IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

TUESDAY, FEBRUARY 13, 2018

CHARGE NO. FCT/HC/CR/12/2014

BETWEEN:

COMMISSIONER OF POLICE ... ... PROSECUTION

AND

YAKUBU BULUS ... ... DEFENDANT

JUDGMENT

THE DEFENDANT herein, *Yakubu Bulus* was arraigned on 4/3/14 for culpable homicide not punishable with death contrary to s. 222 and punishable under s. 224 of the Penal Code Law. The one-count charge preferred against him reads as follows:

> "That you Yakubu Bulus, male, 43 years of Tasha II, FCT-Abuja on the 20th of December 2013 about 2300hrs, at Tasha II, Gwagwa, FCT, Abuja within the jurisdiction of this Honourable Court, did commit an offence of culpable homicide not punishable with death, in that you caused the death of one Ha'anatu Daniel, female of Tasha II, FCT, Abuja by repeatedly heating her with fist blow which resulted to her death; you thereby committed an offence contrary to section 222 and punishable under section 224 of the Penal Code Law."

The Defendant pleaded "Not Guilty" to the charge, thereby setting the stage for the Prosecution to discharge the non-shifting burden of establishing his guilt beyond reasonable doubt in a frantic bid to demonstrate the Defendants'

guilt, the Prosecution called three (3) witnesses, whilst the Defendant testified for himself and called no other witness.

The PW1, *Anthony Akerele* is an Inspector of Police currently attached to Force CID, Nigeria Police, Area 10, Abuja, FCT, but was formerly with the Homicide Section, CID, Nigeria Police, FCT Command, Abuja. He stated that he knew the Defendant as well as the deceased *Hanatu Daniel;* that a case of culpable homicide was transferred from Gwagwa Police Station; that upon receipt of the case, the Complainant [*Magdalene Daniel*] volunteered a statement and the accused person, *Yakubu Bulus* equally volunteered a confessional statement under caution; that he visited the scene of crime with the Complainant and the accused person and equally visited the mortuary where he saw the corpse of the deceased *Hanatu Daniel;* that he also recorded voluntary statements from three (3) witnesses, and forwarded the case file to the Legal Section, CID, FCT Police Command for prosecution upon conclusion of investigation. He further stated that the photograph of the corpse of the deceased was contained in the original case file that was transferred to him along with the Defendant; that he recorded the Defendant's statement which was confessional in nature and the same was endorsed by a senior police officer, *ASP Godwin Gonam.* The PW1 identified Defendant's extra-judicial statement dated 27/12/13, and the same was tendered in evidence as Exhibit P1.

It is noteworthy that the Defence counsel from the Legal Aid Counsel, *Azubike Moneke, Esq.* withdrew his earlier objection to the voluntariness *vel non* midway into the trial-within-trial when the Defendant's stance shifted from not making the statement voluntarily to not making any statement at all. The court however noted in passing that even if the objection were not been withdrawn, a dispassionate consideration of the evidence adduced in the trial-within-trial would lead inexorably to the conclusion that the Defendant's statement was

voluntarily made as the Defendant was unable to point to anything that would suggest otherwise in that beyond his mere *ipse dixit* that he was forced to sign the statement, the Defendant could not describe what the Police officer(s) who recorded his statement did or did not do that amounted to force.

The PW1 equally identified and tendered the statement of nominal complainant *Magdalene Daniel* dated 27/12/13 as Exhibit P2; and stated that he wrote on 27/12/13 to request a medical report from *Suzzyville Clinic & Maternity, Gwagwa* where the deceased was admitted before her death; and that he received a medical report on 31/12/13, which he identified and tendered as Exhibit P3.

Under cross examination by *Azubuike I. Moneke, Esq.* of counsel for the Defendant, the PW1 stated he has been with the Police for 34 years; that the date in Exhibit P3 is located where the doctor's signature appeared; that the letter referred to in Exhibit P3 is in the case file before the court; that the matter was first reported at Gwagwa Police Station before it was transferred to the Homicide Section at State CID, FCT Command; that the case file transferred to him contained photographs of the deceased, statement of the nominal complainant, the Defendant's extract from crime diary, and minute sheets of the IPO to officers. He could not remember offhand the content of the documents in the case file or the date he visited the crime scene, which is the house of the deceased in Tasha 2 in Gwagwa axis, the exact date he received the file and the accused person or the date he wrote to *Suzzyville Clinic*. When pressed by counsel as to whether he recorded the statements of the accused and the complainant, as well as wrote to *Suzzyville Clinic* on the same date, the PW1 maintained that it was around 27/12/13.

