

**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:25th May,2023

FCT/HC/CR/165/2021

BETWEEN:

COMMISSIONER OF POLICE-----

COMPLAINANT

AND

SHAMSU YUSUF-----

DEFENDANT

JUDGMENT

The Defendant was charged with one count charge to wit:-

“That You Shamsu Yusuf ‘M’ 20 years on and about 18th February, 2020 at about 17:15hour at FoiKubwaFCT, Abuja within the Abuja Jurisdictional Division did commit Culpable Homicide punishable with death in that you caused the death of One Affa Mohammed ‘M’ 37 years by stabbing him on his chest with knife thereby causing him deep and severe injury which eventually led to his death and you did so with the knowledge that death would be the possible consequence of your act. You thereby committed an offence contrary to section 220 (a) (b) and punishable under section 221 Penal Code.” Having read the content of the charge the Defendant pleaded not guilty

Interpreter:- Sworn to interpreter

Name :- Mohammed Suliman Takuma

Address:- High Court of Justice FCT, Abuja

Date:- 15th December, 2021

PW1:- While given evidence he told the Court that he can remember on the 18th February, 2021 around 6 :O Clock in the evening one Umar Isah T of Utako complaint that somebody stabbed one of his workers with a knife. The matter was referred to PW1 and his team members to investigate. They proceeded to the scene of crime where they saw the victim they rushed him to the hospital on reaching there the doctor on duty confirmed the death of the victim .PW1 invited the Defendant who was alleged to have stabbed the victim to death. PW1 said they recorded the statement of the complainant voluntarily while that of the Defendant was recorded under ward of caution. The corpse was deposited at Kubwa General Hospital mortuary PW1 further said they invited both the complainant and the Defendant. Those in attendance during the interview include PW1, DPO and the DCO in the cause of recording the statement of the Defendant same was crying he said to them he did not know that death would be the possible consequence of his action. The statement was read to the Defendant same was endorsed by the DCO after the Defendant affixed his signature.

Based on the nature of the offence the case was transferred to state CID Homicide section. The Defendant knowing fully well that the used of knife would cause the death of the Defendant. Under cross examination answered that he was not there when the incident took place.

He also answered that it was as a result of their investigation that he became aware of what happened. PW1 further answered that yes it was as a result of the attack of some worker at the site that led him to use his knife in self defence. He also answered that it was at the state CID that further investigation was carried out. Prosecution no re-examination.

PW2 Inspector Felix peter attached to Homicide section CID FCT Command Abuja. PW2 said he could remember on the 18th February,2021 or any other day a case of Culpable Homicide was transferred to this section from Dutse Alhaji Police Division together with the Defendant for thorough investigation. On receipt of the case they recorded the statement of the complainant voluntarily who happened to be the site engineer at FoiKubwa.

PW2 he also recorded the statement of the young brother of the deceased. the Defendant was voluntarily interviewed, video recording and the statement was recorded under word of caution on a broad day light in the presence of the team leader. Some representative of the Legal Aid Counsel. After that PW2 and woman inspector Ruth visited the scene of the crime at FOI Kubwa, Abuja where they recorded voluntarily the statements of three witnesses, PW1 recorded the statement of two witness while his colleague recorded the statement of one witness. Those women were shocked that was why they recorded the statement there they could not come to his office. The corpse was released to the younger brother for burial arrangement. The corpse was released to the relation because they don't want any autopsy to be conducted. PW1 said their findings was that on 17th February, 2021 the 1st witness by name Umar Isah Tele had a construction site at FOI Kubwa where he hired the other three labourers in the process of working they run out of cement the said Umar isah Tele requested for extra 100 bags of cement same was supplied by Babangida. The Defendant works as a loader with the said Babangida truck. After the supply.

The labourers requested the Defendant to off load 20 bags of the cement at the open space in the compound that would be used on that day. While the remaining 80 bags should be offloaded inside the store. Surprisingly the Defendant started offloading all the cement at the open space outside they now confronted him why the Defendant

should offload all the cement outside. He replied that he can offload anywhere he feels that is not their business. Defendant was advised by kamaluden that he should offload the cements inside the compound if he cannot do that he should stop offloading. Fight started between kamaluden and the Defendant. The deceased who is the oldest person at the site now rushed to the scene of the site the defendant rushed into the truck brought out a short knife. The deceased while trying to separate the Defendant and kamaluden. The Defendant now stabbed the deceased on the chest and same fell down. The Defendant tried to escape but was arrested with the help of some passerby. They almost lynched him when somebody called some policemen at DUtseAlhaj. PW2 said that was what they gathered during interrogation and also they obtained the confessional statement of the Defendant and addressed same to the DCP Cld FCT Command. The report was signed by the officer in charge of Homicide section CID Abuja by CSP OluwafobiShafat. After all, have been done DCP referred the matter to legal section where finally the Defendant was now brought to Court. The following documents were admitted in evidence:-

