATE (2008) 6 NJSC 36 at 57*** was cited. On the third ingredient necessary to impute to a Defendant in order to find him guilty of the crime of culpable homicide is the intention. For an act to be culpable homicide, it must be aimed at someone and must be committed with the intention to cause death, grievous bodily harm or to expose a potential victim to serious risk of death or bodily harm. ***AFOLABI VS. STATE (2013)***

NWLR (Pt. 1371) 321 at 354. Thus, it is not enough for the Prosecution to prove that death resulted from the act of the Defendant but must go further to prove that there was the requisite intent or mens rea by the Defendant to kill or cause grievous bodily harm.

UGURU V. STATE (1964) 1 ALL NLR 21 was cited.

Learned counsel argued, that it is also apposite to quickly say that in order to prove an offence, the Prosecution can use any of the following modes of proof namely:

1. The confessional statement of the accused which has been duly tested, proven and admitted in evidence.

2. By circumstantial evidence which is complete, cogent and unequivocal and lead to irresistible conclusion that the accused committed the offence charged.

3. By direct evidence of eye-witness(s) who actually saw the accused committing the offence. ***ILORI & ANOR V. STATE (1980) 8-11 SC PG. 81***.

It is the totality of the evidence that has to be evaluated and assessed altogether. The Court cannot pick and choose the

evidence to be assessed. ***MOGAJI VS. CADBURY (NIG) LTD. (1985) 2 NWLR (Pt. 7) 393*** was cited.

Learned counsel submits, that such death was caused by the Defendant, considering the totality of evidence from both sides, it is without doubt that one Usman Sani, a trader at the Fruit Market Zuba, died. Counsel therefore restrain from dwelling on whether somebody died or not. From the record, it is crystal clear that death of a human being occurred.

Learned counsel further submits, that it is reasonable in a criminal trial to establish not only that a crime was committed but more importantly that it was the Defendant that committed the crime. ***ADEKOYA V. STATE (2012) LPELR (7515) 1 AT 28*** was cited***.*** Counsel shall argue the two other ingredients together in showing that the Defendant knows nothing about what eventually killed the deceased and whether the Prosecution proved beyond reasonable doubt that the Defendant intended to cause death or that he knew that death would be the probable consequence of his alleged act.

In order to establish the other two ingredients, the Prosecution in the charge filed before the Court, notified the Court that it intended relying on evidence of the following witnesses:

1. Sufam Dahiru, 37 years old, a business man at Fruit Market, Zuba, Abuja who is to testify as an eye witness and who witnessed how the deceased and the Defendant were engaged in an argument over an orange that was poured on the ground by the Defendant which argument eventually resulted into a fight and how the Defendant picked a stone and hit it on the deceased head which resulted to the death of Usman Sani.

2. Mustapha Mohammed, 25 years old, also a business man at Fruit Market Zuba, Abuja who is to testify as an eye witness, who saw both the deceased and the Defendant fighting and how the Defendant injured the deceased on the head and how the deceased brother rushed him to the Suleja General Hospital.

3. Sunusi Usman, 33 years old, businessman who is to testify how the Defendant hit the deceased with a stone on his head and how he moved the deceased from Diamond Hospital Zuba to Suleja General Hospital.

4. Sergent Binbol Bongtim, a police officer attached to Zuba Police Division who is to testify as the Investigating Police

Officer (IPO) who recorded the statement of the Defendant during investigation.

5. ASP Micah Garba, a police officer who is to testify as an IPO and a team leader in the Homicide section of Criminal Intelligence and Investigation Department.

Learned counsel further contends, that to prove the culpability of the Defendant, the Prosecution in its prove of evidence attached to the charge also listed the following as documents to be tendered as Exhibit:

1. Statement of all the witnesses
2. Statement of the Defendant
3. One photograph showing the deceased at sake (sic)
4. Death report to the Corner (sic)

Learned counsel submits, that they have carefully examined the charge in its entirety and the evidence placed before this Honourable Court in support and upon conclusion of our examination, they discovered that considering the totality of evidence before the Court, the Prosecution was unable to prove the remaining ingredient of the offence of culpable homicide

punishable with death beyond reasonable doubt as required by law.

