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IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP:	HON. JUSTICE S.E. ALADETOYINBO
COURT CLERKS:	M.S. USMAN & OTHERS
COURT NUMBER:	HIGH COURT THREE (3)
CASE NUMBER:	FCT/HC/CR/142/2006
DATE:	11 <sup>TH</sup> DECEMBER, 2017
BETWEEN:	

ATTORNEY GENERAL OF THE FEDERATION - COMPLAINANT

AND

1. IBRAHIM MOHAMMED	}	- ACCUSED PERSONS
2. AMINU SANI		
3. KABIRU YAHAYA		
4. JOHN BONIFACE AKA OSCAR		

Four accused persons were arraigned before this court on the 24<sup>th</sup> Day of January 2007, on three counts charge of conspiracy to commit culpable homicide and rape, punishable under Section 97 of the Penal Code, rape punishable under Section 293 of the Penal Code and Culpable homicide punishable under Section 221 of the Penal Code. The three counts in the charge are as follows:

**Count 1:**

That you Ibrahim Mohammed "M", Aminu Sani "M", Kabiru Yahaya "M", all of N.E.P.A. Road, Kubwa, Abuja respectively and John Boniface aka Oscar "M" of Plot 109, 22 Gado Nasko Road, Kubwa – Abuja on or about 28/7/2006 between 10:00 – 11:00 a.m. at Alhaji Hamza Abdullahi farm at Kubwa, Abuja within the jurisdiction of this Honourable Court did agree with one another or

cause to be done an illegal act to wit: Rape and Culpable Homicide on Sarah Ikape (deceased) formerly of Phase 4 NEPA Road, Kubwa – Abuja and the same act was done pursuant to the agreement and that you thereby committed an offence punishable under Section 97 of the Penal Code Cap. 532 Laws of Federation of Nigeria (Abuja) 1990.

### **Count 2**

That you (2) Ibrahim Mohammed "M" (2) Aminu Sani "M" (3) Kabiru Yahaya "M" all of NEPA Road, Kubwa – Abuja respectively and (4) John Boniface aka Oscar "M" of Plot 109, 22 Gado Nasco Road, Kubwa – Abuja on or about 28/7/2006 between 10 – 11 a.m. at Alhaji Hamza Abdullahi Farm at Kubwa – Abuja within the jurisdiction of this court had sexual intercourse against the will of Sarah Ikape "F" (deceased) formerly of Phase 4 NEPA Road, Kubwa – Abuja and thereby committed an offence of rape punishable under Section 283 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

### **Count 3**

That you (2) Ibrahim Mohammed "M" (2) Aminu Sani "M" (3) Kabiru Yahaya "M" all of NEPA Road, Kubwa – Abuja respectively and (4) John Boniface aka Oscar "M" of Plot 109, 22 Gado Nasco Road, Kubwa – Abuja on or about 28/7/2006 between 10 – 11 a.m. at Alhaji Hamza Abdullahi Farm at Kubwa – Abuja within the jurisdiction of this court on or about 28/8/2006 between 10 – 11 a.m. at Alhaji Hamza Abdullahi farm Kubwa – Abuja you did

cause the death of Sarah Ikape "F" (deceased) formerly of Phase 4 NEPA Road, Kubwa – Abuja by using cement block to crush her skull with the intention of causing her death and thereby committed an offence of culpable homicide punishable under Section 221 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

After the three counts charge were read over and explained to the accused persons in the language they understood, their plea were taken; they pleaded not guilty to each of the 3 counts charge. The prosecutor thereafter called nine witnesses, wherein no case submission was made on behalf of the 4<sup>th</sup> accused person by defence counsel; the no case submission made on behalf of the 4<sup>th</sup> accused person was upheld by the court; he was discharged and acquitted. The summary of the evidence of the nine witnesses for the prosecution are as follows:

PW1 – Ikapi Job, the elder brother of the victim deceased live at NEPA Road, Phase 4, Kubwa within the deceased and other sibling. He told the court that on the 28<sup>th</sup> Day of July 2006, the deceased went to his wife's Saloon located at Phase 4 Navy quarters, Kubwa by 10:00 a.m. to deliver food to the workers in the saloon; she did not get to the saloon; she was raped and murdered; the saloon is not far from their house; it is a walking distance but not motorable. It is a foot path through Hamza Abdullahi farm. The deceased was raped and killed by the accused persons under a tree, in corn plantation which had grown higher than five feet.



At about 7:00 p.m., younger brother of PW1 called him on phone and informed him that deceased named Sarah Ikape had not been seen since she went to deliver food to the workers in Saloon. Since the deceased was not seen on the 28/7/06, PW1 went to Police Station in Kubwa Phase 4 to make a report of missing person on 29<sup>th</sup> Day of July 2006 by 10:00 a.m.

