IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS TUESDAY, THE 10TH DAY OF MAY, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/154/17

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ……....COMPLAINANT

AND

ALIYU JIWO NDALOLO ……..…..…….DEFENDANT

JUDGMENT

The Defendant was charged on a one count Amended charge dated 23rd March, 2021 and filed on 23rd March, 2021. The charge reads as follows:

"COUNT ONE:

Culpable Homicide not punishable with death contrary to Section 224 of the Penal Code.

PARTICULARS OF OFFENCE:

That you Aliyu Jiwo Ndalolo 'M' of No. 1, Light Well Estate, Dan Suleiman Street, Utako Abuja on the 13th Day of June, 2016 at No. 1 Light Well Estate, Dan Suleiman Street, Utako Abuja did commit an offence of Culpable Homicide not punishable with death by stabbing one Maryam Ndalolo your mother with a kitchen knife and then strangled her an act which you knew was likely to cause death and thereby committed an offence."

The defendant pleaded not guilty to the charge.

In proof of its case, the prosecution called five (5) witnesses. **Edward Ngoka**, an Architect and Principal Partner in the firm of Mod-Arch Design Associates, testified as **PW1**. He testified that he knows the defendant and the deceased, Maryam Ndalolo who is a professional colleague and mother of the defendant. That he made a report to the Police on 17th June, 2016. That as colleagues, he helps the deceased in the execution of construction jobs and designs. That he saw a 3D Dimensional design with her which he liked and on request, she linked him with the Architect in Lagos who made the design whom he gave a similar assignment which he excellently executed.

PW1 stated that he called the deceased phone to thank her for introducing the Architect to him but that instead of the deceased answering the call, a male voice answered the phone and said he was **Mr. Emmanuel**. He requested to speak to the deceased only for the Mr. Emmanuel to tell him the details of what happened to the deceased, and that she is no more.

PW1 stated that he told the Mr. Emmanuel that he is driving and will call him when he gets to his destination. He then immediately called some of his friends and told them what happened and they advised him to report the matter to the police because if the phone record of the phone of the deceased is later recovered, his number will be found and he may be invited for questioning. PW1 testified that he then went to Utako Police Station and asked for the D.P.O and told him what happened. He then called the Mr. Emmanuel at the station and put him on speaker phone and requested that he repeats what he earlier told him.

PW1 testified that Mr. Emmanuel said on phone that the deceased was sleeping at night when defendant took a knife and **stabbed** and **strangled** the deceased and ran to the Boys Quarters (BQ) to inform him, as he is the house boy to the deceased. They then went to her room and found her in a pool of blood.

That Mr. Emmanuel, the house boy told defendant that they should run. They then took her car but left it at around Utako Police Station and took a transport outside Abuja. PW1 stated that he then wrote a statement and was asked to identify the car of the deceased which was left near the same station he made the report and he did identify the Mercedez E350 Coupe Car, light blue in colour. That the police asked him if he knows her residence and he answered in the affirmative and he took three police officers to the house of the deceased

within Utako. He pointed the Flat she stays and the police officers went in. That he did not enter the flat.

PW1 stated that when the police men entered the flat, they believed nobody was inside but to their surprise, the **defendant** opened the door and one of the police officers then called him to enter the flat. That they saw defendant with two girls and when they asked him of his mother, that he told them that she had travelled to Cotonou and parked her car along Airport Road.

PW1 stated that he then took the Police Officers together with defendant and the two girls back to the police station and he parked behind the deceased car at the station and that the defendant was asked as to why the car was parked near the police station instead of Airport Road as he stated.

PW1 stated that he does not know the two girls with defendant and has never seen them. That he has no contact with Mr. Emmanuel, the house boy of the deceased. That he reported the case on 17th June, 2016 around 10:00am to 12:00pm.

Cross-examined, PW1 stated that he did not know where Mr. Emmanuel was when they spoke on the phone. That he won't know when Maryam died but he called on 17th June, 2016. PW1 stated that he does not know whether the police went round the flat of deceased. Further that he only spoke with Mr. Emmanuel on phone; he has never seen him.

That when he took the police men to the flat of deceased, the defendant opened the door and he identified him as the son of Maryam. That the defendant who calls him uncle asked him why the police are in the flat. He testified that the defendant did not tell him that he killed his mother. That he does not know whether the conversation with Mr. Emmanuel on phone was recorded by the police.

Re-examined, he said his statement was taken before he took the officers to the house of the deceased.

Inspector Clement Simon testified as **PW2**. That he is stationed at Utako Police Station and that he knows the defendant in relation to the case of culpable homicide reported against him.

PW2 testified that one Architect Edward (PW1) reported the case at their station on 17th June, 2016. He informed them that he called one Architect Maryam, the

deceased on her phone to thank her for a favour but that one Emmanuel picked up the phone and told him that she is no more as she was killed by her son. That the Architect then told Emmanuel that he was driving and will call him back when he stops.

On the receipt of the information, the Architect drove to the Utako Police Station to lay his complaint. He then called the said Emmanuel and put him on speaker phone to their hearing and that Emmanuel stated that on 13th June, 2016 while he was in the B.Q, the defendant ran to him and told him that he has stabbed his mother to death and they now ran to the parlour and saw her on the floor. That the defendant asked him what he can do about the situation and he advised that they run to Benin city and that he also asked for the sim card of the deceased from defendant so that he can remember her. That it is because he has her sim card, that they are getting him on phone through her number. Further that Emmanuel also informed them that before they left for Benin, they drove the deceased Mercedes car and parked it near Utako Police Station.

PW2 stated that following this information, they went to where the car was parked and it was identified by PW1. He stated that PW1 then took them to the house of the deceased at Light Well Garden Estate Utako, a block of flats and her apartment was on the second floor. That on getting there, they knocked and the defendant opened the door and they asked for his mother and he told them that she had travelled to Cotonou. The defendant was arrested along with **two lady prostitutes** defendant brought to the house. They were all taken to the station and their statements voluntarily obtained under words of caution.

