IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI –ABUJA

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE: 9TH MAY, 2023

FCT/HC/CR/412/2022

BETWEEN:

COMMISSIONER OF POLICE ---------- COMPLAINANT

AND

ANNAS HARUNA ---------- DEFENDANT

JUDGMENT

The Defendant was arraigned before this court on 1st day of December, 2022, on one count charge of Culpable Homicide punishable with death pursuant to section 221 of the Penal Code. The one count charge is hereby reproduced thus- "That you Annas Haruna male 21years old of Opposite ECWA Dawaki Abuja on 15th March,2022 at about 1600hrs at Mbuko Village FCT Abuja within the jurisdiction of this Honourable Court did unlawfully caused the death of one Jamilu Haruna Male 30yrs by using a Wooden pestle to hit him on the head and he sustained a severe head injury and he died on 17th March,2022 and during police investigation you were arrested and you confessed to have committed the above offence. You thereby committed an offence punishable under Sec, 221 of the Penal Code." Upon taking plea,of the Defendant same pleaded not guilty and the matter was set down for trial and in proof of the case the

prosecution called a sole Witness. The witness is the investigating police officer in the case and Referred to as PW1.

SUMMARY OF THE EVIDENCE OF PWI- Inspector. Peter AziThe PW1 is the Police IPO who investigated the matter at CID FCT Police Command. And he testified as follows:-

It is the testimony of the PW1 that on the 15th day of March, 2022 at about 1600hrs a distress call was received from Bamuko Village, Dutse District, Abuja informing the Police that there was a fight between 2 brothers which led some Policemen to be mobilized to the scene, and upon arrival, they met the deceased (Jamilu Haruna) lying on the ground in a pool of his own blood. Upon further enquiries, it was discovered that the Defendant used a Pestle to hit the deceased on the head which made the deceased to be rushed to Kubwa General Hospital where he died. He also testified that the Step-Mother of the Defendant- Mairo Haruna was interviewed in this matter and she stated that she was not present when the incident happened but only met the deceased lying down in pool of his blood. The PW1 further testified that the Defendant's case file was transferred from the Dutse Alhaji Police Station to his Department, CID Section, FCT Command.

During the examination in chief of the PW1 he tendered the following exhibits and they were admitted in evidence.
a. Exhibit 1- Request for medical report by Nigeria Police Force.

b. Exhibit 2- Application for the release of corpse.

C. Exhibit 3-Statement made at Dutse Alhaji Police, Abuja.

d. Exhibit 3A- Statement made at C.I.D FCT, Abuja.

The witness was cross examined and none of the essential elements of his testimony were impeached or discredited.

At the close of the Prosecution's case, the Defendant opened his case and testified as DW1. It is the case of the Defendant that sometime in2022, he visited his mother in Bamuko Village and thereafter left the house to the Primary School and while at the school, someone told him that his Step- Mother is calling him at home and upon reaching the house, he saw the deceased lying down and when he asked what happened to the deceased, they started beating him and dragged him to the Police Station where he was told that he killed his brother. So, they locked him up in a cell even when he insisted, he did not kill his brother and he knew nothing about the death.

EXHIBITS 3A and 34 were shown to the Defendant and he denied making such statements. The Defendant also testified that he has never seen PW1 before, save at the point of his transfer to SARS (Special Anti-Robbery Squad) detention facilities. At the close of the Defendant's case, the Defendant was subjected to cross examination where he admitted essential part of the extra judicial statement and all the information about himself which he provided to the Police.

ISSUES FOR DETERMINATTION

Whether the prosecution has proved the offence of culpable homicde punishable with death against the Defendant beyond reasonable doubt?.

2. Whether the evidence of investigating officer on what he discovered during investigation can amount to hearsay evidence?.

