IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI - ABUJA

THIS WEDNESDAY, THE 2ND DAY OF OCTOBER, 2013

BEFORE: HON. JUSTICE UGOCHUKWU A. OGAKWU - JUDGE

CHARGE NO. FCT/HC/CR/58/2010

BETWEEN:

COMMISSIONER OF POLICE ..... PROSECUTION

AND

PTE KABIRU ABDULLAHI ..... ACCUSED PERSON

JUDGMENT

This *judgment* is in respect of the odyssey of a *Private* in the *Nigerian Army*. He embarked on a trip from *Auchi, Edo State*, where he was serving, heading to *Kaduna* where his parents reside. In the course of the journey there was a stopover at *Zuba* in the *Federal Capital Territory, Abuja*. Certain things happened during the said stopover, ultimately aborting the journey of the *Army Private* to *Kaduna*. Unlike *Odysseus* or *Ulysses*, the *Greek* king of *Ithaca* and hero of *Homer's* epic poem, the *Odyssey*, this *Army Private* did not make it to *Kaduna.* The things that happened at *Zuba* landed the *Army Private* with a charge for which he is standing trial in this Court.

The *accused person, Private Kabiru Abdullahi,* is standing trial on a *one count charge* of *culpable homicide punishable with death* under *Section 221* of the *Penal Code*. The charge is that he caused the death of one *Musa Tanko* of *Zuba Motor Park* by stabbing him with a knife which resulted in his death.

In proof of the charge, the *Prosecution* called a total of *six witnesses* and the *Prosecution* also tendered the extra-judicial statements said to have been volunteered by the *accused person* among other exhibits.

The *PW1* was *Inspector Edet Ubi*. He stated that on *13th January 2010*, while he was still attached to the *State CID FCT Police Command*, a case of homicide involving the *accused person* was transferred from *Zuba Division* and referred to him for investigation. He said that he interrogated the *accused person* and that the *accused person* volunteered a *statement* which he, the *PW1,* recorded, after which he read over the *statement* to the *accused person* who confirmed it as correct and signed and he, the *PW1*, countersigned. The *PW1* further stated that it was the *accused person* who requested that he record what he was going to say because he, the *accused person*, was tensed up. The said *statement* volunteered by the *accused person* was admitted in evidence as ***EXHIBIT A***.

Cross-examined by the defence counsel, the *PW1* said that he was not at the scene of the crime and did not know what transpired at the scene because he was on duty in his office at *State CID* on the day of the incident. He stated that apart from recording the *statement* of the *accused person,* he also visited the scene of the crime.

Corporal Solomon Samson was the *PW2*. He testified that at about *15:37 hours* on *12th January 2010* when he was serving at the *Crime Branch* at *Zuba Police Station,* the *accused person* was brought before him by one *Inspector Ogbeh Godwin* of *MOPOL 50*, who was on special duty on pin-point at the *Niger State/FCT* boundary around *Madalla*. He stated that said *Inspector Ogbeh Godwin* told him that the *accused person* was being pursued by *two persons* who alleged that the *accused person* had killed someone and the *accused person* then ran to him, *Inspector Ogbeh*. The *PW2* said he visited the scene of crime where he saw a young man who

was identified as *Musa Tanko* lying dead. He stated that a photographer was called to take photographs of the scene after which the corpse was moved to *Gwagwalada Specialist Hospital* where the deceased was confirmed dead and an autopsy was carried out. It is his further testimony that he recorded the *statement* of the *accused person* at the request of the *accused person* that he record what he will tell him. He said that after recording the *statement* he took the *accused person* to his superior officer, *SP Femi Adelegan* for the *statement*, which was confessional, to be endorsed. The said *statement* was admitted in evidence as ***EXHIBIT B.*** He further stated that the case was later transferred to *FCT Command*.

Under cross-examination by learned defence counsel, the *PW2* stated that he was not at the scene when the offence was committed but that he later visited the scene. He said that though from his own knowledge he did not know what happened at the time the offence was committed, but that he knew what happened based on the *statement* volunteered by the accused *person*. He stated that the deceased sustained an injury at the neck area and that after the *accused person* had volunteered a *statement* he was moved to *Gwagwalada Police Division* because a mob had besieged the *Zuba Police Office* with a view to lynching the *accused person*. He further said that he discovered from his investigation that the *accused person* was annoyed and angry at his encounter with the deceased as a result of which the *accused person* stabbed the deceased. He finally stated that the *accused person* was a secondary school leaver but that even though the *accused person* could have written his statement by himself, he had asked him to record it because he said he was not in the mood.

