



IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

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SIC
MINISTRY OF JUSTICE
FALL 21 NIGER, NIGER STATE
A/11/25

APPEAL NO: CA/ABJ/CR/1340/2024
SUIT NO: NSHC/LP/2C/2020

BETWEEN

DAUDA YAKUBU APPELLANT

AND:

THE STATE RESPONDENT

APPELLANT'S BRIEF OF ARGUMENT

1.0. INTRODUCTION:

- 1.1. This is an appeal by the Appellant against the Ruling and final Judgment of the High Court of Niger State, Lapai Judicial Division, **CORAM; Hon. Justice Danladi Ahmad**, delivered on the 23rd September, 2021 and 24th of November, 2022 respectively, admitting Exhibit P3 (purported Confessional Statement of the Appellant) in evidence and convicting the Appellant on the two count offences he was charged with: **Armed Robbery contrary to section 298 of the penal code and Culpable Homicide punishable with death under section 221(a) of the Penal code law** (pages 4-5 of the Records of appeal).
- 1.2. The Ruling of the lower Court admitting the appellant's purported Confessional Statement in evidence as Exhibit P3 is at pages 87 - 99 of the Records of appeal, while the judgment of the lower Court that convicted the appellant and sentenced him to death by hanging is at pages 127 - 141 of the Records of appeal.



- 1.3. The Appellant, being dissatisfied with the Ruling and judgment of the High Court of Niger State, sitting at Lapai, has appealed to this Honourable Court upon 4 grounds of appeal dated 30th October, 2024 and filed on the 4th of November, 2024. (pages 158 - 162 of the Records of appeal).

2.0. **BRIEF STATEMENT OF FACTS:**

- 2.1. The Appellant was charged with the offences of Armed Robbery and culpable homicide punishable with life imprisonment and death respectively under sections 298 and 221 of the Penal code law. The Appellant was accused of killing one Emmanuel Sunday by slaughtering him with a knife and beheading him whilst stealing his unregistered Red Daylong motorcycle, after luring the deceased into a bush. Upon arraignment, the Appellant pleaded not guilty to the counts and the matter was set down for trial.
- 2.2. At the trial, the prosecution called three (3) witnesses, PW1 - PW3 respectively while the Accused testified on behalf of himself as DW1. Three (3) exhibits were tendered by the Prosecution, viz: **Exhibit P1**, being a Computer Certificate of Compliance; **Exhibit P2** (1-4), being 4 pictures of the purported decomposed dead body of the deceased as well as picture of the accused person with the purported stolen motorcycle; and **Exhibit P3**, the purported confessional statement of the accused person/Appellant (pages 9 - 19 and 1 - 8 of the Additional Records of Appeal). These three (3) exhibits were admitted by the Trial Court and they also formed the basis of the findings of the Trial Court in favour of the prosecution and consequent conviction of the Appellant and sentencing him to ten (10) years imprisonment and death by hanging.
- 2.3. It is worthy of note that:

- a) The nominal Complainant, one *Samuel Amos* (the deceased brother) who reported the case of missing younger brother at the Gegu Police Station, Niger State and who made extra-judicial statement to the Police (pages 7 - 8 of the Records of Appeal) that triggered the search for the deceased brother and the investigation into the subject matter of the criminal trial, was not called to testify in Court;
- b) the extra-judicial statement the Appellant made at Lapai Police Station, Niger State on the subject matter of the Charge before the lower Court, before the case file was transferred to State CID, Minna, Niger State, did not form part of the proof of evidence and was not tendered in Court, while Exhibit P3 (the purported Confessional Statement of the Appellant made at the State CID, Minna, Niger State) was admitted in evidence even though the Appellant objected to its admissibility on the ground that it was not voluntarily made; and
- c) the Investigation Police Officer (Sgt. Akapge Yaweh) attached to DCB, Lapai Divisional Police Headquarters who investigated the case subject matter of the Charge against the Appellant before the case file was transferred to State CID, Minna, Niger State, and who wrote his report of investigation (pages 13 - 14 of the Records of Appeal), was also not called to testify in Court.

3.0.

ISSUES FOR DETERMINATION:

1. **Having regards to the totality of evidence before the trial Court, whether the prosecution discharged the burden of proof placed on it to warrant the conviction of the Appellant (distilled from grounds 1, 2 and 3)**

2. Whether the lower court was right to have¹ relied solely on the confessional statement of the Appellant obtained involuntarily to convict the Appellant when the prosecution during trial within trial could not proof otherwise (distilled from Ground 4).

4.0. **LEGAL ARGUMENTS:**

4.1. **ISSUE 1**

Having regards to the totality of evidence before the trial Court, whether the prosecution discharged the burden of proof placed on it to warrant the conviction of the Appellant (distilled from grounds 1, 2 & 3)

- 4.1.1. We submit with utmost humility, my lords that the learned trial judge erred in law when it held that the Respondent has successfully proven the crime of Armed Robbery and culpable homicide punishable with death against the Appellant beyond reasonable doubt, as required by law.

See: (1) Section 135 (1) of the Evidence Act, 2011 (amended)

(2) Black's Law Dictionary, 9th Ed., by *Bryan Garner* page 1533.

- 4.1.2. My lords, this burden of proof has been given judicial flavour in plethora of cases, that where the prosecution cannot establish the guilt of an accused person beyond reasonable doubt it is said that the prosecution has not proved its case.

