

IN THE COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION

HOLDEN AT NNEWI:

BEFORE HIS LORDSHIP, THE HON JUSTICE O. M. ANYACHEBELU ON
MON THE 16TH DAY OF JAN 2017.

CHARGE NO: A/54C/2007:

BETWEEN:

THE STATE

: : : **COMPLAINANT**

AND

1. INNOCENT OBIAJULU NWOKIKE
2. IKECHUKWU NWANIKIRI
3. NGOZI EKE

: : : **DEFENDANTS**

JUDGMENT

The information in respect of this charge as constituted was initially filed on or about the 14th day of September 2007. That is the current Suit No A/54C/2007. Actually, the very initial charge was A/5C/2001, commenced at a time when the 1st Defendant had not been joined. However, with the joinder of 1st Defendant, the said Charge No A/5C/2001 became substituted for the current charge No A/54C/2007.

This court as constituted, took over the proceedings while then sitting at Awka High Court. Notwithstanding transfers of Judicial Officers, this court had to take the case along on automatic assignment order as case was virtually at defence Stage.

The records indicate that after the conclusion of addresses but before the judgment, the Prosecution sought leave to amend the charge/information. That was by virtue of Motion No HN/803M/2016 filed on 12/7/2016. This motion was heard and granted without opposition on 18/7/2016.

That put in place the Amended Charge/information as filed on 12th July 2016.

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Initially there were 5 Defendants, but in between, the 4th and 5th Defendants who were elderly died and their names were struck out. No wonder the Amended Charge correctly reflected 3 Defendants.

Fresh plea was taken on 18th July 2016 whereupon, the three Defendants severally pleaded not guilty to the Amended Charge. Incidentally, consequent upon the Amendment, there were no further evidence that was called.

The Statement of Offence reads thus;

“Murder contrary to Section 274(1) of the Criminal Code Cap, Cap 36 Vol II, Anambra State of Nigeria 1991”.

The particulars of Offence reads as follows;

“Innocent Obiajulu Nwokike, Ikechukwu Nwanikiri and Ngozi Eke on 26th day of January, 2000 at Ifite Nibo in Awka Judicial Division did assault one Henry Nwokike which eventually led to his death on the 7th day of April 2000 and thereby murdered him”.

The records show that initial plea on this charge was taken on 4th October 2007, before the re-plea to the amended charge.

Actual trial started on 28th February 2008 with the evidence of PW1. Altogether the prosecution fielded 4 witnesses while the Defendants each testified for him and/or herself.

It can safely be said that 3 witnesses testified for defence as the 4th witness who actually testified for herself died before the case became concluded.

PW1 was one Onochie Nwokike. He is one of the sons of the deceased, Henry Nwokike. On 26th January 2000, he was informed by his Late father that they have a court case with the 1st Defendant, Obiajulu Nwokike and that his attendance was necessary. Being a student at GTC Awka then, he obtained permission and went to the Magistrate court. He returned back to school with his junior brother at the end of the proceedings.

Later in the day he went to his father's office where he met his junior sister narrating how the said 1st accused threatened her with a machet. Their father quickly reported the matter to C.P.S. where the Police directed him to go and resolve the matter peacefully.

On getting home that night, Obiajulu Nwokike (1st Defendant), Chidi Adibe, Ekwutosi Adibe, Nkiruka Nwokike (1st wife of 1st Defendant) broke into their house and started beating the deceased with sticks and bottles. They also

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tied their mother with a rope when she came out. Two other ladies dressed on jeans were also there.

PW1 managed to escape with his brother and then raised alarm. They both hid by the wall so as to observe what was happening. At this stage, some other persons namely Ngozi Eke 3rd Defendant, Ikechukwu Nwanikiri 2nd Defendant, Obiajulu Nwanikiri and others, came and joined in beating his father with sticks. They all beat his father and mother and both were lying helpless. They then ran to one Eric at Obinofia Village, Nibo and told him everything so he took them to the Police station around 12.00 midnight. The Police did not listen to them because it was late so they went back to Eric's house.

The next morning, on their way back, they saw their mother by the bush close to their house with blood all over her body. She was taken to the Police station where it was demanded that they took photographs before being taken to Amaku general hospital. She was subsequently admitted at the said hospital.

Later same day, they found their father under one Ukpaka tree on the road leading to Okpalayam stream. He was also taken to CPS, Awka then to the same Amaku hospital where his photograph was also taken. His father was at the hospital for almost 3 months before he was discharged but was to be coming to receive treatment at intervals in the hospital. On 3rd April, he complained about his head and was taken back to the hospital but he eventually died on 7th April, 2000.

He stated that it was after the death of his father that the Police effected arrests but stressed that some other accused persons that joined in beating his father all ran away.

