IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA, ABUJA
ON THE 6TH DAY OF DECEMBER 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MARYANN E. ANENIH
PRESIDING JUDGE.

SUIT NO. FCT/HC/CR/102/2017

INSPECTOR GENERAL OF POLICE …… COMPLAINANT

AND

CHARLES ENI UMOKORO …… DEFENDANT

JUDGMENT

By a formal Charge dated and filed on 10th February, 2017 the Defendant herein was arraigned on the 9th of May 2017 on a single count charge of the offenceof culpable homicide punishable with death under **Section 221 of the Penal Code**. The charge sheet specifically reads as follows;

CHARGE

> *That you Charles Eni Umokoro 'M' on or about 21st day of April 2016 at Brain and Hammers Estate Apo within this Maitama Judicial Division did commit culpable Homicide Punishable with death in that you caused the death of Mrs Louisa Amenaghawon Eni Umokoro by hitting her on the head which caused internal homaerrhage (sic) with the knowledge that her death would be the probable consequence of your act and thereby committed an offence punishable under Section 221 of the Penal Code Laws of Northern Nigeria.*

The Defendant pleaded 'not guilty' to the charge and trial commenced with the Prosecution opening its case and calling eight(8) witnesses; i.e. PW1 (NosakhareUkponmwan), PW2 (Inspector Musa Ibrahim), PW3 (Dr. Paul Gowon Jubril), PW4 (Paulette Ukponmwan), PW5 (Dayo Adeleke), PW6 (Isaac Vincent Edogun), PW7 (Enitan Gerald

Akoni) and PW8 (IsokenUkponmwan) respectively. The Prosecution Witnesses were cross-examined by Counsel to the defence. At the end of the evidence of its witnesses the Prosecution closed its case and the Defendant opened his defence by testifying himself as DW1. The defence closed after the Prosecution had cross-examined its sole witness.

The following were admitted in evidence and marked as exhibits at trial;

1. Exhibit A:-iPhone 6 with maroon coloured case.
2. Exhibit B1:-The Defendant's statement made on 25th of May 2016.
3. Exhibit B2:-The Defendant's statement made on 27th of May 2016.
4. Exhibit B3:- The Defendant's statement made on 31st of May 2016.
5. Exhibit B4:-The Defendant's statement made on 2nd of June 2016.
6. Exhibit C:- The statement of NosakhareUkponmwan (PW1) dated 17th of May 2016.
7. Exhibit D:- The statement of Eli Prioritydated 27th of June 2016.
8. Exhibit E:- The statement of Epelle MercyNwachidated 18th of July 2016.
9. Exhibit F:- The statement of Ms Paulette Ukponmwandated 17th of May 2016.
10. Exhibit G:- The statement of IsokenUkponmwandated 14th of June 2016.
11. Exhibit H:- The statement of Enitan G. Akonidated 15th of June 2016.
12. Exhibit J:-The statement of OsatoEkhosuehidated 15th of June 2016.
13. Exhibit K:-Report of Post Mortem Examination on Eni UmukoroLouis from National Hospital Abuja.
14. Exhibit L:- CTC of Police Interim Report dated 21st July 2016.

15. Exhibits M1 and M2:- CTC of document titled 'Re: Petition Against the Sudden and Unnatural Death of Mrs. Louisa AmenaghawonEni-Umokoro' dated 17th May 2016 and attached petition dated 16th May 2016.
16. Exhibit N1:-CTC of Coroner's form (Death Report).
17. Exhibit N2:-CTC of Coroner's form (Post Mortem Examination).
18. Exhibit N3:-CTC of Coroner's form (Report of Medical Practitioner).
19. Exhibit N4:-CTC of Coroner's form (Order for Post Mortem Examination).
20. Exhibit O:- Document titled 'Profile' of Isaac Vincent Edogun.
21. Exhibit P:-Certificate of Completion of Isaac Vincent Edogundated 22nd of January 2015.
22. Exhibit Q1:-Compact Disc labelled 'Recording 1'.
23. Exhibit Q2:-Compact Disc labelled 'Recording 2'.
24. Exhibit Q3:-Compact Disc labelled 'Recording 3'.
25. Exhibit Q4a:-Compact Disc labelled 'Recording 4a'.
26. Exhibit Q4b:-Compact Disc labelled 'Recording 4b'.
27. Exhibit Q4c:-Compact Disc labelled 'Recording 4c'.
28. Exhibit R-enbloc:-Transcribed bundle of documents of Vinox TranscriptionServices.
29. Exhibit S:-Certificate of Compliance signed by Isaac Vincent Edogun (PW6).
30. Exhibit T1:-Official payment receipt of National Hospital Abuja No. 16-00092014.
31. Exhibit T2:-Official payment receipt of National Hospital Abuja No. 16-00092031.
32. Exhibit T3:-Official payment receipt of National Hospital Abuja No. 16-00092037.
33. Exhibit T4:-Official payment receipt of National Hospital Abuja No. 16-00092138.
34. Exhibit U:-General request form of chemical pathology dated 21st April 2016.
35. Exhibit V:-National Hospital receipt No: 16-00104562.
36. Exhibit W:-CTC of Probate letter dated 26th August 2016.

37. Exhibits X1 and X2:-CTC of FCT High Court Writ of Summons dated 5th May 2017 and attached Pre-action Certificate.
38. Exhibit Y:- CTC of Motion on Notice dated 13th April 2018.
39. Exhibit Z:-CTC of Motion on Notice with No: M/9018/17certified on 1st July 2021.
40. Exhibit AA:-Email documents from SIAML Investments dated 17th January 2017.

The case of the Prosecution is presented to this Court through the oral and documentary evidence adduced by them. A summary of the evidence of the Prosecution's witnesses which in support of its case against the Defendant is given as follows;

PW1,Mr. NosakhareUkponmwan testified on oath that one Mrs. Louisa Eni Umukoro(who is now deceased) was his immediate younger sister. PW1 is the first born and followed by his said deceased sister also known as 'Lulu' at home and 'Louisa' or 'Lois' in the office. He testified to the effect that he has other siblings some of whom reside outside Nigeria. That within two weeks to one month of the memorial service (held in January 2016) of their late father's passing, PW1's sister Mrs. Titi Adeleke who resides in the United States called him in the early hours of the morning to urgently go to Louisa's (deceased's) place.PW1 testified that he was informed by his said sister residing in the US that she had been on a phone call with PW1's nephew Mr. EnitanAkoni who was locked up in the guest room while staying in PW1's deceased sister's house at Brains and Hammers Estate. That PW1's sister in the US had overheard the Defendant insulting Enitanand the deceased insisting that Enitan must leave the house. PW1's sister further informed him that she had spoken with the Defendant to appease him on another occasion and she had reason to believe he would be violent as it was his pattern to beat up their sister when aggrieved. It was due to this known violence that PW1's sister insisted that he goes to the house urgently and maybe Enitan should move out of the house if he was the source of the irritation.

PW1 testified that upon arriving at the deceased's house in Brains and Hammers Estate which she shared with the Defendant, he sat down to talk with the Defendant about the events of the past night. That the Defendant's next statement was derogatory in respect of PW1's late father whom the Defendant said had given the deceased to the Defendant as wife. PW1 told the Defendant that it was unacceptable and that he had crossed the line with that statement. Another of PW1's sisters Isoken Iyo later joined them at the house and proceeded to have a conversation with Enitan about what transpired in the night which the Defendant denied. PW1 testified that one Barrister Afabor, a family friend of both the deceased and Defendant, also came to the house. That the Defendant stood in front of the deceased wagging his finger at her saying "you'll see what I will do to you if Enitan doesn't leave this house" and said something similar to Isoken. PW1 said to the Defendant how dare he say such a thing in response to which the Defendant advanced on PW1 with intention to attack PW1 but Mr. Afabor stepped in quickly to restrain the Defendant. PW1 then resolved to concentrate on Enitan packing out of the house. The Defendant thereafter brought out drinks to celebrate removing Enitan and Isoken and being left with only the deceased in the house. Enitan eventually left the house that day and PW1 heard about acts of violence by the Defendant against his late sister the deceased.

It is PW1's further testimony that the deceased resorted to recording conversations on her phone whenever the Defendant started being violent. PW1 came in possession of the deceased's said phone to communicate with people who were calling about the deceased's condition before she passed and stayed in his possession after her passing. PW1 stated that the phone contains recordings of the Defendant's words and his violent utterances and he engaged a transcriber, Isaac Edogun of Vinox Technology Ltd, to transcribe the recordings into writing and download to DVD. Exhibit A was admitted in evidence as the said phone. He testified that there are 3 recordings made by the deceased of her interactions with the Defendant. That there is another recording of when the Defendant came with his family to PW1's family.

Under Cross-examination, he testified *inter alia* that the recordings on the phone were done between 2014 to 2016. He was not present when the recordings were done. He does not know what transpired at the hospital before he got there. Before the deceased went to the hospital on 20th April 2016, he met her in the church with the Defendant, their son, Mercy Epelle (deceased's close friend), Madam Fabo and Chinyere. From the church they all went to Diff Hospital. He was not with her during Doctor's examination though as the Defendant made sure no one else had access to her in order to cover up what happened. That they all later left the deceased with her friend Mercy, for the night upon the instruction of the Doctor that the hospital had limitation on the number of persons allowed to stay over. That it was on 21st April 2016 that she was transferred to National Hospital where she later died that day. It is correct that they reported to the police that the Defendant murdered their sister, but untrue that the reason for the complaint was to get access to his late sister's property.

PW2 (Inspector Musa Ibrahim) gave sworn testimony. He is a policeman attached to the Homicide Section, Force C.I.D, Abuja. He testified that he and his team investigated a petition to the office of the IGP over the sudden and unnatural death of the Defendant's wife. PW2 and his team recorded the voluntary statements of the petitioner, the witnesses and the Defendant who was arrested in Sapele. That the team also filled coroner's form for the autopsy report which was given by the National Hospital through the initial IPO. The Defendant's statements were admitted in evidence as Exhibits B1 – B4 while PW1's statement was admitted as Exhibit C. PW2 stated that he recorded the statements of Eli Priority, Epelle Mercy, Paulette Ukponwan, IsokenUkponwan, Enitan and Osato which were all admitted in evidence as Exhibits D, E, F, G, H and J respectively. PW2 stated in his evidence that his team eventually got autopsy report from the National Hospital (which was admitted in evidence as Exhibit K).

It is PW2's further testimony that some of the witnesses' statements are to the effect that the deceased was a victim of domestic violence. That voice recordings on the CD plates which the family had attached

to the petition (although PW2 didn't play them), the autopsy report from the National Hospital and the case file were duplicated and sent to the legal section for vetting and advice. He stated that it was after this that the Defendant was charged to this Court for culpable homicide. That although his team visited the scene (the deceased's house)in respect of the statement by the Defendant of the Deceased falling in the bathroom, the team met no one as the house was locked. The police team also did not contact the hospital about the deceased falling from the hospital bed. PW2 testified that it was the Deceased's friend Mercy that stayed with her in the hospital.

PW3 (Dr. Paul Gowon Jubril)also testified on oath that he works in the Pathology department of National Hospital, Abuja. He testified that he is a Medical Doctor, a1991 graduate of University of Ife,as well as a fellow of the Post Graduate Medical College of Nigeria, Faculty of Pathology since 2001. He graduated with MBCHB (Bachelor of Medicine and Surgery). He is an atomic pathologist and a forensic pathologist of death and has been engaged in this practice since 1996 which is over 20years. He has conducted several autopsies as autopsy and post mortem examination is one of the main jobs of an atomic pathologist. He has been working in the National Hospital since 2005 and knows Dr. Said Aminu, Dr.Oguntebi and Dr.Olagbenro who had all worked with him in the department.

PW3 testified that autopsy was done on someone sometime on 28th April 2016 by his team and reviewed with PW3 after which a comprehensive post mortem report was issued vide Exhibit K, which report PW3 said that he duly signed. He explained that post mortem means examination after death and essentially means the same thing as autopsy. He stated that 'massive subdural hemorrhage' in Exhibits K, N, N1 and N3 means that there is a bleeding between the dural and the brain (which has a covering called 'dural'and hangs through the spinal cord). He testified that it was found on the left part of the brain in this case, and in addition, he and his team saw bleeding between the scalp and the skin covering the scalp bone which is what is called "sub-galeal haematoma" on page 6 (Number b) of Exhibit K. That it is a bleeding between the dural and brain tissue within the skull bone.

That someonewho falls from bed or bathroom can have subdural hemorrhagebut not sub-galeal haematoma.

PW3 further testified that bleeding between the scalp and skull is called sub scalpsular haematoma which is the same as sub-gileal. Sub dural haematoma is a passive bleeding from the brain that occurs gradually over some time while sub scalpsular haematoma is a result of use of force (i.e. trauma). PW3 stated that his team noticed something spectacular in this patient that ruled out many things i.e. that the sub scalpular haematoma was on the right side outside the skull bone while the sub dural haematoma was on the left side within the skull bone. That the patient had no wound anywhere else. It is PW3's testimony that in cases of road traffic accidents and somebody falling from height, there are some indications that are ordinarily present butwere not seen in this case. That if somebody is falling from a bed or height to hit the head on the floor, the bleeding inside and outside the brain would be on the same side. That in this patient however, the bleeding outside and inside are on different sides and this scenario is usually as a result of when one side is hit by a blunt object and the other side shakes in the manner here. That this is what is called **"kanta cu and cu injury**". That is, direct force is on one side and vibrates to the other side and the small blood vessel on that side would begin to bleed gradually until the person dies. He stated that the person wouldnot die immediately and it would cyanosis when there's blueness. Nail verde is what is called cyanosis as seen on page 2 of Exhibit K (External appearance). That due diligence conducted by PW3 and his team revealed that there was no evidence of hypertension in the patient.