The PW2, *Erume Lucky Omamuzou* stated that he is a licensed Community Health Practitioner at Suzzyville Clinic, Kubwa; that he trained at University of Maiduguri Teaching Hospital in 2002 and holds a certificate in Community Health; that he knew the Defendant whom he treated sometime in 2002/2003 when the former had a fight with his brother; that Suzzyville Hospital has two branches at Kubwa and Gwagwa; that three (3) patients were brought to their clinic at Gwagwa on 23/12/13; that one of them was *Hanatu Bawa Daniel* who was brought by her daughter and a female police officer whose named is *Sgt. Jemila*; that *Hanatu*'s two hands were swollen and her speech was incoherent; that she was also crying and complaining of pain all over her body; and that he was working under his father, *Dr. Erume* who examined the patient, took her blood pressure, and wrote out a prescription. The PW2 further testified that after his father took her blood pressure, she was placed on observation but did not respond to treatment and later died at about 2 a.m.; that the Police was called and they all certified her dead, whereupon the corpse was taken to the mortuary by the Police; that they subsequently received a letter from CID on 27/12/13 enquiring into what caused Hanatu's death and his father [Dr Erume] responded accordingly; and that his father retired in 2016.

Cross-examined by *Azubuike I. Moneke, Esq.* of counsel for the Defendant, the PW2 conceded that his qualification as a Community Health Officer does not authorise him to manage an emergency patient; that his father is a medical practitioner, and that was why he was the one who took the vital signs and other details of the patient; that the patient was unable to walk and was being supported; that he is neither a security nor receptionist at the clinic, but a community health professional and was going out of the clinic when the deceased was brought in and he saw her. Upon being pressed on why the patient was not referred to a general hospital when they discovered that it

was an emergency case, the PW2 stated that his father was in charge and he was not the one giving directives on what to do. He stated that he did not have his father's consent to testify in court, but his testimony is based on the case file and the documentation in the treatment card; that he came to court as a staff of Suzzyville Clinic and everything he said in court was with the authorisation of the clinic; that he was in court because he knew the facts of this matter; that their clinic did not transfer the patient to a general hospital because the case was not above them; that his father prescribed paracetamol for the deceased and that was all he could remember because the incident occurred a long time ago; that the deceased was in their clinic seven or eight hours before she died; that she was admitted at 5.00 p.m. on 23/12/13 but she died at 2a.m. on 24/12/13; and that he was not present when her remains were deposited at the mortuary. He denied telling the court that the Police took the body of the deceased to the mortuary on 27/12/17, insisting that his father asked him to call the Police when the deceased passed on and the Police came to the clinic at about 7a.m. on 24/12/13. The PW2 stated that he does not live in the hospital premises and did not sleep in the hospital on 23rd – 24th December, 2013 but was on duty at the clinic; that his father left the clinic at 8p.m. on 23/12/13 and there was no doctor on duty from 23rd – 24th December 2013; that the two registered nurses on duty administered the drugs his father prescribed and he was present. When pressed as to why they did not tell his father to transfer the deceased to the General Hospital at Kubwa since the prescribed drugs were not working, the PW2 maintained that it was not within his power to give orders in the clinic; that his father was present when the deceased was brought to the clinic; and that it was the most senior nurse, *Sarah Ojoh* who informed his father at 3.00 a.m. on 24/12/17 that the deceased had passed on; and that she was shouting of pain from the time she was brought in until she died. He could not remember what treatment the deceased was given but maintained that they

gave her the most appropriate treatment; and that he has worked at Suzzyville Clinic for about nine years and has been in Gwagwa during that period. He rejected the suggestion that he is not qualified to give evidence of cause of death of the deceased, but conceded that they did not conduct any autopsy; and stated that seven (7) other patients were in the clinic when the deceased was brought in; and that he had no direct contact with the deceased and did he not interview her.

The PW3, *Jemila Adamu*, is an Inspector of Police currently attached to the Divisional Police Headquarters, Gwagwa, Abuja. She knew the Defendant as a suspect in a case she investigated in 2013; that a case of criminal force and assault was reported by one *Magdalene Daniel* in the evening of 23/12/13 at Gwagwa Police Station; that the case was referred to her and she had to rush *Hanatu Daniel* (now deceased) to Suzzyville Clinic, Gwagwa; that *Magdalene Daniel* reported that *Yakubu Bulus* [Defendant] beat up her mother [*Hanatu Daniel*] for no reason; that after rushing *Hanatu Daniel* to the hospital, she recorded the statement of *Magdalene Daniel* but *Yakubu Bulus* was at large at the time; that she visited the scene of crime at Tasha 2, Gwagwa, Abuja on 23/12/13; and that *Hanatu Daniel* died at about 2a.m. on 24/12/13 whilst receiving treatment at Suzzyville Clinic; that the corpse was photographed on the same date and moved to Kubwa General Hospital at about 9.30a.m.; that *Bulus* was arrested on 25/12/13, at about 1.30 a.m. at Kasasana village; that he made a confessional statement which was read over to him and he understood same and signed it before she countersigned; that the statement was also endorsed by a superior police officer; and that the case was transferred on 27/12/13 to CIID for further investigation. The PW3 identified and tendered the extra-judicial statements made by *Yakubu Bulus* and *Magdalene Daniel* on 23/12/13 and 25/12/13 as Exhibits P4 and P5 respectively.