One John Igbere PW7 told PW1 that he had seen the clothes belonging to the deceased at foot path, PW1, PW6 and PW7 went to the foot path where they discovered the dead body of the deceased half naked with broken cement block by her side including clothes and sandal. PW1 went to report to the Police whereupon three policemen were assigned for them and a vehicle; PW6 brother to PW1 remembered seeing the 3<sup>rd</sup> accused person coming from where the dead body of the deceased was discovered one hour after the deceased's passed through the same spot. The 3<sup>rd</sup> accused was reported to the Police and later arrested and taken to State C.I.D. Police Command along with 1<sup>st</sup> and 2<sup>nd</sup> accused persons. PW1 confirmed to the court that he heard when the 1<sup>st</sup> – 3<sup>rd</sup> accused confessed to the murder and rape of the deceased at C.I.D. Police Command when he was writing his own statement in the same Police Department. PW1 further heard the 1<sup>st</sup> – 3<sup>rd</sup> accused saying that they were sent to kill the deceased by Engineer Achi and Novis for ritual purposes and that they were given N50,000.00 down payment. The deceased's body was later taken to hospital for post-mortem. PW1 identified the body to the pathologist; her body was later released for burial.

It was when PW1 was writing his statement at the FCT Police *Command*, that he heard the confession of 1<sup>st</sup> – 3<sup>rd</sup> accused persons; that they raped and murdered the deceased person. PW1 heard the confession when Police were interrogating the three accused person.

PW2 ASP John Mashi, he told the court that PW1 reported the incident of missing person in the Police Station and reported again seeing the dead body of the missing person. On getting to the scene of crime behind NEPA Road, Kubwa, PW2 saw the deceased half naked, cement block which they used to hit the deceased on the head was beside her. PW2 heard the wailing of PW6 Emmanuel Ikapi that he saw three people coming from where the named body of the deceased was discovered on the 28<sup>th</sup> Day of July 2006. PW6 was invited to the Police Station where he confirmed knowing one of the three men he saw as Kabiru Alia (Kab) and even know where he lives, Emmanuel Ikapi PW6 then took PW2 to the house of Kabiru for the purpose of knowing same.

On the 30<sup>th</sup> Day of July 2006 Kabiru was arrested; he accepted going to the scene of crime with two others but denied committing the offence, the other two were arrested; they were 1<sup>st</sup> and 2<sup>nd</sup> accused persons. After preliminary investigation, the case was transferred to State C.I.D. FCT Command Headquarters, because Kubwa Police Station has no power to investigate murder case to conclusion.

The case diary, exhibits along with 1<sup>st</sup> – 3<sup>rd</sup> accused persons were transferred to State C.I.D. Command. PW2 further confirmed that

where the deceased lived is not more than 500 metres to the scene of crime.

PW3, DSP Chris Onuche claimed to be mandated by the Inspector General of Police to take over and investigate the rape and murder of Sarah Ikapi, a seventeen years old school girl in Hamza Abdullahi Farm. PW3 and his team left for State C.I.D. FCT Command with five accused persons along with the exhibits, namely:

1. Ibrahim Mohammed
2. Aminu Sanni
3. Kabiru Yahaya
4. Engineer Alex Achi
5. John Annobi

The Exhibits are as follows:

- (a) A female jeans skeet.
- (b) A pair of female slippers
- (c) Female hair attachment
- (d) A short Knicker
- (e) Half Cement block

PW3 brought the suspect to Louis Edet House Nigeria Police Force Headquarters. PW3 team of investigators includes Sergeant Bala Audu, Sergeant Ibrahim Shugaba. PW3 directed the duo to obtain statement from the three accused persons. One of the accused person by name Ibrahim Mohammed was said to have made a confessional statement; he was brought to PW3 on the



13<sup>th</sup> August 2006, along with his statement where he admitted making the statement. PW3 endorsed same; the 1<sup>st</sup> accused claimed to have been tortured by the C.I.D. FCT Command of which he investigated and found same untrue; the case diary in respect of the accused persons were sent to DPP for legal advice who advised lead to prosecution of the accused persons.

PW5 – Ibrahim Shugaba gave evidence as PW2. During the trial-within-trial, he told the court that he recorded the statements of the 1<sup>st</sup> accused and statements of the 2<sup>nd</sup> accused person; beside that PW5 has nothing to add to his evidence.

PW6 – Emmanuel Ikapi, a brother to the victim deceased and equally a brother to PW1. He told the court that by 10 a.m. of the 28<sup>th</sup> Day of July 2006, his sister who was the victim of this crime left for shop, an hour later he followed the same path Hamza Abdullahi farm Kubwa on his way to the church. On his way he saw 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused persons coming out from the bush, he greeted and passed them. He went straight to the shop (Saloon), the destination of his late sister. He asked the workers whether they had seen the late sister; the workers replied that they had not seen her; he then told the workers that the late sister left for the shop before him. He sat down in the shop waiting for her. When he did not see her, he called his elder brother PW1 by phone informing him that the late Sarah is nowhere to be found. PW1 told PW6 to wait but PW6 left for the house. PW1 later came to meet him in the house. Both of them could not look for late Sarah because it was night; they waited for the 2<sup>nd</sup> day 29<sup>th</sup> July

2006 being Saturday before reporting the missing of Sarah to the Police Station, Kubwa. The Police told them that they can only report 24 hours after they noticed that the victim was missing; they searched for late Sarah but could not see her. They went back to the station and reported that Sarah had not been seen since 28<sup>th</sup> Day of July 2006. One of the workers in the saloon was coming back from the shop to the house; he followed Hamza Abdullahi farm, his name is John Ebere PW7, as he was coming he saw the cloth Sarah was wearing that day. When he got home, he told PW1, PW6 was present when PW7 related his story to PW1. Later PW1 followed PW7 to observe the clothes; later PW6 followed them, he saw PW1 crying as he pointed to the corpse of late Sarah. Immediately PW6 saw the corpse he remembered the 1<sup>st</sup> – 3<sup>rd</sup> accused persons coming out of the bush the particular place where the corpse was discovered on the 28<sup>th</sup> Day of July 2006, he related same to PW1 who reported same to the Police. The corpse was taken to the hospital. PW6 claimed that the scene of crime is about 10 minutes walk to their house and under cross-examination, PW6 claimed he did not see those clothes when he passed through same Hamza farm on the morning of 28<sup>th</sup> Day of July 2006, because he did not focus his mind on same.

