**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**
**IN THE ABUJA JUDICIAL DIVISION**
**HOLDEN AT JABI**

**THIS TUESDAY, THE 22ND DAY OF FEBRUARY, 2022**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**CHARGE NO: CR/91/2017**

**BETWEEN:**

**COMMISSIONER OF POLICE .....COMPLAINANT**

**AND**

**IBRAHIM SUNDAY ……. DEFENDANT**

**JUDGMENT**

The Defendant was arraigned on a one count charge on the 27th January, 2017. The charge read thus:

**"That you Ibrahim Sunday 'M' 44 years of Sherith Village, FCT, Abuja within the jurisdiction of this Honourable Court on or about 24th November, 2016 at the above mentioned address did commit felony to wit: Culpable Homicide punishable with death in that you caused the death of one Ibrahim Musa 'M' aged 14 years, your biological son by strangulating him by the neck and choke him with your hands until the deceased died, and you thereby committed an offence contrary to Section 220 and punishable under Section 221 of the Penal Code."**

The Defendant pleaded not guilty to the above charge.

In proof of its case, the prosecution called three (3) witnesses. The first witness is **Zainab Ibrahim** who testified as **PW1**. She is 35 years old and the Mother of the deceased, Ibrahim Musa. She knows the Defendant, her former husband

and the father of the deceased son. That she engaged her son as apprentice tailor with one Umaru and he normally comes home by 10pm. She stated that on the 24th November, 2016, she slept and woke up by 12pm and discovered that her son was not at home. She then called the master, Umaru and asked of the whereabouts of her son, and the master replied by asking her that did Musa not come back? She stated further that the master told her that before Musa closed, he sent him to buy pure water and when he did return, he saw Musa with 'suya meat' and he Musa told the master that the suya was given to him by his father, the defendant, who he saw around the corner.

PW1 testified also that she called the father (the defendant) 4 times but he refused to answer her call. She then called the master (Umaru) and he replied that she should calm down as she is not the only parent; that the father too is a parent. She stated that in the morning around 5:00 am, she called her daughter Maimunat Ibrahim to go in search of Musa.

PW1 got the address where the defendant lives at Sherith Village near Kabusa and she and her daughter, Maimunat went to the village to the house of defendant, the daughter knocked, and he asked who it was and she answered. He opened the door and immediately he set his eyes on PW1, he asked her what she was looking for and threatened to beat her for coming to his house. That people in the compound then started coming out and she asked the defendant to please produce her son. She stated that the landlord came out and she narrated her story to the landlord, who advised them to go and report the matter at the Police Station but the father refused and that he will rather report the matter to another person.

PW1 stated that she told him that it is the life of somebody that is involved and that it is better they go to the police station but the defendant refused. That she even stopped two "okada riders" to take them to the police station but that defendant insisted he will not go.

PW1 further stated that as they got to Okada park near the police station, the landlord now asked her about the cloth her son was wearing. That she asked him what kind of question is that and he said that there is a dead boy lying behind the back of my former husbands house covered with carton and he wore jeans and t-shirt.

She stated that when they got to the scene where the body was, she was advised to report the matter to the police which she did. At the station, they asked for her husband, but she told them that he ran away immediately she was told of the death of their son.

The police asked for his phone number which she gave and both the police and his landlord called him but the phone was switched off.

PW1 stated that the police at Kabusa then called Apo Police Station. Two police men at Kabusa followed her to where the corpse was recovered. The police from Apo came later with their vehicle to where the corpse was to retrieved same and a camera man took photographs of the deceased body and they then took the body to kabusa police station. At Apo, she explained what happened and her statement was taken.

PW1 stated that the senior brother of her former husband called her and she told him what happened. He told her to wait for him but did not tell her that her former husband was with him.

That the senior brother came and told the D.P.O at Apo that his brother is with him and he has handed him over at Lugbe Police Station and that he did that because the brother told him that he killed his son because his former wife left him. That the D.P.O called the I.P.O and the corpse was then taken to Asokoro Mortuary and the D.P.O directed that a vehicle be taken to bring the defendant from Lugbe and when he was brought, that he confessed to the D.P.O that he killed his son.

She stated that they then left the station and later came back to carry the corpse for burial and the matter was then transferred to Command Abuja where the defendant changed his story, that he was not the only one involved. A lot of people were then arrested and her statement was again taken at Command and she told them that her former husband killed their son because he had attempted to poison them before with rat poison "otapiapia". Her statement dated 2nd December, 2016 and 22nd December, 2016 were admitted as **Exhibits P1** and **P2**.

Cross-examined, she stated that when she came to defendant's house, it was the Landlord that advised that they go to the police station and collected her phone number. That it was the landlord who called to ask what her son was wearing.

That the landlord was not the one who first discovered the body. That as he finished praying, he came out and saw people gathered around the corpse. That he made enquiries and called her and that the defendant then ran away. That the house of her husband is near the bush and the corpse was found in the bush near his house.

That the landlord did not identify her son because his face was covered with carton. That he only identified the jeans he was wearing and the t-shirt. That it was when she got there that she removed the carton to see her son.

That the elder brother of defendant is Haruna and that she lived with her former husband for almost 16 years and that in those years he never behaved as someone with a mental problem.

She stated that she did not see defendant kill her son and nobody told her he saw defendant kill her son but that the defendant himself said he killed their son.

**Dominic Igbedor** testified as **PW2**. He is a police officer attached to FCT Police Command but presently with Apo Division. He knows Ibrahim Musa, the deceased, Zainab Ibrahim, the complainant and the defendant.

PW2 testified that on the 25th November, 2016 they got a complaint from Zainab Ibrahim at Apo that one Ibrahim Sunday, her former husband and defendant herein killed his son named Musa Ibrahim. On receiving the complaint, they went to Kabusa where the incident took place and saw the corpse.

PW2 stated that they discovered that the deceased was strangulated and dragged to the back of the house and covered with Banana leaves and that the father was nowhere to be found. They then conveyed the corpse to the mortuary at Asokoro. PW2 stated that they then got information from the defendant's elder brother that the defendant was about running away because his house was on fire and that on further questioning, he told him he killed his son and he then contacted a nearby police station and he was then arrested. They then went and brought him to the station and that he hold them he strangled his son to death.