PW1 gave evidence of a land dispute between the 1st accused and his father prior to his death. He stated that the Ozo people looked into the case and told the 1st accused to vacate the land as his father was the 1st son. This was what made him and his group beat his father and he eventually died as a result of the beating. Through him the following were tendered as Exhibits;

1. Exhibits A, A1 – AB – negatives of the said photographs.
2. Exhibits B – photograph of a woman standing half naked.
3. Exhibit B1 – photograph of a woman sitting on the bed.
4. Exhibit B2 – photograph of a man lying on the bed.

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5. Exhibit B3 – photograph of a man sitting on the bed.

He maintained that the deceased died as a result of the beating of 26th January 2000.

Under cross-examination, he maintained that the 1st Defendant tried to take away the deceased's property but was told by the Ozo people to vacate the said property. That the deceased was admitted in the hospital for over 3 months and finally died on 7th April 2000 as a result of the assault.

PW1's statement to the Police was admitted as Exhibit C under cross examination. He insisted that all the accused were people that beat his father which subsequently led to his death. He denied the suggestion by counsel to the 2nd accused that he and his mother were using his father's death to net in their perceived enemies.

PW2 was Christiana Nwokike (Mrs). She is the wife of the deceased. She recalled that on the said 26th January 2000, they were in their house when 1st accused, 2nd – 5th accused broke into their house and started hitting the deceased. They beat and tied her up while her children ran away. She found herself in the hospital and learnt it was her son that brought her there. Her late husband was brought to the same hospital and they stayed for about three months. Thereafter they were discharged and instructed to come at intervals for further treatment. The deceased was later re-admitted because of the condition of his health and he finally died on 7th April 2000.

According to her, it was after his death that they informed Police at CPS Awka who were handling the case. It was the Police that instructed that they take photograph of her husband's corpse. She then made statement at the Police on the said 7/4/2000 and another statement on 28/7/2000 at Amaku General Hospital where she was as at then receiving treatment. She stressed that apart from the Police report of 7/4/2000, she did not personally incident any other Police report.

Under cross-examination, counsel to the 1st and the then 4th Defendant alleged that the PW2 in her evidence before the previous court, said that the fight took place both in the night and morning of 26/1/2000. PW2 denied and maintained it took place only at night of the said 26/1/2000. Exhibit D and Exhibit D1 – which were the proceedings of 25th May 2004 – 2nd June 2006 which proceedings of the previous court and also page 8 thereof were admitted.


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PW2 also denied beating the then 4th Defendant on 26th January 2000 at Obibia Bridge at Awawbia as alleged by counsel to the 1st Defendant and then 4th Defendant.

Counsel to the 2nd Defendant alleged that the name of the 2nd Defendant was not mentioned by PW2 in her statement to the Police on 7/4/2000. Exhibit E – which is the said statement to the Police made by PW2 was admitted in consequence under cross-examination.

PW2 in all, maintained that the deceased died at Amaku General Hospital. Exhibit F – which is also the record of proceedings before Hon. Justice Uzodike was admitted while the proceedings of 28/5/2004 was also marked as Exhibit F1. PW2 insisted that she made statement to the Police only on 7/4/2000 and 28/7/2000.

PW3 was one Dr. S.N. Anyaegbu. He was the Doctor that filled the medical death certificate of the deceased. He narrated all he knew about the incident. He recalled that it was one Dr. Agbati who actually admitted, wrote the diagnosis indicating that the deceased was hit by relations. He came on board consequent upon death.

The following exhibits were tendered;

1. Exhibit G – The order for post mortem dated 7/4/2000.
2. - Exhibit G1 – Death report of coroner dated 7/4/2000 Form B.
3. Exhibit G2 – Report of medical practitioner, Form D.

He admitted that it was the deceased wife Mrs. Christiana Nwokike that identified the deceased body to him. He stated that the deceased died on 7th April, 2000.

Under cross-examination, PW3 maintained that although it was the doctor that handled the deceased's case that will sign the medical death certificate, but in his absence, any other doctor can sign as in this case. He stressed that though he was not the Doctor that admitted the deceased, but that the folder for treatment showed he was being treated for trauma to body. He admitted however that Doctor Agbati was still working with the said Hospital.

PW4 was one Chukwura Clifford Igwegbe. He is the Deputy Superintendent of Police presently incharge of the Police station at Nkpor. He stated that the case was transferred from CPS Awka to the State CID Awka and



that post mortem had been performed before the transfer. He came into the matter effective from 28/7/2000 while he was still at State CID Awka. All the Defendants and others mentioned were at large except the 2nd Defendant and the former 4th Defendant. It was an initial case of Assault occasioning harm which later resulted in death. They actually worked as a team.

The following were admitted through the witness as exhibits

1. Exhibits H & H1 – statement and English translation thereof in respect of the then 4th Defendant dated 28/7/2000.
2. Exhibit J – Statement of 3rd Defendant dated 3/8/2000
3. Exhibit K – statement of the then 5th Defendant dated 16/8/2000.
4. Exhibit L – Statement of the 2nd Defendant dated 28/7/2000.
5. Exhibit M – Statement of 1st Defendant dated 28/3/2006.
6. Exhibit N – Police interim report dated 2/8/2000.