Learned counsel also submits, that in his evidence in chief, the Defendant giving evidence on his behalf as DW1 testified that the deceased who had been battling with Asthma for about five years eventually died of Asthma attack after they both had a misunderstanding that led to his being admitted in the hospital. He told the Court that Usman Sani died a week after they both had scuffle. It can be confirmed that the deceased did not die immediately from Exhibit "A", the confessional statement of the Defendant made on 3rd March, 2018. He did not confess to killing Usman Sani. He only stated that Usman Sani sustained injury and was taken to the hospital.

Learned counsel argued, that the Defendant denied that it was his action that led to the death of Usman Sani. The only way the Prosecution can prove this vital ingredient or element of the offence of culpable homicide is to call eye witness(es) or vital or material witnesses who can prove the existence of the ingredient.

It is the submission of learned counsel, the Defendant claimed that he only pushed Usman Sani and he fell and was subsequently taken to the hospital because of injury he sustained

when he fell. He told the Court that Usman Sani did not die until after a week. That Usman Sani died of Asthma attack. His evidence is unchallenged, uncontroverted and uncontradicted by any Prosecution witness not even during cross-examination. The Prosecution notified the court that it intended calling three vital witnesses who saw the entire episode when the Defendant used stone to hit the deceased on the head and he died on the way to the hospital. As a matter of fact, were any of these witnesses was called and he testified to the Court what happened, this would have been the end of this matter as this Court will treat such evidence as reliable and believable and would proceed to base conviction of the Defendant on such evidence.

However, the Prosecution failed woefully to present any of these three vital witnesses who saw it all. This Honourable Court had to fore-close the case of the Prosecution after series of adjournments. Sunusi Usman who made complaint at Zuba Police Station was nowhere to be found throughout the entire hearing. In the same vein, Sunfam Dahiru and Mustapha Mohammed who both saw the Defendant and Usman Sani fought were equally not called to give an account of what happened. Since evidence was not adduced by the Prosecution through a credible witness, can we then conclude that Usman Sani died as a result of encounter

he had with the Defendant? This Court is a Court of facts and does not deal with speculation. Nobody testified that it was the stone the Defendant used to hit Usman Sani that led to his death and nobody gave evidence on when Usman actually died. However, from the record of documents before the Court, it is obvious that Usman Sani died around 12th March, 2018 and not on 3rd March, 2018 when the incident occurred. The only evidence the Prosecution relied on in proof of the second and third ingredient of the offence of culpable homicide is the evidence of PW1 Sergent Binbol Bongtim, the IPO and Exhibit "A" the purported confessional statement of the Defendant.

Since the evidence of PW1 is not a direct evidence but based on what one Usman Sunusi told him, this Honourable Court ought to treat the said evidence of PW1 with caution and the Court ought to warn itself of the danger of acting on the evidence of PW1 without corroborating same.

Learned counsel submits, that by virtue of Section 178 of the Evidence Act 2011 (as amended), a conviction for murder can stand on the evidence of a single witness. Such a single witness must however be one that is credible and whose conduct does

not give room for reasonable doubt. ***EMINE V. STATE (1991) 7 NWLR (PT. 204) AT 480;***

ABOKOKUYANRO V. STATE (2012) 2 NWLR (P1. 1285) 530 AT 558 were cited.

The PW1 testified that on the 3rd March, 2018 he was on duty when one Usman Sanusi of Fruit Market Zuba reported the Defendant to the Police. According to him, Usman reported that the Defendant had misunderstanding with one Usman Sani and in the course of the quarrel, the Defendant hit the said Usman Sani with a stone and was later confirmed dead. The PW1 did not disclose to the Court whether he as the Investigating Police Officer visited the scene of the crime or took statement from the Complainant or any other person. From the look of things, it seems the PW1 did not know anything about the case. If at all he was on ground when the case was reported, there is no evidence that investigation was conducted at all.

Learned counsel also submits, that the Defendant in his examination in chief testified that Usman Sani (the deceased) died a week after the incident and that he died as a result of asthma after he was hospitalized consequent upon injury he

sustained while they were fighting. This evidence of the Defendant was not challenged or shaken by cross-examination.