See: **PATRICK V. STATE [2009] LPELR-8904 CA**, where this Court held thus:

" It is trite that once there is a reasonable doubt about the guilt of the accused, the prosecution would have failed to discharge the onus of

*proof vested on it by law and the accused will be entitled to an acquittal but, where there is pointer, not rebutted by evidence on the accused then guilty of the accused cannot be shaken. The requirement of proof beyond reasonable doubt is a policy of our law which carries a heavy burden. It is not based on what we as human beings perceive justice to be, because of our human limitations. We on our own cannot know or determine the actions of others unaided by evidence and inferences, more especially where the offence charged is of a grave nature and where the punishment is the highest in our land, death sentence. Therefore the evidence leading to conviction of an accused must be clear, without any doubt, any doubt in the prosecution's case must be resolved in favour of the accused/appellant. See **UKWUNNENYI v. THE STATE (1989) 7 S.C.(PT.1)64.**"*

- 4.1.3. My lords, drawing from the above statutory as well as judicial authorities, it is our humble submission that the Respondent failed to prove the commission of the offences for which the Appellant was charged with beyond reasonable doubt. And we shall prove that anon.
- 4.1.4. It is humbly submitted that for there to be a conviction for culpable homicide punishable with death pursuant to Section 221 of the Penal Code law, three consecutive and essential ingredients of the crime must be proved beyond reasonable doubt and the prosecution is obligated to prove same in order to secure a conviction. These ingredients were enunciated by the Apex court in the case of **HARUNA V. STATE (2022)16 NWLR (PT.1855) page 1 particularly page 21, paras. A-D** where the Supreme Court held as follows:

"a) that the deceased person died;

b) that his/her death was caused by the accused person; and

c) that he/she intended to either kill the victim or cause grievous bodily harm.

The ingredients must co-existent or coeval; that is, they must be co-incident in the sense that the three ingredients must co-exist. The effect where one of the ingredients is absent, the prosecution would not have discharged its duty..."

At page 28, paras. C-E the learned jurist, Chima Centus Nweze, JSC went further to hold that the guilt of the accused person can be proved in three ways namely:

a) by Confessional statement of the accused person; or

b) by evidence of eye-witness to the crime; or

c) by circumstantial evidence.

4.1.5. My lords, the Respondent, at the lower Court, did not present any material facts before the Court by way of relevant confessional Statement; eye-witness account or circumstantial evidence to warrant judgment being given in its favour and against the Appellant.

4.1.6. It is submitted that for the trial Court to convict on the Offence of Armed Robbery contrary to S. 298(c) of the Penal Code, the Prosecution must prove the following:

(a) That there was robbery;

(b) that the accused person took part in the commission of the robbery;
and

(c) that at the time of committing the robbery, the accused person was armed with firearms or an offensive weapon.

See:

(1) *Mohammed v. State* (2025) 11 NWLR (PT. 1999) 241 @ 266 to 267, paras. G-C per Abiru JSC

(2) *Olanrewaju v. State* (2023) 13 NWLR (pt. 1901), page 305 @ 337, paras. B-D, per Saulawa JSC

(3) *Adeyemi v. State* (2013) 3 NWLR (pt. 1340), page 78 @ 97, paras D-F, per Iyizoha JCA.

4.1.7. My lords, the Respondent, again, woefully failed to establish all of these peremptory elements, or at all, at the lower Court to enable it secure a conviction for armed robbery contrary to Section 298(c), Penal Code against the Appellant. The only evidence presented by the prosecution at the trial Court in proof of the offences of armed robbery and culpable homicide against the Appellant is the evidence/testimonies of PW1, PW2 and PW3 (pages 9 - 12; 21 - 22; 73 - 74; 101 - 102; and 107 - 110 of the Records). The testimonies of PW2 and PW3, we submit, only confirmed the fact that the Appellant sold 'an unregistered red Daylong motorcycle' to PW2 and which sale was facilitated by PW3.

The testimony of PW1 (*ASP. Danladi Audu*), the second Investigation Police Officer at State CID, Minna, Niger State who received the transferred case file from Lapai Police Station, unsuccessfully sought to establish the fact that the 'unregistered red Daylong motorcycle' the Appellant sold to PW2 was purportedly stolen from one Emmanuel Sunday who was allegedly murdered by the Appellant.

4.1.8. My lords, from the totality of evidence before the lower Court, there was no established case of armed robbery, let alone proving that the Appellant participated in any robbery or committed same while armed with firearms or offensive weapon; and no such firearm or offensive weapon was produced in Court. The Appellant is only a victim of circumstance because an unregistered red Daylong motorcycle was found on a football field at Kpada Village, Lapai L.G.A, Niger State by the Police and PW2 was fingered as the owner of the motorcycle, who in turn led the Police and members of the Vigilante who arrested him, to the Appellant who sold same to him (pages 10, 107 and 109 of the Records). My lords, if any other unregistered red Daylong motorcycle were seen at any other place at Kpada Village before the Police and Vigilante got to the football field, the owner of that other motorcycle could have been the victim and the appellant would not have been involved or considered.

This is the sham Police investigation that the lower Court did not find fault with but rather relied on same to convict the Appellant for armed robbery and culpable homicide punishable with death contrary to Sections 298 and 221(a) of the Penal Code.

4.1.9. My lords, something else is also wrong with the testimony of PW1. That testimony is an inadmissible hearsay which ought not to have been relied upon by the trial Court at all.