3. Whether an extra judicial statement of a Defendnat who understands English language but cannot write requires illiterate jurat

4. Whether an objection can be raised on the admissibility of an extra judicial statement after it has been admitted in evidence without objection

5. Whether a medical report or an autopsy is mandatory in the prove of the case of culpable homicide punishable with death

6. Whether a police officer can tender an extra judicia statement recorded by another police officer.

ISSUE ONE

whether the prosecution has proved the offence of culpable homicde punishable with death against the defendant beyond reasonable doubt?.

By section221 of the Penal Code, it is the duty of the Prosecution to prove the following essential ingredients beyond reasonable doubt to establish a case of Culpable Homicide;

a. That the deceased had died.
b. That the death of the deceased was caused by the accused,
c. That the act or omission of the accused which caused death of the deceased was intentional with the knowledge that death or grievous bodily harm was the probable consequences. See *AYEDUN V STATE (NCC) 10 PAGE 532.*

The above ingredients can be proved in one of the following ways;

a. Eye witness Account.

b. Confessional Statement of the accused person.

c. Circumstantial Evidence,

The confessional statement of the Defendantis in evidence before this Court where the Defendantnarrated how he killed the deceased. And such confessional statement was unimpeached, positive and voluntary.

On whether court can convict on confessional statement alone, the CA in case of *OLOWOYO V. State (2012) 17 NWLR (Pt. 1329) 346 C.A.*

The Court held that confessional statement is sufficient to sustain a conviction. However, for confessional statement to be used to convict in a capital offence, there are some factors that must be considered to determine the weight to be attached to the confessional statement. These factors are: is there anything aside the statement to show

(a) that it is true;

(b) is the confessional statement corroborated; had the accused any opportunity to commit the offence;

c. And is the confession possible or consistent with the facts of the case. It my humble submission that the confessional statement is positive and voluntary and should support the case of the prosecution in securing the conviction of the Defendant.

Counsel urge the court to take a look at exhibit the two statements of the Defendant (the one made at Dutse Division and CIID) marked as exhibit 3 and 3A and the court will discover that the Defendant has been consistent in his confession and he was in that environment when the incident occurred. Looking through the statement the Defendant never denied being in that environment and in his viva voce evidence before the court he admitted being in the nearby primary school to the seen of incidence and that was where he was arrested.

The learned defenseCounsel made an assertion that we were unable to prove that the deceased died, Counselrefer the Court to exhibit 2 which is the application by the family member for the release of the corpse for burial. Therefore the argument that the death of the

deceased was not proved is futile.

In the case of *STEPHEN V. STATE (2018) LPELR-45207(CA*), the court held that the confessional statement alone is enough to secure a conviction. See also *NWACHUKWU V. STATE(2007)ALL FWLR(PT. 390) 1380@ 1387.*

A confessional statement is an admission of guilt made at any time by a person charged with crime stating or suggesting the inference that he committed the offence, see section 28 of Evidence Act. In the case of *DANIEL V. STATE (1991) 8 NWLR (PT.212)page 715*, The court held also that a confessional statement alone is sufficient to ground a conviction. It must lead to an unequivocal admission of guilt.

The authorities in this area of law are plethora and settled and he urge the Court to attach requisite weight to the confessional statement of the Defendant which was tendered before this HonourableCourt without objection on the involuntariness of the said statement.

Counsel humblysubmit that the confessional statement of the Defendant is positive and voluntary and urge the Court to rely on it and convict the Defendant.

ISSUE TWO

Whether the evidence of investigating officer on what he discovered during investigation can amount to hearsay evidence?.

The learned defense counsel either not current in the position of law in this area of his argument that the evidence of the investigating police officer is documentary a hearsay evidence as well as documents tendered by him or there is a calculated attempt to mislead this Honourable Court.

In the case of *ANYASODOR V. STATE (2018) LPELR-43720(SC*). Where the question arose as to whether the evidence of an Investigating Police Officer as regards what he saw or discovered during an investigation is hearsay, the court held thus, "on the appellant's counsel's submission that the testimony of PW3 was hearsay, I am also at one with the lower court's conclusion that such testimony as given by the PW3 was not and cannot be described as hearsay evidence. To my mind, all that the PW3 (IPO) did was to give evidence on what he actually saw or had witnessed, or discovered in the course of his work as an investigator.