PW7 – John Ebere, barber by profession, told the court that on the 29<sup>th</sup> Day of July 2006, he left the shop between 4:00 p.m. – 5:00 p.m. and followed the foot path through Hamza Abdullahi farm by Federal Ministry of Health quarters approaching the NEPA Road; he saw a lady shoe black in colour, sweater ash colour belonging to late Sarah. PW7 used to wear the same sweater in



the saloon, the reason PW7 became aware that same sweater belong to late Sarah. Meanwhile PW7 and others have been looking for late Sarah and when he saw those items, his mind went to missing Sarah, he ran and informed PW1 who is from the same village with him Igede, Benue State. PW1 and PW7 came to the spot where late Sarah's clothes and shoes were seen, they continued to search for Sarah in the bush until PW1 sighted the corpse of late Sarah half naked, her head had been hit with an object because blood was coming out from her head. PW1 instructed PW7 to wait beside the corpse while PW1 went and called the Police. PW1 came along with Police to the scene of crime, the Police invited photographer to take the pictures of late Sarah and the corpse of late Sarah was taken to the hospital.

PW8 – Anebi Okoh, a Police Officer attached to FCT Police Command was part of investigating team of the murder of the Sarah; he accompanied photographer to take the pictures of the deceased at the scene of crime which pictures were tendered in evidence. He equally took the deceased for autopsy at Gwagwalada Specialist Hospital where medical report was issued on the cause of death of the deceased by one Dr. Mukhtar A.U, the Medical Report was tendered as exhibit.

After the close of the case of the prosecution, counsel to the 4<sup>th</sup> accused decided to file a no-case-submission on behalf of the 4<sup>th</sup> accused person and also elected that 1<sup>st</sup> – 3<sup>rd</sup> accused shall give evidence for their own defence. The no-case-submission on behalf of 4<sup>th</sup> accused person was sustained; he was discharged

and acquainted; while the 1<sup>st</sup> – 3<sup>rd</sup> accused gave evidence for their defence as follows:

DW1 – Ibrahim Mohammed. He is the 1<sup>st</sup> accused person. He told the court that he is a professional driver according to him, on 30<sup>th</sup> Day of July 2006; he was inside his house, when Police came to arrest him and took him to Kubwa Police Station where he was told that he passed through road going to river and somebody died on that road. He replied that the road is busy road and he used to pass through the road everyday to buy cow milk, he was later detained in the cell for five days along with the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons. The case was later transferred to State C.I.D. where they were taken to Crime Office and then to theatre for torturing by Police Officers who wanted him to confess to the murder of late Sarah which he did not commit; he was later paraded with other suspects to the press as killers. DW1 was taken to Inspector General of Police Monitoring Unit in the Police headquarters; he was kept in the police cell for four months before he was arraigned before this court.

DW2 – Aminu Sani. He is the 2<sup>nd</sup> accused person; he lives at NEPA Road, Kubwa, FCT; sometimes in July 2006, he was arrested in his house by the Police and taken to Kubwa Police Station. DW2 was asked by the Police about the death of one lady, he told the Police that he did not know anything about the murder of a lady, he told the Police further that the route he took was a public route, the day in question DW2 went to buy cow milk from one Fulani girl and he passed through the said route, the case was



transferred from Kubwa Police Station to State CID Command, he was tortured at State CID Command because the Police wanted him to confess to the murder he never committed. DW2 claimed that he was tortured along with other accused persons at CID State Police Command, he was paraded along with other accused persons to the press, they were later transferred from State CID Command to Police Force Headquarter where they were detained.

DW3 – Kabiru Yahaya. He is the 3<sup>rd</sup> accused person; he lives at Hamza Abdullahi farm, Kubwa. He told the court that he was sleeping in his house when police came to arrest him by 11:30 p.m. of 27<sup>th</sup> Day of July 2006, he asked the police why they came to his house at late hour, he was taken to Kubwa Police Station where he was accused of murder of a lady along NEPA Road by the DPO. DW3 told the police that he did not know anything about the murder of a lady. DW3 told the court that he does not understand English language, the police instructed him to sign statement which he refused to sign as a result of which he was tortured. It was police officer who later signed the statement on his behalf. DW3 claimed not to know the 1<sup>st</sup> and 2<sup>nd</sup> accused persons before he was arrested; they were detained together at Kubwa Police Station where they were transferred to State CID Police Command. DW3 claimed he was tortured at State CID Police Command along with the 1<sup>st</sup> and 2<sup>nd</sup> accused so as for the three of them to confess to the murder of the lady. When the torture was too much DW3 claimed to have confessed to the murder of the deceased, one Naomi wrote statement which she

forced DW3 to thumb-print. DW3 claimed that 1<sup>st</sup>, 2<sup>nd</sup> accused and himself were paraded before the press as the killers of late Serah and that the three of them have confessed to the killing of the deceased; they were transferred to Police Force headquarters and later arraigned before this court.