That in the statement of the defendant, he confessed to having used a kitchen knife at about 12 midnight leading to 13th June, 2016 and stabbed her in the stomach and that she died instantly and he then travelled with Emmanuel to Benin. Before leaving, they drove the car of the deceased and parked it near the Utako Police Station.

Further that the defendant stated that when they got to Benin, Emmanuel abandoned him and he was stranded. That he slept in a Mosque and came back to Abuja on 14th June, 2016 at about 18:00hrs.

That on getting home he met the corpse of his mother lying in the room. He then picked up one of her travelling bag, put her inside and closed it and took her downstairs, opened the boot of a Toyota Yaris Car on 15th June, 2016 and at

about 6:00am, he drove the car with the corpse and dropped it near a refuse bin along Mike Akhigbe Way, Utako and he then left.

PW2 stated that during the investigations, they discovered that the corpse was evacuated by the Life Camp Police Station following an information they received. The corpse was deposited at Asokoro District Hospital Mortuary. PW2 stated that after the incident, the defendant took the kitchen knife and dropped it inside a rubber waste bin which they could not recover.

He stated further that the defendant confessed to have killed the deceased to inherit her wealth. That the family of the deceased were contacted. A coroners form was filled and signed for post mortem examination but that the family of the deceased said they did not want a autopsy and applied to the DPO Utako Police Station for the release of the corpse of the deceased for burial according to Islamic rites which was granted.

PW2 further testified that the defendant confessed to have given the two ladies with him, his mother's belongings in place of the N10, 000 he was to pay them for their services. That they also executed a search warrant and the belongings of the deceased including clothes, bags and jewelries among others were recovered from the two ladies and then subsequently taken to State C.I.D. for further investigation.

PW2 stated that they found all that the defendant told them to be true. That the defendant and Emmanuel indeed left for Benin through public transport on 13th June, 2016 but that he cannot say precisely the time.

PW2 further stated that when the corpse of the deceased was found, it was evacuated by officers of Life Camp Police Station, before they took the corpse at Asokoro General Hospital together with the travelling bag in which the deceased was found in. The bag was also transferred with the case file to the State C.I.D.

The following documents were tendered through PW2:

1. Application for release of the body of the deceased Hajiya Mariam Ndalolo dated 17th June, 2016 was admitted as **Exhibit P1**.

2. Post-Mortem examination form and Coroners forms were admitted as **Exhibits P2 (1) and P2 (2-5).**

3. Letter forwarding list of Exhibits to the Nigerian Police Force FCT Command dated 21st June, 2016 was admitted as **Exhibit P3**.

Cross-examined, PW2 stated that the matter was taken over by their station on 17th June, 2016. He stated that he was not there when the incident happened and all he knows about the crime was what he was told.

Okafor Cyprian Chinedu, a police officer now attached to Awada Division in Anambra State testified as **PW3**. He was formerly attached to the Divisional Crime Branch in Life Camp Division, Abuja.

PW3 testified that, a police officer reported at Dakibiyu police outpost that there is a bag containing a corpse, and he along with some other officers went to the scene. They opened the bag and found in it a woman **that was tied with a rope** from the neck to the leg.

That he recovered a white envelop from the bag and inside it was a photograph with 3 females on it and on the photograph was written Nigerian Turkish Nizamiye Hospital. PW3 said he then took photographs of the body inside the bag with a digital camera and they then deposited the corpse at Gwarinpa General Hospital where her death was confirmed. That they then moved the corpse to Asokoro Mortuary where it was deposited.

PW3 said they then went to the Turkish Nizamiye Hospital to continue investigations but in the process, they were called back because the Principal Offender had been arrested and the case file was then transferred to Utako Division.

The following documents were admitted in evidence through PW3 as follows:

1. Copy of Photograph with 3 females admitted as **Exhibit P4.**

2. Photographs showing (1) an unopened bag and (2) an opened bag containing a corpse together with the certificate of compliance were admitted as **Exhibits P5 a, b and c**.

PW3 stated that he does not know the defendant and has never met him. That the corpse was found on 13th June, 2016 at about 8:30 am.

Under cross-examination, he said he took the photographs**, Exhibits P5 a and b**. That the bag is black and that it is the bag they found deceased in. He stated

that he has been in the Police Force for 17 years and in investigations for over 5 years. That the bag and whatever is recovered should be registered as an Exhibit, but that the list of Exhibit vide **Exhibit P3** does not contain or list the bag as an Exhibit.

PW3 stated that they took the corpse and deposited it at the mortuary. That **three** of them lifted the bag from where it was found. That he does not know the weight of defendant and whether it is up to the combined weight of three of them that lifted the bag containing the corpse.

DSP John Otache, a Police Officer attached to criminal investigation department (C.I.D.) FCT Police Command testified as **PW4**. That he knows the defendant. That on **20th June, 2016** at about 6:30 pm, a case of culpable homicide was transferred from Utako Police Divisional Headquarters to their Department. The case file was transferred along with three persons including the defendant. The case was assigned to his section and team for investigation.

PW4 stated since they were brought late in the evening, they detained the three persons till the following day when they were all interviewed and that the defendant confessed that he killed his mother using a kitchen knife and stabbed her in the **chest**, the **stomach** and **other parts of her body** when she was lying down on the couch in her parlour.

He stated that the defendant admitted that after killing his mum, he put her in a bag, took it to the booth of his mother's car and dumped it at a place in Utako. He stated that the defendant also confirmed to bringing one of the lady prostitute to the house who then called her friend to join them and that after having fun with them, he used his mother's possessions to pay them for their service. That the two ladies were arrested and confirmed the story and their statements were taken.

PW4 said that they went to the house of the deceased in the process of investigations and recovered her cheque book and an empty pack of i-phone. PW4 stated that at the conclusion of their investigation they made the following findings:

1. **That on 17th June, 2016, one Architect Edward called the phone of the deceased and one Emmanuel who is the house boy to the deceased answered and said he was with the phone of the deceased and told him that the defendant killed his mother and dumped the body. This made**

the Architect report the matter at Utako Police Station. Police officers from Utako now went to the residence of deceased where defendant was arrested and the matter was then transferred to their office where they commenced investigations as already stated and the statements of defendant and the ladies were taken, voluntarily. The defendant also recorded his statement himself.

