

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

ON FRIDAY 11TH OF FEBRUARY 2022

BEFORE HIS LORDSHIP: HON. JUSTICE O. A. ADENIYI

SITTING AT COURT NO. 8 MAITAMA -ABUJA

CHARGE NO FCT/HC/CR/23/14

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

NASIRU BELLO DEFENDANT

JUDGMENT

The Defendant was originally arraigned before this Court on 16/03/2015 on a **one-Count Charge** of culpable homicide punishable with death under the provisions of **s. 221 (b)** of **the Penal Code Act**. The prosecution amended the charge on 12/11/2015; and on which date the Defendant was re-arraigned.

At the plenary trial, the prosecution fielded **three (3)** out of the **six (6)** witnesses listed in the proof of evidence, namely:

- **PW1 - Olusegun Faleye** - Staff of the Engineering Services Dept., Federal Ministry of Works, Mabushi, Abuja.
- **PW2- Iorgbide Thaddeus** - A Police Officer attached to the Nigeria Police Station, Mabushi, Abuja.
- **PW3 - Nasiru Hassan** - A Police Sergeant attached to the State CID, Police Command, FCT, Abuja.

is considered pertinent to remark that in consideration of the length of time the trial of the Defendant took, from the date of his arraignment, the Court, upon application of the Defendant's learned counsel, admitted the Defendant to bail on liberal terms, on 25/01/2018. However, he was unable to fulfill the bail conditions and as such had remained in the custody of the **Kuje Correctional Services** ever since.

At the conclusion of the prosecution's case, the Defendant, through his learned counsel, applied to make a no-case to answer submission, pursuant to the provision of **s. 302** of the **Administration of Criminal Justice Act, 2015 (ACJA)**. In its considered ruling rendered on 17/12/2020, this Court overruled the Defendant's no case submission and ordered the Defendant to enter his defence to the Charge.

The Defendant testified for himself and called no witness(es) in offering his explanations with respect to the Charge for which he stood trial.

At the close of the defence of the Defendant, parties, as agreed to by them, filed and exchanged written final addresses. In the final address filed on behalf of the Defendant on 24/06/2021, his learned counsel, **G.**

T. Adebite, Esq., formulated a sole issue as having arisen for determination in this trial namely:

Whether in the circumstances of this case, the prosecution alleged the offence of criminal conspiracy and culpable homicide under section 221 (b) of the Penal Code laws against the accused person beyond reasonable doubt as required by law, thereby necessitating his discharge or acquittal.

In turn, the prosecution learned counsel, **K. A. Fagbemi (Miss)**, filed the Complainant's final address on 13/07/2021 wherein she also raised two issues for determination, namely:

- 1. Whether the prosecution has proved its case beyond reasonable doubt; and**
- 2. Whether the prosecution has successfully proved all the elements of the offence for which the Defendant is charged.**

I had proceeded to carefully consider and take due benefits of the totality of the written and oral arguments canvassed by the respective learned counsel on both sides, to which I shall endeavour to make specific reference as I consider needful in the course of this judgment.

The obvious question that the Court has to determine in the instant Charge is as to whether or not on the basis of the totality of the evidence led by the prosecution witnesses and the explanations offered by the Defendant, it could be said that the offence of culpable homicide for which the Defendant stood trial has been proven beyond reasonable doubt by the prosecution.

I consider it pertinent, as a starting point, to re-state the fundamental principles of a criminal trial, as also correctly alluded to by the prosecution learned counsel, to the effect that the prosecution could discharge the burden placed on it by the provisions of **s. 135(2) and (3)** of the **Evidence Act**, to prove the guilt of an accused defendant beyond reasonable doubt, in any of the following well established and recognized manners, namely:

- 1. By the confessional statement of the accused defendant which passes the requirement of the law; or**
- 2. By direct evidence of eye witnesses who saw or witnessed the commission of the crime or offence; or**
- 3. By circumstantial evidence which links the accused defendant and no other person to or with the commission of the crime or offence charged..**

See Lori Vs. State [1980] 8 - 11 SC, 81, Emeka Vs. State [2001] 14 NWLR (Pt. 734) 668; Igabele Vs. State (2006) 6 NWLR (Pt. 975) 100.

