

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

CHARGE NO: FCT/HC/CR/97/2018

BETWEEN:

COMMISSIONER OF POLICE..... COMPLAINANT

AND

CHIDIEBERE IYIDIOWI DEFENDANT

JUDGMENT

DELIVERED ON 16TH FEBRUARY, 2022

The Defendant is standing trial before this court on a one count charge of Culpable Homicide punishable with death contrary to Section 221 of the Penal Code Law. The Charge on the Charge Sheet read as follows:-

“That you, Chidiebere Iyidiobi, male, adult of No. 63 2nd High Tension Sokale Village Dutse, FCT, Abuja on or about the 11th day of December, 2017 at about 1700hrs at Sokale Village Dutse, FCT, Abuja within the Jurisdiction of this Honourable Court did commit Culpable Homicide Punishable with death of one Akpulu Onyedikachi, male,

adult of Sokale Village Dutse, FCT, Abuja by stabbing him with a scissors on his chest, thereby causing him bodily harm which led to his death and you did so knowing that his death would be a probable and not only a likely consequence of your act. You thereby committed an offence punishable under Section 221 (1)(b) of the Penal code.”

When the charge was read to the Defendant, he told the court that he understood the charge and pleaded not guilty to the charge. In prove of its case, the Prosecution called a total of three witnesses, tendered nine exhibits and closed it case. The Defendant called two witnesses including him and closed its defence without tendering any exhibit.

At the close of the case, counsel for the parties filed written addresses which were adopted by counsel on the 12th July, 2021. I have carefully listened to the testimony of all the witnesses in this case and I watched keenly their demeanor while they testify in the witness box. I have equally perused closely the exhibits tendered by the Prosecution in this case. The summary of the case of the Prosecution is that on 11th December, 2017, the deceased went out in company of PW1 to buy a bread at a house beside theirs at Dutse Sokale Abuja while they were on their way near a borehole the Defendants and three others blocked them. And altercation ensued whereat the Defendant drew out a

pair of scissors from his bag. The other three of his friends each had a cutlass.

The deceased and PW1 started running and were hurriedly pursued by the Defendant and his three friends. The deceased in the process of running fell down. The Defendant and his three friends cut up with the deceased. When PW1 attempted to rescue the deceased he was chased by the Defendant three friends and he ran away. In the meantime the Defendant has used the pair of scissors he was carrying to stab the deceased on his chest. Before he could be rushed to a hospital in Kubwa, the deceased had died.

The case for which the Defendant is standing trial is a case of Culpable Homicide punishable with death under Section 221 of the Penal Code Law. In a trial such as this, the onus is on the Prosecution to prove its case beyond reasonable doubt. In essence, the prosecution must prove all the elements of the offence strictly before it can secure a conviction of the Defendant see the case of *Aruna V. State* (1990) 6 NWLR (Pt. 155) page 125 at 137.

The proof required from the Prosecution is weighty but not proved beyond any shadow of doubt. For to require proof beyond any shadow of the doubt will defeat the purpose of the law see the cases of *Osetola V. The State* (2012) 50 NSCQR Pg. 598 at 641 – 632; *Ugwuanyi V. F. R. N* (2012) 49 (2) NSCQR Pg. 1242 at 1257.

As I said earlier in this judgment, it is the Prosecution which has a burden or onus of proof of the guilt of the Defendant beyond reasonable doubt. To achieve this, the Prosecution must prove each ingredient of the offence of Culpable Homicide. If he fails to prove any of the ingredients, then he cannot be said to have proved it case beyond reasonable doubt.

In that case, there will be a doubt which must be resolved in favour of the Defendant see the cases of Oforlexe V. State (2000) 12 NWLR (pt. 681) pg. 415; Onubogu V. State (1974) 9 S. C. 1; ALMU Vs. State (2009) 10 NWLR (Pt. 1148) pg. 31 at 46 and 52.

