IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN CRIMINAL DIVISION
HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON. JUSTICE R. IRELE-IFIJEH - JUDGE,
ON FRIDAY THE 4TH DAY OF MAY, 2018

BETWEEN: **CHARGE NO. B/CD/199C/2014**

THE STATE é COMPLAINANT

VS.

CHINONYE LUCKY é ACCUSED PERSON

J U D G M E N T

The Accused person is standing trial on the following count:

STATEMENT OF OFFENCE 1

Murder: Punishable under Section 319 of the Criminal Code Cap. 48, Vol. II Laws of the Defunct Bendel State of Nigeria 1976, now applicable in Edo State.

PARTICULARS OF OFFENCE 1

CHINONYE LUCKY on or about the 21st day of March, 2010 at Ukobi Street, Sapele Road in the Benin Judicial Division did murder one OSAMUDIAMEN LUCKY (m) by giving him poisonous chemical to drink.

Plea was taken on the 15/10/2015 wherein the Accused pleaded not guilty on the one count charge.

In proof of its case, Prosecution called 1 witness and tendered 3 Exhibits. The Exhibits are:-

Exhibit ñAò ï Statement of the Accused person dated 30/3/12.

Exhibit ñA1ò ï Attestation form dated 30/3/12.

Exhibit ñBò ï Statement dated 24/3/12.

At the close of the Prosecutionôs case, learned defence counsel entered a No case submission on behalf of the Accused which led to a Ruling delivered on the 24/2/17, wherein the Accused person was called upon to enter her defence.

The Accused opened her defence on Oath on the 10/11/17 and was cross examined. She called no witness.

Final written addresses were filed, exchanged and adopted by learned defence and prosecuting counsel on the 13/4/18, hence this Judgment today.

Briefly, the facts of the case as narrated by the Prosecution in the record book is that on the 21/3/2012 one Osamudiame Lucky (deceased) was murdered at Iguelaba Village. The murder was alleged to have been committed by the Accused person who was the step mother to the deceased, with the use of poison. P.W. 1 is the Investigating Police Officer from Zone 5 Police Head Quarters, Benin. He was formerly attached to the homicide section, State C. I. D. Benin. He obtained the statement of the Accused which the Court admitted and marked as Exhibit óAô, he also tendered an attestation form which was marked as Exhibit óA1ô.

Learned counsel to the Accused person M.I. Oriazuwan Esq. whose written address was signed by G.A. Eghobamien raised an issue for determination which is:

> ñwhether the evidence adduced by the Prosecution irresistibly leads to the guilt of the Accused person and/or whether or not the Prosecution proved the case against the Appellant beyond reasonable doubt.ò

He submitted that the onus to prove the guilt of the Accused is on the Prosecution, that the Prosecution failed to prove itôs case. He highlighted the ingredients of murder that Prosecution must prove to secure the conviction of an Accused person.

He referred to **OBIDIKE v. STATE (2014) ALL FWLR PT. 733 PG. 1899 R. 19**

He submitted further that the, Prosecution failed to lead evidence linking the cause of the death of the deceased to the Accused person.

He referred to **ADEKUNLE v. STATE (2003) 3 ACLR PAGE 561 amongst others**.

That there was no medical evidence (autopsy report) to show the cause of death of the deceased, hence the allegation that the Accused caused the death of the deceased is mere suspicion.

He referred to **AHMED v. STATE (2003) ACLR PG. 145 @ 157 LINE 25**.

He finally submitted that there was no corroboration of the extra-judicial statement of the Accused hence the Court should apply great caution in receiving it.

He referred to **AYOBAMI v. STATE (2017) ALL FWLR PT. 886 PG. 1964 R. 5**.

The Prosecuting Counsel Orobosa Okunbor Esq., Principal State Counsel in his final written address raised an issue for determination, which is:

> ñwhether owing to the totality of evidence led by the Prosecution, the Prosecution has proved the offence of murder against the Accused person beyond reasonable doubt.ò

He submitted that proof beyond reasonable doubt does not amount to proof beyond every shadow of doubt.

He referred to **ONOFOWAKAN v. THE STATE (1987) SCJN PG. 328 amongst others**.

He submitted further that, all that is required of the Prosecution in discharging the burden of proof in a criminal trial, is to establish the ingredients of the offence.

He argued that proving the ingredients of the offence can either be done by:

(1) The confessional statement of the Accused person.

