IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 6TH DECEMBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CR/805/2020

BETWEEN:

COMMISSIONER OF POLICE:……………..COMPLAINANT

AND

GOD'SLOVE FAVOUR:…………….……....DEFENDANT

Donatus F. Abah Esq, for the Prosecution.
ChimaOkereke for the Defendant.

JUDGMENT.

The Defendant was arraigned before this Court on a on count charge as follows:

Count 1.

That you God's Love Favour, female, 35 years old of Akaraka Village, Gwagwa, Abuja on or about 21st December, 2019 at about 8 am, at Akaraka Village, Gwagwa, Abuja within the jurisdiction of this Honourable Court, committed a criminal offence to wit; culpable homicide not punishable with death; in that, on the said date, you caused the death of one Mrs. Comfort Chisom, who was eight month pregnant and at the verge of giving birth, of Karmo, Abuja by your rash and negligent act of injecting her with a substance suspected to be Oxytocin injection. You thereby committed an offence contrary to

222(7) of the Penal Code Law and punishable under section 224 of the same Penal Code Law.

The Defendant pleaded not guilty to the charge.

On 18th January, 2021 the prosecutor opened his case with the evidence of PW1, Insp. Anyebe John the IPO. The PW1 testified to the effect that on 21st December, 2019, a case of culpable homicidewas transferred to the State CID from Gwagwalada Police Division for further investigation whereby the Defendant was the suspect. In the course of investigation, they discovered that the Defendant a Midwife/Nurse gave the deceased Chisom Comfort who was heavily pregnant and at the verge of delivery an injection called 'Oxytocin'. Immediately she gave the injection, the Defendant complained of weakness and was vomiting and that she rushed the Defendant to Gwagwaladahospital and on reaching there the Defendant was confirmed dead. That the Defendant made a confessional statement which was admitted in evidence as Exh DW1A.Even though the Defendant claimed that the Police recorded the statement and she (Defendant) signed it.

Under cross examination PW1 informed the Court that one of the IPO that worked in his team recorded the statement. When asked whether there was a lawyer or relative present at the recording of the statement, the PW1 said that when the PW1 was asked to produce a lawyer or family member for the recording of her statement, she said she had none and that she voluntarily made the statement without any intimidation.

When asked if he was aware that the Defendant was uneducated, the PW1 said that there was no evidence to show that she was not educated being Nurse Attendant. PW1 further said that he knew that the Defendant was not well educated.When asked why the syringe and drug used on the

deceased was not produced, PW1 said that the Defendant admitted using the said drugs in her confessional statement.

The prosecutor AbbahDonatus closed his case with only one witness.

On the 16th February, 2022 the Defendant testified as the DW1. She said that she is a native local birth attendant. That on 21st December, 2019 the deceased Comfort called to inform her that she was in labour. That she came over to her house and complained of pains all over her body and that she used shea butter to rob her. After a while the deceased started screaming that "see dem, they are cutting my intestine". That she said that a group of people were dragging her. That she did not administer anything to her but only rushed her to Gwarinpahospital at about 4:30am. That she was taken to the labour room in a wheel chair. That was where she saw her breath the last. It was then a doctor came to interrogate her and she told him that she was a labour attendant. That the doctor got furious and called the Police who arrested her. That when the deceased died, that she also called the husband to inform him. The Defence counsel applied to tender the statement of the deceased husband Chisom, but it was rejected because it failed the litmus test of admissibility rules. Under cross examination the Defendant told the Court that the deceased was well known to her and that they were related because they are from one family in AkwaIbom. Further under cross examination she said that she has been a midwife attendant since 2002 and that her educational background was only primary 6. That the midwife attendant was a gift from her father. On whether she was a certified traditional medicine assistant, she replied in the affirmative and told the Court that she obtained a certificate from the person her father took her to, to bless her. That it was an organisation which she did not know

the name. However that the name on the certificate was that of her fatherEkanemUdo. That her real name is EkanemUdo and that ‘God’sLove Favour’ is the name she answers in Abuja.