On the basis of these well settled legal principles as espoused in the authorities cited in the foregoing, I now proceed to examine the instant Charge, in the light of the evidence adduced by the prosecution witnesses and the Defendant; and the issues formulated by the respective learned counsel, in order to determine whether or not the prosecution has proved the commission of the offence in the Charge against the Defendant beyond reasonable doubt as required by law.

For ease of reference, the Amended Charge for which the Defendant stood trial is hereby reproduced as follows:

That you Nasiru Bello, on or about 10th June, 2014, while at Federal Ministry of Works Headquarters, Engineering Services Block 3, Mabushi, FCT Abuja, within the jurisdiction of this Honourable Court, did commit culpable homicide punishable with death, to wit: you caused the death of one Fatai Shorumu, by hitting him with a stone on his head which caused his death with the knowledge that death would be probable and not only likely consequence of your act and you thereby committed an offence punishable under section 221 (b) of the Penal Code.

The provision of **s. 220** of the Penal Code defines the offence of culpable homicide as follows:

"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 such a rash or negligent act, commits the offence of culpable homicide."**

The provision of s. 221 (b) of the **Penal Code Act**, the punishment section, under which the Defendant is charged, states as follows:

"221. Except in the circumstances mentioned in section 222 culpable homicide shall be punishable with death -

(a) ...

(b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act of any bodily injury which the act was intended to cause."

The ingredients of the offence of culpable homicide punishable with death are:

- i. that the death of a human being actually took place;
- ii. that such death was caused by the accused defendant;
- iii. that the act of the accused defendant that caused the death was done with the intention of causing death; or that the accused defendant knew that death would be the probable consequence of his act.

The position of the law is that all the ingredients of the offence must be proved or co-exist before a conviction could be secured; and that failure to establish any of the ingredients would result in an acquittal. See Adava Vs. State [2006] 9 NWLR (Pt. 984) 152 at 167.

I will proceed to determine the Charge in the light of the evidence adduced on record as relating to each of the ingredients that must be present in order for the charge to be sustained.

RESOLUTION

DID DEATH OCCUR?

The **PW1, Olusegun Faleye**, is a staff of the Federal Ministry of Works, Headquarters, Mabushi, Abuja. He gave an eye witness account of the deceased's encounter with the Defendant. He testified that on 10/06/2014, around 3.30pm, in company of one of his colleagues, Mr. Sorunmu, when they were about to close from work, that they left the office to look for where they could break **N1,000.00** bill into smaller denominations; that as they walked towards the back of the Police Station in Mabushi, then they saw the Defendant standing beside a car; that he accosted them and begged for money to eat; that **Mr. Sorunmu** told him that they had no money and moved on to pursue their mission. The **PW1** testified further:

"As we were returning, we still met the accused person at the same spot. We passed by him towards our office. My friend stopped by to greet a meat seller and I moved ahead. I then called on him to join me. As I looked back, I saw a big stone hit him on the head and he fell on his face instantly. Immediately I looked back and saw the accused person who made to run away and I caught him. Other persons joined me to hold on to him and rushed to pick up my friend, but he could not stand. I saw cuts on his head. I

asked if he could walk so that I could guide him to the clinic, he responded that he could not stand up. His body was already covered with blood. After that, some passers-by helped to carry him to the clinic that is inside the Ministry premises. As my friend was being given first aid, I quickly went to check for the accused person, but did not see him at the spot again. We were asked to transfer my friend to the General Hospital in Wuse. He was not accepted at the Wuse General Hospital. We were asked to take him to Asokoro General Hospital. At Asokoro, we were asked to go and conduct head scan on him to ascertain the extent of the injury on his head. We took the deceased to the Indian Hospital in Karu, where we did the scan. We took him back to Asokoro Hospital late in the night, around 9pm, where he was admitted. The deceased gave up the ghost in the morning of the following day. In the meantime, I was told that the Defendant had been taken to Mabushi Police Station. I went to the Police Station the following day where I reported the death of the deceased. I was requested to write a statement, which I did."

The witness thereon tendered in evidence the statement he volunteered at the Mabushi Police station on 10th June, 2014 as **Exhibit P1**.