He stated that it is only bleeding into the brain tissue alone that can be said to be non-traumatic while in this deceased patient, the bleeding was in the covering of the brain and covering of the skull which points to a blunt source. That they saw some findings which cannot be related to cause of death.The goitre (thyroid gland) is enlarged (as contained on page 5 of Exhibit K). That although reports show that the patient was already on el-thyroidinne, which is a thyroid replacement drug, this would not cause bleeding like they saw in the

brain. That except for thyroid cancer, thyroid disease is unlikely to cause death. PW3 and his team also saw evidence of kidney disease (pyelonephritis) which can only cause pain in the loin. PW3 stated that he and his team also saw uterine fibroid. That these are explanation of the findings showing that the bleeding is a result of blunt force to someone who is conscious and standing which could be either that something was used to hit her head or her head was used to hit something. That it is however not his and his team's jurisdiction to determine whether or not the death was by natural causes as that is the duty of a coroner to so pronounce.

PW3 testified *inter alia* under Cross-examination that the subdural venous bleeding not arterial. That haemorrhagic stroke is bleeding into the brain tissue. In the instant situation, the case note showed history of 170/80 so they checked and their findings revealed that the deceased patient was not hypertensive. That oxygen level is not a problem with blood circulation.

PW4 is Paulette OghenekweroroUkponwan and is the wife of PW1. She identified the Defendant as the husband of the deceased (who she says died in April 2016). PW4 identified Exhibit F as the statement she had made to the police. Her sworn testimony before this Court is to the effect that the Defendant had met and proposed to the deceased some years ago and they eventually got married. She testified that the years the Defendant and the deceased spent together was very violent. That the deceased had once called while PW4 was away in London that she (deceased) was in PW4's house in Asokoro having run away from her own house where she lived with the Defendant her husband. That the deceased had said the Defendant had beaten her the previous night and threatened to kill and destroy her. PW4 testified that her parents-in-law were angry and wanted to take up thecase with WRAPA but for the Defendant's relations who came to plead on his behalf. That on another occasion, the deceased had called PW4 in a hushed voice one morning telling her that she (deceased) was locked up in the toilet as the Defendanthad started beating her again. That the deceased had asked PW4 to come take her to the hospital. Upon reaching the house, PW4 saw the deceased with blood on her nipple,

bite mark on her upper breast, bite marks on her back and scratches. The deceased told PW4 that the Defendant had dragged her outside to throw her off the balcony three floors down to kill her. That although the fighting had ceased when PW4 got there, she nevertheless knelt down to beg the Defendant asking if he knew that he would kill his wife if he threw his wife three floors down to which he responded that he would kill her and hand himself over to the police. PW4 testified that the deceased had also told her that one day the Defendant had threatened to kill PW4's husband who is also the deceased's elder brother and when PW4 confronted the Defendant with this information he said that that the Ijaw boys were just waiting for his signal to get rid of her husband.

PW4 stated that the deceased and the Defendant had been married for about ten years with a son before she died. That PW4 had a cordial relationship with both the deceased and the Defendant. That about one week before the deceased died, they had travelled to Lagos by air and the deceased had told PW4 at the airport that she had been having severe headache which was getting worse despite medication. The deceased also said she was divorcing the Defendant and that the deceased was told the Defendant had another wife and children in Sapele. That the deceased had told PW4 that she was waiting for theDeed to the house in Brains and Hammers where they lived for which the deceased had borrowed money to pay but the Defendant told her to write Mr. & Mrswith a promise to pay her some money which he never did. That the deceased had said that the latest problem in their house at that time was that Defendant wanted her to buy him a Mercedes Jeep which she refused saying it was too much. PW4 said the deceased told her this problem had caused an uproar that attracted the neighbours and the deceased had to call some counsellors, a couple, to the house but the Defendant poured water on the couple and then beat the deceased mercilessly. That the deceased said that just for peace to reign, she had put the Defendant on a monthly stipend and opened a business of online newspaper for him for which she spent a lot of money but when the people that partitioned the office came to the house for their money, the Defendant chased them out with a cutlass. That despite all efforts, the deceased said she

would not give him her pay packet and never made him her next of kin in the office.

PW4 testified further that the deceased told her and she saw with her own eyes that the Defendant would beat, drag and give the deceased head butt whenever there was a fight and on one occasion he had sat on her and pounded her until Enitan (PW4's sister in law's son) physically removed the Defendant from her. That after beating the deceased, the Defendant would force himself on her and if she refused, he would rape her and urinate on her. That the deceased had also told PW4 on the flight that the Defendant was molesting their 14year old house help who reported the matter to her mother and they removed her from the house. PW4 stated that she pleaded with the deceased not to divorce her husband but she said her mind was made up and was waiting for the Defendant's name to be removed from the title to the house before she would divorce. That if she doesn't leave the marriage, the defendant would one day kill her. That the Defendant had beat up the deceased to delete recordings she had made of their quarrels and fights but she had other recordings unknown to him. PW4 said she couldn't remember the exact date they went to Lagos but it was in the same April, about a week to the deceased's death. She said Enitan was living with the deceased and the defendant until the Defendant asked him to leave although PW4 does not know the exact date he left.

PW5, who gave his name as Dayo Olugbenga Adeleke, gave sworn testimony before the Court. He is a Medical Practitioner and retired Commissioner of Police who lives in Abuja. He testified that he knows the deceased and the Defendant very well. That thedeceased Mrs. Louisa Eni Umukorowas the older sister of his (PW5's) brother's wife, Tete Adeleke who is resident in the United State of America with PW5's brother Rotimi Adeleke. He met the deceased and the Defendant (who had been introduced as the deceased's husband) in 2005 when he received them, on Tete's request, as a guest in his house in Port Harcourt. PW5 was subsequently transferred to the Nigeria Police Force Headquarters, Abuja a couple of months after which the deceased was also transferred to SEC

(Security and Exchange Commission) in Abuja. He testified that he and the couple (deceased and Defendant) exchanged visits and recreated together regularly as it was a happy relationship. That there were occasions thereafter that PW5 had to intervene on issues bordering on domestic violence between Defendant and the deceased on at least three occasions between 2013 and 2016. That PW5 once was called and met the Defendant in an obviously drunken state being restrained from gaining access to PW1'a house and PW5 had to plead on the Defendant's behalf. The couple had their son named Maro shortly thereafter. PW5 stated that Tete called him to intervene occasionally and on one particular day,Tete was recording on an open line when the Defendant was being violent with his wife the deceased. That the Defendant was insulting the memory of the deceased's late father and when PW5 later met the Defendant, the Defendant tried to excuse his actions to mean that he didn't mean to do it and he confirmed there was a fight. That the Defendant had said he wanted Enitan (the deceased's nephew) out of the house and that the deceased was trying to adopt Enitan to inherit her property.

PW5 testified that he had identified the corpse at National Hospital Abuja and his name is on Exhibits K and N as the identifier of the corpse. Before identifying the body however, PW5 had received a call from Tete who informed him that the deceased had been beaten by Defendant about a week earlier and that she had been having headaches consistently even after she went to Lagos and had gone to the hospital and could not be traced. PW5 had gone to look for the deceased on Tete'sinstruction and had been told at PW1's house that the deceased had gone to the Church, returned home and proceeded from there to the hospital. That she had been moved to the National Hospital by the time PW5 got to Diff Hospital. PW5 then got a text message from Tetethat her sister was dead after which he got to National Hospital to discover that the body had been taken to the mortuary. When burial arrangements started, he received a call from the Defendant and a certain Mr. Atabor to the effect that PW5 should not be present at the post mortem but PW5 decided to be present and so he went to the National Hospital mortuary and eventually identified the deceased's body.

PW6 (Isaac Vincent Edogun) gave sworn testimony. He testified that he is a graduate in the field of criminology and a professional transcriber who transcribes for a living. The nature of PW6's job is to take audio or video recordings and transcribe into written form. He does this by picking the recording, putting it on laptop computer, sitting with headphones, listening to the voice and typing out accurately everything heard, word for word into a written form. He testified that he holds a certificate in General transcription from the Transcription Certification Institute United States and has engaged in transcribing for the past eight years. He started transcribing in 2012 as a freelance transcriber and in 2015 started working with Vinox Transcription Services till date. Exhibit O was admitted in evidence as PW6's Curriculum Vitae while Exhibit P is his certificate.

PW6 testified that PW1 had in 2016 brought an iPhone (which PW6 identified as Exhibit A) containing audio recordings to his company for transcription into readable format. PW6 said he connected the phone (which PW1 unlocked with password) to his laptop computer and copied out from the iPhone into his laptop, six audio recordings which he labelled Recording 1, Recording 2, Recording 3, Recording 4a, 4b and 4c. He eventually burnt these to Compact Discs which were all admitted in evidence at trial as Exhibits Q1, Q2, Q3, Q4a, Q4b and Q4c respectively. He then did the transcription to readable format which was admitted in evidence as Exhibit R. He said PW1 paid him for his services. PW6 proceeded to state that Exhibits Q1, Q2, Q3, Q4a, Q4b and Q4c (which were all played in open Court) were what he transcribed into pages of Exhibit R.

PW7's name is given by him as Enitan Gerald Akoni and he gave sworn testimony that he had been living with his late aunt (Mrs. Louisa Eni Umukoro) to whom the Defendant was married at Brains and Hammer Estate Apo Abuja as far back as 2008/2009. PW7 identified Exhibit H as his statement which he made to the police sometime in June 2016. He said there were nights when he observed that the Defendant came home drunk and his deceased aunt later screamed for PW7 who discovered the couple's bedroom door was

locked by the Defendant. Upon forcing his way into the couple's room, PW7 ran in-between them to use himself as a shield from the Defendant who had cornered the deceased. PW7 said the Defendant was saying a lot of things to the deceased such as her seeing what others were doing for their husbands. That the Defendant threw large objects at PW7 and the deceased, one of which objects was the stereo that hit the deceased who started bleeding. The Defendant followed the deceased who had tried to escape, beat her and while PW7 and the deceased begged him, started head butting her and PW7. The deceased and PW7 ran out of the flat and this was between 12midnight and 2:00am. While PW7 went back in to get his money and the small house-help, he overheard the Defendant threatening to burn the deceased's certificate and the house. PW7 testified that PW1, who was downstairs at this time, took all of them to his house in Asokoro. It is PW 7's further testimony that the Defendant arrived at PW1's house 30 minutes after they did and shook the burglary shouting that his wife be brought back and he had the right to do whatever he pleases with her. PW1 eventually convinced the Defendant to leave and it was discovered that he had removed the burglary from the hinges. PW7 said he left to the U.K for study shortly thereafter.

PW7 stated that, as per his statement to the police, the couple's son (Maro) was crying once and the Defendant picked him and shook the boy saying, "Maro, you're shaming me and you are going to grow up to be a bad boy, instead of that I will rather spank you into the ground". PW7 told the deceased (who was away in Lagos) this incident and she said she was scared for their safety. PW7 was fed up with the situation and hence left the couple's house for the United Kingdom.

He testified that he however went to stay with the couple again upon the deceased's invitation when he finished his degree in 2016. About two weeks or so of his return to live with them, PW7 was out one day when he received a phone call from the deceased sounding panicked and telling PW7 to sleep where he was as the Defendant was drinking and angry again. PW7 said he could hear the Defendant in the

background shouting that he was going to finish some of PW7's family including PW7. PW7 testified that he returned to the house the next day and was told by the deceased to be careful and lock his room. The deceased said she was getting scared and started recording their conversations. PW7 said that another incident thereafter occurred at night where the Defendant was angry and the couple was having an argument. That the Defendant came downstairs to PW7's room door calling PW7 a bastard and for him to go to his own house. PW7 could hear rattling sound like a knife or bottle while the Defendant returned to PW7's door banging on same for him to come out to be dealt with. That the Defendant went upstairs and PW7 could hear the commotion that appeared like he was beating her, she was screaming and he was shouting. He said his mother and other relatives came the next day to pack his things and he left the house. He didn't know it was the last time he would live with them as his mum called him to inform him that deceased had died. He said the deceased and the Defendant were the only two adults living in the house after he left and he never witnessed the deceased falling from the bath and being assisted by Defendant.

PW8 (Isoken Iyo Ukpomwan) gave sworn testimony that her sister the deceased, who was married to the Defendant, passed in 2016. She identified Exhibit G as her statement to the police. She said the marriage between the deceased and the Defendant was a bad one because the Defendant would bully, degrade, beat and publicly disrespect the deceased. That there were several incidents which PW8 saw and which the deceased told her. She said the Defendant returned from a journey once and the deceased sent the housemaid to meet him downstairs for his luggage but when the Defendant came upstairs he shoved the deceased backwards and scolded her for not coming downstairs to greet him. PW8 said that this was the first instance of physical abuse she saw which was just a few years into their marriage. That when she relocated to Abuja she started living with her brother because the deceased said the Defendant didn't want the deceased's siblings staying in their house. PW7 testified that in 2009 when her son Enitan (PW7) came to spend the holidays with the deceased in Abuja, the said PW7 called her and put the distraught sounding

deceased on the phone and the deceased told PW8 that the Defendant had tried to kill her the day before. That the Defendant had locked her up in the room after coming back home after midnight so no one could come to her rescue. PW8 stated that she was told the incident was reported to WRAPA (a women's protective agency).

PW8 testified that the deceased was a director at Security and Exchange Commission before she died. That the deceased had once revealed to PW8 that she (deceased) had recently discovered that defendant had a secret wife and children who were in Sapele and he never told the deceased before they got married. That the deceased said she suspected that large amounts of money obtained from the deceased was used by the Defendant to maintain his other family. PW8 stated that the deceased later called about two weeks later that she had confronted the Defendant with the information of his secret family and that he became aggressive and started beating her for asking him that type of question. The deceased had said she called in two of their church mentors to the house to settle the couple but he poured a bowl of water on the mentors who then left. That the Defendant again started beating the deceased for bringing people to embarrass him in his house. PW8 said this call from the deceased happened in February 2016 while the deceased died on 21st April 2016 which was an interval of a month. That within the month of March, 2016, the deceased told her that the Defendant was beating her, he pushed her down and twisted her hands to her back. That PW8 saw that the deceased's upper hands between the shoulder and elbows were swollen. She testified that on the day the deceased passed, her sister Tete called that she (Tete) had received a call from the Defendant's sister Mary that she (Mary) had been told by someone that the deceased and defendant had fought and were both in the hospital. PW8 said that she never saw the deceased fall and the deceased never told her of falling in the bath or anywhere at all. She said the Defendant didn't want any of them around the deceased for reasons best known to him. She said her son (PW7) was the last person to live with the couple before the deceased passed although her cousin used to live with them but that person also left before then.

