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 MONDAY THE 31ST DAY OF JULY, 2017.

CHARGE NO. HN/2C/2011

BETWEEN:

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

VS.

1. **INNOCENT ORJI (GENERAL)**
2. **SABASTINE AMADI (SABESTINE EJIOFOR)**
3. **CASMIRE ODAKWA**
4. **OJEMBA ANYANWU**
5. **ENI KALU**
6. **NDUBUISI OKAN**
7. **IKECHUKWU CHIKWEM**
8. **EMMANUEL ORJI**
9. **CHUKWUMA KALU**
10. **CHIDIEBERE EZEKWEM**
11. **MADUABUCHI ASIKA**
12. **UCHE IDIKA IGBO**
13. **UCHENNA NIKOLAS**
14. **PETER IGBOKWE**
15. **IKECHUKWU AGHARA**
16. **AMAH ONU**
17. **CHUKWUEBUKA IKENWA**

} **DEFENDANTS**

JUDGMENT

By an information dated the 20th day of January, 2011 and filed on the same day by the State, the defendants were 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 between the 17th day of March, 2011 and 26th day of June, 2009 at Nnewi in the Nnewi Judicial Division, the defendants murdered one Feng Shenyi. The

defendants in their respective plea before the Court denied the commission of the offence. The prosecution in a bid to prove its case called on the whole three(3) witnesses in support of the charge who testified as the P.W.1, P.W.2 and P.W.3. After the evidence of the P.W.3 the prosecution closed her case. Thereafter, the defendants opened their defence. On the whole, the 1st defendant testified as the D.W.4 and closed his case. The 2nd – 16th defendants called 6 witnesses who testified as the D. W.1, D.W.2, D.W.3, D.W.5, D.W.6 and D.W.7 and closed their case. The 17th defendant testified as the D.W.8 and called no other witness.

At the conclusion of evidence, the parties filed and exchanged written addresses in compliance with the orders of the Court made on the 9th day of June, 2017. As such, on the 18th day of July, 2017 the learned counsel for the 17th defendant adopted the final written address dated the 23rd day of June, 2017 and filed on the same day as their final argument in this charge. He urged the Court to discharge and acquit the 17th defendant for being innocent of the alleged offence. The learned counsel for the 2nd – 16th respondents on his part adopted the final written address dated the 19th day of June, 2017 but was filed on the 23rd day of June, 2017 as their argument in urging the Court to hold that the prosecution has failed to prove any case against the 2nd – 16th defendants. He referred the Court to page 2 at paragraph 3.0 of the final written address of the prosecution and contended that the prosecution has conceded that it did not make out a case against the 2nd – 16th defendants and urged the Court to hold as such. As regards the 1st defendant, his learned counsel adopted the final written address dated the 26th day of June, 2017 but was filed on the 28th day of June, 2017 and the written reply address on points of law dated the 24th day of July, 2017 and filed on the same day as their argument in urging the Court to discharge and acquit the 1st defendant. For the prosecution, her learned counsel adopted the final written address dated the 7th day of July, 2017 but was filed on the 12th day of July, 2017 as his argument in this matter. He urged the Court to hold that the prosecution has sufficiently proved the murder charge beyond reasonable doubt to warrant the conviction of the 1st defendant.

In the final written address of the 17th defendant, his learned counsel formulated one issue for the determination of this Court to wit:-

> "Whether the prosecution has proved the guilt of the 17th defendant beyond reasonable doubt as required by law?"

The learned counsel for the 2nd – 16th defendants equally framed one issue for the determination of this Court to wit:-

> "Whether the prosecution has proved beyond reasonable doubt the allegation of murder made against the 2nd – 16th defendants in the information?"

In the final written address of the 1st defendant, his learned counsel framed one issue for determination as follows:-

> "Whether the prosecution has proved her case of murder against the 1st defendant beyond reasonable doubt?"

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

> "Whether the prosecution has adduced sufficient evidence to warrant the conviction of the 1st defendant in this case?"

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 culled on behalf of the parties shows clearly that the sole issue for determination variously prepared by the learned counsel for the defendants in their final written addresses are similar and related to the sole issue for determination formulated by the learned counsel for the prosecution in his final written address. Any of the sets of issue for determination framed 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 the allegation of murder made against the defendants?