Under cross-examination by the Defendant's learned counsel, the **PW1's** testimony on the issue at hand is as follows:

"We took the deceased to four hospitals before he gave up the ghost- Federal Ministry of Works Clinic, Wuse General Hospital, Asokoro General Hospital, Indian Hospital, Karu (for head scan) - before he was eventually admitted at Asokoro General Hospital... It is correct that the deceased was referred to the General Hospital because the FMW Clinic could not attend to the magnitude of his injury. It is correct that the Police were aware that I took the deceased to the hospital. The Police took his picture at the FMW Clinic. There was no provision for admission at the Clinic.The incident happened at about 3.30pm. The deceased was finally admitted at Asokoro General Hospital between 7.30 and 8.00pm same day. It is not correct that the deceased gave up because he was not attended to in time. It is also not correct that the deceased died because he was not promptly attended to at Asokoro General Hospital."

The **PW2** is an Investigation Police Officer. He was on duty at the Mabushi Police Station on 10th June, 2014, when he received the report of the incident that resulted in this trial. His evidence, inter alia, is as follows:

"Remember 10th June, 2014. While I was on duty at the Station in Mabushi, we received a distress call from the FMW at Mabushi that one of their staff named Fatai S. Sorunmu, was attacked by a scavenger with a stone. Immediately we received the call, I ran to the crime scene. I saw the accused person being held by staffs of the Ministry. I equally saw the concrete which he was alleged to have used to hit the victim. The victim was rushed to the Staff Clinic for medical attention. I took pictures of the victim whilst he was still on admission at the clinic. I equally took over the accused from members of staff and took him to the station. I also took a picture of the concrete stone used to hit the victim. I asked if he was going to write his statement by himself but he solicited my assistance to write it for him whilst he dictated to me. The statement was taken in English language after I duly cautioned him. He confessed to have committed the crime. Because the statement was confessional, I took the accused person to the Divisional Crime Officer (DCO), DSP Akinwale Akapo. The statement was read over to him and having confirmed that he understood it, he signed it. The victim was later transferred to Asokoro General Hospital where he was confirmed dead...."

The witness tendered in evidence as **Exhibits P2, P3, P4 and P5** respectively, pictures of the victim taken whilst on first aid at the FMW

Clinic and picture of the Defendant holding a concrete stone. Without objection, the witness also tendered the Defendant's purported confessional statement, taken at the Mabushi Police Station on 10/06/2014, as **Exhibit P6**.

Under cross-examination by the Defendant's learned counsel, the witness stated further, inter alia, as follows:

"It is correct that I was not present when the accused person was alleged to have hit the deceased.... I took the pictures, Exhibits P2, P3 and P4 by myself. From Exhibit P4, I can see the accused person carrying the concrete stone he claimed he threw at the deceased.... The stone was recovered at the scene. I recovered it myself.... it is the deceased victim that was in the pictures, Exhibits P2 and P3 - Fatai Sorunmu. I snapped the picture at the Staff Medical Clinic, Federal Ministry of Works. It is correct that the deceased had injuries on his forehead and on his nose, lips and back of his head as shown in the picture. I investigated the manner in which the accused person was alleged to have attacked the victim. He attacked the victim from the back. The injuries were both at the back of the head of the deceased and also in his face. ... It is true that I was called on the phone that the deceased was late; and that he had been deposited at the mortuary. I went to the mortuary to confirm and I saw him lying dead at the mortuary."

(underlined portion for emphasis)

The **PW3** is also an Investigation Police Officer, **Sgt. Nasiru Hassan**. He claimed to have investigated the case against the Defendant when he was transferred to the State CID, Police Command, FCT. He claimed to have taken the confessional statement of the Defendant statement which was tendered but eventually rejected after a trial within trial process.

Perhaps I should also put it on record in this judgment that from 20/03/2018, the date the Defendant took objection to the admissibility of his purported confessional statement, up until 25/06/2019, when the Court ruled on the trial within trial proceedings, was a period of one (1) year and three (3) months. This thus underscores that the trial within trial process is a major factor causing delay in the determination of criminal matters in Nigeria.

