

**IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF IDEMILI JUDICIAL DIVISION
HOLDEN AT OGIDI
BEFORE HIS LORDSHIP: HON. JUSTICE ARINZE AKABUA
ON TUESDAY THE 24TH DAY OF OCTOBER, 2017**

0/30C/2012

BETWEEN

THE STATE

PROSECUTION

AND

- 1. CHIJOKE NWANKWO**
- 2. CHUKWUNONSO EPUNDU**
- 3. EMEKA EPUNDU**

DEFENDANTS

JUDGMENT

By an amended charge filed on 17/04/13 defendants herein were arraigned on a one count charge of murder to wit;

STATEMENT OF OFFENCE

Murder contrary to Section 274 of the Criminal Code Cap 36 Vol. Revised Laws of Anambra State of Nigeria, 1991 as amended

PARTICULARS OF OFFENCE

Chijioke Nwankwo, Chukwunonso Epundu and Emeka Epundu on the 26th day of December, 2011 at Oranye Street in the Onitsha Judicial Division did murder one Ogochukwu Areh by stabbing him with a broken bottle on his neck.

On the 05/06/15, plea was taken and all three defendants pleaded not guilty and the case proceeded to trial. In proof of the charge, prosecution called six witnesses and tendered several exhibits.

Mrs. Mary Ann Okonta elder sister of the deceased testified as first prosecution witness. She testified that on 26/12/11 the three defendants in addition to three other boys now at large had attended the marriage ceremony of her cousin at their home at No. 20C Oranye street Onitsha. That all the boys are relations of the groom who came to marry her cousin. That at about 5.30 p.m. after the ceremony had ended and the elders of both families had left, she was sitting beside another of her younger brother's window, when she noticed six boys (the three defendants and the three other boys at large) plus a girl sitting close to the door. That one of the boys; Arinze Epundu broke a bottle beside her, and part of the broken bottle fell on her leg. That when she asked him why he broke the bottle, he in addition to the other five boys confronted her, saying somebody must die in this compound today. That 3rd defendant brought out a horse wipe and flogged her three times with it. That she shouted and took her children into her mother's room. That one of the boys; 2nd defendant ran into the same room and started dragging her younger brother (the deceased) out of the room. That when they dragged him out, all the six boys started beating him until 1st defendant broke a stout bottle and stabbed him on the neck wherein he fell and died. That when the boys saw that the deceased had fallen, they all fled but her younger brother (prosecution witness 2) pursued them and caught 1st defendant and handed him over to the police. Subsequently, PW2 went and deposited the corpse of the deceased at the mortuary. Witness two statements to the police on 02/07/12 and 03/07/12 were admitted in evidence and marked Exhibits B1 and B2 respectively.

Answering questions in cross examination put to her by 1st defendant counsel **SIR R.I OBUMSE**, PW1 insisted that she saw 1st defendant stab her brother the deceased with a broken bottle. She also insisted that the defendants formed a common intention to kill and actually killed her brother. She further insisted that defendants were not drunk when they killed her brother neither was the killing done in the course of a free for all fight, because there was no fight. Answering further questions put to her by 2nd defendant counsel **S.C. UDEMEZUE ESQ.** PW1 insisted that contrary to the first statement she made to the police that her shouting about broken bottle brought her husband, her brother and the deceased from the room, it was actually 2nd defendant that dragged the deceased out from the room before the other boys started beating him before he was eventually stabbed to death by 1st defendant.

Answering further questions in cross examination by 3rd defendant counsel **CHIEF S.O.P. OKEKE**, PW1 admitted that on the day of the incident, she did not know the names of the six boys having only seen them for the first time that day, but that it was through 1st defendant that she got to know the names of all six boys including the 1st defendant himself. She also admitted that there was no prior problem between the defendant's family and her family before this incident.