(2) Through circumstantial evidence.

(3) Evidence of an eye witness.

He referred to **OSENI v. THE STATE (2012) VOL. 208 LRCN 151 at 158 RATIO 9, amongst others**.

He submitted further that the Court can safely convict on the Accused personôs confessional statement alone, once it has been duly admitted in evidence and forms part of the Prosecutionôs case.

He referred to **NWOCHA v. THE STATE (2012) LPELR – 9223 RATIO 3 amongst others**.

He submitted that the denial or retraction of a confessional statement by the Accused person as in this case, does not make it inadmissible, that the law provides that the Court is to subject a confessional statement to the six way test, and if the Court is satisfied that the said statement passes those test, then it should be duly admitted by the Court and the Court can convict the Accused based on the confessional statement. He highlighted the six way test and referred to

ONYENYE v. THE STATE (2012) VOL. 212 LRCN 107 at 113 – 114 amongst others.

He finally submitted that from the totality of evidence the Accused person had the intention to kill the deceased. He urged the Court to convict the Accused person as charged as the Prosecution has proved itôs case beyond reasonable doubt.

In criminal cases, the law is well settled that the onus is on the Prosecution to prove the guilt of the Accused beyond reasonable doubt.

See **ADEBOYE v. STATE (2011) LPELR – CA/IL/C 62A/2010**.

Section 135(1) of the Evidence Act 2011 imposes an obligation on the Prosecution to prove the guilt of the Accused beyond reasonable doubt.

The guilt of the Accused can be proved either by direct oral evidence, circumstantial evidence or through the confessional statement of the Accused if it is direct, positive and satisfactorily proved.

See **OBASI ONYENYE v. STATE (2012) LPELR 7866 SC**.

See also **AME v. THE STATE (1978) 6 and 7 SC. PG. 27**.

To prove that the Accused murdered the deceased by administering poisonous substance, the ingredients of the offence of murder must be established. Prosecution must prove beyond reasonable doubt the following:

(a) That the deceased died.

(b) That the deceased died as a result of the voluntary act of the Accused by introducing poisonous substance into the mouth of the child (the deceased).
See **ONONUJU vs. THE STATE (1976) 5 SC. PG. 1**

(c) That there was intent to kill the deceased.
See **JIMMY v. THE STATE (2009) LPELR – CA/C/72 2008**.

The issues the Court is to determine are:

Whether or not the Prosecution was able to prove all the ingredients of the offence of murder beyond reasonable doubt.

Secondly, if the cause of death was traceable to the act of the Accused, whether this act was intentional, meaning whether the Accused had the mens rea to kill the deceased.

To establish whether it was the act of the Accused that led to or caused the death of the deceased there must be cogent evidence on the part of the Prosecution linking the cause of death to the act of the Accused. In culpable homicide, all the

ingredients of the offence must be proved together, failure to prove any of them means failure of the charge.

See **ISAAC OGUNNIYI v. THE STATE (2012) LPELR – 8567 CA**.

I shall examine the case of the Prosecution alongside the evidence of the Accused person.

P.W.1 (IPO) testified that he recorded Exhibit A from the Accused and that all the investigations he carried out were stated in his investigation report, he stated that the murder incident happened on the 21/3/12.

But under cross-examination his investigation report (Exhibit A1) revealed that, the incident happened on the 23/3/12. He explained that it was a slip which means a mistake on his part, that the incident happened on the 21st of March 2012 as stated in other documents.

I wish to state that these are minor discrepancies that cannot affect the root of the case or defeat the case.

See **THEOPHILUS v. THE STATE (1996) LPELR – 3236 SC P. 27 PARA E – G**.

Where per Iguh, J.S.C. stated thus:

> ñThe point cannot be over-emphasized that it is not every trifling inconsistency in the evidence of the Prosecution witness that is fatal to its case.ò

P.W.1 also stated in his evidence that he did not visit the scene of crime due to logistic reasons, that he took statements from the witnesses transferred with the case file from Iguelaba Police Station to State C.I.D. Benin, which includes the father of the deceased, Mr. Lucky Mathaias.

He testified under cross-examination that the deceasedôs father informed him, while recording his statement that he had poison for grass cutter in the house, implying that that may have been the poisonous substance the Accused used. Still

under cross-examination when he was confronted with the said statement, he admitted that the deceasedôs father never made statement to the fact that he had grass cutter poison at home. The father of the deceased never testified before this Court, neither was his statement to the Police tendered as Exhibit in Court.