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 the allegation of murder

made against the defendants? It is now settled law that 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 defendants, the P.W.1 Sylvester Unigwe testified that he knows some of the defendants particularly Innocent Orji also known as General, Sabastine Amadi (3rd defendant), Eni Kalu (6th defendant), Ndubuisi Okam (7th defendant) and the 13th defendant. It is his evidence that on the 17th day of March, 2007 he came to where Innocent Chukwuma was building a motor plant between 9am and 9.30am. As he was there, a land-rover jeep arrived and about 9 men including Sabestine Amadi, Eni Kalu, Ndubuisi Okam and Uche Idika Igbo came out from the vehicle with guns. The 3rd defendant Sabastine Amadi ordered them to remain calm and not to move. They kidnapped him and two Chinese men namely Eric Niu and Feng Shenyi and took them to a thick forest. On the 2nd night of their kidnap, they brought a phone and directed him to call Innocent Chukwuma. When he called him, they negotiated the ransom money for their release. He stayed there for 25 days with the two white men before his release on the 11th day of April, 2007 to go and collect the balance of the ransom money. They continued pleading with the 1st defendant to release the two Chinese men any time he called but he refused. Later the soldiers stormed the camp where he was held with the Chinese men and engaged the kidnappers in serious exchange of gun fire. On the 2nd day of the battle, Eric Niu Guiging ran out but Feng Shenyi was not seen up till today.

The P.W.2 Irabor Ambrose in his evidence testified that there was a petition from the complainant to the Area Commander Nnewi and his team was detailed to take over the investigation. The complainant informed them that the kidnappers were already making demand for ransom. They collected the phone number with which they were calling the complainant and extended their investigation to MTN office Asaba where the call details were released to them. They identified a phone number in the list that was communicating with the kidnappers and that led them to Aba where the house of the ring leader was located. The wife and elder sister of the ring leader were seen at home and they were arrested. It was then that they revealed to the Police that Innocent Orji the ring leader with his gang were with the two Chinese men and Sylvester Unigwe at Ebonyi in a forest in a village called Ekoli Edda, Afikpo. It is also the evidence of the P.W.2 that on the strength of this, they extended their investigation to Ebonyi State and with the use of the military and Mobile Police men they entered into that forest to arrest the hoodlums and rescue the two Chinese men and the Nigerian. In that process the 14th defendant (Peter Igbokwe) who was cooking for them in the forest was arrested in Agwu. Sabastine Amadi the 2nd defendant was arrested in Agbaja in Imo State. The statements of the defendants were taken under caution by the Police and he recorded the statements of some of them. It was found out that one of the Chinese men Feng Shenyi was killed while Niu Guiging Eric survived the onslaught. On the 28th day of May, 2009 they got information that one of the suspects they were looking for had been arrested by the Police from Okpoko Division for unlawful possession of military camouflage uniform. When he got there, he identified the 1st defendant as the person they were looking for. The 1st defendant gave information that led to the recovery of the skeleton of Feng Shenyi at a spot in the forest in Ekoli Edda, Afikpo, Ebonyi State.

The then Commissioner of Police, Anambra State directed him to take him to SARS, Awkuzu. He identified the certified true copy of the extra judicial statements of the 8th defendant (Ikechukwu Chikwem) and Uche Idika and they were admitted as Exhibits "A" and "B" respectively. The P.W.3 A. S. P. Eyetuarem Samuel who was part of the team that investigated this case while attached to SARS Awkuzu confirmed that they took over the 1st defendant with army camouflage uniform and some charms. He stated that the 1st defendant recorded his statement in his own handwriting under caution and attested by ASP Hyacinth Oziri since it was confessional. He identified the extra judicial statements of the 1st and 16th defendants and they were admitted as Exhibits "C" and "D" respectively. The P.W.3 claimed that the 1st defendant linked them to one man he called "Incredible" through his phone to direct them to where

Feng Shenyi was buried. They established contact with the said Incredible who led them to where Feng Shenyi was buried. Later they went to the grave with one Dr. Wilson a pathologist and the late Feng Shenyi was exhumed. On the exhumation, a human skull, human bones, a pink trouser and a pant with the inscription "Yetsing" were recovered and registered. When the P.W.3 was cross examined, he testified that he does not know the 2nd – 16th defendants and never gave any evidence against them. It is his evidence that he was not shown the picture or anything relating to the deceased when he was alive. He maintained that the Chinese man Feng Shenyi came to Nigeria.

It must be pointed out that the learned counsel for the defendants while cross examining the prosecution witnesses did not challenge the claim that the death of the Chinese man Feng Shenyi occurred in the forest at Ekoli Edda while being held hostage by the kidnappers. It was only in his final written address that the learned counsel for the 1st defendant challenged the claim of the prosecution that Feng Shenyi is dead. The fact that Feng Shenyi was amongst those kidnapped at Innoson Factory Nnewi on that fateful day is beyond argument. This was clearly established by the evidence of the P.W.1 who was also a victim. The P.W.1 also confirmed that when he was released, the two Chinese men were held hostage in the den of the kidnappers. The witness also stated that when the military men attacked the kidnappers in a fierce exchange of gun fire, on the second day one of the Chinese men Eric Nui Guiging escaped and ran out but Feng Shenyi has not been seen till today. The P.W.2 and P.W.3 showed that during investigation, it was discovered that Feng Shenyi died in the forest and was buried at a spot in Ekoli Edda. The learned counsel who argued that nobody like Feng Shenyi died and no call details or telephone numbers as well as the handsets used in making the calls were made available to the Court appears not to take cognisance of the evidence of the 1st defendant as the D.W.4 when he testified that he did not conspire with anybody to kidnap the deceased Feng Shenyi. In other words, the 1st defendant in his evidence admitted that Feng Shenyi is dead. 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 Feng Shenyi.