The totality of the testimony of the **PW3** is that his investigation revealed that the Defendant used a stone to hit the victim on the head and that he died the next day.

Now, from the totality of the evidence of the three prosecution witnesses, it is not in doubt that the victim of the alleged attack inflicted by the Defendant, **Mr. Fatai Sorunmu**, a staff of the Federal Ministry of Works, Mabushi, died on 11/06/2014, a day after the Defendant was alleged to have stoned him. The evidence of the **PW1** and **PW2** are compelling enough for the Court to come to the conclusion that the victim indeed died. Whilst the **PW1** testified that the victim, after being hospitalized as a result of injuries he sustained from the alleged stone attack by the Defendant, the victim, with who he had worked in the

same office for four (4) years, gave up the ghost at the Asokoro General Hospital the following day after the alleged attack.

On his part, the **PW2** testified, under cross-examination by the Defendant's learned counsel, that he was informed on the phone that the victim had died; and that he visited the mortuary where the victim's body was deposited; and he confirmed that the victim had indeed died.

From the totality of the evidence before the Court surrounding the alleged attack and the subsequent hospitalization of the victim and his eventual death on 11/06/2014, I am satisfied that the prosecution has proved the first ingredient of the offence for which the Defendant stood trial..

DID THE DEFENDANT CAUSE THE DEATH OF THE DECEASED?

It is trite that before the Court would determine whether or not it was the accused defendant that caused the death of the deceased, it must first be ascertained, the cause of death. In other words, determining what caused the death of the deceased must precede determining who caused the death.

The position of the law is also that cause of death can be proved by direct or circumstantial evidence that creates no room for doubts or speculation. See Adetola Vs. State [1992] NWLR (Pt. 235) 267; Uguru Vs. State [2002] 9 NWLR (Pt. 771) 90.

My first port of call here is the statement made by the Defendant at the Mabushi Police Station on 10/06/2014, **Exhibit P6**. The statement was admitted without objection by the Defendant's learned counsel, presupposing that the Defendant accepted that he made the statement voluntarily. It must also be stated that although the Defendant's learned counsel cross examined the **PW2** on the statement, he however did not question or impeach its veracity.

Now, I had examined the contents of the statement. It is not a very long statement so I take liberty to reproduce it in its entirety as follows:

"My name is Nasiru Bello born in the family of Bello from Sokoto State in Binji L.G.A of the State. I attended Sani Dinga Memorial Primary School, Sokoto. I came to Abuja in the year 2008 myself. Since I came I have engaged myself in various forms of trade to earn my living, e. g., trading of pure water, Boller work and others. On many occasions, the people in Ministry of Works collect my items which I source from my bollar work. On this fateful day of 10/06/2014, at about 0500 pm, while on my way from Zone 6 to Mabushi to go and sell my bollar products, on reaching Mabushi Bus-stop, two unknown persons came and collected my things. I followed them begging until we reached the gate of Ministry of Works; but they refused to give me. That was when I saw a stone on the ground and I took it and I hit one of them on his head and he fell down immediately. The second one rushed and started beating me. That is all I know about it."

(Underlined portion for emphasis)

No doubt, this statement has the features of a confession in the sense that the Defendant unequivocally owned up to the act of hitting the deceased with a stone on his head as a result of which he fell down on the ground immediately.

The case of the prosecution is that it was the act of the Defendant, in hitting the deceased with a stone at the back of his head in the afternoon of 10/06/2014, that eventually led to the death of the deceased at the Asokoro General Hospital in the morning 11/06/2014. of

The evidence of the **PW1** corroborated the Defendant's confession. His testimony in his evidence-in-chief, already reproduced in the foregoing is that when he looked back to call him friend, the deceased, he saw a big stone hit him on the head and he fell on his face instantly; and that at that moment he saw the Defendant who made to run away and that he apprehended him and that other persons joined him to hold the Defendant, after which he rushed to attend to the deceased; who, by then had his body covered with blood and had cuts on his head. He further testified under cross-examination that he saw the stone used by the Defendant to hit the deceased on the ground; and that where the deceased fell on his face was a tarred road.