It is PW8's testimony that she had a conversation with the deceased inside a saloon at Sahad a week before the deceased's death. That the deceased had told PW8 that she had been having headaches that was getting worse over time and that the Defendant said there was no need to see a doctor. That they had travelled to Lagos for a wedding/social event and the deceased had called PW8 on Saturday on her (deceased's) way back to Abuja to get PW7 to pick the deceased at the airport as the deceased wanted to get home on time because she still had the headache. PW8 said she spoke with the deceased again around midnight and the deceased said she was just getting home because she had gone to the hospital. That the deceased called her on Wednesday morning to find time to see her as she (deceased) had something urgent to tell PW8 but PW8 later heard from other sources that day that the deceased was very ill and PW8's efforts to reach the deceased and the Defendant on phone was futile. That PW1 told her that he had gone to the deceased's house and met the Defendant's son from a previous relationship who told PW1 that Defendant had taken the deceased to church. That PW1 had told PW8 that he was informed that the Defendant had called two people to beg the deceased to go to the hospital but she didn't want to. PW8 stated that she found this hard to believe and told PW1 to confirm this. She said PW1 told her that he went to the church and saw the deceased looking really weak and sick, questioned why she was in church and not hospital, gathered them and they went to Diff hospital (including defendant) where the deceased was admitted.

PW8 learnt that the deceased was moved to National Hospital and upon her (PW8's) return to Abuja, she went straight there but discovered it was over as the deceased had passed. That PW1 had told her that the only thing the Defendant said was to ask PW1 if the deceased had said anything to him. That Mr. Afabor told her that the Defendant had called him to convince the deceased to go to the hospital because when he got to the house, he (Defendant) called the deceased who answered and he discovered her sitting on the edge of the bathroom saying she wasn't feeling well and he had carried her to the bedroom. PW8 said when she spoke with PW4 however, PW4 told her that the Defendant had told her that after he called her the

deceased didn't answer, so he opened the bathroom door and discovered something hindering the door, he managed to push the door, squeezed in, found her on the floor and took her into the room. PW8 stated that while receiving condolence visits at the house, she later overheard the Defendant telling staff from the deceased's office that she had slipped and fallen when she was taking her bath. That the two small house girls, Priority and Yewvoro, came to her saying they didn't know why the Defendant was saying the deceased fell as he had quarrelled with her. PW8 stated that a few days after the deceased's death, one Tinuke had contacted her from the human capital office of SEC wanting to speak with Dr.UyiUkponwan (PW8's brother in America) who was listed in their records as Louisa's next of kin because the Defendant had come to their office to inquire about the money which SEC as a policy gives the family for the burial. PW8 said that the deceased was still in the morgue at this time and was yet to be buried. PW8 told Tinuke that the Defendant wasn't acting for Dr.Ukponwan and gave her his current phone number. PW8 stated that the reason she said the Defendant did not want the deceased's relatives around her for reasons best known to him is for him to have the opportunity to beat her without any help. That the defendant caused the death of Louisa because of his consistent physical assault on her. That before going to the hospital he said he found her on the floor but at the hospital he told people that it was her goitre that was worrying her. That by his actions, the Defendant denied the deceased the urgent medical care she was to have gotten because he had beaten her. She said she and the deceased's co-workers took her body to Edo State for the funeral but the Defendant did not show up for the funeral except for his sister and some hooligans. That the hooligans started a fight, threatening to kill one person or another and beating up one person or the other. She said the Defendant went several times after the funeral to the deceased's office to demand the money insisting that he was the deceased's husband. That he also went to Stanbic IBTC Pension managers with same demand for her pension. He attempted to sell her house in Area Eleven and he even went around collecting rent from her property. That the Defendant is involved in a civil case in respect of the deceased's property.

The Defendant (DW1) testified in his own defence. He described how he met and befriended his wife (the deceased) in 2004 in the course of a training in Nigeria Capital Market School run by SEC in Abuja. That he led his family to Benin for introduction and they were married under the Act sometime in June/July 2005. They thereafter lived as husband and wife in Abuja and the deceased's niece, Miss OsatoEkhosuehi, was living with the deceased as at 2005/2006. He said the couple bought their house in Area 11 with mortgage and another one in Brains and Hammers Estate Apo Dutse Abuja into where they moved in 2014. That he lived there with the deceased, his little son and his eldest son Igberiase Eni who was about 18years then and studying Accounting at University of Abuja. That Osato who was studying at Ambrose Ali University used to come and go while PW7 came to stay in 2008 but left to the UK for studies. The Defendant stated that the couple also had two girls, Priority Eli and Yerowo Sunday, 12 and 13 years respectively living with them. He testified that the deceased had underlying health issues due to fibroid and introduced him to one Dr. Idahosa at Diff Hospital in Garki who had been caring for her in 2006. That the deceased was also managing goitre and High blood pressure while he was managing High blood and they were both on medication from Diff hospital for HBP.

He identified PW1 as the elder brother of his wife (the deceased). He denied physically abusing or beating the deceased and stated that they loved each other. He denied that his sister-in-law Tete tried to talk him out of beating his wife. He rather described the incident that occurred as that PW7, who was staying with them at the time, was keeping late nights and returned home 1:00am/2:00am driving roughly through the Estate in his mother's (PW8's) car. He said the Estate Security used to come to report PW7 to him as there was insecurity issue. That he and the deceased had sat PW7 down to speak with him but he would not listen. That previously, the Defendant had bailed PW7 out of NDLEA office at Area 3 and the Defendant told the deceased that PW7 should go and stay with her elder brother (PW1) to avoid making further problem. The deceased told her family what the Defendant had said but PW8 and PW1 raised issues as to

why the Defendant didn't want PW7 to live with them when his eldest son (who was not the deceased's son) was with them. That since the house belonged to their sister, PW7 the deceased's nephew, must live there. That although the deceased cautioned them that the house was bought with a loan by the couple, PW8 angrily insisted that her son would not leave the house. The Defendant said his wife called Tete in America who appealed to with the Defendant to be patient and advised the deceased to send away anyone that wouldn't respect her husband. That PW8 then left with PW7 who later promised to change. That PW7 left the couple's house in February 2015. The Defendant stated that PW7 returned but later continued with the same behaviour and eventually left in February 2016. He denied that he locked up the room while beating his wife. He said that PW7 wasn't even in the house as the gate security called at about 1:45am that PW7 was at the gate. That the deceased had called PW7 and told him to go back to where he was coming from or go to PW1's house. That PW7 had come the next day with PW7 and PW8 that the Defendant had started sending PW7 out of the house. That PW8 challenged the Defendant for sending PW7 away and said the Defendant crossed the red line while PW1 drew an imaginary line on the floor with his foot indicating the red line the Defendant had crossed saying he (PW1) will deal with the Defendant. PW1 and the Defendant started exchanging angry words over the red line drawn by PW1 in the Defendant's house until Mr. Afabor (the deceased's former colleague and family friend) came,having been invited by the deceased,to settle the quarrelling men. The Defendant denied almost pouncing on PW1 as he had simply explained things to Mr. Afabor and PW1 had ended the matter by asking PW7 to pack and leave the house.

The Defendant said in his testimony that he is not a killer and did not threaten PW7 or any other person. He denied being violent with his late wife (deceased) and is not aware of any report to WRAPA. He denied pouring water over a pastor and his wife. He stated that PW8 told lies before the Court. That although he knows PW4 (PW1's wife), it is not true that he (Defendant) is always drunk and beating up the deceased and urinating on her as these are lies. He doesn't know where the recordings tendered in Court came from and doesn't

believe the deceased recorded him as he claims the recordings are doctored. He says the recordings must have been done by someone who was spying on his marriage. He only knows his late wife used to take recordings for her lectures in the United Kingdom.

Describing events around the time of the deceased's death, the Defendant testified that on 15th April 2016 (which he said was a Thursday) at her request, he drove the deceased to Sahad to make her hair in preparation for her trip to Lagos for the 80th birthday of his uncle in-law. That the deceased flew to Lagos for the birthday on the 16th April 2016 and sent a Whatsapp of how she was happy and dancing. The Defendant said he identified PW4 in the background. She sent a message that the Defendant was missing and he replied her saying 'Enjoy'. The Defendant later called the deceased about 8:00pm and she spoke with her son after which they slept. In the morning of 17th April 2016, the deceased called to say she couldn't sleep as a result of headache and the Defendant advised her to get PW4 to take her to the hospital. The deceased said she didn't go with her BP medication and he told her to go to the hospital but she said she wouldn't want to go to the hospital in Lagos and develop another medical record. Although he told the deceased to buy the medication, she said that she would endure and come directly to Diff hospital in Abuja when she returned. At her request, when the deceased landed by flight on Saturday 17th April 2016, the Defendant met her at Diff Hospital Abuja where the doctor told her that she doesn't rest and take her High blood pressure medication regularly. The doctor told her to rest and watch her blood pressure.

It is the Defendant's testimony that the next day, Sunday 18th April 2016, the deceased said she couldn't go to church as the headache was not abating and she was becoming dizzy. This was the first time the deceased would miss Sunday service. The couple ate together and the deceased slept till the next morning. On Monday, the deceased went to work as she was a bit stabilized and later in the evening called the Defendant to meet her at the doctor's at Diff, which the Defendant did. The Defendant testified that the deceased was put on bed rest at the hospital and was allowed to go home around 7:30pm/8:00pm. For

the next two days however, Tuesday and Wednesday, the deceased couldn't go to work. The Defendant said the deceased called him on Wednesday, while he was at the office, that her friend Mercy was around to spend a few days and he should come back early to pick her (deceased) so they could go to church together as a family because MFM was conducting nationwide fasting and prayers. Upon getting home, he met Mercy Ekpelle (the deceased's long-time friend), Maro the couple's son and his other son Eguriase. He asked Yewvoro, Priority and an adult housemaid, Susan, where the deceased was. He said the deceased was taking her bath upstairs but when he got upstairs and called her, she didn't answer. He said the door was shut but she eventually answered slowly from the bathroom. That he saw the deceased (naked with towel wrapped on her chest) on the floor between the bathroom and the door. He said the deceased was trying to stand up and she said she had tripped while stepping out of the bathroom. The Defendant assisted her up and she insisted on going to church for prayers before going to the hospital despite his entreaties to go to the hospital. He said when he noticed the deceased was prioritising her going to the church over the hospital, he called Mama Osato and Barrister Afabor but the deceased spoke with them and assured the former that she would go to church first and be fine. He said the deceased dressed up and they went downstairs and they all went to church together i.e. the Defendant, the deceased, Mercy Ekpelle, Priority, Maro and Susan, except his eldest son Eguriase who stayed back home alone. That Mr. Afabor who met them on the way tried to advise the deceased to go to the hospital but she insisted on going for the Wednesday church service. Mr. Afabor then drove behind them to the church where PW1 met them about 20 minutes later. That PW1 also tried to convince the deceased to leave for the hospital but the deceased insisted on waiting till after the church service 30 minutes later. He testified that they all left for the hospital after the church service which ended 30 minutes later. That PW1, who had momentarily been knocked down by a motorbike, drove behind Mr. Afabor who drove behind the Defendant to Diff Hospital.

The Defendant testified that the deceased was told at the hospital that her BP was high and she couldn't be released. He identified the

persons that were present at the hospital as himself, Afabor, Mercy, Susan, Maro, PW1 and Eguriase. The deceased said she wanted a light snack and malt which the Defendant went to buy. The Defendant wanted to stay with the deceased and their son at the hospital but there weren't enough beds so Mercy Ekpellealone ended up staying with her instead. They all left at that stage which was around 10:00pm. He said he received a call at about 5:00am on 31st April 2016 from Mercy that the Doctor wanted to see him urgently. Upon reaching the hospital, the Defendant saw the deceased on drip and Mercy told him that the deceased couldn't sleep at night, fell off the bed and was vomiting profusely. He said he called PW1 to report all this to him. He said he was told by the nurse that the deceased would have to be transferred to another hospital as she needed to been seen by an endocrine doctor as the goitre she has is weighing heavily on her system.

The Defendant testified that, based on an advice given to PW1, the Defendant drove the deceased to National Hospital along with PW1 and a staff of Diff Hospital. The deceased was admitted in the emergency ward of the National Hospital and the deceased went for medical tests for which the Defendant paid. He tendered Exhibits T1 – T4 as receipts of said payment. One of the deceased's test results which the Defendant said he collected was also admitted in evidence as Exhibit U. Upon the Defendant's return from the laboratory, the doctor excused PW1 and told the Defendant that it was all over. Members of staff of the deceased's office came thereafter and the Defendant was given a tag and receipt (Exhibit V) for the depositing of the deceased's body at the mortuary. The Defendant said he was surprised to learn when he was arrested that an autopsy was conducted on his wife's body without his input. He called his family in Delta on 21st April 2016 and later went to Delta to inform them formally. He said his family went to hold a meeting with the deceased's family(including PW1 and PW8) at their family house in Benin on 29th or 30th April. That the deceased was thereafter buried on 12th May 2016 in Benin although he didn't attend the burial but his family was represented at the burial.

The Defendant testified that he was arrested on 25th May 2016 that he had killed the deceased. That PW1 and PW8 were falling over themselves for the deceased's assets and, even before the arrest, PW1 had called for a meeting with the Defendant to decide on the deceased's asset and custody of the couple's son. He at first refused to give up his son when he was arrested but later obliged as his sister could not take care of the boy being a special child. That PW1 thereafter told the Defendant to hands off the deceased's property including the ones jointly owned by the couple because they believed he would marry another wife and use the wealth to take care of her. He said it was because he refused to sign off the properties that led to the instant trial before this Court. He learnt from his tenant that letters of administration (Exhibit W) had been obtained by the deceased's brother UyiUkpomwan but signed by PW1. The Defendant said also that a civil suit was brought against him after he had been charged to Court. Exhibit W was admitted in evidence as court processes in said civil suit. He said that he made the statements Exhibits B1, B2, B4 and B4 to the police.