His testimony on what the appellant told him was positive and direct which was narrated to him by the appellant and other witnesses he came in contact with in the course of his investigation of the case.

Evidence of (IPO) is never to be tagged as hearsay. This court in a plethora of its decided authorities had adjudged such evidence as direct and positive evidence and therefore not hearsay evidence".

The authority quoted above is clear that the academic gymnasium and intellectual summersault of the learned defense counsel holds no water and cannot achieve the purpose of misdirecting this HounorableCourt and urgethe Court to reject such submission in its entirety and uphold our submission that the evidence of the Investigating police officer before this court cannot amount to hearsay evidence.

The authority cited above is a Supreme Court decision and he need not belabour the Court on several other settled decisions of our appellant courts on this area of law.

ISSUE THREE

Whether an extra judicial statement of a defendant who understands English language but cannot write requires illiterate jurat?.

It is in evidence that the Defendant understands English language and same was admitted by the learned defense counsel in paragraph 2.6 of the Defendant's written address where he stated that the Defendantunderstands English language minimally for the purpose of communication.

What the law requires for the purposes of writing a statement is a person who understands English Language even pidgin English minimally for the purpose of communication and not a professor of English language who can read and write. Therefore a person who understands English language does not require an interpreter for the purposing of making statement.

The learned defense counsel elucidated a strange principle of law when he stated that the statement does not contain an illiterate jurat. Most respectfully our criminal law does not understand the meaning of illiterate jurat. Illiterate jurat is a principle of law only applicable to civil law and not in criminal law and such should not be illegally imported to contaminate the follow of the clean water of criminal justice.

In the case of ***DAJO V. STATE(2019) 2 NWLR (PT. 1656) 281***, Court: SC. On Meanings of JURAT and illiterate JURAT-The court held that JURAT is a latin word which means "to swear". An illiterate JURAT is a certification added to an affidavit or deposition by a witness stating when and before what authority the deposition or affidavit was made and that the person affected by such deposition or affidavit, though an illiterate has understood the meaning of the contents of such deposition. It is usually associated with civil cases. In the instant case,

a close perusal of the signature of the interpreter and that of the recorder in the statement of the appellant tendered as exhibit A before the trial court showed that the person who recorded exhibit A was also the person who interpreted it. The statement was admissible in evidence even without insertion of illiterate jurat. (P. 299, paras. D-F).

The above decision is to the effect that illiterate jurat is unknown to our criminal law and he urge the court to so hold and align with the Supreme Court on this issue.

What our criminal law recognizes is the use of an interpreter when the Defendant is an illiterate. The supreme court again in the case of *ADELANI V. STATE(2018) 5 NWLR (PT. 1611) 18*, Court: S.C.On When confessional statement recorded through an interpreter will be inadmissible.
In a criminal case a confessional statement recorded through an interpreter will be treated as inadmissible if the officer to whom it was made was not called as a witness. It is inadmissible for non-compliance with the law. But in a civil case formal proof of such a document/statement can be waived. In the instant case, Exhibit N (the appellant's confessional statement) was not properly tendered and admitted in evidence.

From the above decisionit is only when the Defendants is an illiterate that an interpreter is required but in the instant case the Defendant understands English Language and the statement was properly admitted through the investigating Police Officer who recorded the statement on behalf of the Defendant. Therefore such statement does not require an interpreter or an illiterate jurat and Counsel urge the court to so hold. It is our position that the statement of the Defendant did not require an interpreter. Even statement made in Pidgin English does not require any interpretation.

