**AMINA MUSA**

**V.**

**THE STATE**

COURT OF APPEAL

12TH DAY OF FEBRUARY, 2014

CA/K/289/C/2013

**LEX (2014) - CA/K/289/C/2013**

OTHER CITATIONS

2PLR/2014/17 (CA)

(2014) LPELR-22912 (CA)

**BEFORE THEIR LORDSHIPS:**

DALHATU ADAMU, JCA

ITA GEORGE MBABA, JCA

HABEEB ADEWALE OLUMUYIWA ABIRU, JCA

**BETWEEN**

AMINA MUSA – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

JIGAWA STATE HIGH COURT (AHMAD ISAH GUMEL, J., Presiding)

**REPRESENTATION**

M. BULAMA Esq. for Appellant

YAKUBU A. H. RUBA (A. G. Jigawa State) for Respondent

**MAIN JUDGMENT**

CRIMINAL LAW - MURDER - CULPABLE HOMICIDE:- Ingredients of – Duty of prosecution thereof

CRIMINAL LAW AND PROCEDURE - EVIDENCE:- Contradictory evidence - Cause of death - Allocutus

CRIMINAL LAW AND PROCEDURE – EVIDENCE:- Confessional statement - Admission of - Voluntariness of - Burden of proof

CHILDREN AND WOMEN LAW: Children - Murder – Poisoning of 3 children to death by a co-wife targeting her rival – Polygamous marriage/family relations – How treated by court

**PRACTICE AND PROCEDURE ISSUES**

APPEAL:- New issues - Ground of appeal - Role of reply brief

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

Appellant was convicted on three counts charge of culpable homicide punishable with death. She was accused of causing the death of three different children, namely Yusuf Musa (m), 7 years old, Nana Dausiya Musa (f), 3 years old and Hafsatu Ya'u (f), 7 months old, each by poisoning, contrary to Section 223 of the Penal Code Law of Jigawa State.

DECISION APPEALED AGAINST

The Appellant was sentenced to 10 years imprisonment on each count under a lesser offence pursuant to Section 218 of the Criminal Procedure Code, and Section 225 of the Penal Code.

DECISION OF COURT OF APPEAL

**Held-**

1. That the role of reply brief in appeal is to contest fresh points of law, raised in the Respondent's brief, which were not envisaged or argued in the Appellant's brief.

2. Thatappellant cannot raise, on appeal, a case different from what he had at the trial court.

3. That both the ground of appeal and the issue therefrom must be founded upon and rooted in the decision of the trial court, appealed against

4. That an accused person, who objects to the admission of his confessional statement on account of involuntariness, has to raise the objection, timeously, at the time of tendering the same, and call for a trial-within-trial, to resolve the issue of voluntariness or otherwise of the confessional statement.

5. That even where an appellant had retracted his confessional statement at the trial, the court can still rely on the retracted confessional statement to convict him, where the statement is a direct, positive disclosure of facts that pin down the Accused person to the offence.

6. That a confessional statement is the best and strongest evidence of guilt, as by it the Accused person surrenders himself and closes every door of defense against himself.

7. That the burden of proving that any person has committed a crime or a wrongful act rests on the person who asserts it and this is, more often than not, the prosecution.

8. That where the commission of crime by a party is in issue in any proceedings be it civil or criminal, it must be proved beyond reasonable doubt. In discharging the burden, all the essential ingredients of the crime alleged must be proved beyond reasonable doubt. The burden never shifts.

**MAIN JUDGMENT**

ITA GEORGE MBABA, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the decision of the Jigawa State High Court in charge No.**JDU/27C/2009**, delivered by **Hon. Justice Ahmad Isah Gumel** on 2/12/2010, wherein Appellant was convicted in the three counts charge of culpable homicide punishable with death. She was accused of causing the death of three different children, namely Yusuf Musa (m), 7 years old, Nana Dausiya Musa (f), 3 years old and Hafsatu Ya'u (f), 7 months old, each by poisoning, contrary to Section 223 of the Penal Code Law of Jigawa State.

The Appellant was, however, convicted and sentenced to 10 years imprisonment on each count under a lesser offence pursuant to Section 218 of the Criminal Procedure Code, and Section 225 of the Penal Code, which says:

"Whoever causes the death of any person by doing any act not amounting to culpable homicide but done with the intention of causing hurt or grievous hurt, shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both"

The sentences were to run concurrently.