PW2 was informed by the defendant that he has been married to his former wife for 17 years and that they have 7 children but lost one. He was further informed that the couple had a misunderstanding and they parted ways and the children are with PW1, the defendants' wife. He was further informed by defendant that

he made several efforts for the wife to return without success and that the best way the defendant thought he could get her back was to kill the boy so that she can come back home. Thereafter he was asked to write his statement, but the defendant pleaded with PW2 to write for him which PW2 obliged him. After writing, he read it to the defendant who agreed to the contents and endorsed his signature while PW2 counter-signed before the matter was transformed to FCT Police Command.

The said statement dated 25th November, 2016 was admitted as **Exhibit P3**.

PW2 stated that their investigation showed that the deceased was seen with tears in his eyes even in death and that when he asked defendant why the son was in tears, that the defendant said the deceased was begging him not to kill him but he did not listen. He stated also that the deceased body was dragged from the room to the back of the house and this showed a line or mark on the ground and they took photographs of the mark.

Under cross-examination, PW2 confirmed that he is a Sergeant with the Nigeria Police and he had put in 19 years in the service and has been an investigation officer for 9 years. That deceased was taken to Asokoro Hospital where he was confirmed dead. He stated that at their level, there was no post-mortem report and he is not aware whether the post-mortem was carried out at the command. He confirmed that the defendant is an **illiterate** and he wrote the statement and read it to him and he agreed it was what he said and signed.

PW2 stated further that the defendant was never induced to sign the statement. That the defendant did not mention any other person(s) as involved in the killing. That when they saw the corpse, it was covered with Banana leaves. PW2 stated that he cannot remember whether the wife of the defendant was with the police at the scene. PW2 stated also that the defendant was cautioned before his statement was taken.

PW2 further stated that from their investigation, that the boy (deceased) would not have been killed by any other person but his father, the defendant. He stated that nobody told him he saw the defendant kill his son or heard the boy shouting that his father should not kill him.

**DSP John Otache** testified as **PW3**. He is also a police officer attached to State C.I.D., FCT Command, Abuja. He knows one Sgt. Dominic Egbedor, Isa

Ibrahim and the defendant in the course of investigations in respect of the death of the deceased.

That on the 24th November, 2016, he received a call from one of his superiors that the Commissioner of Police has ordered them to proceed to Apo Divisional Police Division; that there was a problem at Sherith Village under the Division; that one Musa Ibrahim was killed and they proceeded to Sherith in company of 2 other officers where the incident happened. PW3 stated that they went to the defendant's house and they were told his son is nowhere to be found. The defendant could not also be found at home. They then started tracing the whereabout of Musa. PW3 stated that the wife who was with them showed him the slippers of the deceased and that of the defendant and they also saw a mark or impression of somebody being dragged into the bush and followed the impression to the bush close to the defendant's house and there, they saw a lifeless body of Musa Ibrahim, the deceased covered with carton and leaves.

PW3 stated that the lifeless body was recovered and taken to the hospital where the deceased was confirmed dead. PW3 stated that they proceeded to their office to inform the Commissioner of Police of their findings and the Apo Division started the preliminary investigation into the matter. He stated further that during the process of investigation, 4 persons including the defendant were arrested and the matter was officially transferred from Apo Division to Homicide Section of the FCT Police Command.

He further stated that when cases are transferred, they start all over again by recording new statements.

PW3 testified that the statement of the complainant, Zainab Ibrahim (PW1), witnesses and that of the 4 suspects transferred with the case file were taken. He stated that before they recorded the statements, they had verbal interviews with each of them and they explained their involvement in the case and all were done voluntarily. The statements of the suspects and defendant were taken in the presence of the complainant, the witnesses, all the suspects, the brother of the defendant and other team members were also present and the Deputy Commissioner of Police was the one interviewing the suspects.

PW3 stated that during the interview, the defendant confessed that he was the one that killed his son with the reason that he wants his wife to come back to his house. At this point, the wife was asked what the problem was, she narrated the

problem that led to the separation between her and the defendant. At the end of the investigation it was discovered that the defendant and PW1 were married with 6 children, the deceased, Musa Ibrahim was one of the children. They were all staying with PW1.

PW3 testified that on the night of 23rd November, 2016, the Defendant bought 'suya' for the deceased and when it was closing time, at his tailoring workshop, he took the boy home. That when the mother waited for him to come home and he did not, she called his master at the tailoring shop who told her that the deceased had left the shop and asked whether he has not come home.

That the master then told her the father came and bought 'suya' for the boy and he suspects that he must have taken him home. The mother then started calling the father but he did not pick his calls until about 5 calls later when he picked and she asked for the whereabout of her son; he denied any knowledge and she later came to the house of defendant, she did not see her husband but saw the slippers of her son around the house of defendant. That the defendant later came home. That the statements of defendant was taken by one of the officers in the team. That he was there when it was taken and because it was confessional in nature, he counter signed.

PW3 stated that at the end of the investigation, they found that the defendant was the father of the deceased while PW1 is the mother; that they are blessed with children and that they had marital problems which led to her moving out and the defendant has been begging her to return.

PW3 stated that they also found out that the defendant was not leaving with his wife and that the deceased was learning a trade, tailoring. That they found that a day to the incident, the defendant went and lured the boy to a 'suya' joint where he bought 'suya' for him and took him home and that when the boy went to the house, he strangled him and took him to the bush and covered him with a carton.

Further that investigation revealed that after he killed his son, he called his **senior** brother and told him the circumstances behind the death of his boy and because of his confession, his brother now called the police who came and arrested defendant. Further that the slippers used by the deceased on the day in question was found in the room of defendant, so that when defendant confessed that he killed his son, they had already uncovered all the facts.

Cross-examined, PW3 said he was an ASP as at the time of the investigation. That the deceased was learning tailoring. He stated that he was not part of the team that recovered the corpse of the deceased. That the findings were as a result of the investigations.

That nobody told him that he saw defendant strangling his son except what he told them.

He stated that there was no post-mortem or death certificate to ascertain cause of death of deceased, but that investigations reveals he died of strangulation and that the defendant confessed.