At the conclusion of the evidence of parties, each party filed final written address which they adopted as their oral arguments in support of their respective cases on the 21st September 2022.

The Defendant's final written address is dated and filed on 14th April 2022 while the Prosecution's final written address is dated 27th April 2022 and filed 29th April 2022. The Defendant's Counsel further filed a Reply on Points of Law to the Prosecution's final address.

Learned Counsel to the Defendant, Sir P.O. Aihiokhai, formulated a sole issue in his address for the determination of this case, to wit:

> *"Whether from the totality of evidence before this Honourable Court, the Prosecution has been able to discharge the onus of proof of the ingredients of the offence of Culpable Homicide punishable with death under Section 221 of the Penal Code."*

Learned lead Counsel for the Prosecution, J.S. Okutepa SAN, also distilled a sole issue which he put as follows in his final address;

> *"Whether the Prosecution proved beyond reasonable doubt the case against the Defendant as required by the law for the Defendant to be convicted as charged."*

The full arguments of both counsel on behalf of the parties is captured in the record of the court in this case. Same is however summarised hereunder:

Making submissions on his sole issue, learned defence Counsel identified three ingredients which must be proved to secure a conviction for the offence of culpable homicide punishable with death under Section 221 of the Penal Code. He also relied on the case of MAIGARI V. STATE (2010) 16 NWLR PT. 1220 P. 439. Counsel conceded that the first ingredient, which is that the deceased actually died, has been established in this case. He noted that Exhibit M2 was a petition in respect of the sudden and unnatural death of the deceased and further questioned that if there was a coroner's inquest, where was the report of the Coroner? He posited that withholding evidence is fatal to the Prosecution's case and referred this Court to Section 167(d) of the Evidence Act submitting that it means the deceased died of natural causes. He contended that from Exhibit L, the police sent letters of investigation to Diff Hospital and National Hospital where the deceased was attended to but the Prosecution withheld these facts. That for there to be a safe cause of death there must be a vivid description of the injuries for which the deceased received treatment at the hospitals. He relied on OGUNTOLA V. THE STATE (1996) 2 NWLR PT. 432 P. 503 and AIGOUOREGHIAM V. THE STATE (2004) ALL FWLR PT. 195 P. 716. He posited that apart from the police investigation report Exhibit L, it was not enough for PW2 to state that there was another police investigation report as the Prosecution ought to have tendered same. He contended that there was no compliance with Exhibit L.

Learned Counsel to the Defendant, submitted that the testimonies of the prosecution witnesses are hearsay regarding events that allegedly took place long before the deceased's death. That PW3 admitted that the subdural haemorrhage can be caused by a crash, fall or violent attack. He argued that to secure conviction on circumstantial evidence in a case of culpable homicide punishable with death, such circumstantial evidence must be cogent, complete and unequivocal pointing to the conclusion that the accused person and no one else committed the homicide. He contended that there is evidence before the court that the deceased had history of ailments. It is Counsel's submission that the circumstantial evidence given by the Prosecution in this case is mere circumstances of suspicion for which this Court cannot safely convict the Defendant. He relied on a plethora of authorities. He argued that even if it is established that the cause of death of the deceased was subdural haemorrhage, the Prosecution failed to prove that the Defendant is linked to the cause of death. That the Defendant had testified and denied all the allegations against him and was only doing the needful when he filed Exhibit Z in respect of his late wife's probate. Counsel posited that the stories allegedly gotten from the deceased and narrated to this Court by the prosecution witnesses are all hearsay evidence and cannot be relied upon as dying declarations under Section 40(1) of the Evidence Act. He submitted that the Prosecution has failed woefully to prove beyond reasonable doubt that the Defendant committed culpable homicide under Section 221 of the Penal Code and urged this Court to discharge and acquit him.

Proffering legal arguments on his sole issue, learned Senior Advocate of Nigeria submitted on behalf of the Prosecution that the Prosecution has proved the essential ingredients of the offence in this case. He cited Section 221 of the Penal Code and identified the same three ingredients (which Defence Counsel had identified in his address) that must be proved to secure conviction for the offence of culpable homicide punishable with death. Learned Prosecution Counsel posited that it has been clearly established that the deceased, Mrs. Louisa Amenaghawon Eni-Umokoro died on 21st April 2016. He submitted that the Defendant killed the deceased, intending to cause her death or

knew that death was the probable consequence of his act and learned Counsel urged this Court to so hold. He posited that voice recordings which were transcribed to Exhibit R would show that the deceased was the Defendant's punching bag and the beatings caused her death. He said PW3's testimony narrated the cause of death of the deceased as subdural haemorrhage and ruled out other causes, while the Defendant on the other hand gave varied causes of the deceased's death. He posited that the defence failed to establish inconsistencies in PW3's testimony or call expert medical evidence to controvert same. He said that the evidence of PW4 shows the violent application of force by the Defendant to the head of the deceased. He submitted that when Exhibit K is taken together with the evidence of PW3, PW1, PW4, PW7 and PW8, the reasonable conclusions which this Court is urged to draw is that the Defendant and no one else killed the deceased. That there is evidence that the Defendant succeeded in driving away all the relatives of the deceased to enable him perfect his criminal enterprise of eliminating her. He argued that PW3's evidence is to the effect that the subdural haemorrhage caused by violent attacks suffered by the deceased would not cause her death immediately but gradually. That there is therefore clear nexus between the violence which the deceased inflicted on the deceased and her cause of death.

Learned Prosecution Counsel further submitted that it is clear that the reason why the Defendant performed the heinous act was to take over the assets and properties of the deceased. He referred this Court to Exhibits Z and AA and contended that while the law is that motive is not a necessity to establish a crime, it helps in its detection and proof. He relied on the case of FRANCIS IDIKA KALU V. THE STATE (1993) LPELR-1656(SC). He submitted that the Prosecution has been able to prove through strong circumstantial evidence that the Defendant intentionally killed the deceased. He relied on a plethora of decided cases on circumstantial evidence. He further posited that the question of how the deceased had subdural haemorrhage can only be answered by the Defendant being the last person seen with the deceased before she had subdural haemorrhage. He relied on the case

of IJEOMA ANYASODOR V. THE STATE (2018) LPELR-43720(SC).

In response to the Defendant's final written address, learned Counsel to the Prosecution submitted that there is nothing hearsay in the evidence of PW1, PW4 and PW8 who narrated to the court the ordeals faced by the deceased in the hands of the defendant as told to them by the deceased. He contended that these come within admissible evidence under Section 40(1) of the Evidence Act 2011 and statements made by the deceased to these witnesses are evidence of dying declarations. He relied on the case of OKORO V. STATE (2006) LPELR-7594(CA). He posited that the deceased consistently told PW1, PW4 and PW8 that the Defendant beats her and hit her head while PW7 was a witness to such attack. Counsel argued that the defence was availed all documents which the Prosecution intended to use to prosecute the Defendant and the defence argument of the failure to tender coroner's report lost sight of the law. He contended that the Prosecution never withheld evidence as it has the right to call any evidence it wants to prove its case and further relied on CHUKWU V. STATE (1992) LPELR-854(SC).

He concluded his arguments in his final address by urging this Court to find that the Defendant deliberately killed the deceased by hitting her head which caused subdural haemorrhage and which eventually led to her death. He further urged this Court tofind the Defendant guilty as charged and convict him accordingly.

Replying on Points of law, learned Counsel to the Defendant submitted inter alia thatthe persons who made the extra judicial statements (admitted in evidence as Exhibits D, E and J) to the Police were never called as witnesses at trial to enable the Defence cross-examine and test the veracity of the contents thereof. He contended therefore that Exhibits D, E and J go to no issue. He reiterated that the evidence of PW1, PW4 and PW8 amount to hearsay evidence which is not excused by Section 40 of the Evidence Act 2011. He also reiterated his argument on withholding evidence (i.e. coroner's report) by the Prosecution.

I have carefully considered the Charge before the Court, entire evidence adducedand the arguments of both parties via their final written and oral submissions. The issues formulated by both parties are similar in content and apt. I would adopt same and distil the sole issue for determination as;

> **Whether from the totality of evidence before this Honourable Court, the Prosecution has been able to discharge the burden of proof placed on her by law to prove the ingredients of the offence of Culpable Homicide punishable with death under Section 221 of the Penal Code beyond reasonable doubt.**

In the resolution of the issue for determination before this Court, I am mindful of the trite position of the law that in criminal trials, the Prosecutionhas the unshifting burden and duty to prove all (and not merely some) of the ingredients of the offence charged beyond reasonable doubt. The standard of proof is such that if there is any element of doubt in relation to any of the ingredients, the doubt is to be resolved in favour of the defendant. The discharge of this burden of proof, requires the prosecutionto produce plausible and credible evidence which may be direct; or if circumstantial, it must be of such quality or cogency that a court could safely rely on it in coming to its decision in the case. – see **Section 135 of the Evidence Act 2011** and **Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)**. See also the following cases;

CHUKWUMA V. F.R.N (2011) LPELR–863(SC) PP. 15 – 17 AT PARAS. F-A; P. 19. PARAS. D-E,

UMAR V. STATE (2014) LPELR–23190(SC) PP. 32 – 34 AT PARAS. C-B,

ESSEYIN V. STATE (2018) LPELR–44476(SC) AT PP. 10 – 11PARAS. F-D,

ATTAH V. STATE (2019) LPELR–48287(CA) AT PP. 19 – 21 PARAS. E-C,

and

OKOLI V. STATE (2021) LPELR–56277(CA) AT PP. 13 – 15 PARAS. F-A.

In the instant case, the Defendant has been charged with the offence of culpable homicide punishable with death under **Section 221 of the Penal Code** which provides as follows;

> *221. Except in the circumstances mentioned in Section 222 of this Penal Code, culpable homicide shall be punished with death-*
>
> *(a) if the act by which death is caused is done with the intention of causing death;*
>
> *or*
>
> *(b) if the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause.*

The offence of 'culpable homicide' itself is defined in **Section 220** of the same Penal Code as follows;

> *220. Whoever causes death-*
> *(a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or*
> *(b) by doing an act with the knowledge that he is likely by such act to cause death; or*
> *(c) by doing a rash or negligent act, commits the offence of culpable homicide.*

See **STATE V. DA'U (2021) LPELR–56601(SC) AT P. 13 PARAS. A-E** per Ariwoola JSC (now CJN).

Now there are certain ingredients/elements that must be proved beyond reasonable doubt by the prosecution to establish the offence

of culpable homicide punishable with death and secure a conviction for same under **Section 221 of the Penal Code**. They are;

(i) *That a human being (the deceased) died;*
(ii) *That it was the act of the defendant that caused the death; and*
(iii) *That the act of the defendant which caused the death was done with the intention of causing death or grievous bodily harm or knowing that death or grievous bodily harm was the likely consequence of the act.*

See the following Supreme Court and Court of Appeal cases;

KAZA V. STATE (2008) LPELR-1683(SC) AT PP. 29 – 30 PARAS. E-B,

ESSEYIN V. STATE (SUPRA) AT PP. 18 – 19 PARAS. F-E,

STATE V. IBRAHIM (2019) LPELR-47548(SC) AT P. 21 PARAS. B-E,

JIBRIN V. STATE (2021) LPELR-56233(SC) AT PP. 61 – 62PARAS. F-B,

DERIBA V. STATE (2016) LPELR-40345(CA) PP. 10-11 PARAS. F-E,

YELLI V. STATE (2017) LPELR-42134(CA) AT P. 22 PARAS. C-F,

and

OBIDAH V. STATE (2021) LPELR-56237(CA) AT P. 22 PARAS. D-F.

Both the Prosecution and the Defence Counsel appear to bein agreement(in their final address) on these foregoing ingredients to be proved by the Prosecution in the instant case.

It is also settled law that failure on the part of the Prosecution to prove any or all of the ingredients/elements so itemised above would be

fatal to the charge against the Defendant. – see **DERIBA V. STATE (SUPRA)**.

The charge against the Defendant in this case includes the allegation that Mrs. Louisa Amenaghawon Eni Umukoro died. On the first ingredient i.e. that a human being died, there appears to be a consensus between the Prosecution and the Defence that this ingredient has been established by the Prosecution to wit, that Mrs. Louisa Amenaghawon Eni Umukoro died.

A careful perusal of the evidence before this Court reveals several testimonies of witnesses on the passing of the defendant's wife. PW1 testified to the effect that Mrs. Louisa Eni Umukoro who was his immediate younger sister is deceased. The evidence of PW4 and PW8 is to the effect that the deceased was their sister-in-law and sister respectively and that she died on 21st April 2016. All these pieces of evidence were neither discredited under cross examination nor challenged by contrary evidence by the Defence. Further thereto, the evidence before this Court is that PW5, who knew the deceased very well during her lifetime, identified the deceased's body at the National Hospital Abuja mortuary prior to an autopsy/post mortem examination conducted on said body by PW3's team of pathologists. Even the Defendant testified that the deceased was his wife and that she is indeed dead.

I therefore find that the death of the deceased (Mrs. Louisa Eni Umukoro) has been sufficiently proved in this case.The first ingredient required in a charge of culpable homicide punishable with death has thus been established beyond reasonable doubt and I so hold.

The second ingredient to be established by the Prosecution is that the Defendant's act caused the death of the deceased. In other words, that it was the Defendant that caused the death of the deceased.

The charge before this Court specifically alleges that the Defendant caused the deceased's death by hitting her on the head which caused internal haemorrhage.

