IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA

BEFORE HIS LORDSHIP THE HON. JUSTICE IKE OGU
ON TUESDAY THE 25TH DAY OF JULY, 2017.

CHARGE NO. HN/1C/2012

BETWEEN:

THE STATE ========== PROSECUTION

VS.

DR. OBIEJEMBA CHINEDU ========== DEFENDANT

JUDGMENT

By an information dated the 14th day of December, 2011 but was filed on the 24th day of January, 2012 by the State, the defendant was arraigned on one count charge of murder contrary to Section 274 (1) of the Criminal Code Cap. 36 Vol. II, Revised Laws of Anambra State, 1991. It was alleged that on the 24th day of August, 2011 at Chioma Hospital, Uruagu, Nnewi in the Nnewi Judicial Division, the defendant murdered one Uzoamaka Offor. The defendant in his plea before the Court denied the commission of the offence. The prosecution in a bid to prove its case called on the whole six(6) witnesses in support of the charge who testified as the P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.6. After the evidence of the P.W.6 the prosecution's case was closed for her. Thereafter, the defendant was to enter his defence but his learned counsel elected to rest the defendant's case on the case presented by the prosecution.

At the conclusion of evidence, the parties filed and exchanged written addresses in compliance with the orders of the Court made on the 6th day of December, 2016. As such, on the 4th day of May, 2017 the learned counsel for the defendant adopted the final written address which was filed on the 9th day of December, 2016 and the written reply address on points of law dated the 27th day of

February, 2017 but was filed on the 28th day of February, 2017 as their final address in this matter and urged the Court to discharge and acquit the defendant on the ground that the prosecution failed to prove the allegation beyond reasonable doubt. For the prosecution, her learned counsel adopted the final written address dated the 21st day of February, 2017 and filed on the same day as their final argument in this charge. He urged the Court to hold that the prosecution has proved all the ingredients of murder beyond reasonable doubt. He urged the Court further to convict and sentence the defendant in accordance with the law.

In the final written address of the defendant, his learned counsel formulated one issue for the determination of this Court to wit:-

> "Whether the prosecution proved that it was the defendant who murdered the deceased as required by law?"

For the prosecution, her learned counsel in his final written address framed one issue for the determination of this Court. The issue for determination is as follows:-

> "Whether the prosecution has proved the case of murder beyond reasonable doubt in this charge?"

I have looked at the issue for determination variously distilled by the learned counsel for the parties in this charge. On sober reflection on the sets of issue for determination as settled on behalf of the parties shows clearly that the sole issue for determination prepared by the learned counsel for the defendant is similar and related to the sole issue for determination culled by the learned counsel for the prosecution. Any of the sets of issue for determination formulated by the parties is apt, relevant and germane to determine this charge. I shall adopt the sets of issue for determination in the consideration of this charge but for easy understanding, I shall address the sole issue for determination as follows:-

> Whether the prosecution from the circumstances of this case and the evidence adduced, has proved beyond reasonable doubt

that it was the defendant who murdered the deceased?

The sole issue for determination in this charge is, therefore, whether the prosecution from the circumstances of this case and the evidence adduced, has proved beyond reasonable doubt that it was the defendant who murdered the deceased? The facts of this case fall within a narrow compass and are in most aspects not being disputed. However, in order to secure the conviction of a person charged with murder as rightly submitted by the learned counsel for the parties in their final written addresses, the prosecution must prove beyond reasonable doubt the following:-

1. the death of a human being;
2. the cause of the death;
3. that the death was caused by the act of the defendant;
4. that the act or acts were done with the intention of causing death or grievous bodily harm; and
5. that the defendant knew that death would be the probable consequence of his act or acts.

SEE: NWOSU VS. STATE (1998) 8 NWLR (PT. 562) 433.

NWAEZE VS. STATE (1996) 2 NWLR (PT. 428) 1.

ADEKUNLE VS. STATE (2002) 4 NWLR (PT. 756) 169.