PW3 stated that 4 people were arrested including the defendant but the others were granted administrative bail. That the confession of defendant was at the SARS detention center. That even though no hospital evaluation was carried out on defendant to determine whether he was mentally alright but that he appears physically alright to them.

The following documents were tendered through PW3 thus:

1. The 1st statement of the defendant made on the 3rd December, 2016 was admitted as **Exhibit P4**.

2. The further statement made by the defendant dated 23rd February, 2017 was admitted as **Exhibit P5**.

With his evidence, the prosecution closed its case.

The defendant in proof of his case testified in person and the only witness for the defence. He stated that one evening in his house, his son told him that he had something to tell him about what is happening in his house. He called the mother to join them and he told him that his wife brought a man to the matrimonial home but the mother denied the allegation. The son then went in and brought out a skirt that was allegedly bought for her and he told her to take it back to whoever bought it. That the wife snapped at his son and he warned her not to do that. That the following day when he went to work, his wife packed out of the house with her belongings to her mother's house.

DW1 said he went to see her and she poured a bucket of water on him and he went home. He left Musa with his wife. He stated that the following morning,

a man and his wife came to the house around 5.00am. That the wife went on her knees and started begging him for pouring water on him and he told her that since she had an extra key to his house, she could bring back her belongings.

DW1 said that his wife then told him that she has not seen Musa and he told her that how can she say she cannot see Musa when he left him with her. He however advised that the matter be reported to the police.

DW1 stated that on their way to the police station, the wife called somebody and he heard her enquire about a dead body. That they are on their way to the police station. DW1 collected the phone and dialed the number and the person told him that his son is dead and the person switched off the phone. DW1 stated also that his wife said she knows where the body is and she said they should go there.

DW1 testified that on their way, his wife (PW1) asked him "assuming, we get there and it is your son, what will be his reaction"? DW1 told her he doesn't know since he left the deceased with PW1 healthy. He stated that at the place, the wife showed him the dead body and she said, they should go and bury the corpse, but DW1 disagreed with PW1. DW1 removed the carton and saw his son lifeless. He stated also that at a point, PW1 hit him on his head and he became unconscious until he regained consciousness in the police station. DW1 was asked what happened and he narrated his story. He was then taken to SARS. He was in SARS for 6 months. While at SARS, he was asked who is Ibrahim Sunday and he told them that is his name. He stated further that he was forced to sign a paper and was beaten and the next day, he was taken to High Court, Apo. He stated that he did not kill his son and he doesn't know who killed his son.

Under cross-examination, he stated that the deceased was his second son and was attending school. That he lived at different places in the FCT. That he remembers his wife came to his house to beg him by 5:00am. That he was not divorced or separated from his wife. That it was because of the "skirt" issue that she left.

DW1 says he does not know any Isa Haruna Ibrahim who resides at Airport road. That he did not kill his son and did not report to his brother at Airport Road. That nobody arrested him. That his wife hit his head and he found

himself at the police station. That she hit him near a Catholic Church at Kabusa.

That his children including the deceased all lived with his wife and he has never had any problem with his wife except the "skirt" issue. That it was his wife that took him to the dead body near the Catholic Church and that it is not near his house.

That he is not aware that the police arrested other people in relation to this incident.

He denied attempting to poison his family members. He also stated that he does not have any senior brother or sister and that his only senior brother is late. That he has lived in Abuja for 30 years now and lives in Kabusa District Apo and also works in Apo.

With his evidence, the defendant closed his case.

Pursuant to the Order of Court, the parties filed and exchanged written addresses. The written address on behalf of the defendant was settled by P.O. Onucheyo Esq. dated 22nd November, 2021 and filed on 23rd November, 2021 at the Court's Registry. Learned counsel raised one issue as arising for determination thus:

**"Whether the prosecution has established the guilt of the defendant beyond reasonable doubt?"**

The final written address of the prosecution was settled by John Ijagbemi Esq. and it is dated 29th November, 2021 and filed same date at the Court's Registry. One issue was equally raised as arising for determination as follows:

**"Whether by virtue of evidence before the Honourable Court, the prosecution has proved his case beyond reasonable doubt to warrant his being convicted and sentenced pursuant to Section 221 of the Penal Code?"**

I have carefully considered the charge in this matter, the evidence adduced by parties, and the written addresses filed by the learned counsel herein to which I may refer to in the course of this judgment where necessary. It seems to me that the single issue for determination in this matter and which requires the most circumspect of consideration is whether the prosecution has proved the charge against the defendant beyond reasonable doubt to warrant a conviction for the offence charged.

Now, it is not a matter for dispute that the charge defendant is facing involves the alleged commission of a crime. Under our criminal justice system, and here all parties are in agreement, that the burden or onus is clearly on the prosecution to prove the guilt of the accused person beyond reasonable doubt; See **Section 135(1) of the Evidence Act.** The position of the law, as provided for by **Section 135(2) and (3) of the Evidence Act,** needs restatement, that the burden of proving that any person has been guilty of a crime or wrongful act is, subject to **Section 139 of the Act,** on the person who asserts it; and that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the Accused person.

In shedding more light on the statutory responsibility and expectation on the prosecution to prove its case beyond reasonable doubt, the Supreme Court held in **Mufutau Bakare V. The State (1987)3 SC 1 at 32,** per Oputa, JSC (now late) as follows:

**"Proof beyond reasonable doubt stems out of a compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of any doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure including the ministration of criminal justice."**

See also **Lortim V. State (1997)2 N.W.L.R (pt.490)711 at 732; Okere V. The State (2001)2 N.W.L.R (pt.697)397 at 415 to 416; Emenegor V. State (2009)31 W.R.N 73; Nwaturuocha V. The State (2011)6 N.W.L.R (pt.1242)170.**

It is also well settled that in a criminal trial, the prosecution could discharge the burden placed on it by the provisions of **Section 135(2) and (3) of the Evidence Act,** to prove the ingredients of an offence, and invariably the guilt of an Accused Person beyond reasonable doubt, in any of the following well established and recognized manners, namely:

1. By the confessional statement of the accused 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 Person and no other person to or with the commission of the crime or offence charged.