Where it is admitted that the deceased did not die on the same day but a week after, the Prosecution would have done well in providing a medical report showing that it was the act of the Defendant that caused the death of the deceased

Learned counsel also submits, that Coroner autopsy are post-mortem examinations performed at the instance of the law, when a coroner or another authority is instructed to determine the cause, time and the circumstance surrounding the cause of death. The coroner autopsies are performed when the clinicians is legally not in position to issue a death certificate. The procedure to getting a coroner autopsy is that whenever there is a complaint of suspicious death in a locality to a police station, the police officer, who is usually a coroner officer, conduct a preliminary investigation before the coroner requests for an autopsy which is performed by a pathologist, who is also a senior police officer. The said pathologist also visit the scene of the incident with the investigating police officer if required. Then the autopsy is performed by the pathologist using standard autopsy procedures with histological and toxicological analysis carried out where

applicable. After completing the post mortem examination, the coroner then issues the report of the coroner inquest.

Learned counsel submits, that PW1 told the Court that he personally filled the Coroner form and took same to the Area Court, Zuba and then to Upper Area Court Zuba and the form was signed by the Coroner. It is clear from his viva voce evidence that he is just investigating police officer and not a pathologist. PW1 claimed that the Form was signed and dated by the Coroner, there is no coroner signature therein. No stamp of the Upper Area Court was affixed on the Form also. The only stamp visible on the face of the Form are the Zuba Police Divisional Headquarters Stamp and another stamp of FCT High Court showing certification by one Hadiza N. Ajanah which stamp is on all the pages off the charge/proof of evidence. It is trite that an unsigned document is a worthless paper. In ***SELTRIX LIMITED VS. IDOTIVE LIMITED & ORS (2022) LPELR 56669(CA)*** it was held thus:

> ***"The position of case law is that an unsigned and undated document is a worthless piece of paper that has no evidential value in law."***

The second Form in Exhibit "B" is also fraught with many irregularities capable of making it inadmissible in evidence. The

said "Form E" filled by the PW1 also stated that the cause of death is culpable homicide. One Sunusi Usman identified the body but the said Sunusi Usman was not called to give evidence as to the body he identified. In filling question 11 in the said Form the aspect of the Form where PW1 was asked to describe where and how the body was found, PW1 stated that the body was found lying down dead at Suleja General Hospital contrary to his own statement in his extra-judicial statement of 12th March, 2018 that the Police did not see the body. The said Form E was not also filled by any Coroner who was supposed to answer some key questions in the form. The question were left unanswered and the space left blank. The Coroner or Magistrate who was supposed to fill the form and sign did not do so making the document to be a worthless document.

Learned counsel argued, that the document paraded by the Prosecution as the confession of the Defendant, to a discerning mind was shrouded in mystery and counsel urge the Honourable Court to use the judicial antenna to pick and unravel same. The document, as submitted, failed all the litmus test of prove beyond reasonable doubt as required by law for criminal prosecution of this nature.

Learned counsel aver, that apart from the testimony of the PW1 which clearly shows that the Defendant cannot write and cannot communicate in English but Hausa, it is evident from the proof of evidence filed by the Prosecution that the statement of the Defendant was recorded both in English and Hausa versions. The Prosecution filed along with the proof of evidence the Hausa version of the extra judicial statement of the Defendant to the police. The Hausa version of the statement of the Defendant was recorded by one ASP Micah Garba who counter signed after the Defendant has written his name.

Why was the Hausa version not tendered in evidence even though the Prosecution notified this Honourable Court in its proof of evidence that it shall be tendering same? Why was ASP Micah Garba who recorded the confessional statement in Hausa language not called to give evidence and tender the Hausa version in evidence?

In this case, the PW1 admitted that he communicated with the Defendant in Hausa in his viva voce and there is a confirmation in the proof of evidence that the original statement of the Defendant was translated to Hausa version. From this evidence, it

is crystal clear that there exist Hausa version of Exhibit "A" which was not tendered in Court.

The evidence of PW1 had already been discredited being hearsay and unreliable.