The position of the law is that a causal link must be established between the cause of death of the deceased and the acts of the defendant and this can be proved either by direct eye witness account, circumstantial evidence or by a free and voluntary confessional statement of the defendant which is direct and positive. – See

UMAR V. STATE(2014) LPELR-23190(SC)AT P. 34 PARA C-A.

See also

OYENIYI V. STATE (2019) LPELR-48220(CA) AT P. 16 PARAS. B-C,

MBANG V. STATE (2009) LPELR-8886(CA) AT PP. 17-18, PARAS. E-C,

DIKE V. STATE (2014) LPELR-23539(CA) AT P. 19 PARAS. A-F

and

BASHIR V. KANO STATE (2016) LPELR-41561(CA).

Nonetheless, in cases where direct or circumstantial evidence come to play, same MUST HAVE NO other co-existing circumstances which will weaken or destroy that inference. – See**JOSEPH LORI & ANOR V. THE STATE (1980) LPELR-1794 (SC) AT PP. 8 – 9PARAS. F-D** where the Supreme Court held that;

> *"But the circumstantial evidence sufficient to support a convicti on in a criminal trial, especially murder, must be cogent, compl ete and unequivocal. It must be compelling and must lead to the irresistible conclusion that the prisoner and no one else is the m urderer. The facts must be incompatible with innocence of the a ccused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Dealing with the nature of circu*

mstantial evidence in a case from the Supreme Court of the form er British Guyana, Tepper v.Queen (1952) AC 480 at 489 PC. L ord Normand said:-

> *"Circumstantial evidence may sometimes be conclusive, bu t it must always be narrowly examined, if only because evi dence of this kind may be fabricated to cast suspicion on a nother. Joseph commanded the steward of his house, "put my cup, the silver cup, in the sacks' mouth of the youngest", and when the cup was found there, Benjami n's brethren too hastily assumed that he must have stolen it . It is also necessary before drawing the inference of the ac cused's guilt from circumstantial evidence to be sure that t here are no other co-existing circumstances which would weaken or destroy the inference". - (Underlining mine).*

See also

LEVI V. STATE (2019) LPELR-46837(CA) AT P. 17 PARAS. B-C per Pemu JCA.

In order to establish this second ingredient, it has been held in a plethora of decided cases that the first step at this stage is to establish the biological cause of death and not who caused the death. Where there is no certainty as to the cause of death, the enquiry should not proceed further but where the cause of death is ascertained then the next step in the enquiry is to link that cause of death with the act or omission of the person alleged to have caused it. – See the case of **TEGWONOR V. STATE (2007) LPELR-4674(CA) AT PP. 21 – 22 PARAS. D-A** where the Court of Appeal held per Ibiyeye JCA that

> *"It is trite that in a charge of murder if the cause of death has not been proved it is futile and illogical to proceed to consider whether it was the accused who caused the death of the victim of attack. The primary inquiry into the cause of death of a person is an inquiry into the biological cause of death. The pertinent*

question at the stage of inquiry is: What caused the death and not who caused the death. When what caused the death has been ascertained the issue of who caused the death becomes relevant or one of causal connection between the act of the accused person and the biological cause of death."

See also

AMODU V. STATE (2019) LPELR-47484(CA)AT PP. 20 – 23 PARAS. F-A

and

DANJUMA V. NIGERIAN ARMY (2020) LPELR-50469(CA)AT PP. 23 – 25 PARAS. E-B.

In the instant case, PW2 is the Police Investigation Officer that investigated the allegation of unnatural death of the deceased. According to him, his investigation team filled coroner's form for the autopsy report conducted on the deceased's body. Exhibit K is the Report of Post Mortem Examination on the deceased from the National Hospital Abuja while Exhibits N1 – N4 are completed Coroner's forms in respect of the deceased. PW3 is the medical doctor and pathologist whose team of pathologists performed an autopsy/post mortem to enquire into the cause of the deceased's death. Exhibit K is his team's report which he signed. PW3's qualifications to give evidence as an expert was not particularly challenged by the defence.

I shall return anon to the effect of the Post Mortem Report (Exhibit K) and PW3's oral testimony on the cause of death of the deceased.

Meanwhile, it is necessary at this stage to address*pronto*some salient issues that border on presumptions and exceptions respectively,as raised by Counsel in their final addresses.

Firstly, is the issue of police investigation report and coroner's report viz-a-viz allegation of withholding evidence which was raised by the Defence Counsel in his final address.

It is the Defence Counsel's submission that the Prosecution withheld evidence by failing to tender a police investigation report and coroner's report in respect of the deceased's death.

The law is well settled that one of the facts which the Court may presume is that evidence which could be produced but is not produced would, if produced, be unfavourable to the person who withholds it. – see **Section 167(d) of the Evidence Act 2011**.

The records in this case show that pursuant to an Order by this Court obtained via an application by the Defence, the Prosecution produced an interim police investigation report and tendered same which was admitted in evidence as Exhibit L. Under cross-examination however, PW2 testified that there was a further police investigation report.

Learned defence Counsel made heavy weather in his final address about the failure of the Prosecution to produce the other police investigation report.

It is settled law that the choice of how to establish the offence(s) against a defendant is entirely that of the prosecution and the Court should not concern itself with the method of proof as may be adopted by the prosecution provided proof beyond reasonable doubt as required by the law will be secured. – see the Supreme Court's decision in **UMAR V. STATE (SUPRA) AT P. 36 PARAS. A-C** and **STATE V. OLATUNJI (2003) LPELR-3227(SC) AT PP. 32 - 33 PARAS. F-C**.

The question to ask therefore is whether a police investigation report is generally material enough to invoke the presumption of withholding evidence against the Prosecution in this case?

In **IKENMA V. STATE (2014) LPELR-45916(CA) AT P. 23 PARAS. A-G** it was held that police investigation reports cannot override the evidence of an eye witness. In fact, in **UZOR V. STATE (2016) LPELR-40809(CA) AT P. 27 PARAS. B-D** it was held that a police investigation report cannot be regarded as documentary evidence tendered by a witness as its main purpose is merely to guide the Court that there is prima facie evidence to support the charge before the Court.

The Prosecution has made conscious effort in this case to call witnesses to testify on the allegation contained in the charge against the Defendant. An interim police report was tendered at the behest of the defence. There is nothing before this court to convince me to regard the alleged second police investigation report mentioned by PW2 under cross-examination as material enough for the invocation of the presumption of withholding evidence under **Section 167(d) of the Evidence Act 2011** against the Prosecution.

Regarding the purported coroner's report, it would appear from the provisions of **Section 24 of the Coroner's Act, Cap. 489, Laws of the Federal Capital Territory, Abuja 2006**, that a person may be charged to court for the death of a deceased person even though a coroner's inquest into the death of that person had been commenced but not yet concluded. This can be done where there is sufficient evidence available to charge such a person. It follows therefore that a coroner's report may not be a *sine qua non*for prosecuting a person for the death of another where there is sufficient evidence available to sustain such a charge.

In the instant case, the Prosecution led evidence and particularly relied on medical evidence as to the cause of death of the deceased i.e. Exhibit K (Post mortem report) and the oral testimony of an expert forensic pathologist (PW3). These may or may not be enough to establish the charge against the Defendant in the circumstance. That is however the Prosecution's prerogative. Be that as it may, there is nothing before me to convince me that the mere failure of the Prosecution to tender a coroner's report is enough for the invocation

of the presumption of withholding evidence under **Section 167(d) of the Evidence Act 2011** against the Prosecution.I refer to the case of **TEGWONOR V. STATE (SUPRA) LPELR-4674(CA)AT P. 22 PARAS. A-F** where it was held per Ibiyeye JCA thus;

> *"The respondent, for reasons not disclosed to the trial Court withheld that vital Evidence. The prevailing circumstances of this case do not admit of the invocation of the presumption enshrined in Section 149 (d) of the Evidence Act because without the Evidence of the absenting Augustine, though vital, the prosecution was able to establish one of the essential ingredients of murder in this case that is to say death of the deceased."*

See also**EWUGBA V. STATE (2017) LPELR-43833(SC) 7 NWLR PT. 1618 P.262**.

Apparently, it is the duty of the prosecution to lead material evidence that would sufficiently establish the charge against the defendant. This is without prejudice to the provision of **Section 36(6)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended)** for the defendant to be given adequate time and facilities for his defence. It was upon the application of the defence that Exhibit K (the Interim Police Report) was produced by the Prosecution and tendered before this court.

Suffice to say that for the above cited reasons, this Court would not invoke the presumption of withholding evidence under **Section 167(d) of the Evidence Act 2011** against the Prosecution.

Secondly is the reliance of the Prosecution on the evidence of some prosecution witnesses as dying declaration by the deceased.

Learned SAN for the Prosecution Counsel has argued that PW4's testimony of incidents narrated to her by the deceased is admissible as dying declaration under Section 40(1) of the Evidence Act 2011, a

position which the Defendant's Counsel strongly opposed.

On this point, the position of the law is that evidence of a witness who is not giving evidence of what he knew or did personally but of what he was told by another person amounts to hearsay where the purpose of the statement is to establish the truth of the statement and not simply that the statement was made. The general rule is that hearsay evidence is inadmissible and cannot be relied upon by the Court. This is what is called the 'hearsay rule'. – see

Sections 37 and 38 of the Evidence Act 2011.

See also the case of

SAMA'ILA V. STATE (2021) LPELR-53084(SC) AT PP. 17 – 20 PARAS. B-Aper Augie JSC.

Also refer to the following cases;

EZEKWE V. STATE (2018) LPELR-44392(SC) AT PP. 25 – 26 PARAS. C-B,

MOHAMMED V. A-G, FED (2020) LPELR-52526(SC) AT PP. 27 – 28 PARAS. F-E,

BRILA ENERGY LTD V. FRN (2018) LPELR-43926(CA) AT PP. 148 – 151 PARAS. F-C

DAUDA V. FRN & ORS (2021) LPELR-53829(CA) AT PP. 22 – 23 PARAS. E-D

and

ABAH V. FRN (2022) LPELR-56738(CA) AT PP. 48 – 49 PARAS. D-B.

In **EKPO V. STATE (2015) LPELR-25837(CA)**the Court of Appeal put it rather much simply as follows **AT P. 9 PARAS. A-B**;

"The evidence of a person who did not personally witness an incident is hearsay. Such evidence is worthless and unhelpful."

Essentially, by virtue of **Sections 39(a) and 40 of the Evidence Act 2011**, in cases in which the cause of a person's death comes into question, a statement made by that person (who later dies) as to the cause of his death or as to any of the circumstances of events which resulted in his death, is admissible where the person who made the statement believed himself to be in danger of approaching death although he may have entertained at the time of making it hopes of recovery. Such statements by the deceased are commonly known as 'dying declarations' and are one of the few exceptions to the hearsay rule.

See

EZEKWE V. STATE (SUPRA) AT PP. 9 – 11 PARAS. E-C,

MAKERI V. STATE (2020) LPELR-50331(CA) AT PP. 41 – 45 PARAS. B-C,

JOHNNY V. STATE (2020) LPELR-50568(CA),

LEVI V. STATE (SUPRA) AT PP. 19 – 20 PARAS. E-B

and

AYINDE V. STATE (2017) LPELR-42176(CA) AT PP. 15 – 17 PARAS. F-B.

It is fairly settled position of the law that the following conditions must be fulfilled before a statement can be admissible as dying declaration under **Section 40 of the Evidence Act 2011**;

(i) the person who made the statement must have died before the statement, written or verbal, is tendered in evidence;
(ii) the statement must relate to the cause of death of the person who made the statement;

(iii) The statement is admissible in whatever proceeding in which the cause of death comes into question: it is not only relevant in a trial for murder or manslaughter of the maker of the statement; and

(iv) At the time of making the statement, the maker of the statement must believe himself to be in the danger of approaching death, though he may have hopes of recovery; in other words he need not have lost all hope of life or be in settled hopeless expectation of death.

See the following cases

MAKERI V. STATE (SUPRA) AT PP. 41 – 45 PARAS. B-C,

JOHNNY V. STATE (SUPRA) AT PP. 32 – 34 PARAS. F-A

and

SABASTINE V. STATE (2020) LPELR-50319(CA) AT PP. 45 – 50 PARAS. D-A.

A careful perusal of the record would reveal that some of what PW4 said the deceased told her did not relate to the injuries that caused her death as per Exhibit K. Regarding what PW4 said the deceased told her on a plane flight about a week before the deceased died, PW4 said the deceased merely said she had headache. It is imperative to point out that PW4 did not say the deceased drew a connection between the headache and incidents of violence or abuse she narrated involving the Defendant. PW4 said the deceased told her of incidents but did not say exactly when these incidents took place. Invariably, there seems to be a rather general and vague description of incidents without establishing what exactly the deceased might have told PW4 that would make the deceased be in apprehension of looming or approaching death. The actual words used by the deceased were not established. The test as to whether the deceased was in apprehension of approaching death is not an objective one which would depend on the opinion of PW4 (to whom stories of incidents were told). The test is rather a subjective one as to whether the deceased herself thought at

the time she supposedly made the statements whether she believed herself to be in immediate danger of approaching death. – see

OLALEKAN V. STATE (SUPRA) AT PP. 29 – 32 PARAS. C-F,

JOHNNY V. STATE (SUPRA)

and

SABASTINE V. STATE (SUPRA).

It has been held that for a piece of evidence to pass as dying declaration there must be proof that the declarant when talking to the witness was under the apprehension that death was knocking at his/her door. Therefore, strict proof of the actual words used by the deceased is generally required in proof of the dying declaration to avoid any uncertainties. – see **AKPAN V. STATE (1992) LPELR-381(SC) AT P. 39 PARAS. C-D**,

SULE V. STATE (2014) LPELR-24044(CA) AT PP. 16 - 17 PARA. B-B,

AZUBUIKE V. STATE (2019) LPELR-48238(CA)

and

ONYEKWERE V. STATE (2019) LPELR-48235(CA)

In **JOHNNY V. STATE (2020) LPELR-50568(CA) AT PP. 35 – 37 PARAS. E-E** the Court of Appeal held thus;

> *"It seems to me that there is nothing in the above statement of the deceased declarant - Exhibit 8 which might suggest objectively that the declarant subjectively "believed himself to be in danger of approaching death" at the time the said statement was made. The statement of the deceased is not admissible as a dying declaration in the absence of proof that he believed himself to be in such danger. Such proof is sometimes attained by means of the very words uttered by the deceased. Indeed, for a dying declaration to be admissible, strict proof of the actual words used or uttered by the deceased is generally*

required. This is necessary to avoid uncertainties as the words used mirror the state of mind of the declarant."