The *PW3* was *Mohammed Yawa*. He testified that he was working inside the *Zuba Motor Park* when someone called him on phone to say that his brother *Musa* had been killed along the road at *Dan Kogi* where they were loading by one

Army man who used a knife to cut his neck. He said that he rushed to the place where he found his brother dead. He stated that the corpse of the deceased was taken to the *Police Station* at *Zuba* and from there to *Gwagwalada Hospital.*

Cross-examined by learned defence counsel, the *PW3* said that he was told that the *Army man* used his knife to cut his brother's neck and that he saw the injury.

Inspector Alhassan Ibrahim Salihu, the *Exhibit Keeper* at the *FCT Police Command* was the *PW4*. He stated that his duty was to have custody of exhibits recovered by *Investigating Police Officers (IPO)* in the course of investigating cases. He said he registers and keeps the exhibits, duly recording the particulars of the *IPO* investigating the case in the diary, the particulars of the exhibit which will be numbered is also entered in the diary as well as the nature of the offence and the scene where the exhibit was recovered.

He stated that on *14th January 2010*, one *Inspector Abdullahi Ogwu* brought exhibits being a knife, a belt for uniformed men and a knife case (sheath) to him for registration in respect of a case of culpable homicide. He said that after he registered them, he kept them in his custody pending when they will be needed in Court or for verification by auditors. He produced the said items and they were admitted in evidence as follows:

1. *The knife as* ***EXHIBIT C.***

2. *The case or holder (sheath) for the knife as* ***EXHIBIT C1.***

3. *The belt as* ***EXHIBIT D.***

Cross-examined by learned counsel for the *accused person*, the *PW4* said that he did not conduct any investigation, as his duty is to keep the exhibits until needed. He stated that he

relies on the information given to him by the person who brought the exhibits in order to know what to record.

Haruna Wakili was the *PW5*. He testified that he was standing with his friend, the deceased *Musa*, at *Zuba* where they were loading a vehicle to *Kaduna* when the *accused person* came and asked *Musa* for a pen, but *Musa* said he was using the pen. He said that the *accused person* pleaded to be given the pen but that *Musa* refused stating that he was using the pen. He stated that the *accused person* then told Musa to get out whereupon *Musa* responded in anger asking why the *accused person* should ask him to get out and the *accused person* replied that he could tell him to get out.

He said that the exchange of words continued and the *accused person* threatened to beat *Musa* if *Musa* did not get out; and *Musa* asked if he will beat him because of his pen. He said that the *accused person* removed his belt to beat *Musa* but *Musa* held the belt and the *accused person* stated that if *Musa* did not release the belt, he would cut him. He said the *accused person* then brought out a knife and cut *Musa* on the left hand and that while *Musa* was telling the *accused person* that he had cut him, the *accused person* told him that he would kill him if he did not go out from his sight; and that he would kill him if he came any closer to him. He stated that while *Musa* continued coming close to the *accused person*, the *accused person* used the knife to cut *Musa* on the neck and *Musa* fell down and died instantly, and he, the witness, ran away.

Cross-examined by learned counsel for the *accused person*, the *PW5* said that though he was a *motor mechanic* he used to come to the *motor park* to do *"agbero"* work and that on the day in question, he did not go to the *mechanic workshop* but resumed at the *motor park*. He said he could not remember the date of the incident but that he was standing close by when the late *Musa* and the *accused person* who was in uniform were exchanging words. He stated that they load

passengers by the roadside and that it is at the same place where *Musa* was working as a booking clerk that he, the witness was also loading a vehicle. He said he did not do anything when the *accused person* cut *Musa* on the hand with a knife because the *accused person* is a member of the *Force* and that it was soon after cutting *Musa* on the hand that the *accused person* cut *Musa's* throat. He maintained that he was not telling lies stating that after the incident the matter was reported to the *Police* and that the knife which the *accused person* used was a local knife. He stated that when *Musa* fell down, people gathered to beat the *accused person* but that he was rescued by someone. He said that *Musa* was his best friend, stating that *Musa* could not have had a quarrel with the *accused person* before the incident as they did not know each other.