It is the submission of learned counsel, that under the crucible of cross examination PW1 made it clear to the Court that at the time the statement of the Defendant was obtained, it was only him and one Inspector Naceta that were there with the Defendant and the Defendant gave the two of them the information contained in the said confessional statement. The PW1 did not tell the Court whether the lawyer of the Defendant or any of his representative was there. He also did not testify to the fact that there was any video recording of the questioning leading to the making of the statement. The Defendant, on the other hand told this Honourable Court that he did not give the statement in issue. He denied outrightly making Exhibit "A" in the course of the investigation by the Police.

Learned counsel cited **Sections 15(4) and 17(1)** and **(2) ACJA** to buttress his point.

Learned counsel further submits, that the Supreme Court recently laid to rest all argument on whether or not it is compulsory to

record the making of statement electronically on a retrievable video compact disc or such audio visual means and the need to ensure the presence of Defendant's legal practitioner or Legal Aid of Nigeria representative or official of a Civil Society Organization or a justice of peace or any other person of the Defendant's choice when the Defendant is making his statement before the police. In ***CHARLES VS. THE STATE OF LAGOS (2023) 13 NWLR (Pt. 1901) 213,*** the Supreme Court held that it is compulsory for the Prosecution to fulfil all the conditions laid down in both **Section 15(4) and 17(1) and (2) of Administration of Criminal Justice Act 2015** while obtaining the statement of the Defendant.

In conclusion; learned counsel also submits, that from the totality of the evidence before this Honourable Court in proof of the charge of culpable homicide punishable with death, counsel submit with respect that it is abundantly clear that there is no cogent, verifiable and conclusive evidence pointing as a fact that the Defendant was responsible for what eventually led to the death of the deceased. The Prosecution, contrary to the expectation of the law, failed woefully to discharge the burden placed on it by law. The evidence placed before this Honourable

Court by the Prosecution scored a barren point as it lacks the following:

1. Prosecution failed to call vital and or material witness to testify in Court which is fatal to the Prosecution's case.

2. Prosecution failed to controvert the evidence of Defendant that the Deceased died of Asthma and it is trite that evidence of a witness which is not challenged or shaken by cross-examination must be accepted as correct.

3. Evidence of the sole witness of the Prosecution one Sergent Binbol Bongtim (PW1) was fraught with doubt and glaring loopholes incapable of knocking down the wall of probable cause so as to ground the conviction and sentence of the Defendant for the charge of culpable homicide punishable with death.

4. Exhibit "B", the Coroner Form is inadmissible as it was not signed by any Coroner or Pathologist making it to be worthless document and hence ought to be expunged from the record of the Court.

5. Exhibit "B" did not state the cause of death and hence not a reliable document. It is obvious that no post mortem or

autopsy was done on the corpse as Exhibit “B” failed to provide the answer.

6. The admitted confessional statement of the Defendant was wrongly admitted and ought to be expunged from the record of the Court for the following reason:

    a. Failure to tender Hausa version outside the retracted confessional extra judicial statement of the Defendant.

    b. The said confessional statement was made contrary to the provisions of **Sections 15(4) and 17(1) and (2) of the Administration of Criminal Justice Act 2015** thereby making same impotent and worthless.

In the nutshell, one irresistible and unavoidable conclusions that this Honourable Court must reach is to hold unequivocally that there is no cogent and sufficient evidence before the Court establishing that the death of Usman Sani was caused by the Defendant and that the act of the Defendant that led to the death of the said Usman Sani was intended to cause death or grievous harm.

COURT:-

I have read and assimilated; the respective addresses of both learned counsel for the Prosecution on the one hand, and that of the Defendant, on the other hand. I have equally abreast myself with the evidence before the court (oral evidence and documentary evidence).

It is instructive to state at this point, that a good final written address may provide a judge a clear mental opinion to perceive either the tenuousness in what had appeared impregnable or to discover the hard core of a party's case. There are however occasions when such an address becomes a formality – they may not diminish or add strength or weakness in a party's case.

I wish to also add that judicial authorities are legion on the fact that final address no matter the brilliance exhibited in writing same cannot take the place of evidence adduced.

The authority of ***JOHN VS STATE (2015) LPELR – 4042 (CA)*** is instructive on the issue.

From the available evidence (oral and documentary), both Prosecution and Defence have dangled issues of law bothering on circumstantial evidence, lack of post-mortem or autopsy, lack of

eye witness to the crime, lack of confessional statement, etcetera etcetera.