In a long line of cases, the superior courts have set down the ingredient that must be proved by the Prosecution against the Defendant in order to secure a conviction. One will suffice. In the case of Nwankwo V. State (2006) 27 W. R. N Pg. 157 the court held that the following ingredients must be proved by the Prosecution namely:

- a. That the death of the deceased occurred within a year and a day of the cause of the death.
- b. That the act or omission on the part of the accused directly caused the death of the deceased; and
- c. That the accused intended to kill or do grievous bodily harm to the deceased.

For the court to hold that the ingredients of the offence have been proven beyond reasonable doubt, the Prosecution may proceed to proven the guilt of the Defendant in any of the following ways:-

1. Eye witness account of the commission of the offence
2. Circumstantial evidence or
3. By confessional statement. See the case of Usman Saminu (AKA Danko) V. The State (2019) S. C 38/2016; Ezekiel Adekunle V. The State (1989) 12 SCNJ. Pg 184 at 192.

The Prosecution need not prove all the conditions listed. The prove of any of the conditions will be enough. In the instant case, it will seems to me that the Prosecution sought to prove the guilt of the Defendant by employing two out of the three conditions namely eye witness account and by confessional statement.

The Prosecution called PW1 and sought to rely on his evidence as the only eye witness to the cause of death of the deceased. There is no doubt in this case that there was a death of a human being. The name of the person who died is given as Akpulu Onyedikachi. The said person was identified by PW1 Exhibit P.P. 9 and P.P. 7 (b), P.P. 7(c) and P. P. 8(a) all named the deceased has a human person. Exhibit P.P.9 is the medical certificate of death which named the deceased person as Akpulu Onyedikachi. Exhibit P.P. 7 (c) and P.P.8 (a) are photographs of the corpse of the deceased Akpulu Oyedikachi.

On the other hand, the Defendant's counsel filed its Defendant's Final Written Address dated and filed 19th March, 2021; herein he raised a sole issue for determination thus:

Whether the Prosecution has discharged the evidential burden placed on it under law, by proving its case beyond reasonable doubt against the Defendant.

In arguing the sole issue, counsel submitted that it is trite that in our system of administration of criminal justice, the Prosecution is continuously saddled with the burden of proving its case against the Defendant beyond reasonable doubt. Therefore, the Prosecution is duty bound to establish the guilt of the Defendant and not for the Defendant to prove his innocence. This burden never shifts, and is further strengthened by the constitutional right of the Defendant, to wit; the presumption of innocence, as expressly provided by Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999. He referred the court to the cases **ARUNA V. STATE (1990)6 NWLR (pt. 155) pg. 125 pt. 137 para E-G** and **AHMED V. THE STATE (1999) 7 NWLR (Pt 612) 641 at 673 paras D-E**. It is also incumbent on the Prosecution to prove the elements of the offence strictly as contained in the charge, for the purpose of a charge in itself is to give Defendant strictly knowledge of the case against him. Also **ARUNA V. STATE (*supra*)**.

Counsel stated that the above requirement remains as of law, codified in Section 135 of the Evidence Act and as such the

Prosecution must discharge same to guarantee a successful conviction of the Defendant. This is achieved by proving its case beyond reasonable doubt. This would involve **establishing the guilt of the accused person with compelling and conclusive evidence with a degree of compulsion which is consistent with the degree of probability**. He cited the case of **AKINLOLU V. STATE (2016) 2 NWLR (Pt. 1497) at 503**.

Counsel further submitted that in discharging this burden of proof placed on the Prosecution, the ingredients of the offence must be proven against the Defendant, which ingredients have been laid down by the Courts in several judicial authorities. These ingredients include:

- a) There was death of a human being;**
- b) The death was caused by the act of the accused person;**
and
- c) That the accused person knew or had reasons to know that death would be the probable and not only the likely consequences of his act.**

Also see **EZEKIEL ADEKUNLE V. THE STATE (1989)12 SCNJ 184 at 192**

Also, that the Prosecution has failed to prove its case beyond reasonable doubt, in that it has not been able to establish the elements of the offence, against the Defendant. This is so because, from the ingredients of the offence of Culpable Homicide punishable with death highlighted above, while it will be agreed

that there was death which was not of a natural occurrence, as was proved by Exhibits A4 –A7, particularly the Medical Certificate of cause of death and the testimonies of witnesses who had seen the corpse of the deceased, we however submit, and urge this Honourable Court to so hold, that the Prosecution has not been able to establish, neither is there anything to show that the death was actually caused by an act of the Defendant.