2. **That they found that the defendant actually stabbed his mother and packed her corpse in a bag and dumped the body in a dust bin. That on the facts, they came to the conclusion that a prima facie case of homicide was made out against defendant.**

The statement of defendant dated 22nd June, 2016 was admitted in evidence as **Exhibit P6** after a trial within a trial was conducted. PW4 stated that they found that the defendant used a kitchen knife to stab the mother severally and that the defendant confessed to have thrown away the knife. That they believed he threw the knife in a dust bin at Wuse and when they went there, the dust bin has already been tampered with by scavengers or other people, so they could not recover the knife.

Cross-examined, PW4 said that there is nothing in the confessional statement of defendant vide **Exhibit P6** where defendant said **he stabbed defendant severally** as he stated in his evidence in chief. Further that there is nothing in it where he said he dumped the kitchen knife he used in stabbing his mother at Wuse.

PW4 further stated that the post mortem and coroners forms filled by the police vide **Exhibits P2 (1-5)** in respect of the deceased and that the column in particular in **Exhibit P2 (2)** with respect to whether there was any marks of violence on the deceased was left blank. He stated that to **stab somebody severally** is a sign of violence.

PW4 stated that when the matter got to them, they did not conduct a post-mortem and or that he cannot remember whether it was conducted.

He stated that the defendant and one Emmanuel ran away to Benin and that they use the vehicle "God is Good Motors". That they went to the motor company but they did not meet the person that would have given them information on the day they travelled.

That they then went to the apartment of the deceased but they did not **interview** any of the neighbours to determine whether they saw anything. That the estate of the apartment where the deceased stays has security guards and that they interviewed them and they said they did not see anybody carrying any bag and putting same in any car. That they did not obtain any written statements from them.

That they tried to get in touch with Emmanuel who defendant said he gave an i-phone and laptop to without any success. PW4 said he did not weigh the body of the deceased and he did not personally see the body of the deceased before it was buried. That they did not carry out any forensic examinations but they acted on what defendant told them.

He agreed that neither himself or his team members were there when the deceased was killed and they did not come across anybody who said he saw when she was killed. That they examined the car used in conveying the body to where it was dumped and there were no blood stains on it. He stated further that he cannot remember the colour of the bag that the deceased was found in and that he did not see the bag himself.

The last witness for the prosecution is one **Ekeh Henry Chinwendu** who testified as **PW5**. He was formerly working with E-Eman Investment Nig. Ltd as their sales manager. They are into computer accessories and office equipments.

That he knows the defendant. That sometime in 2016, he was at the office at Banex Plaza when the defendant walked in and he attended to him. That the defendant brought 2 Terabyte, an apple hardware that stores information and offered it for sale. He told him that he will keep it until he gets someone who wants to buy.

The defendant then left and some days later, he came back with some police men and as he saw him entering the shop, he picked the hardware to give him but he was arrested and taken to the police station.

Under cross-examination, he said he does not buy and sell stolen goods. That he does not know the defendant is charged with murder. That he knows nothing about this case.

With the evidence of PW5, the **prosecution close its case.**

The defendant then made a no case to answer submission which the court overruled by its decision on 12th July, 2021 and called upon the defendant to enter his defence.

The **defendant** testified in his defence as DW1 and the only witness.

He testified that he listened to the case of the prosecution that he killed his mother but that he is not guilty. That as far as he can remember, he was at home when police officers came to arrest him and took him to the police station at Utako and he was the only one arrested without any prostitutes.

That at the station, he was forced to write a confessional statement saying he was responsible for the death of his mother and that he is into drugs which is not true. That he was forced to write the statement under duress and that he knows nothing about the offence which he is accused of.

Under **cross-examination**, he said his mother died on a Monday. He agreed he testified in the trial within trial but that he cannot remember saying he travelled to Benin or going to Benin with one Emmanuel. That he did not go to Benin on 13th June, 2016 and 14th June, 2016. That he did not see the body of his mother on the couch on 14th June, 2016 and also that he did not see the body of his mother.

He also stated that he did not drive his mother's car on 15th June, 2016 and did not dump her body and that he did not go out after dumping her body and did not bring back prostitutes to the house. That it never happened. Further that he does not know any of the prostitutes by name Ladi and that he did not give the belongings of his mother to the prostitutes as payment for their services.

He stated that did not go to Banex Plaza to sell his mother's hard drive to pay the prostitutes. That he did not sell any hard drive to **PW5**. That his mother is the person in the middle of the 3 ladies in **Exhibit P4**. That he does not know whether the picture was found in the bag containing the corpse of his mother.

He stated that he cannot remember whether PW1 was around when he was arrested. That it is not only himself, Emmanuel and the mother that live at their house. That as far as he can remember, it is only his mother and himself.

That he cannot remember that PW2 and PW3 gave evidence that the corpse of his mother was discovered by officers of Life Camp Police Station. He stated

that the suit case or bag his mother was found in (Exhibit P5a) was not familiar to him and that he cannot recognize the picture in **Exhibit P5b**.

With his evidence, the **defendant closed his case**.

Pursuant to the Order of Court, parties filed and exchanged written addresses. The written address on behalf of the defendant was settled by Mohammed Ndayako SAN dated 24th December, 2021 and filed on 29th December, 2021 at the Court's Registry. Learned counsel raised one issue as arising for determination thus:

"Whether, having regard to the state of the evidence before this Honourable Court, the Prosecution has been able to prove, beyond reasonable doubt, the alleged offence of Culpable Homicide Not Punishable with Death against the Defendant."