The testimony reads:

"... My name is ASP. Danladi Audu, My force number 147338. I am attached to State CID headquarters, Minna as a detective in Anti-fraud Section presently. Yes, I know the accused person. On the 26th October, 2018 I was on duty of (SIC) Police headquarters, Minna when a

case of criminal conspiracy, culpable homicide and armed robbery were transferred from Lapai division. That on 18th October, 2018 one Emmanuel Sunday a commercial motorcyclist went out at Girinye Village of Koton Karfe L.G.A of Kogi State. While in the business, Dauda Yakubu and one Mohammed (now at large) stopped him on way...This information was narrated during the investigation..."

(underlining ours for emphasis)

(pages 73-74 of the Records of Appeal).

- 4.1.10. It is humbly submitted that PW1 (ASP. Danladi Audu) only narrated the stories he read from the transferred case file he received from Lapai Police Station, and surprisingly the Investigation Police Officer at Lapai Police Divisional Headquarters (Sgt. Akapge Yaweh) who took the Statement of the Appellant at Lapai Police Division, investigated the alleged crime and produced report of investigation (pages 13-14 of the Records) before transferring the case file to the State CID, Minna, Niger State, was not called to testify in Court.

Again, the same PW1 told the lower Court at lines 17 - 18 of his testimony of 4th February, 2021 (page 74 of the Records) that the information he furnished the Court with was narrated during investigation, surprisingly again, did not tell the trial Court who narrated same to him. And no such narrator/s was/were called to testify in Court.

- 4.1.11. It is submitted, preliminarily, that evidence of a statement made to a witness by a person who is not himself called as a witness is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the Statement. We refer your lordships to:

1) **Idi v. State (2019) 15 NWLR (pt. 1696), 448 at 471, paras. B-E SC;**

- 2) *Urteh v. State* (1992) 2 NWLR (pt. 223), 257;
- 3) *Ojo v. Gharoro* (1999) 8 NWLR (pt. 615) 374.

4.1.12. In *Bukar v. State* (2022) LPELR - 57701 (CA), PP. 35-38, paras F-B, the Court of Appeal held, per Tobi JCA as follows:

"The Respondent's Counsel had submitted that the evidence of a Police Officer who investigated a matter cannot be hearsay. While I agree with the submission of Respondent's Counsel and the decision of this Court in Paul vs C.O.P (2021) LPELR-52489, I hasten to add that this is not a blanket position of the law. I wish to state the position of the law as I know it and understand it. If the Police Officer is giving evidence of the outcome of his investigation which he is giving by way of narration, it cannot be hearsay but however, if he is restating what he was told, it will amount to hearsay. This Court in this respect held in Oladele v. State (2021) LPELR-

"The evidence of the sole prosecution witness was a summation of what was contained in the case file that was transferred to him. The appellant was arrested by other Policemen who were not called as witnesses, the exhibits were received by other Policemen who were not called to testify. The Appellant and the said exhibits were bundled and transferred to the sole prosecution witness about two weeks after the robbery. The testimony of the sole prosecution witness, which the lower Court relied upon in this regard, was a reaction of what

other Police Officers had done before the matter was transferred to State CID, Elewaran, Abeokuta, and what the victims of the crime, who were not called as witnesses stated in their extra-judicial statements, Exhibits Y2 and Y3. I iterate that the sole prosecution witness did not witness the commission of the crime and what the victims told him happened or what was done before the case was transferred to State CID, Elewaran, Abeokuta, is neither what the sole prosecution witness saw, observed nor actually did. Without a doubt, it is hearsay. It is trite law that the evidence of a Police witness on what a prospective witness told him in the Course of investigation is hearsay and inadmissible."

See also **Amukali v. The State (2021) LPELR – 55864 (CA)**

- 4.1.13. My lords, assuming without conceding that the Appellant was convicted based on the evidence of the Prosecution witnesses that stolen property (unregistered red Daylong motorcycle) was found in his possession, which is not the case here, it is humbly submitted that the Appellant gave an explanation on how he came about the unregistered red Daylong motorcycle. He said he bought it, and also mentioned the **amount he bought it for, the name and address of the person that sold it to him** (pages 112, lines 4-6; 115, lines 7-11; and 116, lines 14-15 of the Records).

The trial Court also gave credence to the above submission when the Court found in its judgment as follows:

"During cross examination, accused person told the Court that the relationship between him and Mohammed Yunusa the suspect who is at large is only friendship. ...Finally, he told the Court that the motorcycle he sold belonged to him and was purchased from one Alhaji Abu at the sum of ₦95,000.00."
(page 127, Records of Appeal).

Surprisingly my lords, this line of evidence/testimony was neither investigated nor challenged by either the Police or the Prosecution.

- 4.1.14. My lords, the presumption of the law on doctrine of recent possession as enunciated in the case of **HASSAN V. STATE (2024) LPELR-62529 (SC)** is to the effect that where the person in whose possession a stolen item was found cannot render an account of how he/she came about the item then he/she is presumed to be the thief or must have taken possession of the item knowing it to have been stolen. See **Section 167(a), Evidence Act, 2011 (as amended)**).

