IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO ON THE 14TH DAY OF MARCH, 2018
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO:FCT/HC/CR/288/15

COURT CLERKS: JOSEPH BALAMI ISHAKU & ORS.

BETWEEN:

COMMISSIONER OF POLICE …….COMPLAINANT

AND

JOSHUA LAWAL……..DEFENDANT

JUDGMENT

The Defendant was arraigned on a one Count Charge of Culpable Homicide punishable with death vide a Charge dated 21st August, 2015 but filed on the 2nd day of September, 2015.

It reads:

"That you Joshua Lawal 'M' 41 years old of ECWA Church Area , Kuruduma, Asokoro, Abuja FCT on the 11th day of February, 2015 at about 23.00hrs or

thereabout within the Abuja Judicial Division committed offence of Culpable Homicide punishable with death in that you caused the death of one Sunday Itoh 'M' of Kuruduma I, Asokoro, Abuja FCT by hitting him with a nail plank on the head which caused him severe injuries and resulted to his death having known that death is the probable consequence of your act thereby committed an offence punishable under Section 221 of the Penal Code."

The Defendant entered his plea on the 28/10/15. He pleaded Not Guilty to the one Count Charge.

In proof of its case the Prosecution called only one Witness. The Prosecution Witness is one Inspector Ganiat Yusuf.

She stated in evidence that she resides in Asoskoro Extension, Abuja.

That she is a Public Servant serving in the Police Force.

That she is an Investigating Police Officer attached to the Crime Branch of the Asokoro Police Station.

That she knows the Defendant.

That on the 12th day of February, 2015 at about 0.6:30:00hrs, one ASP Fonben Peter, Male attached to Kuruduma Police Outpost reported a case of Culpable Homicide against the Defendant.

That on 11/02/15 at about 23.00hrs, the said Joshua Lawal hit a Plank on the back head of one Sunday Itoh Late, Male of the same address. The said Sunday Itoh fell down unconscious and was bleeding profusely. He was rushed to Asokoro General Hospital where he died while receiving treatment.

That when the case was referred to her for investigation, the Complainant called Linus Iroegbu of the same address gave a voluntary statement alleging a case of culpable Homicide against the suspect.

The Defendant's statement was also obtained under the word of caution in which he confessed to have committed the offence. She led a team of detectives to the scene of crime where the Exhibit used for the commission of the offence which was a plank was recovered. It is a 2 by 3 plank with a nail.

She also proceeded to Asokoro General Hospital Mortuary where the body of the Deceased was deposited awaiting autopsy. That photographs were taken and signal raised from her Division to Command Headquarters.

That Corona Form was filled and Witnesses were invited and they gave statements voluntarily amongst them was Josephine Itoh, Escalous Ariah, Linus Iroegbu and ASP Fonben Peter.

That on 16/02/15 at about O.9.00hrs, the case diary, suspect and Exhibit were transferred to State CID for discreet investigation.

She also gave a voluntary statement as the IPO at the State Command. The Prosecution tendered the following documents as Exhibits.

Exhibit A – Statement of Linus Iroegbu.

Exhibit B – Statement of the Defendant dated 12/02/15.

Exhibit C – C3 are statements of Itoh Josephine, made on 18/02/15.

2. Ganiat Yusuf dated 16/02/15 and Escalous Ariah.

The Plank and nail were transferred to State CID on 16/02/15 along with the case file and diary.

Under Cross-examination, the Witness answered as follows:

That she was a Sergeant when the offence was committed. That the incident happened on 11/02/15 at about 1130 p.m.

The Defendant was brought around 06:30 .00hrs. That she was accompanied by three other detectives and the Suspect to the scene of crime.

To a further question, she said statements of the Witnesses were taken after visiting the scene of crime. That some of the Witnesses pleaded with her to write for them.

The above is the case of the Prosecution. The defence also opened and the Defendant gave evidence in his defence.

He is Joshua Lawal. He stated orally that he lives at Kuruduma Village Asokoro. He was working at NESREA as a driver. He knows why he is in Court.

That on 12/02/15, he gave a statement to the Police. They wrote the statement and brought it for me to sign. That he signed it but does not know what it contains because he cannot read and write. That the statement was not read to him at the Police Station. What is contained in the statement is not what he told the Police.

On the day in question, thieves came to his house, he heard their foot steps. He shouted who is that? He saw one and a fight ensued. They dragged themselves outside and stared shouting. He picked a stick and was still shouting 'thief, thief, thief.' He hit him at the back with the stick. He fell down. He was afraid and turned back to the house. He later decided to go to the Kuruduma Police Post to report the case.

They had no vehicle to carry the victim. That thieves normally come and they had earlier come to steal his properties and locked him inside. The Police told him to go and bring the victim/thief.