Further corroborating the Defendant's confessional statement, the **PW2**, the IPO, testified that he was the one that recovered the concrete stone allegedly used by the Defendant to hit the deceased from the scene of the incident. He further claimed to have taken the pictures showing the

condition of the deceased whilst he was still at the FMW Clinic; and that he also took pictures of the said concrete stone. He further testified, under cross-examination by the Defence counsel, that the deceased had injuries at the back of his head, on his forehead, on his nose and lips.

The pictures, **Exhibits P2** and **P3** vividly showed the gory images of the bruised face and the bandaged head of the deceased after first aid was applied to him at the FMW staff clinic. From the pictures can also

be clearly seen a deep cut on the deceased's forehead, which by that time, had also got swollen and bulgy. It can easily be inferred that the deep cut on the deceased's forehead resulted from the impact of his fall face down when the stone thrown by the Defendant hit him at the back of his head.

The picture of the concrete stone used by the Defendant to hit the deceased was also tendered in evidence as **Exhibit C4**. Judging from its share size as depicted by the picture, **Exhibit C4**, the Court can reasonably infer that its impact on the head of the deceased must be enormous and that explained why he fell down immediately the stone hit him, as explained by the Defendant in his confessional statement.

Let me state here that I agree with the submissions of the prosecution learned counsel, and as I had demonstrated in the foregoing, that the evidence of the **PW1** and **PW2** corroborated the truth of the Defendant's confessional statement to the extent that he hit the deceased with a stone at the back of his head, which caused him to fall down immediately. In that regard, on the authority of Golden Diebe Vs. The State [2007] 1 All FWLR (Pt. 362) 83 @ 114-115, I attach weight and

credibility to **Exhibit P6**, the Defendant's confessional statement to the Police at Mabushi, Abuja, on 10/06/2014.

I have also noted that the Defendant, in his oral testimony at the trial, omitted the portion of his confessional extra-judicial statement that he stoned the deceased. The position of the law is that the testimony of an accused defendant at trial, to the extent of its inconsistency with his extra-judicial confessional statement, is not to be taken seriously by the Court. See Thomas Vs. State [2013] LPELR-20205(CA), where it was held as follows:

"A retraction made after a statement has been tendered without objection, and admitted as evidence is, at best, an afterthought. Indeed, a challenge or retraction presented after the statement has been admitted in evidence and perhaps the witness for the prosecution discharged cannot be taken seriously."

See also Akpan Vs. State [2001] FWLR (Pt. 75) 428 @ 443, where the Supreme Court, **per Karibi-Whyte, JSC**, held as follows:

"Where an accused makes an extra-judicial statement, admitting the commission of the offence with which he is charged, the statement will still be considered or taken into account in the determination of his guilt, notwithstanding that he had resiled from that evidence in his testimony at the trial, by giving evidence contrary to that statement."

In order to pinpoint the cause of the deceased's death, it is important to reckon with the evidence on record that the incident happened at about 3.30pm on the fateful day, 10/06/2014. This is confirmed by the oral testimony of the **PW1** and his extra-judicial statement. In his extra-judicial confessional statement, the Defendant stated that the incident occurred at about 5.00pm. What is not in dispute is that the incident happened towards late afternoon of the day in question.

The evidence on record is further that the Defendant hit the deceased with a big concrete stone on his head, which made him to fall down immediately and he sustained injuries to the back of his head, his forehead, nose and lips. First aid treatment was immediately administered to the deceased at the FMW staff clinic. Because of the severity of the injuries sustained by the deceased, the FMW clinic referred him to the General Hospital in Wuse, Abuja. At the Wuse General Hospital, the deceased was not accepted and he was asked to be taken to Asokoro General Hospital. At the Asokoro Hospital, head scan was demanded in order to ascertain the extent of the head injury; which led the deceased to the Indian Hospital, Karu. The head scan was conducted and the deceased was returned to the General Hospital in Asokoro late in the night of the same day, 10/06/2014; and the deceased was then admitted. The evidence on record is further that the deceased gave up the ghost in the morning of 11/06/2014.

From the state of the evidence on record, it happened that the deceased died in the hospital less than twenty four hours from the point he was hit with a concrete stone on his head by the Defendant and collapsed. Even though the prosecution did not produce any medical certificate

that should medically explain the exact cause of death of the deceased; the Court is entitled to make inferences from the totality of the available circumstantial evidence to determine the cause of death.