In a bid to prove the ingredients of murder against the defendant, the P.W.1 who is the father of the deceased Uzoamaka Offor testified that on the 23rd day of August, 2011 the deceased visited him at about 4 p.m. and informed him that she will be going back to school having secured an admission. Later, she left for where she was living at Chioma Hospital where she was working as a nurse. It must be stressed that unknown to the P.W.1, that visit was the last time he will see his daughter alive. In the night of the 24th day of August, 2011 at about 2 a.m. his sister-in-law called him on phone and told him that there was problem at Chioma Hospital, Uruagu Nnewi and he should go there. In the morning, he went to Chioma Hospital Uruagu Nnewi with Chief Yagazie Sunday Eze his brother. When he got there, he saw the corpse of his daughter Uzoamaka Offor in a pool of blood. When the Police

were ready to conduct the autopsy, he joined them with the defendant, his father and relations to the mortuary. At the mortuary, he identified the corpse of the deceased as the body of his daughter Uzoamaka Offor for autopsy. Later, the corpse was released to him for burial. The P.W.2 Mrs. Helen Ibe corroborated the evidence of the P.W.1 when she testified that when the defendant pointed the touch light, she saw Uzoamaka Offor lying on the ground stone dead. The P.W.3 confirmed that post mortem examination was conducted on the deceased and he took her photographs which were admitted as Exhibits "M" – "M^{6}". The P.W.4 – P.W.6 all confirmed the death of Uzoamaka Offor in their testimonies before the Court.

It must be pointed out that the learned counsel for the defendant while cross examining the prosecution witnesses did not challenge the claim that the death of Uzoamaka Offor occurred on the 24th day of August, 2011 at Chioma Hospital Uruagu Nnewi. Even in his final written address and written reply address on point of law, the claim of the death of the deceased appears to have been conceded by the defence and so was not challenged. It is therefore my finding that the prosecution proved beyond reasonable doubt that there was the death of a human being; that is, the death of Uzoamaka Offor. The second ingredient of the offence of murder to be proved by the prosecution is the cause of the death of Uzoamaka Offor. In a murder charge, especially when there is no direct evidence of eye witness, the cause of death of the deceased person is a fact in issue that must be established beyond reasonable doubt by the prosecution. Where the prosecution failed to establish the cause of the death of the deceased beyond reasonable doubt, the defendant must be discharged.

SEE: REX VS. SAMUEL ABENGOWE (1936) 3 WACA 85.

R VS. OLEDIMA 6 WACA 202.

LORI & ANOR VS. THE STATE (1980) 8 – 11 S. C. 81.

Where there is no direct evidence of the cause of the death, then medical evidence becomes a sine qua non. However, where the cause of death of the deceased is obvious, and has been proved

beyond reasonable doubt by the prosecution or proof of murder by circumstantial evidence where there is no body, medical evidence is not necessary and can thus be dispensed with by the Court. In other words, it is not in all murder cases that medical or autopsy reports are necessary in proving cause of death of deceased persons.

SEE: OPARA VS. STATE (2006) 9 NWLR (PT. 986) 508.

CHUKWU VS. STATE (2007) 13 NWLR (PT. 1052) 430.

In the instant case, the facts and circumstances surrounding the death of the deceased Uzoamaka Offor were most undoubtedly beyond argument. There is the evidence of the P.W.2 who was the last person with her colleague Chika Ugwu to see the deceased alive at least after 9 p.m. when they were together at the parlour of the flat which they use as O. P. D. section of the hospital. According to her, the deceased picked her books and left and she assumed that she went upstairs where she was living. The P.W.2 testified that she was asleep when she heard a noise of something that fell down from the upstairs. After about one hour, the defendant entered the place where she was sleeping looking for Uzoamaka Offor. Eventually he discovered her body downstairs and she followed him downstairs around 12 mid-night where she saw the said Uzoamaka Offor lying on the ground stone dead. The P.W.3 who was the Investigating Police Officer in his evidence told the Court that there was injury at the back of the head of the deceased and a lot of blood where she was found. By the evidence of the P.W.1 and P.W.3 post-mortem examination was carried out on the body of the deceased but there is no evidence of the findings made during the autopsy. The prosecution witnesses in the circumstances of this case did not demonstrate the cause of the death of the deceased. I say so because there is no evidence to suggest that the injury at the back of the deceased head was what caused her death. Assuming the head injury was the cause of her death, was it inflicted on her while she was upstairs or somewhere else? If this is not the case, was the head injury the proximate result of her falling from the three storey building? But the P.W.6 Emmanuel Elekalachi while being cross examined by the learned counsel for the defendant testified that the body of the deceased was not smashed like the body of someone who fell from a height but blood was gushing out from

