HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 7TH MAY, 2018
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E ANENIH
(PRESIDING JUDGE)

FCT/HC/CR/18/13

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

HENRY EMMANUEL ABUCHI.....DEFENDANT

JUDGEMENT

By an Amended charge dated on the 26th January 2016, the defendant was arraigned before this court on a 1 (one) count charge of the offence of Culpable Homicide punishable under Section 221 of the Penal Code Law as follows:

COUNT ONE

That you, Henry Emmanuel, on or about the 31st of March, 2013 at FF22 Hotel and the Channel 8 Mosque Kubwa Abuja FCT did commit an offence of culpable homicide punishable with death, when you hit one Inspector Josph Mboko with a matchet which lead to his death and you thereby committed an offence punishable under Section 221 of the Penal Code.

The initial charge filed on the 19th of September, 2013 was amended on 26th January, 2016.

The amended charge of 26th January 2016 was read and explained to the defendant on 27th January 2016 and he pleaded not guilty to the one count charge of culpable homicide.

The prosecution called one witness ASP John Otache who testified as PW1. And the defendant in his defence called two (2) witnesses. The defendant and his mother Angelina Emmanuel testified as DW1 and DW2 respectively.

On the 31st of October, 2014 the prosecution in proof of its case called ASP John Otache who testified as PW1 and tendered the following Exhibits;

Exhibit A1, A2 two statements of defendant

Exhibit B1, B2 and B3; comprising three photographs.

His evidence is as summarized hereunder:

The case was transferred to FCT POLICE COMMAND from Kubwa police station and referred to the Homicide Team for investigation. That one Mrs Umeh Udochim while jogging on 1st April 2013 saw a man on the ground in a pool of blood. She reported to the Kubwa Police Division, the police took the man identified as Insptr. Joseph Mboko to general Hospital Kubwa, where he died while receiving treatment for the machete cut all over his body. Investigation commenced, progressed and the defendant was arrested. He was cautioned and his statement was recorded. Amongst other recorded Statements was that of Sunday wisdom who confirmed that the defendant told him that, one El-Rufai, Dauda Dawiya and defendant had problems with the deceased. And that together three of them killed the inspector and collected his service pistol.

The PW1 recounted that they arrested the vigilante group in charge of the area where the deceased was found and that the vigilante identified the defendant based on his complexion (yellow guy) because they didn't

know his name. And this led to the first statement made by the defendant. And that when they arrested Sunday Wisdom Obi defendant's friend whom he had told his story, the defendant admitted that he committed the offense hence the need for the second statement.

Under cross examination of PW1, he told court that;
He wrote the confessional statement for the accused person. And that the accused 2nd statement was made 3weeks after Sunday Wisdom narrated the story which the accused confirmed as correct.

On the 9th December 2014, PW1 continued his cross examination and he informed court that the 1st accused being the defendant was not tortured. That he PW1 recorded and wrote the statement of the defendant because the defendant told him he cannot write and that he wasn't in the right mind to write. He further informed the court that the deceased's injury was machete wound but that the machete wasn't recovered as it was thrown away after the defendant and El Rufai had beaten the deceased.

The defendant called two witnesses on 5th December 2017.

Emmanuel Henry Abuchi, defendant, testified as DW1 and his said testimony is hereunder summarized;

That on the 31st March 2013 at 12am on his way home he saw a crowd of people quarreling and he saw one Sunday Daura, son of his mother's landlord with injury on his head who told him they were fighting. He was in company of the vigilante and they told him there was a man with a gun and anyone who attempted to enter would be attacked. After exchanging words with the man who then fired a shot as he approached the front, they all ran away and he was able to enter his brother house.

He said that after about 2 months he returned from Kabba where he went for a programme and at about 5am in the morning he was arrested in his house and taken to area command in kubwa Abuja and afterwards to Special Anti Robbery Squad office in Abattoir (SARS) and he was asked

if he knew Sunday Daura and he made his statement on the 15th June 2013. And that he did not make any statement on 8th July 2013 but was forced to sign another statement on 8th July 2013 which they refused to allow him read. He said that he was hurt seriously in his private part and that the police brought one Sunday Obi on the day they forced him to sign the statement. The said Sunday wasn't arrested with him but was brought back to SARS after forcing him to sign the statement. Furthermore, he said it is not correct that he used machete on said 31stMarch 2013 nor that he told some people he killed a police inspector or attack any police officer with any person named El Rufai.