We respectfully submit that the Appellant during his examination in chief as well as cross-examination maintained that he told the Police officers where and who he bought his motorcycle from and the amount he bought it. (pages 112, lines 4-6; 115, lines 7-11; and 116, lines 14-15 of the Records of Appeal). He stated as follows:

"... I do not know anything concerning the death of Emmanuel Sunday. I bought the motorcycle from another person. There is a man called Alhaji Abu in Gugu who sells both new and old motorcycle. I bought mine from him. I told the police he issued me with the receipt... I bought the motorcycle from Alhaji Abu

at the rate of ₦95,000.00..." (pages 115, lines 7-11; 116, lines 14-15)

- 4.1.15. The Appellant further gave an uncontroverted evidence that the Police is with the receipt of purchase of his motorcycle (page 114, lines 14-15 of the Records).
- 4.1.16. My lords, it is obvious from the records of appeal before this court that not only that the police did not investigate the evidence of the appellant that he bought the unregistered red Daylong motorcycle from one Alhaji Abu in Gegu, they instead proceeded to his house and collected the book that contained the purchase receipts the seller issued him upon purchasing the said motorcycle, as well as carted away his household properties like Television, DVD, and generator. (pages 114, lines 4 – 11 of the Records)
- 4.1.17. My lords, apart from the fact that the Police failed woefully to investigate this important testimony of the Appellant as to how he acquired the unregistered red Daylong motorcycle, the trial Court also failed in its duty to invoke the Provisions of **Section 237(1)(a) of the Criminal Procedure Code** which empowers the trial judge to summon as a witness this Alhaji Abu in Gegu, being a material witness, from whom the Appellant said he bought his motorcycle.
- That **Section 237(1)(a) of the Criminal Procedure Code** provide as follows:

"Any Court may at any stage of any inquiry, trial or other judicial proceedings under this Criminal Procedure Code, summon any person as a witness or call as a witness any person

in attendance though not summoned as witness, and shall summon or call any such person ----

(a) If his evidence appears to the Court to be essential to the right decision of the case..."

- 4.1.18. It is humbly submitted that the said Alhaji Abu in Gegu town whom the Appellant severally mentioned as the person that sold the unregistered red Daylong motorcycle to him for ₦95,000.00, is a vital witness whose evidence would have determined the liability of the Appellant one way or the other; and whose absence in the proceedings before the lower Court was fatal to the Prosecution's case.

See: **Ochiba v. State (2011) 17 NWLR (Pt. 1277) page 663 particularly @ 696, paras. A-B SC.**

- 4.1.19. We further submit my lords, that the Appellant having given in his evidence before the lower Court information to the Police on how he acquired his motorcycle, failure of the Police to investigate same should have prompted the trial Court to activate **Section 237(1)(a) of the Criminal Procedure Code** knowing the nature and character of the Nigerian Police in the investigation of crime. No wonder the Apex Court, per **Ogunwumiju JSC**, in the case of **STATE V. ABUBAKAR (2022) 5 NWLR (PT 1824) P 511-512** held thus:

"... we are part of the Nigerian society. The Law evolves as the society evolves if not Law would cease to be fit for purpose. There is no doubt that in a situation where the police more often than not never conduct proper investigation of a crime, the duty on the court to seek for anything that links the defendant directly to the crime should be paramount...

...until the police start investigating serious crimes with death penalty as the sanction, instead of relying on 'obtaining a confessional statement from a suspect, the credibility test in my view will continue to assume significance in the probative value of a defendant's 'confessional' statement. This court has commented several times on the need for police investigation of crimes not to be limited to 'obtaining' confessional statement from a suspect and nothing more."

(underlining ours for emphasis)

- 4.1.20. It is further submitted that the prosecution did not also prove all the ingredients of the offence of culpable homicide punishable with death under **Section 298, Penal Code** against the Appellant to warrant the lower Court to convict and sentence him to death. The prosecution did not prove beyond reasonable doubt that the death of Emmanuel Sunday (the deceased) was caused by the Appellant as required by law.

See **Ochiba v. State (2011) 17 NWLR (pt. 1277)663 at 668, Ratio 1, particularly at 693, paras D-G** where the Supreme Court held, per Adekeye, J.S.C, as follows:

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

- (a) that the death of a human being took place,*
- (b) that such death was caused by the accused,*
- (c) that the act of the accused that caused the death was done with the intention of causing death or that the accused knew that death would be the probable consequence of his act.*

All these ingredients must be proved to co-exist before a conviction could be secured"

See also: **Akpa v. State (2007)2 NWLR (Pt. 1019) pg. 500**

Uwagboe v. State (2007)6 NWLR (Pt. 1031) pg. 606

- 4.1.21. My lords, the Appellant unequivocally testified before the lower court that he did not know anything concerning the death of Emmanuel Sunday (the deceased). (see page 112, lines 1 - 3 and page 115, lines 7 - 8 of the Records of Appeal).
- 4.1.22. Furthermore, the nominal complainant (*Samuel Amos*), the deceased brother, who made statement to the police (pages 7 - 8 of the Records) but was not called to testify, did not say that it was the Appellant that killed the deceased. His statement to the police on this inquiry is as follows:

"... at about 200 hrs I did not see him and he did not come back home I decided to check his room I did not see him...from there I proceeded to Emir house (SIC) to informed (SIC) him and he ask (SIC) me to go and tell the police and reported the issue at Girinya Police Station. From there I also reported to Gegu Police Station after three days when we are still searching and we went back to the Emir palace (SIC) to give us permission to go to nearby village because there is crises in our area,...later one Gimba Emmanuel that they were 2 in number (SIC) by name Samuel Audu 'M', Joshua Samuel which they saw the dead body lying down without head under Lapai Local Government Area of Niger State from there I called the police men in Girinya under Kogi State and told them I have found the dead body of my brother... On the process they brought them to

Lapai Division which they later said it was Dauda Yakubu and Mohammed Yunusa that killed my brother and took his motorcycle..." (pages 7 - 8 of the Records).