The position of the law is that it is not in all cases that production of medical report stating the cause of death would be crucial. In Ben Vs. State [2005] 11 NWLR (Pt. 936) 335, it was held as follows:

"It is trite in law that the onus is on the prosecution to prove the cause of death beyond reasonable doubt. In proving the cause of death beyond reasonable doubt, it is not only by production of medical evidence that the proof may be made. Where the victim of a beating died and the evidence leave no doubt as to the manner and cause of death, medical evidence can be dispensed with. See (i) Bakuri Vs. The State (1965) NMLR 163; (ii) Adamu Kumo Vs. The State (1968) NMLR 227."

From the totality of the circumstantial evidence on record as evaluated in the foregoing, I do not think anyone is left in doubt, and indeed this Court is not left in any shadow of doubt whatsoever, that, with or without medical jargons, it was the act of the Defendant, hitting the deceased at the back of his head with a concrete stone that eventually led to his death less than twenty four hours thereafter. I so hold.

The finding of the Court is further that the prosecution proved beyond reasonable doubt, that there was no break in the link between the act of the Defendant and the eventual unfortunate death of the deceased. In other words, the prosecution accounted for the actus novus

interveniens, that is, the events that transpired between the time the incident occurred and the time the victim died. I so hold.

As it stands, once the cause of death is determined, it becomes easy to invariably make the finding that the Defendant caused the death of the deceased. Accordingly, on the basis of the analysis of the evidence on record, as undertaken in the foregoing, the Court holds that the prosecution has proved beyond reasonable doubt that the Defendant caused the death of the deceased.

WHAT WAS THE INTENTION OF THE DEFENDANT?

The third and last ingredient that the prosecution must prove beyond reasonable doubt, in order to sustain the charge of culpable homicide, is that the act of the Defendant that caused the death of the deceased was done with the intention of causing death; or that he knew that death would be the probable consequence of his act.

Now, there seemed to be divergence in the accounts of the events that led the Defendant to hitting the deceased with a concrete stone at the back of his head. The account of the **PW1**, as narrated both in his extra-judicial statement and his oral testimony at the trial, which accounts are materially consistent, is that, towards closing time on the fateful day, he and the deceased decided to go and seek how they will break **N1,000.00** note to smaller denominations, at which point the Defendant accosted the deceased and begged for money to eat with; that the deceased told him he had no money to give him; that they proceeded on their mission;

that on their way back to the office, the Defendant was still loitering at the Car Park area of their office, the FMW, Mabushi, Abuja; and they passed him by; that the next thing he saw was that the deceased fell down and when he looked back, he saw a big stone that hit the deceased from the back and the Defendant made to run away but he, with the help of the passers-by, apprehended him.

However, the accounts of the Defendant on the other hand, as narrated also in both his extra-judicial confessional statement and his oral testimony at the trial, are not exactly consistent. In his confessional statement, he claimed that two men accosted him at the Mabushi Bus-Stop, collected his things and moved away; that he followed them and was begging them to release his scraps to him but that they refused; and that as they reached the gate of the FMW, he saw a stone, took it and hit one of them on his head.

His oral testimony is that he was a scavenger; that on the day in question, he was running his scavenging business within the vicinity of the FMW, Mabushi, Abuja; that two men saw scraps of iron materials he was holding and accosted him to sell the items to them; but that he told them that the items were not for sale; that when they insisted, he agreed to sell; that they priced the items for the sum of **N350.00**, but that he refused their offer; that they wanted to seize the items from him by force; that they then called one Hausa man to appeal to him to sell to them otherwise they will beat him up; that he then ran to the Mabushi Police Station to report the men; but that the Police chased him away, assuming he was a mad man; that when he returned to where he kept his goods; the two men who priced his goods, the Hausa man and other

passers-by began to beat him up, calling him a thief; that he then became unconscious and the Police came to take him away.