Prosecution Witness 2 Areh Anthony Obinna is the nominal complainant in this case and also a brother of the deceased. He testified that he was outside their compound at No. 20C Oranye Street Onitsha for another function when he was called that some boys were breaking bottles in their compound. That when he ran back to the house, he saw six boys armed with broken bottles, bottle axes, jackknives etc shouting that somebody must die today. That when he arrived the boys were already attacking his brother in-law PW3. That when he tried to intervene, 2nd defendant pounced on him. That he then ran into his room to remove the native wear he was putting on. That when he came out two minutes later he saw the deceased (his younger brother) in a pool of his own blood. That he started pursuing the six boys and eventually arrested 1st defendant in an uncompleted building about a quarter mile away from the incident, where he was hiding. That he took the 1st defendant to the Central Police Station Onitsha, where the 1st defendant started mentioning the names of the other five boys involved in the incident. That later policemen from the Central Police Station followed him to the scene of crime where they took pictures of his dead brother and advised him to take the corpse to the mortuary. According to him the matter was later transferred to the State Criminal Investigation Department Awka. His two statements to the police were admitted in evidence and marked Exhibits C1 and C2 respectively.

Answering question in cross examination PW2 insisted that even though people were running helter-skelter when he entered the compound, no fight was going on and the defendants were not drunk. He also admitted he did not see 1st defendant stab the deceased. Answering further questions in cross examination he admitted that he was calling the six boys by name for the first time in court because at the time he made statements to the police, he did not know their names.

Inspector Paul Okonta, husband to PW1 and in-law to PW2, testified as PW3. He basically corroborated the testimony of PW1. He said he came outside when he heard his wife PW1 shouting about broken bottle. That he saw the six boys welding broken bottles and other dangerous weapons. That 3rd defendant actually assaulted him with horsewhip. That 2nd defendant dragged deceased out from the room and that he saw 1st defendant stab deceased on the neck leading to his death. That he was part of the persons that pursued defendants when they ran, and one of the persons that took the deceased to the morgue later. He tendered the four statements he made to the police which were marked Exhibits D1 – D4.

During cross examination PW3 admitted that before the stabbing incident, the six boys were very rowdy and fighting everybody. He also denied the suggestion that he made additional statements to the police to implicate 2nd and 3rd defendants.

Dr. Okwusogu Augustine Osita, Chief Medical Officer attached to the General Hospital Onitsha, testified as PW4. He tendered the Coroners Form Exhibit E and post mortem examination report Exhibit F. During cross examination he admitted that even though the corpse was deposited at the mortuary on 26/12/11, he did not conduct a post-mortem examination until the 29/12/16, at which time the corpse had been embalmed and the stab wound sutured up. He admitted that the penetrating injury referred to in his report can be caused by any sharp object and that the cause of death is bleeding from a penetrating injury.

Inspector Clem Nwancho testified as PW5. He stated that he was the investigating police officer. That he recorded the statement of the complainant PW2. That he also recorded the statement of 1st defendant under caution. That he visited the scene of crime with the complainant and the 1st defendant. That he recovered the murder weapon, a broken bottle from the scene of crime and registered same as an exhibit. That he also ordered a photographer to take digital pictures of the deceased person and the murder weapon. That he arranged with his team to take the deceased to Borromeo Hospital for autopsy. That because that day was a public holiday (26/12/11) he could not procure the coroner's form until 29/12/11 on which date he served the form on Dr. Okwusogu and the autopsy was conducted and report received. He also took the statement of one of the witnesses; PW3 before the case file was transferred to SCID. Through him, the State tendered the pictures of the murder weapon and the deceased person as Exhibits G1 – G3.

Furthermore, his statement made at the SCID whilst handing over the case file was also admitted in evidence as Exhibit H. Answering questions in cross examination PW5 admitted that he did not take the statement of both Arinze Epundu the alleged instigator of the fight nor the groom Christopher Epundu because they both ran away after the incident and he could not arrest them. He further admitted that broken bottles littered the scene of crime even though the only broken bottle he recovered was the murder weapon. He insisted that even though a certain Inspector Udekpo was the original IPO, he later took over the investigation of the case on the orders of the District Crime Officer before the case was transferred to the SCID. PW5 admitted that 1st defendant fingered Arinze Epundu as the perpetrator of the crime at 1st defendant's earliest opportunity.