Under cross examination by *Azubuike I. Moneke, Esq.* of counsel for the Defendant, the PW3 stated that she was promoted to the rank of Inspector on 1/7/2014 but was a Sergeant in 2013; that she was unable to take the details of the deceased and did not hear from her directly before she passed on; that this is not the first time she was testifying in court; and that what she told the court was based on what the complainant [*Magdalene Daniel*] told her. She could not recall the exact date she recorded the statement of *Magdalene Daniel*, but insisted that *Magdalene* reported the matter at their station on 23/12/13. She denied being sympathetic towards *Magdalene* being the daughter of the deceased; and stated that the date on Exhibit P4 is 23/12/13 but could not tell if there was any mutilation or alteration of the date therein. The PW3 maintained that she read the statement to *Magdalene* and she understood it before she signed; that she neither visited nor contacted the masseur to whom the deceased took herself for massage as stated in Exhibit P4. She denied knowing whether or not *Magdalene Daniel's* statement in Exhibit P4 to the effect that she was in her husband's house when the deceased called her to leave whatever she was doing and come over to see her was made before or after the deceased had died; and insisted that she did her best in investigating the matter even as a Sergeant back then in 2013; that they do not have any relationship with Suzzyville Clinic and that the deceased was not the first person they have taken there. The PW3 however conceded that Kubwa General Hospital was a better place to take victims of crime to, but maintained that it was her superior officer who ordered that the deceased should be taken to Suzzyville Clinic, and she did so because that is where they usually take victims to till date, and many victims taken to Suzzyville Clinic whose cases were even more severe than that of *Hanatu Daniel* survived, but did not have the records offhand; that apart from *Hanatu*, she was not sure that any other victim they took to Suzzyville died. She stated

that the distance between Gwagwa Police Station and Suzzyville Clinic is a walking distance, but denied taking *Hanatu* there because of her own convenience; that she took remains of the deceased to Kubwa General Hospital on the orders of one *DSP Famous* [whose surname she could not remember] who was the same officer who ordered her earlier to take the deceased to Suzzyville Clinic; and that she could not confirm *Magdalene's* narrative from the deceased because she saw the deceased crying of pain and chose not to disturb her.

At the close of the Prosecution's case, the Defence made a no-case submission which was overruled by the court, whereupon the Defendant [*Yakubu Bulus*] testified on his behalf as DW1. He stated that he is a farmer and lives with his family at Tasha, Gwagwa but has been at Kuje Prisons since he was brought to court; that he was at Tasha on 20/12/13; that one of his sons took ill on 16/12/13 and he took him to a herbalist at Sabon-Wuse where he spent two days; that upon his return, his children informed him that the Police were looking for him, so he went to Gwagwa Police Station by himself and they detained him there for three (3) days under torture; that he knew *Mrs Hanatu* who sells *kunu* at the roadside; that he had no connection [or relationship] with her but only knew that she was taken to the hospital; that he is standing trial because of the allegation levelled against him by *Mrs Hanatu's* daughter for slapping her mother which is not true; that he did not slap *Mrs Hanatu* as alleged or at all; that he heard from *Mrs Hanatu's* daughter at Gwagwa Police Station that her mother was taken to hospital; and that he knows that Mrs *Hanatu* is now dead.

Under cross examination by *Mrs E. S. Osiaje* of counsel for the Prosecution, the Defendant insisted that he does not know anything about drink and does not know the names of the children of the deceased, and no child was sent to call

him; that it could be his brother, but not him; that his daughter, *Blessing* was eight (8) years old in 2013; and that he does not know anything about *akara* [bean cake]. He maintained that he was not arrested but presented himself to the Police on 23/12/13 and said to them he was told they were looking for him, and they detained him; that he learned about *Hanatu's* death on 20/12/13 from her daughter in town [Tasha]; and that he did not ask why he was being looked for by the Police. He conceded that is was not how the Police used to look for someone; and stated that they told him that he was being detained in connection with the death of *Hanatu*, and that he denied knowing anything about her death; that he was being tortured and did not know anything else they were doing; that he has been living in Tasha since 2012, but does not know when *Hanatu* moved to Tasha; and that he had no misunderstanding with *Hanatu*. The Defendant was not sure of when he was born, but stated that he is well over 40 years.

The trial wound to a close with the testimony of the DW1, and the final written address filed and exchanged pursuant to the orders of this court were adopted in open court by learned counsel on both sides of the divide on 15/1/18. The Defendant's final address is dated 11/12/17, whilst the Prosecution's final address is dated 4/1/18.

In the Defendant's final address, a sole issue was formulated for determination as follows:

> *Whether from the totality of the evidence before the court, it can be said that the prosecution has proved his case beyond reasonable doubt to warrant the conviction of the Defendant on this offence.*

The Prosecution in its final address formulated a sole issue and an alternative issue for determination as follows:

Whether the Prosecution has proved its case of culpable homicide not punishable with death contrary to section 222 of the Penal Code Law and punishable under section 224 of the same law against the Defendant.