After the conclusion of the defence of the three accused persons, the court invoked Section 256 of ACJA 2015 to call vital witnesses namely Naomi Danladi and Police Constable Friday Sule to produce the statements they obtained from the accused persons. Only Naomi Danladi came to give evidence; this gave rise to evidence of PW9 Naomi Danladi.

PW9 – Naomi Danladi, a police officer claimed that the case was transferred from Kubwa Police to FCT Police Command along with the three accused persons including Exhibits which include the following items:

- (a) Torn clothes
- (b) Sandal
- (c) Food Flask and a piece of broken cement block which was used to kill the deceased.

PW9 tendered the statement of the 1<sup>st</sup> accused which she recorded as Exhibit E, tendered statement of the 2<sup>nd</sup> accused which she recorded as Exhibit F and PW9 further tendered the statement of the 3<sup>rd</sup> accused which she recorded as Exhibit G.

PW9 tendered additional statement of 1<sup>st</sup> accused Ibrahim Mohammed recorded by Sergeant Anebi Okoh as Exhibit H and



tendered the further statement of 3<sup>rd</sup> accused recorded by P.C. Friday as Exhibit I. The above items recovered at the scene of crime were never tendered by PW9 but claimed the items are still in the custody of Force CID.

When Exhibit E, F, G, H and I were being tendered in evidence, the accused persons denied ever making the statements, since what the accused said was that they did not make the statements and not that they made the statements under duress, the court went ahead to admit Exhibits E, F, G, H and I in evidence. See the case of JEREMIAH v STATE (2012) 14 NWLR (Pt 1320) at Page 248 where the Court held as follows:

*"Two situations arises when an accused denies his statement. It is either an accused says he did not make the statement voluntarily or that he did not make the statement at all, where an accused persons says he did not make the statement voluntarily, it behooves on the trial court to conduct trial-within-trial to determine the voluntariness or otherwise of the statement before admitting it in evidence. In the second situation where the accused person says he did not make the statement, the trial court can go ahead and admit the statement and wait until the end of the trial to determine whether the accused made the statement or not"*

The three accused persons were charged with the offences of culpable homicide punishable with death under Section 221 of the Penal Code, rape under Section 283 of the Penal Code and conspiracy under Section 97 of the Penal Code. For the

prosecution to establish that the three accused persons committed culpable homicide under Section 221 of the Penal Code, the prosecutor must establish all the ingredients of the offence as stated in the case of JUA v STATE (2010) 4 NWLR (Pt 1184) Supreme Court observed as follows:

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

- (a) That the deceased died.*
- (b) That the death was caused by the accused person.*
- (c) That the accused person had the intention of causing the death of the deceased or to cause him grievous bodily injury.*

Where the death of human being is in issue before a court of trial, the prosecution's duty is to prove the followings:

- (1) That the death of human being has actually occurred.*
- (2) That such death was caused by the person being accused.*
- (3) That the act was done with the intention of causing such bodily injury as:*
  - (i) The accused knew or had reason to know that the death would be probable and not the likely consequence of his act.*
  - (ii) That the accused knew or had reason to know that death would be the probable and not only the likely consequence of any bodily injury*



*which the act was intended to cause. See KADA v STATE (1991) 7 NWLR (Pt 208) 134 at 144.*

The next question for determination is how the guilt of accused person can be proved in criminal case?

See the case of OLOWOYO v STATE (2012) 17 NWLR (Pt 1329) 346 at 360 where the court observed as follows:

*"The guilt of accused person can be proved by:*

- (a) Confessional statement, or*
- (b) Circumstantial evidence or*
- (c) Evidence of eye witnesses"*

In the case at hand, there is no eye witness, no sufficient circumstantial evidence that points strongly to the commission of the crimes by the three accused persons. What we have are confessional statements of the accused persons. The 1<sup>st</sup> accused person Ibrahim Mohammed made four different confessional statement namely Exhibit TWT C, TWT D, E and H. Below are the confessional statements lifted from each exhibits (Confessional statements) made by the 1<sup>st</sup> accused Ibrahim Mohammed.

**Exhibit TWT C:**

*"Oscar then pleaded with us not to report him and asked the three of us to have sex with the girl which I was the first person to start it. I had a round of sex with her followed by Kabiru Yahaya who also did once and lastly by Aminu Sani"*

Exhibit TWT D

*"I was able to identified Osar whom myself Kabiru Yahaya and Aminu Sani raped the late Sarah Ikape with"*

Exhibit E

*"There and then we succumbed to his wish and three of us had carnal knowledge of her"*

Exhibit E

*"And Goddy dragged the deceased into maize farm and hit her on the ground and had carnal knowledge of her, then I also had carnal knowledge of her followed by Kabiru Yahaya and Aminu Sani too. After we had raped her, Goddy suggested that we should kill her so that the charm will work. I succumbed to his suggestion and I picked a Half cement block stone dust and hit her on her face and the deceased became unconscious and we left Goddy there with deceased"*