the back of her head. This evidence of the P.W.6 dismissed the option that the deceased was thrown down from the upstairs. But is he competent to give this evidence in the circumstances? The medical doctor who performed the post-mortem examination would have clarified this better if he had testified.

It is therefore pertinent that the cause of death of the deceased should be established considering the circumstances in which the deceased body was discovered. In my opinion, medical report (autopsy) and evidence of a medical doctor who performed the autopsy are essential to establish the actual cause of death of the deceased considering the facts and circumstances of this case. This is so because where there are no facts which sufficiently showed the cause of death to the satisfaction of the Court, medical evidence of the actual cause of death is essential.

SEE: EFFIONG VS. STATE (1998) 8 NWLR (PT. 562) 362.

AWOPEJO VS. STATE (2001) 92 L. R. C. N. 3187.

I will now consider the next ingredient of the offence of murder to be proved by the prosecution beyond reasonable doubt which is that the death was caused by the act of the defendant. I have scrutinized the evidence adduced against the defendant by the P.W.2, P.W.4, P.W.5 and P.W.6. I am afraid that there is no direct evidence linking the defendant with the commission of the offence as rightly submitted by the learned counsel for the defendant in his final written address. The learned counsel for the prosecution appreciated this fact hence he relied on circumstantial evidence in his final written address. He contended that the unbroken chain of circumstantial evidence led by the prosecution through the P.W.2 points irresistibly to only one conclusion, namely, that it was the defendant who murdered the deceased. In the case of **IJIOFFOR VS. THE STATE (2001) 3 NWLR (PT. 718) 371, KARIBI-WHYTE, J. S. C.** (as he then was) had this to say:-

> *"The absence of direct evidence is indeed the very essence of resort to circumstantial evidence. Where direct positive evidence is elusive with respect to the commission of an offence, surrounding circumstances of positive, cogent and compelling evidence inescapably linking the accused with the commission of the offence is*

acceptable. It has been accepted without question that the Judges and sage of the law have laid it down that there is but one general rule of evidence, the best that the nature of the case will allow" See Omyehund v. Barker (1745) 1 Atkin 21 at p.49. Hence, it has always been accepted that where direct evidence of eye witnesses is not available, the Court may infer from the facts proved the existence of other facts that may logically tend to prove the guilt of an accused person. See Idowu v. State (1998) 11 NWLR (Pt. 574) 354 SC. Section 149 of the Evidence Act enables the Court to draw inferences from established facts bearing in mind the common course of natural events. Often times circumstantial evidence is all that is available on points on which direct evidence would ordinarily be required."

It is trite that circumstantial evidence is very often the best evidence. It is the evidence of surrounding circumstances which by un-designed coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial. "Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. Joseph commanded the steward of his house, "put my cup, the silver cup, in the sack's mouth of the youngest", and when the cup was found there, Benjamin's brethren too hastily assumed that he must have stolen it. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference." In **STEPHEN UKORAH VS. THE STATE (1977) 4 S. C. 167 at 174, 176-177, IDIGBE, J. S. C. (as he then was)** quoting with approval a passage from Emperor v Browning 39 I. C. 323, stated:-

"In a case in which there is no direct evidence against the prisoner but only the kind of evidence that is called circumstantial, you have a two fold task; you must first make up your minds as to what portions of the circumstantial evidence have been established; and then when you have that quite clear; you must ask yourselves is this sufficient proof? It is not sufficient to say "If the accused is not the murderer, I know of no one

who is. There is some evidence against him and none against any one else. Therefore I will find him guilty." Such a line of reasoning as this is unsound, for experience shows that crimes are often committed by persons unknown who have succeeded in wholly covering their tracks....."

