**HENRY IKPONMWONSA**

**V.**

**THE STATE**

IN THE COURT OF APPEAL OF NIGERIA

THE 8TH DAY OF JUNE, 2017

CA/B/473C/2014

**LEX (2017) - CA/B/473C/2014**

OTHER CITATIONS

2PLR/2017/149 (CA)

(2017) LPELR-42568(CA)

**BEFORE THEIR LORDSHIPS**

JIMI OLUKAYODE BADA, J.C.A

MOORE ASEIMO ABRAHAM ADUMEIN, J.C.A

MUDASHIRU NASIRU ONIYANGI, J.C.A

**BETWEEN**

HENRY IKPONMWONSA - Appellant(s)

AND

THE STATE - Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF EDO STATE, ABUDU JUDICIAL DIVISION (Imadegbelo, J., Presiding)

**REPRESENTATION/LAWYERS**

EMMANUEL ACHUKWU, Esq. with J. N. OKONGWU and C. OKONGWU - For Appellant.

AND

R.O. OAIHIMIERE (Senior State Counsel; Edo State Ministry of Justice) - For Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE - OFFENCE OF CONSPIRACY:- Nature of the offence of conspiracy – What prosecution must prove to succeed

CRIMINAL LAW AND PROCEDURE - OFFENCE OF MURDER:- Essential ingredients that must be proved by the prosecution to ground a conviction for murder – Duty of prosecution thereto

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE - CONFESSIONAL STATEMENT:- confessional statement of an accused person - Whether a court can convict solely thereon

EVIDENCE - PROOF BEYOND REASONABLE DOUBT:- Essence and purport of – Duty of prosecution proving the commission of a crime.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was the 1st accused while one Isaac Enabuzor was the 2nd accused in a Charge initiated in the High Court of Edo State, Abudu Judicial Division wherein they were charged with the following offences: Conspiracy to Murder, punishable under Section 324 of the Criminal Code Cap 48 Vol. II Laws of Bendel State of Nigeria 1976 now applicable to Edo State; Murder: punishable under Section 319(1) of the Criminal Code Cap 48 Vol. II Laws of Bendel State of Nigeria 1976 now applicable to Edo State.

In the main, it was alleged that Henry Ikponmwonsa and Isaac Enabuzor conspired on or about the 2nd day of March, 2008 at Umuogun Nokhua Village in the Abudu Judicial Division murdered one William Ehigie (m) by shooting him to death with a gun.

Upon the conclusion of the trial and after the addresses of learned counsel for the parties, the trial Court delivered a reserved judgment. The appellant was convicted of both offences and was sentenced to death by hanging for the murder of one William Ehigie (m).

Being dissatisfied with the decision of the trial Court, the appellant appealed to the Court of Appeal.

**DECISION(S) APPEALED AGAINST**

The trial Court entered judgment, convicting and sentencing the Appellant to death for the offences of conspiracy and murder. Dissatisfied, the Appellant appealed to the Court of Appeal.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

Whether the totality of the evidence adduced by the prosecution as summarized herein above proved the guilt of the appellant beyond reasonable doubt.

*BY RESPONDENT:*

1. Whether the learned trial Judge was right to have admitted Exhibits “B, D and G” and ascribed probative value to them, thereby convicting the appellant on them.

2. Whether having regard to the totality of the evidence led at the trial and the circumstance of this case, the prosecution proved the offences of conspiracy to commit murder and murder against the appellant beyond reasonable doubt.

*AS ADOPTED BY COURT:*

Whether having regard to the totality of the evidence led at the trial and the circumstance of this case, the prosecution proved the offences of conspiracy to commit murder and murder against the appellant beyond reasonable doubt.

**MAIN JUDGMENT**

**MOORE ASEIMO ABRAHAM ADUMEIN, J.C.A. (**DELIVERING THE LEADING JUDGMENT):

The appellant was the 1st accused while one Isaac Enabuzor was the 2nd accused in Charge No. HAB/9C/2008 initiated in the High Court of Edo State, Abudu Judicial Division, holden at Abudu wherein they were charged with the following offences:

STATEMENT OF OFFENCE

COUNT 1:

Conspiracy to Murder, punishable under Section 324 of the Criminal Code Cap 48 Vol.II Laws of Bendel State of Nigeria 1976 now applicable to Edo State.