I shall in the course of this Judgment touch on all the issues and more of such issues of law that I am most convinced will direct us to a legally acceptable destination.

To do this, the issue formulated by learned counsel for the Defendant for determination, which seem apt, is adopted as that of Court for determination; the issue is:-

Considering the totality of Evidence placed by the Prosecution viva voce of PW1, documentary evidence tendered and admitted at trial and other documents in the Court file, whether or not the prosecution has not failed to prove their case beyond reasonable doubt as required by law.

Culpable homicide punishable with death is the charge against the Defendant (Aliyu Abubakar).

The law is settled on the ingredients of the offence which Prosecution is under a duty to establish by credible evidence before the court for conviction to be secured. The proof is always

beyond reasonable doubt. See the case of ***ORJI VS. STATE (2008) VOL. 6 M.J.S.C 168 at 183 Paragraphs D-F.***

For an accused person to be sentenced to death for culpable homicide under section 221 of the penal code, as in the present case, the Prosecution is under an obligation to prove the following:-

a. The death of the deceased

b. That the death resulted from the act of the accused

c. That the accused knew that his act will result in death or did not care whether the death of the deceased will result from his act.

On above, I rely on ***AKPA VS. STATE (2008) LPELR 368 SC or 4-5 SC (Pt. 11)1.;***

BAKARE VS. STATE (1987) 1 NWLR (Pt. 52) 579;

KADA VS. STATE (1991) 8 NWLR (Pt. 208) 134.

Prosecution called one witness and tendered exhibits which have been mentioned in the preceding part of this judgment.. Defendant on his part gave evidence as DW1.

I shall again make elaborate reference to the oral and documentary evidence in the course of this judgment.

I further wish to mention that Prosecution in proving the guilt of a Defendant may from the available evidence lead either concrete evidence, direct eye witness account, confession of the Defendant or circumstantial evidence which must be cogent, pointing directly at the guilt of the Defendant.

I find solace for above in the case of ***USMAN VS. STATE (2014) LPELR 2287.***

From the available evidence before me, there was no eye witness who saw how the deceased died; the Defendant (Aliyu Abubakar) did not confess to killing the deceased (Usman Sani). The court therefore is left with two options i.e consider the concrete nature of the evidence adduced by both Prosecution and Defendant to be able to draw inference from the surrounding circumstances of the case.

The Defendant (Aliyu Abubakar) is presumed innocent, until his guilt is established. This is enshrined under section 36(5) of 1999 Constitution of Federal Republic of Nigeria as amended. See ***ALHASSAN VS. STATE (2010) LPELR 8674 (CA).***

This policy of entitlement of accused person to the benefit of doubt indeed derives from the fact that human justice has its human limitations.

It is not given to human justice to see and know, as the almighty creator knows, the thoughts and actions of all men. Human justice has to depend on evidence and inference.

Dealing with the irrevocable issue of life and death, caution must be exercised lest an innocent person is sent to an early and ignoble death.

I wish to state that I have a duty thrust upon me to investigate and discover what is in any particular case will satisfy the interest and demands of justice.

And the interest and demands of justice be dictated by the peculiar facts and the surrounding circumstances of each case.

In proving the offence, prosecution tendered the extra-judicial statement of the Defendant and it was admitted and marked as Exhibit "A" and also tendered Coroner's form, which was admitted and marked as Exhibit "B".

Section 119 of the evidence Act, Laws of the Federation of Nigeria 2011, provides for illiterate jurat where an illiterate or

blindman is expected to either make a statement or depose to affidavit.

I have seen Exhibit "A" i.e statement of Defendant. Clearly in the said statement, the fact that Defendant was not the one that wrote the statement was mentioned.

Be it known to all and sundry that the need to reform the criminal justice administration in Nigeria to keep pace with modernization in the Administration of Criminal Justice in Nigeria informed the passing into law the Administration of Criminal Justice Act 2015 (ACJA).

The main purpose of the Act is to promote amongst others, efficient management of criminal justice institutions and speedy dispensation of justice, protection of the rights of Defendant and the victim of crime.