PW4 stated that sometime in March 2006 he was at Delta State CID Asaba when he was informed of 1st Defendant's arrest. He directed one Chibuike to help him record the statement of the 1st accused. He saw the said statement when he came back, i.e. exhibit M.

According to him, he wrote an interim report before he left on transfer. The said interim investigation report i.e. Exhibit N. This report was necessitated by age of the 4th Defendant and preceded the arrest of the other accused persons.

Under cross-examination, he maintained that the incident was thoroughly investigated by him to the best of his ability before he moved on promotion course at Jos. He stated that he cannot speak for the other investigating team members.

With the conclusion of the evidence of PW4 on 14/5/2009, the prosecution counsel announced the close of case of for prosecution. Defence opened on 2nd day of October, 2009 with the evidence of 1st Defendant of the DW1.

His evidence in defence is to the effect on 26th January 2000, the deceased, the wife (PW1), another son called Ifesinachi, his daughter

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Ogboegbunam, his son called Isimdibe and 2 other male persons not known to him, invaded and attacked him in his home between 7.30 pm and 8.00 pm.

He contended that the problem was over a compound (Ngwulu), which they were disputing. The said dispute had earlier on been arbitrated by the kindred, at Ifite General Assembly and Ntoko Shrine where he reported him. It was ruled in favour of DW1. That was why the deceased and his family resorted to fighting him.

According to him, he usually reports them to the Police on each occasion, then the Police would arrest, investigate and charge the case to court. Exhibit P – which is the C.T.C. of Charge No MAW/11C/2000 – COP VS HENRY NWOKIKE & 3 ORS was admitted. Also the C.T.C. of Charge No MAW/110C/99 – COP VS HENRY NWOKIKE was admitted as Exhibit P1.

On the 26th day of January 2000, PW2 attacked the mother of DW1 at the Obibia Stream Bridge and inflicted injuries on her. At about 7.30 pm – 8.00 pm of the same day, the deceased, PW1, PW2, Ifesinachi, Isimdibe, Ogoegunam and two unknown men attacked him in his house. He was rescued and assisted by one Innocent Nwankwo to the Police station. Unfortunately Innocent Nwankwo is late. It was also at the Police station that he met his sister Mrs. Ekwutosi Adibe who was in custody. She explained that she was arrested by PW2. DW1 alleged making statement to Police on 27th January 2000 and 28th March 2006.

He later went back to Yenogoa his place of business and after some years he was informed by his mother that his counsel – Barrister JPC Onwuka directed that he should come back. It was on his way back on 19/3/2006 that PW1 and two others arrested and took him to the Police station where he made statement.

DW1 denied specifically breaking into the house of PW1 and PW2 or hitting the deceased with a rod. He referred to this case as off shoot of the fight incidence between them on 26/1/2000. He claimed that the other Defendants were not present during the alleged fight. He denied the allegation by PW1 and PW2 against him. He reiterated that before the fight he was really in front of house and as they approached, he was really scared. According to him, they came for a fight and we fought.

Under cross-examination, he confirmed that the quarrel between him and the deceased bothered on ownership of their late father's compound known as 'Ngwulu'. He stated that it was the deceased that injured him in his face and

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armpit. He insisted he did not fight back with any weapon. He confirmed that he and deceased had some cases in court prior to this incident.

He maintained that he had been in Yonegoa for about 6 years after the fight before his counsel directed that he should return. He claimed that the arbitration over the said land in dispute was resolved in his favour. He claimed that neither the 2nd nor 3rd Defendant were present or participated in the said fight of 26/1/2000.

DW2 was one Ikechukwu Nwanikiri. He testified on 6th February 2014. He denied being at the scene of the fight. He stated that the fight to his knowledge was a result of a land dispute between the deceased and the 1st Defendant. He was only involved because he sided and accompanied the 1st Defendant to go and swear an oath before the Ofe Ntokolo shrine. The deceased refused to take the oath when they got there.

Under cross-examination, he denied being involved in the fight. He went further to give a brief history of their family background stating that the 1st Accused and the deceased are actually cousins. He allegedly stated that the deceased wife mentioned his name out of malice.

DW3 was Mrs. Ngozika Eke. She is the 3rd Defendant on record. She denied any involvement in the fight of 26th January 2000 which caused the death of the deceased. She believed that her name was included in the charge merely because she prevented the Police and PW2 from passing through her compound as they both share a common boundary.

Under cross-examination, she insisted being in good terms with PW2 and not taking a part of the fight.

DW4 was one Igboanaka Nwokike. She is the 4th Defendant on record. Her case was that on her way to Awka on the 26th January, 2000, she was attacked by the PW2 at Obibia Stream Bridge. She was taken to the hospital for treatment but did not make a report to the Police.

She claimed not to be around on the evening of the 26/1/2000 to witness the fight. She was later invited to the Police station where she made mention of her alibi but according to her the Police failed to investigate that.