The *PW6* was *Mohammed Abubakar*. He said that on *12th January 2010*, by the *Major Filling Station gate* at *Zuba*, there was a problem and people were running. He said he came and met the *accused person* with blood on his body standing near where his, the witness', car was parked at *Dan Kogi Park*. He said that he saw one *Musa*, who was a member of the *Union* at the *Park*, lying dead on the ground. He stated that the *accused person* had a knife in his hand and he asked the *accused person* what happened and the *accused person* told him that he had killed the bastard, referring to *Musa*. He stated that people rushed to beat the *accused person* but that he rescued him and took him in his car to the *Police checkpoint* by *Niger State* boundary where he got an *Inspector* and *Sergeant* from the *checkpoint* and they went to *Zuba Police Division*.

Under cross-examination by the learned counsel for the *accused person*, the *PW6* said that he did not know the *accused person* before the incident and that on the day of the incident he was waiting for his turn to load his vehicle. He stated that where his vehicle was parked was close to where the incident happened. He said that he was not

present when the incident happened as he was not there when the deceased was stabbed.

At the conclusion of the testimony of the *PW6*, the *Prosecution* closed its case.

The *accused person, Kabiru Abdullahi*, testified for himself in defence of the charge and did not call any other witness. He said that he is a *soldier* residing at *Lekoho Barracks, Auchi, Edo State;* and that he was serving at the *Nigerian Army School of Electrical and Mechanical Engineering* in *Auchi, Edo State*. He stated that on *12th January 2010* he was travelling to *Kaduna* from *Auchi* and that the bus was carrying passengers going to *Abuja* and *Kaduna*. He said that when they got to *Zuba Park Abuja,* some passengers dropped and that while the driver was trying to pick other passengers, he went to buy some fruits.

He stated that after getting the fruits, he was going back to the bus when a group of people numbering about *six* came to him saying in *Hausa* language that how could this little boy be a soldier. He stated that some of them put their hands in his pocket, took his money, his phone and his wallet. He said that because his *ID card* was in his wallet, he decided to go for his *ID card* when one of the people tripped him and he fell down. He testified that one of the people brought out a *Hausa* local knife and tried to stab him with it but that he, the *accused person,* managed to grip the blade of the knife and the person with the knife tried to pull the knife with full force not knowing that his other friend was standing close behind him. He said that with the force with which he pulled the knife from his hand, the person lost control and the knife stabbed his friend who was standing behind him in the neck.

He further stated that the man with the knife became shocked and dropped the knife. The *accused person* said that he was equally shocked and that the man who was stabbed with the knife started bleeding and his friend who stabbed

him ran away. The *accused person* said that after a while he noticed that all those people who had approached him had started coming towards him again, whereupon he picked the knife that was dropped in order to use it for his self-defence, telling them in *Hausa* that he was not there for violence and that they should call the Police. He said that they called one of their *Union* members who used his vehicle to remove him from the scene and he was eventually taken to *Zuba Police Station.*

He said that while he was at the *Police Station*, the garage boys came with weapons threatening that they should bring him out or they would burn the *Station* as a result of which the *Divisional Police Officer (DPO)* directed that he should be transferred to *Gwagwalada Police Station*. It is his further testimony that at the *Gwagwalada Police Station*, he narrated what happened and a policeman recorded it and said that he should sign. The *accused person* said that he requested that he read through the *statement* before he signs but that the policeman refused saying that he should be taken back to the cell and that he would be taken to *Command*.

He stated that on the following day, he was taken to *Command* where the *statement* that was recorded was handed to one *Inspector Edet* who asked him to sign but that he requested to read the *statement* first, but the said *Inspector Edet* then said that he would deal with him. He said that he was taken to a room and an electric iron was plugged in and used to burn into his skin through the uniform he was wearing after which his uniform was removed and the iron was used on his other shoulder. He said that as a result of the pain being inflicted on him he had to sign the *statement* after which he was taken to *Wuse Police Station* and from there to the *Special Anti-Robbery Squad (SARS)*; after which he was eventually charged to Court. He said that he can read and write and that he had his primary and secondary school certificates.