Where then, were the surrounding circumstances from which the learned counsel for the prosecution urged the Court to reach the conclusion that the only inference capable of being drawn was that the defendant murdered the deceased? Let me consider the evidence of the prosecution witnesses especially the evidence of the P.W.2 on which the learned prosecuting counsel placed heavy reliance. By the evidence of the P.W.2, the defendant left for his home around 9 p.m. after both of them entertained fear whether he could get a commercial motor cyclist by that time. After attending to new patients, she had discussions with the deceased before she picked her books and went upstairs where she was living. In less than one hour, she was awaked by the noise of something that fell down from the upstairs. After about one hour, the defendant entered the place where she was sleeping and on her inquiry he told her that he was coming from upstairs. The defendant asked her of Uzoamaka Offor and she told him that she was upstairs. The defendant told her that she was not upstairs and she maintained that she was there. It was at this stage that the defendant collected her touch light and went upstairs and later came down and told her that she was not upstairs. The P.W.2 then suggested to him to go and knock on her door as she is supposed to be in her room. The defendant went and only to come down to say that her door was open but nobody was there. The defendant went up again and later came back and told her that he had found her downstairs. He requested for the key of the staircase door which she gave to him and followed him to the downstairs where he opened the door. He pointed the touch light and she saw Uzoamaka Offor lying on the ground stone dead. It is her evidence that she did not know when the defendant came back to the hospital and when she went to sleep, the door to the hospital had been locked. She stated that the defendant did not tell her why he was looking for Uzoamaka Offor when he opened the door where she was sleeping.

When the P.W.2 was cross examined, she agreed that she did not see the defendant with Uzoamaka Offor. She agreed also that

when Uzoamaka Offor left the flat which was the last time she saw her alive, she did not see her enter the flat retained by the hospital on the 3rd floor but assumed that she went there. It is her evidence also that apart from the key he gave to the defendant to open the staircase door, other tenants have keys to that entrance door and she was not present when the entrance door was locked in the night of the incident. The P.W.3 in his evidence told the Court that the deceased's purse, text book, exercise book and two Nokia phones were found in the parlour of her flat while her body was found at the ground floor with the left leg of the sandal. The P.W.4 Leonard Ezekude in his evidence claimed that he locked the main gate and entrance door to the building by 10 p.m. as usual and did not open it for anybody again. But when he came down after hearing the noise, the gate has been opened with its key. It is his evidence that every tenant in the compound has his own keys. He claimed also that when he came down from his flat following the cry of one of the nurses, the defendant told them that Uzoamaka Offor fell from the upstairs. However, the P.W.5 in his evidence stated that following the cry of the nurse on duty, the neighbours were banging at the gate and later the nurse on duty opened the gate for them. The P.W.6 Emmanuel Elekalachi while being cross examined by the learned counsel for the defendant testified that the body of the deceased was not smashed like the body of someone who fell from a height but blood was gushing out from the back of her head.