PARTICULARS OF OFFENCE

Henry Ikponmwonsa (m) and Isaac Enabuzor on or about 2nd day of March, 2008 at Umuogun Nokhue Village in Abudu Judicial Division conspired with one another to commit a felony to wit: Murder.

STATEMENT OF OFFENCE

COUNT II:

Murder: punishable under Section 319(1) of the Criminal Code Cap 48 Vol.II Laws of Bendel State of Nigeria 1976 now applicable to Edo State.

PARTICULARS OF OFFENCE

Henry Ikponmwonsa and Isaac Enabuzor on or about the 2nd day of March, 2008 at Umuogun Nokhua Village in the Abudu Judicial Division murdered one William Ehigie (m) by shooting him to death with a gun.

Upon the conclusion of the trial and after the addresses of learned counsel for the parties, the trial Court delivered a reserved judgment on 07/04/2014, in which the appellant was convicted of both offences and was sentenced to death by hanging for the murder of one William Ehigie (m). Being dissatisfied with the decision of the trial Court, the appellant has appealed to this Court and his amended notice of appeal contains 4 (four) grounds, from which he has distilled the following sole issue in his brief filed on 09/02/2015:

Whether the totality of the evidence adduced by the prosecution as summarized herein above proved the guilt of the appellant beyond reasonable doubt.

The respondent, however, formulated 2 (two) issues for determination as follows:

1. Whether the learned trial Judge was right to have admitted Exhibits “B, D and G” and ascribed probative value to them, thereby convicting the appellant on them.

2. Whether having regard to the totality of the evidence led at the trial and the circumstance of this case, the prosecution proved the offences of conspiracy to commit murder and murder against the appellant beyond reasonable doubt.

I am of the view that a single issue is sufficient for the determination of this appeal and that sole issue is the one framed as issue No. 2 by the respondent, which is:

Whether having regard to the totality of the evidence led at the trial and the circumstance of this case, the prosecution proved the offences of conspiracy to commit murder and murder against the appellant beyond reasonable doubt.

Learned counsel for the appellant cited the cases of Onah v. State (1985) 3 NWLR (Pt. 12) 236; Adava v. State (2006) 9 NWLR (Pt. 984) 152 and Nkebisi v. State (2010) 5 NWLR (Pt. 1188) 471 on the ingredients to be proved by the prosecution to sustain a charge of murder. The learned counsel relied on Section 135 of the Evidence Act, 2011 and the cases of Ikem v. State (1985) 1 NWLR (Pt. 2) 378 and Onafowokan v. State (1987) 3 NWLR (Pt. 61) 538 and submitted that the prosecution ought to prove the charge beyond reasonable doubt and that the burden to prove its case never shifts to the accused person.

The appellant’s counsel contended that “it is obvious that the prosecution’s bid to link the appellant with the death of the deceased was anchored on exhibits A, A1, B, C, D, E, F, G, (I.D.1), H, J (I.D.2) and H (I.D.3)”. He argued that, however, none of the 9 witnesses called by the prosecution was an eye witness to the incident that allegedly led to the death of the deceased. Put differently, learned counsel argued that “not one of the 9 prosecution witnesses said he witnessed the appellant doing any act or making any omission that resulted in the death of the deceased”. He submitted that the finding of the trial Court on page 149 of the record that: “There is evidence from the prosecution witnesses that the deceased died of gunshot injuries. From the voluntary acts of the 1st and 2nd accused persons, this fact is not in contention”; is not borne out of the evidence on record.

Learned counsel for the appellant contended that there was no useful evidence tending to show that the appellant’s co-accused actually shot the deceased with the gun - Exhibit ‘F’ tendered through PW4. He argued that the evidence of PW8 that the appellant’s co-accused kept Exhibit F at her house and that he made a confession to that effect, is a worthless piece of hearsay under Section 38 of the Evidence Act, 2011 and inadmissible, and learned counsel referred the Court to the case of FRN v. Usman (2012) 8 NWLR (Pt.1301) 141. Still on Exhibit F, it was argued that PW6, who claimed to have sold two cartridges to the appellant’s co-accused for N400.00 in his extra-judicial statement but contradicted himself in his oral testimony in Court by denying collecting any money from the appellant. He argued that both the previous statement of PW6 and his oral evidence in Court should be rejected as unreliable on the authority of Shofolahan v. State (2013) 17 NWLR (Pt. 1383) 281.