(Underlining ours for emphasis)

4.1.23. My lords, the Records of Appeal revealed that not only that the nominal Complainant (Samuel Amos) was not called to testify in court, these names the nominal complainant mentioned (Messrs. **Gimba Emmanuel, Samuel Audu and Joshua Samuel**) whom he said told him that they saw a headless dead body within Lapai Local Government Area and he then concluded that it was the deceased, were also not called to testify in Court. Again, the people the nominal Complainant classified as "**they**" who later said it was the Appellant and one Mohammed Yunusa that killed the deceased and took his motorcycle (page 8, lines 12-15 of the Records), were also not called to testify in court. In other words, there was no eye witness evidence or circumstantial evidence linking the Appellant to the death of the deceased.

4.1.24. My lords, the question that is seriously begging for answer is:

Why would a person who reported a serious matter as grave as culpable homicide punishable with death to the police thereafter stay away from Court, together with all the people he alleged confirmed his story, thus not present to substantiate his allegation against the Appellant?

4.1.25. It is humbly submitted that the nominal Complainant (**Samuel Amos**) and messrs. **Gimba Emmanuel, Samuel Audu, Joshua Samuel** and "**they who later said it was Dauda Yakubu and Mohammed Yunusa that killed...**" are all vital and material witnesses in this case whose evidence would have assisted the lower Court in arriving at a just determination of the entire case;

and failure of the Prosecution to call them is fatal to the Prosecution's case. Moreso that the Appellant denied committing the offence.

See (1) **Akono v. The Nigerian Army (2000)14 NWLR (pt. 687) 318 @ 331, paras F-G.**

(2) **The State v. Nnolim & anor (1994)5 NWLR (pt. 345) pg. 394 @ 406, paras C-D.**

(3) **Ikhuobase v. The State (2016) LPELR-45 687 (CA) per C.N. Uwa JCA, pp. 11-18, paras. C-C.**

4.1.26. Furthermore, the evidence of PW2 and PW3 did not directly link the Appellant to the death of the deceased. The Prosecution's futile attempt to indirectly or circumstantially link the Appellant to the death of the deceased by alleging that the unregistered red Daylong Motorcycle which the Appellant sold to PW2 belonged to the deceased, failed woefully in the face of the unchallenged and uncontroverted evidence of the Appellant which disclosed who sold the said motorcycle to him, where he bought it and how much he bought it. See **Section 167(a), Evidence Act, 2011 (as amended).**

4.1.27. The Prosecution's other attempt to link the Appellant to the death of the deceased through the evidence and testimony of PW1, also was futile; reason being that the entire evidence/testimony of the PW1 was an inadmissible hearsay. We re-iterate our earlier submissions in paras. 4.1.9; 4.1.10; 4.1.11 and 4.1.12 above.

4.1.28. My lords, the only evidence the lower Court relied on to convict the Appellant on offences of culpable homicide punishable with death under **Section 221(a) of the Penal Code**, and armed robbery contrary to **Section 298 of the Penal Code** is the purported Confessional Statement of the

Appellant which the lower Court admitted in evidence as Exhibit P3 (pages 1- 8 of the additional Records) and held:

"Now, from the combination or aggregate of these pieces of evidence especially confessional statement by the accused person, whether it could be denied that the accused person wasn't culpable and capable of committing both offences of armed robbery and culpable homicide?

These pieces of evidence were never indicating (SIC) that the accused person while along with one Mohammed Yunusa lured the deceased into a bush, where they killed him and snatch (SIC) his motorcycle in order to have money for themselves. The accessed only attempted to resile or retract (sic) his confessional statement which was already late in the day."

(pages 137-138 of the Records)

4.1.29. My lords, this Exhibit P3 (purported Confessional Statements of the Appellant made on 26/10/2018; 29/10/2018 and 1/11/2018) which the lower Court considered sacrosanct and heavily relied upon to convict the Appellant, is as unreliable as it is also self-contradictory on every material account as follows:

- (a) From the purported Confessional Statement (Exhibit P3) that was purportedly made by the Appellant on the 26/10/2018, the account of the state of affairs that preceded the death of the deceased (Emmanuel Sunday) (page 1, lines 18-30 and page 2, line 1 of the additional Records) is different from the account of the state of affairs that preceded the death of the same deceased (Emmanuel Sunday) contained in another version of the

purported Confessional Statement purportedly made by the same Appellant on the 1/11/2018 (page 7, lines 12-26 of the additional Records) which also formed part of Exhibit P3.

- (b) From the purported Confessional Statement (Exhibit P3) that was purportedly made by the appellant on the 26/10/2018, the account of how the deceased was stabbed and the events that preceded it (Page 2, lines 2-22 of the additional Records) contradicted the narration of the event contained in another version of the purported Confessional Statement purportedly made by the same appellant on the 1/11/2018 (page 8, lines 2-15 of the additional Records) which also formed part of Exhibit P3.
- (c) Again, the purported Confessional Statement (Exhibit P3) that was purportedly made by the appellant on the 26/10/2018 credited the appellant as confessing to haven sold the deceased motorcycle for ₦50,000.00 (Fifty Thousand Naira) (page 3, lines 16-19 of the additional Records), which is different from the narration of the same event contained in another version of the purported Confessional Statement (Exhibit P3) purportedly made by the same appellant on 29/10/2018 (page 5, lines 26-30, page 6, lines 1-6 in the additional Records) placing the sale at ₦120,000.00 (One Hundred and Twenty Thousand Naira).
- (d) In the purported Confessional Statement (Exhibit P3) that was purportedly made by the appellant on the 26/10/2018, the appellant was credited as confessing to haven disclosed to his

friend, **Samaila** (who connected PW3 as a prospective buyer) the truth about how he got the Motorcycle that he placed for sale (page 3, lines 8-10 of additional Records), but that statement was surprisingly retracted in another version of the same purported Confessional Statement (Exhibit P3) purportedly made by the same appellant on the 29/10/2018 (page 5, lines 23-30 of the additional Records).