1. Investigation report dated 12th March, 2021 is exhibit 1
2. Application for the release of corpse dated 19th February, 2021 is exhibit 2
3. Statement of Umar Tela dated 19th February, is exhibit 3
4. Statement of Abdul Sani dated 1st March, 2021 is exhibit 4
5. Statement from Nuhu Babangida dated 1st March, 2021 is exhibit 5
6. Statement from Mohammed Isah dated 26th February, 2021 is exhibit 6
7. Statement of KamaluddeHamisu dated 1st March, 2021 is exhibit 7
8. Photograph of victim is exhibit 8

Even though in the course of the proceeding the defence Counsel object to the admissibility of the statement made by the Defendant on the ground that the Defendant only thumb printed and that the

Defendant denied ever signing the said confessional statement. The objection above was over ruled by the Court and the confessional statement made by the Defendant was exhibit 9 During cross examination PW2 said the Defendant was arrested about 4 to 5 meters when he tried to escape. PW2 further answered that he did not record the statement of the driver. The witness also answered that the Defendant is working with the driver of the truck. The Defendant according to PW2 told the Court that he was always paid N50.00 per cement he offload from the truck. He also informed the Court that it was some labourers that tried to stop him from offloading and he has even shown a cut inflicted on his head by the labourers. The defendant acted in selfdefence according to PW2 this information was given to PW2 during investigation.

PW3 said on the 18th February, 2021 while on duty a case of Culpable Homicide was reported the PW3 was on duty both the suspect and the deceased were brought to the station. The case was referred to Inspector KwandeOsenbe to investigate he was equally assigned to move the corpse of the deceased to Kubwa General Hospital in order for the medical personel to certified that yes the deceased was actually dead. PW3 said he recorded the statement of the Defendant under ward of caution in English language. Thereafter read over to him and interpreted same in Hausa. The Defendant said he can't write but he made a thumb print on the statement PW3 counter signed as the recorder. The statement was endorsed by a Superior policeofficer. The said statement was admitted in evidence as exhibit 10 under cross examination PW3 said the only role he played was the recording of the statement made by the Defendant. Defendant answered exhibit 10 was recorded in English but initially same was interpreted in Hausa before the Defendant thumb print on the statement PW3 said the Defendant made his statement in Hausa while the Defendant only recorded in English. He also answered that he did not record the statement of the

Defendant in Hausa because what they would tender is the English version of the statement. PW3 said he can also write in Hausa but that it is not mandatory that he must write in Hausa language while recording the statement of the Defendant. PW3 also told the Court that he was the 1st person to record the statement of the Defendant and he said he was not the IPO. The Defendant opened his defence he told the Court that on 18th February, 2020 in FOI Kubwa while he was sitting at their site his boss instructed that they should carry blocks to the site. On reaching the site they met some people fighting each other some were carrying shovels while others were carrying 2 by 6 wood. The defendant asked someone what was happening when one of the fighters asked him do you want to know what is happening the Defendant replied yes. He now raised his shovel and heat him on both right and left hand defendant now attempted to run away when somebody heat him with an iron at the back of his neck where he had a cut on his neck. He now fell down and became unconscious.

Finally when he wake up he saw himself at the hospital. DW1 while given evidence in chief told the Court that he only thumb printed on exhibit 10 and that he did not sign exhibit 9. During cross examination DW1 answered that on 18th February,2020 he drove a truck to the building site he also answered they conveyed blocks to the site. Defendant denied using a knife to inflict injury on the deceased he further told the Court that he does not know what happened because he was unconscious. Defendant also said he was not aware that somebody died,Defendant said the name of his boss is Alhaji Hussaini. Defendant further said he was not given his handset to call anybody ever since he was arrested.

He also denied stabbing anybody with a knife that led to that person death. Having closed their defence both Counsel agreed that the matter be adjourned to the 3rd April, 2023 for adoption of final written address. Having receipt a copy of the final written address served on

them by the Defendant the prosecution failed to file their own accordingly the Defendant apply to foreclose the prosecution which application was accordingly granted by the Court and same adopted their final written address. The lone issue that arises for determination is whether or not from the evidence before the Court the prosecution has proved its case beyond reasonable doubt against the Defendant.

The Defendant's Counsel argued that since PW3 recorded the statement at Dutse Alhaji lacked jurisdiction to investigate the matter exhibit 10 in this case the alleged statement be discountenanced. So also the refusal to release the phone owned by the Defendant has denied him the right to prepare his defence adequately. ***DURU VS STATE (1993)3 SCNJ AT 14***

"In any criminal trial the burden of proof is on the prosecution to prove its case beyond reasonable doubt. As this is a case of murder, the death its cause and the person murdered must be proved by the prosecution as required by law"

The alleged testimony of eye witnesses tendered in evidence namely exhibit 3,4,5,6 and 7 these so-called eye witness did not testify in Court so that they can be cross examined. Counsel urge the Court to dismiss their statements. See ***Nicholas WANLLEY VS THE STATE (1993)6 SCNJ 152.***

The duty of the Court is to consider all the defence available to the Defendant even if it is implied from the evidence see ***UCHE VS STATE (1992) 10 SCNJ 74 ALLPABID VS STATE (1994)7-8 SCNJ 429.IN UCHE VS STATE (supra)***

"Any defence in which an accuse person is in evidence entitled to should be considered however stupid or unreasonable for what it is worth."