Angelina Emmanuel, mother of defendant testified as DW2. She stated inter alia that she wasn't living with Henry in the same house and that it is not correct that she was asking him who he quarreled with when he purportedly came to the house to pick up a machete. She also said that it is not correct that she told Sunday Wisdom that Henry came to collect a machete. That she doesn't know Sunday Obi.

The records of the court reveals that on 26th September 2017 the defense counsel made a No Case Submission on behalf of the defendant. The No Case Submission was overruled on the 8th November 2017 and the matter further adjourned for definite defence. On 5th December 2017, the DW1 and DW2 testified and the matter was further adjourned to the 8th February 2018 for cross examination and/or adoption of final written addresses.

On the 8th of February 2018, the prosecution was absent and unrepresented and the defence counsel applied that the prosecution's right to cross examine the DW1 and DW2 who were in court should be foreclosed. The Court granted same and the defendant adopted their final written address filed and served on 17th January 2018. The defendants therein raised one issue for determination which is;

Whether the prosecution has proved his case beyond reasonable doubt to warrant the conviction of the defendant vis-à-vis the charge.

The said written address is summarized hereunder and further reference would be made to same as the need arises in this judgement.

The defence counsel submitted that there is no evidence to prove the essential elements in the alleged offence of culpable homicide and that the death of the deceased has not been established with regards to the evidence before the court. He further submitted that the only evidence of the prosecution before the court is the evidence of the PW1, which is nothing but inadmissible information from others who were never called as witness(es). That the evidence of PW1 including all the exhibits tendered through him are all hearsay evidence which is inadmissible. He relied on the case of ADAMU V. THE STATE (2014) 4 SCNJ 191 Ratio 3 page 207 – 208 and VIVIAN ODOGWU V. THE STATE (2013) 7 SCNJ 569 Ratio 18.

I have considered the case of the prosecution and the defence of defendant and I am of the view that the issue for determination here is:

Whether the prosecution has discharged the burden of proof placed on her by law to secure the conviction of the defendant on the one count charge of culpable homicide.

As earlier observed the defendant is before this court on a one count charge of culpable homicide punishable under Section 221 of the PENAL CODE.

For the purposes of clarity section 221 of the Penal Code provides that;

> Except in the circumstances mentioned in section 222 culpable homicide shall be punished with death-
>
> a) If the act by which the death is caused is done with the intention of causing death; or

b) If the doer of the act knew or had reason to know that death will be probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause.

For the above offence which the defendant has been charged, it is imperative that the court examines the evidence before the court critically and revert to the specific and relevant laws for proper guidance to determine the culpability or otherwise of the defendant.

The standard of proof in criminal allegations such as the present one is proof beyond reasonable doubt.

Fortunately also the EVIDENCE ACT 2011(as amended) has set out the modalities for burden of proof in criminal trials as follows:

Section 135:

1. If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.

It is worthy to note that the purpose of a charge is to give good notice to the defence of the case it is up against and it is a prerequisite for the prosecution to prove the elements of the offence as contained in the charge.

See **FEDERAL REPUBLIC OF NIGERIA V. MOHAMMED USMAN ALIAS YARO YARO & ANO 2012 3 SCNJ (PT1) 223 AT 237.**

In criminal trials the guilt of a defendant can be established by either or all of several ways including by Confessional Statement of the defendant, Circumstantial evidence and evidence of an eye witness. See

IGABELE V. STATE (2006) 6 NWLR (PT. 975) Pg.100 or LPELR-1441(SC) pg 34 paras F-G Where his Lordship Onnoghen J.S.C.(as he then was) resonated that;

"It is settled that the guilt of an accused person can be proved by:

a. *The confessional statement of the accused person;*
b. *Circumstantial evidence or*
c. *Evidence of eye - witness of the crime – see Emeka V. State (2011) 14 NWLR (Pt. 734) 668 at 683".*

And in order to secure a conviction of a defendant in respect of an offence, the onus is always on the prosecution to establish the guilt of the accused person beyond reasonable doubt. And the prosecution would achieve this by ensuring that all the vital ingredients of the offence charged are proved by the evidence adduced. See

YONGO & ANOR V. COP (1992) NWLR (PT. 257) 36 or LPELR-3528(SC) pg 14 paras D-F where His Lordship Justice Kutigi J.S.C. held that;

> *"In criminal proceedings the onus is always on the prosecution to establish the guilt of the accused beyond reasonable doubt. The prosecution will readily achieve this result by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence".*

It suffices to say that Proof beyond reasonable doubt is not attained by the number of witnesses fielded by the prosecution. It depends on the quality of the evidence tendered by the prosecution. See **FRN V IWEKA (2011) LPELR-9350 (SC)**

Thus in order to secure a conviction for the offence of culpable homicide against the defendant, the prosecution must establish the existence of the above mentioned ingredients of the offence of culpable homicide. Where the onus of proof is discharged by the prosecution, the burden of then establishing a reasonable doubt then shifts to the Defendant.