In proof of its case, the Prosecution called three witnesses and tendered 10 exhibits. It is counsel submission that for ease of reference and for the purpose of clarity, they shall produce in sum, the evidence of each witness, in order to establish before this Honourable court, that the Prosecution has not proven its case beyond reasonable doubt.

Counsel submitted that in **the testimony of PW1 (Akpulu Chukwudi)**, PW1 who is the brother to the deceased testified that on 10th September, 2018 at about 4:30pm, he was on his way to a football viewing centre when the Defendant stopped him and demanded ₦ 200 (Two Hundred Naira) from him. Upon his refusal he claimed the Defendant had removed a scissors from his bag and had injured him on the check, after which the Defendant ran away. He went on further to state that he went home reported the incident to his mother who asked him not to retaliate and that the following day he was on his way and in the company of his younger brother now the deceased to buy bread when the Defendant attacked them alongside his friends and stabbed the

brother in two places. He stated also that his brother had died on the spot even before being taken to the hospital.

PW1 under cross examination denied any allegation of a fight between him and the Defendant and reasserted that he had written a letter to the Commissioner of police for the corpse to be released for burial.

Also in **the testimony of PW2 (Investigation Police Officer)**, PW2 testified that on the 11th December 2017, a case was reported to the Dutse Alhaji Division, which was transferred to Homicide FCT Command on the 20th of December, 2017. He stated that the Defendant was arrested alongside three other suspects who were later released because they couldn't be linked to the crime. He further stated that the statement of the Defendant was recorded by one Inspector Okepetu Hussaini who wrote for the Defendant and the Defendant signed the statement afterwards. Upon investigation he said the Defendant admitted to stabbing the Deceased and that the sites listed were visited. He added that the mother of the deceased had written a letter to the Commissioner of Police FCT Command seeking the release of the corpse for burial as she couldn't afford the expenses of an autopsy investigation, which was granted.

Under cross-examination, the witness stated that in the course of investigation it was discovered that there had been a fight between the Defendant and the deceased.

Furthermore, in **the testimony of PW3 (Roseline Akpulu)**, PW3 testified that on the date of the incident, at about 5:30 pm, she was about serving her sons dinner when he left to purchase Kunu. Five minutes after they had gone, she heard a knock on the door by someone calling to inform her of an incident involving her son. She further stated that she had followed him and had found her son in a pool of his own blood, she got help and he was taken to a Hospital at Dutse from where he was referred to Kubwa General Hospital where he was attended to and that before his death he had informed her that he was stabbed by Chidiebere. She added they had gotten people who knew who the named Chidiebere was and had him arrested. She further stated that when the matter was transferred to the Police Headquarters, he was called to confess after which she asked him to write a letter as their culture demands.

Under cross-examination, she admitted she was not there when her son was stabbed neither was she aware if he was involved in a fight or not.

The Defendant's counsel also submits that It is trite that evidence that can ground the conviction of an accused person/Defendant must be direct and not hearsay. He therefore referred the court to the case of **OSUOHA V. STATE (2010) 16 NWLR (Pt. 1219) 364 at 402 paras F – G**. In the instant case, the testimony of **PW1** is the only purported eye-witness account of the incident that led to the death of the deceased. Other witnesses, i.e., PW2

& PW3 didn't in fact witness or state that they saw the Defendant stab the deceased.

The Defendant's counsel however submits that notwithstanding the testimony of the said PW1, same cannot be relied upon by this Honourable Court to ground the conviction of the Defendant herein. This has become so because the said testimony of PW1, when placed side by side with the other evidence before the Honourable Court as presented by the Prosecution, it would be clearly seen that it is riddled with manifest inconsistencies, borne out of a desperate attempt by PW1, to inflict the Defendant with the guilt of causing the deceased's death, even by not telling the truth.