- 4.1.30. My lords, it is humbly submitted that the lower Court cannot pick and choose which of the contradicting versions of the purported Confessional Statement (Exhibit P3) to accept.

See **Zakirai v. Muhammed (2017) LPELR – 42349, PP. 70-71, paras. F-A** where the Supreme Court held, per Augie, JSC, as follows:

“The law insists that where there are material contradictions in the evidence adduced by a party, the Court is enjoined to reject the entire evidence as it cannot pick and choose which of the conflicting version to follow - Kayili v. Yilbuk & Ors (2015) LPELR – 24323 (SC)”

- 4.1.31. Furthermore, it is humbly submitted that the version of Exhibit P3 (the version that was purportedly made on the 1/11/2018) which the lower Court accepted as the appellant’s Confessional Statement of how and where the deceased was stabbed and killed (pages 137-138, lines 29-37 of the Records) and convicted the appellant on the basis of that alone, is highly incredible and humanly impossible.

That version reads:

“...we met with Emmanuel Sunday on his motorcycle. We stopped him and asked him to take us to Kagbodu road to go and do timber work. On arrival there, we asked him to go inside the bush with us to get the payment from our boss who is already inside the bush. Base (sic) on the trust that we are from the same village he followed us to get his money. He parked the bike under a mango tree. As we were walking into the bush at a hill, Muhammed Yunusa was leading followed by Emmanuel Sunday and I was at the back. When we reached a certain destination, I grabbed him from behind and Muhammed Yunusa used the knife and stabbed him at the back of his neck and I fell him down...”

(underlining ours for emphasis)

(page 17, lines 10 -19 and page 18, lines 1-2 of the Records; page 7, lines 24-30, and page 8, lines 1-15 of the additional Records of Appeal)

- 4.1.32. My lords, it is highly improbable and practically impossible for anyone (in the instant case, the appellant) to grab the deceased from behind, as was narrated above, and the person in front (in the instant case, Mohammed Yunusa) stabbing the deceased **at the back of his neck**, without first injuring/slicing the throat, face or chest of the appellant; depending on his height. Except is magic!
- 4.1.33. It is humbly further submitted that Exhibit P3 (pages 1-8 of the additional Records) is completely inconsistent with the appellant's testimony before the lower Court (pages 112-116 of the Records of Appeal), and the appellant unequivocally stated that Exhibit P3 was not voluntarily made by him.

The appellant said in his testimony (page 113, lines 15-18 of the Records) as follows:

"... At the State CID, they asked me to come and explain what happened? It was in the process of explaining that whatever I said they said it's a lie. In the process they started beating me. When the beating was too much I was forced to admit certain things that were not the truth..."

4.1.34. My lords, not only that the appellant denied the voluntariness of Exhibit P3, he further stated in his testimony before the lower Court that his Statement was taken at Lapai Police Station (page 116, lines 5-6, Records), that is, before the case file was transferred to State CID, Minna where Exhibit P3 emanated from. My lords, that Statement of the appellant which he said he made at Lapai Police station, was surprisingly not tendered in Court.

4.1.35. It is therefore humbly submitted that that Statement of the appellant that was taken at Lapai Police Station which was not produced, would if produced, be unfavourable to the case of the Prosecution. We urge your lordships to so hold.

We refer your lordships to:

- (1) **Section 167(d), Evidence Act, 2011 (as amended)**
- (2) **Juji v. State (2025) 8 NWLR (pt. 1993) 535 at 565, paras. B-E and 566, paras. G-H (SC)**
- (3) **Igenti v. State (2025) 7 NWLR (pt. 1990) 453 a 470 – 480, paras B-B.**

4.1.36. My lords, something else is also wrong with that purported Confessional Statement of the appellant (Exhibit P3). That Statement was admittedly made in Hausa language but translated to English language by the PW1, and without producing the Hausa version in court.

The PW1 testified as follows:

"The accused made the Statement in Hausa and I was recording in English".

(page 81, lines 9-10 of the Records of Appeal).

In **Ugwu v. State (2020) 7 NWLR (pt. 1723) page 259 at 288 - 289, paras. E - C**, this Court held, per Iyizoba, J.C.A, as follows:

"...A confessional Statement must be first recorded in the language in which it was made by an accused person before translating it into English as that would ensure the accuracy of the accused person's Statement. In order to ensure the correctness and accuracy of a Statement made by an accused person and to protect his right to fair hearing guaranteed by Section 36(6) of the 1999 Constitution (as amended), where he volunteers a Statement in a language other than English language, which is the language of the Court, the Statement in the original language in which it was recorded as well as its translation into English language must be tendered in Court. It affords the accused person the opportunity to challenge in Court, if the need arises, his Statement as originally recorded or its translation. It enables the Court to be satisfied that it is his true Statement".

In **Usman v. State (2022)12 NWLR (pt. 1843) page 181 @ 202-203, paras, H - G**, the Supreme Court held, per Augie, J.S.C, as follows:

"A Statement recorded in Nigerian language cannot stand alone. English is the language of the Court and the law insists that a Statement made in any language other than English must be translated to English language before it is admitted in evidence against the accused person. English version cannot stand alone. The translated version cannot be admitted into evidence on its own stream. The Statements in a Nigerian language and the English version go hand in hand together. One cannot be admitted in evidence without the other. Therefore, it is not possible for the Court to convict the accused based on the English version only."