The second ingredient of the offence of murder to be proved by the prosecution is the cause of the death of Feng Shenyi. 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 as rightly submitted by the learned counsel for the prosecution.

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 Feng Shenyi were most undoubtedly beyond argument. There is evidence of the P.W.1 that the said Feng Shenyi was amongst those abducted by gun men at Innoson Factory Nnewi on the 17th day of March, 2007. The P.W.1 also testified that when he was released by the kidnappers, the two Chinese men were in their camp and when the soldiers attacked the camp of the abductors, one of the Chinese men ran out but Feng Shenyi has not been seen till today. The P.W.2 and P.W.3 testified that his grave was located and his skeleton was exhumed and autopsy was carried out. So there was autopsy. However, in as much as it is pertinent that the cause of death be established since his skeleton was discovered but the inference or circumstantial evidence is clear that he was last seen with the kidnappers who abducted him. So the deceased must have been killed by his abductors or during the cross fire with the military men. The Chinese man Eric Niu Guiging who escaped from the camp of the kidnappers and may be the medical doctor who performed the autopsy would have clarified this point if they had testified. However,

they were not called to testify on behalf of the prosecution notwithstanding that they were listed among the witnesses to be called by the prosecution. It is therefore pertinent that the cause of death of the deceased should be established considering the circumstances in which the deceased skeleton was discovered. In my opinion, the evidence of Eric Niu Giuging is essential to establish the actual cause of death of the deceased considering the facts and circumstances of this case. It is trite law that 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.

However, by the evidence before the Court, it was only the skeleton of the deceased Feng Shenyi that was discovered. There is no evidence to show that the autopsy carried out on the skeleton could not demonstrate the cause of death. The Court would not be expected to speculate on this as the medical doctor who conducted the autopsy if called as a witness would have clarified this point. 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 defendants. I have scrutinized the evidence adduced against the defendants by the P.W.1, P.W.2 and P.W.3. I am afraid that there is no direct evidence linking the defendants with the commission of the offence as rightly submitted by the learned counsel for the defendants in their final written addresses. I say so because it is too remote to conclude that by allegedly kidnapping the deceased and others, the defendants caused his death. The learned counsel for the prosecution appreciated this fact hence he relied on the extra judicial statement of the 1st defendant which he claimed is confessional statement and the circumstantial evidence of the P.W.1 – P.W.3. He then conceded that there is no evidence linking the 2nd – 16th defendants with the commission of the offence. I will now consider the so called circumstantial evidence of the P.W.1 – P.W.3 in relation with the exhibits before the Court. 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. In the Biblical story before the Jewish slavish sojourn in Egypt and evolution of the 12 tribes of Israel, 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. The discovery of the silver cup in the sack belonging to Benjamin is circumstantial evidence which is so compelling notwithstanding that he did not touch the cup. This is the danger inherent in circumstantial evidence. As such, it is necessary before drawing the inference of the guilt of the accused 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....."*

It should be borne in mind that the prosecution is relying on the extra judicial statements of the 1st, 7th, 12th and 16th defendants to prove that the defendants murdered the deceased. The prosecution as such through the P.W.2 and P.W.3 tendered the said extra judicial statements as Exhibits "C", "A", "B" and "D" respectively. The learned counsel for the prosecution in his final written address submitted that the statement of the 1st defendant which is Exhibit "C" is confessional statement and so supported their case that the 1st defendant murdered Feng Shenyi. The 1st and 16th defendants in their evidence before the Court denied making Exhibits "C" and "D" at the SARS' office. The learned counsel for the 1st defendant submitted in his final written address and written reply address on points of law that Exhibit "C" has no probative value in that it was not corroborated by any evidence adduced by the prosecution witnesses. The learned counsel for the 2nd – 16th defendants in his final written address did not challenge the said extra judicial statement of the 16th defendant notwithstanding the fact that he retracted it in his testimony before the Court. However, having admitted the statements of the 1st, 7th, 12th and 16th defendants as exhibits without objection, they become part of the case for the prosecution and I am therefore bound to consider their probative value notwithstanding the retraction by the 1st and 16th defendants in their testimonies before the Court. What is important is the weight I will attach to such confession and retraction during my fact finding mission as such a retraction does not necessarily make the confession inadmissible.

SEE: NWACHUKWU VS. THE STATE (2007) 17 NWLR (PT. 1062) 31.