The final written address of the prosecution was settled by Y.A. Cole and it is dated 21st January, 2022 and filed on 24th January, 2022 at the Court's Registry. Two issues were raised as arising for determination as follows:

1. **Whether the prosecution has proved its case beyond reasonable doubt.**

2. **Whether the prosecution has proved the offence of Culpable Homicide Not punishable with Death contrary to Section 224 of Penal Code against the defendant beyond reasonable doubt.**

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.

Before dealing with the substance of the charge, let me quickly treat the preliminary point raised by the defendant in the final address that the evidence of PW4, **DSP John Otache** is admissible and should be expunged together with **Exhibit P6** tendered through him because his written statement was not attached to the proof of evidence served on the defendant. The cases of **Ugwu V State (2013) 13 NWLR (pt.1374) 257 at 276-277; Olonoyo V State (2012) 17 NWLR (pt.1329) 346 at 37, Gboko V State (2007) 17 NWLR (pt.1063) 272 at 304 – 305** and **Ifeanyi Maduoko V State (2019) LPELR – 48246** were referred to.

On the other side of the aisle, it was contended that by the provision of **Section 379 (1) of the Administration of Criminal Justice Act 2015 (ACJA 2015)** which is the procedural law applicable in this court, the statement of the witness is not required to be attached or to form part of the proof of evidence. It was further submitted that even if it is assumed without conceding that such a requirement exists, the name of PW4 features as one of the witnesses in the proof of evidence. Further that the prosecution also filed additional proof of evidence on 19th January, 2018 and 1st March, 2019 with attached statements of witnesses before PW4 testified and at no time did the defendant request for the statement. That the failure to attach the statement of PW4 was an oversight and that the failure of the defendant to raise any complaint meant that he had slept on his right and cannot now raise any objection or complaint. The case of **Egboma V State (2013) LPELR – 21358 (CA).**

I have carefully considered the submissions on both sides of the aisle. The issue does not present a difficult point, notwithstanding the volume of the submissions made particularly by the defendant.

In resolving this issue, we must necessarily take our bearing from the provision of **Section 379 (1) (a) of ACJA 2015** which streamlines what the proof of evidence should contain and then situate the application of the provision within the context of the clear facts of this case.

Section 379 (1) (a) states thus:

"379(1) An information shall be filed in the registry of the High Court before which the prosecution seeks to prosecute the offence, and shall include:

(a) The proof evidence, consisting of:

(i) The list of witnesses;

(ii) The list of exhibits to be tendered;

(iii) Summary of statements of the witnesses;

(iv) Copies of statement of the defendant;

(v) Any other document, report, or material that the prosecution intends to use in support of its case at the trial;

(vi) Particulars of bail or any recognizance, bond or cash deposit, if defendant is on bail;

(vii) Particulars of place of custody, where the defendant is in custody;

(viii) Particulars of any plea bargain arranged with the defendant;

(ix) Particulars of any previous interlocutory proceedings, including remand proceedings, in respect of the charge;

(x) Any other relevant document as may be directed by the court."

The above provision appears to me clear and unambiguous with respect to what a proof of evidence should consist of and there should be no difficulty here of determining or ascertaining its correct import. The law is settled that where the words of a statute are clear and unambiguous, they must be given their literal interpretation. See **Ifekwe V Madu (2000) 14 NWLR (pt.688) 459 ay 479 F**. The well established canon of interpretation requires that if the intention of the framers of a statute must be ascertained, it can be from no other source than the words used by them in couching the provision and it is there that their intention

is entrenched. Therefore, the court have no jurisdiction to interpret the clear and unambiguous meaning or place onerous weight or burden on the otherwise clear and unambiguous provision. See **A.G. Lagos V A.G Federation (2003) 14 NWLR (pt.833) 1 at 186 – 187 H-B**.

The crux of the complaint of defendant here is very narrow: it is simply that the **statement of PW4, ASP John Otache** does not form part of the proof of evidence. The question that arises is whether there is even such a requirement within the ambit of the provision stated above? It is logical to hold that it is only where there is such a provision, that the question of violation can then arise. The provision of **Section 379 (a) (iii)** provides simply or states that a **"summary of statements of the witnesses"** shall be filed along with the charge or information. The law itself did not situate the form of this summary statement. What the above implies is that the prosecution in filing the information will provide in a summary manner the essence of the evidence each of their witnesses will provide at trial. There is however nothing in this provision that talks of written statement or provides the requirement of written statement of witnesses as canvassed by the counsel to the defendant. The provision cannot therefore be extended or altered to suit a particular purpose. See **Section 128 of the Evidence Act.**

The word **"summary"** is defined in the Oxford Advance Learners Dictionary at Page 1200 as:

"a short statement that gives only the main points of something, not the details."

Now in this case, in the proof of evidence filed by the prosecution along with the charge dated 5th April, 2017, the name of PW4, **ASP John Otache** appears as the 4th witness on the list of witnesses. As part of the proof of evidence, the prosecution equally gave a summary of the evidence or testimony to be elicited from all of the witnesses. For purposes of clarity, with respect to PW4, the nature of his testimony was stated as follows:

"He is one of the police officers attached to the Homicide Section, C.I.D, Abuja, he will testify as to the police findings in the matter."

Let me also quickly add that the document he tendered and or the statement of defendant is identified as **number 2** on the list of exhibits forming part of the proof of evidence.

The prosecution has here clearly given sufficient advance notice of what the evidence of **PW4 will entail** which clearly complies with the requirement that a summary of his statement be made in contradistinction with for example the provision of **Section 379 (1) (iv)** which provides for **"copies"** of the statement of defendant to form part of the proof of evidence.

In the **latter** situation, a demand or complaint of failure to attach written copies of statement of defendant will have some validity. There is no such demand or obligation in the former scenario. In the present scenario, to which unnecessary strain must therefore not be placed on the clear provision of **Section 379 (1) (iii)** which at the risk of prolixity only demands for "summary of statements of the defendant" which essentially denotes that the defendant be apprised with the main points of the testimony the witness will give in succinct and clear manner.