Under cross-examination, she denied having instigated the fight in the evening of 26/1/2000 as a result of what happened in the morning of the said day at Obibia Stream bridge.

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Let it be reinstated that the DW4 i.e. 4th Defendant was said to have died in the course of proceedings and her name duly struck out. That was on 4th April 2016. Since her evidence was in her own defence only, I am minded to discountenance same.

With the close of the case for the Defence, written addresses were ordered with consent of all counsel and eventually all counsel obliged and filed the final addresses. As it were, the final addresses were taken on 17th October 2016.

I have read the record of proceedings, the exhibits, and appreciated the addresses as duly and finally adopted. I must appreciate all the counsel for their industry.

The learned counsel for the 1st Defendant raised 8 issues for determination. Some of the issues related to matters concerning defence of the 4th Defendant who had died and whose name had been struck out. Some other issues appeared more like aspects of defence.

With respect, I believe the 8th issue is holistic and wide enough accommodating all the other issues. The counsel to the 2nd and 3rd Defendants respectively raises issues which were similar in content to the said 8th issue by the 1st Defendant. I intend therefore to adopt the said holistic single issue in the following terms namely;

Whether the prosecution proved the charge against the 1st, 2nd and 3rd Defendants or any one of them beyond reasonable doubt?

The Defendants are charged for the offence of murder contrary to section 274(1) of Cap 36, Volume 2, Revised Laws of Anambra State of Nigeria 1991.

It provides as follows;

"Subject to the provision of this section, any person who commits the offence of murder shall be sentenced to death".

As usual in criminal prosecution, the burden is on the State i.e. the Prosecution to prove the case beyond reasonable doubt in order to sustain a conviction. As a matter of fact, the burden does not shift.

See Section 135 of Evidence Act.



See also the case of

**OBA GABRIEL ADEPOGU ADEYORA
VS**

THE STATE.

(2012) 30 WRN 67 at 88 – 89 where the court stated thus;

"By the provision of Section 138 (1) of the Evidence Act, the standard of proof in all criminal trials is proof beyond reasonable doubt".

Indeed, it is the case of

NWOSU VS THE STATE

1998 8 NWLR (PART 562)

4333 at 444, the court stated

"In all criminal trials, the burden of proof is always on the prosecution in proving beyond reasonable doubt the guilt of the Accused. Failure to do so will automatically lead to the discharge of the accused".

In **OZAKI VS STATE 1990 1 NWLR PART 124, Pg 92**, the court further stated

"What this simply translates to is that where there is any doubt as to guilty of the Accused, such doubt must be resolved in favour of the Accused, in this case the Appellant".

Now, on the meaning and scope of the phrase, proof beyond reasonable doubt, the court in

PATIENCE OMADARE & ANOR

VS

ATT. GEN OF FEDERATION

(2013) 32 WRN 129 at 142 – 143, had this to say;

"Proof beyond reasonable doubt however does not mean proof beyond every shadow of doubt, but the evidence adduced by the Prosecution must be strong against the Accused person as to leave only a remote possibility in his favour. When there is nothing short of this, the Prosecution has discharged its burden and the trial court may convict".

In order to prove the offence of murder, the burden placed on the prosecution is to prove and establish the following ingredients, namely;

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- a. That death of a human being took place i.e. that the deceased died.
- b. That the death was caused by the Accused.
- c. That the act of the Accused that caused the death was done with the intention of causing death or that the accused knew that death will be the probable consequence of his act.

See the supreme court case of

HARUNA VS AG FEDERATION
2012 9 NWLR PART 1306
Pg 419 Ratio 1.

See also the case of

GAMBO MUSA VS STATE
2009 39 NSCQR Vol. 39 at 392.

IGABELE VS THE STATE
2006 6 NWLR PART 975
Pg 100.

On these preliminary issues, it must be borne in mind that the guilt of the Accused may be proved by all or any of the following;

- a. Confessional statement.
- b. Circumstantial evidence
- c. Direct evidence i.e. evidence of an eye witness.

See the case of **OKUDO VS STATE**
2011 3 NWLR PART 1234
Pg 209.

The first burden cast on the Prosecution is to prove that a human being died. The deceased in the instant case is one Henry Nwokike.

According to PW1, (the son of the deceased) the deceased was admitted in the hospital and he eventually died on 7th April 2000. PW2, who is the wife of the deceased testified also that he died on 7th April 2000.

These were direct eye witnesses and incidentally this aspect of their evidence as to death of the deceased was not controverted.

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PW3 was the Medical Doctor that filled the Corona's Form. That is Exhibits G, G1 and G2 tendered and admitted without objection. According to him, the deceased died on 7th April 2000. He was shown the dead body. It was the PW2 that identified the dead body. There was no controversy over this issue. Whether it was the Defendants that caused the death was a different issue to be considered shortly.

The Defence did not challenge the evidence relating to the death of the said Henry Nwokike. They all know the man was dead. I do not therefore have difficulty in holding that from the evidence before the court, the State sufficiently proved that Henry Nwokike, the deceased actually died on 7th April 2000.