The Supreme Court led strong voice on this issue in the case of *OLANIPEKUN V. STATE(2016): S.C.*-

On Whether extra-judicial statement recorded in Pidgin English requires translation --When they held that it is erroneous for anyone to assume that people who communicate in pidgin English do not understand proper or Queen's English especially in Nigeria. The use of Pidgin English allows for free expression without minding the grammar which is usually employed in the proper English. Consequently, a statement recorded in Pidgin English does not require translation into proper English and any statement made in Pidgin English can be recorded in proper English. Pidgin English is English language whether spoken or written. A distinction between Pidgin English and English language is that of half a dozen and six. In the instant case, the appellant's statement, exhibit "D", could not be treated as secondary evidence but was treated as primary evidence.

ISSUE FOUR

> *"Whether an objection can be raised on the admissibility of an extra judicial statement after it has been admitted in evidence without objection?"*

The law is trite that the only time to raise an objection to a confessional statement is at the point of it being tendered in evidence and not when it has been admitted

In the case *OGUNO V. STATE (2013) 15 NWLR (PT. 1376) 1,. (P. 23, PARA. H)*

Court: S.C., On When accused person to challenge voluntariness of his extra-judicial statement - An accused person who denies the voluntariness of his extra-judicial statement made to the Police

should object to the statement when the prosecution seeks to tender it in evidence.

In the Supreme Court decision in the case of ***OGHENEOVU V. F.R.N. (2019) 3 NWLR (PT. 1689) 235,*** Court: S.C. On when to object to admission extra -judicial statement - The Court held that the appropriate time object to the admission of extra-judicial statement is at the time it was tendered in evidence at the tri al court. In this case, exhibit A was made voluntarily and was never retracted for whatever reason. [***SULE V. STATE (2009) 17 NWLR (PT. 1169) 33; ANAGBADO V. FARUK (2019) 1 NWLB (PT.1653) 292referred to.] (P. 255, paras. E-F),***

Counsel submit that it is too late in the day to cry by the Defendant's team and asking the court at this stage to hold that the statement was retract will be like asking the court to exercise the miraculous power to resurrect the dead like what our Lord Jesus did in the tomb of Lazarus. And we know it as in law and fact that this court has only judicial power and not miraculous power.

Counselurge the Court not to attach any legal or probative value to the argument of the learned defence counsel and to warn that this is a criminal matter and principles used by my learned senior before election tribunals where documents are admitted and objections raised during address if imported into criminal jurisprudence will contaminate the sacred stream of our criminal law.

The Court of Appeal has also followed the above principles in the case of ***ACHUKU V. STATE (2015) 6 NWLR (PT. 1456) 425,***Court: CA, On When to object to voluntariness of extra-judicial statement - The proper time to attack the voluntariness of an extra- judicial confessional statement is at the point of tendering it, not after its admission into the province of the prosecution's (Respondent's)case.Pp.453,-454,paras.H-A).

Counsel urge the Court to accept his submission where itsthe correct position of our laws and reject the argument of his learned friend for the defence as misleading and not inter dem with the dynamic and kaleidoscopic nature of our criminal jurisprudence.

> "Analysis *of issue five whether a medical report or an autopsy is mandatory in the prove of the case of culpable homicide punishable with death?.*

The learned defence counsel has also made a heavy weather that the medical report was not tendered. And Counselsubmit most respectfully that medical report or even autopsy report is not mandatory in a case of culpable homicide when the cause of death is known. The deceased after being hit with a pestle he was rushed to hospital and he died within 48hrs. On this the causative factor that caused the death is known and there is no mandatory requirement to carry out inquiry as to what caused the death of the deceased.