From the totality of the evidence of the prosecution witnesses, one thing is clear and that is that the defendant who had left the hospital finally for the day later resurfaced in the hospital. However, there is no evidence of the time the defendant came back to the hospital and nobody saw him enter the hospital compound. The fact that the defendant resurfaced in the hospital suggests that the gate to the compound and the entrance door had not been locked by the P.W.4 at the time he entered the hospital. Following the evidence of the P.W.2 and the time of the incidents she experienced before the corpse of Uzoamaka Offor was found; it suggested one of two things. The first is that the defendant did not leave the hospital but was in the flat reserved for the doctors upstairs. If that is the position, it means that it was a premeditated murder. However, there is no evidence that the defendant was in possession of the key to the entrance door of the flat. Since the deceased was the person residing in the flat while the doctors use the doctors' room in the flat when they could not

go home, it is natural that the deceased Uzoamaka Offor would be in possession of the entrance door key to the flat. This would therefore dismiss the proposition that the defendant was in the flat before the deceased came upstairs. Since the P.W.2 appears to be sure that the defendant left the hospital, the only reasonable inference to be drawn is that it cannot be true that the P.W.4 came back and locked the gate and entrance door of the hospital by 10 p.m. as he claimed.

It must be pointed out that the fact that Exhibits "C", "D", "D^1" "E" and "F" which are black purse, two Nokia handset phones, text book and exercise book were recovered from the residence of the deceased suggest that she went up to her residence when she left the P.W.2 and Chika Ugwu. In the same vein, since the deceased was wearing the left leg of the sandal she wore earlier in the day suggests that she had not retired to bed before she met her death. It should be borne in mind that it is in evidence that the right leg of her sandal was not seen in her flat or within the premises and thereby suggesting the inference that she may have met her death outside her flat. It should be appreciated that the available evidence had dismissed the inference that she fell down from the upstairs. In the circumstances, I must agree with the contention of the learned counsel for the defendant that the mere fact that the defendant resurfaced in the hospital looking for the deceased after telling the P.W.2 he was going home is not sufficient circumstantial evidence that he committed the offence. This is so more especially when you weigh the fact that the P.W.2 was aware that the likelihood of his getting a bike at that time of the night was very remote. It is true that there is no yardstick by which any circumstantial evidence can be measured before a conviction can be entered against a defendant charged with the offence for which the circumstantial evidence is the only one available. Each case depends on its own facts but the one test which such evidence must satisfy is that it should lead conclusively and indisputably to the guilt of the defendant. The Supreme Court has held in several decided cases, that the evidence in support of conviction must be positive, cogent, compelling and irresistible to convince the court of the guilt of the defendant and inconsistent with any other rational conclusions. There must be no other co-existing circumstances which can weaken such inference.

SEE: THE STATE VS. EDOBOR (1975) 9 – 11 S. C. 69.

LORI & ANOR VS. THE STATE (Supra).

UDEDIBIA VS. STATE (1976) 11 S. C. 133.

ADEPETU VS. STATE (1998) 9 NWLR (PT. 565) 185.

Accordingly, for circumstantial evidence to be believed, and to justify the inference of guilt, the evidence must:-

(a) be unequivocal and positive;

(b) irresistibly point to the guilty of the defendant; and

(c) not be co-existing circumstances that place doubt on the inference that the defendant and no other person is guilty of the offence or incompatible with the innocence of the defendant.

SEE: **FATOYINBO VS. A. G., WESTERN NIGERIA (1966) WNLR 4.**

LORI & ANOR VS. STATE (Supra).

OMOGODO VS. STATE (1981) 5 S. C. 24.

GABRIEL VS. STATE (1989) 5 NWLR (PT. 122) 457.

OKEREKE VS. STATE (1998) 3 NWLR (PT. 540) 75.

Applying these principles to the facts in the instant case, it cannot be disputed that the evidence adduced by the prosecution was not positive, cogent, compelling and irresistible that the defendant was responsible for the murder of the deceased. It cannot also be said that the defendant and no other person was responsible for the death of the deceased. From the analysis made above, lope hole exists or the possibility of any other person committing the offence other than the defendant. As a matter of fact, there is no circumstantial evidence linking the defendant with the murder of the deceased apart from the fact that he resurfaced in the hospital looking for the deceased Uzoamaka Offor. As such, the defendant