The 2nd ingredient of the offence has to do with proof of the fact that the Defendants or anyone of them caused the death of the deceased.

The particulars in respect of the offence reads that the Defendants assaulted the deceased on 26th January 2000, which led to his death on the 7th day of April 2000 and thereby guilty of murder.

What is clear from the above is that it is for the Prosecution to successfully show that the Defendants or any of them participated in the alleged assault on the deceased on the 26th January 2000. It is also for the prosecution to show that it was that encounter that eventually led to the death on 7th April 2000.

There are three Defendants being subjected to trial. It is therefore pertinent to consider the evidence for and against them individually in order to access the level of involvement and thereby determine whether the ingredient is proved against any or all the them.

Before proceeding with whether any or all of the Defendants participated in the said assault of 26th January 2000, I find it more exigent in the circumstances to make a finding as whether that death of 7th April 2000 was the resultant effect of that alleged assault.

PW1 an eye witness. According to him, consequent upon the assault on the deceased on 26th January 2000, he was admitted at the General hospital Amaku, Awka. He was admitted for a continuous period of three months and was discharged. He was visiting the hospital from home i.e. the Aunty's place. The deceased was again later readmitted and died few days thereafter namely on 7th April 2000.



This aspect of evidence was collaborated materially by the PW2 who was to a large extent was an eye witness.

For the PW1, learned counsel for the 1st Defendant under cross-examination, tried to show that in his statement to Police, he stated that the deceased died at the said Auntie Nwije's place and not at the hospital. Incidentally the PW1 stood his ground insisting that what he told Police was that he was visiting hospital after discharge from the Auntie's house. PW1 was insisted that the deceased died as a result of the injuries sustained from the encounter of 26/1/2000.

Exhibit C which is the statement of PW1 to the Police was tendered under cross-examination to show that he had told the Police that the deceased died at the said relation's house i.e. Auntie Nwije and not in the hospital.

I have seen the said Exhibit C. at page 5 thereof, PW1 has stated;

"On 3rd April 2000, my father complained that his head injury was still troubling him. I took him to one Doctor Akpati at Amaku General Hospital. The Doctor made some proscriptions and we got them. On the 7th of April 2000, in the morning he died in the residence of his Auntie Nwije (f) where he was taking shelter... ..".

The PW1 insisted that it was not exactly what he told the Police and maintained he died at the hospital. My view of the matter is that some benefit of doubt must accrue to the PW1 as he was not the one who recorded the statement.

Furthermore, the issue as to place of death is not the determinant factor. What was material was whether it was in the process of recovery or treatment in respect of the assault of 26th January 2000 that he died.

This exactly were the evidence of the PW1 and PW2 on the matter and they stood their ground.

PW3 was Dr. S. N. Anyaegbu. It is on record that the Doctor who admittedly treated the deceased was one Dr. Akpati. Incidentally he did not testify.

PW3 was the Doctor who saw the deceased after he had died. The records did not show that Dr. Akpati saw him after death. PW3 was the person who filled the Medical Death Certificate Corona's Ordinance. These were tendered and admitted as Exhibits G1 and G2.



According to PW3, he confirmed that the deceased was admitted on 26th January 2000. From the folio, Dr Akpati did the diagnosis and entered that the man was hit by relations.

Exhibit G2 which was signed by PW3 gave the cause of death to be "Trauma to the body sustained on 26th January 2000".

Under cross-examination, he maintained that he was not the person that treated but that the diagnosis and information were all contained in the folio for treatment for which he made his conclusions. He also insisted that he inspected the body before filing the said Exhibit G2 in particular.

Under cross-examination by counsel to the 2nd Defendant, he answered

Q – It is correct that your opinion as to cause of death was based on the information as recorded by Dr. Akpati in the folder for the treatment.

Ans – Yes.

Also under cross-examination by counsel to the 3rd Defendant, he stated

Q – By medical practice, it is the Doctor who treated that is to sign the medical death certificate?

Ans – Yes, but if he is unavailable, any other Doctor on call can sign".

The records show that as at the time of death, PW3 was on duty and had to carry on the assignment. It was not the contention of the Defence that the records in the folder was wrong but rather that since the said Dr. Akpati was still alive he was both a material and necessary witness.

With respect, it must be remembered that though Dr. Akpati treated, the records were neither indicted nor challenged. It was PW3 that was available and who filled the form. I do not therefore find his evidence deficient simply on the ground that he was not the Doctor that treated. After all, if there was any contrary evidence, the Defence was at liberty to summon him i.e. Dr. Akpati to testify. With respect, I am satisfied as to the cause of death being an offshoot of the injuries (trauma) sustained from the incident of 26th January 2000 and I so find.

What is therefore more germane and to which the court will now proceed to consider is to determine whether all or any of the Defendants participated



actively in that assault incident of 26th January 2000, that eventually led to the death.