In order for narrations to constitute dying declarations and have such effect, they must rise above the status of tales being passed on. The actual words used by the deceased are often necessary to establish that the declaration was made at a time when the deceased was in actual apprehension of death. In the instant case, the actual words used by the deceased are necessary if the narrations attributed to the deceased by PW4 are to be relied upon as dying declarations by the Prosecution. Unfortunately, the Prosecution did not give thought to this when PW4 was giving evidence at trial. The narrations are PW4's own summary of what she was supposedly told by the deceased. In the peculiar circumstances of this case, they cannot be relied upon as dying declarations as to constitute an exception to the rule against hearsay.

The narrations which PW8 said the deceased made to her before her death would also suffer the same fate.

In sum, the testimonies of PW4 and PW8 of narrations told to them by the deceased amount to hearsay and inadmissible to prove the fact that the events described in such narrations actually did occur. So does the evidence of other witnesses who testified as to what they were told by other persons in this case. Thus, the aforementioned pieces of evidence do not qualify as dying declaration under the circumstance and cannot therefore be admissibleas exception to the hearsay rule.

Thirdly, Learned SAN for Prosecution, further argued for the application of the doctrine of 'last seen' to this case.

The doctrine of 'last seen' means that the law presumes that the person last seen with a deceased bears full responsibility for his death if it turns out that the person last seen with him has been found dead. Thus, wherea defendant was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and

leads to an irresistible conclusion that it was the defendant that was last seen with the deceased and no other person, there is no room for an acquittal. A trial Court can safely convict on such evidence. It is therefore the duty of such a defendant faced with compelling circumstantial evidence to give explanation relating to how the deceased met his death. In the absence of such explanation, a trial Court will be justified to hold that it was the defendant that killed the deceased being the person last seen with him. There is a plethora of decided cases on this doctrine. See

KOLADE V. STATE (2017) LPELR-42362(SC) AT PP. 49 – 50 PARAS. E-F,

ESSEYIN V. STATE (2018) LPELR-44476(SC) AT PP. 14 – 15 PARAS. D-C,

STATE V. SUNDAY (2019) LPELR-46943(SC) AT PP. 12 – 13 PARAS. B-D

and

OLADAPO V. STATE (2020) LPELR-50553(SC) AT PP. 6 – 7 PARA. C-C.

On the meaning and application of the doctrine of 'last seen', the Supreme Court put it in very simple terms when it held as follows in **JUA V. STATE (2010) LPELR-1637(SC) AT PP. 38 – 39 PARAS. E-A**;

> *"The position of the law, as firmly settled, is that if Mr. A. was last seen alive with or in company of Mr. B. and the next thing that happened, was the disappearance of Mr. A., the irresistible inference, is that Mr. A. was or had been killed by Mr. B. The onus, will then be on Mr. B. to offer an explanation for the purpose of showing that he was not the one who killed Mr. A. See the case of Igho v. The State (1978) 3 S.C. 87; Gabriel v. The State (1989) 5 NWLR (PT.122) 457; (1989) 12 SCNJ. 33 - Per Belgore, JSC (as he then was)."*

It has been held that where, as in the instant case, direct evidence of eye witnesses, is not available, the Court may infer from the facts proved, the existence of other facts that may legally tend to prove the guilt of a defendant such as the application of the doctrine of last seen. – see **SUNDAY V. STATE (2013) LPELR-19978(CA) AT PP. 21 – 23 PARAS. F-C**.

Before the doctrine of last seen can be upheld, some conditions must be met i.e. (A) That the defendant was last seen or in the company of the deceased when the deceased met his death,and (B) That the defendant has to proffer an explanation as to the how the deceased met his death. – **NWACHUKWU V. STATE (2014) LPELR-22531(CA) AT P. 31 PARAS. E-F**.

In the instant suit, there is overwhelming evidence that the deceased died in the hospital and her friend Mercy Ekpelle had spent the deceased's last night and last day with her in the hospital prior to her death.

Thus, before the doctrine of last seen alive can apply, the time gap between the period the deceased was last seen alive with the defendant and the time the deceased is found dead must be so small as to rule out the possibility of any person intervening. – see

ZUBAIRU V. STATE (2021) LPELR-54227(CA) AT PP. 31 – 37 PARAS. E-C.

Nevertheless, it would appear that the doctrine of 'last seen' would still apply if a deceased died several days after he was last seen with the defendant, *where the defendant was the person last seen with the deceased when the deceased received the fatal injuries that would eventually cause his death*. – see

ANYASODOR V. STATE (SUPRA) AT PP. 21 - 23 PARAS. F-B.

In the instant case however, there is nothing that establishes when exactly the deceased sustained the injuries (subdural haemorrhage)

that would appear to have contributed to her death in the hospital. As there is no cogent and reliable evidence before this Court as to when the deceased sustained those injuries, it would be near impossible to apply the doctrine of 'last seen' to this case. Put differently, there is no actual evidence before this Court as to who exactly last saw the deceased when she sustained the fatal injuries and whether it was the Defendant that was seen with her at that time. – see the case of

AGBOM V. STATE (2012) LPELR-7910(CA) AT PP. 28-29, PARAS. E-A where the Court held that;

> *"The prosecution anchored the appellant's conviction on the "last seen theory", namely that where the suspect was last seen with the deceased, there is a duty on him to explain or show the deceased's whereabout or how he met his death. But in this appeal no such evidence as to who last saw IguluAwara conveying the appellant on his motorbike has testified. The Court had no justification to draw a conclusion that it was the appellant who murdered IguluAwara. There must be clear, cogent and unequivocal evidence as to who last saw the deceased for the conviction to be sustained. See Jua vs State (2010) 2 MJSC 152 at 175; Ozo vs The State (1971) NSCC 101."*

It would be highly speculative to say that the Defendant was the last person seen with the deceased when she received the injuries. Consequently, the application of the doctrine of 'last seen' to the instant case would require a great degree of speculation and this Court does not indulge in speculation and conjecture. – see

ORISA V. STATE (2018) LPELR-43896(SC) AT PP. 25 – 26 PARAS. C-Aand

AKOKHIA V. STATE (2018) LPELR-44163(CA) AT PP. 17 – 18 PARAS. D-A.

It must be noted that the application of the doctrine of 'last seen' is not a reliance on mere speculation and conjectures. No. The doctrine itself is the application of logical conclusions and inferences derived from well-established and proven facts. – see

SUNDAY V. STATE (SUPRA) AT PP. 21 – 23 PARAS. F-C.

As it is, the facts of the instant case do not disclose circumstances for the application of the doctrine of 'last seen'. The doctrine cannot therefore be applied to the instant case against the Defendant and I so hold.

Having resolved the afore stated arguments of counsels, there still remains before the court a litany of evidence of witnesses to consider.

I now return to the effect of the medical evidence produced by the Prosecution as to the cause of death of the deceased i.e. autopsy/post mortem report (Exhibit K) and the testimony of expert pathologist (PW3).

Now the position of the law is that medical evidence is not always a *sine qua non* to establishing cause of death in all cases of murder. Thus, where the victim dies and the evidence leaves no doubt as to the manner of cause of death, medical evidence may be dispensed with. – See
HARUNA V. A G FEDERATION (2010) LPELR-4233(CA) AT PP. 9 – 10 PARAS. F-E.

Where however the manner of death is not exactly clear and thus likely to raise doubt as to the cause of death, then production of medical evidence of cause of death may become inevitable. See

STATE V. SUNDAY (2019) LPELR-46943(SC) AT PP. 20 – 22 PARAS. B-D.

Generally, the Autopsy Report which has been held to qualify as a Certificate, may be tendered by a police officer, usually, the investigating police officer.

In the case of **A-G FEDERATION V. OGUNRO & ANOR (2001) LPELR-9863(CA) AT PP. 19 – 21 where** it was held that

> *"It is a well-established practice, which accords with the criminal proceeding that the prosecution witness or witnesses are supposed, to testify to the effect that a medical expert or a pathologist performed post mortem examination on the corpse of the deceased and through that witness, usually the Investigation Police Officer (I.P.O), the result of the autopsy will be tendered and admitted. It is up to the defence to call the medical expert who issued the report to come to the witness box, to further explain some medical terms which are obscured vis-a-vis his opinions on the cause of the death."*

In line with the foregoing procedure, as earlier observed, Exhibit K is the autopsy/post mortem report of examination ofthe deceased while PW3 is the medical doctor and pathologist who was one of the team (leader) of pathologists that performed the autopsy/post mortem.

In the instant case, there abounds testimony from the prosecution witnesses that the deceased was several times violently assaulted by the defendant, albeit this evidence is disputed by the Defence. One undisputed and established fact before the court however is that the deceased complained of having headaches and died days thereafter at the hospital. Various theories have been propounded by the witnesses as to the cause of death of the deceased. In peculiar circumstance such as this, the medical evidence sought to be adduced by the Prosecution is therefore imperative to establish the cause of the deceased's death in this case. See the case of

AMODU V. STATE (2019) LPELR-47484(CA) AT PP. 20 – 23 PARAS. F-A where the Court of Appeal held that;

> *"In the instant case, the cause of death of the deceased was not ascertained beyond reasonable doubt. No doubt the evidence disclosed that the Appellant slapped the deceased, there was however no evidence that it was the slap that was the immediate cause of death or some other intervening factor. The deceased died several days after the slap and there is no medical evidence to establish the biological cause of death. Though, PW2 stated that he saw some injury on the deceased's head there was no evidence to connect the slap with the head injury. There is also no evidence to establish the nature of the head injury; i.e. whether it was superficial or deep. It therefore remains that the cause of death of the deceased was not proved."*–(Underline supplied by me for special emphasis).

The law is quite settled indeed that medical evidence (being an opinion of an expert) must be specific, strong, concrete and compelling in the light of the content thereof and must not be confusing, nebulous, unsatisfactory and unconvincing. Where medical evidence is available, it must be conclusive and not otherwise. – see **EBONG & ANOR V. STATE (2011) LPELR-3789(CA) AT PP. 19 - 21 PARAS. B-A**. See also**HARUNA V. A G FEDERATION (SUPRA) AT P. 9 PARAS. D-F** where it was held thus;

> *"The purpose of a medical report or evidence is mainly to prove the cause of death of the deceased. Such medical report or evidence must clearly show that the injury inflicted on the deceased caused the death without any intervening factor or factors as would create the possibility that the cause of death was something else other than the injury inflicted on the deceased. Onyia v. State (2006) 11 NWLR (pt. 991) 167 at 291; Oforlete v. State (2000) 12 NWLR (pt. 681) 415."*

PW3's (pathologist's)testimony essentially was to shed more light on the terms used in theautopsy report Exhibit K and his findings therein. He explained terms such as 'sub-dural haemorrhage', 'sub-galeal haematoma' and 'cyanosis' as contained in Exhibit K. He explained

that the injuries as found outside and within the deceased's skull bone show that the bleeding is as a result of blunt force to someone who is conscious and standing which could be either that something was used to hit her head or her head was used to hit something.

Now it is pertinent that I reproduce the conclusions reachedinPW3's report on the autopsy of the deceased (Exhibit K). It reads in part as follows;

> *"CAUSE OF DEATH*
>
> *1a. sub-dural haemorrhage*
>
> *2. Uterine fibroid*
>
> *Comment: Subdural haemorrhage is mostly caused by trauma and thereareno anatomical evidence of hypertensive cardiovascular disease. The systolic hypertension noted may be as a result of increase in intracranial pressure secondary to the traumatic subdural haemorrhage."*

'Subdural haemorrhage' (explained by PW3 as being as a result of trauma) is listed as a cause of death of the deceased. This is in tandem with the allegation against the Defendant in the charge that he caused the death of the deceased by hitting her on the head which caused internal haemorrhage.

However, 'Uterine fibroid' is also listed as a cause of death of the deceased and THIS does NOT agree with the allegation in the charge against the Defendant.

There's no medical evidence led by witnesses that explains "uterine fibroid" as a consequence or effect of "hitting on the head" or any other action attributed to the defendant.

I have noticed with some consternation that the Defence Counsel did not cross-examine PW3 on this rather crucial fact of a second cause of death apart from 'subdural haemorrhage' (which is usually caused by trauma). The fact that the Defence did not cross-examine PW3 on this

fact as evident in his autopsy report however does not relieve the Prosecution in this case of the duty of proving the cause of death beyond reasonable doubt and relying on medical evidence which must be conclusive as to cause of death of the deceased.

It is trite that to establish a charge of murder(or manslaughter), it must be proved not merely that the act of the defendant could have caused the death of the deceased, but that it did cause it. Even where *the defence did not suggest that death arose from other causes that would be no confirmation of evidence which falls short of showing that death did arise as a result of the defendant's act*. The onus to establish that the defendant's act resulted in the cause of death is not on the defence but on the prosecution. – See

SUNDAY V. STATE (2013) LPELR-19978(CA) AT PP. 26 – 29 PARAS. B-E.

It is also pertinent to note, and this is apposite here, that this Court is obliged to consider and cannot ignore or wave aside the issue of "Uterine fibroid" indicated in the Autopsy Report as possible cause of death of the deceased. – see the Supreme Court's decision in the case of **KAZA V. STATE (SUPRA) AT P. 42 PARAS. D-F**where the apex Court held as follows per Chukwuma-Eneh JSC;

> *"It is trite law that a Court trying a criminal case as here must consider all the defences raised by the accused and all other defences which surfaced in the evidence before the Court however slight or minor. See: Ahmed v. The State (1999) 7 NWLR (pt. 612) 641 at 679 para. D."* – (Underline supplied by me for emphasis).