For determination are:

(1) Did the said Osamudiamen Lucky die?

(2) From the totality of the evidence adduced by the Prosecution can it be said that the Accused person killed the deceased?

(3) Did the Accused person by her actions intend to kill the deceased?

The Court will now address these issues.

There was no direct oral evidence of persons who witnessed the alleged poisoning of the said Osamudiamen Lucky which led to his death. The Court will therefore base itôs findings by inferring from circumstantial evidence if it was the Accused that murdered the deceased, and also from the voluntary confessional statements of the Accused if they are direct and positive.

This can only be after the Prosecution has proved itôs case beyond reasonable doubt.

It is trite that the Court can convict the Accused based on the evidence of a single witness provided the evidence of such witness is relevant in proof of the case.

See: **IGBO v. THE STATE (1975) 9 to 11 SC PG. 80**.

P.W.1 stated in evidence that he did not visit the scene of crime due to logistic reasons, he also did not see the corpse of the child (deceased) because of logistic reasons which means he did not conduct any investigation but relied on what he was told. His evidence with regards to the charge therefore amounts to hearsay. The position of the law is that hearsay evidence is inadmissible.

See **SECTION 38 OF THE EVIDENCE ACT, 2011**.

It is settled law that the Prosecution is bound to call vital witness or witnesses whose evidence will help to settle the vital issues for determination one way or the other. A vital witness is one who knows something significant about the case and therefore ought to be called by the Prosecution.

See **AYENI v. STATE (2011) LPELR – 4380 (CA)**.

See also **STATE v. AZEEZ & ORS. (2000) 14 NWLR PT. 1108 PG. 439**.

The need for criminal cases to be properly investigated particularly those attracting capital punishment cannot be over emphasized.

See **NJOKU v. STATE (1992) 8 NWLR PT. 262**.

In the cause of the Ruling on NCS it was held that the Accused had some explanation to make having admitted two confessional statements allegedly made by her. The Court felt it was necessary for her to open her defence, hence.

In a charge of murder, the burden rests on the Prosecution to establish the cause of death.

In a murder case the cause of death of the deceased must be proved by the Prosecution beyond reasonable doubt, and it must be shown that the death of the deceased was caused by the Accused that is, there must be a link between the death of the deceased and the act of the Accused, and this must be established and proved beyond reasonable doubt.

See **OFORLETE v. STATE (2000) 12 NWLR PT. 631 PG. 415**.

In **LORI v. STATE (1980) LPELR SC. 37**/1979 the Supreme Court held that

> ñin a charge of murder the cause of death of the deceased must be established unequivocally and the burden rests on the Prosecution to establish this and if they fail the Accused must be discharged.ò

The evidence of P.W.1 is not sufficient proof of the cause of death of the deceased. A Medical Practitioner ought to have been called to establish with certainty the cause of death of the deceased. Although it is settled law that medical evidence though desirable in establishing the cause of death in a case of murder, is not essential provided that there are facts which sufficiently show cause of death to the satisfaction of the Court.

See **UKWA EGBE ENEWOH v. THE STATE (1990) LPELR – 1141 (SC)**.

In the instant case the cause of death of the deceased was suspected to be poison which was allegedly administered by the Accused.

Although the Prosecuting Counsel argued that, P.W.1 who was the Investigating Police Officer gave evidence to the fact that, he recorded statement from the Accused person where she confessed to giving the deceased poison to drink, this is not sufficient proof of the cause of death of the deceased, most especially as the Accused resiled from the said confessional statement. One who witnessed the death of the deceased or who knows what caused the deceasedôs death (medical doctor) would have resolved the issue of proving the cause of death. Since there was no autopsy result or the evidence of a medical doctor who would have told Court the exact cause of death of the deceased which was necessary in this case to prove the cause of death of the deceased beyond reasonable doubt.

See **CHUKWU v. STATE (SUPRA)**.