The 1st Defendant appears to be the central figure. I would therefore for convenience deal with the 2nd and 3rd Defendants before coming to the 1st Defendant.

The 2nd Defendant is Ikechukwu Nwanikiri while the 3rd Defendant is Ngozi Eke. The two eye witnesses in respect of the Assault incident were PW1 and PW2.

The summary of the evidence by PW1 in this regards is that the 2nd and 3rd Defendants were not amongst the 1st batch of people led by the 1st Defendant who invaded and assaulted the deceased.

According to him, it was when he had escaped from the house, and hid somewhere, that he noticed 2nd and 3rd defendants come in with some other persons. According to him, they joined in the beating. He was however not specific as to what either of them did.

Exhibit C which is the statement of PW1 to Police was tendered under cross-examination. In the said statement, he did not say that 2nd Defendant did anything to the deceased at all.

It was the 3rd Defendant he said hit the father with broken bottle even though he did not give such evidence before the court.

Interestingly, the records show further that under cross-examination on 22/4/2008, by counsel to 2nd Defendant, PW1 stated thus;

Q – Put – The 2nd Accused did not touch any of your parents?

Ans – He did not.

Incidentally he maintained that he saw the 2nd Defendant on that day in their compound.

PW1 even created more doubt by his evidence in chief as to the culpability of 2nd and 3rd Defendants.

This is so because in his evidence before the court, he had told the court while the 1st batch that came were beating the parents, he and his brother managed to escape and hid by the wall while watching the scenero. The 2nd & 3rd Defendants were not among the 1st batch.

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Further in his evidence in chief, PW1 stated thus;

"From where I was hiding by the wall, I was able to see how they were beating y father and mother. They had finished beating my father and mother and stopped but were still around. Both my father and mother were lying down helpless".

I recall that according to this PW1, it was while PW1 and his brother were hiding that he saw 2nd, 3rd Defendants and others come in from the back as additional group of invaders.

If it is true that while hiding they had finished beating, then it becomes doubtful if even if the 2nd and 3rd Defendants were by chance present, he did not see them actually join in the beating since according to him they had by then finished the beating. This adds to the doubt in favour of 2nd and 3rd Defendants.

The conclusive impression from the evidence of the PW1 both in chief, cross-examination and from Exhibit C is that it was doubtful if the 2nd Defendant actually participated in assaulting the deceased on the said 26th January 2000.

For the 3rd Defendant, the PW1 maintained she was amongst the 2nd batch that came. In his evidence in court, he merely stated that when they came in, they joined in the beating but in his statement to Police, stated that she stabbed the father with broken bottle.

In the meantime, under cross-examination, PW1 stated;

Q – Ngozi Eke – 3rd Accused is not even from your kindred?

Ans – She is not.

Q – Before 26/1/2000, she had no quarrel with your father?

Ans – she did not.

Further down, PW1 was also asked

Q – The 3rd Accused has no stake in the dispute?

Ans – she does not.

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A combination of the impression from the above answer combined with the evidence of PW1 before the court giving out 3rd Defendant as allegedly just joining in beating as different from Exhibit C where PW1 alleged stabbing with bottle raises doubt as to real involvement of the 3rd Defendant in the saga. This is from the aspect of the evidence of PW1 as evaluated.

Interestingly, PW2 who was also an eye witness painted a different picture. She stated that 2nd and 3rd Defendant were amongst the 1st batch of the suspects that came in contrary to the evidence of PW1

Under cross-examination, her statement to Police was admitted as Exhibit E. A reading of Exhibit E, shows that PW2 did not at all mention 2nd Defendant as one of the persons that participated in the alleged assault. Even though she maintained 3rd Defendant as being present, yet she did not say what exactly she did.

2nd Defendant and 3rd Defendants maintained that they did not partake. According to them, the grouse against 2nd Defendant is that he supports the 1st Defendant in the dispute over the compound while for the 3rd Defendant, she claims that her name was included simply because she refused thorough fare to PW2 and Police through her compound.

It is for the Prosecution to prove that the Defendants participated in the assault on the deceased on 26th January 2000 which it is settled led to the death on 7th April 2000. The circumstances of the mix up in the evidence by the two eye witness create serious doubt as to whether the 2nd and 3rd Defendants were present and even if present how they participated in the said assault.

It is the law and it is settled that such doubt in the circumstances must be resolved in favour of the 2nd and 3rd Defendants. That aspect of the ingredient having not been proved, there is no way it can be said that Prosecution proved the case against them beyond reasonable doubt. They must at the end be entitled to a discharge and acquittal.

At this stage, I then turn to the 1st Defendant. The fact that the 1st Defendant was present and actually took part in the said incident of 26th January 2000 which ultimately led to the death of the deceased on 7th April 2000 is not in doubt.

According to the PW1, he saw the 1st Defendant and some others (who are not part of this prosecution) come into their apartment. They bounced on the deceased and started beating him with sticks and bottles.