He brought the Deceased in the car of his friends. They later told them to take him to the hospital. They needed blood in the hospital but there was no blood.

At around 2:30 a.m the hospital staff told them to go home. By 6:30 a.m. the Police called to inform me that the man was late.

That he was later arrested, taken from the outpost to Asokoro Police Station and the following Monday he was taken to FCT Command.

That his statement was also taken at the FCT Command and remanded at SARS. That it was around 11:30 – 12 midnight that he was burgled.

That there was no light. That he used 2 by 2 plank to hit the Deceased. That when they asked for the plank, he pointed at it.

Under Cross-examination, the Witness said he does not know Linus Iroegbu. That he is a former staff of NESREA . To a question he answered that it is only one thief that he saw. That they did not carry any arms. He did not store any arms or planks with nail in his house. To another question he answered that there was firewood within the compound. That he picked a firewood to hit the Deceased at the back. That the Deceased wanted to run. That there are local vigilantes in the area. That Linus Iroegbu is one of the vigilantes.

To a question, he answered that as soon as he hit him, he ran to the vigilantes first. That he reported the matter to the Police. That he made a statement to the Police. That he cannot read and write. That Exhibit B is not his statement.

To a question, he answered that the Police did not know him before he was arrested. That he did not know the Deceased was his neighbour in Kuruduma. He did not know if the Deceased was healthy or not. That when he hit him, he fell down. That he was there until he brought people to take him to the hospital.

Counsel to the parties adopted their Written Addresses. The Prosecution's Final Written Address is dated 19/01/18 but filed on the 22nd. Learned Prosecution Counsel adopted same as his final oral argument. He raised only one issue for determination which is whether in the circumstance of this case, the Prosecution has proved its case beyond reasonable doubt to warrant the Defendant's conviction. He submits that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. That the

Confessional Statement of the Defendant and his testimony in Court can be said to be confessional in nature. That the fact that the action of the Defendant resulted in the sudden death of the Deceased is established by the Confessional Statement. That the fact that the Deceased died is not also controverted.

That Defendant made his Confessional Statement voluntarily without any inducement or promise. That he made his statement thrice.

Learned Prosecuting Counsel further submitted that the fact that the Defendant chose to hit the head of the Deceased meant that he intended to either kill him or cause him grievous harm.

Learned Counsel referring to the Defendant's Plea of self defence said it cannot avail the Defendant. That

the Defendant was not in any danger at all. That in fact the Deceased was unarmed and was running away.

The act of repelling an imminent danger was not proportionate to the danger posed to the Defendant. That from the totality of the arguments and in the light of the evidence, he submits that the Prosecution has discharged the onus placed upon it by law by proving its case beyond reasonable doubt. He finally urges the Court to convict and sentence the Defendant accordingly.

The Defendant's Counsel also adopted her Written Address filed on the 26/10/17 and posited one issue for determination which is whether the Prosecution has discharged its burden of proof. That the ingredients of

the offence of Culpable Homicide must be proved conjunctively and not disjunctively. That where any of the ingredients cannot be established, the Prosecution fails and the doubt must be resolved in favour of the Defendant.

That the Prosecution did not establish the death of the Deceased before this Court. There is no evidence of anything living or dead called Sunday Itoh. That Defendant never sighted the dead body. He was merely informed on phone. That in the absence of death Certificate or any other proof of death, there is doubt as to whether the Deceased died or not.

The statement of the other Witnesses are inadmissible as they refused to appear in Court. They could not be cross-examined to ascertain the truth of the said

statement. The failure of the Prosecution to call the said Witnesses is fatal to the Charge. That PW1 was not the maker of the said statement. That the statement of the Defendant falls short of a direct and positive statement. That the Defendant gave his narration of the event of the fateful night but in no way admitted guilt or suggested a criminal intention to kill. Nothing outside the confession shows or corroborates that the Defendant hit the Deceased on the head or that he died.

That the Prosecution has also failed to prove that it is the injury inflicted that caused the death. That Prosecution led no evidence to tender any Medical report showing the cause of death of the Deceased. That cause of death cannot be presumed where death did not occur instantly.

There are many possibilities of the likely cause of death. That the Prosecution has failed to link by Medical evidence the death of the Deceased to the act of the Defendant. The Charge is therefore bound to fail. That the act of the Defendant did not show any criminal intent. He did not have the intention of killing the Deceased.

Learned Counsel to the Defence further relies on the right of private defence. She submits that the Deceased was an unknown criminal trespasser. That reasonable force is envisaged in overpowering the thief, robber or burglar. That any accident that occurred while carrying out a lawful act is not an offence.