The prosecution under the circumstance has the burden to establish both the physical commission (actus reus) and the criminal intention (mens

rea) of the defendant. Prosecution is also to establish a connection (causation) as the resulting effect of the culpable homicide.

Now the offense of culpable homicide with which the defendant is charged punishable under Sc.221 of the Penal Code requires proof beyond reasonable doubt the existence of certain ingredients, which are reflected in the said section and reiterated in several decided cases. They include:

HARUNA V. A.G OF FEDERATION (2003) 18 NWLR (PT. 851) Pg. 224

UGURU V. STATE (2002) 9 NWLR (PT.771) Pg. 90

And

In the case of **JIMOH MICHAEL V. STATE (2008) 13 NWLR (PT.1104) 361 (SC) / LPELR- 1874 (SC) Pg 20 paras C-E**

the Supreme Court held that the prosecution in order to secure a conviction for culpable homicide must establish beyond reasonable doubt the following;-

> *(a) the death of the deceased;*
>
> *(b) that the act or omission of the accused person caused the death of the deceased*
>
> *(c)that the said act or ommission was intentional or with knowledge that death or griveious bodily harm would be the probable consequence of his act or ommision".*

See also

HARUNA V. AG OF FEDERATION (Supra)

In the light of the totality of the evidence before the court, the crucial issue for determination is whether or not the prosecution has proved beyond reasonable doubt the ingredients of the offense warranting a finding in its favor against the defendant. It is however to be noted that proof beyond reasonable doubt does not amount to proof beyond all shadow of doubt. See

ONAKOYA V. FRN (2002) 11 NWLR (PT. 779) P. 595 and
FRN V. IWEKA (2013) 3 NWLR (PT. 1347) P. 285 Where His Lordship Justice Mukhtar J.S.C reiterated that;

> *" the law requires that an accused person will not be convicted of a crime unless the case has been proved beyond reasonable doubt. See Section 138 of the Evidence Act Cap. 112 of the Laws of Federation of Nigeria 1990. Any doubt of course results in the discharge and acquittal of the accused person. In the instant case no material doubt exists, as far as I can see.*
> *The concept of proof beyond reasonable doubt has in many authorities been translated not to amount to proof beyond all shadows of doubt, see Miller V. Pension 1947 ALL E.R P372, Alkalezi V. State 1993 2 NWLR Part 273 page1, and Oreoluwa Onakoya V.Federal Republic of Nigeria 2002 11 NWLR part 779 page 595 and Shande V. State 2005 12 NWLR Part 939 page 301."*

An examination of the records of the court shows that the prosecution called one witness, the PW1 who gave evidence based on reports he got from alleged eye witnesses who were never examined nor cross examined before the court. Random excerpts of his evidence are reproduced hereunder for clarity;

On the 31st of October 2014, the prosecution through PW1 gave evidence that;

> "the fact of the case is that on 1st April 2013 one Mrs Umeh Udodima was jogging along 2/2 street Kubwa, while she was jogging, she met a man on the ground in the pool of his own blood.

She reported at kubwa police station and the police came to the spot and took the man identified to be Inspector Joseph Mboko, attached to state intelligence bureau FCT Police Command Abuja. The police took him to general Hospital Kubwa and as he was receiving treatment he died out of the injury he sustained from machete cut on his head and all over his body."

He also testified that;

"during the investigation four security men (we call them vigilante) who keep vigil on Jaji street that night were invited and statements recorded from them. In their statement, they confirmed that they saw the man when Mr. E Abuchi (defendant) and one Dauda Dawiya came to report to them that they saw a thief standing at D close and when they went there, they found out it was the same police inspector and that the man is not a thief."

Furthermore PW1 testified that

"our findings is that the accused person Henry Emmanuel Abuchi and one EL Rufai(real name unknown) and Dauda Dawiya A.K.A Capedo are the ones that attacked the inspector and took his service pistol after they wounded him."