As I had held earlier on, the Defendant's oral testimony, which was inconsistent with his extra-judicial statement, is at best an afterthought of which this Court have not taken seriously. Again, I find the consistent account of the PW1 more plausible than the account related by the Defendant in his confessional statement that the two men seized his goods and he chased after them, begging them to release his goods; failing which he stoned the deceased from behind. I believe the **PW1** that the Defendant's action, in stoning the deceased, was actuated by the deceased's refusal to give him money to eat.

Now, as to whether or not the Defendant intended the consequence of his heinous action, I draw veritable resource from the decision of the Supreme Court in James Afolabi Vs. The State [2016] LPELR-40300 (SC), where it was held extensively as follows:

"It is an elementary proposition of the criminal law that every person is taken to intend the natural and probable consequences of his or her act. And, the consequence of an act may be said to be probable, if a reasonable man would consider its occurrence to be the natural and normal effect of the act. See Shazali Vs. State [1988] 12 SC (Pt. 11) 58, [1988] NWLR (Pt. 93) 164, R Vs. Dim 14 WACA 154 at 155; Yakubu Vs. The State [1980] 3-4 SC 84 at 98, Atani Vs. R [1955] 15 WACA 34."

The apex Court proceeded to define intention, in the same decision as follows:

"But, what is intention? The Black's Law Dictionary Ninth Edition by Bryan A Garner, page 883 defines intention follows:

"The willingness to bring about something planned or foreseen; the state of being set to do something." Also, John Salmond, in his book Jurisprudence, 378 [Glanville L. Williams ed, 10th Edition (1947) reproduced in The Law defines Dictionary first alluded to above, intention thus: "Intention is the purpose or design with which an act is done. It is the foreknowledge of the act coupled with the desire of it such foreknowledge and desire being the cause of the act, in as much as the law themselves through the operation of the will. An act is intentional if, and in so far as, it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied."

Another learned author, P. H. Winfield, in his book, A Textbook of the Law of Torts p. 19 (5th Edition 1950) also defines intention in the following words. "This signifies full advertence in the mind of the defendant to his conduct, which is in question, and to its consequences, together with a desire for those consequences."

From the above definitions, it seems to me that in an offence of murder, intention, which is not tangible, can be inferred from the instrument used to commit the crime, the force used and the part of the body on which the injury was inflicted. Also, the force with which the accused applied with the instrument on the deceased is also to be taken into consideration. See *Orisakwe Vs. The State* (2004) 12 NWLR (Pt. 887) 258, *Queen Vs. Moses Onoro* (1961) 1 All NLR. In the instant case, the appellant states emphatically in Exhibit D adjudged to have been freely and voluntarily made, that he aimed his gun at the chest of the deceased at close range and shot him. It was his further evidence that the deceased fell down and could not move again. At that point, he ran to the village head and reported that he had killed a man. In the circumstance, did he intend to kill the man? I had earlier stated in this judgment that a person is taken to intend the natural and probable consequences of his act. So, when the appellant aimed his gun at the chest of the deceased and shot it, did he intend to keep him alive? I do not think so. At least he intended to cause him grievous bodily harm. And in view of the force of a gunshot aimed at the heart, the engine room of a man's life, it can safely be concluded that the appellant intended to kill the deceased by his action, the report he made to the village head notwithstanding. Had the appellant shot the deceased on the leg, maybe, just

maybe, one would have thought he did not intend to kill him."

Again, the Supreme Court held in Mohammed Vs. State [2000] 12 NWLR (Pt. 682) 596, as follows:

"The failure to produce the murder weapon during the trial is, in my view, inconsequential. It is the intentional murderous assault on a vital part of the body which leads to conviction for culpable homicide punishable with death. There can be no doubt that a person delivering a violent blow with a stick or club on a vulnerable part of the body such as the head must be deemed to have intended to cause such bodily injury as he knew that death would be the probable consequence of his act."

See also Tobi Vs. State [2019] LPELR-46537 (SC); Bamidele Patrick Vs. State [2013] NWLR (Pt. 1385) 167 @ 187, cited by the prosecution learned counsel.