Learned Counsel finally urges the Court to hold that the Prosecution has failed to discharge the onus of proof beyond reasonable doubt. She urges the Court to discharge and acquit the Defendant accordingly.

I have carefully read the evidence of parties and considered the Written Addresses of Counsel. Both Counsel posited one issue for determination which this Court is inclined to adopt. It is whether the Prosecution has proved its case beyond reasonable doubt to warrant a conviction of the Defendant.

In criminal proceedings, the onus lies throughout upon the Prosecution to establish the guilt of the Defendant beyond reasonable doubt. The burden does not shift. Even where the Defendant in his extrajudicial

Statement admitted committing the offence, the Prosecution is not relieved of that burden.

See ***AKINFE VS. STATE (1988) 3 NWLR (PT. 85) 729 SC.***

AIGBADION VS. STATE (2000) 4 SC (PT. 1) 1 at 15 & 16.

IGABELE VS. STATE (2006) 6 NWLR (PT.975) 100 SC.

The One Count Charge preferred against the Defendant is culpable homicide punishable with death contrary to Section 221 of the Penal Code. Section 221 of the Penal Code States:

"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.

b. 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 if any bodily injury which the act was intended to cause.

By Section 221 of the Penal Code, the ingredients of the offence of culpable homicide punishable with death are:

a. That the death of a human being took place.

b. That such death was caused by the Defendant.

c. The act of the Defendant that caused the death was done with the intention of causing death or that the Defendant knew that death would be the probable consequence of his act."

The law is that all the ingredients must be proved or co exist before a conviction could be secured. Failure to establish any of the ingredients would result in an acquittal. Once more, the onus is on the Prosecution throughout and it does not shift.

See ***ADNA VS. STATE (2006) 9 NWLR (PT. 984) 152 at 167 SC.***

AKPA VS. STATE (2007) 2 NWLR (PT. 1019) 500 C.A.

In proof of the Prosecution's case, only one Witness was called. She is one Ganiat Yusuf, the investigating Police Officer attached to Asokoro Police Station. I have earlier in this Judgment summarized her evidence. It is basically hearsay as to what happened at the scene. She further said when the case was referred to her for investigation, the Complainant Linus Iroegbu of the same address with the Defendant gave a voluntary statement alleging a case of culpable homicide. The said Iroegbu Linus was not called to testify. She said she proceeded to the scene of crime and recovered a 2 by 3 Plank with nail which the Defendant used in hitting the deceased back head

named Sunday Itoh. She further said Witnesses were invited and they gave their statements voluntarily. She mentioned them as (1) Josephine Itoh , Female, Escalous Ariah Male, Linus Iroegbu Male and ASP Fomben Peter (Male). It should be noted that none of the above Witnesses were called to testify for the Prosecution.

No eye witness was called to testify on the first ingredient, the evidence of the sole witness is that:

"On 12/02/15 at about 0.6:30hrs one ASP Fomben Peter Male attached to Kuruduma Police outpost reported a case of culpable homicide against the Defendant Male of Kuruduma 1 Asokoro, Abuja. That on 11/02/15 at about 23:00 hrs the said Joshua Lawal hit a plank on the back head of one Sunday Itoh Male. The said Sunday Itoh fell down unconscious and was bleeding

profusely. He was rushed to Asokoro General Hospital where he died while receiving treatment".

"... she proceeded to Asokoro General Hospital Mortuary where the body of the deceased was deposited awaiting autopsy. Photographs were taken and signal raised from her Division to Command Headquarters. Coroner Forms were also filled".

No autopsy report was tendered. The evidence given by the Witness about the death of the deceased was largely hear say, the Witness however said she visited the hospital where the body was deposited awaiting autopsy. There is no evidence to the effect that she visited the hospital with the Defendant. She did not deposit the said body in the hospital. However a conviction for culpable homicide can be sustained in

the absence of corpus delicti, that is without actually seeing or producing the body of the deceased person, where there is strong direct evidence to justify such conviction.

See ***AIGUOREGHIAN VS. STATE (2004) 3 NWLR (PT. 860) 367.***

BABUGA VS. STATE (1996) 7 NWLR (PT. 460) 279 SC.

ARICHE VS. STATE (1993) 6 NWLR (PT. 312) P. 757 SC.

The evidence of the PW1 is largely hearsay. The photographs tendered were REJECTED. No coroner forms were tendered neither was there any result of a coroner inquest.

However, Exhibit D is the Statement of the Defendant. It states:

"… I pursued him covering a few metres, I then hit him with a stick plank on his forehead, he fell down and was bleeding. I reported at Kuruduma Police Outpost with the assistance of my neighbors. He was conveyed to Asokoro General Hospital and he died while receiving treatment".