Under the Administration of Criminal Justice Act 2015, it has become the law that an arrested suspect who decides on his volition to make a statement may so give such statement in the presence of a legal practitioner of his choice or an officer of the Legal Aid Council in the absence any legal practitioner of his choice and the making and taking of the statement shall be video

recorded as provided for Under Sections 15(4) and 17(2) of ACJA 2015. The provisions are herein reproduced for reference:-

Section 15(4)

> ***Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of such statement is recorded on video and the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement may be in writing and may be recorded electronically on a retrievable video compact disc or such other audio visual means.***

Section 17 (2)

> ***"Such a statement "may" be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the peace or any other person of his choice provided that the legal practitioner or any other person mentioned in this***

subsection shall not interfere where the suspect is making his statement, except for the purpose of discharging his role as legal practitioner."

The mischief sought to be cured by this thoughtful and carefully written provision is the inherent abuse in taking statements from accused person by investigating police officers who usually are bent on achieving quick and positive results to please their superior officers. It is usually an easier approach to harass, intimidate and most times torture suspects into admitting to commission of offence alleged against them.

That is not to say however that there are no die-hard criminals who will always deny any involvement in a crime even if caught in the act.

To reduce therefore to the barest minimum denial of confessional statements made by accused, Sections 15(4) and 17(2) of Administration of Criminal Justice Act (ACJA) were made.

The said section 17(2) of Administration of Criminal Justice Act (ACJA) 2015 has "May" as the operative word.

“MAY” was interpreted by Supreme Court in the case of ***EDEWOR VS. UWEGBA & ORS (1987) LPELR – 1009 PER NNAMANI JSC (as he then was)*** in the following words:

> ***“Generally the word “May” always means “May”. It has long been settled that may is permissive or enabling expression. In MESSU VS. COUNCIL OF THE MUNICIPALITY OF YASS (1922) 22 SRNSW 494 Per Cullen, CJ at Page 497, 498 it was held the use of the word “May” Prima facie conveys that the authority which has the power to do such an act has an option either to do it or not to do it.”***

I have considered the evidence of the Prosecution on the one hand, and the defense of the Defendants on the other hand.

The law is trite that once the voluntariness of a confessional statement was challenged by the person said to have given or made it in criminal trial, the burden of proving affirmatively that it was given or made voluntarily is on the prosecution.

A similar scenario played out when a statement made by a Defendant was tendered in the case of ***FRN VS. AKAEZE ELC (2024) 7899 Page 1 (SC),*** and an objection was raised which saw the case travel to Supreme Court, wherein issue bothering on

the interpretation of section 15(4) and 17(2) of the Administration of Criminal Justice Act, 2015 received judicial interpretation at the Apex Court of the land in ***AKAEZE (Supra).***

The fundamental purpose necessitating the enactment of ACJA 2015 is to ensure that the Administration of Criminal Justice in Nigeria promotes efficient management of criminal institution, speedy disposing of justice, protection of the society from crime and protection of rights of suspects, the Defendant, and the victim.

It is trite that the object and purpose of interpretations of an enactment are sometimes provided in the text of the law, regulation or Bill Act.

One of the Canons of interpretation i.e the mischief Rule, which usually will consider the state of the law prior to the enactment, the defect which the statute sets out to eradicate or prevent, the remedy adopted by the legislature to cure the mischief, and the actual reason behind the remedy.

See ***OGWU VS. ARARUME (2007) 12 NWLR (Pt. 1048) 367;***

SAVANNAH BANK OF NIGERIA VS. AJILO (1989) 1 NWLR (Pt. 97) 305.

Eventhough it has been stated in plethora of judicial decision that “may” is “may” and “shall” remain “shall”, but there are cases in which for various reason, as soon as the person who is within the statute is entrusted with the power it becomes his duty to exercise such power thereby making “may” mandatory…

See EGBO VS. LAGUMA (1988)3 NWLR (Pt. 80);

ADESOLA VS. ABIDOYE (1999) 14 NWLR (Pt. 637) 28.

For above reason, in interpreting the provision of Section 15(4) and 17(2) of ACJA 2015, both, Court of Appeal and Supreme Court conclusively decided that failure to comply with the video recording of the Statement of a Defendant according to the dictates of the aforementioned provision would be deemed to be a flagrant non-compliance with the law, and in such a situation the Court would be entitled to invoke its interpretative jurisdiction to hold that the non-compliance with the law is against the recalcitrant party.