Sergeant Aloke Emenike testified as PW6. He testified that he was part of the team that investigated the case at the SCID under the leadership of ASP Leekodora Peter now retired from the Nigeria Police Force. He repeated the information as contained in case file handed over to his team by PW5. He testified that the murder weapon a broken bottle was handed over to his team by PW5. That he received the broken bottle and registered it as an exhibit. That unfortunately the said broken bottle fell down in court during the last adjourned date and broke into small pieces. Prosecution counsel sought to tender the broken into pieces bottle as it was. After much argument, the broken into pieces bottle was admitted in evidence and marked Exhibit J. Furthermore, witness tendered the statement made by 1st, 2nd and 3rd defendants at SCID Awka and they were admitted in evidence and marked Exhibits K, L and M respectively. He also tendered his own investigation report and it was admitted and marked Exhibit N. Finally, the envelope containing the broken bottle registered and marked as an exhibit at the SCID was tendered admitted and marked Exhibit O.

During cross examination, PW6 admitted that after the broken bottle was handed over to him, he did not conduct any further test on it to determine whether there was human blood on it, or indeed to match blood on it, if any, to the blood of the deceased at the morgue. He also admitted that he neither interviewed Arinze Epundu, nor the groom nor the bride because they were all on the run after the incident. Finally PW6 admitted that what he knows about this case was what was told him by the previous investigators. With the testimony of PW6, prosecution closed its case.

1st defendant testified for himself and denied killing the deceased. He insisted that it was Arinze Epundu that killed the deceased. That Arinze Epundu killed the deceased in self-defense because deceased attacked Arinze Epundu with a butcher's knife in the course of the altercation between Arinze Epundu and deceased elder sister PW1. He said that after the incident only he was arrested and he told the police that Arinze Epundu is the culprit. He said the police told him that if he provided Arinze Epundu he would be released. That it was after they could not get Arinze Epundu that they turned and started saying that he committed the crime. 1st defendant further testified that at the time of the incident, he in addition to the other boys were all very drunk and they neither came to the marriage ceremony with any weapons, nor did they have a common intention to kill anybody.

In the course of cross examination, 1st defendant denied all the statements he made at the police station with respect to what transpired except the insistence that it was Arinze Epundu that killed deceased. 1st defendant's statement to the police was admitted in evidence in the course of cross examination and marked exhibit D1. 1st defendant did not call any further witness in his defense.

2nd defendant also testified for himself without calling any further witnesses. He testified that just before the killing happened, he left the compound to buy soft drinks. That when he came back he noticed that there was commotion inside the compound. That Mike and Offor Epundu were leaving the compound with 1st defendant. That the deceased ran out from the room and started pursuing them. That the first person he caught up with was 1st defendant. That as soon as he caught up with 1st defendant, 1st defendant stabbed him on the neck with a broken bottle. That as soon as he slumped all three boys took to their heels pursued by members of the family. That they caught 1st accused and took him to the police station. That after about eight days he too was arrested.

During cross examination, 2nd defendant insisted that contrary to the testimony of Prosecution Witnesses 1, 2 and 3 that he was present during the fight and actually dragged deceased from the room, he was not involved but only observed 1st defendant stab deceased to death. He also denied the suggestion that it was Arinze Epundu instead of 1st defendant that killed the deceased.

When it was time for 3rd defendant to open his defence his counsel **CHIEF SOP OKEKE** made a no case submission on his behalf. The court after a careful and dispassionate consideration of the evidence put forward agreed with the submission and consequently discharged and acquitted 3rd defendant.

On 31/07/17, parties adopted their final written addresses. Adopting the final written address on behalf of 2nd defendant his counsel **S.C. UDEMEZUE ESQ.** prayed the court to discharge and acquit 2nd defendant on the grounds that the State has not been able to prove the offence of murder against him beyond reasonable doubt as required by the law. He cited several authorities on what the State needs to prove to sustain a conviction on a murder charge.

Responding to this address, prosecuting Counsel **OLISA MACHIE ESQ** prayed the court to convict 2nd defendant because the State has been able to prove all the ingredients of murder against him. Furthermore, Mr. Machie sought to discredit the defences of alibi and intoxication put forward by 2nd defendant. He prayed the court to find 2nd defendant guilty as charged.