For the purpose of clarity, counsel highlights the inconsistencies of the testimony of PW1, when placed side by side the evidence presented by the Prosecution. These areas of inconsistencies or contradiction are as follows that demonstrate that PW1 is not a witness of truth are as follows:

- i. The place of death of the deceased;
- ii. The cause of death of the deceased; and
- iii. Whether PW1 was actually present at the scene of the incident leading to the death of the deceased.

On the place of death of the deceased, the testimony of PW1 on the place of death of the deceased in his two statements to the police and his testimony in court is that the deceased had died

even before he was taken to the hospital, which he stated to be Kubwa General Hospital. PW1's testimony reads in part as follows:

"...Immediately we came out from the house, beside the borehole the Defendant with three of his friends, Simon, Courage and Mayor, they blocked us and the Defendant said he is not yet done with me as I have guts to push him on his chest. So my younger brother Akpulu Onyedikachi asked the Defendant angrily, that you stabbed my brother, instead of apologizing you are still talking nonsense. The Defendant brought out scissors from his bag, the three other of his friends were all with cutlasses, so me and my younger brother started to run, on the process of running my brother fell down, then I stopped to drag him up, the others came and chased me. That was when the Defendant stabbed my brother on the chest. He stabbed him with a scissors, before we could rush him to the hospital, he died."

That this testimony is however at variant with that of PW3, who while giving evidence, stated thus;

"I heard a knock on my door, the person was my neighbor that come and see your son lying down

in blood...I called people and we were able to take him to Dutse Alhaji Royal Hospital and there we were transferred to General Hospital. The Doctor was attending to him I was there watching them pressing his chest..."

It is counsel submission that contrary to the allegation of PW1 that the deceased died before the deceased was taken to the hospital; there were persons who saw the deceased alive after the incidence and was being attended to by a doctor. Also, the PW1 alleged that the deceased was taken directly to Kubwa Hospital, this is as opposed to PW3's testimony that she called persons to help her take the deceased to the hospital. Another inconsistency also, is that PW1 does not know the hospital the deceased was taken to first, and not Kubwa general Hospital, as stated by PW3, his mother. It would therefore be safe to conclude that the two narrations PW1 and PW3 on the place of death of the deceased, are in contradiction to each other, leaving my Noble Lord with a puzzle on what to believe, in that regard.

He stated that the Courts have laid to rest the position that where there are contradictory evidence on an issue before the Court in relation to the commission of an offence, such contradictions should be resolved in favour of the Defendant. He cited the case

of **EHIS ERAGHA V. THE STATE (2019) LCN/13880 (CA)**.

Where the court held thus:

“I cannot say that Exhibit D is consistent with other facts that have been ascertained and proved in the circumstance of this case due to material contradictions in the evidence of PW1 and PW2 which must be resolved in favour of the appellant”

From the foregoing, counsel submits that the testimony of PW3 and PW1 are in conflict. Furthermore, whilst PW1 claims to have left the house in company of his younger brother, the deceased, to buy bread, PW3 on the other hand claims the deceased “went out” to buy Kunuwhile PW1 was at home waiting for the deceased and that the deceased was in fact found at the spot where Kunu was sold. He also submits further reveals the inconsistency in the testimony of PW1 and PW3, who both claim to be narrating the same incident.

On the cause of death of the deceased, Counsel submitted that another area of inconsistency between the testimony of PW1 and those of other witnesses presented by the Prosecution is on the cause of the death the deceased. In PW2’s testimony, PW2 admitted during cross-examination that investigation revealed that there was a fight between the Defendant and the deceased, the fight which later resulted in the death of the deceased. While, PW1 on the other hand, and in a characteristic manner to conceal

the truth and mislead the Honourable Court, vehemently denied any such allegation of a fight.

Counsel submits that this denial by PW1 of the fact of a fight between the Defendant and the deceased amounts to PW1's concealment of truth of what transpired, that led to the death of the deceased. Such concealment by PW1, we further submit, should be regarded as a desperate attempt by PW1 to at all cost place the death of the deceased in the hands of the Defendant, by painting a picture in the mind of my Noble Lord, as can be seen from the narrative of PW1.