Appellant had pleaded not guilty to the charge on being arraigned. She was arraigned for trial de novo on 10/2/2010, having been first arraigned before **Umar Maigari J**, where two witnesses testified. On the demise of his lordship, the trial had to commence, de novo, before **Ahmad Isah Gumel J.**

At the de novo trial the prosecution called 4 witnesses and tendered 3 exhibits, while the Appellant testified as DW1. The facts of the case at the Lower Court showed that the Accused (the 2nd wife) of PW1, had given what they called **Fura** to her co-wife and when the three children, 2 of whom were of her co-wife drank what was prepared from the **Fura**, they (children) died, one at the spot and the other in the hospital, on admission. PW1 was the father of two of the children; PW2 was the mother of the 2 children and PW3 the mother of the last girl and neighbor of the PWs 1 & 2 and of the Accused. Pw2 said the Accused gave her the **Fura**, through her child, to be kept in her room; that on 6/2/2009, she gave the **Fura** to the children and the moment they took it, they started vomiting and stooling and when the **Fura** was checked poison was found in it. The children died of the poisonous substance called **"Shayin Bera"** found in the **Fura**. Exhibit P1 was the medical report on the deceased and Exhibits P2 and P2A the statements of the Accused. The trial judge relied heavily on the evidence of PW2 and PW3 and on the confessional statement of the Appellant in convicting her.

Appellant filed her notice and grounds of appeal on 29/6/2013, upon being granted extension of time to appeal. She raised three grounds of appeal, as per pages 70 to 72 of the Records. From the three grounds, Appellant distilled two issues for determination:

"(1) Whether, based on the evidence led by the prosecution before the Lower trial Court and the findings made by the Court, it can be said that the prosecution has proved its case beyond reasonable doubt, (Grounds 1 and 2).

(2) Whether failure of the Lower trial judge in not sufficiently assessing the evidence before him has led to miscarriage of justice (ground 3)."

The Respondent filed its brief on 14/10/2013 and distilled a lone issue for determination

*"Whether the prosecution has prove (sic) its (sic) case beyond reasonable doubt to warrant the conviction and sentence of the Accused/Appellant"*

In response to the brief of the Respondent, Appellant filed a Reply Brief on 22/10/2013, and when the appeal came up for hearing on 22/1/14, the Learned Counsel, on behalf of the parties adopted their briefs and moved this Court, accordingly.

Learned Counsel for the Appellant, **Mustapha Bulama Esq**., submitted on the issue one, that the applicable presumption of the law, under Section 36 (5) of the 1999 Constitution, on the innocence of the Accused, prevailed, requiring his guilt to be established beyond reasonable doubt. He relied on the case of **BAKARE VS. STATE (1987) 1 NWLR (PT.52) 591**, on the definition of the term proof beyond reasonable doubt, and said it is for the prosecution to establish that offence has been committed, and that was with certainty, that the accused was the person who committed the offence; that by Section 138(2) of the Evidence Act, the law places such burden on the prosecution, which never shifts **(OREPEKAN VS. AMADI (1993) 11 SCNJ 68 at 83).**

Counsel submitted that to prove the allegation that Appellant caused the death of the children by poisoning, as contained in the charge, the following ingredients of offence of murder must be proved, as stipulated in the case of **NKEBISI VS. STATE (2010) 5 NWLR (Pt. 1185) 471 at 495 - 496:**

**"(a) the deceased died**

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

**(c) 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 the probable consequence."**

He added that, by law, the prosecution must prove all the ingredients in order to succeed; that if it fails to establish any of the requirements, the accused is entitled to be free. He relied on **EMEKA vs. STATE (2001) 15 NWLR (Pt.734) 667; AYUB KHAN VS. STATE (1991) 1 NWLR (Pt.123) 127; EDET VS. FRN (2001) 1 NWLR (Pt.695) 502 at 505.**

In order to prove the guilt of the accused person, Counsel submitted that the prosecution must confine itself to the words of the charge framed against the appellant; that is to say, the prosecution must prove that the Appellant caused the death of the children by poisoning them. Counsel then called our attention to the evidence of the 4 witnesses for the prosecution. He particularly pointed at the evidence of PW1, which he said the trial Court had held on it; thus:

*"This Court agreed with the defence that the evidence of PW1 is fatal to the prosecution's case, because of the contradiction contained therein and is a hearsay evidence. This Court thereby discountenances same as unreliable."*

Counsel agreed with the trial Court on the findings on PW1's evidence and the decision to jettison it being hearsay and unreliable.