Exhibit H

*"The third girl we raped and kill was Sara and the incident happened at Hamza farm, Kubwa. We that participated in raping and killing the Sara are Ibrahim Mohammed, Kabiru Yahaya, Aminu Sani"*

The only confessional statement made by Aminu Sani, the 2<sup>nd</sup> accused person is Exhibit F which read as follows:



#### Exhibit F

*"We saw Goddy on Top of her having carnal knowledge, after Goddy, Ibrahim Mohammed climbed her, Kabiru Yahaya followed and I finally forked her. After having carnal knowledge of her we left her with Goddy alive and returned back to my working place. The only incident I have ever participated is that of Sarah Ikape"*

The only confessional statements made by Kabiru Yahaya the 3<sup>rd</sup> accused person is Exhibit I which read as follows:

#### Exhibit I

*"The third victim called Sarah who stay in our street NEPA Road Kubwa was brought by one John Novies who lives in the same street gave Ibrahim Mohammed the sum of Twenty Thousand Naira (N20,000:00) for the job and he participated in raping the girl and was the first person to rape the girl, followed by Ibrahim Mohammed, followed by me, then Oscar and Aminu. It was John Novies that did the exercise of draining blood with a string three times before Oscar drained the sperm as usual before Ibrahim Mohammed used molding block to hit the girl's head to death. The following day early in the morning I was arrested"*

- The court observed that in Exhibit E where the 1<sup>st</sup> accused made the confessional statement or the portion of the paper where the 1<sup>st</sup> accused Ibrahim Mohammed made the confessional statement was not signed by him, the last two sheets of papers

contained the confession of the 1<sup>st</sup> accused where he alleged he killed the accused was not signed because the portion containing the confessional statement of 1<sup>st</sup> accused was not signed by him. This court will not attach any weight to Exhibit E made by the 1<sup>st</sup> accused person. This court cannot construe the signatures of the 1<sup>st</sup> accused in the first four sheets of papers as the signature in the last two sheets of paper. In Exhibit E the 1<sup>st</sup> accused was not taken to superior police officer to confirm Exhibit E as having been made by him. See C.O.P. v UDE (2011) 12 NWLR (Pt 1260) 189 where the court held as follows:

*"Although a confessional statement need not be taken to a superior police officer to enable the accused deny or admit making the statement, it is an acceptable and good practice approved by the courts to take confessional statement to a superior police officer for his endorsement so that the accused will deny or admit making the statement. However, where confessional statement is not taken to a superior police officer for endorsement, the court would treat such a confessional statement with considerable caution"*

The conclusion of this court is that the court will not attach any weight to Exhibit E, apart from Exhibit E, there are three other confessional statements made by the 1<sup>st</sup> accused person; they are Exhibits TWT C, TWT D and H. Exhibits H and TWT C were taken before superior police officers along with the 1<sup>st</sup> accused person to confirm or deny the statements. Exhibit TWT D which was not



taken before superior police officer is a continuation of Exhibit TWT C.

The only confessional statement made by 2<sup>nd</sup> accused person, Exhibit F was taken to superior police officer along with the 2<sup>nd</sup> accused person, Aminu Sani to confirm or reject the statement.

The only confessional statement of the 3<sup>rd</sup> accused person Kabiru Yahaya, Exhibit I was taken to superior police officer along with the 3<sup>rd</sup> accused to confirm whether he made same or not. Only two of the accused persons confessed to rape and murder of Sarah Ikape namely: the 1<sup>st</sup> accused Ibrahim Mohammed and the 3<sup>rd</sup> accused Kabiru Yahaya while the 2<sup>nd</sup> accused person Aminu Sani confessed only to the rape of the victim.

The confessional statements of the 1<sup>st</sup> accused in relation to the murder and rape of the late Sarah are Exhibits TWT C, TWT O and H. The confessional statement of the 2<sup>nd</sup> accused is Exhibit F which relate only to the rape of the deceased.

The confessional statements of the 3<sup>rd</sup> accused which relate to murder and rape of the late Sarah is Exhibit I, the confessional statement of 1<sup>st</sup> and 3<sup>rd</sup> accused implicated the 2<sup>nd</sup> accused as having being present when the rape and murder of late Sarah took place, what the 2<sup>nd</sup> accused stated in his own statement is that he participated in the rape of the late Sarah, he never claimed that he was present when the late Sarah was murdered. The question for determination is whether the statements of the 1<sup>st</sup> and 3<sup>rd</sup> accused alleging that the 2<sup>nd</sup> accused was present when

the murder occurred can be admitted against the 2<sup>nd</sup> accused person. See Section 29(4) of the Evidence Act 2011 which state as follows:

*"Where more persons than one are charged jointly with an offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court shall not take such statement into consideration as against any of such other persons in whose presence it was made unless he adopted the said statement by words or conduct"*

See the case of ENITAN v STATE (1986) 3 NWLR (Pt 30) 604 at 606 where the Supreme Court observed as follows:

*"A statement made to the police by a co-accused confessional or otherwise is no evidence against his co-accused unless the truth of the statement is adopted by him (R.V AKINPELU again (1936) 5 W.A.C.A."*

See also the case of TITILAYO v STATE (1998) 2 NWLR (Pt 537) 235 CA where the court held as follows:

*"By virtue of Section 27(3) of the Evidence Act (now Section 29(4) of the Evidence Act 2011), where an accused person makes a confessional statement in the presence of a co-accused which incriminate the said co-accused such a statement cannot be taken into consideration by the court as against such a co-accused unless he adopted the statement either by words or conduct. This means that a man's*