Under cross examination, PW1 testified that;

"1st accused was arrested on the day his first statement was recorded 15th June 2013. Also 1st defendant's second statement was recorded on the 8th July 2014, 3weeks after that Obi Sunday wisdom narrated what 1st accused told him which 1st accused confirmed hence the need for additional statement."

The preceding excerpt appears to suggest that the second statement of the defendant was made on 8th July 2014 pursuant to the statement of Obi Sunday Wisdom that the defendant told him he was involved in the physical attack which inflicted the injuries on the deceased.

The said Obi SundayWisdom was not called as a witness neither was his statement tendered.

The defense counsel argued that the death of the deceased has not been established by the evidence before the court. In my humble view this is a clear case of an oxymoronic argument. If he did not die then how did he become the deceased as acknowledged in the argument of counsel?
It is well settled that there are instances where even cause of death of a deceased can be established by circumstantial evidence and not only by medical evidence.

See

ABBAS MUHAMMAD V. THE STATE (2017) LPELR-42098(SC) PG. 23-26 paras D-B where the court held that;

> *"It was sufficient that his testimony and findings are corroborative of PW1 the star witness. As Ogunbiyi, JSC, pointed out in Ali V. State (supra), (2006) 16 NWLR (Pt. 1006) 582 that medical evidence is not essential in establishing this issue where the deceased was attacked with lethal weapon and died instantly. In that case, Ben V. State (supra), Akintan, JSC, stated as follows - In cases, where a man was attacked with lethal weapon, and he died on the spot, cause of death. Put in another form, where the cause of death is obvious, medical evidence ceases to be of any practical or legal necessity in homicide cases. Such a situation arises where death is instantaneous or nearly so. Katsina-Alu JSC (as he then was), further observed as follows- The Appellant struck the deceased on the head - - He fell down unconscious, never regained consciousness until he died a few hours later in hospital. Medical evidence was not necessary to determine the cause of death in the circumstances of this case. It could properly be inferred that the wound inflicted caused the death of the deceased."*

See also
GIDEON V. STATE (2017) LPELR-43033(CA) PG, 30 PARAS C-E

Both the PW1 and the defendant (DW1) testified to being aware that a man died, while the PW1 testified further that he went with members of his team to the mortuary to see the corpse of the deceased and even got a photographer to take pictures of the deceased. He stated further that the deceased was identified by the police as Inspector Joseph Mboko, attached to intelligence bureau FCT police command Abuja. Thus that the said Inspector. Joseph Mboko died or is the deceased in question was not disputed in the evidence of the defendant. That a man was killed is clearly acknowledged in the two statements of the defendant tendered before the court.

Suffice to say that from the evidence before the court and the surrounding circumstances as presented it would be safe to infer that the death of said Inspector Joseph Mboko has been sufficiently established.

The second issue is whether the cause of death is attributable to the defendant. The PW1 in his evidence testified that the defendant by his second statement to the police made on the 8th July 2013 admitted to killing the deceased with a machete. I would summarise parts of both statements hereunder:

According to the first statement of 15th June 2013.

On the 31st March, 2013 DW1 was on his way home when he was accosted by one Pidol in company of two others who told him not to enter his close that there was a man with a gun there who had injured him. DW1 witnessed exchange of words between the man and pidol and that the man fired a shot and everyone got dispersed as he noticed the man pursuing pidol. On the 1st April, 2013 in the morning he met with Pidol who told him not to mind the man that he got his cap back and that it was after an arrest that he learnt the man was killed.

This statement is to the effect that, the defendant knew the deceased but had no contact with him.

The second statement made on the 8th July 2013, reveals that on the 31st of March 2013 around 1200pm to 0100 am of 1st April 2013, that defendant was on a motorcycle, in a bid to enter his close he was stopped by Pidol who told him he was fighting with a man, that the man is with a gun and had wounded him. And that he collected the matchet the security men were holding and walked to the man, who then shot in the air. And that himself, El Rufai, Pidol pursued the man and as the man fell, El Rufai started using the cutlass he collected from the security men on him. That he also used the cutlass he was holding to hit the man who kept begging saying 'please leave me'. And that afterwards they left him, but they did not tell the security men what they had done. But that the man's gun is with El Rufai.

It suffices to say that, to secure a conviction, the confession attributable to a defendant must be direct, positive and unequivocally link the defendant with the alleged crime.