The use of the word **"summary"** by the legislature with respect to the statements of witnesses will appear to me deliberate. There is therefore no obligation to attach any detailed statement of witnesses and or that the statement of the witness must be produced and attached to the proof. That must await the hearing proper where detailed evidence will then be led to accentuate the summary content of the evidence earlier supplied. If it is thought as submitted by defendant that there is an obligation to supply written statements or copies of statements of witnesses, then that is a matter for the legislature and not the courts. There is no room to stretch or add to what is not in the law as earlier stated.

The key salutary point is that the defendant is not taken by surprise and just like in pleadings in civil cases, the primary purpose of the proof is to enable the defendant know the case and evidence to be presented by a particular witness and prepares accordingly all in the overall interest of justice.

In this case and on the record, the detailed evidence of PW4 at trial clearly relates to the findings they made in relation to the case which clearly is predicated within the context of the summary of his evidence earlier highlighted. It was stated clearly that he was going to give testimony or evidence of their findings in the case. Nothing was said outside the context of this summary. As stated earlier, the statement of defendant he tendered was equally listed as part of exhibits to be tendered.

In the circumstances, it is difficult to situate any violation of any statutory or constitutional provision as contended by defendant. I cannot equally see my

way how it can be argued with any conviction that there is a miscarriage of justice or injustice occasioned in the circumstances particularly when it is noted that the defendant actively cross-examined this witness and never at any time requested or demanded for any statement or indeed any material from the prosecution, as allowed by extant laws all through the course of this proceeding.

In this vain, the provision of **Order 6 Rule 1 of the Federal Capital Territory Administration of Criminal Justice Rules 2019** provides for disclosure by serving on the court and defendant any material it intends to rely on in the course of trial.

Order 6 Rules 4, 5, 6 and **7** of the same Rules provides that the defendant may apply to court for access to any material in the custody of the prosecution where it has reason to believe that the prosecution is withholding same. The court will upon such application decide as appropriate in the interest of justice to ensure the defendant's right to a fair trial. A criminal trial is serious business and there is no room for surprises. All cards must be laid on the table as it were. Even if there was a violation of the provision of **Section 379 (1) (a) (iii)** (and I must reiterate that I don't agree there is any violation), then it was open to the defendant to apply to court to have the facility by way of an order compelling the prosecution to make available those facilities he requires for his defence. Where no such request is made, there cannot therefore be a valid complaint that the right to access to "facilities for his defence" within the purview of **Section 36 (6) (b) of the 1999 Constitution** had been breached. The Apex Court made the positions clear in the case of **Okoye & Ors V C.O.P & Ors (2015) LPELR – 24675; Nweke V State (2017) 15 NWLR (pt.1587) (2017) 3-4 SC 120 at 481, 507** and reaffirmed in the case of **Madukaegbu V State (2018) 10 NWLR (pt.1626) 26.**

As a logical corollary, the contention that the evidence of PW4 and the document he tendered be expunged clearly is not availing and is accordingly discountenanced. The evidence of **PW4** and the statement of defendant vide **Exhibit P6** is thus available for evaluation in determining the guilt or otherwise of defendant.

Now back to the substance. 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 was arraigned before this court for

the offence of culpable homicide not punishable with death under **Section 224 of the Penal Code**.

At the risk of prolixity but for ease of clarity, the count with the particulars reads as follows:

"COUNT ONE:

Culpable Homicide not punishable with death contrary to Section 224 of the Penal Code.

PARTICULARS OF OFFENCE:

That you Aliyu Jiwo Ndalolo 'M' of No. 1, Light Well Estate, Dan Suleiman Street, Utako Abuja on the 13th Day of June, 2016 at No. 1 Light Well Estate, Dan Suleiman Street, Utako Abuja did commit an offence of Culpable Homicide not punishable with death by stabbing one Maryam Ndalolo your mother with a kitchen knife and then strangled her an act which you knew was likely to cause death and thereby committed an offence."

The above charge is critical in this case as the prosecution has delineated clear particulars which it must establish to situate the offence. I will return to this charge later on particularly the specifics of the allegation.

Having regard to the above charge, the prosecution is on the authorities required to prove the following important requisite elements to wit:

1. **That the death of a human being has occurred;**

2. **That the death was caused by the act of the defendant; and**

3. **That the defendant intended by his act to cause such bodily injury as was likely to cause death.**

If any of the above elements or ingredients are not proved or established to the required standard or threshold, the charge will collapse and the accused or defendant 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 five 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.**

The first ingredient or element to be proved is the death of a human being. On this point, there appears to be no dispute on the evidence about the death of one **Maryam Ndalolo**, the deceased subject of the extant charge and also said to be the mother of the defendant. By the confluence of facts flowing from the evidence of PW1, PW2, PW3 and PW4 and even the evidence of the defendant himself, there is no dispute or doubt with respect to the unfortunate death of the deceased in this case. On this point, parties are *adidem* that a human being died.

The next ingredient is who caused the death of the deceased. There is no doubt, again, that the burden was on the prosecution to establish that the act of the defendant caused the death of the deceased. The defendant in his evidence before court categorically denied that he was responsible for the death of the deceased. In resolving this question, we must beam critical judicial search light on the evidence on record vis-à-vis the particulars of the offence contained in the charge. The particulars of the extant charge of culpable homicide not punishable with death speak for itself. I will only quote the relevant portion of the count thus:

"That you Aliyu Jiwo Ndalolo … on 13th day of June 2016 at light well estate, Dan Suleiman Street, Utako Abuja did commit an offence of culpable homicide not punishable with death by stabbing one Maryam

Ndalolo, your mother with a kitchen knife and then strangled her, an act which you know was likely to cause her death and thereby committed an offence." (I shall return as stated earlier to the key elements of this charge in the course of this judgment.)

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 considered the evidence of all the prosecution witness, **PW1-PW5**, and there is no where they indicated or stated that they were present or were privy to the circumstances when defendant "stabbed" or strangled the deceased which are key particulars or elements of the extant count. All PW1 said in relation to the incident was what he was told by one Emmanuel, the house boy of the deceased who unfortunately, both the police and the prosecution could not reach to get his take or insight as to what happened to the deceased. The hearsay evidence of PW1 clearly will have no probative value in the circumstances. PW5 on the other hand clearly indicated that he knows absolutely nothing about what happened to the deceased.