That during Examination in Chief, reproduced in part in paragraph 4.15 above, PW1 stated as follows:

“...The Defendant brought out scissors from his bag, the three other of his friends were all with cutlasses, so me and my younger brother started to run, on the process of running my brother fell down, then I stopped to drag him up, the others came and chased me. That was when the Defendant stabbed my brother on the chest...”

However, when being cross-examined on this piece of evidence, PW1 took what would be regarded as a 'U' turn on his evidence in Chief. The cross-examination went in part as follows:

“Q: So when he blocked you on the road at about 4pm?”

Ans: The place was bright and there were no passers by

Q: Why did you not call for help?

Ans: I shouted and he ran away."

It is counsel submission that the cross-examination highlighted above, clearly discredits the narrative of PW1 and indicates that PW1 is not a witness of truth. This is so because PW1 in his evidence-in-Chief reproduced in paragraph 4.22 above, stated that PW1 and his brother were attacked and PW1 and his brother ran away before the deceased was stabbed by the Defendant, however during cross-examination produced in paragraph 4.23 above, the same PW1 stated that when PW1 called for help by shouting, the Defendant ran away.

Counsel stated that it therefore becomes curious that the Defendant having run away when PW1 called for help while being blocked, how then did the Defendant stab the deceased, as alleged in this case. The testimony of PW1 does not in any manner reveal the answer to this curious question as his testimony can at best be regarded and misleading. That being the case therefore the testimony of PW1, we submit, is not the truth and is not worthy of any belief by this Honourable Court.

On whether the PW1 was actually present at the scene of the incident leading to the death of the deceased, counsel submits that the third area of inconsistency of the testimony of

PW1 which is fundamental to the believability of PW1's testimony, is whether PW1 was actually present at the scene of the incident, leading to the death of the deceased. PW1 in his narration claimed to be physically present at the scene of the incident. However, the testimony of PW3 further betrays the concocted story of PW1, in that in her testimony, PW3 clearly stated that PW1 was not even at the scene of the said incident, because PW1 was at home. The testimony of PW3 reads in part as thus:

“...I was about serving them food, he told me he wanted to buy Kunu. He went out to buy Kunu. I normally serve him with his brother, so this brother was waiting for him, less than 5 minutes after he left I heard a knock on the door...”

That the testimony of PW 3, therefore reveals that PW1 was not even together with the deceased but at home waiting for his brother, the deceased, who went to buy *kunu*. The testimony of PW 1 in its entirety is false as PW1 did not in fact witness the death of the deceased as he (PW1) was not present at the scene but was at home. PW1 is not a witness of truth and should not be believed by this Honourable Court. Please see **UDOH V. STATE (2018) LPELR-43707 (SC)(p.22 paras. A-B)**.where the Supreme Court per Rhodes Vivour, J.S.C, reiterated the precondition for the acceptability of the testimony of an eye

witness to be that the witness must be telling the truth. The Court stated as follows:

“Eyewitness evidence is always reliable evidence provided the witness is telling the truth”

Having established that the testimony of PW1, who is a purported eye witness, cannot be believed because PW1 is not a witness of truth and was not present at the scene of the incident, as can be seen in PW1’s inconsistent narration and attempts to conceal vital information, the only testimony left would be those of PW2 & PW3. We however submit that the said testimony of PW2 & PW3 do not in any manner irresistibly point to the Defendant as the person who killed the deceased.

That the PW2 in evidence stated as follows:

“... on the 11th December, 2017; a case was reported to Dutse Alhaji by Chukwudi Akpulu, and three suspects were arrested...”

PW 2 also went on to state that it was upon the report of PW1 that the arrest was made and a statement written for the accused person following which PW2 visited the alleged scene of crime, after the incident of the death of the deceased.

Counsel further submitted that despite the fact that the evidence of PW2 is in strict sense of it, not classified as hearsay evidence because of his position as Investigating Police officer, however My Lord, he is not an eye witness to the crime and the investigation

of the PW2 did not reveal in any way that the alleged instrument of the murder was found in the possession of the Defendant neither did it provide any other evidence whether direct or circumstantial evidence linking the Defendant to the commission of the offence, other than stating that the purported confessional statement of the Defendant was taken. At best, PW2 only established the death of the deceased, but failed to link the cause of death to the Defendant.