It is elementary that the crux of the offence of culpable homicide is the commission of an act that its result brought about the cause of death. Although it is usually difficult to get direct proof of this, nonetheless as observed hitherto this may be inferred from glaring circumstances of the case. See

ABBAS MUHAMMAD V. STATE (Supra)
GIDEON V. STATE(Supra)

It is settled law that another ingredient to be established before conviction is that the action of the defendant caused the death of the deceased.

The prosecution did not call any other witness outside the PW1 who mostly recounted sequence of events said to have been narrated to him

by the defendant and other witnesses. None of these witnesses was called and the prosecution did not challenge the evidence of the defendant by way of cross examination. The defendant denied the statement of 8th July 2013. The defendant's evidence by himself and DW2 remain unchallenged. The second statement referred to by the prosecution as the confessional statement doesn't appear to me to be unequivocal as to the guilt of the defendant. For a confessional statement to by itself ground a conviction it must be unequivocal and point directly to the guilt of the deceased. This is even more so in this instance where there are two contradictory statements and the second one is the alleged confessional statement.

It is settled that before a defendant is convicted on the basis of a confessional statement, such conviction must be unequivocal and lead directly to the guilt of the defendant. See

SOLOLA & ANOR V. STATE (2005) LPELR -3101 (SC) PG. 39 paras C-D where His Lordship Justice Niki Tobi J.S.C. resonated that:

> *"Before a confessional statement could result in the conviction of an accused, it must be unequivocal in the sense that it leads to the guilt of the maker. Where a so-called confessional statement is capable of two interpretations in the realm of guilt and non-guilt, or wayward, a trial Judge will not convict the accused but give him the benefit of doubt."*

See also on this:

EDOKO V. STATE (2015) LPELR-24402 (SC) Pg. 27 para B-C

Where his lordship Okoro JSC resonated on what is expected when an accused person makes two statements voluntarily as follows:

> *"The law is quite clear that where an accused person makes two statements voluntarily, with full knowledge of what he is doing and*

without any form of inducement, a trial judge will be right to take the one which is less favourable to the accused particularly when that one is first in time. The second one will, in my opinion be an afterthought. See Sule V State (2009) 17 NWLR (Pt. 1169) 33 at 66 paras F-G and Ikemson V. The State (1989) 3 NWLR (Pt. 110) 455 at 473".

The learned defense counsel submitted that the defendant retracted his confessional statement in his testimony before the court. It is well settled that the retraction of a confessional statement does not render it inadmissible but may only affect the weight to be attached it. See

MUHAMMAD V. STATE (2017) LPELR-42098 (SC) Pp. 63-64, Paras F-A where his Lordship Justice CLARA BATA OGUNBIYI ,J.S.C resonated that

"The law is trite that mere retraction of a voluntary confessional statement by the accused person does not render it inadmissible or worthless. See Egboghonome v. State (1993) 7 NWLR (Pt. 306) 383 and Joseph Idowu v. State (2000) 7 SC (Pt. 11) 50, also Dibie v. The State (2007) 3 SCNJ 160 at 171."

And in determining the weight to be attached to a confessional statement the court will take into account the following factors.

1.) Whether there's anything outside the confession to show that it is true.
2.) Whether the confessional statement is corroborated.
3.) Whether the relevant statements of facts made in the confessional statement are true as far as they can be tested.
4.) Whether the accused persons had the opportunity of committing the crime.
5.) Whether the confession is possible.

6.) Whether the confession is consistent with the other facts which has been ascertained and have been proved.

And for these determinants I refer to the case of

KABIRU V. A.G OGUN STATE (2009) 5 NWLR (PT. 1134) Pg. 209

AND

AFOLABI V. COP (1961) ALL NLR 852 PG. 686 or LPELR-25028(SC) PG. 4-5 para E

Almost all the factors in the above cited cases have not been established in this trial. To this extent in this instance where the prosecution's case appears to rely on circumstantial evidence, a greater degree of caution needs to be exercised. This admonition was highlighted by the Supreme Court in;

OKORO MARIAGBE V. THE STATE (1977) LPELR - 1838 (SC) Pg. 7-8 para E-A where the court admonished as follows:

> *"Thus while we agree that circumstantial evidence is admissible in criminal cases, such evidence in the words of;*
> *LORD NORMAND in LEJZOR TEPER vs. THE QUEEN (1952) AC 480 at pg. 489. " Must be always narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion of another . . . it is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co existing circumstances which would weaken or destroy the inference." See also R. V. ORODOSOKODE - (1960) 5 FSC P. 208."*

Given the current circumstance a medical report or medical evidence would have been very helpful in this trial, as the particular cause of death, by the evidence before the court so far remains unknown. And the

nexus so far drawn between the defendant and the death of the deceased is feeble. The pictures tendered cannot be relied on as the negatives being the primary evidence was not tendered nor the said photographer called as a witness. Even if the pictures had been properly admitted in evidence they still do not show nor tell the time or cause of death. As a matter of fact there's no fact or statement of defendant in the said confessional statement admitting that it was his attack on the deceased with a machete that led to his death, or that the deceased died soon after the attack. And there's no eye witness account or cogent nor credible evidence before the court that it was the hitting of the deceased by defendant with the matchet that led to his death on the 1st April 2018. It is the position of the law that proof of cause of death attributable to defendant is necessary to ground a conviction against him for culpable homicide; See

AIGUOREGHIAN & ANOR V. STATE (2004) LPELR -270 (SC) Pg. 49 para C

> *"Absence of proof of cause of death as attributable to the act of an accused person is fatal to the conviction of an accused person. See Ojimah V. The State (1978) 1NCAR 516"*

And

UMARU V. THE STATE (2015) LPELR- 40901 PG. 15-16 Para C

The evidence led by the prosecution seeks to establish guilt of the defendant by circumstantial inferences characterized by hearsay evidence. This court cannot rely on nor act solely on the defendant's statement of 8th July 2018 to infer that the action of the defendant as recounted therein points to the quilt of the defendant. It must be proved beyond reasonable doubt that the cause of death is attributable to the action of the defendant. See

AFOLABI V. COP (Supra)
KABIRU V. A.G OGUN STATE (Supra)

And

UMARU V THE STATE (2015) LPELR- 40901 (CA) PP 15-16 PARA C. Where the court held that;

> *"On the second ingredient of the offence - whether it was the act of the Appellant that caused the death of the deceased, the law is that to establish this ingredient beyond reasonable doubt, the Respondent must establish the cause of death unequivocally and then there must be cogent evidence linking the cause of death to the act of the Appellant -* ***Udosen Vs State (2007) 4 NWLR (Pt 1023) 125, Oche Vs State (2007) 5 NWLR (Pt 1027) 214, Ekpoisong Vs State (2009) 1 NWLR (Pt 1122) 354, Illiyasu Vs State (2014) 15 NWLR (Pt 1430) 245.*** *This point was made by the Supreme Court in* ***Oforlete Vs State (2000) 12 NWLR (Pt 631) 415*** *thus:"In every case where it is alleged that death has resulted from the act of a person, a causal link between the death and the act must be established and proved in a criminal proceeding, beyond reasonable doubt. The first and logical step in the process of such proof is to prove the cause of death. Where there is no certainty as to the cause of death, the enquiry should not proceed no further. Where the cause of death is ascertained, the next step in the enquiry is to link that cause of death with the act or omission of the person alleged to have caused it".*

The second confessional statement only purpotedly describes an actual contact and physical attack by the defendant on the deceased but not killing of the deceased. It suffices therefore to say apropos of the second ingredient that the evidence lead by the prosecution falls short of the requirement of the law.

Thus the prosecution has not successfully discharged the onus of proof on them to establish that the action of the defendant caused the death of

the deceased. The defendant therefore is under no obligation to prove his innocence as the burden doesn't revert back to him. See

THE STATE V. JOHN OGBUBUNJU & 1OR (2001) 1 SCNJ Pg. 86 at 102 -103 or LPELR- (SC) Pg 51 Para D-F where the Supreme Court per Ogundare JSC reiterated that:

> *"In law an accused person is under no obligation to prove his innocence. The burden of establishing his guilt beyond reasonable doubt rests throughout on the prosecution. See Patrick Njoven & Ors V. The State (1973) 1 NMLR 331. Failure to do so would lead to the discharge of the accused person."*

In the same vein in the instant case it would not be in the interest of justice to make the defendant to bear the brunt of the negligence of the prosecution who abandoned their case midway into the trial and never appeared to produce other witness(es) nor cross-examine the defence witnesses. It is even more fatal to prosecutions case under the circumstance when the evidence of their sole witness doesn't do justice to the allegations against the defendant which is quite grevious.