Having failed to comply with above provision, Exhibit “A” is hereby expunged from the records of this court.

With the confessional statement, so called, expunged, it is only the Coroner's report and the evidence of PW1 who is a Police Officer that is left to determine the guilt of the Defendant.

In the absence of any express confessional statement by the Defendant, the court shall attempt to consider the circumstantial evidence and the evidence placed before the court.

PW1 (Binbol Bongtim) told the court how on the 3rd March, 2018 while he was on duty, when one Sanusi Usman of fruit market, Zuba reported the Defendant to the Police.. He said the Defendant and one Usman Sani of Zuba fruits market had a misunderstanding with the said Sani when the Defendant used heavy stone and hit the Deceased who was later confirmed dead.

That he (PW1) took the statement of the complainant and filled Coroner form which he took to Zuba which was signed by the Coroner. The Defendant was arrested and statement was taken after administering cautionary words on him. The case was later transferred to CID because they did not have the power to investigate the case.

During cross – examination PW1 stated, that he went there and saw the victim at the scene, and he took him to the hospital.

It is trite that a testimony will be regarded as hearsay where the person making the statement is not the one who either saw it, heard it, perceived it or gave it as his own personal opinion but rather as what was said to him by another person. ***SALISU VS. AMUSAN (2010) LPELR 9103 (CA).***

The testimony of PW1 at best is hearsay evidence and shall be discountenanced with in the course of this judgment.

PW1 tendered Coroner Form which was admitted and marked as Exhibit "B". PW1 told the Court that he personally filled the Coroner form and took same to the Area Court, Zuba and then to Upper Area Court Zuba and the form was signed by the Coroner.

A cursory look at Exhibit "B" shows that the form was not signed by anybody. Again, PW1 claimed that the Form was signed and dated by the Coroner, there is no coroner signature therein.

On said form, it is expressly stated "To be filled in by the Medical Officer and handed to the Police escort immediately on completion of the Post-mortem". The portion of the signature of the medical officer was left unsigned.

The law; general principle with respect to the status of an unsigned document is that it is inadmissible as evidence in court.

This is because, a signature serves as a means of authenticating a document, signifying that the document has been reviewed, agreed upon and endorsed by the signatory.

An unsigned document is inadmissible and lacks probative value. Such a document is worthless and a worthless document cannot be efficacious. ***NASIRU YUSUF VS. THE STATE (2018) LPELR-46718 (CA)***

On the whole, therefore, the said Coroner Form which is unsigned, being worthless and lifeless, is hereby jettisoned.

As earlier stated in the preceding part of this judgment, the duty of the Prosecutor is to proof the guilt of the Defendant beyond reasonable doubt. This means that there is credible evidence upon which the court can safely convict, even if it is upon the evidence of a single witness.

Indeed, the law is quite clear on the requirement of proof beyond reasonable doubt to secure conviction for any criminal offence by virtue of section 138 (1) of the evidence Act. Therefore, if on the entire evidence adduced before a trial court, that court is left with no doubt that the offence was committed by the Defendant, that burden of proof beyond reasonable doubt is discharged and the

conviction of the accused person will be upheld. ***ANIM & ORS VS. FRN (2014) LPELR 23219 (CA).***

From the evidence adduced before the court by the prosecution could it be safe to conclude that the Defendant caused the death of the deceased to warrant his conviction?

PW1 told the court, that the Defendant used heavy stone to hit the Deceased, and the Deceased was later confirmed dead.

PW1 In filling question 11 in the said Coroner Form was asked to describe where and how the body was found, PW1 stated that the body was found lying down dead at Suleja General Hospital contrary to his own statement during examination-in-chief on 2nd November, 2023 that the Police saw the body at the scene of the crime..

DW1 stated before this court, that seven days after the misunderstanding with the Deceased, family of the Deceased and family of the Defendant came to the Police station to tell the Defendant that the Deceased had died, but… he had always had asthma from birth.