***confession is only evidence against him and not against accomplices unless the latter adopts the statement"***

Applying the above principle, the 2<sup>nd</sup> accused did not adopt the confessional statements of the 1<sup>st</sup> and 3<sup>rd</sup> accused persons in relation to the murder of Sarah Ikape and therefore cannot be guilty of culpable homicide punishable under Section 221 of the Penal Code. The 1<sup>st</sup> accused person confessed participating in the murder of Sarah Ikape and the 3<sup>rd</sup> accused adopted the confessional statement of the 1<sup>st</sup> accused person. The 1<sup>st</sup> accused accepted hitting the head of late Sarah Ikape with cement block which was confirmed by the 3<sup>rd</sup> accused because he was present when the 1<sup>st</sup> accused hit the head of late Sarah with cement block, it does not matter whether it was the 1<sup>st</sup> accused person what hit the head of the victim with cement block, since the 3<sup>rd</sup> accused was present both of them are guilty of murder. See *BUJE v STATE* (1991) 4 NWLR (Pt 185) 287 at 298 where it was held as follows:

***"When any person aids the commission of an offence by being present at the scene not as a mere onlooker but with the purpose of aiding and assisting any other person or persons committing the offence, he is equally guilty of committing the offence as a principal. See NYAM v STATE (1964) 1 All NLR 361"***

The confessional statements of the 1<sup>st</sup> and 3<sup>rd</sup> accused persons in relation to the murder of late Sarah Ikape is sufficient for this court to convict the 1<sup>st</sup> and 3<sup>rd</sup> accused persons for culpable homicide

under Section 221 of the Penal Code. See IKEMSON v STATE (1989) NWLR (Pt 110) 455 at 476 where the Court held as follows:

*"An accused person can be convicted on his confessional statement alone. He may also be convicted where the confession is consistent with other ascertained facts which had been proved. See NTABA v STATE (1972) 4 SC 1"*

See also TAJUDEEN FABIYI v STATE (2016) 13 NCC 52 AT 59 where the court observed as follows:

*"It has long been settled in a long line of authorities, that a free and voluntary confession of guilt, whether judicial or extra-judicial, if it is direct and positive and properly established, is sufficient proof of guilt; as such it is enough to sustain a conviction so long as the court is satisfied with the truth thereof"*

Apart from the confessional statement of the accused persons, PW6 Emmanuel Ikape gave evidence to the effect that he saw the three accused persons coming out from where the rape and murder of Sarah was committed one hour after Sarah left home for saloon to deliver food to workers; this served as corroboration to the confessional statements of the accused persons to rape and culpable homicide. See TAJUDEEN FABIYI v STATE (2016) 13 NCC 52 at 60 where the court observed as follows:

*"However, outside the confession, it is desirable to have some corroborative evidence no matter how slight, of*



***circumstances which make it probable that the said confession is true and correct".***

Based on the confessional statements of the 1<sup>st</sup> accused person Exhibit H and the confessional statement of the 3<sup>rd</sup> accused Exhibit I, the 1<sup>st</sup> and 3<sup>rd</sup> accused persons are hereby convicted to culpable homicide punishable under Section 221 of the Penal Code, in other words the 1<sup>st</sup> and 3<sup>rd</sup> accused are hereby convicted on Count 3 while the 2<sup>nd</sup> accused is discharged and acquitted on Count No. 3.

The court now goes to the 2<sup>nd</sup> count of rape of the late Sarah Ikape. The three accused persons confessed to the raping of late Sarah Ikape. The 1<sup>st</sup> accused confessed in Exhibits TWT C, TWT D and Exhibit H that he participated in the rape of the deceased, the 2<sup>nd</sup> accused person also confessed to having carnal knowledge of the victim in Exhibit F while the 3<sup>rd</sup> accused confessed to have raped the victim in Exhibit I, as to whether confessional statement will sustain a conviction. See AGBOOLA v STATE 2014 9 NCC 593 at 603 where the Supreme Court held as follows:

***"In plethora of cases of similar facts and circumstances, this court has stated clearly that where an extra-judicial confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt, such confession will suffice to ground a finding of guilt regardless of the fact that the maker retracted it"***

In the same case, the Supreme Court stated how to determine the truthfulness and veracity of confessional statements as follows:

*"However, in determining the weight to be attached to a retracted confessional statement of an accused person, the court is expected to test its truthfulness and veracity by examining the statement in the light of other credible available evidence. This is done by looking in whether:*

- (a) There is anything outside it to show that it is true;*
- (b) It is corroborated,*
- (c) The accused person had the opportunity of committing the offence.*
- (d) The facts stated in it are true as far as can be tested.*
- (e) The accused persons confession is possible.*
- (f) The confession is consistent with the other facts ascertained and proved at the trial"*

The confessional statements of the accused persons met the above conditions set out by the Supreme Court in the case of *AGBOOLA v STATE* 2014 9 NCC 593 at 602:

- (a) Exhibits B1, B4, B7 and B10 clearly confirmed that the late Sarah Ikape was raped and brutally murdered by hitting an object to her head.
- (b) Exhibits B1, B4, B7 and B10 confirmed that the white pant the late Sarah wore was torn and all her dresses from waist down were removed.