See **Lori V. State (1980)8 8-11 SC 18; Emeka V. State (2011)14 N.W.L.R (pt.734)668; Igabele V. State (2006)6 N.W.L.R (pt.975)100.**

Being therefore mindful of the well settled principles as espoused in the authorities cited in the foregoing, I shall proceed to examine the instant charge in the light of the evidence adduced by both the prosecution and the Accused Person, in order to determine whether or not the prosecution has established the charge against the Accused Person beyond reasonable doubt and or the threshold required by law.

Now it is indisputable that every criminal allegation which is statutorily provided for has basic and critical ingredients that the prosecution must prove in order to secure a conviction. As already stated at the beginning of this Judgment, the defendant is arraigned before this court for the offence of culpable homicide punishable with death under **Section 221 (b) of the Penal Code Law.**

The offence of culpable homicide is defined under Section **220 (a) – (c) of the Penal Code Law** as follows:

**"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,**

**commits the offence of culpable homicide"**

In order to succeed in the charge against the defendant, parties on both sides of the aisle are agreed that the prosecution must prove these requisite elements, to wit:

1. That the death of a Human Being has actually taken place.

2. That such death was caused by the Accused; and

3. That the act was done with the intention of causing death, or that it was done with the intention of causing such bodily injury as:

i. The accused knew or had reason to know that death would be the probable and not only the likely consequence of his act; or

ii. That the accused knew or had reason to know that death would be the probable and not only the likely consequence of any bodily injury which the act was intended to cause.

The commentary in the **Penal Code Law** by **S. S Richardson** states instructively thus, that, there must be a finding that the act that caused the **death was done either with the intention of causing death** or **causing bodily injury** sufficient in the ordinary course of nature to cause death. It goes further to state that, the finding that **the accused inflicted an injury that was merely likely to cause death** will not amount to the offence of culpable homicide punishable with death.

As already alluded to, thus for the prosecution to secure a conviction, it must prove beyond reasonable doubt that the act of the accused was done with the intention or knowledge that such act will result into or cause death. If any of the elements or ingredients earlier listed are not proved to the required standard, the charge will collapse and the accused shall be discharged. See **Jua V The State (2009) 15 N.W.L.R (pt.1184) 217; Musa V State (2009) 15 N.W.L.R (pt.1165) 467, Usman V State (2013) 12 N.W.L.R (pt.1367) 76; Achuku V State (2014) LPELR – 22651 (CA).** The threshold of reasonable doubt simply means, proof that drowns the presumption of innocence of the accused. The court is entitled to convict although there could exist shadow of doubt. The moment however that the prosecution renders the presumption of innocence on the part of the accused valueless and pins him or her as the owner of the **mens rea** or **actus reus** or **both**, the prosecution has discharged the burden placed on it by **Section 135 (3) of the Evidence Act**. See **Dibie V The state (2007) All F.W.L.R (pt.382) 83 at 108.**

Having properly set out the above legal template including the key ingredients of the offence charged, the simple, albeit, delicate task the court is to undertake now is to examine the evidence led by the 3 prosecution witnesses in the light of the legal ingredients required to establish the offence for which the accused

person was charged. It is trite that before a conclusion can be arrived at, that an offence has been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that the acts of the accused person come within the confines of the particulars of the offence charged. See **Amadi V. State (1993)8 N.W.L.R (pt.314)646 at 664.**

I had earlier identified the elements or ingredients that must be established to legally situate the offence the defendant is charged with. The first ingredient or element to be proved is the death of a human being. On this point, it is true that on the evidence, no evidence of the physical body of the deceased was presented in one form or the other or say evidence of a medical doctor presented situating an examination of the body of the deceased and confirming death but by confluence of facts flowing from the unchallenged evidence of PW1 – PW3 and even the evidence of the defendant himself, there is no dispute or doubt with respect to the unfortunate death of Ibrahim Musa, the young son of defendant and PW1.

Both sides are *adidem* with respect to the question of the **death of a human being**, here the deceased has taken place.

The next ingredient is who caused the death of the deceased. There is no doubt that, again, the burden was on the prosecution to prove that the act of defendant resulted in the death of the deceased. The defendant in his evidence categorically denied that he was responsible for the death of his son having left him hale and healthy with the wife. In resolving the question, we must again have recourse to the evidence.

The charge against the defendant and I prefer to allow the charge speak for itself is that the defendant **"caused the death of one Ibrahim 'M' aged 14 years by strangulating him by the neck and choke him with your hands until the deceased died…"** (I shall return the aspects of this charge later on).

Now in law cause of death is always a fact in issue in a case of homicide and that fact in issue may be proved by direct evidence or circumstantial evidence. Contrasted with circumstantial evidence, direct evidence is evidence of fact in issue. When it is testimonial evidence, it is evidence of the witness who claims personal knowledge of the fact he testified about. Circumstantial evidence on the other hand is evidence of relevant fact(s) from which the existence or non-

existence of facts in issue may be inferred. See **Ahmed V State (2001) 18 NWLR (pt.746) 622 at 644 – 645 – H-A**.

Indeed in relation to cause of death, medical evidence is direct evidence of the cause of death, a fact in issue, when given by the doctor who carried out the autopsy or by a doctor who treated the deceased. There may be other direct evidence, such as, for instance that of a witness who saw a deceased person beheaded by another. Circumstantial evidence of cause of death may be relied on where direct evidence is absent. It is in such a situation that cause of death may be proved other than by medical evidence. Where medical evidence is not available, cause of death can be proved by circumstantial evidence. See **Ahmed V State (supra) 645 B-C.**

The principle of causation dictates that an event is caused by the act proximate to it and in the absence of which, the event would not have happened. Therefore so long as the cause of death is traceable to the action(s) inflicted by the defendant, he would be held criminally responsible.

I have on this point carefully evaluated the evidence of PW1, the estranged wife of the defendant and evidence of the police vide PW2 and PW3 and there is no where that they indicated or stated that they were present when the alleged act of **"strangulation and choking"** of the deceased occurred. Indeed in their evidence, they all cumulatively indicated that nobody informed them that they saw defendant carry out the actions of strangulation and choking of the deceased. Nobody was produced by the prosecution who had direct knowledge of what caused or led to the death of the deceased. The reality is that beyond what is at best speculative posturing, there was really no direct evidence of the cause of death.