The recent decision of the supreme court captured it better in the case of ***WOWEM V. STATE(2021) 9 NWLR (PT. 1781) 295***, Court: S.C. On When medical evidence necessary to prove cause of death in murder case- A medical report is not a sine qua non for conviction in murder trials. In a murder case, the cause of death of the deceased person is a fact in issue that must be proved beyond reasonable doubt by the prosecution. It is necessary for the prosecution to adduce direct evidence linking the cause of death of the deceased with the accused. Where there is none.then medical evidence becomes a sine quo non. However, where the cause of death of the deceased is obvious and has been proved beyond reasonable doubt by the prosecution, medical evidence is not necessary and can thus be dispensed with by the trial court. In other words, it is not in all murder cases that medical or autopsy reports are necessary in

proving cause of death of deceased person. Where the victim dies in circumstances in which there is abundant evidence of the manner of death, medical evidence can be dispensed with. In the instant case, exhibit 6 had been wrongly admitted, it would not have been sufficient to have the judgment set aside. [*NWAOGU V. STATE (2012) LPELR - 15420 CA; IDEMUDIA V. STATE (1999) 7*

Counsel rest his argument on the above recent decision of our supreme court and urge the court to so hold. The Defendant in his confessional statement has stated how he hit the deceased with a weapon. And when the victim was taken to the hospital, he died within 24hrs. As lord Denning we say 'take your victim the way you see him as that is the probable consequences of your action'

ISSUE SIX

> *"Whether a police officer can tender an extra judicial statement recorded by another police officer? "*

Provided that a statement was made in English language were no interpreter is required, any police officer who is part of the investigation and have the knowledge of the content of the statement can tender it in evidence.

This is the position of the court of Appeal court in the case of *AWOSIKA V. STATE(2010) 9 NWLR (PT. 1198) 49, (P. 76, PARA. G) CA,* wherein On Whether a police officer can tender documents that form official record of another Police Officer-The court held that one Police officer can properly tender documents that forms the official records of another police officer made in the course of his employment.

It is in evidence that the division IPO transferred the suspect with the case file to the office of PW1 who then produced the suspect and the documents forming part of his official records before the court. The

above position was better put by the supreme court in the case of *EKPO V. STATE(2018) 12 NWLR (PT. 1634) (P. 418, PARAS. C- D),*Court: S.C. On Admissibility of confessional statement tendered by police officer other than the officer who recorded same - By virtue of section 83(2)(a) of the Evidence Act, 2011, the court may at any stage of the proceedings, if having regard to all circumstances of the case, it is satisfied that undue delay or expense would otherwise be caused admit a statement in evidence notwithstanding that the maker of the statement is available but is not called as a witness. In the instant case, exhibit P7, was a statement made to the police and PW3 through whom the statement was tendered is a police officer. It is therefore presumed that he had knowledge of the document that was tendered throughhim.

From the above position of the supreme court it has laid to rest the misplaced position of the learned defense counsel that it must be the police officer who recorded the statement can tender it in evidence. Also in the case of *SANMI V. STATE (2019) 13 NWLR (PT. 1690) 551, (P. 582, PARAS. C-E)* Court: S.C. On Whether Investigating police officer who initially investigated crime must be called as a witness in criminal proceeding -The Supreme court held that the Nigerian Police is an institution where any of its officers can takeover investigation of a case from another officer and indeed produce documents that were executed by the previous officers and tender them in court for the purpose of proving the prosecution's case. Thus, in this case, the fact that the initial Police Investigating officer was not called as a witness was not fatal to the prosecution's case. We Counsel the Court to place reliance on the above authority and hold in their favour that failure to call the initial IPO is not fatal to the case of the prosecution. A police officer can tender an extra judicial statement recorded by another police officer and transferred to him. Inconclusion the prosecution

said the law had proved the case of Culpable Homicide punishable with death contrary to section 221 of the Penal Code beyond reasonable doubt and pray the Court to convict and sentence the Defendant accordingly.