On further questioning she said that she has been delivering women since 2002-2019 at a price of N5,000 for each delivery. She admitted that she never took her patients to the hospital but she had to take the deceased to hospital because of her condition. That the deceased stayed with her from Friday to Saturday that is 20th December, 2019 – 21st December, 2019. That it was only Shea butter that she used on her and not any injection.

DW2 testified asChisomIbekwe on 9th May, 2022 and informed the Court that the deceased was his wife and he did informed the Police that he is not interested in the matter again.

At the close of cross examination and no re-examination, the defence counsel applied to close his case having no other witness to call.

Both counsel agreed to file their final written address. The Defence counsel final written address filed on 1st June, 2022 raised a sole issue on**whether the prosecutor proved his case beyond reasonable doubt the allegations against the Defendant.**

Placing reliance on Section 131, 132 and 135 Evidence Act, 2011, the Defence counsel argued that the burden of proof rests on the prosecution to prove the existence of facts so alleged. That by the Section 222(7) and 220 Penal Code, that proof of culpable homicide punishable by death must be beyond reasonable doubt. He relied on **Bozin v. The State (1985)2 NWLR(Pt.8), State v. Azeez&Ors (2008)14 NWLR (Pt.108)439.** Where by the plethora of cases held that onus

remains on the prosecution to prove the guilt of the Defendant and the burden never shifts – **Chidozie v. C.O.P (2018)LPELR 43602 (SC).**

That from the charge, it is clear that the Defendant was accused of being "rash and negligent" in attending to the deceased and thereby caused her death. That it is the duty and burden on the prosecution to prove that the Defendant acted rashly and negligently. Defence counsel submitted that the prosecution failed to prove any of the necessary ingredients of the offence. That for the prosecution to discharge the burden, he must rely on the combination of

(i) Direct evidence of witnesses.
(ii) Circumstantial Evidence.
(iii) The voluntary confession

- **Bello Okeshetu v. The State (2016) LPELR 40611 (SC).**

Defence counsel argued that the prosecution failed because his sole witness PW1 the IPO was not an eye witness, did not see the deceased body nor did he tender any medical report to determine the cause of death. That the PW1 merely relied on hearsay evidence, learned counsel relied on the case of **Ijioffor v. The State (2001)NWLR (Pt.718)371** per Ejiwunmi JSC;

> ***"Hearsay evidence or hearsay rule has been succinctly formulated by Professor Cross thus:***
>
> ***'Express or implied assertions of persons other than the witness who is testifying and assertions in documents produced to the Court when no witness is testifying are inadmissible as evidence of that which is asserted.'(See Cross Evidence, 4th Edition, p.387). The above formulation of the hearsay rule, encompasses the provisions of Section 77***

subsections (a), (b), (c) and (d) of the Evidence Act Cap 112 of Vol. VIII of the Laws of Nigeria, 1990 which apart from the provisions thereto, read thus:

Section 77: Oral evidence must, in all cases whatever, be direct-

"(a) If it refers to a fact which could be seen, it must be evidence of a witness who says he saw that fact.

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact.

(c) If it refers to a fact which could be perceived by any other sense of in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense in that manner.

(d) If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person shohold that opinion on those grounds." *(Underlinings supplied for emphasis)*

We submit that there is no evidence that was led by the Prosecution before the Honourable Court that any cogent, complete, positive and unequivocal inference can be drawn from. There was no Death Certificate stating the cause of the deceased's death and there was no record of any scientific medical examination/Autopsy that was conducted on the body of the deceased to establish the cause of her death was because Oxytocin was administered on the deceased.

The Supreme Court had in the case of Oladejo v. State (1987) 2 NSCC, 1025 held that circumstantial evidence "must be cogent, complete, unequivocal, positive and point irresistibly to the accused person and no one else as the culprit. The facts must be incompatible with his innocence and incapable of explanation upon any other reasonable hypothesis than that of guilt." See also Lori v. State (1980) 8-11 SC, 81 at 86.

We submit that, in their aggregate content, the evidence of the witnesses of the Prosecution do in any way or guise suggest or point to the commission of the alleged offences by the Defendant. they fail woefully to provide a justification for inferences to be drawn linking the Defendant to the commission of the alleged offence. We urge your lordship to so find and hold."