What is strange in this case is that there is absolutely no medical evidence of a medical doctor who performed a post-mortem of the deceased delineating clearly the cause of death as **"strangulation and choking".**

The point to underscore is that even where the prosecution relies on direct evidence, such as a medical evidence of a medical doctor who performed a post-mortem, such medical evidence must be satisfactory and cogent in establishing that it is the actions or injury inflicted on the deceased that led to the death of the deceased. Thus where medical evidence is inconclusive, the court has a duty to examine the evidence before it and draw the necessary inferences. See **Adekunle V State (1989) 5 NWLR (pt.123) 505 at 515; Essien V The State**

**(1984) 3 SC 14**. Whether the absence of a medical report will impact this case, we shall soon see.

In the absence of direct evidence of the cause of death, what is left is whether from the circumstantial evidence, cause of death can be inferred. The point to reiterate is that although medical evidence as to the cause of death is desirable, it is not essential in all cases of homicide. Where medical evidence is not available, as to the cause of death, the court may infer cause of death upon circumstantial evidence adduced before it. See **Ahmed V State (supra) 646 B-C**.

Now from the evidence of PW1, her evidence is that that the deceased her son, was an apprentice tailor with his master and usually returns home by 10pm. That on the day in question, 24th November, 2016 she over slept and when she woke up by 12pm, she found her son was not at home, she then called the master who was surprised that the son was not at home. That the master however told her before Musa closed, he sent him to buy pure water and when Musa returned, he saw him with **"suya"** meat which he said was given to him by his father. That she called the father but he did not answer and very early the next morning, she was at his house to enquire about her son and when they started quarrelling, the landlord now intervened and told them to report the matter to the police station.

Now on the evidence, it was on her way to the police station that the landlord called her to say that a body was lying behind the back of defendant's house and she came back to identify the corpse as that of her son.

The evidence of PW1 clearly raises more questions than answers.

On the evidence, the 'master' of the deceased who appears to me to be a very important witness was not produced to shed light on what happened to the deceased. Did he leave work on that date and who did he leave with? Are there no other apprentices with the master who could have been produced to talk about what really happened to the deceased with respect to the time he left the workshop?

From the entire evidence of PW1, the master never said that he said defendant leave the shop with his son. All he said was that he saw him with **"suya"** and when he inquired, the deceased said the father bought it for him. No more.

It is rather strange that the landlord who called to say the body of deceased was found behind defendant's house was equally not produced in court to lend credence to what he saw and where he saw the body. Again, none of the cotenants of defendant who allegedly saw the body were called to give evidence with respect to where the body was found. The bottom line is that the evidence of PW1 who only saw the body of deceased after his death is not helpful at all as to cause of death and the link to defendant.

Let's situate the evidence of the remaining two witnesses. The evidence of the I.P.O. (PW2) attached to FCT Police Command is that on receiving the complaint by PW1 that her husband killed their son, they went to Kabusa Village and they found that the deceased was **"strangulated and dragged to the back of the house and covered with Banana leaves."**

Now there is absolutely nothing in the evidence of PW2 situating the parameters of how he arrived at the decision that the deceased was **"strangulated"**. The PW2 is certainly not an expert or a medical person and to be fair to him, he never made himself out as one. There was no forensic evidence of any kind presented that established any link between the defendant and the body of the deceased or that will place him as having any kind of contact with the deceased. The question then is how did he come to the conclusion that the deceased was strangulated by defendant and that the strangulation led to his death? The best to be made of this evidence is that it is all within the realm of speculation not grounded on any forensic facts or details.

The same conclusion equally goes for the evidence of PW3, who led the Police Investigations. There is equally nothing in his evidence precisely delineating that the cause of the death of the defendant was due to strangulation and defendant had a hand in it. Again PW3 is equally not a medical doctor or an expert in the field of medicine to have determined by mere casual observation that death was as a result of strangulation caused by defendant.

In law, the cause of death as a general rule is a medical question to be established on the evidence of a registered medical practitioner. See **State V Okpala (2012) 3 NWLR (pt.1287) 388 at 408 A-B**.

As stated severally in this judgment, and beyond the alleged confession which I will shortly treat, none of the prosecution witnesses was there when the deceased was killed and nobody told them of how the deceased was killed and who did or carried out the act.

It is to be noted that I have not mentioned the elder brother of the deceased who was said to have caused the arrest of defendant when he allegedly confessed to killing his son and he thus reported the matter to the police. This person was again not presented in court to say what he knows or what he did and one wonders at what probative value to give to what is largely hearsay evidence. The fact that defendant has in his evidence even denied the existence of such a brother cast serious doubt on the credibility of this narrative.

Even if the brother was produced, to the clear extent that he was not a direct witness to what happened that led to the death of the deceased, his evidence will have largely been irrelevant to the important question of cause of death.

It is really difficult on the materials to find cogent evidence to situate cause of death of deceased. At different levels, this case suffer from serious evidentiary difficulties or challenges. Firstly, the master who he worked with or any of the other workers or apprentices never gave evidence of what happened to the deceased as at the time he left the work place. Who did he leave with? Was the defendant at the shop? Nobody produced these answers to this logical and searching questions.

Secondly, the landlord who called PW1, to say the body of deceased was found behind the house of defendant was not produced to give credibility to the fact that the body was indeed found behind the house of his tenant, the defendant. None of his tenants were equally produced to add credibility to this narrative. It must be noted that the defendant in his evidence denied that the body was found behind his house but that it was found behind a church. The production of the landlord or any of the cotenants of defendant would have given clarity to this issue.

Thirdly, both PW2 and PW3 spoke about photographic evidence showing evidence that the deceased was allegedly dragged from defendant's room to the back of his house. This photographic evidence was equally not tendered to situate the house of defendant and the marks discovered showing a corpse was dragged to the back of a house.

Finally, from the evidence of PW3, the slippers of the deceased was said to have been discovered. Again this slippers was not tendered in evidence to situate the deceased as been with the defendant at any time.

From the gamut of evidence led by prosecution and evaluated above, it is really difficult to circumstantially situate the cause of death of the deceased and the clear link to the defendant.

There is really no physical and clear evidence to situate cause of death in the circumstances and how the defendant has a hand in it. There is again no clarity to directly or circumstantially situate presence of the deceased with defendant at any time on the day the deceased died beyond unsubstantiated speculative assertions.