Cross-examined by the prosecuting counsel, the *accused person* stated that he did not make any statement at *Zuba Police Station* and that it was at *Gwagwalada* that the Police wrote a *statement* and forced him to sign. He said that he did not make any *statement* at *State CID Command* but that the statement made at *Gwagwalada* was taken to *Command* where he was forced to sign the *statement.* He stated that he was travelling to *Kaduna* to see his parents and that he did not know the people who approached him at *Zuba* after he had bought fruits, but that the deceased was one of them. He said that the deceased used his bare hands to attack him, maintaining that it was possible for him to be attacked even though he was wearing his uniform.

He stated that the knife which struck the deceased somewhere around the neck was held by one of the friends of the deceased and that the deceased died on the spot. He agreed that a serious force must have been used to strike the deceased with the knife, but that the knife which was pulled from his grip with that force did not injure him, the *accused person*. The *accused person* said that he did not know that a knife when used to attack somebody could injure the person. He maintained that he did not kill the deceased with a jack knife, stating that it was not correct that he was not a witness of truth. He finally stated that he did not know anything about using a jack knife to intimidate and kill the deceased.

With his testimony as the sole witness in defence of the charge, the *accused person* closed his case.

The matter thereafter proceeded to *address*. *Written addresses* were filed and exchanged. On *18th July 2013*, the date fixed for *address*, the learned counsel for the *accused person, O. J. Ojefia, Esq.,* who had filed the *final address* of the *accused person* on *31st May 2013* was not in Court to adopt his *written address*. However, *Mrs. O. E. Ohakwe,* learned prosecuting counsel who was present in Court

adopted the submissions in the *final written address* of the *Prosecution*, which is dated *24th June 2013* but filed and deemed as properly filed and served on *25th June 2013*. She urged the Court to convict the *accused person* as charged.

In the *final address* of the *accused person*, a sole issue was distilled as arising for determination, namely:

> *Whether the Prosecution has discharged the burden of proof beyond reasonable doubt as envisaged by law in this case before this Honourable Court?*

The *Prosecution* on its part formulated two issues for determination in its *written address* as follows:

1. *Whether the Prosecution has proved its case beyond reasonable doubt?*

2. *Whether the ingredients establishing the offence have been proved beyond reasonable doubt?*

I have carefully considered the *charge* in this matter, the evidence adduced and the *written addresses* filed by learned counsel. The legal position is that it is the duty of the *Prosecution* to prove the guilt of the *accused person* beyond reasonable doubt. In the formulation of issues for determination in the respective *written addresses*, this burden on the *Prosecution* has formed the fulcrum of the issues as distilled. Howbeit, I will take the liberty to succinctly state the issue on the basis of which I will determine this *charge*. The sole issue which suffices in this regard is:

> ***Whether the Prosecution has proved the charge against the accused person beyond reasonable doubt in order to warrant a conviction?***

Our adversary criminal justice system is accusatorial. This is so because by *Section 35(6)* of the *1999 Constitution*, every

person charged with a criminal offence shall be presumed innocent until he is proved guilty. Equally apt in this context is the cardinal principle of law that the commission of a crime by a person must be proved beyond reasonable doubt. *Section 135* of the *Evidence Act, 2011* casts this burden on the prosecution, the burden never shifts and if on the whole of the evidence the Court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof and the accused person will be entitled to an acquittal, since it is better to allow nine guilty men to go free than to convict and punish one innocent man. See **ALMU vs. THE STATE (2009) 4 MJSC (PT II) 147 at 171, UKPE vs. THE STATE (2001) 18 WRN 84 at 103, ODUNEYE vs. THE STATE (2001) 13 WRN 88 at 105, SHANDE vs. STATE (2005) 12 MJSC 152 at 173** and **MAJEKODUNMI vs. NIGERIAN ARMY (2002) 31 WRN 138 at 147.**

For the *Prosecution* to discharge the burden of proof cast upon it by law, it has been held that there are three ways or methods of proving the guilt of an accused person. These are:

1. By reliance on a confessional statement of an accused person voluntarily made;
2. By circumstantial evidence, and
3. By the evidence of eyewitnesses.