EGBOGHONOME VS. THE STATE (1993) 7 NWLR (PT. 306) 383.

I have considered the extra judicial statements of the 1st, 7th, 12th and 16th defendants which are Exhibits "C", "A", "B" and "D". Exhibits "A" and "B" do not suggest that the 7th and 12th defendants have any hand in the commission of the offence for which the defendants are charged. In the circumstances, they do not enhance the case presented by the prosecution. Exhibits "C" and "D" were retracted by the 1st and 16th defendants on the ground that they did not make any statement at all to the SARS, Awkuzu. In the first place, Exhibit "C" which is the statement of the 1st defendant contains lucid details of the background of the 1st defendant. It contains also graphic description of his day-to-day activities up to the steps taken prior to his arrest and even included what happened at the camp at Ekoli Edda of which some of them had been adduced in evidence by the P.W.1. Apart from this, there was no objection raised against Exhibit "C" at the point it was tendered in evidence. The P.W.1 and P.W.3 were not really challenged under cross examination on their evidence against the 1st defendant in relation to Exhibit "C". The contents of Exhibit "C" point irresistibly to the fact that it was the 1st defendant that gave the information in the statement to the Police and its being voluntary was not called to question. It is therefore my finding that it was the 1st defendant that made Exhibit "C".

As regards the statement of the 16th defendant which is Exhibit "D"; the 16th defendant as the D.W.3 was unruffled during cross examination and stood his ground that he did not make any statement at all after being arrested. In that regard, I have painstakingly read Exhibit "D". In Exhibit "D", it was clearly stated that the 16th defendant was charged to Court in 2008 over this MASSOB issue. The 16th defendant is supposed to make his statement before being charged to Court. The fact that the 16th defendant stated in his statement that he was charged to court in 2008 points irresistibly to the fact that he did not make the statement to the Police during investigation. I must say that the witness appeared convincing in the witness box and I am satisfied that he did not make Exhibit "D". In any case, the content of Exhibit "D" will not assist the prosecution in any way as the 16th defendant did not admit the commission of the offence. Having considered the evidence of the prosecution witnesses and Exhibits "A", "B" and "D", I agree completely with the learned counsel for the prosecution as conceded in his final written address that no tangible evidence was adduced by the prosecution against the 2nd – 16th defendants suggesting the inference that they murdered the deceased Feng Shenyi. However, I will add the 17th

defendant as clearly borne out by the issue for determination formulated by the learned counsel for the prosecution. The 17th defendant was not mentioned at all during the evidence of the P.W.1 and P.W.2. It was only the P.W.3 who had shown that he is deficient of the facts concerning the 17th defendant that mentioned the 17th defendant during his evidence. Even at that, his evidence is in relation to tendering his statement which eventually was rejected for not being made voluntarily. The conclusion is therefore inescapable that the prosecution did not lead any tangible evidence linking the 2nd – 17th defendants with the murder of the deceased Feng Shenyi.

We are now left with the extra judicial statement of the 1st defendant which is Exhibit "C" and which was said to be confessional statement by the P.W.3 and the learned counsel for the prosecution. When is a statement confessional? By the provisions of section 28 of the Evidence Act, 2011 "a confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime." For a statement to constitute a confession, the maker must admit or acknowledge that he committed the offence for which he is arrested. The admission must be clear, precise and unequivocal. In other words, a confessional statement will be relevant if it establishes beyond reasonable doubt the ingredients of the offence for which the defendant is charged as well as the identity of the defendant. Can it be said that Exhibit "C" is really confessional statement? It is therefore pertinent at this juncture to reproduce the relevant portions of Exhibit "C" in order to ascertain if it is confessional statement. The relevant portion of Exhibit "C" reads:-

> *"I am Innocent Orji aka B-stone (General). ..... All the person shown to me in photographs are my strong group members. Some of them are now late, scattered and in prison yards. My gang, I am in chief of this gang operating under MASSOB. ..... We later regrouped at Edda in Afikpo South L. G. A. of Ebonyi State. ..... After the release of Chief Ogbuawa about two months and some weeks we went for the arrest of the Innoson group. It was Ejiofor who led the operation my gang went to Innoson group but missed their target but they arrested two Chinese men with one black man and brought to the camp. Then we later released the black man on payment of N10, million and he promised to bring more N10, million for the release of the two white men. Suddenly Nigerian Army attacked us at the Edda camp. Some of us*