Counsel submitted that the testimony of PW3, like that of PW2, does not also point to the Defendant as the person who killed the deceased. This is so because PW3 was not at the scene of the incident and her testimony at best qualifies as hearsay, in that PW3 did not see the Defendant stab the deceased, as alleged. The said witness only visited the scene, after the stabbing. PW3 in her testimony expressly stated thus:

“...I heard a knock on my door, the person is calling my name, he is my neighbor that comes and sees your son laying down in blood. I followed him immediately. Just by the side where they are selling kunu I saw my son lying down bleeding. I called people around and they were able to take him to the hospital...”

Counsel further stated that at best, the totality of evidence presented by the Prosecution in this case qualifies as

circumstantial evidence, which evidence does not come also in aid of the case of the Prosecution. This is so because circumstantial evidence is only permitted to be used to ground the conviction of a Defendant, upon the fulfilment of certain conditions. He referred the court to the case of **ABUBAKAR TIJANI SHEHU V. THE STATE (2010) ALL FWLR 523 at 1894** the court outlined the conditions when circumstantial evidence may ground a conviction. These include:

- **The evidence must irresistibly and unequivocally lead to the guilt of the appellant**
- **No other reasonable inference could be drawn from it.**
- **There must be no coexisting circumstance which could weaken the inference.**

It is counsel submission that the evidence before this Honourable Court does not irresistibly and unequivocally lead to the guilt of the Defendant, neither do they raise any inference that could be drawn from them that it was the Defendant that committed the offence. The only option left for the Honourable Court therefore, is to discharge and acquit the Defendant. Counsel cited the case of **SHOFOLAHAN V. THE STATE (*Supra*) at 281**, it was held that:

“Where circumstantial evidence does not link an accused person to the commission of the crime alleged, then it is of no moment, and the accused person is entitled to be discharged and acquitted”.

Counsel further stated that since the testimonies of the Prosecution witnesses and circumstantial evidence do not irresistibly established the guilt of the Defendant, the only evidence left before the Court are the purported confessional statements of the Defendant, i.e., Exhibit A3a & Exhibit A3b.

Counsel however submit, that the circumstance of this case places the statements in a disqualifying position and cannot be used as the sole evidence which this Honourable Court can rely on to convict the Defendant. This is because of the fact that the said confessional statements which have been retracted are just mere fabrications of the various investigation police officers.

That there are two confessional statements purportedly made by the Defendant which admitted though retracted by the Defendant; These statements consist of that dated **17/12/2017 at Dutse Alhaji, marked "Exhibit A3a" and the other dated 20/12/2017 at the CIID, marked "Exhibit A3b"**.

It is counsel contention that upon close look at the said statement made on 17/12/2017 i.e., Exhibit A3a, it would be seen that the hand writing does not belong to the Defendant and looks different from the hand writing contained in that made on 20/12/2017 i.e., Exhibit A3b. The statement made on 17/12/2017 was not witnessed by anyone, while it was recorded by one Sgt. Ola Olamide. Also, the purported statement does not explain the circumstances that led to the reason why the statement had to be written for the Defendant.

Also that the statement made on the 20/12/2017 i.e., Exhibit A3b on the other hand, when looked at closely, also contains a different hand writing from Exhibit A3a, indicative of the fact that it was written for the Defendant. It also does not explain why the statement was written for the Defendant or whether the Defendant consented to it being written for him, rather the said statement was presented as though same was written by the Defendant.

Counsel submitted that the two purported statements of the Defendant were not taken before a witness, in accordance with the provisions of Section 17(2) of the Administration of Criminal Justice Act (ACJA), 2015, which provides that statements are to be taken in the present of a legal practitioner of a suspect or an officer of the Legal Aid Council of Nigeria or an official of a civil Society Organization or a Justice of peace or any person of the suspects' choice. Upon a cursory look at Exhibit A3a and A3b, however, it is clear that none of such witness, enumerated in Section 17(2) of ACJA was present when the statements were purportedly taken. What appears on the said statements are mere endorsement of officers of the police force, who also wrote the statements for the Defendant. The two endorsements do not show that the officers were present while the statements were allegedly taken.