ALTERNATIVELY, *whether the facts proved by the Prosecution are sufficient to support a charge of assault or criminal force to woman with intent to outrage her modesty contrary to section 268 of the Penal Code Law.*

Now, it is merely restating the obvious that our adversary criminal justice system is accusatorial in nature and substance, and every person charged with a criminal offence is presumed innocent until he is proved guilty. See ***s. 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*** A necessary corollary of the presumption of innocence is that in a criminal trial such as the present, the burden is always on the prosecution to establish the guilt of the accused person beyond reasonable doubt. Quite unlike civil proceedings, this burden on the prosecution is static in a manner akin to the fabled constancy of the '*Northern Star*' and never shifts to the accused. It is if, and only if, the prosecution succeeds in proving the commission of a crime beyond reasonable doubt that the burden of establishing that reasonable doubt exists shifts to the accused. See *ss. 135 and 137 of the Evidence Act 2011*. The Prosecution has the onus of proving all the material ingredients of the offence(s) charged beyond reasonable doubt. See *STATE v SADU [2001] 33 WRN 21 at 40*. Where the prosecution fails to do so, the charge is not made out and the court is bound to record a verdict discharging and acquitting the accused. See ***MAJEKODUNMI v THE NIGERIAN ARMY [2002] 31 WRN 138 at 147.*** Also, if on the totality of the evidence adduced the court were left in a state of doubt or uncertainty, the prosecution would have failed to discharge the onus of proof cast upon it by law and the accused would be entitled to an acquittal. See *UKPE v STATE [2001] 18 WRN 84 at 105*. However, proof beyond reasonable doubt does not mean proof beyond all

shadow of doubt, but such proof as would reasonably and/or irresistibly lead to the inference that the accused committed the offence. See ***AKINYEMI v STATE [1996] 6 NWLR (PT 607) 449, ONI v STATE [2003] 31 WRN 104 at 122*** and ***MILLER v MINISTER OF PENSION (1947) 2 ALL ER 372 at 373.*** Against the backdrop of the foregoing, the straightforward issue arising for determination is whether the prosecution has adduced sufficient, cogent, credible and compelling evidence to establish the charge against the Defendant beyond reasonable doubt; and it is on this basis that we shall proceed presently to consider and evaluate the evidence adduced which has already been set out *in extenso* hereinbefore.

The Defendant is charged with the offence of '*culpable homicide not punishable with death*' contrary to s. 222 and punishable under s. 224 of the Penal Code. It has been held in a long line of decided cases that where culpable homicide is in issue, it is always incumbent on the prosecution to prove the cause of death, and this can be done either by direct evidence or circumstantial evidence that creates no room for doubt or speculation. See *AKPAN v STATE (1992) 7 SCNJ 22, R v. OLEDINMA (1940) 6 WACA 202, GABRIEL v STATE [1989] 5 NWLR (PT. 122) 457.* There must be clear and unequivocal evidence that the deceased died as a result of the act of the accused person. If the circumstances of attack on the deceased person are crystal clear (such as where the victim died on the spot), or the cause of death is obvious (such as where fatal injuries inflicted on the deceased by the accused person are graphically described to lead to no other inference than that the deceased died as a result of the attack and those injuries), medical evidence ceases to be of practical legal necessity and the court can convict even where there is no medical evidence, and even if the body of the deceased is not recovered or found. See *BABUGA v STATE [1996] 7 NWLR (PT. 460) 279; ULUEBUKA v STATE [2000] 7 NWLR (PT. 665) 404* and *ENEWOH v STATE [1989] 4 NWLR*

(PT. 119) 98. But where the deceased did not die on the spot, the issue of causation arises and the prosecution must establish the cause of death beyond reasonable doubt. The Supreme Court held in ***UYO v ATTORNEY GENERAL OF BENDEL STATE [1986] 1 NWLR (PT. 17) 418*** that: (i) the principle of causation dictates that an event is caused by the act proximate to it and in the absence of which the event would not have happened; (ii) in order to establish culpable homicide (whether punishable with death or not), it must be established not merely that the act of the accused **could** have caused the death of the deceased but that it **actually** did; and (iii) the important consideration for determining responsibility is whether death of the deceased was caused by injuries sustained through the act of the accused and not whether death of the deceased from a medical point of view was caused by such injuries. See also ***R. v EFFANGA (1969) 1 ALL NLR 339, AIGUOBARUEGHIAN v STATE [2004] 3 NWLR (PT. 860) 367.*** It is of the essence that in order to hold an accused person criminally responsible in a charge of culpable homicide, the chain of causation must not be broken as this implicates the *actus reus* of the offence. Where there is a break in the chain of causation, otherwise known as *novus actus interveniens*, it would be resolved in favour of the accused. Also, where there is more than one possible cause of death, the benefit of the doubt is always given to the accused person because the available evidence in such a situation hardly pins the accused person down to the death of the deceased. See *UYO v ATTORNEY-GENERAL, BENDEL STATE supra, AHMED v STATE [2001] 18 NWLR (PT. 746) 622, AIGUOBARUEGHIAN v STATE supra at 414* and *OCHUKO TEGWONOR v STATE (2007) LPELR-467 (CA).*