were killed, arrested and some ran away. I escaped with the two whitemen with some of my members. After two days we got to Erei where I disguise myself by giving one of the white men my uniform and put on his own. I then handed over the two Chinese men to one Ukpai, Incredible and Miliki to take care of the white men, while I left to search for food. I left with two of my members to search for the food. The names of those who went with me were Ogbuebule, Carbros and Ishmel. As we were going towards Ohafia area, the Nigerian Army pursued us and we ran away into the bush for about three days and we later find our way out. ..... I was also informed that the Nigerian Army has rescued one of the white men. After three to four months, I asked Miliki and Incredible about the remaining white man, he told me that the remaining white man is dead due to three days rain that fell on them as cold entered into their body and that he was buried there at Ugwufe Edda in Afikpo South LGA of Ebonyi State. ..... I don't know where the dead Chinese man was buried at Ugwufe Edda. It was Incredible, bruce bunker, Papa Wamba, Francis Nome and Onyema that can know where the dead Chinese was buried as I left him with them at Erei. ..... On 17/04/09 self-Innocent Orji alias 'General' B-stone and other members of my armed robbery/kidnapping gang kidnapped two white men and a black man at Nnewi. ..... We later released one of the two Chinese men, while the other one died. It was one of our members called Incredible that killed the remaining Chinese man. I am ready to take the police to Ugwufe in Edda where the Chinese man was buried.... ."

Having painstakingly read Exhibit "C", it is clear to me that it contained two different versions of how the said Feng Shenyi met his death. The first version is that the Nigerian army released one of the Chinese men while the other one who is Feng Shenyi died as a result of cold. The 1st defendant was shown not to be amongst the people that carried out the kidnap at Nnewi although he authorized it. The second version is that the 1st defendant took part in perpetrating the kidnap at Nnewi. The gang released one of the Chinese men while the deceased Feng Shenyi was killed by one of the members of their gang called Incredible. The implication is that there is discrepancy on material point in the extra judicial statement of the 1st defendant which is Exhibit "C". However, the two versions as contained in the statement of the 1st defendant cannot

make the statement confessional in relation to the offence of murder for which the defendants are charged. I am therefore of the opinion that Exhibit "C" is not confessional statement made by the 1st defendant wherein he admitted all the ingredients of the offence of murder with which they were charged. In my view, as long as the offence of murder which the defendants are alleged to have committed is concerned, Exhibits "C" is not confessional statement made by the 1st defendant stating or suggesting the inference that he murdered Feng Shenyi.

However, Exhibit "C" demonstrated clearly that there was a kidnap by armed men on the 17th day of March, 2007 at Innoson factory Nnewi where two Chinese men and a Nigerian were kidnapped and the 1st defendant was shown to be amongst those who perpetrated the offence. In other words, the 1st defendant in Exhibit "C" confessed to having participated in the commission of a lesser offence of kidnapping while armed with guns. This is so because as at the 17th day of March, 2007 when the offence was alleged to have been committed, kidnapping while armed with guns does not carry the maximum sentence in the event of conviction. I am therefore of the opinion that Exhibit "C" is not confessional statement made by the 1st defendant wherein he admitted all the ingredients of the offence of murder with which the defendants were charged. In my view, as long as the offence of murder which the defendants are alleged to have committed is concerned, Exhibit "C" is not confessional statement made by the 1st defendant stating or suggesting the inference that he committed murder. However, the 1st defendant in Exhibit "C" confessed to having participated in the commission of a lesser offence of kidnapping while armed with guns or dangerous weapons. Accordingly, Exhibit "C" purports to be confessional statement stating or suggesting the inference that the 1st defendant participated in the commission of a lesser offence of kidnapping at Innoson factory Nnewi on the 17th day of March, 2007 were two Chinese nationals and a Nigerian were kidnapped. It follows that the prosecution has successfully proved beyond reasonable doubt if un-contradicted that there was a kidnap while armed with guns on the 17th day of March, 2007 at Innoson factory Nnewi where two Chinese men and a Nigerian were kidnapped.

I have therefore considered Exhibit "C" and the evidence of the P.W.1 – P.W.3. The evidence of the P.W.1 did not show that the 1st defendant killed the deceased Feng Shenyi. This is so because by his evidence, at the time he was released, Feng Shenyi and Eric Niu Guiging were still held hostage at the camp by their kidnappers. The witness also testified that some army men stormed the Ekoli Edda camp and engaged the kidnappers in serious exchange of gun fire and on the 2nd day of the

battle, Eric Niu Guiging ran out and Feng Shenyi was not seen till today. The evidence of the P.W.2 and P.W.3 supported the contents of Exhibit "C" which did not suggest that the 1st defendant was the person who killed Feng Shenyi. It should be borne in mind that that Exhibit "C" and the circumstantial evidence from the P.W.1, P.W.2 and P.W.3 that the 1st defendant participated during the kidnap at Innoson factory Nnewi are the evidence tendered by the prosecution in proof of the alleged offence of murder against the 1st defendant. However, for the prosecution to succeed in a charge of murder against the 1st defendant, it must prove beyond reasonable doubt that the deceased died as a result of an act by the 1st defendant, and that the act of the 1st defendant which caused the death of the deceased is one of the six circumstances in Section 271 of the Criminal Code Cap. 36 Vol. II, Revised Laws of Anambra State, 1991. The six circumstances are as follows:-

(a) if the offender intends to cause the death of the person killed, or that of some other person;

(b) if the offender intends to do to the person killed or to some other person some grievous harm;

(c) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

(d) if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;

(e) if death is caused by administering any stupefying or overpowering thing for either of the purposes last aforesaid;

(f) if death is caused by wilfully stopping the breath of any person for either of such purposes.