The learned counsel further argued that even if the evidence of PW6 were acceptable, it did not carry any probative value because “the prosecution failed to show that the cartridges allegedly bought from PW6 by the appellant were those whose shells were removed PW7 from the body of the deceased”.

After analyzing further the evidence adduced by the prosecution, learned counsel for the appellant argued that Exhibits A, A1, F, G, and H were not useful and that it becomes obvious that the only remaining evidence on record upon which the appellant was convicted are Exhibits B and D (the alleged confessional statements of the appellant) and Exhibit J (the attestation form in respect of exhibit D). Learned counsel referred to the case of Adebowale v. State (2013) 16 NWLR (Pt. 1379) 104 and submitted that: The 2nd accused person allegedly implicated the appellant in his alleged confessional statements, Exhibits C and E. It was, however, submitted that in the absence of any adoption of the said statements by the appellant, they were not admissible evidence against the appellant.

In any case, learned counsel submitted that Exhibit D was retracted when it was sought to be tendered; while “an objection was raised to the admissibility of Exhibit B on grounds of involuntariness”. He argued that having regard to the surrounding circumstances of the alleged confessional statements the trial Court could not safely rely on them to convict the appellant. On the tests for the verification of a confessional statement, learned counsel referred the Court to the cases of State v. Isah (2012) 16 NWLR (Pt. 1327) 613 at 626 and Oseni v. State (2012) 5 NWLR (Pt. 1293) 351 at 374. Learned counsel submitted that the alleged confessional statements which formed the basis of the appellant’s conviction did not satisfactorily pass the tests judicially specified for confirming confessional statements.

In urging the Court to resolve this issue in favour of the appellant, learned counsel argued that since the substantive offence of murder was not proved, “the appellant cannot be found guilty of the offence of conspiracy, more so where, as in the instant case, both offences are based on the same set of facts and are intricably interwoven.” In support of this final submission, learned counsel cited the case of Awosika v. State (2010) 8 NWLR (Pt. 1198) 49 at 70.

On behalf of the respondent, it was contended that Exhibits B and D were properly admitted by the trial Court after a trial-within-trial to test their voluntariness and the Court rightly relied on them. Learned counsel also referred to the tests to which a confessional statement should be subjected before being acted upon by a trial Court and argued that these tests were applied by the trial Court, which meticulously evaluated the evidence, before the appellant was convicted. Relying on the cases of Ogunniyi v. The State (2012) LPELR-8567 (CA) Edoho v. The State (2012) Vol. 10 LRCNCC 81 and Musa v. The State (2012) Vol. 10 LRCNCC 255, learned counsel contended that evaluation of evidence is the primary function of a trial Court and, since this function was properly discharged, the findings of the trial Court should not be disturbed.

The learned counsel for the respondent referred to the cases of Nwocha v. The State (2012) LPELR-9223 and Nwachukwu v. The State (2007) LPELR-8075 (SC) and submitted that a Court can convict on a confessional statement of an accused person alone. After analysing the evidence before the Court and the evaluation of the evidence and findings of the trial Court, learned counsel submitted that the offences were proved beyond reasonable doubt. He urged the Court to resolve the issue in favour of the respondent and to dismiss the appeal.

I have read the record of appeal, particularly the oral testimonies of the witnesses who testified in the trial Court and the judgment of the Court. I have also read the exhibits tendered before the Court and admitted by same. In addition, I have read the illuminating submissions of the learned counsel in their respective briefs. As stated earlier, the appellant was convicted and sentenced of the offences of conspiracy to commit murder, and murder.

The law is now settled that an allegation of crime must be proved beyond reasonable doubt by the prosecution. Proof beyond reasonable doubt does not, however, mean proof beyond all shadow of doubt. Where the evidence is so strong against an accused person, so as to leave only a remote probability in his favour, which can be dismissed with the sentence or statement: “of course it is possible, but not in the least probable”; the case is proved beyond reasonable doubt. See Basil Akalezi v. State (1993) 2 NWLR (Pt. 273) 1 at 13; per Ogwuegbu, JSC quoted in The State v. Osen Okon Ekanem (2017) 4 NWLR (Pt. 1554) 85 at 105, per Peter-Odili, JSC.

The prosecution can prove the commission of a crime by any or all of the following ways:

(i) by the evidence of an eye witness or eye witnesses;

(ii) by the admission or confession of guilt by the accused; or

(iii) by circumstantial evidence.