Applying these authorities to the case at hand, the inference that must be drawn, inescapably, from the totality of the circumstances that led the Defendant to stoning the deceased, is that he was actuated by malice, desperation and anger that the deceased did not give him money to eat and that he intended the consequences of his deliberate and heinous action by aiming the stone at the back of the deceased's head. I have no doubt in my mind that the Defendant intended to cause the deceased grievous harm. As the apex Court alluded to in one of the authorities I cited above, the Defendant did not aim a big concrete stone

at the head of the deceased with the intention of keeping him alive or just to slightly injure him. By my assessment of the totality of the circumstances, the conclusion I have come to is that the Defendant intended the eventual outcome of his action by hitting the deceased with a big concrete stone on the head, a very delicate part of the human body, which eventually resulted in the death of the deceased.

Contrary to the submissions of the Defendant's learned counsel, non-tendering of the stone used by the Defendant at trial is of no moment. As was held in Mohammed Vs. State (supra), it is not compulsory to tender the weapon used to inflict harm on a victim that led to his death, in so far as the effect of the weapon on the victim is visible. In the present case, the Defendant's confession, which was corroborated by the **PW1** is that the deceased fell down immediately the stone landed at the back of his head. The fact of the deceased falling flat on his face upon being hit with a stone is sufficient to infer that the stone must be heavy to have had such immediate impact on the deceased. Besides, the picture, Exhibit P4, showed the sheer size of the stone that the Defendant used to hit a fellow human being on the head. See also Ado Vs. State [2013] LPELR-22596(CA), cited by the prosecution learned counsel..

I therefore hold, without any hesitation, that the prosecution has proved beyond reasonable doubt, the third and last essential element of the offence of culpable homicide for which the Defendant stood trial.

I totally disagree with learned counsel for the Defendant that the inconsistencies highlighted in the testimonies of the prosecution witnesses have any fatal or material bearing to the substance of the proof they supplied to establish the case of the prosecution. Should learned counsel have taken account of the Defendant's unequivocal and positive confessional statement as to how he stoned the deceased, causing him to fall down immediately, the issues as inconsistencies in the testimonies of the prosecution witnesses as to how the incident occurred would not have arisen. The authority of Adebayo Vs. Nigerian Navy [2018] LPELR-45957(CA), cited by prosecution learned counsel suffices in the circumstances.

The Defendant's learned counsel again seemed to have misapprehended the testimony of the **PW2**, in particular, by categorizing his evidence as hearsay. The **PW2** gave graphic evidence of the actions he took from the point the incident was reported at the Mabushi Police Station. He testified that he saw the deceased at the FMW staff clinic, where he received first aid treatment. He also took pictures of the deceased, depicting his bruised face and bandaged head. The Defendant's learned counsel did not object to the tendering of the photographs. He also did not subject the **PW2**, to any form of cross-examination as to the contents of the deceased's photographs, Exhibits P2 and P3 respectively.

In the final analysis, having taken into account a combination of the unequivocal, direct and positive confessional extra-judicial statement of the Defendant; the first hand evidence of the **PW1** and **PW2** and the totality of the compelling circumstantial evidence on record, as I have

analyzed in the course of this judgment, the inescapable conclusion that I have arrived at is that the prosecution has proved beyond reasonable doubt that the Defendant is guilty of the offence of culpable homicide for which he stood trial. Accordingly, pursuant to the provision of **s. 220(a) and (b) of the Penal Code Act**, I hereby find the Defendant guilty of the offence of culpable homicide. The imminent consequence of this conviction, pursuant to the provision of **s. 221 (b) of the Penal Code Act**, is that the Defendant is liable to be sentenced to death. Accordingly, pursuant to the provision of **s. 402(2) of the Administration of Criminal Justice Act (ACJA)**,

2015, the sentence of the Court upon you, **Nasiru Bello**, is that you be hanged by the neck until you are dead or by lethal injection.

Pending the execution of this sentence, the convict shall remain in the custody of the Kuje Correctional Service.

OLUKAYODE A. ADENIYI

(Presiding Judge)

11/02/2022

Legal representation:

K. A. Fagbemi (Miss) (Principal State Counsel, Federal Ministry of Justice)
(with **T. A. Joel (Miss) (State Counsel, Federal Ministry of Justice)**) - for
the prosecution

G. T. Adegbite, Esq.- for the Defendant