Indeed, apart from the confessional statement of defendant, which I will shortly consider, PW2, PW3 and PW4, the police officers who investigated the offence all stated in evidence that they did not witness the killing of the deceased by defendant and nobody informed them that they saw defendant when he "stabbed" and "strangled" defendant. Nobody was thus 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 **"stabbing and strangulation"** as delineated in the charge.

It is true that PW2, tendered in evidence **Exhibit P2 (1),** the Nigerian Police post-mortem examination form, but he himself stated that no post mortem or autopsy was conducted because the family of the deceased decided against it. Now on **Exhibit P2 (1)** there are two parts to it. The first part is to be filled by the police when forwarding the corpse. For purposes of clarity the heading reads thus:

"Form to be filled (in duplicate) by police when forwarding in corpse to Medical Officer for post mortem examination."

This part was filled. Yes they may have indicated in the column for alleged cause of death as **"stabbed to death"** but this certainly is not the post mortem report by a medical doctor.

The second portion of the **Exhibit** is where a medical officer will relay the results of the post mortem.

The heading of this part of the exhibit reads thus:

"To be filled in by a Medical Officer and handed over to the Police escort immediately in completion of the post-mortem."

In this case, it is clear that the **columns** in this part of the exhibit was not filled at all indicating that no post-mortem was conducted. The portion for signature of the medical officer who may have conducted the post-mortem was equally not signed. In law it is settled principle that an unsigned document has no probative value because a document not signed has no origin in terms of maker.

See **Bello V Sanda (2012) 1 NWLR (pt.1281) 219. Exhibit P2 (1)** clearly lacks any probative value in the circumstance.

The bottom line and consistent with the other evidence on record shows clearly that no post-mortem was conducted to positively and medically establish that the deceased died as a result of **"stabbing and strangulation"** and the link, if any with defendant. The coroners form Report of medical practitioner vide **Exhibit P2 (4)** was not filled at all to further accentuate the point of absence of expert evidence of any kind to situate cause of death of deceased on terms as framed in the charge.

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**. The circumstantial evidence must however denote circumstances as to render the commission of the crime certain and leave no ground for reasonable doubt. The circumstantial evidence should be so cogent and compelling to convince the court of no rational hypothesis other than the guilt of the defendants.

Let us again situate the evidence of the prosecution witnesses.

PW1 as stated earlier, had no direct knowledge of what happened to the deceased. All he knows about the incident was what he was told, which I held is hearsay and inadmissible. He has equally never met the said Emmanuel who narrated or told him that defendant said he killed his mother. In evidence, he stated that the defendant did not tell him that he killed his mother. There is

nothing in the evidence of PW1 to situate circumstantially the stabbing and strangulation of deceased by defendant.

PW2 was part of the Police team that commenced investigation into the incident at Utako Police Division before the transfer of the file to the State C.I.D. He equally gave evidence of what PW1 informed them in relation to what he was told as regards the death of the deceased by the said Emmanuel. His narration in that respect is equally hearsay and inadmissible. Now with respect to actions he was directly involved with, he said that after the narration by PW1, he drove them to the house where they arrested defendants with two call girls and their statements were taken. That in the statement of defendant, he confessed to stabbing his mother with a kitchen knife in her stomach which he threw away and then he drove the car of the deceased and parked it near Utako Police Station before fleeing to Benin with the said Emmanuel. Further that defendant told them that when he came back from Benin, he now took the corpse of the deceased, put it in a bag and dumped it at a refuse site. PW2 further stated that the defendant informed them that he gave or paid the call girls for their services by giving them the belongings of his late mother, the deceased and they executed a search warrant and recovered clothes, bags, jewelries e.t.c from the ladies.

Again and at the risk of sounding prolix, the substance of the evidence of PW2 was essentially what he was told. With respect to the actual investigations, his evidence left many gaping holes. On the evidence, he said they found or believed that the defendant stabbed his mother but noting was furnished to situated the stabbing. The kitchen knife was not found and no autopsy was conducted to determine that she died due to knife injury. If there was a stabbing in the sitting room of the deceased, then there must be evidence of blood splatter on the couch or the sitting room where she was stabbed. It is curious that nothing was said by PW2 about the situation of the house when PW2 and his team visited the apartment. What was the situation of the sitting room? Was there evidence of blood on the couch and sitting room resulting from the stabbing? Was there evidence that the couch and sitting room was cleaned? Was any forensic examination carried out on the couch or the parlour to situate whether the place was recently cleaned? If there was a cleanup, was the house thoroughly checked to situate signs whether any couch was cleaned, moved or replaced or cleaning materials discovered to explain absence of blood?

Most importantly, PW2 stated that they believed that the defendant put his mother in a bag, drove her and dumped her body in a refuse dump and they retrieved the bag. The question here is what is the basis of this belief? Was any DNA Analysis carried out on the body or bag to determine who actually touched the bag to situate any link with defendant. If it is taken or accepted that, the family refused an autopsy, but the bag she was allegedly put in before she was dumped was available to be analysed to determine who may have carried the bag to the dump site. What about the car? Where there blood stains in the car? Was any forensics done to determine who drove the car there? There is here beyond speculative posturing no nexus situating the defendant as the person who "stabbed" and dumped the bag with the body at the refuse dump.

In the same vain, when defendant was arrested, he was allegedly arrested with two call ladies who PW2 said were paid by defendant with properties of the deceased. Now these prostitutes for reasons that are not clear were not called to give evidence to situate what they were doing in the house of the deceased and whether they offered any services and were paid with the property of the deceased. In evidence, PW2 said they executed a search warrant and recovered these items/properties but nothing was tendered in evidence to support the seizure of the properties of deceased said to have been given to them by defendant.