Where the act of the 1st defendant which allegedly caused the death of the deceased is not one these six circumstances mentioned above, the death of the deceased is not murder.

SEE: ILODIGWE VS. STATE (2012) 18 NWLR (PT. 1331) 1.

CHUKWU VS. STATE (2013) 4 NWLR (PT. 1343) 1.

KOLADE VS. STATE (2017) 8 NWLR (PT. 1566) 60.

It is glaring that the evidence of the P.W.1 – P.W.3 and Exhibit "C" did not suggest any of the above inferences. In my opinion, it is too remote to suggest that the kidnap of the deceased Feng Shenyi caused his death and also qualified to any of the said circumstances. It is therefore discernible that Exhibit "C" and the circumstantial evidence from the P.W.1, P.W.2 and P.W.3 that the 1st defendant participated during the kidnap at Innoson factory Nnewi are the evidence tendered by the prosecution in proof of the offence of kidnapping while armed against the 1st defendant. The question that is relevant to ask at this point, is whether the 1st defendant can be convicted on the basis of his confessional statement which is Exhibit "C" in view of the fact that he retracted it in his testimony in Court? The law is now firmly established as rightly submitted by the learned counsel for the 1st defendant in his final written address that where a defendant confesses to a crime in his extra judicial statement to the police but in court, he retracts from his confession, prudence and the well laid down practice is that before such a defendant is convicted on the said confessional statement, the Court looks for some evidence outside the confession which would make the confession probable.

SEE: **OMOJU VS. F. R. N. (2008) 7 NWRL (PT. 1085) 38.**

STEPHEN VS. STATE (2013) 8 NWLR (PT. 1355) 153.

In other words, before giving legal effect to a confessional statement of a defendant, I am enjoined to test it as to its truth by examining it along with other evidence to determine whether it is probable. In order to be able to do this, the appellate courts have set some guiding principles as rightly submitted by the learned counsel for the 1st defendant in his written reply address on points of law and I am implored to ask myself the following questions:-

(a) Is there anything outside the confession to show that it is true?

(b) Is it corroborated?

(c) Are the relevant statements made in it of facts true as far as they can be tested?

(d) Was the defendant one who had the opportunity of committing the offence?

(e) Is his confession possible?

(f) Is it consistent with other facts which have been ascertained and have been proved?

SEE: KABIRU VS. A. G., OGUN STATE (2009) 5 NWLR (PT. 1134) 209.

NSOFOR VS. STATE (2004) 18 NWLR (PT. 905) 292.

If the confessional statement passes the tests satisfactorily, it will be proper for me to convict based on it unless other grounds of objection exists. However, if the confessional statement fails to pass the tests, no conviction can properly be founded on it and if any is founded on it, it will invariably be overturned on appeal. As I said earlier, the evidence the prosecution tendered at the trial in respect of the point under consideration is only the confessional statement of the 1st defendant which is Exhibit "C" and the circumstantial evidence adduced by the P.W.1 – P.W.3. I have the duty to consider whether there is any evidence corroborating the confession which is Exhibit "C". However, in doing that it should be borne in mind that Exhibit "C" as I said earlier, is not confessional statement of the offence of murder for which the defendants were charged. The 1st defendant in Exhibit "C" confessed to having committed a lesser offence than the one he is alleged to have committed.

Now considering Exhibit "C" in relation to the applicable tests, there is the evidence of the P.W.1 that the 1st defendant was the leader of the kidnap gang at Ekoli Edda forest where they were held hostage to show that the confessional statement which is Exhibit "C" is true on crucial point. The circumstantial evidence of the P.W.1, P.W.2 and P.W.3 to the effect that the 1st defendant was communicating with those who kidnapped the Chinese men and the Nigerian and was demanding for ransom which was partly paid to him support the veracity of Exhibit "C". The evidence of the prosecution witnesses to the effect that Feng Shenyi died and was buried in the forest at Ekoli Edda was supported by Exhibit "C" to show that the confessional statement is true on crucial point. It was

proved that the 1st defendant had the opportunity of committing the offence. It is seen that in Exhibit "C", the 1st defendant admitted the commission of the offence of kidnapping while armed to avoid the payment of the supreme price for the murder of the deceased Feng Shenyi and thereby evincing the fact that his confession is possible. It is also seen that there are evidence of the P.W.1 – P.W.3 which corroborated Exhibit "C" to show that it is true. The relevant statements made in Exhibit "C" when juxtaposed with the evidence of the P.W.1 – P.W.3 are facts which have been shown to be true. As such, Exhibit "C" is consistent with other facts which have been ascertained and have been proved through the P.W.1 – P.W.3. The confession is direct and positive and admits the essential elements of the offence of kidnapping while armed and so amounts to admission of guilt.