- (c) Exhibits B1, B4, B7 and B10 indicated that the late Sarah was half naked, Exhibit D is the Medical Report on cause of death which state as follows:

***"Head and neck injuries with multiple soft tissues injuries with haemorrhage secondary to assault and rape"***

***The cause of death is consistent with the confessional statements of the accused persons"***

- (d) The confessional statements of the three accused persons in respect of rape of late Sarah Ikape and hitting her head with cement block are consistent with Exhibits B1, B4, D, B7 and B10 respectively, in other words Exhibit B1, B4, B7 D and B10 corroborate the confessional statements of the three accused persons relating to rape and murder of late Sarah Ikape.
- (e) In addition to Exhibits B1, B4, B7 and B10, PW6 Emmanuel Ikape saw the three accused persons coming out from where the rape and murder took place one hour after the late Sarah passed through the Scene of crime.
- (f) The accused persons and the late Sarah were living in the same area, some of the accused persons knew Sarah as stated in their statements, Sarah too must have known them, the reason she was brutally murdered.
- (g) There is consistency of the fact that the late Sarah was raped by the accused persons for ritual purposes as revealed from the accused persons confessional statements.

- (h) Exhibits B7 and B10 indicated whitish substance in the arms and vagina of the late Sarah which is consistent to the accused persons confessional statements that they raped late Sarah Ikape.

For ingredients of rape under Section 283 of the Penal Code, the court hereby referred to the case of EZIGBO v STATE (2012) 16 NWLR (Pt 1326) 318 where the court held as follows:

*"For the prosecution to sustain a conviction against an accused for the offence of rape under Section 83 of the Penal Code, the following ingredients of the offence must be established by evidence, viz:*

- (a) That the accused had sexual intercourse with the woman in question;*
- (b) That the act was done in circumstances envisaged in any of the three paragraph of Section 282(1) of the Penal Code.*
- (c) That the woman was not the wife of the accused or, if she was the wife, she had not attained puberty.*
- (d) That there was penetration"*

The late Sarah could not have consented to sexual intercourse in the bush with three men in the manner shown by Exhibits B1, B4, B7 and B10. There was no consent, the reason she was brutally murdered, the confessional statements of the accused are very consistent with the scene of crimes as shown in Exhibits B1, B4, B7 and B10 respectively. The conclusion of this court is that the



prosecution proofed beyond reasonable doubt the offence of culpable homicide punishable under Section 221 against the 1<sup>st</sup> and 3<sup>rd</sup> accused persons. The prosecutor had equally proofed beyond reasonable doubt the offence of rape punishable under Section 283 of the Penal Code against all the three accused persons. See JEREMIAH v STATE (2012) 14 NWLR (Pt 1320) 248 where the court observed as follows:

***"Once a trial court is satisfied beyond reasonable doubt that on the evidence offered by the prosecution that the accused and no one else committed the offence the judge is entitled to find him guilty"***

All the three accused persons are hereby convicted of rape punishable under Section 283 of the Penal Code; which is Count two in the charge in other words all the three accused persons are convicted under Count No. 2 of the charge.

The last count is the 1<sup>st</sup> count which is criminal conspiracy punishable under Section 97 of the Penal Code for the meaning of conspiracy see YAKUBU v STATE (2012) 12 NWLR (Pt 1313) where the court observed as follows:

***"Conspiracy is the agreement of two or more persons to do an unlawful act by unlawful means. The two or more persons must be found to have combined in order to ground a conviction for conspiracy"***

For the proof of ***mens rea*** in offence of conspiracy see AFOLAYAN v STATE (2012) 13 NWLR (Pt 1316) 185 where the court observed as follows:

***"The mens rea of the offence of conspiracy is not easy to locate as it is usually buried in secrecy. It is the actus reus of the offence that would draw the mens rea to the open and make it possible for the court to find inculpatory evidence"***

There was meeting of the minds of the 1<sup>st</sup> and 3<sup>rd</sup> accused persons to carry out the offence of culpable homicide punishable under Section 97 of the Penal Code. There was equally meeting of the minds of the three accused persons to commit rape punishable under Section 97 of the Penal Code. The 1<sup>st</sup> and 3<sup>rd</sup> accused persons are hereby convicted for conspiracy to commit culpable homicide punishable under Section 97 of the Penal Code.

The 2<sup>nd</sup> accused is hereby discharged and acquitted for conspiracy to commit culpable homicide punishable under Section 221 of the Penal Code.

The three accused persons having confessed to the raping of the deceased are hereby convicted for the offence of conspiracy to commit rape punishable under Section 97 of Penal Code. Conspirators are punished for acts actually done and not for acts jointly intended to be done. See ADAMU v STATE (1986) 3 NWLR (Pt 32) 865 at 878.