And for the last ingredient of the offense vis: whether death was the probable or a likely consequence of an act or of any bodily injury is a question of fact. I refer to;

MAIGARI V THE STATE (2010) LPELR-4457(CA) and

OCHEMAJE V. THE STATE (2008) LPELR- 2198(SC) (Pp. 27-28, paras. C-D) where His Lordship Justice Niki Tobi resonated that;

> *"There is agreement by the parties on the ingredients of culpable homicide punishable with death. The appellant put the ingredients as follows, and I do so in repetition: "(a) That the death of a human being has actually taken place. (b) That such death was caused by the person being accused. c) That the act was done with the intention of causing such bodily injury as: (i) the accused knew*

or had reason to know that death would be the probable and not only the likely consequence of his act; or (ii) that the accused knew or had reason to know that death would be the probable and not only the likely consequence of any bodily injury which the act was intended to cause. Kada v. The State (1991) 7 NWLR (Pt. 208) 134 @ 144 paras. E-H." The respondent put the ingredients in similar language as follows and again, I do so in repetition: "(i) That the death of the deceased has actually taken place. (ii) That such death has been caused by the accused. (iii) That the act was done with the intention of causing death or that it was done with the intention of causing bodily injury as the accused knew or had reason to know that death would be the probable and not only the likely consequence of his act; or (iv) That the accused knew or had reason to know that death would be the probable and not only the likely consequences of any bodily injury, which the act was intended to cause. See the cases of Omonga v. State (2006) 14 (Pt. 1000) NWLR 532 at 551; Adekunle v. The State (2006) 14 NWLR (Pt.1000) 717 at 736- 737" I entirely agree with both counsel. I accordingly endorse the above ingredients."

The issue of the third ingredient of the offense doesn't even arise under the circumstance as the cause of death has not been established nor successfully attributed to the defendant's action. It would be necessary on this note to revert to the consideration of these ingredients of culpable homicide, and determine the weight to be attached to evidence adduced during trial. The Supreme Court was in support of this view in the case of;

ALLI V STATE (2015) LPELR-24711(SC) PG 26-27, PARAS. B-b Per Ogunbiyi J.S.C. that;

"our criminal justice system is well entrenched that except in the circumstances mentioned in Section 222 Penal Code, culpable homicide is punishable with death if the act by which death is caused is done with the intention of causing death, or if the doer of

the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause'.

In line with the above position of the law this court cannot rely on the evidence of the prosecution which only points to and stops at suspicion of the defendant as the killer of the deceased. Unfortunately for the prosecution who did not lead material and credible evidence to prove the charge, suspicion no matter how strong cannot ground a conviction in law. See

SHEHU V. THE STATE (2010) 8 NWLR (PT. 1195) S.C PG. 112 or LPELR-3041 Pg. 25-27 PARA G C. Where his lordship Ogbuagu JSC reiterated while applying this principle as follows:

"It is now firmly settled that it is an elementary proposition that suspicion however strong will not found or lead to a conviction. In other words, it cannot take the place of legal proof.

And the whole essence and merits of the requirement of proof beyond reasonable doubt is to guide against conviction and sentence of innocent persons.

Where the prosecution fails to adduce evidence sufficient to establish the guilt of the defendant, then the court would under such circumstance have no option than to absolve him of guilt. This is in line with the time honored principle that *"it is better that ten guilty person's escape Justice than for one innocent man to be punished for an offense he did not commit"*. See

SHINA OKETAOLEGUN V. THE STATE (2015) LPELR -24836 (SC) PG. 27 Para A.

Where the prosecution fails to adduce evidence sufficient to establish the guilt of the defendant, then the court would under such circumstance have no option than to give him the benefit of doubt and absolve him of

guilt. This is in line with the time honored principle that "it is better that ten guilty person's escape Justice than for one innocent man to be punished for an offense he did not commit.

In line with the above position of the law this court cannot rely on the evidence of the prosecution, which falls short of the requirement of proof beyond reasonable doubt.

Consequently and in line with Section 309 of the Administration of Criminal Justice Act 2015, the defendant Emmanuel Abuchi is hereby found not guilty of the offence of culpable homicide and is accordingly discharged and acquitted of the one count charge against him.

(Signed)

Honourable Judge

REPRESENTATION

Vivian Opuromo Ms for Prosecution

Eje Vin Martins and James O. Okpor Esq for Defendant