Counsel further referred the court to Exhibit A3a, the endorsement reads as follows:

“I SP TILÉ TERSOO have personally read the statement of the suspect who was marched before me at about 15:43hrs of 17/12/17 to his hearing and he confirmed to be the maker of same hence the endorsement.”

While Exhibit A3b, the endorsement reads as follows:

“On 20/12/2017 at about 18:57hrs, the suspect one Chidebere Iyidiobi was brought before me by the IPO Insp. Hussanni Okpetus with his statement and it was read to him and he admitted making the confessional statement without duress or promise.”

That these two endorsements do not in any manner show that the endorsing officer were present when the statements were written but that the Defendant was presented to the officers together with an already written statement which the officers endorsed.

Counsel therefore submits that the non-compliance with the provisions of Section 17(2) of ACJA, renders the said Exhibits A3a and A3b inadmissible *abinito* and should be expunged as wrongly admitted evidence. Please see the case of **NNAJIOFOR V. F.R.N (2019)2 NWLR (Pt. 1655) P 170 paras D-E**, where the Court held that such statement recorded outside the provisions of ACJA is impotent and therefore inadmissible.

That the Defendant on his own part has also retracted the statements and has in his testimony, denied ever making the statements. The Defendant stated before this Honourable Court that upon his arrest, the police officers investigating the case made some preliminary inquiry on his background to which he obliged the police officers. The following took place during cross-examination of the Defendant as DW1:

“Q: At Duste Alhaji and CID you made statements?”

Ans: I did not write any statement, they only bring a sheet of paper and said I should tell them my name, my state and my parent name. They brought a sheet of paper after I answered the questions, they came back with a filled paper with writing and asked me to sign, then I asked that I want to know what I am signing from there they started beating me.

Q: What you told the Court now, where did it happen?

Ans: It happened at Kubwa Police Station and also at command. They said they would condemn me if I don't sign and I don't want to die.”

During re-examination, the witness further stated thus: **“I can read, though I cannot write”**.

Counsel stated that from the purported statements tendered and marked as Exhibit A3a and A3b, the Defendant is clearly stated to

have some basic form of Education, in that he had attended Primary school up till the Senior Secondary School class 1 after which he had dropped out to learn Furniture making for the reason of lack of funds.

That the two Confessional Statements are also riddled with manifest contradictions as to whether it was the Defendant that killed the deceased, upon a close look at the narration in the statement on the narration of events such contradictions were observed. In the first purported confessional statement, Exhibit A3a made on 17/12/2017, the Defendant is alleged to have been on his way to beg the deceased in company of his friends, same persons the police had listed as suspects in the case who were later released because no case could be made against them. It also alleged in the said Exhibit A3a made on 17/12/2017, that the Defendant had gone to the hospital after stabbing the deceased to treat himself and that upon hearing about the death of the deceased he had taken off to the bush to hide and that after sometime had called his in-law who had taken him to the police station to report himself.

On the other hand, according to the second confessional statement, i.e. Exhibit A3b, made on 20/12/2017, the Defendant was attacked by the deceased while he was at the beer parlour with his friends to buy sachets of hot drinks. The same event cannot be said to have occurred simultaneously at different

places. The statement further states that the Defendant purportedly ran to Dutse police station immediately after stabbing the deceased and was asked to go and treat himself by the police at a Pharmacy. He also stated in this statement that the named friends, Simon and Courage did not follow him to fight.

To this end, it is my considered view that From the arguments above, it is clear that the purported confessional statements of the Defendant ought not to be relied upon, in the circumstance of this case, for having manifest defects, contradictions and their retraction by the Defendant.