See Ekpo Obongha Mbang v. The State (2013) 7 NWLR (Pt. 1352) 48 and Ifeanyichukwu Akwuobi v. The State (2017) 2 NWLR (Pt. 1550) 421.

The offence of conspiracy, which is the agreement between two or more persons to do or cause to be done an illegal act or a legal act by illegal means, is usually proved by circumstantial evidence, since it is always difficult to prove actual agreement between the conspirators. See Benson Obiakor & Anor v. The State (2002) 10 NWLR (Pt. 776) 612 at 628, per Kalgo, JSC. Therefore, the offence of conspiracy can be inferred from the surrounding circumstances of the case. See Ifeanyichukwu Akwuobi v. The State (2017) 2 NWLR (Pt. 1550) 420.

The ingredient of the offence of murder are well-settled and the elements were re-stated by the Supreme Court in the recent case of Chief Vincent Duru (alias Otokoto) v. The State (2017) 4 NWLR (Pt.1554) 1 at 24, per Ariwoola, JSC where His Lordship said that:

“It has long been settled beyond controversy from several decided cases of this Court that to secure conviction on a charge of murder, the prosecution must necessarily prove the following:

(a) That the deceased had died;

(b) That the death of the deceased was caused by the accused; and

(c) That the act or omission of the accused which caused the death of the deceased was intentional with knowledge that death or grievous bodily harm was its probable consequence.

See: Ogba v. The State (1992) 2 NWLR (Pt. 222) 164; Monday Nwaeze v. The State (1996) 2 NWLR (Pt. 428) 1, Fred Dapere Gira v. The State (1996) 4 NWLR (Pt. 443) 375; Madu v. The State (2012) 6 SC (Pt. 1) 80; (2012) 15 NWLR (Pt. 1324) 405; Mukaila Salawu v. The State (2014) 12 SCN (Pt. 2) 622 at 642-643; (2015) 2 NWLR (Pt. 1444) 595; Inyang Akpan v. The State (1994) 9 NWLR (Pt. 368) 347.”

In this case, there is unchallenged and uncontroverted evidence that the deceased William Ehigie (m) had died. The question is: Was the death of the deceased caused by the appellant? Secondly: Was the act of that appellant intentional, with knowledge that it could cause death or grievous bodily harm.

On pages 146 - 147 of the record of appeal, the trial Court held, inter alia, as follows:

It is quite clear from Exhibits B and D confessional statements of 1st accused person and Exhibits C and E confessional statements of 2nd accused coupled with Exhibit G and F that the 1st and 2nd accused persons had the intention of killing the deceased. They planned on how to kill him. 1st accused gave N400.00 to 2nd accused to buy catridge, 2nd accused bought catridge from PW6. The evidence of PW6 corroborated this fact. The 1st and 2nd accused set out to kill the deceased on the first attempt they failed, they tried again and shot the deceased on the neck and he died. I find that the act of 1st accused person and 2nd accused person in causing the death of the deceased was done intentionally with knowledge that death or grievous bodily harm was its probable consequence.

The trial Court found in its judgment that the deceased died of gunshot injuries on his neck.

Learned counsel argued that there was no evidence to justify the conviction of the appellant.

I have read the evidence of the 9 (nine) prosecution witnesses who testified for the respondent. I have also read the evidence of the appellant who testified as DW1.

In Exhibit ‘B’, which was admitted after a trial-within-trial by the trial Court, the appellant narrated the gory story of how he procured the services of his co-accused to kill the deceased because he sponsored the deceased daughter in Spain but her “parents refused to pay me for my expenses”. He narrated how the deceased was killed by stating, inter alia, as follows:

“I Mr Henry Ikpowose Alias Eferegbede knows one Janefer Ehigie, she was the girl I sponsored to over sea Spain and the girl Janefer and the parents refused to pay me for my expenses and for some reasons the girl was arrested in Spain and detained. And I also normally asked for the money from the parents Mr. Williams Ehigie who refused to pay me the money, and the same Williams bought new motorcycle. It was on the 2/3/2008 in my house at Umuhun-wokah Edo State at about 5pm I was with Dr. Isaac his surname unknown but native of Kwale a good friend of mine, who also reside in Umuhun-wokiah, on that same date my girl friend who stayed at Over sea Spain called me on phone in the presence of Isaac, and told me of how she was almost being arrested because of Janefer whom I sponsored to the same over sea Spain. And there I hold Isaac that now that peace is about coming between me and the father of Janefer Mr. Williams Ehigie, the daughter Janefer is now trying to bring problem, And the money involved is two thousand (US) Europe (dollars). Then my friend Mr. Isaac said the best thing is to finished Mr. Williams Ehigie that is kill him. And myself and Isaac left my house after Isaac had brought his gun with Catrige to the farm road along Umuhun-Nokiah road; and there we lay in the bush at about 5pm with Isaac motorcycle and when Mr. Williams Ehigie was coming back from farm with his motorcycle then I told Isaac to shot the man and Isaac had to shot the man and the man Williams Ehigie fall down with his motorcycle and die. And I carried Isaac on the same motorcycle that belongs to Isaac back to the village and abandoned Mr Williams Ehigie at the farm road.”

The trial Court, per Imadegbelo, J. was very articulate and meticulous in the judgment delivered on 07/04/2014. The lower Court did not blindly rely on Exhibit B but relied on the totality of the evidence tendered by the prosecution and applying the relevant tests to Exhibit ‘B’ before convicting the appellant. In this respect, the trial Court elaborately stated on page 145 of the record of appeal as follows:

In respect of the 1st accused person he made confessional statements Exhibits B and D. 2nd accused person also made confessional statements Exhibits C and E. These statements were tendered through the Investigating Police Officer PW3. At the stage of tendering the statements the 1st and 2nd accused persons retracted their statements. The Court proceeded into trial within trial. The voluntariness of a confessional statement is tested at the time the statement is sought to be tendered in evidence. And confessional statement so long as it is free and voluntary and direct, positive and properly proved is enough to sustain a conviction. The truth of the statement must however be first tested and the test for determining the veracity or otherwise is to seek any other evidence, be it slight of circumstances which make it probable that the confession is true. Alarape V. State (2001) 2 SC 114; Idowu V State (2000) 3 NSCQLR 96 at 98; Ibrahim V State (2011) 1 NWLR (pt.1227) 1 at 8. The Supreme Court in Alarape V State supra per Igun JSC laid down the following tests.

1. Whether there is anything outside the confession to show that it is true.

2. Whether the statement is corroborated no matter how slightly.

3. Whether the facts contained therein so far as can be tested are true.

4. Whether the accused had the opportunity of committing the offence.

5. Whether the confession was consistent with other facts which has been ascertained and proved in the matter.

Upon a thorough examination of the evidence before the trial Court and the judgment of the trial Court, I find no basis to disturb the decision of the trial Court because the crimes levelled against the appellant were proved beyond reasonable doubt; the trial Court properly evaluated the evidence before it and arrived at the right conclusions. In this case, the appellant’s confessional statement - Exhibit ‘B’ is sufficient to ground the appellant’s conviction as demonstrated in the judgment of the trial Court and in this judgment. A confessional statement which is direct, positive and voluntary as exhibit ‘B’ is sufficient to sustain a conviction. See Joseph Idowu v. The State (2000) 12 NWLR (Pt. 680) 48 and Ifeanyichukwu Akwuobi v. The State (2017) 2 NWLR (Pt.1550) 421. In this case, the voluntary confessional statement was corroborated by other pieces of evidence tendered by the prosecution.

The issue identified in this appeal is hereby resolved against the appellant and in favour of the respondent.

The appeal, therefore, lacks merit and it is hereby dismissed.

The judgment of the trial Court delivered in Charge No.HAB/9C/2008 on 07/04/2014 is hereby affirmed.

**JIMI OLUKAYODE BADA, J.C.A.:**

I read in draft the lead judgment of my learned brother MOORE ASEIMO ABRAHAM ADUMEIN, JCA, I agree that this appeal lacks merit, and it is also dismissed by me. I abide by the consequential order made in the said lead judgment.

**MUDASHIRU NASIRU ONIYANGI, J.C.A.:**

I read in advance the judgment just delivered by my learned brother, MOORE ASEIMO

**ABRAHAM ADUMEIN, JCA.:**

I agree that the appeal lack merit and should be dismissed.

Accordingly, I also dismiss the appeal and affirm the judgment of the trial Court in charge No.HAB/9C/2008 delivered on the 7th day of April, 2014.