Confession is the best evidence of guilt against a defendant. It is stronger than the evidence of eye witness because the evidence that is to say the confession came from the said defendant. A voluntary confession of guilt is sufficient for the conviction of a defendant and does not need collaboration. In the case of **NSOFOR VS. STATE (2004) 18 NWLR (PT. 905) 292** at page **311**, the Court held that a free and voluntary confession alone, properly taken, tendered and admitted and proved to be true is sufficient to ground conviction provided it satisfies the condition for admissibility.

SEE: QUEEN VS. OBIASA (1962) 2 SCNLR 402.

ONOCHIE VS. THE REPUBLIC (1966) SCNLR 204.

MBANG VS. STATE (2010) 7 NWLR (PT. 1194) 431.

The prosecution has proved the confessional statement of the 1st defendant which is Exhibit "C" and confirmed its content which directly linked the 1st defendant to the commission of the crime of kidnapping while armed with guns. Exhibit "C" if no doubt is created will suffice to ground a finding of guilt regardless of the fact that the 1st defendant retracted it during the trial. It should be borne in mind that the confession of commission of an offence by a defendant or the commission of an offence as admitted by a defendant can only be evidence against him.

SEE: AMALA VS. STATE (2004) 12 NWLR (PT. 888) 520.

Consequently, the confession and admission of the 1st defendant of the offence of kidnapping while armed is evidence against him alone. In my view therefore a lesser offence of kidnapping while armed with guns was made prima facie by the prosecution against the 1st defendant based on his confession which is Exhibit "C" and the circumstantial evidence of the P.W.1, P.W.2 and P.W.3 which corroborated the confessional statement. I am therefore satisfied that the prosecution failed woefully to prove this element or ingredient of the offence of murder which is that the act of the defendants killed the deceased Feng Shenyi. This has made it an academic exercise to consider the other remaining ingredients of the offence of murder. This is so because 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 (1998) 8 NWLR (PT. 562) 433.

As I said earlier, in order to sustain a conviction for murder, the prosecution must prove the death of the person the defendants are alleged to have killed, the cause of death and that it was the act of the defendants that caused the death of the deceased within the stipulated circumstances. The prosecution cannot succeed in establishing the guilt of the defendants 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.

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 defendants but made out a prima facie case of kidnapping while armed against the 1st defendant. Having all these at the back of my mind, it is now necessary for me to look at the evidence adduced by the 1st defendant to see whether he succeeded in creating reasonable doubt. In the evidence of the 1st defendant as the D.W.4, although he admitted being a member of MASSOB but he denied murdering Feng Shenyi or conspiring with anybody at all to kidnap the deceased Feng Shenyi or anybody at all. However, the P.W.1 who was a victim of the kidnap and testified that he spent 25 days in the kidnappers den at Ekoli Edda identified the 1st defendant as the leader of the gang of kidnappers. He gave a vivid account of how the 1st defendant was calling them demanding for the balance sum of the agreed ransom money. And there lies the evidence of the P.W.2 that it was the wife and elder sister of the 1st defendant that revealed to them that he was in a camp at Ekoli Edda with his gang where the Chinese men and the P.W.1 were held hostage. The evidence adduced by the prosecution's witnesses were confirmed in the 1st defendant's statement which is Exhibit "C".

I must say that it is clear that the evidence of the 1st defendant as the D.W.4 in relation to the event of the 27th day of May, 2009 leading to his being declared wanted for launching the Biafran Shadow Government are events that occurred after the 17th day of March, 2007 when it was shown that he committed the offence of kidnapping while armed. In that regard, Exhibit "F" which is the Scroll Magazine of 2009, which was tendered to substantiate the fact that they held the meeting of the Biafran Supreme Military Council of Administration and which both learned counsel for the 1st defendant and the prosecution failed to canvass further argument as directed in their final written addresses will not assist the case of the 1st defendant. Again, his claim that he reported himself to Okpoko Police Station and not that he was arrested with army camouflage uniform is neither here nor there. After all, the evidence is contrary to his statement to the Police which is Exhibit "C" where he admitted that he was arrested with army camouflage uniform and so cannot be relied upon. In the same vein, his evidence that he was told at Okpoko Police Station that it was Godwin Orji they were looking for is of no moment. I say so because the P.W.2 testified that when he came to Okpoko Police Station, he identified him as the person they were looking for in respect of the kidnapping and he admitted in Exhibit "C the commission of the offence of kidnapping while armed as well as having escaped when the army and police stormed their hideout.