From the above evidence, it is clear that the death of a human being took place. This piece of the evidence contained in Exhibit B is direct and compelling. It corroborates the evidence of PW1. It is my view and I so hold that the death of a human being took place.

On whether the death was caused by the Defendant. The law is that cause of death can be proved by direct or circumstantial evidence. It can also be inferred where the person injured or attacked died immediately.

See ***UGURU VS. STATE (2002) 9 NWLR (PT. 771) 90 SC.***

The Investigating Police Officer gave her evidence on this point as heard from witness. She also tendered Exhibits A, C, C1, C2 and C3.

Exhibit A is the Statement of Linus Iroegbu the Complainant.

Exhibit C is the Statement of one Josephine Itoh.

Exhibit C1 is the Statement of the Investigating Police Officer PW1.

Exhibit C2 is the Statement of Escalous Ariah while Exhibit C3 is the Statement of Fomben Peter. None of the makers of the Statements was called in evidence except IPO. Documents are not objects that can be cross-examined, therefore oral evidence must be called in support.

See ***EGBA VS. APPAH (2005) 10 NWLR (PT. 934) 164.***

The law is that documents/statements admitted in evidence no matter how useful they could be, would not be of much assistance in the absence of admissible oral evidence by persons who can explain their purport.

The proper person through whom a document is tendered is the maker of the document. If a person who is not the maker of the document tenders same, the Court as in this case will not attach any probative value to the document because the person tendering the document not being the maker cannot answer question arising from any Cross-examination.

In the circumstance of this case, Exhibits A, C, C2 and C3 are Statements made by persons who were not

called as Witnesses. I shall therefore not attach any probative value to them.

See ***LAMBERT VS. NIGERIAN NAVY (2006) 7 NWLR (PT. 980) 525.***

The evidence of the Prosecuting Witness is that the Defendant hit the deceased with a plank infested with nail on the back head. The Defendant fell down and was bleeding profusely. He was rushed to the General Hospital where he died while receiving treatment. The above evidence is hearsay. The Complainant was not called to testify neither were all other Witnesses listed. However, the only piece of evidence that threw some light on the ingredient is the Statement of the Defendant. I have earlier reproduced that part of the evidence.

The Defendant stated that he pursued the victim … hit him with a stick plank on his forehead, he fell down and was bleeding. He was conveyed to the General Hospital where he died while receiving treatment. That he picked a stick which has nail on it from the road.

I have earlier stated in this Judgment that death can be proved by direct or circumstantial evidence. It can also be inferred. In homicide cases where the cause of death is obvious as in this case, medical evidence ceases to be of practical necessity particularly when the deceased died almost immediately from the voluntary act of the Defendant, medical evidence will not be necessary.

See ***BEN VS. STATE (2006) 16 NWLR (PT. 1006) 582 SC.***

ALARAPE VS. STATE (2001) LRCN 634 SC.

It is clear and I hold that the death was caused by the Defendant.

On the 3rd ingredient, whether the act of the Defendant that caused the death was done with the intention of causing death or that the Defendant knew death will be the probable consequence. There is only one witness. The PW1 the (IPO).

I have said it often times that the evidence is hearsay. She said she recovered the stick/plank with nail which the Defendant used in hitting the deceased. It was not tendered. I also read through her oral evidence. There is no where she said, the Defendant knew that the plank he used in hitting the Deceased had nail on it and that he intentionally used the said plank on the deceased. Her Statement, Exhibit G is also devoid of

such evidence. The Exhibit B the alleged Confessional Statement is also devoid of any such confession. It is not a Confessional Statement. In actual fact it denies the Charge. Even if it is a Confessional Statement, there is no evidence of its veracity. There is nothing outside the said Statement to show its truth. It is not corroborated. There is also no other facts with which it is consistent. It is dangerous to rely solely on Exhibit B. He stated in the said Exhibit B that he merely picked a plank in the heat of the hot pursuit but unfortunately it had a nail on it. He stated he never had the intention of killing the deceased. That he only wanted to hit him at the back and unfortunately hit him on the head.

In my respective view and I so hold that the Prosecution failed to prove that the act of the Defendant that caused the death was done with the

intention of causing death or that the Defendant knew that death would be probable consequence of his act.

In the circumstance, the Prosecution has failed to prove the One Count Charge of Culpable Homicide punishable with death against the Defendant beyond reasonable doubt and I so hold. The Charge is accordingly dismissed and the Defendant discharged and acquitted.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)

14/03/18

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AND

JOSHUA LAWAL……..DEFENDANT

A.A. Ibikunle Amupitan appears for the Defendant.

Prosecution is not available.

Judgment delivered.

Signed.
Hon. Judge.
14/03/18.