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It was also not in dispute that 1st Defendant and the deceased were having a running battle over ownership of the compound. This dispute had taken them to several arbitral bodies and physical confrontations had also landed them in court. The 1st Defendant tendered Exhibits P and P1 as examples. It is noted that these charges arose prior to the incident of 26th January 2000.

PW1 stated that the Ozo people had finished looking into the case and told the 1st Accused to vacate and told him that his father the deceased was the first son. According to him, that was what infuriated the 1st Defendant to beat the deceased.

PW1 concluded by stressing that his father, the deceased died as a result of the beating the 1st Defendant and his group gave to him.

What is significant is that on these aspects of evidence relating to the involvement of 1st Defendant, he stood his ground even under cross-examination.

PW2 is the mother of PW1 and the wife of the deceased. According to her, he saw the 1st Defendant, who came in with others to beat up the deceased and herself. According to her, the 1st Defendant hit the deceased on the head.

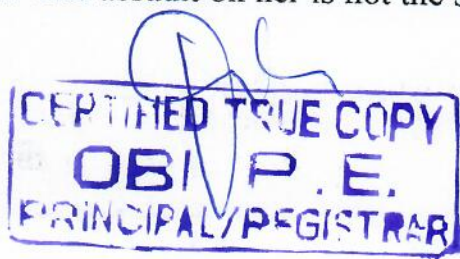
Exhibits D, D1, were tendered to contradict the PW2 on the ground that before the previous court she had testified that fight took place in the night and morning of 26/1/2000 which she denied.

It was also sought to contradict her to the effect of whether she was the one that reported the incident to the Police on 26/1/2000 or not and on issue of making statement on 26/1/2000.

My view is that for contradiction to earn the status of rejecting the entire evidence by the witness, it must be on material facts. I hold the view that the areas on which the contradictions were intended to attract were not on material issues. The alleged statement to the Police were made in the year 2000. The evidence before the previous court were sometime in 2004.

The witness testified in this court in 2008. With the period gap in between, it was not reasonably expected of a witness to speak with the same exactitude otherwise it would look like just memorizing.

As I have sated, the matters raised were not on material issues. The PW2 was not under trial. The assault on her is not the subject matter in this case.



Interestingly, the 1st Defendant himself admitted that there was a scuffle between him and the deceased on the date in question. He admitted the running battle relating to ownership of compound.

According to the 1st Defendant testifying as DW1 on 22nd October 2009, then at Awka, apart from Exhibits P and PI, he made reference to another charge No MAW/72C/2000, which he claimed was a charge of affray in which the deceased, his wife (PW2), himself and wife were charged for affray in respect of that fight that took place on 26/1/2000.

As at then, the deceased was still alive. The alleged case did not make progress until the deceased died. In the words of the 1st Defendant "This case is an offshoot of that incident of 26/1/2000.

It is significant to mention that DW1 did exonerate the other Defendants. Nothing is however said about those not charged.

Under examination in chief, 1st Defendant testified as follows;

"The deceased was using his bare hands to beat me and I was responding with my bare hands as well.

The same DW1 has testified that the PW2 had beaten up his mother in the morning of the said 26/1/2000 at Obibia stream for which he had to take his mother for treatment. That gave the impression of one who purportedly was nursing a grievance, and on a revenge mission.

DW1 consistently referred to the incident as a fight between him and the 1st Defendant.

Under cross-examination on 29th January 2014, 1st Defendant as DW1 answered thus;

Q – in the course of the said fight, you not only used fist blows; you and your group used sticks and dangerous weapons on the deceased?

Ans – It is not true, we only fought with hands.

The records show that after the deceased was said to have died, the 1st Defendant could no longer be seen till after a period of almost 6 years. According to him it was his counsel Chief JPC Onwuka that insisted he should come back. Without prejudice to the burden on the prosecution to prove their case, that quickly gives out suspicion of a man with guilty conscience.

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In any case, the true position is that, the eye witnesses testified that 1st Defendant did in fact take part in the assault on the deceased that took place on 26th January 2000 which incident the court has already held led to the death.

To lessen the burden on the Prosecution, the 1st Defendant admitted same but gave the impression of a fight without instruments.

Let me stress that I am aware that the only eye witnesses in this case PW1 and PW2 are relations of the deceased. With respect there is nothing wrong in law and in fact for blood relations of a deceased to testify.

Indeed in the case of

**EZEAKONOM NKEBIA & ANOR
VS**

**THE STATE
2010, 5 NWLR PART 1188,
Pg 429 at 474 Ratio 1,**

the Supreme Court stated thus;

"In many cases, when murder is committed in the presence of family members, the only witnesses available are blood relatives. In other words, there is no law which says evidence of a relative of a deceased must not be accepted at all times for the conviction of an accused person; it depends upon the circumstances of the evidence, and the evidence. Thus if a relative is the only eye witness to the murder of a deceased on the part of the law to discharge and against an accused person on that ground. That will not be justice to the family of the deceased. That will be clear injustice. The court has to examine the totality of the evidence and see whether the relation gave biased evidence in favour of the prosecution merely to ensure that the accused person is convicted".