The Defence counsel argued profusely that the purported confessional statement was written by the Police and she signed. That for someone who is not quite literate and cannot express herself in English, that it was her own feeble way of saying that she did not write the statement. Defence counsel concluded that it is settled law that for the statement to qualify as a confessional statement that the trial Court can found a conviction, the confessional statement must be voluntarily made.

- R v. Essien (1939)5 WACA 70, Nig. Navy v. Lambert (2007)18 NWLR (Pt.1066)300 Oguntade JSC held;

"In order to amount to a confession, the statement of an accused must be direct, positive and not equivocal. See RaimiAfolabi v. Commissioner of Police (1996)AllNLR 654. Nor can a statement amounting to

only an implication in a crime be regarded as a confession."

Placing reliance on other cases, Defence counsel submitted that;

> ***"there is no corroborative evidence before the trial Court to support the purported confessional statement because the Defendant under cross examination by the Prosecution had clearly and categorically denied that she administered Oxytocin injection or any other injection on the deceased and in her own words stated that "I only use things like Ori (Shea Butter), leaves and other herbs in my work I don't use injection. The Defendant's answers to the Prosecution's questions which answers she freely gave in the open Court are clearly different, contradictory and a marked departure from the statements regarding the use of Oxytocin injection that are contained in the Defendant's Written Statement to the Police, which the Defendant had said that the Police wrote and asked her to sign and she signed.***
>
> ***We submit that the purported confessional statement having no corroborative evidence to support it is not qualified to be relied upon by the trial Court to found a conviction of the Defendant."***

Placing reliance on **Kabiru v. A.G. Ogun State (supra),**Defence counsel submitted that the confessional statement lacked some corroborative evidence which made it probable that the confession is true.

In conclusion, the Defence counsel urged the Court to take into consideration the evidence of DW2 that he was not informed in the case. That since there is no proof beyond reasonable doubt, that is no proof of all the essential ingredients that failure to prove leaves doubt in the mind of the Court and should be resolved in favour of the Defendant and discharge and acquit the Defendant.

In response, the Prosecution filed his final written address on 21st June, 2022 and formulated 1 issue, **whether the act or omission that led to the death of the deceased is directly that of the Defendant and no any other person?**

Prosecutor argued that;it is the law that the guilt of an accused person can be proved by any of the following ways: confessional statement, circumstantial evidence or direct evidence from eye witnesses to the commission of the offence. See the case of the **Nigerian Navy &Ors v. Lambert (2007)18 NWLR(pt.1066)300.**

That circumstantial evidence as one of the source of proof in our law has been defined by My lord, Kalgo JSC in the case of **Akinbisade v. State (2006)17 NWLR (pt.1007)184 at 212 paras A-C** that *"Circumstantial evidence is evidence of surrounding circumstances culled from credible evidence in court and which, by undersigned coincidence, is* capable of proving a proposition with the accuracy of mathematics".

That the penal provisions of our land gave the prosecution the choice or options for proving its case beyond reasonable doubt.That prosecutor may deploy all three options or a combination of options. The guilt of an accused may be proved by: "(i) a confessional statement of the accused; (ii) evidence of an eye witness; or (iii) Circumstantial evidence." See **IGRI VS THE STATE (2012)16 NWLR (PT.1327)522;OGUNO VS THE**

STATE (2013) 15 NWLR (PT.1377)AT 1;IBRAHIM VS THE STATE (2014) 3 NWLR (Pt.1394)305;OGEDENGBE VS THE STATE (2014) 12 NWLR (PT.1421) 338and**UMAR VS THE STATE (2014) 13 NWLR (Pt.1425) at 497."Per BAGE, J.S.C. (Pp. 17-18, Paras. E-D)**(…read in context)

In thelight of these judicial authorities and statutory provisions, prosecutor submitted that it is therefore clear that in the instant case the Prosecution has been established and proved beyond all reasonable doubt by means of circumstantial evidence.Thatthe circumstance leading to the death of the deceased was the act of the Defendant and no any other person.