Adopting 1st defendant's final address, his counsel **SIR R.I. OBUMSE** also submitted that prosecution has not been able to show by evidence that 1st defendant caused the death of deceased. Counsel predicated this assertion on the grounds that the police did not investigate the allegation by 1st defendant that it was Arinze Epundu not him, that killed the deceased. Counsel further argued that the autopsy report is not conclusive that it was the alleged murder weapon that killed the deceased as the injury that purportedly caused death; laceration on the anterior angle of the neck had been sutured before the post mortem examination was conducted. He therefore urged the court to discharge and acquit 1st defendant. 1st defendant counsel also raised the defence of intoxication and lack of mens rea as extenuating circumstances.

In response to these arguments, learned prosecuting counsel **OLISA MACHIE ESQ** argued that it is not in doubt that the deceased had died, that the death of the deceased resulted from the unlawful acts of the 1st defendant, and that the said act of the defendant was intentional with knowledge that death or grievous bodily harm was its probable consequence. Furthermore, counsel argued that the material contradictions in the testimony of the 1st defendant was such that the court cannot

rely on his testimony that it was Arinze Epundu that killed deceased instead of him. Finally, counsel argued that the defence of intoxication or insanity cannot avail 1st defendant.

The case of the prosecution in a nut shell is that defendants in conjunction with other persons now at large formed a common intention to kill Ogochukwu Areh (deceased) and actually succeeded in killing him by 1st defendant stabbing him on the neck. Counsel for the prosecution argued that it is immaterial which of the defendants did the actual stabbing since the position of the law is that all the defendants are deemed to have done the stabbing. Counsel **CITED OKASI V. STATE (1989) 1 NSC 378 AND ASIMI V. STATE (2016) 12 NWLR (PT. 1527) 434.**

The facts of this case are that defendants in addition to some other persons now at large attended the traditional wedding ceremony of their uncle at deceased family house. Sometime later in the day about 5.30 p.m. a fracas erupted. It is reported that defendants in addition to other persons now at large were holding broken bottles, axes and jack knives threatening that somebody was going to die in the compound that day. All of a sudden, 1st defendant stabbed the deceased on the neck and he died. It is the law that common intention is incapable of positive proof. Its proof is a matter of inference from the facts and surrounding circumstances of every given case. **See NWANKWOALA & ANOR V. STATE (2006) 14 NWLR (PT. 1000) 663.**

What are the facts and circumstances of this case? Six young men attended a social function on invitation. This function started around mid-day. There was no reported incident until about 5.30 p.m. even though it is in evidence that these young men had been drinking heavily. All of a sudden there was an altercation between one of the young men and one of the hosts. Tempers flared, bottles were broken and brandished. Threats were made. In the middle of this melee, one of the young men (1st defendant) allegedly used his own broken bottle to stab on the neck and kill the deceased. Before this unfortunate incident, it is not in evidence that any of the young men agreed with, counseled, aided or abetted the 1st defendant to use his own broken bottle to stab the deceased or anybody else for that matter. There may have been a common intention to cause commotion but certainly there was no common intention to commit murder. **MOHAMMED VS STATE 1980 3-4 SC**

In the circumstance, I find and hold that there was no common intention to commit murder on the part of the defendants. Consequently, I shall consider the charge of murder against the defendants independently of each other.

The case of prosecution against the 2nd defendant is that he dragged deceased out from deceased mother's room where he was set upon by the six young men who severally assaulted him until 1st defendant allegedly fatally stabbed him. The case of the 2nd defendant in his defence is that he was not involved in the fight as he had gone out to buy soft drinks only to re-enter the compound at the time 1st defendant was fatally stabbing deceased. Now, three eye witnesses PW1, PW2 and PW3, place 2nd defendant at the scene of crime. I believe the story of prosecuting witnesses that 2nd defendant was present and participated in the commotion. I do not believe 2nd defendant's version that he was not present. Now having placed 2nd defendant at the scene, what is the extent of his involvement. In Exhibit B1, PW1's first statement to the police she said and I quote".....Obinna my husband and Ogochukwu came out to the scene". In her subsequent statements to the police, she suggested that 2nd defendant dragged out deceased from her mother's room. She maintained this position in her testimony in court. PW3 on the other hand in his first statement to the police said that "he later noticed" that one of the boys had dragged deceased out whereas in a subsequent statement and his evidence in court, he maintained that he saw 2nd defendant pulling out deceased from the mother's room. In the light of these discrepancies, I am not satisfied that anybody pulled out deceased from any room. I am satisfied that deceased heard the commotion outside and came out on his own volition and became unfortunately, fatally involved.