On the basis of the evidence analysed above, it is difficult to situate circumstantial evidence of value and cogency linking defendant with the "stabbing" and "strangulation" of the deceased.

The evidence of PW3 did not further the case of Prosecution in any material particular. He only took the photograph of the bag containing the body of the deceased when it was found at the refuse dump. He stated clearly that he does not know the defendant and has never met him.

PW4, was the head of the team of police officers who investigated the case when it was transferred to the State C.I.D. Office. His evidence, apart from the confessional statement **Exhibit P6** which I will shortly treat, falls along the same trajectory with that of PW1 and therefore is affected by the shortcomings earlier highlighted. He stated that the defendant **confessed** to killing the mother with a kitchen knife and stabbed her in the chest, stomach and other parts of her body when she was lying down in her parlour.

Here again, there is nothing to situate or support this alleged stabbing of deceased in different parts of her body? What is the basis for such a conclusion? He agreed under cross-examination that neither him or his team were there when the deceased was allegedly severely stabbed by defendant and there is no medical report to support any stabbing. Also, the evidence of PW4 just like the evidence of PW1 did not situate any circumstantial evidence to support that the defendant used a car to dump the deceased at a dump site in a bag. Nothing was furnished in terms of forensics situating the defendant was the person who took the bag there or drove the car in question and the court cannot speculate. No tests of any type was carried out on the car or the bag to provide any link with defendant.

Again what is interesting here is that **PW4** visited the scene of the alleged incident and nothing incriminating was found and linked to defendant. What is perhaps strange here is that PW4 under cross-examination said that they did not interview the neighbours of the deceased in the Estate where she lives. If the deceased was **"stabbed severally"** as alleged, by defendant, then common sense dictates that neighbours will be interviewed to determine if they heard anything suspicious or not. The fact that this basic step was not even taken beggars beliefs!

Again and at the risk of prolixity, if the deceased was stabbed severally, how come there are no blood stains in the house or even the car? PW4 stated that they even examined the car and there were no blood stains. Again for a person "severally stabbed" what happened to the blood which would be a natural result of the violent attack by a kitchen knife? Was there a clean up of the premises? No answer was furnished by the prosecution.

Again, PW4 and his team may have taken the statements of the lady prostitutes but they did not give evidence at all to support that they were given the properties of deceased for services they rendered. The properties said to have been recovered from them were not tendered.

The bottom line is that there is nothing in the evidence of PW4 who led the second investigating team situating the parameters of how he arrived at the conclusion that the deceased was "severally stabbed" in various parts of her body and by defendant.

The PW4 is certainly not an expert or a qualified medical person and to be fair to him, he never made himself out as one. The question then is beyond the

alleged confession, how did he come to the conclusion that the deceased was severally stabbed with a kitchen knife by defendant and that this led to her death. No credible evidence was proffered by him. The best to make of his evidence is that it is essentially within the realm of speculation not grounded on any forensic facts or details.

As stated earlier, the same conclusions goes for the evidence of PW2 who led the initial police investigations. There is equally nothing in his evidence precisely delineating what caused the death of defendant as due to stabbing. Again PW2 is also not a medical doctor or an expert in the field of medicine and therefore neither PW2 or PW4 can by mere casual observation determine that the death of the deceased was a result of stabbing caused by defendant.

The evidence of PW5 is simply to the effect that the defendant offered an apple software for him to sell and no more. This software was not tendered in evidence and there is nothing to show that it even belongs to the deceased. His evidence is not of any help to the prosecution.

Finally, it is to be noted that neither PW2 or PW4 or indeed any of the prosecution witnesses gave any evidence that the deceased died as a result of strangulation as contained in the particulars of the offence. In the absence of evidence, it is taken that the prosecution has **abandoned** that aspect of the **charge**.

Now 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 really difficult on the materials to circumstantially see cogent evidence situating cause of death and the clear link with defendant. At different levels, this case suffers from serious evidentiary challenges which I have demonstrated. There is really no physical and clear evidence to situate cause of death and how the defendant has a hand in it. Circumstantially, any link, is at best tenous and does not unequivocally situate that the defendant caused the death of deceased by stabbing and strangulation.

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 the 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 with respect to cause of death.

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 threshold was not crossed by the prosecution in this case.

This now leads me to the alleged confessional statement tendered in evidence as **Exhibit P6.** In the statement, the defendant stated that **"I ended up committing the crime of murdering my mother, that night at around 12 (am) noon before Monday morning."**

I note that in his oral evidence, the defendant stated that the statement was not voluntarily obtained. That issue was dealt with at the hearing when a trial within a trial was conducted and the statement admitted. Furthermore on the authorities, the retraction of the confessional statement during his oral testimony is clearly of no moment. The most important point is that the court must be satisfied as to the truth of the confession and can therefore rely on it to ground a conviction. See **State V Masiga (2017) LPELR-43474 (SC)**.

Indeed 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.**

Now in this case, I had earlier alluded to the specifics of the confession made in the statement **Exhibit P6** and to paraphrase defendant, he stated thus: **"I ended up committing the crime of murdering my mother."** The question that has given me considerable difficulties, I must confess, is whether this admission is direct, positive and unequivocal as an admission of guilt in view of the specifics of the particulars of the charge which specifically indicated cause of death to be **"stabbing with a kitchen knife"** and **"then strangled her, an act which you knew was likely to cause her death…"**

Now during the evidence in chief of PW4 who tendered the said **Exhibit P6,** he made the point that the defendant confessed to stabbing the deceased severally with a kitchen knife and dumped her body at a refuse dump.

However during cross-examination, PW4 agreed that no where did the defendant say in the **Exhibit P6** that he stabbed his mother with a kitchen knife and dumped her body at a refuse dump. There is equally nothing in Exhibit P6 where any allusion was made by defendant to any act of strangulation. The bottom line is that the said **Exhibit P6** does not positively and directly confess to the particulars of the offence delineated in the count.

The confessional statement here, which the defendant has in his oral testimony retracted from, even if admissible does not appear to me in view of the nature of the particulars of the charge to have the attribute of being direct, positive and unequivocal.