The clear, undisputed fact that has emerged in these proceedings is that the deceased *Hanatu Daniel* passed on at Suzzyville Clinic, Gwagwa, Abuja on 24/12/13 at about 2am. The Prosecution's case is that the Defendant beat up the deceased *Hanatu Daniel* on 20/12/13; that she died as a result the

beating at Suzzyville Clinic on 24/12/13; that the Defendant confessed to have committed the offence charged in his extra-judicial statements in Exhibits P1 and P5 and he can safely be convicted on the strength of his confession once the court is satisfied that it was free, voluntary and true, citing ***STATE v SHEEVO SHONTO LPELR-CA/YL/33C/2012*** and ***IREGU EJIMA HASSAN v STATE (2016) LPELR-42554 (SC)***; that the Defendant specifically admitted in Exhibit P1 that he did beat up the deceased on 20/12/13 and that '*he knew that she died as a result of the beating*', and in Exhibit P5 that he discovered after beating the deceased that she was in pain but did not take her to the hospital for treatment due to lack of money; that "*the medical report on the deceased which was admitted in evidence as Exhibit P3 seem to establish circumstantially that the death of the deceased at about 2am on December 24, 2013 resulted from the voluntary act of the defendant*"; that having allowed Exhibits P2 and P5 [being extrajudicial statements of the nominal complainant, *Magdalene Daniel*] and Exhibit P3 [being the medical report issued by *Dr Erume*] to be admitted unchallenged or without objection, the Defendant cannot complain at the latter date that the makers were not called to testify and/or that the evidence of the prosecution witnesses constitute hearsay, insisting that admissibility is determined by relevancy and the court is bound to admit evidence that is relevant for the proper determination of any fact in issue, placing reliance on the case of *HARUNA v ATTORNEY GENERAL OF THE FEDERATION 2012 NSCQR (Vol. 49) 1410*; and that the law does not require the prosecution to call any particular number witnesses in proof of this case, citing *OLABODE v STATE [2009] All FWLR (PT. 500) 607 at 619*.

It is contended on behalf of the Defendant that the failure or neglect on the part of the Prosecution to call the nominal complainant [*Magdalene Daniel*] and *Dr. Erume Nathaniel* [who examined the deceased upon her admission at Suzzyville Clinic] is fatal to the case of the prosecution as they are vital

witnesses to the determination of this case, citing the case of ***IGRI v STATE [2010] 7 WRN 38 at 58 (CA)***; and that an analysis of the testimony of all three Prosecution witnesses will reveal that they gave hearsay evidence before this court which is inadmissible in law under to s. 38 of the Evidence Act 2011, placing reliance on ***LASUN v AWOYEMI [2010] 33 WRN 67 at 75***. The court was urged to discharge and acquit the Defendant.

Now, let us grapple with whether the Defendant's extra-judicial statements in Exhibits P1 and P5 are confessional in nature, content or character as has been forcefully urged upon me by the Prosecution. There is no doubt whatsoever that a confessional statement made by an accused person constitutes potent evidence in the hands of a prosecutor for proving a charge. By **s. 28(1)** of the **Evidence Act 2011**, *"[a] confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime."* See ***BRIGHT v THE STATE [2012] 8 NWLR (PT. 1320) 297***. Once an accused person makes a statement under caution, admitting the charge or creating the impression that he committed the offence with which he is charged, the statement becomes confessional. See ***HASSAN v STATE (2001) 7 SC (PT II) 85 at 93***. It is now well ingrained in our jurisprudence that a free and voluntary confession of guilt made by an accused person, if direct and positive, is sufficient to warrant his conviction without any corroborative evidence insofar as the court has no reservations as to the truth of the confession. See *YESUFU v STATE (1976) 6 SC 167 at 173; IDOWU v STATE (2000) 7 SC (PT II) 50 at 62 - 63; NSOFOR v STATE [2004] 18 NWLR (PT 905) 292; NWACHUKWU v STATE [2004] 17 NWLR (PT. 902) 262; OGOALA v STATE (1991) 3 SC 80 at 88; ADEYEMI v STATE (1991) 7 SC (PT II) 1 at 48, AKPAN v STATE [1990] 7 NWLR (PT 163) 101* and *OMOJU v F. R. N. [2008] 7 NWLR (PT. 1085) 38*. In the realm of criminal law, a confessional statement is a statement that admits of the commission of the crime charged

both in fact and in law. Put differently, a confessional statement must admit of the doing of an act or the making of an omission that constitutes an offence in law, including all the ingredients of the crime or offence confessed. See ***NWOBE v STATE [2000] 15 WRN 133 at 141.***