I.A. Aminu the first prosecutor that commenced the prosecution of this case is a private legal practitioner hired by the Attorney



General of the Federation to commence prosecution of this case; he sent the court into a wild-goose chase by colluding with Defence counsel and embarked on fruitless trial within trial for years for statements of the accused persons that are not confessional. Trial-within-trial is only for confessional statements that were obtained under duress or under torture of the accused person, but I.A. Aminu tendered so many statements of the accused that are not confessional and refused to tender the confessional statements of the accused person during trial-within-trial; he later abandoned the case without any excuse from the court. The court had to write to the Attorney General of the Federation to take over the prosecution. See the case of *GOMWALK v MIL. ADMIN PLATEAU STATE* 1998 7 NWLR (Pt 558) 416 where the court held as follows:

***"Counsels are officers of the court should at all times be able to count on their support in the quest to attain justice in litigations it is not part of the duties of counsel to send the court on a wild goose chase which is of no benefit to the litigation concerned and which does not serve any useful purpose"***

What is in vogue world-wide in respect of criminal investigation is scientific investigation known as forensic investigation. The victim of the crime committed by the accused person was raped and murdered in the most brutal manner. What the police should have done was to take the sperm in the private part of the deceased for DNA analysis, all the clothes forcefully removed from

the late victim by the accused should have been subjected to DNA analysis and finger prints.

It is unfortunate that lack of forensic investigation prolong the prosecution of cases by the State, it is time for the Federal Government to establish laboratory for forensic investigation.

Before the commencement of writing this judgment, the court had gone through the final written address filed on behalf of the accused persons including the final written addresses filed on behalf of the prosecutor. The court decided not to summarize the final written addresses of the accused and the prosecutor because they form part of the records of this court.

Since the 1<sup>st</sup> and 3<sup>rd</sup> accused persons have been convicted for the offence of culpable homicide punishable under Section 221 of the Penal Code which is Count No. 3, and the three accused persons convicted for rape punishable under Section 283 of the Penal Code which is Count No. 2, while the 1<sup>st</sup> and 3<sup>rd</sup> were convicted for conspiracy to commit culpable homicide punishable under Section 97 of the Penal Code which is Count No. 1, the three accused were equally convicted for conspiracy to commit rape punishable under Section 97 of the Penal Code which is Count No. 1. The court now referred to dictum of Superior courts in rape cases. See *BONIFACE ADONIKE v STATE* (2015) 11 NCC 97 at 111 where M.S. MUNTAKA COOMASSIE JSC observed as:



*"I also lend my voice to this very important pronouncement especially against the backdrop of the rise in rape cases nowadays. Lucky appellant who has not appealed against the sentence had the trial Judge and indeed the court below, by change sentenced the accused Appellant to death or life imprisonment I would have kept mum"*

See also the case of HABIBU MUSA v STATE (2013) 8 NCC 464 AT 469 WHERE I.T. MUHAMMED, JSC held as follows:

*"Rape in our society and indeed in any human society is a grave and serious offence committed by those people who are shameless, merciless and animalistic. I cannot imagine a situation where one will put aside his honour, integrity and humanness to over-power or lure a young girl of tender age to have her carnal knowledge. It is against humanity and God the creator will not allow such a bestial behavior to go unpunished even here in the mundane life.*

*It is the lesser punishment of God that has caught up with the appellant, I wish it were heavier"*

The items recovered from the scene of crime which include the cement block used in hitting the head of the victim to death were not tendered as Exhibits before this court, the failure of the prosecutor to tender same is not fatal to the case of the prosecution. See ABIODUN v STATE (2012) 7 NWLR (Pt 1299) 394 where the court held as follows:





*"The failure of the prosecution to tender the weapon used in committing a crime is not fatal to the prosecution case.*

*The court is satisfied that the prosecution established the guilt of the accused persons beyond reasonable doubt"*

See ALIYU YAHAYA v STATE (2017) 14 NCC 394 where the court held as follows:

*"Proof beyond reasonable doubt does not mean proof beyond all doubt or all shadow of doubt, it simply means establishing the guilt of the accused person with compelling and conclusive evidence. See OSUAGU v STATE (2013) 1 SCNJ 33"*

**Allocutus:**

Niven Aliyu Momoh for the three accused persons.

The accused have been standing trial for 11 years, the time they spent in detention they have learnt lessons; they are all young men, they can contribute to the country their own quota, in sentencing the accused person we urge the court to temper justice with mercy, they should be allowed to learn trade in the prison.

S.M. Labaran for the prosecutor, having listened to the counsel to the accused, rape and murder are condemnable offence. Section 221 stipulates death penalty. In exercising discretion, there are some circumstances which may warrant discretion which is not available from the allocutus.



Court – Having heard the defence counsel plea for mercy on behalf of the accused, the court hereby refer to the case of AMOSHIMA v STATE (2011) 14 NWLR (Pt 1268) 530 where the Supreme Court held as follows:

*"The law recognizes the existence of maximum and mandatory sentences in criminal law proceedings both of which mean different things and are irreconcilable. In relation to death sentence, there is a global trend which shows hostility of the sentence on any convict. The death penalty may be said to be degrading of human beings but the same cannot be said where the law recognizes its existence and desires its enforcement by the courts. Whereas in very many jurisdiction the death sentence is frowned upon or even abolished,*

*It is firmly entrenched in Nigeria status"*

This court has no discretion to sentence the accused to terms of imprisonment under Section 221, the accused persons are hereby sentenced to life imprisonment for rape, for culpable homicide, the 1<sup>st</sup> and 2<sup>nd</sup> accused are sentenced to death but the court hereby appeal to the authority concerned to commute the death sentence to terms of imprisonment.

(Sgd)  
Hon. Justice S.E. Aladetoyinbo  
(Presiding Judge)  
11/12/2017