I have reproduced the position of both sides substantially in this judgment. I have also take into consideration the issue for determination for and against. However in view of the circumstances of the matter I intend to deal all with the issue raised by the two learned gentlemen. In all the evidence before this Court. I found merit on exhibit 3A while in the alleged confessional statement in respect of exhibit 3 I have completely agreed with the learned defence Counsel that this Court should not attached any value to it reason being that the of same was not called as a wittiness neither does the prosecution complied strictly with the provision of section 83 of the Evidence Act. Also the case of ***NWAEZE VS STATE (1996) 2 NWLR (PT428) 1 SC***where both the Court of Appeal and Supreme Court affirmed that exhibit A was in admissible in the proceedings as Inspector Ndukwe through whose interpretation the statement was recorded in the English language was not called to testify as a witness in the case and stand cross examined . on the accuracy of this interpretation admissibility is precursor to weight and therefore, unless there is other evidence upon which a conviction may be sustained such confessional statement is devoid of probative value PW1 who was not the maker of exhibit 3 cannot be cross examined extensively in order to discover the accuracy of the same. Also non compliance with section 83 of the evidence Act make same in admissible. However, with the regards to exhibit 3A the retraction of the statement exhibit 3Aperse does not render it admissible denial was not madetimerously may lend weight to it. See ***OLATINWO NUMDDEEN BRIGHT VS STATE (2012) LPELR 784 SC.***The fundamental reason of the objection raised by the Defendant was the fact that the

Defendantclaim to be illiterate and therefore exhibit 3A is not admissible in evidence having offends the provision of section 3 of the Illiterate and protection Act. I totally disagreed with the learned defence Counsel because theDefendant gave evidence in this Court in English and PW1 graphically form the record of the Court told the Court how he recorded the statement. In my view PW1 testified with regards to exhibit 3A has satisfied all the requirement of the law therefore same is reliable because of its credibility, accuracy and certainty I have critically relied on section 28 of the evidence Act. A confession is an admission made at any time by a person charged with a crime statingor suggesting the inference that he committed that crime. The requirements of section 221 of the PCC has not and cannot be said to have been established by the prosecution beyond reasonable doubt the key element of the offence punishable under section 221 of the PCC has not been establish at all. I don't have to produce those key elements in this judgment. However, based on exhibit 3A when the Defendant confessed that he hit the deceased with a broken pestle according to him have acted in self defence made me to strictly believed that the Defendant actually hit the deceased person with a broken pistol in the cause of retaliation. Although the broken pistol was not tendered in evidence and medical report was also not tendered in evidence so also no eye witness was called to testify. This can only be done depending upon the nature and circumstances of the alleged crime. From my understanding and more particularly from exhibit3A confessional statement theDefendant hit the deceased in self defence from the confessional statement, the Defendant cannot be said to have killed the deceased because the prosecution failed to prove the case against the Defendantas required by the law.Oursis accusatorial criminal justice system an accuse is presumed innocent until the contrary is proof. Based on the confessional statement I deemed it justice to convict the

accused person under section 226 of the P.C.L consequently the Defendant is hereby convicted based on the above provision of the PCL. The defence raised in his examination in chief by the Defendantthat he was inside one particular primary school when two Okada men came to the primary school who live with his step mother. According to the Defendant they requested him to follow them home that his attention was needed by his mother on reaching home he saw the deceased lying down he asked what happened they started beaten me and replied him that he killed Jamilu I was taken to police station from my understanding this piece of evidence is a one of Alibi which must be raised timeously not during the trial. The essence is to enable the prosecution to conduct their investigation towards the direction. The Alibi as a defence comes late. I therefore refused to agree with the above piece of evidence as a defence.

SENTENCE

Having heard the plea of allocutos made by the defence Counsel, I would certainly temper justice with mercy. Based on the reason stated above. Consequently the convict is herebysentence to 6 years imprisonment the sentence shall start running from the 1st day the convict was arraigned before the Court. This judgment is stickily inline with section 226 of the P.C.L

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance
Fidelis Ogbobe:- For the prosecution

Defendant in Court

T.P Tochukwu:- Appearing with me is Dennis Abu for the Defendant.

Court:- The defence counsel conducted this case probono from arraignment to judgment.