The courts in a plethora of cases have laid down the principles to follow in order to ascertain the veracity of the confessional statement whether retracted by a Defendant or not. Thus, in setting aside the conviction of an appellant/Defendant, based on a confessional statement that was not verifiable, it was held in **ALIU V. STATE (2015) All FWLR (PT 782) 1706 AT 1743 PARAS A-G**. that:

“It is however the law that before a trial court can rely on such confessional statement to connect an accused person for the offence charged it is required as a matter of establishment practice, to ascertain the truth of the confession in other words, it has become the practice that any confessional statement be tested and examined in

the light of other evidence outside the confession. In the exaltation of the evidence of confession the trial court is enjoined to test the truth of the confession by ensuring the following questions”

- 1. Is there anything outside the confession to show it is true?*
- 2. Is the confession corroborated*
- 3. Are the statements made in it of facts as far as can be ascertained true?*
- 4. Was the accused a person who had the opportunity of committing the offence?*
- 5. Is the confession possible?*
- 6. Is the confession consistent with other facts which have been ascertained? See also OKOH V. STATE (2009) All FWLR (Pt. 453)*

Going by the guidelines raised in the case of **Aliu V. State (supra)** mentioned above, there is nothing outside the confessional statements to show that the statement is true, neither are the confessional statements corroborated by facts outside the statements. As highlighted in paragraphs 4.14 to 4.27 above, all the testimonies of Prosecution witness are contradictory and have failed to link the Defendant to the death of the deceased. That of PW1 the brother of the deceased cannot be

relied upon as a witness of truth. PW2 who was the Investigating Police Officer only got acquainted with the facts of the death of the deceased, after the report to the police station by PW1. PW3 in person of Roseline Akpulu did not see the Defendant inflict those injuries on the deceased.

Another point worthy of note about the Confessional statement is that the exhibit was recorded by the Police Officer for the Defendant, who retracted same as not being his statement in his evidence before this court and told the court he could read. Counsel submit, and urge this Honourable Court to uphold the retraction of the confessional statement by the Defendant and that the Defendant did not author same.

Counsel contended therefore that, it can clearly be seen that the Prosecution has not by direct and compelling evidence, proven that it was the Defendant that caused the death of the deceased and we urge the court to so hold.

During the trial, the Defendant's own testimony before this Honourable court, the Defendant, while testifying as DW1 on the proceedings of 23rd February, 2021, gave a vivid account of what transpired on the day of the incident. Whilst he testified as to have had an encounter with the deceased as to how the Defendant was attacked and wounded by the deceased and his friends and how one of his attackers was hit by the other. The Defendant did not mention that the Defendant injured the deceased or cause any bodily harm to the deceased that would

lead to the death of the deceased. The fact of the Defendant being attacked and sustaining injury was also established by DW1, who testified as to how the Defendant came to DW1's house with injury and had to be taken for treatment. That piece of evidence of DW1 was not discredited under cross-examination and therefore stands as the truth of what transpired.

That the above evidence-in-chief and the cross-examination of the Defendant does not show any form of admission of guilt by the Defendant. It has since been established, as was held in the case of **THE STATE V. ENABOSI (1966) 2 All NLR 166**, that where an accused person only narrates the facts of the incident but made no unequivocal admission that it was him who killed the deceased, that narration does not amount to an admission. Counsel therefore submits that such testimony does not automatically point to the guilt of the Defendant, and we urge this Honourable Court to so hold. Also, the testimony of the Defendant was not discredited by the Prosecution during cross-examination on the facts narrated by the Defendant. Counsel also call upon the Honourable Court to take cognizance of the confidence and the demeanor of the Defendant, while the Defendant gave the said narration as DW1 on the proceedings of 23rd February, 2021.

On the strength of the above therefore, I resolve this sole issue in favour of the Defendant, by holding that the Prosecution has failed to discharge the evidential burden placed on it under law

and has failed to prove its case beyond reasonable doubt and could not established the guilt of the Defendant, by proving the various elements of the offence of Culpable Homicide punishable with death;

Equally too, the Prosecution has failed to furnish this Honourable Court with eyewitness accounts or with cogent evidence that will establish the guilt of the Defendant;

In conclusion, I resolve these doubts in favour of the Defendant and accordingly discharged and acquit the Defendant.

APPEARANCE:

Yakubu Philemon, Esq. for the Defendant; who is present in court.

The Prosecution is not in court.

Sign
Hon. Judge
16/02/2022