See **EMEKA vs. THE STATE (2001) 32 WRN 37 at 49** and **OKUDO vs. THE STATE (2011) 3 NWLR (PT 1234) 209 at 236D.** We will see in the course of this *Judgment* if the *Prosecution* has proved the charge against the *accused person* by any one of these ways or methods or by a combination of one or the other or all of them.

The sole count of the *charge* against the *accused person* is *culpable homicide punishable with death*. It is a charge of *murder*. The *Prosecution* in order to discharge the standard of proof beyond reasonable doubt must establish:

a) *that the deceased had died,*
b) *that the death of the deceased was caused by the accused person, and*
c) *that the act or omission of the accused person which caused the death of the deceased was intentional with the knowledge that death or grievous bodily harm was its probable consequence.*

See **ONAH vs. STATE (1985) 3 NWLR (PT 12) 236, IGAGO vs. STATE (1999) 14 NWLR (PT 637) 1, ADEKUNLE vs. STATE (2006) 14 NWLR (PT 1000) 717 at 736G – 737A** and **ONYIA vs. STATE (2006) 11 NWLR (PT 991) 267 at 293C-H and 295G - 296A.** The above ingredients operate cumulatively in order to secure a conviction in a charge of *murder* or *culpable homicide punishable with death.*

To establish these ingredients, the *Prosecution* relies on a combination of the confessional *statements* of the *accused person* and the eyewitness testimony of the *PW5*.

In the *final address* of the defence, it has been contended that the *PW5* is a suborned witness who ought to be treated as a tainted witness because he did not produce any identity card showing him to be a member of the *Dan Kogi Park Union of Road Transport Workers* and that no official of the *Union* was called to testify that the *PW5* was a member of the *Union*.

I am not enthused by this contention. Indeed the reasoning which informed this submission does not enamour me in the least bit. The testimony of the *PW5* as to what he witnessed has absolutely nothing to do with the *Road Transport Workers Union*. Indeed it did not necessarily require someone to be a union member to witness what happened. It only

required presence at the material time. The *PW5* remained unshaken in cross examination and the defence was unable to make any dent in his weighty account of what transpired. In such circumstances I am unable to accede to the submission of the defence that the *PW5* is not a witness of truth or a tainted witness.

The confessional *statements* of the *accused person* are ***Exhibits A*** and ***B***. They were admitted in evidence without any objection. However, in his testimony in defence of the *charge*, the *accused person* testified that he was tortured before he signed the *statement* thus raising the issue that the *statement* was not made voluntarily. This issue as to the voluntariness of the *statement* seems to have been a little too late in the course of the proceedings.

The question of voluntariness of a confessional statement ought to be raised at the time the statement is sought to be tendered in evidence. As already stated, the confessional *statements* were tendered at the trial without any objection from the defence. It is rather belated for the issue to be raised after the *Prosecution* had closed its case. In such circumstances such as this, the voluntariness of the confessional *statements* cannot be in doubt. See **ALARAPE vs. STATE (2001) 5 NWLR (PT 705) 79 at 100A-B.**

Now, there is no evidence stronger than a person's own admission or confession. The confessional statement made by an accused person is potent evidence in the hand of a prosecutor for proving a charge. It is the best and safest evidence on which to convict. See **ADEBAYO vs. A-G OGUN STATE (2008) 7 NWLR (PT 1085) 201 at 221F-G** and **USMAN vs. STATE (2011) 3 NWLR (PT 1233) 1 at 11.** The free and voluntary confessional statement of an accused person alone is enough to sustain the conviction of an accused person where such voluntary confession of guilt is direct and positive. See **YESUFU vs. STATE (1976) 6 SC 167 at 173, IDOWU vs. STATE (2000) 7 SC (PT II) 50 at 62 – 63, DIBIE vs.**

STATE (2007) 9 NWLR (PT 1038) 30 at 51A-B and 63G-H and **KAZA vs. STATE (2008) 7 NWLR (PT 1085) 125 at 166A, 194A and 195D.** In the extra-judicial *statements* of the *accused person*, ***Exhibits A*** and ***B***, he stated that he stabbed the deceased on the right hand and that while the deceased struggled with him, the knife got to the neck of the deceased and cut his throat.