See also **ORISA V. STATE (2018) LPELR-43896(SC) AT PP. 24 – 25 PARAS. F-A**.

Now it is established that the deceased, in her lifetime, had some health challenges such as goitre on her neck. – see the evidence of PW1, PW7 and PW8 under cross-examination. PW1 admitted under

cross-examination that he was aware that the deceased had fibroid. The Defendant also testified that the deceased had ***underlying health issues due to fibroid***and was managing goitre and High blood pressure as far back as 2006 around when they got married.

PW3's testimony in his examination in chief is that his team found goitre (enlarged thyroid gland) in the autopsy of the deceased as contained in page 5 of Exhibit K, but that this is unlikely to cause death. He however also stated that his team saw ***uterine fibroid*** in the deceased.

By Exhibit K, PW3's report of autopsy of the deceased, ***uterine fibroid*** is also a cause of the deceased's death. Neither Exhibit K nor the PW3's evidence suggests UTERINE FIBROID and SUBDURAL HAEMORRHAGE as alternate possible cause of death. This particular possible cause of death (uterine fibroid) has not been attributed to the Defendant in any way by prosecution's evidence. They have only led evidence on actions of the defendant apropos of sub-dural haemorrhage.From the evidence adduced and relied upon by the Prosecution, there appears to be a break in the cause of death of the deceased in this case.

Shedding light on the principle of causation in criminal trials, the Supreme Court per Tobi JSC held as follows in **AIGUOREGHIAN & ANOR V. STATE (2004) LPELR-270(SC) AT PP. 41 – 42 PARAS. F-C**;

> *"In order to hold an accused criminally responsible, the chain of causation must not be broken. Once there is a broken link in the chain of causation, that broken link must be resolved in favour of the accused as it affects the* ***actus reus*** *of the offence. In other words, where the injury which caused the death is not the proximate, legal or direct cause of the death of the deceased, the benefit of doubt must be given to the accused. I can still go further. Where there is more than one possible cause of death, the benefit of doubt must be given to the accused because the available evidence in such a situation does not pin the accused*

down to the death of the deceased. This is because there is an intervening or supervening cause, which equivalents in Rome's Latin home, are ***novus actus interveniens*** *and* ***nova interveniens*** *respectively."* – (Underline supplied by me for emphasis).

See also **OCHI V. STATE (2018) LPELR-45064(CA) AT PP. 19 – 22 PARAS. A-B**.

In **EBONG & ANOR V. STATE(2011) LPELR-3789(CA) PP. 28 – 34**, the Court of Appeal held that;

"Howbeit, where as in the instant case, the Court relied on medical evidence to establish the cause of death of the deceased, such medical evidence must clearly show that the injury or injuries inflicted on the deceased by the unlawful act of the accused persons, caused the death without any intervening or supervening cause or causes which culminated or contributed to the death of the deceased. Thus, where there is the possibility or strong likelihood that the cause of death could be attributed to cause or causes other than the actual injury inflicted, some doubt has been raised on the proper and actual cause of death and the benefit of such doubt must be resolved in favour of the accused person. see Oforlete v. The State (2000) 12 NWLR (Pt. 681) 415."

See also **ABDULLAHI V. STATE (2021) LPELR-55700(CA) AT PP. 45 – 46 PARAS. A-B**.

On the implication of criminal liability where the chain of causation is broken in a murder charge, the Court of Appeal held as follows in **TEGWONOR V. STATE (2007) LPELR-4674(CA) AT PP. 32 - 34 PARAS. A-D**;

"In the instant case, there appeared to be two causes of death. Thus, there is a cause of death apparently testified to by the 1st and 2nd witnesses for the respondent on the fact of an attack on

the deceased by the appellant which led to a grievous bodily injury and subsequent death and there is another cause of death given by an expert, the P.W.4. This scenario, no doubt, created a break in the chain of causation. It is settled that any such break in causation, otherwise known as ***novus actus interveniens****, should be resolved in favour of the accused person, in this case the appellant, as it affects the* ***actus reus*** *of the offence."*

Other than the issue of break in the chain of causationin this case before the Court, I have also made further observations apropos of evidence ledin respect of the violent attacks on the deceased. A careful scrutiny of the entire evidence of the prosecution witnesses reveals that there is no direct evidence as to when exactly the deceased sustained the injuries that resulted in the subdural haemorrhage which allegedly caused her death. PW3 said such bleeding from the brain could occur gradually over time, but no specific possible range of time was given. There are however two mutually exclusive causes given in Exhibit K (autopsy report) for the deceased's death. Subdural haemorrhage is one while uterine fibroid is another. There is clear evidence before this Court that the deceased had fibroid. Hence, going by the autopsy report Exhibit K, she could have died from uterine fibroid just as she could have died from subdural haemorrhage or even from both.

I have earlier stated that medical evidence is crucial in a case of this nature to establish cause of death of the deceased. Such medical evidence must be conclusive as to the injuries caused to the deceased being the cause of her death and no other possible cause. – see

EBONG & ANOR V. STATE (SUPRA) AT PP. 19 - 21 PARAS. B-A

and

HARUNA V. A G FEDERATION (SUPRA) AT P. 9 PARAS. D-F.

Unfortunately for the Prosecution and fortunately for Defence, the medical evidence which the Prosecution produced and relied on in this case is not conclusive as to pin the cause of the deceased's death to only subdural haemorrhage allegedly caused by the Defendant. The same medical evidence has also attributed the possible cause of the deceased's death to uterine fibroid which has not been linked to the Defendant. The two possible causes of death in this case have occasioned a break in the chain of causation and the doubt as to which of the two or whether both actually caused the deceased's death MUST be resolved in favour of the Defendant. – see the plethora of decided cases I cited earlier particularly the decision of the Supreme Court in **AIGUOREGHIAN & ANOR V. STATE (SUPRA) AT PP. 41 – 42 PARAS. F-C**.

It must be noted at this stage that I have carefully perused the Defendant's extra-judicial statements to the police (Exhibits B1 – B4) and nowhere therein did the Defendant say he hit his wife as to cause her death in the manner in which he has been accused in the Charge against him. Thus, his said statements (Exhibits B1 – B4) can neither be treated as confessional statements nor have such effect under the provisions of the **Evidence Act 2011** (particularly **Sections 28 and 29(i)** thereof). Assuming (though not inferring) anything in all or any of Exhibits B1 – B4 amount to a confession of deliberately hitting the deceased to kill her, the fact that two causes of death have been given by the medical evidence (Exhibit K) before the Court would still have raised the doubt as to whether it was the Defendant's act of causing trauma to the deceased (and subdural haemorrhage) that actually killed the deceased or the uterine fibroid which is also given as another possible cause of her death. Such reasonable doubt would still have had to be resolved in favour of the Defendant under such circumstances despite his confession. Alas, there is not even any admission by the Defendant suggesting an inference that he committed the offence charged. Hence, no confession to rely upon against the Defendant in this case.

It follows that the Prosecution has failed to establish the cause of death in this case as being a result of an act of the Defendant as

indicated in the charge. This is fatal to the case of the Prosecution. – see

AIGUOREGHIAN & ANOR V. STATE (SUPRA) AT P. 49 PARA. C.

It is trite that where there is no certainty as to the cause of death, the enquiry or matter should ordinarily not proceed further. – see

MAKERI V. STATE (SUPRA) AT PP. 31 – 32 PARAS. C-D.

On the effect of failure of prosecution to prove the elements or ingredients of an offence such as culpable homicide punishable with death, the Court of Appeal had this to say (and this is very pertinent) per Georgewill JCA in **DERIBA V. STATE (SUPRA) AT PP. 40 – 43 PARAS. C-B**;

> *"I had earlier in considering the first essential element of the offence of culpable homicide punishable with death under Section 221(a) of the Penal Code, held that on the evidence of PW1, even without any medical or post mortem report tendered in evidence, coupled with the evidence of PW3, PW4, PW5 and indeed DW1, the fact of both the death and cause of death of the deceased as resulting from the grevious injuries inflicted on him in the attack on him on the night of 1/6/2010 has been duly established by the Respondent. However, in law it is not enough on a charge alleging culpable homicide punishable with death and grievous bodily harm respectively, the fact that one of the essential elements of these grave offences has been established by the Respondent against the Appellant. The Respondent must go further to prove by credible and cogent evidence against the Appellant the other two essential elements of the offences charged; that it is the acts of the Appellant that caused the death of the deceased and/or the grievous bodily hurt on the PW4 as laid in Counts 1 & 2 respectively. In law therefore, the issue of the intention of the Appellant, that is the mental element of these offences, does not arise for consideration and unless and until it has been proved by the Prosecution that it was the act of the*

Appellant that caused the death of the deceased and/or caused the grievous hurt to the PW4. In law conviction for any offence can only be secured based on proof by sufficient, credible and cogent evidence in satisfaction of all the essential elements of the offence(s) charged, failing which an Accused person is entitled to be discharged and acquitted. However, in proving the guilt of an Accused beyond reasonable doubt, I agree with the submission of the learned DPP for the Respondent that it does not impose on the Respondent any greater duty than it simply entails, which is proof of all the essential ingredients of the offence(s) charged and not proof beyond all iota of doubt or proof to the hilt. See Emmanuel Eke V. The State (2011) 200 LRCN 143 @ p. 149. In a charge alleging the gravest of offences and carrying the death penalty upon conviction, the Prosecution must prove by credible evidence the guilt of the Accused person beyond reasonable doubt as required by law under Section 135(1) of the Evidence Act, 2011. In so doing, the clearest of evidence invoking neither doubt nor mere passion or compassion in the judge is needed in proof of all offences, particularly offences which by law carries the capital punishment upon conviction. Thus in law where such evidence is lacking in the case as presented by the Prosecution, it is immaterial that the Accused person gave unreliable evidence in his defence or that he prevaricated in his cross examination or even that he lied outrightly in his evidence. He is still entitled to an acquittal.

This may sound harsh against the Prosecution and may not be easily comprehended or appreciated by the untrained mind in the ways of the law, yet it is the law that even a lying Accused person against whom the Prosecution has not made out a case as would warrant his conviction is still entitled to an acquittal. It is the law! See Ajose V. FRN (2011) 6 NWLR (Pt. 1244) 465 @ p. 470."

Even if the cause of the deceased's death could (by some stretch of imagination) be said to have been established with certainty by the medical evidence before this Court to be as a result of subdural

haemorrhage occasioned by trauma, has such cause of death been linked to acts of the Defendant in this case?

By the Charge before this Court, the Defendant is accused of having caused the deceased's death *by hitting her on the head which caused internal haemorrhage*.

On the methods of proving the offence of culpable homicide punishable with death against a defendant, it has been held that proof beyond reasonable doubt as required by law can be achieved through the following methods: (i) by confession of the defendant, (ii) by direct evidence, (iii) by circumstantial evidence. Proof could be by a combination of all or any of the foregoing methods. – see

UMAR V. STATE (SUPRA) AT P. 34.PARAS. C-E. See also

OBIDAH V. STATE (SUPRA) AT P. 22 PARAS. A-C

and

DERIBA V. STATE (SUPRA) AT PP. 13-14 PARAS. D-A.

I have already stated that although the Defendant made extrajudicial statements to the police (Exhibits B1 – B4), same do not amount to confessions in this case. There is therefore no confession before this Court to prove/establish a link between the Defendant and the act that caused subdural haemorrhage and the resultant death of the deceased.

On the other two methods of proof i.e. direct evidence and circumstantial evidence, it is trite that circumstantial evidence differs from direct evidence only in the logical relation to the fact in issue. While evidence as to the existence of the fact is direct evidence, circumstantial evidence relates to the existence of facts which raise a logical inference as to the existence of the fact in issue. – see **ADESINA & ANOR V. STATE (2012) LPELR-9722(SC) AT P. 27 PARAS. D-E**.

The fact in issue at this stage of the case, pertaining to the second ingredient of the offence of culpable homicide punishable with death, is the Defendant allegedly hitting the deceased on her head and causing her death by *internal haemorrhage.*

I have carefully perused the evidence available to this Court on record. There seems to be no direct evidence of a witness who saw the Defendant actually inflict the injuries that caused the subdural haemorrhage that killed the deceased. Nowhere in PW1's oral testimony which he gave on oath before this Court did he say he witnessed the Defendant hit the deceased on the head. PW2, PW3 and PW6, the Investigating Police Officer, the medical pathologist and the transcriber respectively did not testify in any way that they witnessed any assault between the Defendant and the deceased.

Let me here quickly address the issue raised by the Defence Counsel in his address as to the weight to be attached to Exhibits D, E and J.

Exhibits D, E and J are extra-judicial statements made to the police by Eli Priority, Mercy Ekpelle and OsatoEkhosuehi respectively. They were admitted in evidence at trial through the police officer to whom they were made and who recorded them. The persons who made those statements could thereafter have been called to testify on the contents of their extrajudicial statements and thus give the Defence the opportunity to cross-examine them on the veracity of their said statements. These persons were however not called to testify as witnesses in this case. Interestingly, parties have in their final written addresses referred this Court to content of the said exhibits despite the fact that the purported makers were not called to give evidence.

In **AGBANIMU V. FRN (2018) LPELR-43924(CA)** the Court of Appeal, in describing the proper use of an extra-judicial statement, held thus per Otisi JCA **AT PP. 41- 43 PARA. D-E**;

> *"Exhibits F and G were the extra judicial statements of Ogunronbi Gbenga and of Abayomi Adeoti. None of these persons testified in this matter. I want to straightaway say that*

the contents of Exhibits F and G cannot at all be used against the Appellant. In criminal trial, an extra-judicial statement is used for the cross examination of the witness who made the statement in order to discredit him. The extra judicial statement of a witness who was not called to testify may only be tendered to prove that it was made in the course of investigation and no more. The contents thereof, which were not made on oath, cannot be relied upon as evidence against the accused person."