The fact that the Defendant retracts or denies having made Exhibit PW1 is of no moment as it is very relevant to this trial. We rely on Sections 1, 2, 3, 4, 28 and 29(1) of the Evidence Act, 2011 as well as **Oseni v. state (2012)5 NWLR (Pt.1293)351.**

Further that the submission of the defence counsel that the evidence of PW1, the Investigating Police Officer (IPO) amounts to hearsay evidence, is not correct and is misconceived. In the case of **Paul v. C.O.P. (2021)LPELR 52489 (CA**) it was held as follows:

"…on the evidence of theInvestigating Police Officers which the Appellant contended that it was hearsay evidence, the issue had since been settled that evidence of Investigating Police Officer is not hearsay evidence, see KAMILA V. STATE (2018) LPELR-43605 (SC)."

In conclusion, the Prosecutor urged the Court to deliver judgment as justice demands.

The charge before this Court culpable homicide punishable with death whereby the Defendant was alleged to have injected the deceased who was heavily pregnant with 'Oxytocin injection' and rashly and negligently caused her death.

Prosecutor only called a sole witness the IPO (PW1) who testified to the effect that Defendant was arrested from the hospital where she took the deceased to after injecting her with 'Oxytocin injection' and she died on arrival to Gwarimpa general hospital. PW1 tendered the confessional statement of the Defendant which the Defendant retracted and said that she did not write the statement but was asked to sign the statement after PW1 wrote it. Prosecutor after the testimony of PW1 closed his case. The Defence called two witnesses the Defendant (DW1) and the husband of the deceased (DW2) who said that he had no interest in the case.

Issue for consideration is **whether the prosecutor had proved his case beyond reasonable doubt to earn a conviction?**

Strictly the law requires the Prosecutor to prove beyond reasonable doubt in order to earn a conviction. This required mensrea and the actusreus that is the prosecutor is required to establish the Defendant's intention and actual rash and negligence on her part. It is not enough to merely depend on the purported confessional statement without proof of the ingredients of the offence Section 138 Evidence Act, requires the prosecutor to produce material and credible evidence through witnesses and documents like medical report. See **Afolabi v. State (2010)43 NSCQr 258.**

The medical report is of great essence to establish cause of death. The sole evidence of prosecution is not enough to convict the Defendant.The argument of the Defence counsel that sole witness of prosecution's evidence (PW1)be regarded

as hearsay is discountenanced. Though the evidence of PW1 cannot be adjudged to be hearsay but it lacks the mensrea and the actusreus to conclude the cause of culpable homicide. No evidence was given to establish that the Defendant who denied giving 'Oxytocin injection' actuallygave 'Oxytocin injection' to the deceased. The Court cannot draw an inference merely from the Exh PW1A. Admission of Exh PW1A confessional statement is not conclusive evidence that prosecution proved the cause of death and that it was the Defendant that caused the death. There was no autopsy examination carried and reported upon.

However, I do not believe that the IPOs evidence is hearsay by reason of the case of **Paul v. C.O.P (supra)** cited by the prosecution, I fail to share the Defence counsel view because the narration of IPO is the outcome of his investigation or what he discovered in the course of his work. I will not therefore discountenance the evidence of PW1 (IPO) as hearsay. In the present circumstance of presenting the confessional statement without any other evidence for the Court to act upon is not enough. This confession requires material fact and documentary evidence in medical fact and documentary evidence – medical report autopsy report to support the said confessional statement. The prosecutor failed to produce these pieces of evidence and leaving the Court in doubt as to the commission of the offence. Failure of the prosecution to prove all the essential elements that constitute the offence of culpable homicide renders the prosecution's case fatal. –**Deriba v. State (2016)LPELR-40345(CA).**

Thus the presumption of innocence of the accused still stands until the burden on the prosecution to prove her guilt's shifted. From the evidence before this Court the prosecutor had failed to discharge the burden placed upon him by law. Where at the

close of prosecution's case the essential ingredients have not been proved and the Court has doubts not evenone doubt as to whether the Defendantactually committed the offence, the Defendant is entitled to a discharge and acquittal. That is exactly the finding of this Court in the instant case. The prosecutor has failed woefully to prove the offence of culpable homicide beyond reasonable doubt and therefore, the case of prosecution fails and Defendant is discharged and acquitted of the charge.

HON. JUSTICE A. O. OTALUKA
6/12/2022.