is only being suspected to have committed the offence. This is made clear by the evidence of the P.W.2 – P.W.6 on the point which is bundle of suspicion as submitted by the learned counsel for the defendant. It is clear that because the defendant resurfaced in the hospital looking for the deceased after he had informed the P.W.2 that he was going home finally for the day and later found the corpse that made the witnesses to suspect that he was responsible for the murder of the deceased. This is demonstrated by the P.W.4 who admitted under cross examination that in his extra judicial statement which he made when the facts of the matter were still fresh in his memory, he stated clearly that he suspects the defendant because from the statements of the nurses, he slept in the flat that night before the incident happened. This was also manifested in the evidence of the P.W.5 who testified that at the station the defendant was shivering and the other doctors were encouraging him and when the defendant was making his statement suddenly he dropped his pen and started telling him the story of what happened. But under cross examination he admitted that in his statement to the Police he did not state that the defendant was shivering and the other doctors were encouraging him. He admitted also that in his statement he stated clearly that the defendant told him his story of what happened before the statement making. And above all, the P.W.6 even testified that the defendant collected the touch light from the nurse in the pretext to look for Uzoamaka Offor, but the motive was for him to clean up everything that will incriminate him.

However, the possibility exists that another person may have committed the crime and cleverly covered his track to avoid suspicion. In all, I have looked at the tenor of the evidence adduced by the P.W.1 – P.W.6, and as I said earlier, I am afraid that the evidence is mere suspicion. It is now settled law that suspicion, no matter how strong and convincing cannot displace the heavy duty on the prosecution to prove the defendant's guilt to the hilt by admissible evidence.

SEE: OKEREKE VS. STATE (Supra).

I am therefore satisfied that the prosecution failed woefully to prove this element or ingredient of the offence of murder. This has made it an academic exercise to consider the other remaining ingredients of the offence of murder. When a person is standing trial for a crime, generally every material point or every essential

ingredient of the crime is put, or deemed to be put in issue by him to be proved by the prosecution.

SEE: ALOR VS. STATE (1997) 4 NWLR (PT. 501) 511.

NWOSU VS. STATE (Supra).

As I said earlier, in order to sustain a conviction for murder, the prosecution must prove the death of the person the defendant is alleged to have killed, the cause of death and that it was the act of the defendant that caused the death of the deceased. The prosecution cannot succeed in establishing the guilt of the defendant in the absence of any of these elements as it will vitiate any conviction on a charge of murder.

SEE: R VS. ABENGOWE (1936) 3 WACA 85.

OKOROGBA VS. STATE (1992) 2 NWLR (PT. 222) 224.

NWOSU VS. STATE (Supra).

This is so because before it can be said rightly that the prosecution has proved its case beyond reasonable doubt, every ingredient which constitutes the totality of the offence must be established. This means that if there is a failure to establish one element of the offence, then there is a failure to prove the case beyond reasonable doubt.

SEE: OKEKE VS. STATE (1995) 4 NWLR (PT. 392).

ISIBOR VS. STATE (2002) 3 NWLR (PT. 754) 250.

Having dealt with the salient and important point in this case and after a careful consideration of the entire evidence, I have come to the conclusion that the prosecution has not been able to prove its case of murder against the defendant and the sole issue for determination ought to, and is hereby resolved against the prosecution. The combined effect of section 135(1) of the Evidence Act, 2011 and section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) is that under the Nigerian judicial system, the prosecution has a fundamental duty of proving its case beyond reasonable doubt against a defendant,

otherwise the trial is vitiated and the defendant ought to be discharged and acquitted.

SEE: ALAKE VS. STATE (1991) 7 NWLR (PT. 205) 567.

CHUKWU VS. STATE (2007) 13 NWLR (PT. 1052) 430.

As I am of the view that the evidence against the defendant cannot sustain a conviction, I accordingly discharge and acquit him of the charge of murder. The defendant is hereby discharged and acquitted.

IKE OGU
(JUDGE)
25/07/2017.

T.C. IKENA (ESQ.) Assistant Director of Public Prosecution, Anambra State Ministry of Justice for the Prosecution.
CHIEF G. C. OSUIGWE of counsel for the defendant.