In this connexion, I have carefully and insightfully examined Exhibits P1 and P5 once and again. As stated hereinbefore, that the challenge mounted against the voluntariness of these extra-judicial statements was withdrawn midway into the trial-within-trial, and they were admitted without further ado. However, what can clearly be garnered and understood from Exhibits P1 and P5 is that the Defendant confessed to beating the deceased on 20/12/13. But since the Defendant is not standing trial for assault but for culpable homicide, and the deceased passed on four (4) days after the beating on 24/12/13 at Suzzyville Clinic, causation is a front burner issue in these proceedings and the burden rests squarely on the Prosecution to demonstrate by credible evidence that the deceased died as result of the action or inaction of the Defendant. The point has already been made that a confessional statement is one that admits of the commission of the crime charged both in fact and in law. Bearing in mind that the deceased did not die on the spot, the Defendant is certainly not in a position to positively admit that *"I know that she died as a result of the beating I beat her"* as stated in Exhibit P1; and I find myself unable to accept the argument forcefully pressed on behalf of the Prosecution that Exhibits P1 and P5 can be elevated to the pedestal of confessional statements in a charge of culpable homicide (such as the present), not to talk about being direct and positive enough to warrant the conviction of the accused persons in the absence of other evidence. See ***EKURE v STATE [1999] 13 NWLR (PT 635) 636 at 655.*** Since the Defendant is not charged with assault but with culpable homicide, merely stating in extra-judicial statements that he beat up the deceased and that he knows that the deceased died as a result of the beating

[when the deceased did not die on the spot] cannot by any stretch of the imagination amount to a confession of culpable homicide *in law*. I reckon therefore that we must necessarily look beyond Exhibits P1 and P5 (which are obviously not confessions of culpable homicide) and beam the searchlight on other pieces of evidence put forward by the Prosecution in our quest to ascertain whether the guilt of the accused personshas been established beyond reasonable doubt as required by law. The testimonial evidence of PW1, PW2 and PW3 are crucially relevant in this regard, and it is to them we shall now shift our attention.

The evidence of the PW1 [*Inspector Anthony Akerele*] is simply that a case of culpable homicide was transferred from Gwagwa Police Station to his office and referred to his team for investigation; and that he took voluntary statements from the Defendant and the nominal complainant [*Magdalene Daniel*], as well as visited the *locus criminis* and the mortuary and saw the corpse. It is noteworthy that PW1 did not tell the court what he found out at the *locus criminis* which he visited more than one week after the alleged incident.

The PW2 (*Erume Lucky Omamuzu*) testified that the deceased was brought to Suzzyville Clinic on 23/12/17 and received by his father, *Dr Erume* who examined the deceased and prescribed paracetamol. He is neither a medical doctor nor a nurse but a community health professional who did not personally attend to the deceased but was merely present at the hospital when the deceased was brought in by *Magdalene Daniel* and PW3. His testimony merely recounted what his father did and is hardly helpful in determining cause of death.

The evidence of PW3 [*Jemila Adamu*] was that *Magdalene Daniel* lodged a complaint of criminal force and assault against *Yakubu Bulus* [Defendant] for allegedly beating up her mother, *Hanatu Daniel* (now deceased) for no reason; and she rushed *Hanatu Daniel* to Suzzyville Clinic, Gwagwa for treatment, and recorded *Magdalene Daniel's* extrajudicial statement [Exhibit P4] upon her return from the clinic, and also visited the crime scene; that *Hanatu Daniel* died at about 2a.m. on 24/12/13 whilst receiving treatment at Suzzyville Clinic and her remains were photographed and taken to Kubwa General Hospital mortuary; and that the Defendant who was initially at large was arrested on 25/12/13 and he made a confessional statement [Exhibit P5]. Crucially, the PW3 conceded under cross examination that her evidence as to what transpired was based on information given to her by the nominal complainant, *Magdalene Daniel* [who was not called as a witness), and that she could not confirm *Magdalene's* narrative from the deceased who was crying of pain and she chose not to disturb her.

It cannot escape notice that none of the witnesses called by the Prosecution was an eye-witness [of the beating] and the nominal complainant, *Magdalene Daniel* who heard what transpired directly from the mouth of her deceased mother was not called as a witness, just as *Dr Erume* who examined the deceased at Suzzyville Clinic was also not called as witness. The evidence of both PW2 and PW3 is therefore of little or no probative value or forensic utility. Not dissimilarly, the evidence of PW1 who is a police officer is merely a regurgitation of what he gathered from the extrajudicial statements made by the nominal complainant and the Defendant in the course of investigation, which is scarcely helpful in determining the cause of death. It is noteworthy that the nominal complainant and daughter of the deceased, *Magdalene Daniel* [who was not called as witness] stated in her extrajudicial statement [Exhibit P4] that "*Also on the same Sunday she [the deceased] went to one man*