The **last seen doctrine** clearly will therefore have no application here. The doctrine properly understood creates a rebuttal presumption to the effect that a person last seen with a deceased person bears responsibility for his or her death. See **Iliyasu V The State (2015) LPELR – 24403 (SC); Haruna V A.G Fed. (2012) LPELR – 7821 (SC).**

On the evidence of the three prosecution witnesses, there was no where they categorically stated that the defendant was the last person to be seen in the company of the deceased to shift the burden on him to explain how the deceased died. It is only where such a situation arises that an explanation will be required and where it is no given, the court will be justified in drawing the inference that he the defendant killed the deceased. See **Igabele V State (2006) 6 NWLR (pt.975) 100; Nwaeze V The State (1996) 2 SCNJ 477 61-62, Kiyasu V The State (supra).**

The facts or scenario that would have allowed for the application of the doctrine did not play out in this case. The key persons like his master or co-workers where the deceased was working who must have last seen deceased before his disappearance were all not produced for reasons that are not clear. I live it at that. The principle is therefore not applicable.

The point to perhaps underscore is that the duty on prosecution to prove cause of death cannot be established by speculation or conjectures. Cause of death must be established by prosecution either by direct evidence or circumstantial evidence that creates no room for doubt or speculation. See **Adetola V State (1992) NWLR (pt.235) 267 at 275 E-F; (1992) 4 SCNJ 199.**

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

At the risk of prolixity, it is the bounden duty of the prosecution to establish the cause of death with certainty and show that it was the act of the defendant that caused the death of the deceased. See **Adekunle V State (1989) 5 NWLR (pt.123) 505 at 515 D; Adekunle V State (1989) 12 SC 103**.

This now leads me to the statements of the defendant including the alleged confessional statement. Now in evidence, 3 statements of the defendant were tendered and admitted in evidence, to wit:

1. Statement dated 25th November, 2016 admitted as **Exhibit P3**.
2. Statement dated 3rd December, 2016 and admitted as **Exhibit P4**.
3. Statement dated 23rd February, 2017 admitted as **Exhibit P5.**

**Exhibits P3** and **P4** were admitted without any objection. **Exhibit P3** contains a confession wherein the defendant admitting to strangling his son and it was admitted without objection. **Exhibit P3** was written by PW3 on behalf of defendant having found him to be an illiterate. I note that there is nothing in **Exhibit P3** indicating that defendant was taken together with the statement to a superior police officer. On the authorities the failure to observe this practice to ensure that the confession is voluntarily is not necessarily fatal. See **Hassan V The State (2016) LPELR-42554 (SC)**.

**Exhibit P4** dated 3rd December, 2016 is a statement in which the defendant in essence denies killing his son and that he did not inform any one that he killed his son.

In the statement vide **Exhibit P5**, dated 23rd February, 2017, the defendant confessed to killing his son by "strangling" him. There is no indication in the evidence who wrote the second and third statements for the defendant but on the record, it was only the third statement that was challenged as not voluntarily made and a trial within a trial was conducted before it was admitted. The question of the voluntariness of **Exhibit P5** is not therefore open to question any longer.

I note that in his evidence, the defendant stated that the statements were not voluntarily made. Learned counsel equally made the point in the final address that the statements were not that of defendant and or that they were not voluntarily made.

I take it that this present objection or complaint targets the confessional statement **Exhibit P3** which was not objected to when it was tendered. It would

appear belated to now raise objection to the admissibility of this document at this stage. The time for such a challenge or objection has since passed.

In **Nwachukwu V State (2001) ALL F.W.L.R (pt.390) 1380 at 1411**, the Apex Court stated that the proper time for taking an objection to the admission of documentary evidence is when it is sought to be tendered and not later.

Generally, during trial, an accused person who desires to impeach his statement is duty bound to establish that his earlier confessional statement cannot be true or correct by showing any of the following:

i. That he did not infact make any such statement as presented.
ii. That he was not correctly recorded;
iii. That he was unsettled in mind at the time he made the statement, or
iv. That he was induced to make the statement.

See **Folrunsho Kazeem V The State (2009) 29 WRN 43 at 68-69.** However the way a defendant or accused on trial can discharge the burden of establishing any of the above at the tendering of his confessional statement is by taking evidence during a **trial within trial**. See **Osetola & Anor V The State (2012) 17 NWLR (pt.1329) 251; Adebayo V The State (2014) LPELR-22988 (SC).**

It would appear that the retraction or complaint that the statement was not voluntarily obtained after the admission of **Exhibit P3** is rather late and will be discountenanced particularly when defendant was represented by counsel and the document was as earlier stated admitted without objection.

The present complaints to the admission of **Exhibit P5** clearly has been overtaken by events as a trial within trial was held before the document was admitted.

Now a statement made to police under caution is a voluntary statement in the law of evidence and to amount to a confession, it must be clear and unqualified. See **Uwakwe Ghinya V State (2005) 4 ACLR 21.**

In this case, there are three different statements taken at different times. The first and last statements allude to the strangulation of deceased while the middle statement was effectively a denial. The statements tendered by the prosecution projects two contradictory or inconsistent positions. Both cannot be right or correct.

Now in law, a **free** and **voluntary** confession of guilt by an accused person if it is **direct** and **positive** and it is **satisfactorily proved** should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. That is why in law, such a confession by itself alone is sufficient without further corroboration to warrant a conviction. And there cannot be such a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt. See **Ada & Anor V The State (1986) NWLR (pt.24) 581 at 593 – 594 H-A.**

Indeed the point perhaps need be underscored that a court will be remiss if it fails to convict on such positive confessional statement but to do so, the confession must be on the evidence be seen to have been made voluntarily and it must be direct, positive, true and unequivocal and made out of conscience and the necessity to uphold the truth even in the face of death. See **Ada V The State (2008) 12 NWLR (pt.1103) 149 at 166 G-H.**

The question that has given me considerable difficulties is whether the 1st and last confessional statements (**Exhibits P3** and **P5**) here can be said to have crossed this threshold in the light of the denial vide his statement **Exhibit P4** which came in between the alleged confessional statements. The situation became more unclear and fluid when the oral evidence of the defendant is factored into the factual scenario as it is consistent and clear that he did not kill or participate in the killing of his son and corroborates his statement vide **Exhibit P4**.