Having established that 2nd defendant was present and involved in the commotion that eventually lead to the death of deceased, what is the extent of his culpability to the offence as charged. The offence for which accused is standing trial is murder; the death by stabbing of Ogochukwu Areh. Even though it is in evidence that 2nd defendant was present in a commotion/fracas that eventually culminated in the stabbing death of Ogochukwu Areh, it is not in evidence that 2nd defendant struck the fatal blow or aided, abetted or counseled another person to strike the blow. In the circumstances, this court finds and holds that prosecution has not been able to prove the offence of murder against 2nd defendant beyond reasonable doubt as

required by our laws. Consequently, 2nd defendant Chukwunonso Areh is discharged and acquitted of the charge of murder.

Which leaves us with only the 1st defendant Chijioke Nwankwo? The case of the prosecution against 1st defendant is that in the evening of 26/12/11 at about 5.30p.m at 20C Oranye Street Onitsha, 1st defendant unlawfully murdered Ogochukwu Areh by stabbing him on the neck with a broken bottle. In proof of this case, prosecution called six witnesses whereas 1st defendant testified for himself without calling any witness.

Two witnesses PW1 and PW3 testified that they saw 1st defendant fatally stab deceased. They also testified that this incident happened about 5.30 pm when the day was still bright. These testimonies were not successfully discredited in cross-examination. PW2 testified that immediately after the fatal stabbing, he chased and caught 1st defendant the perpetrator of the crime. Again this testimony was not successfully discredited in cross examination. There has been some hoopla that PW2 was present in court when PW1 testified and as such his testimony should be disregarded by this court. PW2 is the nominal complainant in this case. By our criminal procedure laws, a nominal complaint is a party in the case. A party cannot be barred from being present in court when his case is being tried because he happens to also be a witness. In this circumstance, I refuse to discountenance the testimony of PW2 and will take same into consideration in arriving at a decision in this matter.

PW4, the doctor tendered two documents; the coroner's form and his post-mortem examination report on the deceased. The report (exhibit F) indicated that deceased died of bleeding from a penetrating injury consequent upon a laceration on the anterior angle of the neck. Learned defence counsel for the 1st defendant **R.I. OBUMSE** sought to cast serious doubt on the cause of death as the laceration had been sutured at the time post-mortem was conducted. The law is trite that in cases where a man was attacked with a lethal weapon and he died on the spot, cause of death can properly be inferred that the wound afflicted caused the death. Put in another form, where the cause of death is obvious, medical evidence ceases to be of any practical or legal necessity. See **EMMANUEL BEN STATE (2006) 16 NWLR (PT. 1006) 582**

Two eye witnesses testified that they saw 1st defendant stab deceased on the neck with a broken bottle and he died of the wound sustained. The law is clear that the eye witness account of the commission of any act be it crime or otherwise is the best evidence. See **IMO V. STATE (2001) 1 NWLR (PT. 694) 314**. In the light of this position of the law, assuming but not conceding that the autopsy report is unreliable which it is not (because the reason for the suturing was put in evidence) there is ample evidence as to the cause of death which is the stab wound on the neck.

PW5 the IPO put in evidence pictures of the deceased, and the picture of the murder weapon, a broken bottle. He also tendered in evidence his investigation report. A suggestion by learned defence counsel that PW5 insinuated himself into the murder investigation because of personal interest was stoutly rebuffed. PW6 another police officer put in evidence the 1st defendant's second statement to the police exhibit K, his own investigation report Exhibit N, the envelope with which the murder weapon was packaged and registered at the SCID, Exhibit O and the murder weapon itself Exhibit J. Witness explained that between the packaging /registration of exhibit J and its tendering in court, it broke and shattered into small pieces, making it essentially different from what was recovered at the scene of crime. Because of this change in character, learned defence counsel prayed the court not to admit same in evidence. Court nevertheless admitted the exhibit in that form.