to press the hand for her" and that the deceased did not tell her [*Magdalene Daniel]* of the beating on time because she [i.e. the deceased] did "*not know that she will get serious pains*". The inescapable inference to be drawn from the Exhibit P4 is that the deceased was not in any life-threatening condition, hence she did not deem it necessary to report the incident to her daughter/nominal complainant [*Magdaleen Daniel*] until three days later, after she had been to see an unnamed masseur for massage. Curiously, for reasons that are not immediately clear to me, the Prosecution failed or neglected to interview the masseur to whom the deceased presented herself for massage after the beating. The PW3 conceded under cross examination that she neither visited nor contacted the masseur in the course of investigation. Thus, whatever could have happened to the deceased between 20/12/17 when she was beaten by the Defendant and 23/12/13 when she was taken to Suzzyville Clinic is anyone's guess. This signposts of a break in the chain of causation even before the incident was reported to the police at Gwagwa and the deceased taken to Suzzyville Clinic where she eventually gave up the ghost.

As stated hereinbefore, causation is clearly in issue since the deceased did not die instantaneously, and the onus is on the Prosecution to demonstrate beyond reasonable doubt that it was the act of the accused person that actually caused the death of the deceased. I should think that it is in recognition of this obligation that the Prosecution called in aid medical evidence in the form of Exhibit P3 notwithstanding that no autopsy was conducted on the deceased to ascertain cause of death.

Exhibit P3 is a handwritten letter dated 31/12/13 by one *Dr. Erume* in response to a letter dated 27/12/13 [which was not tendered in evidence]. Exhibit P3 [which is written on the letterhead of Suzzyville Clinic & Maternity, Gwagwa, Abuja] reads as follows:

"The Deputy Commissioner of Police

D Department

The Nigeria Police

FCT, Abuja

Sir,

HANATU B DANIEL

Reference to your letter dated 27 December 2013 with reference number AR: 3000/FCT/X/D2/Vol 39/126

The above named patient was brought into the clinic by a police officer W/Sgt Jemila with the history of assault about 5.00pm 23rd December, 2013.

O/ Examination: Hallucination, both hands swollen, generalised body weakness +++, speech abnormal (unstable), headache and difficulty to walk upright all of 3 days duration.

Patient was admitted for treatment. At about 1:00am patient started having difficulty in breathing. BP 80/40 mmhg Temp below 35OC. Later she passed away 2:00am 24/12/13.

The above patient was certified death (sic) in the presence of the men and officers of Nigeria Police Force, Divisional Police Headquarters, Gwagwa.

Thanks for your cooperation, please."

The stamp of *"Suzzyville Hospital"* is affixed to the bottom of the letter and *Dr Erume's* name, date and signature appear in the columns provided within the stamp. A major snag with Exhibit P3 is that its maker, *Dr. Erume* was not called as a witness whereas it is well settled that any letter made by a person who has not been called as a witness cannot be used for the purpose of treating its contents as evidence of the facts stated therein. See ***OPOLO v STATE [1977] NSCC 439***. But even if that were not the case, it appears in rather bold relief that Exhibit P3 merely relates the vital signs of the deceased taken by *Dr Erume* at the time she was brought to Suzzyville Clinic as well as the fact that she was admitted for treatment but subsequently *"started having difficulty in breathing"* with *"BP 80/40 [illegible] 35OC"* before she

eventually died on 24/12/13 at 2am without indicating any cause of death. As far as can be gleaned from Exhibit P3, *Hanatu Daniel* died of low blood pressure or low body temperature but the cause of her death remains unknown. Exhibit P3 is therefore not a medical certificate of cause of death by any stretch of the imagination and not helpful in the least in determining whether it was the Defendant's act that caused *Hanatu Daniel's* death. Exhibit P3 talks about the deceased being brought in with *"history of assault"* but there is no telling from whence *Dr Erume* got that piece of information since the deceased [whom he described in Exhibit P3 as having bouts of *"hallucination [with] both hands swollen, generalised body weakness +++, speech abnormal (unstable), headache and difficulty to walk upright all of 3 days duration"* could not possibly have recounted to him what happened three days earlier in the state in which she was brought to the clinic by PW3, which equally renders Exhibit P3 manifestly unreliable. It is not unlikely that it was the PW3 who informed *Dr Erume* of the *"history of assault"*, but interestingly, the PW3 conceded under cross examination that she could not confirm *Magdalene's* narrative from the deceased who was crying of pain and she chose not to disturb her, which also renders Exhibit P3 manifestly unreliable for being hearsay.

As enjoined in the case of *SHANDE v THE STATE (2005) 22 NSCQR 756*, I have put every item of fact raised for or against the Defendant through the crucible of merciless scrutiny, and the inescapable conclusion to which I must come is that the Prosecution has not succeeded in establishing that it was the act of the accused person that caused the death of the deceased. Since the death was not instantaneous and there is no evidence of any fatal injuries inflicted on the deceased by the Defendant that could lead irresistibly to no other inference than that the deceased died as a result of the attack and those injuries, medical evidence as to cause of death is of practical legal necessity. See

BABUGA v STATE supra. In such a situation, the law is that cause of death is a medical question that is generally determined from a medical report, which must show conclusively that the death resulted from the act of the accused person without any intervening circumstance or event. See ***BRIGHT v THE STATE supra.*** But the scenario we are confronted with here is that there is a break in the chain of causation, and the Medical Report [Exhibit P3] issued by *Dr Erume* failed to pin down the Defendant to the death of the deceased *Hanatu Daniel;* and the obvious implication is that the guilt of the accused persons has not been established by the Prosecution beyond reasonable doubt. I so hold.