In the instant case, I have examined both the evidence of the Prosecution, together with the response of the 1st Defendant which did not deny the involvement of 1st Defendant in the saga of assault on 26th January 2000. The difference is that the 1st Defendant called it a fight with bare hands. Even 2nd and 3rd Defendants admitted hearing that there was such a fight. 1st Defendant admitted the fight even in chief and in Exhibit M which is his statement to Police.

It is not difficult therefore to conclude that based on the totality of evidence before the court, it was obvious and I so hold that the Prosecution

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**JUSTICE
NNEWI
DATE 27/1/18**

proved this second ingredient against the 1st Defendant i.e. to the effect that the 1st Defendant substantially participated in the action which ultimately led to the death of the deceased.

The 3rd ingredient has to do with proof that the act of the Defendant was done with the intention of causing death.

PW1 made allegation to the effect that the deceased was beaten with sticks and bottles. The PW2 stated that the 1st Defendant hit the deceased on the head but did not state if it was with any object.

In his statement to Police, Exhibit C, the PW1 stated that the 1st Defendant had a stick only.
I refrain from commenting about others who are said to still be on the run.

In her statement to Police, Exhibit E, the PW2 did not state that 1st defendant came with any dangerous weapon.

I have also examined the photograph of the deceased prior to his death, with respect, there is no deep cup signifying use of any dangerous weapon on the deceased. I have in mind Exhibit B3.

The 1st Defendant maintained that they fought but that I have my doubts as to the fact of use of dangerous weapons in the circumstances, and of course that doubt must be resolved in favour of the 1st Defendant.

It is to the effect that based on the circumstances of the assault on the deceased with active participation by 1st Defendant, on the said 26/1/2000 which unfortunately caused his death on 7/4/2000; it is doubtful if the 1st Defendant actually intended death to be the result or knew it will be. I will resolve that doubt in favour of the 1st Defendant.

Incidentally, that is not and cannot be the end. Based on my finding on this last lap, the 1st Defendant cannot be said to be guilty of murder, but the circumstances disclose a lesser offence of manslaughter and I so hold.

In the case of

EJEKE VS STATE

2093, 7 NWLR PART 819

Pg 408, Ratio 5, the court stated thus;

"Manslaughter is the unintentional killing of a human being. Such killing is not pre-meditated but accidental in the sense that it was not intentional".

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See also Section 279 of the Criminal Code.

Furthermore and for avoidance of doubt this court is empowered to convict for a lesser offence if that is what is proved.

See EJEKE VS THE STATE Supra (Ratio 6)

I hold in the circumstances, that the Prosecution did not prove murder but proved the offence of manslaughter against the 1st Defendant beyond reasonable doubt.

The lone issue is therefore resolved in terms.

Having fully considered this case as indicated, judgment is entered in the following terms:

- (1) The 1st Defendant – Innocent Obiajulu Nwokike is found guilty of manslaughter as it relates to the death of the said Henry Nwokike on the 7th of April 2000 consequent upon the assault of 26th January 2000 and is so convicted accordingly.
- (2) The Prosecution failed to prove the charge against the 2nd Defendant – Ikechukwu Nwanakiri and 3rd Defendant namely Ngozi Eke, beyond reasonable doubt. They are both discharged and acquitted accordingly.

O. M. ANYACHEBELU

Judge.

16th Jan 2017.

ALLOCUTUS – 1ST Defendant

1st Defendant's counsel – Says that the 1st Defendant is a first offender. He is a family man with children. Urges the court to reduce the sentence.

Prosecuting Counsel – Nothing is known about the 1st Defendant.

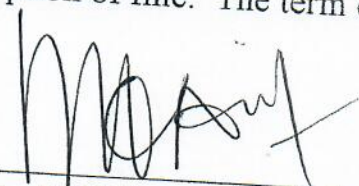
SENTENCE

COURT – I have listened to and considered the submissions of counsel under allocutus. In the circumstance, the following sentence is pronounced.

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HIGH COURT
NNEMI
29/12/16

"The 1st Defendant namely Innocent Obiajulu Nwokike is hereby sentenced to Six (6) years imprisonment without option of fine. The term of imprisonment is with effect from today".



O. M. ANYACHEBELU

Judge.

16th Jan 2017.

Parties – The Defendants are present.

Appearances – D. E. Ejeabukwa, Assistant Chief State Counsel, appears for the Prosecution.

I. E. Muonalu Esq. holds brief for Chief J.P.C. Onwuka for The 1st Defendant.

O. C. Anaso Esq. appears for the 2nd Defendant – Chambers of Igu, Obuka and Co.

O. C. Iloanya Esq. with E. C. Onuzulike Esq., K. N. Ogba Esq. and I. C. Nwigwe (Miss) for the 3rd Defendant.

Continuation of 1st
Continued 23 files at 20 pd on ex No
for file 2560
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27/12/18
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