The law is settled, on how to determine the cause of death in a murder trial. The question at this stage is, what caused the death

and not who caused the death. Thus, in a charge of murder, if the cause of death has not been proved or remained indeterminable, it is futile and unnecessary to proceed to consider whether it was the accused person who caused the death of the victim. This is so because, it is the duty of the Prosecution to firmly establish the criminal culpability of an accused person. This the prosecution shall do by making sure the chain of causation, must not be broken.

Once there is a break in the chain or link, it is incapable of being welded together again and whatever doubt which has been generated by the said break, must be resolved in favour of the accused as it affects the actus reus of the offence charged.

Thus, it is to be noted that, where there is more than one possible cause of death, in terms of occurrence of an intervening circumstance, the benefit of the doubt so raised must be resolved in favour of the accused person, since the available evidence in the given situation will fall short of the required standard in order to distinctly and without distraction deviation whatsoever, pin the accused down with culpability of the death of the deceased. ***ANTHONY THOMPSON EBONG & ANOR VS. STATE (2011) LPELR 3789 (CA).***

Indeed, any break in causation, otherwise known as novus actus intervenens shall be resolved in favour of the accused person.

The law is trite that the court can convict an accused person on a lesser offence disclosed by evidence at the end of trial, if the main charge fails. But that can only apply where the offence proved is part of element of the offence charged or related to it. Section 179 (1) and (2) of the Criminal Procedure Act states as thus;

a. In addition to the provisions herein before specifically made, where- ever a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence in itself and such combination is proved but the remaining particulars are not proved, he may be convicted of such lesser offence or may be plead guilty thereto, although he was not charged with it.

b. Where a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence, although he was not charged with it.

A good explanation and application of the above provision is stated in section 177 of the criminal procedure Act as follows:-

Section 177 "where upon the trial of any person for murder of any child or for infanticide, it appears upon evidence that such person was not guilty of murder or infanticide, as the case may be, but was guilty of the offence specified in section 329 of the criminal code, such person may be found guilty of such offence. ***ADENIYI & ORS VS. FRN (2007) LPELR 8805 (CA).***

From the evidence before the court, it is not in doubt that the Defendant had a misunderstanding with the deceased. This fact was stated by PW1.

The Defendant in his defence stated, that it was in the process of trying to run away that he pushed the Deceased (Usman), who was then taken to the hospital.

During cross - examination, Defendant also stated that the Deceased had shown symptoms of asthma because he was always coughing.

In their proof of evidence, Prosecution sought to rely on the testimony of 3 witnesses; Sufam Dahiru, Mustapha Mohammed and Sunusi Usman…who allegedly saw what transpired between

the Deceased and the Defendant. Prosecution however, failed to bring them before the court. One Sunusi Usman identified the body but the said Sunusi Usman was not called to give evidence as to the body he identified.

I am not satisfied with the evidence adduced by prosecution in an attempt to establish the guilt of the Defendant in this case.

Indeed the conviction of the Defendant under section 222 of the penal code for the offence of culpable homicide not punishable with death, would not serve the cause of justice, as the ingredient of the offence as required by law, have not been completely proved by evidence before me. One of the most important ingredient of the offence, namely the cause of death of the deceased was not established.

Assuming that the court was wrong in questioning the admissibility of Exhibit "B" i.e Coroner Form, it would appear that no post mortem or autopsy was done on the corpse as Exhibit "B" failed to provide the answer for cause of death. The doubt as to the cause of death will naturally be resolved in favour of the Defendant who is presumed innocent.

See the case of ***SIRAJO MOHAMMED DONDOS VS. STATE ELC (2021) 3482 (SC).***

It is clear that the intention of the accused was not to kill the deceased but to free himself from the ordeal.

Certainly speaking, prosecution was not able to tie the death of the deceased to the act of the Defendant. The deceased was taken to the hospital after sustaining injury and later died, can the Defendant be said to be responsible for his death?

I am very convinced Defendant's guilt has not been established by the Prosecution.. there is nothing placed before me to tie the Defendant.

Having failed to prove its case, the said charge is hereby dismissed.., Defendant is consequently discharged and acquitted.

Justice Y. Halilu
Hon. Judge
29th January, 2025

APPEARANCES

Adeolu Salako, Esq. with Michael Ayuba, Esq. – for the Defendant.

Prosecution not in Court and not represented.