The point to make particularly in a criminal trial where the threshold of proof is beyond reasonable doubt is that any finding of fact cannot be made outside the accepted relevant document or be seen to fly in the face of the document before the court. That will be contradictory and perverse. The confessional statement here vide **Exhibit P6** projects a scenario which in the absence of clear evidence cannot transmute or aggregate to the particulars of stabbing and strangulation clearly delineated in the particulars of the offence as cause of death. In such unclear situation, such a confession cannot be said to be positive, direct and unequivocal.

On the authorities, that is however not the end of the matter. 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 and findings in this case. On the Record, there is really nothing in the evidence of PW1-PW5 as already demonstrated delineating strong, cogent and credible evidence that shows the confessional statement to be true. At the risk of prolixity, there is nothing outside **Exhibit P6** in evidence to situate cause of death and the link if any, to defendant.

The narrative of PW1, PW2 and PW4 on what allegedly happened to deceased was from a third source who did not give evidence in court and thus inadmissible. None of the prosecution witnesses saw the incident and did not meet any one who said he saw the defendant commit the offence. No forensic test of any kind was conducted by the police investigations at the house of the deceased, the car said to have transported her dead body to be dumped and the bag used to keep the body to **link** the defendant with key elements of the offence to provide basis for further inquiry.

In addition, key witnesses like **Emmanuel**, the house boy who informed PW1 that the deceased was killed by defendant and they then ran away to Benin was not produced to give evidence and add credibility to the case that the defendant

killed the deceased. The prosecution could also not produced any one from the commercial vehicle operator "God is Good" which the defendant and Emmanuel were said to have use to travel to Benin after the alleged killing of the deceased. Such a witness would have given some insight to the fact they indeed left the FCT around the period the incident happened.

Furthermore, the **call girls** who were allegedly found with defendant at the home of the deceased and who were said to have been given properties of the deceased were equally not produced to give evidence.

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 to 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. Why would a son murder his mother who has been his sole carer and benefactor since he was born? There are allusions made that the defendant is into taking of drugs even in **Exhibit P6** but there is no evidence of any kind before court to support that the defendant is into such kind of activity, the kind or type of drug(s) and how it impacts on him and again the court cannot speculate.

On the question of whether the confession is possible, on the fluid and unclear facts as demonstrated, it is difficult to situate clear and positive facts to support confession. The denial by defendant and failure of the prosecution to present critical witnesses and important materials has served to cast doubt on the confession. Finally, the confession on the evidence and as demonstrated is not consistent with the other facts ascertained and proved. Exhibit P6 is clearly not reliable and providing sufficient foundation to be used in determining the guilt of defendant.

I note that in the final address of counsel to the prosecution, she 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 statement, Exhibit P6 in this case was not satisfactorily proved and a conviction founded on such confession 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.

On the other hand, the circumstantial evidence was not cogent and compelling. For circumstantial evidence to ground a conviction, it must lead only to one conclusion, namely the guilt of the accused person. However, where there are other possibilities in the case than that it was the accused who committed the offence and that others other than the accused had the opportunity of committing the offence, with which he is charged, such a person cannot be convicted. See **Esai & 3 ors V State (1976) 26 NSCQR pt.2, 1367 at 1381-1382**.

It has long been settled that great care must be taken by the court in drawing an inference of guilt of an accused person from circumstantial evidence so as not to fall into serious error. Circumstantial evidence therefore, must be narrowly examined and for it to form the basis of a conviction, the circumstances must clearly and forcibly suggest that the accused was the person who committed the offence and that no one else could have been the offender. See **Udedebia V State (1976) 11 SC 133; Ache V State (1980) 12 SC 116**.

The law has always been that the circumstantial evidence must be cogent, complete and unequivocal but must equally be compelling and lead to the irresistible conclusion that the accused and no one else committed the offence. The evidence must leave no ground for reasonable doubt particularly as any such doubt must by law be resolved in favour of the accused.

The law is settled that in 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 stabbing and strangulation. No such cause was **established** at all beyond the alleged confession 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, especially where there is no evidence to support such conclusion.

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.

The investigation and the prosecution appeared to have fundamentally laid their eggs, as it were, in one basket, that is, on the alleged confessional statement of the defendant and no more. There is nothing wrong in relying on a confessional statement but it has to be positive and compelling. It is high time that law enforcement agencies broaden the sphere of investigation beyond merely obtaining confessional statement(s) which are in a lot of instances not freely obtained. This is a case calling for the creative use of forensic evidence, DNA Finger printing situating unique genetic information of an individual e.t.c

among others which would provide clearer basis for the investigator, the prosecutor and even the court on who was responsible for the death of the deceased and indeed in this case perhaps using these mechanisms situate clear evidence linking defendant with the crime. No one can argue with technology or a DNA found on the body bag for example. There are obvious challenges, for the Law Enforcement Agencies in terms of finance, knowledge, expertise and capacity which the court acknowledges exist, but the use of these modern scientific tools and techniques in trying to solve a crime appear to me imperative to make cases of this nature much easier to prove particularly where as in this case, there are no direct and or clear circumstantial evidence and also there are no **credible range of collaborating clues** to support the commission of the offence.

I cannot end this judgment without saying that it is clear that justice has not been served in this case particularly to the deceased whose life was unnecessarily and cruelty cut 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 deceased 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.

For the young defendant, even if the evidence does not compellingly point at him on the basis of the threshold of the law, it is however important that he looks himself in the mirror which will tell him the truth in ways no one can tell him and then change his ways for good. If he has a hand in the events subject of this charge, he surely knows. Conscience it is said is an open wound; only truth can heal it. He must therefore seek the face of the Almighty and tow to the path of moral rectitude going forward. He is however already facing a life sentence of not been with a loved one, his mother. I say no more.

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.

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Hon. Justice. A.I. Kutigi

<u>Appearance</u>:

1. Y.A. Cole with N.O. Ezea for the Prosecution.