On PW2, Counsel said the evidence was equally hearsay; that she even said:

**"It was the accused person that gave me the Fura, I didn't know whether it (Fura) contain poison or not"**

Counsel said, that showed that PW2's earlier statement that when the **Fura** was checked a poison was found in it, was founded on alleged checking by someone else, and that person was neither named nor called as a witness. Thus, PW2's evidence was complete hearsay; that a person cannot give evidence of facts that are not within his knowledge. He relied on the case of **ARMEL'S TRANSPORT LTD. VS. MARTINS (1970) ALL NLR 27 (Reprint) at 31**. He also relied on Section 77 of Evidence Act 1990, as amended, and on the case of **JUDICIAL SERVICE COMMTTTEE VS. OMO (1990) 6 NWLR (Pt.157) 407 at 468.**

On PW3's evidence, Counsel said the same was fatally contradictory and full of distortions; that from her evidence as narrated in Records, PW3, who was said to be Maimuna Ya'u, was rather talking about another person as Maimuna that she saw the **Fura** inside Maimuna's room (page 13); that she gave the same **Fura** to her daughter; that she saw Maimuna giving her children the **Fura** before she gave her child too (page 16); that it was obvious PW3 was not the mother of Hafsatu (the 7 month old deceased) known in the charge sheet as Maimuna Ya'u; that such confusion leaves room for doubt about the case of the prosecution which should be resolved in favour of the Appellant. He relied on the case of **ONUOHA VS. STATE (1989) 2 NWLR (Pt. 101) 23 at 38.**

Counsel further stated that the Pw3 did not in any way establish the fact that Hafsatu died because she was poisoned; that the PW3 even said on page 16 of the Records: **"I didn't know who brought the Fura**". This evidence, Counsel said, is vital inspite of what PW3 attributed to the appellant as an admission.

Counsel said that all exhibits P1, P2 and P2A tendered by the PW4 had no evidential value and should not have been admitted. Counsel said that the process of recording the 2nd statement of the Appellant (Exhibit P2A) after the Police had told the Appellant to tell **the truth**, conflicted with the words of caution administered to the Appellant and was against the provisions of Section 27 of the Evidence Act. Thus, it was not voluntary and freely made; that such statement ought not to have been admitted during the trial. He relied on the case of **EBHOMEIN VS. THE STATE (1963) ALL NLR (reprint) 371 at 374; STATE VS. RABIU (2013) 8 NWLR (Pt.1357) 587 at 605 - 606.**

Counsel added that the Appellate Court has a duty to reject inadmissible exhibit which was erroneously admitted. He relied on the case of **ROSSEN (NIG.) LTD. VS. SAVANNAH BANK NIG. LTD (1995) 9 NWLR (Pt.420) at 456; ANYAEBISI VS. R.T. BRISCOE (1977-1988) SCJE VOL.2 PAGE 511; AJAYI VS. FISHER (1956) 1 F.SC 90; ESSO WEST AFRICA VS. ALLI (1968) NMLR (Pt.414) at 423 - 424; OKUMU OIL PALM CO. LTD. VS. ISERHIEM HIEN (2001) FWLR (Pt.45) 670 at 684.**

Counsel said that it was wrong for the trial Court to rely on the alleged confessional statement to convict her. He also submitted that Exhibit P1 (medical report) was wrongly admitted despite that defence did not raise any objection to its admission. He appreciated the fact that medical evidence is not indispensible in the prove of a charge of murder, but said that in the instant case where killing by poisoning was alleged, medical evidence was mandatory to establish that the substance that caused the death of the deceased was, infact, poisonous; that can only be ascertained by physical examination of the substance which caused the death.

Counsel called on us to take a careful look at Exhibit P1 (page 51 of the Records). He submitted that when the Exhibit P1 states:

"Child was brought with history of injesting poison 'Fura' few hours prior to presentation"

It shows the report was founded on information told by another person to the Doctor and that formed the basis of the Doctor's findings; thus, the information was not derived from the personal examination by the Doctor by taking her blood sample for examination. He relied on the case of **OKORO VS. STATE (1998) 14 NWLR (Pt.584) 181 at 207**; He submitted that for Exhibit P1 to be admissible, the person who told the story to the Doctor has to be called as a witness.

Counsel further submitted that even the alleged medical report (Exhibit P1) did not cover the other 2 deceased persons as it only covered Hafsatu, and so there was nothing to show the cause of the death of Musa Yusuf and Nana Dausiya Musa.