The *Prosecution* did not call any medical evidence in proof of the cause of death of the deceased. One of the ingredients which the *Prosecution* has to establish is that the deceased had died. The evidence before the Court is that the deceased died on spot. There is however no medical evidence of the cause of death.

The law seems to be settled that a court may dispense with medical report or is not bound by medical evidence in proof of the cause of death of a deceased. It is so because even with or without medical report, a court can still infer the cause of death provided there is clear and sufficient evidence that the death of a deceased was the direct result of the unlawful act of the accused person to the exclusion of all other reasonable possible causes. Put differently, medical evidence is not a *sine qua non* in all cases of murder. Where a man is attacked with a lethal weapon and dies on the spot, the cause of death can properly be inferred that the wound inflicted caused the death. Where the cause of death is obvious, medical evidence ceases to be of any practical or legal necessity when death is instantaneous or nearly so. See **BEN vs. STATE (2006) 16 NWLR (PT 1006) 582 at 594C-G and 595C-D** and **ONYIA vs. STATE (supra) at 291H – 292D and 296C-D.**

Where in a case of *murder* or *culpable homicide punishable with death*, the eyewitness account bears out that the accused person killed the deceased with a lethal weapon and the deceased died on the spot, the offence has been patently proved and in such a case, medical evidence ceases

to be a practical legal necessity to establish the cause of death. See **ULUEBEKA vs. STATE (2000) 7 NWLR (PT 665) 404** and **ONWUMERE vs. STATE (19991) 4 NWLR (PT 186) 428.** In the instant case the evidence on all sides is that the deceased died on the spot after he was stabbed in the neck with the knife, ***Exhibit C***, which without a doubt is a lethal weapon. The only divergence in the evidence is in respect of the circumstances in which the stabbing was inflicted as contained in the *confessional statements* of the *accused person*, the eyewitness account of the *PW5* and the testimony of the *accused person* in his defence of the *charge*. Be that as it may, the evidence clearly establishes that the deceased died after the fatal blow was dealt. In the circumstances, I do not think that the failure by the *Prosecution* to lead medical evidence as to the cause of death is fatal.

I have already stated that the *accused person* in his confessional *statements* stated that he stabbed the deceased in the neck. This is a confession that the death of the deceased resulted from his action. Even though I have found that the *accused person* could not, after the *Prosecution* had closed its case raise the question of the voluntariness of the confession, the *accused person* sought to retract the confessional statement by his testimony that he was not allowed to read what was recorded.

I hasten to state that the mere retraction or resiling from a confessional statement or denial by an accused person of his having made such a statement does not ipso facto render it inadmissible in evidence. See **ALARAPE vs. STATE (2001) 2 SC 114 at 125** and **AREMU vs. STATE (1991) 7 SC (PT II) 82 at 90.** An accused person can still be convicted on the basis of such retracted confessional statement: **HASSAN vs. STATE (2001) 7 SC (PT II) 85 at 93.**

Though I have found that the *accused person* confessed to the crime in ***Exhibits A*** and ***B***, the legal position is that the

Court cannot act on the confessional statement without first applying the test for determining the veracity or otherwise of the confessional statement. The law enjoins the Court to seek any other evidence, however slight, of circumstances which make it probable that the confession is true. The tests which have been laid down to ascertain the weight to be attached to a retracted confessional statement are:

1) *Is there anything outside the confession which shows that it is true?*

2) *Is it corroborated in any way?*

3) *Are the relevant statements of fact made in it most likely to be true as far as they can be tested?*

4) *Did the accused person have the opportunity of committing the offence?*

5) *Is the confession possible?*

6) *Is the alleged confession consistent with other facts which have been ascertained and established?*

See **NWAEBONYI vs. STATE (1994) 5 NWLR (PT 343) 138; AKINMOJU vs. STATE (2004) 4 SC (PT I) 64 at 81; UBIERHO vs. STATE (2005) 7 MJSC 168 at 188 – 189 or (2005) 5 NWLR (PT 919) 644 at 663 to 664** and **ALARAPE vs. STATE (supra).**