In **OFORLETE v. STATE (SUPRA)**

Ayoola, J.S.C. pronounced as follows:-

> ñIn every case where it is alleged that death has resulted from the act of a person, a causal link between the death and the act must be established and proved in Criminal Proceedings beyond reasonable doubt. The first logical

> step in the process of such proof is to prove the cause of death. Where there is no certainty as to the cause of death, the enquiry should proceed no further. Where the cause of death is ascertained, the next step in the enquiry is to link that cause of death with the act (or omission) of the person alleged to have caused it. These are factual questions to be answered by a consideration of the evidence.ò

It is trite that an Accused can be convicted on his confessional statement alone provided the statement satisfies the test of being positive, direct and unequivocal.

See **MUSTAPHA MOHAMMED & ANOR. V. THE STATE (2007) VOL 37 WRN 1 at 23 Lines 25 – 40 (SC)**.

The Accusedôs confessional statements marked Exhibit ñAò and ñBò respectively were admitted in evidence.

To determine the weight to be attached to the confession of the Accused, it is necessary to find out if there are facts to show that the statements (Exhibits ñAò and ñBò) are true.

Before the Court can rely on the extra Judicial Statements of the Accused to convict her, the six way test must be applied.

See **AHMED OLATIDOYE v. THE STATE (2010) LPELR – 9079 CA**

where Per IKYEGH, J.C.A. (in (P. 23 ï 24) highlighted the six way tests to be:

(1) Is there anything outside the statement to show it was true?

(2) Is it corroborated?

(3) Are the statements made in it of fact so far as we can test them?

(4) Did she have the opportunity of committing the murder (crime)?

(5) Is the confession possible?

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

See also **OJEGELE v. THE STATE (1980) 1 NWLR Pt. 71 Page 414**.

The procedure in applying these tests is to examine the two confessional statements of the Accused, Exhibits ñAò and ñBò respectively by comparing them with other bits and pieces of evidence adduced by the Prosecution and see how they fit into these outlined tests.

Having debunked the evidence of the sole witness of the Prosecution (PW1) there is nothing outside the confessional statement of the Accused to attest to itôs veracity as borne out by the evidence of P.W.1. There are no ascertained facts outside Exhibit ñAò and ñBò to show it is true. Exhibits ñAò and ñBò therefore fail the 6 way tests.

It is trite that an Accused can be convicted if there exist cogent and compelling circumstantial evidence pointing to the fact that the Accused killed the deceased.

See **SANI v. STATE (2013) LPELR – 20382 CA**.

From the surrounding circumstances of this case and the evidence adduced by the Prosecution, the Court cannot draw any inference to show that the Accused murdered the deceased.

It is trite that an Accusedôs defence should be considered however stupid or unreasonable for whatever it is worth.

See **THE STATE v. ISIAKA (2013) LPELR – 20521 SC**.

See also **EGBEYOM v. THE STATE (2000) 1 NWLR Pt. 654 Pg. 559**.

The Accusedôs defence was a total retraction from her confessional statements (Exhibits ñAò and ñBò).

However the Accused claimed she was arrested on 24/3/12 after the death of the deceased, according to her, I quote:-

> ñwhen we got home he (my husband) told me that I was been accused of the death of the child. It was when my husband was shouting people came and they started beating me, my husband then called the Police so that I will not be killed by the crowd.ò

It is clear that there is a disconnection in her story meaning the Accused lied.

However the position of the law is that mere telling of lies by an Accused is not proof of commission of the offence. There must be something more than telling of lies before an Accused can be convicted for a crime.

See **MUKA & ORS. v. STATE (1976) LPELR – 1925 SC**.

I have considered the evidence of the Prosecution witness, the defence of the Accused, as well as the written submissions adopted by both counsel alongside the Exhibits.

Having evaluated the evidence, I come to the conclusion that the Prosecution failed to prove the charge against the Accused beyond reasonable doubt. As the Prosecution failed woefully to prove the cause of death, which is a very important issue that must be settled in a murder case.

I therefore find the Accused not guilty of the charge of murder preferred against her.

In the administration of our Criminal Justice System it must always be borne in mind that the two-fold aim of criminal Justice is that the guilty should not escape Justice neither should the innocent suffer. It is better to discharge ten (10) Accused persons than to convict one innocent person.

See **AWO v. STATE (2013) LPELR – 22004 CA**.

The Accused Chinonye Lucky is hereby discharged and acquitted of the charge of murder preferred against her.

APPEARANCES:

O. Okunbor Esq. for the State.

N.O. Edomwande Esq. for the Accused person.

HON. JUSTICE R. IRELE-IFIJEH (MRS.)
(J U D G E)
04/05/18