It should be borne in mind that on the part of the 7th, 3rd, 16th, 14th, 2nd, 12th and 17th defendants as the D.W.1, D.W.2, D.W.3, D.W.5, D.W.6, D.W.7 and D.W.8 they denied the offence with which they were charged. Apart from this, the learned counsel for the prosecution as I said earlier, rightly conceded that there is no evidence adduced by the prosecution linking the 2nd – 17th defendants to the commission of the offence. Having considered the evidence adduced by the prosecution against the 2nd – 17th defendants and the evidence proffered on behalf of the 2nd – 17th defendants, I hold that the prosecution has not been able to prove the case against the 2nd – 17th defendants beyond reasonable doubt. In the final analysis, I find and hold that the evidence adduced by the prosecution as a whole with the confessional statement which is Exhibit "C" considered in relation to the evidence of the 1st defendant as the D.W.4 failed to prove the offence of murder against the 1st defendant beyond reasonable doubt. However, a lesser offence of kidnapping while armed with guns stood proved beyond reasonable doubt against the 1st defendant, and I so hold. The question then arose whether the 1st defendant can be convicted of a lesser offence of kidnapping in the circumstances? It is now settled law that the Court can convict a defendant of a lesser offence than the one charged.

SEE: OGU VS. QUEEN (1963) 2 SCNLR 74.

STATE VS. USMAN (2005) 1 NWLR (PT. 906) 80.

However, before a defendant can be convicted for a lesser offence, the ingredients of the lesser offence must be subsumed in the original offence charged and the circumstances the lesser offence was committed must be similar to those contained in the offence charged.

SEE: NIGERIAN AIR FORCE VS. KAMALDEEN (2007) 7 NWLR (PT. 1032) 164.

AGUGUA VS. STATE (2017) 10 NWLR (PT. 1573) 254.

In other words, for the Court to have the jurisdiction to convict for a lesser offence, it must be shown that the particulars and the fact and the circumstances of the original offence charged are the same or similar to the lesser offence. This was clearly stated by the Supreme Court in the case of **OKWUWA VS. THE STATE (1964) 1 ALL NLR 366** as follows:-

> *"The lesser offence is a combination of some of the several particulars making up one offence charged: in other words the particulars constituting the lesser offence are carved out of the particulars of the offence charged."*

In the instant case, the murder original charged allegedly resulted after the particulars constituting the lesser offence. That is to say that the ingredients of kidnapping while armed with guns were subsumed in the murder original charged and the circumstances the kidnapping while armed was committed were similar to those contained in the offence of murder originally charged. Consequently, a conviction for kidnapping while armed with guns can be substituted for the offence of murder. Having considered the evidence adduced by the prosecution and the defendants and found as indicated above, I hold that the sole issue for determination must be and is hereby resolved in terms of the findings; that is, partly in favour of the prosecution and partly against her. Accordingly, judgment is entered in the following terms:-

1. The prosecution proved a lesser offence of kidnapping while armed contrary to section 315 of the Criminal Code, Cap. 36, Vol. II, Revised Laws of Anambra State of Nigeria, 1991 beyond reasonable doubt against the 1st defendant and he is found guilty accordingly.

2. The prosecution failed to prove the charge relating to the offence of murder against the defendants beyond reasonable doubt.

Consequently, the defendants are discharged and acquitted in respect of the murder charge.

ALLOCUTUS IN RESPECT OF THE 1ST DEFENDANT

1st Defendants' counsel – Urges the court to be lenient with the 1st defendant. He is a very young man who in all intents and purposes can still be useful to the society. He says that he is a first offender who has many years ahead of him. The 1st defendant has been in custody for over seven years and has a family to take care of. He urges the Court to temper justice with mercy.

Prosecuting counsel – There is no record of any previous conviction.

COURT:- The plea under allocutus is noted and appreciated.

SENTENCE

In respect of the lesser offence of kidnapping while armed with guns, the 1st defendant **INNOCENT ORJI (GENERAL)** is sentenced to ten (10) years imprisonment without option of fine.

Note:- The ten(10) years shall be calculated from the year he went into custody, namely the 28th day of May, 2009.

IKE OGU
(JUDGE)
31/07/2017.

Parties –
The defendants are present in Court. They were produced from Prison Custody.

Appearances –
G. C. EMENIKE (ESQ.) for the prosecution.
CHRIS OKORO (ESQ.) for the 1st defendant.
C. I. MEZE (ESQ.) for the 2nd – 16th defendants.
CHINEDU UDO (ESQ.) with **C. R. AKORAH (ESQ.)** for the 17th defendant.