Applying the requisite tests against the background of the evidence of the *PW5*, the eyewitness testimony of the *PW5* affords *prima facie* proof that the confessional *statements*, ***Exhibits A*** and ***B***, are true. It corroborates the said confessional *statements* and the relevant statements of facts contained in the said confessional *statements* are shown from the testimony of the *PW5* to be most likely to be true. The detailed testimony of the *PW5* as to what transpired between the *accused person* and the deceased on that fateful day shows that the *accused person* was at the scene of the crime and that the *accused person* was involved in the circumstances leading to the death of the deceased thus clearly showing that the *accused person* had the opportunity

of committing the offence, thereby making the confession possible in the circumstances. Furthermore, in the light of the evidence and the circumstances in which the *accused person* was evacuated from the scene of crime to the *Police Station* and what transpired at the *Police Station* resulting in his being moved from the *Zuba Police Division* to *Gwagwalada Police Division*; it is clearly possible that the confession which were made within *24 hours* of the incident would have been made. The testimony before the Court is that the deceased had died from the stab wound he sustained in the neck. The knife, the lethal weapon that inflicted the injury is ***Exhibit C*** before the Court. The military belt which the *accused person* was said to have used on the deceased is ***Exhibit D***. Clearly therefore, the confessional *statements* of the *accused person* are consistent with the other facts which have been ascertained and established by the evidence. Therefore, regardless of the fact that the *accused person* retracted his confessional *statements* at the trial, applying the relevant tests to determine the veracity of the confessional *statements* leads me to the conclusion that the said confessional *statements* have to be accorded their full weight in proof of the crime charged. The *statements* are therefore the voluntary *statements* of the *accused person*.

The law is that it is desirable to have outside an accused person's confession to the *Police* some evidence, be it slight, of circumstances which make it probable that the confession was true. See **ONOCHIE vs. THE REPUBLIC (1966) 1 SCNLR 204** and **CHIOKWE vs. THE STATE (2005) 5 NWLR (PT 918) 424 at 442.** The testimony of the *PW5* affords circumstances which make it probable that the confession of the *accused person* is true. Equally, the evidence of the *PW6* that the *accused person* said to him that he had killed the bastard further shows the probability that the confession of the *accused person* is true. The Court is therefore entitled to convict on the confession of the *accused person,* the confessional *statements* having been admitted in evidence without any objection. The said confession is voluntary, direct, positive, properly proved and supported by other corroborative

circumstances as shown in the evidence adduced by the *PW5* and *PW6*. See **OKEKE vs. STATE (2003) 15 NWLR (PT 842) 25, THE QUEEN vs. OBIASA (1962) 2 SCNLR 402** and **CHIOKWE vs. STATE (2005) 5 NWLR (PT 918) 424.**

The *Prosecution* has to further establish that the act of the *accused person* was intentional with the knowledge that death or grievous bodily harm is the probable consequence. In *Section 220* of the *Penal Code*, *culpable homicide* is defined as follows:
"220. Whoever causes death-

(a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or
(b) by doing an act with the knowledge that he is likely by such act to cause death; or
(c) by doing a rash or negligent act,

commits the offence of culpable homicide."

By *Section 221* of the *Penal Code culpable homicide* shall be punished with death if the act by which the 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. The evidence is that after the threat of the *accused person* to use his belt on the deceased did not result in the deceased yielding his pen to the *accused person*, the *accused person* brought out his knife and used the same firstly to cut the deceased on the hand and later stab him on the neck having threatened that he would kill the deceased if he came near him.

Let me state that I gave due consideration to the testimony of the *accused person* that it was one of the friends of the deceased who wanted to use the knife on him, the *accused person*, but that he (the *accused person*) gripped the blade

of the knife and that in trying to extricate the knife from his grip, the said friend of the deceased pulled the knife with such force that it cut the deceased who was standing behind him in the neck. This seems to be a tale which, in inventiveness, that power of creative imagination, that is unparalleled in fiction. The best raconteurs could not have crafted it better. It is a ludicrous tale which is most improbable especially when the *accused person* stated that he was not injured by the blade of the knife which he gripped with his hand and which he wants the Court to believe was pulled out of his grip with such force that the knife went, not with the hilt but with the blade into the neck of the deceased who was standing behind the person, who was supposedly pulling the knife by the hilt. This is incredulous, far-fetched and beyond belief.