The alternative argument put forward on behalf of the Prosecution is that s. 236(2) of the Administration of Criminal Justice Act 2015 empowers this court to convict the Defendant for the lesser of "assault or criminal force to a woman with intent to outrage her modesty" contrary to s. 268 of the Penal Code where the facts established in evidence constitute proof of this lesser offence, insisting that the confessional statements of the Defendant alone are enough to secure his conviction for the alternative offence, citing the case of *OMOJU v FRN [2008] 7 NWLR (PT. 1085) 38, SHUAIBU v STATE (2016) LPELR-41461(SC)* and *JAMES AFOLABI v THE STATE (2016) LPELR-40300(SC).*

Now, Part 23 of the ACJA 2015 regulates '*conviction when charged with one of several offences or of another offence.* Section 236(2), upon which the Prosecution has relied in urging the court to convict the Defendant for an offence not specifically charged, provides as follows:

> *"236(2). Where a defendant is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it."*

The above provision of the ACJA is not necessarily an innovation in Nigerian criminal jurisprudence. It would seem that our courts have always been empowered to convict in appropriate cases for an offence(s) other than that with which a criminal defendant is specifically charged where the facts proved in evidence support a conviction for such other lesser offence(s). In ***BABALOLA v STATE [1989] NWLR (PT.115) 26,*** the Supreme Court [per *Nnaemeka-Agu, JSC*] held that *"where in the trial for offences mentioned in Chapter 37 of the Criminal Code, the facts proved in evidence support a conviction for an offence other than that with which the accused is charged, he may be found guilty of that other offence and punished accordingly".*

However, the Supreme Court has held in the recent case of ***UGBOJI v STATE (2017) LPELR-43427 (SC)*** that the Court of Appeal was wrong in affirming the decision of the trial court when it held that the latter was right in applying the provisions of Section 216 and Section 217 of Criminal Procedure Code to convict the appellant without a formal charge framed against him, describing such finding as both *"perverse and erroneous"*. In that case, the learned trial judge, while delivering his judgment, invoked the provisions of Section 216 and 217 of the Criminal Procedure Code which empowered him to convict an accused for any offence disclosed by the evidence even though not specifically charged with it. But the Supreme Court held firmly that:

> *[B]y the provisions of Section 36 (6) (a) of the 1999 Constitution as amended, reproduced supra, any person charged with a criminal offence must be informed promptly and in detail, the nature of the offence he is charged with or accused of committing in the language he understands. It seems to me that by the provisions of Section 36 (6) (a), the Constitution has decreed that a formal charge has to be framed which also must be read to the accused person in the language he understands, as well as the details of the nature of the offence. The trial Court must also be certain that the accused has not been misled in his defence. The invocation of the provisions of Section 216 and*

Section 217 of Criminal Procedure Code to convict the present appellant of the offence of criminal conspiracy to commit armed robbery by the learned trial Judge without a formal charge framed in the circumstance, is a total breach of the constitutional provisions mentioned above."

The obvious legal implication of the above decision is that a conviction based on s. 236 (1) and (2) of ACJA 2015 (which is similar in effect to ss. 216 and 217 of the CPC) is equally liable to be set aside for being contrary to s. 36 (6) (a) Constitution of the Federal Republic of Nigeria, 1999 (as amended). I will therefore decline the rather tempting invitation extended to me by the Prosecution to convict the Defendant for the lesser offence of assault or criminal force to a woman with intent to outrage her modesty" contrary to s. 268 of the Penal Code with which the Defendant was not formally charged on the basis alone of his extrajudicial statements [Exhibits P1 and P5] wherein he confessed to have beaten up the deceased. I think it is the Defendant's good fortune that this very recent decision of the Supreme Court in ***UGBOJI v STATE supra*** came in the nick of time to make straight the crooked pathway charted by earlier case law on the point and caused him to escape by the skin of his teeth from being convicted for the lesser offence of assault [to which he had confessed in his extrajudicial statements].

I accordingly record an order of discharge and acquittal in favour of the Defendant, *YAKUBU BULUS* in respect of the one-count charge of culpable homicide not punishable with death preferred against him. IT IS SO ORDERED.

PETER O. AFFEN
Honourable Judge

High Court of Justice FCT-Abuja
CERTIFIED TRUE COPY
Name: S. SHEHU
Rank: PRI
Sign.....Date.....

Counsel:

Mrs E. S. Osiaje for the Prosecution.

Azubuike I. Moneke, Esq. (with him: ***U. V. Egelamba, Esq.***) for the Defendant.