In the circumstances, it is clear that the inconsistency rule which would ordinarily have applied to the defendant who seeks to resile from his extrajudicial confessional statement will not apply here. See **Akpan V State (2001) 15 NWLR (pt.737) 745; Nsofor V State (2004) 18 NWLR (pt.905) 292 and Smart V The State (2016) LPELR – 40728 (SC).**

The law is settled that where a witness made on extra-judicial statement which is inconsistent with his sworn testimony on oath in court, and he gives no reasonable explanation, for the inconsistencies, the only option available to the court is to regard his evidence as unreliable. See **Orisa V The State (2018) LPELR – 43896 (SC)**.

In this case, the sworn testimony of the defendant affirmed one of the extra-judicial statement but conflicts with the two extra-judicial confessional

statements. It must be stated the statements were taken at different times by the police. The prosecution did not make any effort to explain this conundrum. The prosecution cannot pick and chose the statements they tendered. They tendered the statements and so are in a better position to explain the inconsistency or contradiction in the statements they obtained. The present scenario has created significant doubt with respect to the credibility of the narrative relating to the confessional statements of defendant admitting guilt and this clearly has served the purpose of not discrediting the entire testimony of the defendant.

The point to make particularly in a criminal trial where the threshold of proof is beyond reasonable doubt is that any finding of fact which is made having regard to the existence of documentary evidence cannot be seen to fly in the face of the accepted relevant document or documents before the court. That will be contradictory and perverse.

A trial judge cannot be expected to pick and choose or make findings that does not reflect the contents of the entire documents tendered particularly as here, where no particular document was discredited as lacking in probative value. To the extent that the prosecution has not resolved the doubt created by the contradictory documentary evidence tendered by them, then any doubt arising from the confession must enure in favour of the defendant. There is another aspect of procedure that a confessional statement must be tested to see if it is true. The court is required to answer certain questions as follows:

a. Is there anything outside to show it was true?

b. Is it corroborated?

c. Are the statements in so far as they can be tested be true?

d. Was the prisoner a man who had opportunity of committing the offence?

e. Is the confession possible?

f. Is it consistent with other facts ascertained and proved?

See **Danielo V The State (1991) 8 NWLR (pt.212) 715 at 729 and Nwachukwu V The State supra at 1410.**

I shall address these questions by doing a recap of the essential features or findings in this case. On the Record, there is really nothing in the evidence of PW1 to PW3 as already demonstrated delineating strong, cogent add credible evidence that shows the confessional statements to be true. At the risk of prolixity, there is no evidence whatsoever before me showing that the defendant picked or took the deceased from his workshop to his house at any time. The assertion by his "master" who was not called to give evidence that the deceased told him his father bought "suya" for him is hearsay and inadmissible. There is equally no evidence before me that the defendant as a matter of practice usually picks or takes the son home from his place of work. Nobody on the evidence saw defendant taking the deceased home on the day on question. The unequivocal evidence of PW1 is that he comes home himself. Neither the evidence of PW2 and PW3 added any factual or legal traction to these critical questions or issues raised above.

Similarly no credible evidence was given as to cause of death. If it was strangulation as charged there is absolutely no medical evidence to situate or show that the deceased died from strangulation and that it was caused by defendant. In addition, no evidence was supplied beyond the bare challenged evidence of PW1 – PW3 that the body of the deceased was found behind the house of the deceased. It is indeed strange as earlier stated that the landlord of the house or any of the cotenants was not invited to give evidence or their statements taken to show or establish the accommodation of the defendant and the fact that the body of the deceased was indeed found behind the house of defendant. The defendant in his evidence stated that the deceased was found behind the back of a Church.

I do not accept that the bare viva-voce evidence of PW1 – PW3 will suffice in the light of the challenge by the defendant. They obviously do not stay in the accommodation and there will be no greater assurance of this fact of defendants accommodation and where the body was found than the testimony of the landlord or his cotenants who allegedly all saw the body behind the accommodation of defendant.

I note that in the evidence of PW1, she indicated that she found the slippers of the deceased in the house of the defendant. The defendant on his part stated that he bought the slippers for his son. I don't find it unusual that a father buys slippers for his son.

Now it is to be noted that this slippers was not tendered in evidence. There was no corroborative evidence of any kind situating that the slippers in question was what the deceased wore on the day in question and as stated earlier on, the "master" who he worked with on the day in question was in a good position to have given clarity to this issue. Same for the co-workers of the deceased.

By the nature of the very fluid evidence in this case, it is difficult to answer the first question in the affirmative with respect to whether the confessions are true. The next issue has do with corroboration of the essential elements of the charge. The question here is whether the confession is corroborated? What is even corroboration? Corroboration is a technical term which means no more than evidence tending to confirm, support and strengthen other evidence sought to be corroborated.

The kind of evidence that would have supported the extant charge would include:

a. Cogent and compelling evidence showing that the accused committed the offence as charged
b. Independent evidence which connects the defendant with the offence charged
c. Evidence that implicates the defendant in the commission of the offence charged.

As demonstrated, there is really nothing outside the confessional statement that confirms it. There is absolutely no corroboration of the essential elements of the charge.

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

Again at the risk of prolixity, on the evidence, there is really nothing on the evidence situating that the defendant had the opportunity to commit the offence. There is nothing in evidence showing that he usually comes to the workshop of his child or goes there to buy things for him. On the evidence, it was PW1, the mother who engaged him in the apprenticeship. The contention by PW2 and PW3 that the defendant killed his only son so that his estranged wife will come

back to him sounds so farfetched and even outlandish. I really fail to understand the rational or basis for such a contention. That because the defendants wants to have his wife back, he will then kill his only male child does not sound reasonable or plausible.

On the question of whether the confession is possible, on the fluid facts as demonstrated, it is really difficult to situate facts to support confession. The extra-judicial statement of the defendant in between the confessions and the evidence of denial by defendant has cast doubt on the confessions. Finally, the confession on the evidence as demonstrated is clearly not consistent with other facts ascertained and proved in the case. Neither **Exhibits P3** or **P5** are reliable and providing sufficient foundation to be used in determining the guilt of the defendant.