The testimony of the *PW5* as to what transpired between the *accused person* and the deceased is more credulous and it clearly shows that the *accused person* intentionally, with the knowledge that death or grievous bodily injury will be the probable consequence of his action, stabbed the deceased in the neck. I am accordingly satisfied that the evidence before the court establishes that the act of the *accused person* was intentional, fully aware that death or grievous bodily injury will be the probable consequence of the act.

The *accused person* in his testimony seemingly raised the issue that the death of the deceased resulted from an accident following the force with which the knife was pulled from his grip and the blade ended up in the neck of the deceased. The accused person further stated in his confessional *statements* that he was acting in self-defence when he was attacked by the deceased and his friends. Even though I have found that the story of accident is highly improbable, it seems to me that the defences of *self-defence* and *accident* are mutually exclusive. This is because *self-defence* admits the intentional doing of the act which results in the injury while *accident* on the other hand is a negation of intention, an event that occurs independently of

the exercise of the will. Therefore reliance on both defences shows a misconception about the nature of the defences and seems to be an angling expedition. See **CHUKWU vs. STATE (1992) LRCN 83 at 97** or **(1992) 1 NWLR (PT 217) 255** and **ONYIA vs. STATE (supra).** The said defences of *self-defence* and *accident* on the peculiar facts of this matter do not avail the *accused person*, since he cannot be heard to say that the event was not intended, an *accident*, and at the same time that he intended it but that he was acting in *self-defence.*

While the law requires the *Prosecution* to prove the offence charged beyond reasonable doubt, it has been held that proof beyond reasonable doubt is not proof beyond all shadow of doubt. See **AKINYEMI vs. STATE (supra), ONI vs. STATE (2003) 31 WRN 104 at 122** and **AKALAZI vs. STATE (1993) 2 NWLR (PT 273) 1 at 13.** In the words of *Lord Denning* in **MILLER vs. MINISTER OF PENSION (1947) 2 ALL ER 372 at 373:**

> *"Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt but nothing short of that would suffice."*

Proof beyond reasonable doubt does not mean or import beyond any degree of certainty. The term strictly means that within the bounds of evidence adduced before the Court, no tribunal of justice would convict on it having regard to the nature of the evidence led in the case. The proof required to be beyond reasonable doubt should be a proof that excludes all reasonable inference or assumption except that which it seeks to support. It must have clarity of proof that is readily consistent with the guilt of the accused person. See **STATE vs. ONYEUKWU (2004) 14 NWLR (PT 893) 340 at 379F – 380B**

and **SHANDE vs. STATE (2005) 12 NWLR (PT 939) 301 at 321B-D.**

From the totality of the foregoing, I am satisfied from the evidence adduced which I have dispassionately considered and evaluated that the *Prosecution,* in its combination of establishing the charge by the confessional *statements* of the *accused person* and the eyewitness account of the *PW5,* has established the ingredients to prove the charge of *culpable homicide punishable with death* preferred against the *accused person*. Consequently, the *Prosecution* has discharged the onus placed upon it in criminal trials, which is to prove its case beyond reasonable doubt. The proof adduced by the *Prosecution* drowns the presumption of innocence of the *accused person* and renders the same useless as the evidence pins down the *accused person* as the owner of both the *actus reus* and *mens rea* for the offence charged: **DIBIE vs. STATE (supra) at 56H-57B.** I therefore find and hold that the *Prosecution* has established the guilt of the *accused person* as charged. The issue for determination as distilled by the Court is resolved in favour of the *Prosecution*. I accordingly find the *accused person* guilty as charged on the sole *count* of the *Charge*.

The punishment for the offence of *culpable homicide* under *Section 221* of the *Penal Code* is death. The sentence of death is mandatory therefore the court does not have the discretion to impose any other penalty upon conviction. The mandatory sentence has to be imposed.

Kabiru Abdullahi, the sentence of the Court upon you is that you be hanged by the neck until you be dead and may the Lord have mercy on your soul.

[SIGNED]
UGOCHUKWU ANTHONY OGAKWU
PRESIDING JUDGE