What then is the weight to be attached to the extra-judicial statements Exhibits D, E and J before this Court? The position of the law is that such statements must amount to naught as this Court cannot rely on same against the Defendant. – see the case of

EKPENYONG V. STATE (1991) 6 NWLR PT. 200 P. 683 where the Court of Appeal held that authorities have established that in a situation where the witness, whose statement has been admitted, never testified at all, the statement should never be considered as evidence of the facts contained in it. See also

IKE V. STATE OF LAGOS (2019) LPELR-47712(CA) AT PP. 42 – 46 PARAS. B-A

and

PAUL V. COP (2021) LPELR-52489(CA).

Consequently, I hold the view that Exhibits D, E and J, being extrajudicial statements of persons who were not called as witnesses, must be discountenanced by this Court. The said exhibits and their contents are accordingly discountenanced.

Although PW4 stated in her evidence in chief that the deceased told her of beatings by the Defendant and she (PW4) saw some with her eyes, she (PW4) however admitted under cross-examination that she actually only saw marks of the beatings on the deceased but did not actually witness the beatings as she was not there during the beating. What she had to say about the beatings, in her testimony, were told to

her by the deceased and these incidents occurred over a year before the deceased's death.

PW5's sworn testimony is to the effect that he had cause to intervene on issues bordering on domestic violence between the Defendant and the deceased during the cause of their marriage. He however did not testify that he witnessed any actual beating of the deceased by the Defendant.

PW8's evidence is that the marriage between the Defendant and the deceased was characterized with physical abuse and she testified that she once saw the Defendant shove the deceased backwards when she (deceased) went to greet him upon return home from a journey earlier in their marriage. She however did not testify that she saw the Defendant hit the deceased shortly before her death let alone in a manner consistent with the injuries to the head (subdural haemorrhage) that caused her death as described by Exhibit K and the testimony of PW3.

Exhibits Q1 – Q4c are recordings played in open court purportedly of the deceased and the Defendant. Exhibit R is a written transcription of said recordings. The Defendant made a feeble attempt to deny the source of the recording being his wife. He also stated that it must have been doctored without saying exactly how it was doctored. For whatever they are worth, Exhibits Q1 – Q4c and Exhibit R are not recordings of the Defendant hitting the deceased in the manner consistent with the injuries described as her cause of death or any injury at all.

PW7's testimony isthat he was staying with the deceased and the Defendant and had once witnessed an altercation between the two whereat the Defendant threw a stereo which hit the deceased (when PW7 dodged it) and she started bleeding. He said he was there when the deceased beat up,bit and headbutted the deceased on that day. Although PW7 gave the time of the incident as being between 12 midnight to 2:00am, he did not state around what date it occurred or whether it even occurred around the time of the deceased's death.

PW7's testimony is that he had moved out of the deceased's house before her death although he was not exactly forthcoming (under cross-examination) as to the exact period he finally left the deceased's house. PW1 (PW7's uncle) however described the incident that saw the final exit of PW7 from the deceased's house to have occurred around January 2016.

The Prosecution therefore did not establish that the incident of the Defendant assaulting the deceased which PW7 said he witnessed was the incident in which the deceased actually sustained subdural haemorrhage which prosecution alleges as havingcaused her death. To therefore say that PW7 witnessed the actual assault that caused the death of the deceased would be highly speculative in the circumstances and this Court cannot resort to speculation or conjectures in resolving the issues before it. That would amount to making a case for the prosecution where none exists – see the case of

ORISA V. STATE (SUPRA) AT PP. 25 – 26 PARAS. C-A where the apex Court held that

> *"To trace the blood stain to the appellant is a mere speculation which no Court can act upon. In Agip (Nig) Ltd v. AgipPetroli International (2010) 5 NWLR (Pt.1187) 348 at 413 paras B - D, this court said:-*
>
> > *"It is trite principle also that a Court should not decide a case on mere conjecture or speculation. Courts of Laws are Courts of facts and Laws. They decide issues on facts established before them and on laws. They must avoid speculation. See Oguonzee vs. State (1998) 5 NWLR (Pt.551) 521; Ikenta Best (Nig) Ltd v. A.G. Rivers State (2008) LPELR 1476; Galadima v. The State (2012) LPELR 15530."*

See also **AKOKHIA V. STATE (SUPRA) AT PP. 17 – 18 PARAS. D-A** and **OKOLI V. STATE (2021) LPELR-56277(CA) AT P. 18 PARAS. A-D**.

As there is no direct evidence directly showing that the Defendant caused the particular injuries found on the deceased (in Exhibit K) and killed her, whatever circumstantial evidence the Prosecution is relying on must be complete, cogent and compelling enough to unequivocally point to the irresistible fact that the Defendant was the one that hit the deceased and caused her death by subdural haemorrhage (trauma) arising therefrom. – see the case of

ANYASODOR V. STATE (2018) LPELR-43720(SC) AT PP. 16 – 18 PARAS. E-A.

See also

NASIRU V. STATE (2021) LPELR-55637(SC) AT PP. 23 – 24 PARA. D-D;

STATE V. ANIBIJUWON & ORS (2011) LPELR-8804(CA) AT PP. 23 – 24 PARAS. E-F

and

GREMA V. STATE (2020) LPELR-51432(CA) AT PP. 13 – 16 PARAS. D-E.

PW1 spoke of violence between the Defendant and the deceased that made the deceased start making recordings of her and the Defendant. He however stated under cross-examination that he could not tell from the recordings (Exhibits Q1 – Q4c which were also transcribed to Exhibit R) if there was violence or not as he wasnot there at the time the recordings were made. Indeed, the said recordings do not establish that there was physical violence at the time they were made.

I have said earlier that aside of bite marks which PW4 said she saw on the deceased at a time, everything which PW4 had to say about violence between the Defendant and the deceased was told to her by the deceased. The incidences of violence which she narrated were not witnessed by PW4. In view of the fact in issue before this Court, it would appear that such incidences as narrated to PW4 by the deceased amount to inadmissible hearsay evidence. I have also elucidated

hitherto my opinion that this evidence does not qualify as dying declaration which ordinarily is an exception to the hearsay rule.

Furthermore, from the incidents described by prosecution witnesses, particularly the PW7, of occurrences during his stay with the Defendant and the deceased at their house, the Prosecution may have succeeded in establishing that the Defendant was physically violent and verbally abusive in his conduct regarding PW7 and the deceased. The defendant however has feebly denied such conducton his part. Is the evidence of violence and abuse (assuming the court is to act on it)however sufficient to establish that the Defendant and no other person is responsible for thedeath of his wife?That is apparently not established at this stage.

What is apparent however is that fortunately, the PW7 was rescued, while unfortunately, the deceased was not rescued. There is no evidence ofeffective efforts to remove her from the environment of violence and pains she appeared to have been living incontinuously.Her obvious cry for help appeared to have been taken with levity by those supposedly closest to her. Now, they say they seek justice. Justice during her life time would have been more beneficial to the deceased, her young son particularly and her entire family. A lesson in caution, I hope. I will say no more on this, save to take this opportunity to refer to two popular quotations;

The first is by ALBERT EINSTEIN the theoretical physicist:-

> *"The world will not be destroyed by those who do evil, but by those whowatch them without doing anything."*

The second is from the HOLY BIBLE James 4:17(KJV):-

> *"Therefore to him that knoweth to do good, and doeth it not, to him it is sin."*

The Prosecution has sought to prove why the Defendant killed the deceased. They sought to prove that the Defendant killed the deceased to get her assets and properties. It is however trite that motive is

generally irrelevant; but where it is proved, it only strengthens the case of the prosecution. –see
UMAR V. STATE (SUPRA) AT PP. 47 – 48 PARAS. D-B.

However, before the issue of motive which may establish the*mens rea*, can arise, it must first be proved that it was the Defendant thatdid cause the death of the deceased i.e. the*actus reus*. – see **DERIBA V. STATE (SUPRA)** where the Court of Appeal further held **AT P. 64 PARAS. B-D** thus;

> *"Proof of mens rea without actus reus is insufficient to prove the offence of culpable homicide punishable with death under Section 221 of the Penal Code, and vice versa. Both must be present and proved to culminate in the offence of culpable homicide punishable with death."*

I must at this juncture observe that, the entire evidence before this Courtcreates a strong suspicion that the Defendant'sactions may be responsible for his wife's (deceased's) death. The law however is very well established that suspicion, no matter how strong, can never ground criminal liability and conviction. – see

ZUBAIRU V. STATE (2015) LPELR-40835(SC) AT P. 26 PARA. C,

IGBIKIS V. STATE (2017) LPELR-41667(SC) AT PP. 22 – 23 PARAS. F-A

and

AYOTUNDE V. STATE (2021) LPELR-53294(CA) AT P. 56 PARAS. A-E.

In the instant case, the Prosecution has failed to establish by credible evidence that it was the Defendant that caused subdural haemorrhage to the deceased and killed her.

In any case, this Court hasearlier found that the Prosecution has failed to prove the actual cause of the deceased's death to be internal haemorrhage as allegedly caused by the Defendant in the charge

against him. Having given more than one possible causes of death vide their medical evidence (Exhibit K), the doubt raised as to the actual cause of the deceased's death must be resolved in favour of the Defendant. – see again

AIGUOREGHIAN & ANOR V. STATE (SUPRA) AT PP. 41 – 42 PARAS. F-C and

TEGWONOR V. STATE (SUPRA)AT PP. 32 - 34 PARAS. A-D to mention but a few of the available plethora of authorities in support of this position of law.

In the circumstance therefore, the Prosecution in this case failed to prove beyond reasonable doubt that it was the act of the Defendant that caused the deceased's death, consequently, the Prosecution failed to establishthe second ingredient of offence of culpable homicide punishablewith death under **Section 221 of the Penal Code**for which the Defendant has been charged in this case.

The Prosecution's failure in this case to prove an essential ingredient of the offence charged amounts to the failure of the Prosecution to establish its case beyond reasonable doubt against the Defendant.See

THE STATE V. OGBUNBUIJU (2001) 2NWLR PT.698 P. 576 or LPELR -3223 (SC) AT P. 43-44 PARAS. G-A.

The implication that Prosecution has failed to establish all the ingredients of the offence charged is that the Defendant ought to be discharged as a result thereof.

The failure to prove the essential elements of an offence by the prosecution as required by law would inexorably lead to an acquittal of the defendant.

A defendant is entitled to such order of acquittal under such circumstances even if he had been untruthful or prevaricated in his defence. – See

DERIBA V. STATE (SUPRA) AT PP. 40 – 43 PARAS. C-B.

Where the prosecution fails to adduce evidence sufficient to establish the guilt of the defendant, then the court would under such circumstance have no option than to absolve him of guilt. The intention of the courts in such situations is not to allow criminals go unpunished but rather to ensure as much as possible that the innocent is not convicted. This is in line with the time-honoured principle that it is better that ten guilty persons escape Justice than for one innocent man to be punished for an offence he did not commit. See

SHINA OKETAOLEGUN V. THE STATE (2015) LPELR -24836 (SC) AT P. 27 PARA. A

and

SHEHU V. THE STATE (2010) 8 NWLR PT. 1195 (SC) AT P. 112 or **LPELR-3041 AT PP. 21 – 27PARAS G-C** where his lordship Ogbuagu JSC reiterated while applying this principle as follows:

> *" ...It is now firmly settled that it is an elementary proposition, that suspicion however strong will not found or lead to a conviction. In other words, it cannot take the place of legal proof. See .....*
> *I agree with the submission in paragraph 5.6 page 10 of the Appellant's Brief of Argument and this is also now firmly settled in a line of decided authorities, that it is better for ten guilty persons to escape than one innocent person to or should suffer.*
> *In other words, it is better to acquit ten guilty men, than to convict an innocent man. See ..... In the case of Saidu V. The State (1982) 4 SC 41@ 69-70, Obaseki, JSC stated inter alia, as follows:*
>
> > *"It does not give the court any joy to see offenders escape the penalty they richly deserve but until they are proved guilty under the appropriate law in our law courts, they are entitled to walk about in the streets and tread the Nigerian soil and breathe the Nigerian air as free and innocent men and women."*
>
> *On his part Sir Matthew Hale is quoted as remarking that:*

"It is better that 5 criminals escape Justice rather than one innocent person to be punished for an offense he did not commit."
"So be it with the appellant. In the circumstances of the evidence before the court which are borne out from the Records. I will give benefit of my doubt, in favour of the Appellant and render my answer to issue 2 of the Appellant, in the Negative."

Before rounding off this judgement I wish to observe that it appears Life is offering the Defendant a Second Chance, hence the failure to successfully prove this charge by the Prosecution. I hope he would embrace this opportunity and take all events that culminated into this trial as a life lesson and guidance in caution in his future endeavours and way of life

Suffice to say in the light of the foregoing that the sole issue for determination in this case must thus be resolved against the Prosecution and in favour of the Defendant.

The resultant effect is the discharge and acquittal of the Defendant in this case – see further the cases of

MABA V. STATE (2020) LPELR-52017(SC) AT PP. 36 – 37 PARAS. C-A,

STATE V. AHMED (2020) LPELR-49497(SC),

OLOJEDE V. STATE (2018) LPELR-46148(CA) PP. 51-53, PARAS. E-B

and

OKWILAGUE V. C.O.P (2021) LPELR-55662(CA) (PP. 13-14, PARAS. E-B.

Consequently, and in line with the provisions of **Section 309 of the Administration of Criminal Justice Act (2015)**, this Court therefore findsthe Defendant 'not guilty' of the offence of culpable homicide punishable with death for which he has been charged under **Section**

221 of the Penal Code and he is herebyaccordingly discharged and acquitted.

……

Honourable Justice M. E. Anenih

APPEARANCES:

J. S. Okutepa SAN appears with Helen J. Apeh (Ms), Patience Omiri (Ms), Ayobami K. Oke Esq, A. E. Ogwiji Esq and Abdulkareem Musa Esq for the Prosecution.

Sir P. O. Aihiokhai Esq appears with O. G. Emagun Esq, E. C. Ike Esq and Peace Offordile Okafor (Ms) for the Defendant.