(underlining ours for emphasis)

See also: **Olanikpeku v. State (2016) LPELR - 40440 (SC)**

Asuquo v. State (2016) LPELR - 4097 (SC)

4.1.38. My lords, it is humbly submitted that the finding of the lower Court that the accused person is not entirely an illiterate because he has passed through Secondary School and neither was he misled with the recording of his Statement by PW1 nor was any miscarriage of justice occasioned in that regard (page 139, lines 9-13 of the Records of Appeal) is, with respect, unfounded for the following reasons:

- (a) Throughout the duration of the Criminal trial before the lower Court, the appellant only spoke and understood Hausa language which necessitated the engagement of an interpreter, **Shehu Bashir**, who interpreted the entire proceedings to the appellant from English language to Hausa language.

(b) The PW1 recorded the appellant's extra-judicial Statement because the appellant could neither read nor write.

(c) The Appellant could not append any signature on the recorded Statement but could only thumbprint because he is illiterate.

4.1.39. The learned Justice of the trial Court descended into the arena when he *Su moto* decided and held that the Appellant is not entirely an illiterate because he passed through Secondary School.

It is submitted that in every matter brought before a Court for adjudication, there is need for the Court to be independent and impartial in the conduct of trial, the principle was enunciated by the Apex Court in **Muhammed v. State (2016)6 NWLR (Pt 1771) P 153 paras A-E** where it was held thus:

"Not being a witness, a trial judge whose court shall be seen to be independent and impartial, on the principle of Nemo judex in causa sua. He is enjoined not to be a witness for either the defence or the prosecution. In the course of proceedings the learned trial Judge must, throughout, presume the innocence of the accused person and must only convict him of the alleged offence upon proof beyond reasonable doubt of his guilt or involvement in the alleged offence. In the light of constitutional or statutory injunctions the learned trial judge, in the instant case, could not play 'Sherlock Homes' and engage himself to forensically analyze, examine and compare thumbprints on exhibit..."

4.1.40. Against the background of the foregoing, it is humbly submitted that the learned trial judge erred in law when he admitted only the English version of

the appellant's purported confessional Statement (Exhibit P3) in evidence and convicted the appellant solely on that.

4.1.41. It is our further submission, having regard to the foregoing arguments, that the Prosecution has not discharged the burden of proving beyond reasonable doubt that the appellant was the one who killed and slaughtered the deceased and stole his unregistered red Daylong motorcycle.

We rely on all our arguments canvassed above and humbly urge your lordships to resolve our issue N0. 1 in the negative and in favour of the appellant; and reverse the judgment of the lower Court.

4.2. **ISSUE N0: 2:**

Whether the lower Court was right to have relied solely on the confessional statement of the Appellant obtained involuntarily to convict the Appellant when the prosecution, during trial within trial, could not proof the voluntariness of same (Distilled from Ground 4)

4.2.1. My lords, the law is trite on when a confessional statement is irrelevant and also the tests for determining the veracity of confessional statement. These guidelines and principles were enunciated by the Apex Court in the case of **State v. Abubakar (2022) 5 NWLR (Pt. 1824) Pp 499-500, para. G - A**, where it was held thus:

"By Section 29(2) of the Evidence Act, 2011, a confession is irrelevant in criminal proceedings if the making of the confessional statement has been caused by inducement, threat, promise or torture. In the instant case, the admission of the confessional statement was improper and having been admitted ought to be expunged. The prosecution failed to dislodge the

doubt the defence implanted in the mind of the court as to the voluntariness of exhibits "D" and "D1". The respondent testified that the extra-judicial confessional statement was obtained involuntarily through oppression and threats. The assertions were not debunked by any cross-examination and were unchallenged. (Philip v. State(2019) 13 NWLR (Pt. 1690) 509 referred to)

Per ABOKI, J.S.C. at page 501, paras B-D

"The alleged confessional statements cannot stand the test of admissibility; being unreliable under this circumstance. The respondent thumb-printed the statements given to him so that the torture and beating would stop; human instinct would always find a way to preserve its existence in the glaring face of death. The learned trial judge in the instant case still relied on the alleged confessional statements despite the fact that the respondent testified and accused the police of tying him up and beating him severely in order to make him put his thumb impression on some written paper."

"In ascertaining the truthfulness or otherwise of a confessional statement, the court is enjoined to seek any other evidence of circumstances which makes it possible the confession is true. An accused person can be convicted solely on his confessional statement. Nevertheless, before a confessional statement can be relied on by the court to convict an accused person, the confession therein must be consistent with other

ascertained facts which had been proved. A trial court can convict an offender merely on his confessional statement provided such confession is direct and positive on the offence the accused is charged. There are six tests which must be satisfied, before such confessional statement can be solely relied upon to convict an accused. The test are:

- a) Whether there is anything outside the statement to show that it is true;*
- b) whether it is corroborated;*
- c) whether the statements made in it is true as far as they can be tested;*
- d) whether the prisoner was one who had the opportunity of committing the offence;*
- e) whether his confession is possible;*
- f) whether it is consistent with other facts which have been ascertained and which have been prove.*

(A) On whether there is anything outside the Statement to show that it is true:

4.2.2. It is humbly submitted that the learned judge of the trial court having regard to the fact that there was no sufficient evidence presented by the prosecution linking/placing the Appellant at the scene of the crime, ought to have discharged and acquitted the Appellant. My lords, from the record Appeal, the testimony of PW1 is to the effect that it was the Appellant that led them to the scene of the crime where the deceased decomposed body was purportedly buried (pages 101 - 102, Record of Appeal). Contrast the

testimony of PW1 with the written statement of the nominal Complainant (*Sunday Amos*) (who was not called to testify) but frontloaded as proof of evidence (pages 7-8, Record of Appeal), it was stated:

"We went back to the Emir Palace to give us permission to go to nearby village because there is crisis in our own area, he told us to met (SIC) the police men but on our own side decided to spread ourselves. Later one Gimba Emmanuel that there 2(SIC) in number by name Samuel Audu 'M' Joshua Samuel which they saw (SIC) the dead body lying down without head under Lapai Local Government Area of Niger State from there I called the police men in Girinya under Kogi State and told them I have found the dead body of my brother and they called the O/C of Muye Police Station which they all come (SIC) to the scene saw the deceased dead body and took photograph of the dead body which they ask us to buried (SIC) him there which we left the place in search of his motorcycle at Kpada Village..."

(underlining ours for emphasis)

- 4.2.3. My lords, it is evidence from the above that it was the relative of the deceased that discovered the deceased body while they went in search of him as against the testimony of PW1 (page 101-103 Record of Appeal) that it was the Appellant who took them to the scene of the crime. The above statement by the deceased brother was corroborated by the statement of **Sgt. Akapge Yaweh** (pages 13 - 14 of the Record of Appeal), the Police officer who investigated the criminal Complaint at the Police Divisional Headquarters, Lapai, Niger State (who was also not called to testify). It was this same officer, my lords, that transferred the case file to the State CID, Minna.

Again, there is no evidence to show that the unregistered red Daylong motorcycle that was sold to the PW2 by the appellant belonged to the deceased. This is because the testimony of the appellant that he bought the said motorcycle from one Alhaji Abu in Gegu town and for ₦95,000.00 (Ninety Five Thousand Naira) remained unchallenged and unassailable. And also, there was no murder weapon recovered from the appellant neither was there any established case of robbery anywhere.

- 4.2.4. My lords, it is for the above reasons that we submit that there is nothing outside the purported Confessional Statement (Exhibit P3) to show that it is true.

(B) On whether the Statement is corroborated:

- 4.2.5. It is submitted that nothing corroborated Exhibit P3 that was admitted and considered sacrosanct by the lower Court.

My lords, the testimony of the appellant before the lower Court was that he was taken into a small room by PW1 who also invited two other Policemen who tortured him with sticks, slaps and even with pistol in an attempt to extract a favourable Statement from the appellant. They slapped and tortured him so much so that his ears began to bleed. They even threatened to kill him if he did not admit killing the deceased. (pages 82 and 113, lines 15-18, Records of Appeal). Surprisingly, this testimony of the Appellant was not debunked during cross-examination.

- 4.2.6. The Prosecution who claimed, through PW1, that the appellant's purported confessional Statement (Exhibit P3) was voluntarily made in the presence of five other members of the Police investigating team (pages 80-82, Records of

Appeal), failed to call any of the alleged team members to testify in Court to corroborate the alleged voluntariness of the said Confessional Statement.

Furthermore, the Statement of the nominal Complainant (*Samuel Amos*) (pages 7-8 of the Records of Appeal) did not link the appellant to the murder of the deceased.

(C) On whether the statements made in it is true as far as they can be tested, and whether the confession is possible:

4.2.7. My lords, it is submitted that no version of Exhibit P3, as far as can be tested, is true. The Statement that the appellant held the deceased from behind and one Muhammed Yunusa stabbed the deceased at the back of his neck and without injuring the appellant himself, is incredible, impossible, improbable and cannot be true. Secondly, the various versions of the purported confessional Statement made on 26/10/2018; 29/10/2018; and 1/11/2018 contradicted themselves on every material account; and the lower Court cannot pick and choose which version to believe and which version to disbelieve.

See: *Zakirai v. Muhammad (supra)*.

4.2.8. My lords, from the testimony of the appellant, there is no gainsaying the fact that he did not have the opportunity to commit the offences he was charged with and Exhibit P3 is not consistent with any facts which was ascertained and proved before the lower Court. The testimonies of PW2 and PW3 did not link the appellant to the offences charged. And the evidence of PW1 (the second IPO who took over a transferred case file from Lapai Police Station) was an inadmissible hearsay.

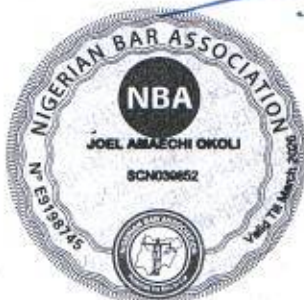
4.2.9. My lords, it is for the above reasons that we humbly urge your lordships to also resolve issue N0. 2 for determination in the negative and in favour of the appellant and against the Respondent; and consequently quash the judgment of the lower Court in the interest of justice.

5.0. **CONCLUSION:**

Having regard to the foregoing submissions, we humbly urge your lordships to allow this Appeal and grant the prayers as contained in the Notice of Appeal for the reasons that:

- (i) The Prosecution did not prove the offences of Armed Robbery and culpable homicide contrary to **Sections 298 and 221(a)** of the Penal Code law beyond reasonable doubt against the appellant to warrant his conviction by the lower Court.
- (ii) Exhibit P3 (purported Confessional Statement of the appellant) which the lower Court considered sacrosanct and heavily relied upon to convict the appellant is highly unreliable and irrelevant, same having been obtained under duress contrary to **Section 29, Evidence Act, 2011 (as amended)**; and therefore inadmissible.

Dated this 23rd day of October, 2025.



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