The essence of tendering the murder weapon is to show that not only was murder committed but to highlight the instrument with which it was committed. However, the fact of murder can be proved without the weapon used in the commission of the offence. See **NGWUTA JSC in DR. REV. KING V. STATE (2016) LPELR 40046 (SC)**. Witness had satisfactorily explained to the court what happened to the exhibit and court admitted same in its current state. However, even if the court were to refuse its admission, offence charged could still be proved relying on **REV. KING V. STATE supra**.

In this defence, 1st defendant denied killing Ogochukwu Areh. He stated that it was Arinze Epundu that killed Ogochukwu Areh with a broken bottle when Ogochukwu Areh attacked him with a butcher's knife. He agreed that he was very drunk on the day of the incident. During cross examination witness denied

218

fighting on the day. He denied breaking bottles and stabbing deceased with it. He denied running outside but admitted hiding in a room in the compound. Defendant 1st statement to the police was admitted through him in cross examination as Exhibit D1. In that statement, 1st defendant admitted that during the commotion, almost all the boys were with broken bottles in their hands including him. He further admitted that all six of them ran away after the stabbing but that he was unfortunate to be arrested. By his own statement 1st defendant placed himself in the middle of the melee with a broken bottle in his hand. Two eye witnesses saw him stab the deceased in the neck. Exhibit G2 and G3 show the supine body of a young man with a deep wound on his neck whereas exhibit G3 show the picture of a broken bottle capable of inflecting the wound shown in exhibits G2 and G3. Finally, Exhibit F says the cause of death is bleeding from a penetrating injury caused by a laceration on the anterior angle of the neck.

Learned defence counsel has forcefully impressed on the court that when this crime was committed 1st defendant was stupendously drunk and so did not know and was not responsible for his actions. Intoxication/insanity is a valid defence in law. However for the defence to succeed, defendant must show that the intoxication was not self-induced. It is in evidence that in the course of the ceremony and even after the ceremony, 1st defendant and his cohorts were drinking heavily. If after drinking beyond his gauge none induced and unforced, defendant goes and does something stupid, he cannot turn back and blame the drink. After all, the man that brings an ant infested log of wood home has only invited the lizard to pay him a visit. Intoxication in this circumstance cannot avail defendant. See **ZAKARI AHMED V. STATE (1999) 7 NWLR (PT. 613) 641**

It has also been suggested by learned defence counsel that 1st defendant may have acted in self defence. Again for this defence to avail defendant, it must be in evidence that the defendant was attacked by the deceased, and the attack put the defendant in reasonable apprehension of death or grievous bodily harm. Nowhere is it in evidence that defendant was attacked. In fact the nearest thing to that scenario is that Arinze Epundu now at large is alleged to have been attacked by deceased with a butcher's knife. Again, this defence also fails. See **FRANK UWAGBOE V. STATE (2008) 12 NWLR (PT. 1102) 621 SC.**

Finally, it has been suggested that there was no intention by defendant to kill deceased there being no premeditation or mens rea. The law is that a man is presumed to intend the necessary consequences of his act. See **AUDU V. STATE (2003) 7 NWLR (PT. 820) 516**. When a man goes into a fight and breaks a bottle when his opponent has not broken any, it is bad enough. When the same man in using the broken bottle, aims not at the hand or the chest, but at the neck, he clearly intends to kill or cause grievous bodily harm. One does not use the same cock feather used in cleaning the ear to clean the eye. 1st defendant intended to kill, and actually succeeded in killing the deceased.

Having reviewed the evidence put forward by the prosecution and the defence proffered by 1st defendant, I am in no doubt whatsoever that prosecution has proven the guilt of 1st defendant beyond reasonable doubt. Consequently, I find 1st defendant Chijioke Nwankwo guilty of the murder of Ogochukwu Areh. Chijioke Nwankwo is sentenced to death by hanging for the murder of the said Ogochukwu Areh. May the Lord have mercy on his soul.


ARINZE AKABUA
JUDGE
24/10/17

APPEARANCES

Olisa Machie for the prosecution

R.I. Obumse with Uche Iyiagu for the 1st defendant

S.C. Udemezue for the 2nd defendant