I note in the final address of counsel to the prosecution, he tried so much and so hard to seek to supply the missing elements in the case as highlighted above and essentially seeking to construct a case not based on the structure of the evidence led and the documentary evidence they themselves tendered.

Counsel is not entitled to assume that it is within his province to make submissions or draw conclusions that do not reasonably reflect the evidence and documents tendered. Cases and more so criminal cases are not decided on the basis of address of counsel. Address of counsel is no more than a hand maid in adjudication and cannot take the place of hard facts required to constitute credible evidence. No amount of brilliance in a final address can make up for the lack of evidence to prove and establish or disprove and demolish points in issue. See **Iroegbu V MV Calabar Carrier (2008) 5 NWLR (pt.1079) 147 at 167; Tapsheng V Lekret (2000) 13 NWLR (pt.684) 381**.

The bottom line is that the confessional statements in this case was not satisfactorily proved and a conviction founded on such confessions without more cannot have legal validity. See **Idowu V The State (2001) FWLR (pt.16) 2672 at 2703, Nwachukwu V The State (supra) at 1406**.

As we have demonstrated above, there is no clear evidence of the cause of death of deceased and also no evidence situating that the act of the defendant caused the death of the deceased and this has fatally served to undermine the extant charge.

The law is settled that every case where it is alleged that death has resulted from the act of a person, a causal link between the death and the act must be established and proved, in a criminal proceeding, beyond reasonable doubt. The first and logical step in the process of such proof is to prove the cause of death. Where there is no certainty as to cause of death, the enquiry should proceed no further. Where the cause of death is ascertained, the next step in the inquiry is to link the cause of death with the act, (or omission) of the person alleged to have caused it. See **Oforlete V the state (2000) 7 WRN 86 at 111.**

At the risk of prolixity, the cause of death on the charge was strangulation. No such cause was **established** at all beyond the alleged confessions which the court found to lack probative value. In the absence of cause of death, it will be a futile exercise to seek to link the **cause** to any person alleged to have caused it.

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

I agree with the prosecution that proof beyond reasonable doubt does not mean proof beyond the shadow of any doubt. That is correct and settled principle. See **Mufutau Bakare V. The State (1987)3 SC 1 at 32; Sule Ahmed (Alias Eza) V. The State 8 NSCR 273; Miller V. Minister of Pensions (1947)2 AII ER 372.**

It is however firmly established that the burden of the prosecution is only discharged when the essential ingredients of the offence have been established and the accused is unable to bring himself within the defences or exceptions countenanced by the law generally or the statute creating the offence. See **Oteki V. A.G Bendel State (1986)2 NWLR (pt.24)658.**

Therefore while proof beyond reasonable doubt needs not attain the degree of absolute certainty, it must however attain a high degree of probability excluding any other conceivable hypothesis than the accused guilt. The authorities are clear that the accused be acquitted if the set of facts elicited in evidence is susceptible to either guilt or innocence in which case doubt has been created. Mere allegations, no matter how believable, does not amount to proof required in law to prove such allegations. In **Mbanengen Shande V. The State 22**

**NSCQR 756 at 772-773;** *Pats Acholonu J.S.C (of blessed memory)* instructively stated as follows:

**"When an accused is being tried for any case whatsoever, because of the principle of law ingrained in our Constitution that he or she shall be presumed innocent, it behoves of the Court to subject every item of facts raised for or against him to merciless scrutiny. Nothing should be taken for granted as the liberty of the subject is at stake. Where there is a doubt in the mind of the Court either as to the procedure adopted or failure to address on very important latent issues that assail or circumscribe the case, the Court should acquit and discharge. Although the standard of proof is not that of absolute certainty (that should be in the realm of heavenly trials) the Court seised of the matter must convince itself beyond all proof that such and such had occurred. It is essential to stress times without number that the expression proof beyond all reasonable doubt- a phrase coined centuries ago and even ably applied by the Romans in their well developed jurisprudence and now verily applicable in our legal system, is proof that excludes every reasonable or possible hypothesis except that which is wholly consistent with the guilt of the accused and inconsistent with any other rational conclusions. Therefore it is safe to assume that for evidence to warrant conviction, it must surely exclude beyond reasonable doubt all other conceivable hypothesis than the accused's guilt. The accused should be acquitted if the set of facts elicited in the evidence is susceptible to either guilt or innocence in which case doubt has been created".**

I need not add to the above eloquent admonition by the revered jurist. From the evidence, adduced on record by the prosecution, I have not been put in a commanding height by the prosecution to comfortably hold that the case has been proved beyond all reasonable doubt. Here there is clearly reasonable doubt as to the culpability of the accused in relation to the offence charged. The implication therefore is simply that the prosecution has failed to discharge the onus of proof placed upon it by **Section 138 of the Evidence Act**. As I conclude, it is perhaps pertinent to observe that the totality of the case presented by the prosecution seeks to put forward a proposition which is the exact opposite of the requirement of the law. It appears to me by the way the case was presented that the prosecution discountenanced the basic constitutional presumption of innocence in favour of the accused, by tending to suppose that it

is for the accused to prove his innocence, rather than for the prosecution to prove his guilt beyond reasonable doubt. This should not be so, as much more, I am afraid could have been done by the prosecution in this case.

I cannot end this judgment without saying that it is clear that justice has not been served in this case particularly to the young boy whose life was unnecessarily and cruelty out short. Whoever may have carried out this dastardly act may be able to escape the judgment of mortals like that of this court which is but a fleeting victory, but he or she will certainly be answerable and indeed be held accountable by the Almighty God at the right and appropriate time. There was absolutely no reason or justification for anybody to take the life of the young promising boy or indeed anybody. It is a given that man's inhumanity to man will always be redressed and consequences paid. That is a constant, now or later. I leave it at that.

In the light of the foregoing and in summation, the evidence adduced by the prosecution falls far short of proving the offence against the accused person beyond reasonable doubt. Having failed to do so, the accused is accordingly found not to be guilty of the offence as charged and he is hereby discharged and acquitted.

**……..**
**Hon. Justice. A.I. Kutigi**

**Appearances:**

1. **John Ijagbemi, Esq. for the Prosecution.**

2. **P.O. Onucheyo, Esq. for the Defendant.**