From the above it was sufficiently established the evidence of the Defendant is that of self defence.

In ***ABADULLABE VS BORNU NA (1963)1 ALL NLR 154- 158 (also cited in SASEGBON LAW OF NIGERIA VOL 7 (PT III) paragraph 2860 pages 1594 – 1595 SC*** on self defence held

“The provision on private defence of person or property are given in section 59-65 when the right to private defence arises under section 60, and there is no time to have recourse to the protection of the public authorities (section 63) no more harm should be done than is necessary to inflict for the purpose of defence (section 62). Section 65 provides that the right of private defence of the body extends under the restrictions mentioned in section 62 and 63 to the voluntary causing of death only when the act to be repelled is of any of the following description namely “

- a. An attack which causes reasonable apprehension of death or grievous hurt or
 - b. Rape or an assault with the intention of gratifying unnatural lust or
 - c. Abduction or kidnapping one of the assailant was the deceased
- Affammuhd from the above the Defendant acted in self defence. The weapon used by the assailant are all issues to be considered to ascertain if the nature of the self defence was within the limit of a reasonable man. It is the duty of the prosecution to call one vital witness see ***IKUMOHIHAN VS STATE (2019) VOL 5 WRN 98 PAGE 132. ADAMU VS STATE (2019)35 WRN ISC ISHAYA VS STATE (2019)WRN 131 SC.***

In the circumstance this Court can rely on exhibit 10 to hold that the defendant acted in self defence. Any doubt created in the mind of the Court as result failure of the prosecution to proof a case against the Defendant shall be resolve in favour of the Defendant see ***MANSOK V STATE (1993)*** Counsel finally urge the Court to discharge and acquit the

Defendant based on self defence. The evidence of PW5 were admitted in evidence namely exhibit 3,4,5,6 and 7 those so called eye witnesses did not testify in Court so that they could give evidence and to be cross – examined so as to test the veracity of their testimony vis s-vis their statement to the police. It is my opinion to discountenance to their statement to the police which were tendered as exhibit same should not be relied upon.

I therefore totally disregards and expunge the statements as admitted in evidence see ***NICHOLAS WARTHEY VS THE STATE (1993) 6 SCNT 152.*** The prosecution from PW1,2 and 3 have not substantially proved a case of murder against the Defendant. Although the Defendants Counsel raised an issue that the investigation which started at Dutse Alhaji was done without jurisdiction. That is not true a police in Nigeria has the right to investigate any matter however in same circumstances depending upon the nature of the offence such investigation can ultimately be handled by the state CID FCT Command. I have no doubt in my mind from the above incident there was no eye witness called by the prosecution neither was there any incriminating item e.g the knife that was tendered in evidence nor any medical report which may reveal the cause of death was not tendered in evidence . Even though the Supreme Court has provided that where a prosecution on establishing a case on single evidence without tendering the weapon used or medical report such evidence may easily establish the guilt of the offence. However in this case since there is no direct evidence the tendering of those document are necessary in this trial failure to do that must be resolved in favour of the Defendant. I would also state in this judgment that in the cause of his evidence the Defendant denied ever stabbing the victim with a knife neither did he know the victim and that he was lynched and became unconscious which in exhibit 10 he confirm to have acted in self defence. However the Defendant failed to gave detailed account how he acted to defend himself satisfactorily.

During the trial Defendant said he only thumbprint on the document he did not sign that cannot render the document inadmissible. A confessional statement may in fact contains both incriminating and exculpatory parts. The applicable principle in the circumstance were expounded by the Supreme Court in the case ***GARBA VS STATE(1997)3 NWLR (PT492) 144 SC***. It was held that where an accused person adverts its mind to the fact that the whole statement both the incriminating part and the excuses or explanation therein must be considered together in deciding where the truth lies .

However a trial Court is entitle to accept an incriminating portion of a confessional statement as established while rejecting another portion of the same statement especially where upon a consideration of the entire evidence before the Court there exist overwhelming credible evidence in support of such incriminating portion of the confessional statement as well as other pieces of evidence which render the rejected exculpatory part clearly unreliable *ibid* at 162 paragraphs E-H per Igu JSC. Base on the above juridical authorities and other consideration made me to convict the Defendant.

SENTENCE

I have carefully record the plea made by Mr. Akin Adewale on behalf of the convict. I have also recorded the response made by the prosecution I hereby sentence you Shamsu Yusuf to 8 years imprisonment commencing for the date you were initially arraigned before this Court, this sentence is strictly in line with section 225 of the Penal Code Law. This sentence shall start running from 18th of February, 2020.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

Defendant in Court

John Ijagbemi:- For the prosecution

AkinAdewale:-For the Defendant