Counsel further referred us to the findings of the Court on page 47 of the records, where he said the Lower Court held to absolve the Accused persons, as follows:

*"There is no dispute that three children, Yusuf, Nana Fawziyya and Hafsatu did not (sic) die it is also not disputable that they didn't drink the Fura prepared by the accused person. It is also disputable that the accused was not the one that gave Maryam PW2 the mother of the children the Fura in question which caused the death of the children after they have taken or drank the same Fura."*

He urged us to resolve the issue for the Appellant.

On issue 2, which he said was on the failure of the Lower Court to meticulously assess the evidence adduced by the parties and apportion probative value to them before reaching a conclusion, Counsel submitted that the failure of the trial judge to do so, resulted in the wrong conclusion and finding the Appellant guilty; that the trial Court heavily relied on the alleged confessional statement of the Appellant, and in ascribing probative value to the same, the trial Court failed, awfully, to consider the prompting made by the DPO after which the additional statement (Exhibit P2A) was made; that apart from the fact that the prompting negated the words of caution administered to the Appellant, the additional statement was made at the instruction and demand specifically to say what the DPO thought acceptable 'truth'. Counsel used the evidence of PW4 to illustrate his point and argued that, if the Lower Court had directed its mind to this fact, it would have seen the need to examine critically the contents of the 1st confessional statement and the supplementary alleged confessional statement, with the retracted evidence of the Appellant on oath, in line with what the Supreme Court said in the case of **AGUDO VS. STATE (2011) 18 NWLR (Pt.1278) 1 at 26:**

"A Court can convict on the retracted confessional statement of an accused person but before this is done, the trial judge should evaluate the confession and the testimony of the accused person and all the evidence available. This entails the trial judge examining the new version of events, presented by the accused person which is different from his retracted confession and the judge asking himself the following questions:

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

(b) Is it corroborated?

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

(d) Did the accused Person have the opportunity of committing the offence charged?

(e) Is the confession consistent with other facts which have been ascertained and have been approved?"

He argued that the use of the word **"I believe"** by the trial judge in his findings, without proper evaluation of the evidence would not save the situation, as there was no basis for such belief.

He relied on the case of **ONUOHA VS. STATE (1989) 2 NWLR (Pt.101) 23 at 40.**

Counsel submitted, again, that the evidence of PW2 and PW3, which the trial Court relied on, were hearsay, contradictory and full of distortions and could not tie the conviction. He relied on **OKONKWO VS. UDOH (1997) 9 NWLR (Pt.519) 16; AMADI VS. AMADI (2012) ALL FWLR (Pt.626) 559.**

He urged us to interfere with the findings of fact by the trial judge; that the same did not consider the evidence by the Appellant, denying the commission of the offence. He relied on the case of **AMADI VS. AMADI (supra) at 575; STATE VS. RABIU (2013) 8 NWLR (Pt.1357) 585.**

He urged us to allow the appeal and set aside the conviction of the Appellant and the sentence.

Responding, Counsel for the Respondent, **Yakubu A.U. Ruba Esq**., (Learned Attorney General of Jigawa State), relied on the case of **AKPA VS. STATE (2008) 14 NWLR (Pt.1106) 72 at 90** on the ingredients required to prove a charge of murder:

**(a)** That there was death of a human being

**(b)** That the death was caused by the accused person

**(c)** That the act of the accused person that caused the death was done with intent or knowledge that death was the probable consequence.

Counsel summed up the evidence of the PW1, PW2 and PW3 and submitted that it was established that, truly, there were deaths of human beings, Yusuf, Nana and Hafsatu.

On the submission of Appellant's Counsel that the evidence of the prosecution witnesses were full of contradictions and distortions, Counsel for the Respondent submitted that, to take the benefit of alleged contradiction in evidence, such contradiction must be material and substantive, relating to the material point in the prosecution. He relied on **DIBIE VS. THE STATE (2007) NWLR (Pt.1038) 30 at 50.** He asserted that there were no contradictions in the case presented by the prosecution.

Counsel placed reliance on the confessional statement of the Appellant, saying that the Appellant's confessional statement was well taken and used by the trial Court; that by virtue of the Evidence Act, an admission made at any time by a person charged with a crime, or suggesting that he committed the offence, is relevant; that once an accused person makes a statement under caution, admitting the charge or creating the impression that he committed the offence with which he is charged, the statement becomes confessional.

He relied on the case of **EGBOGBONOME VS. THE STATE (1993) 7 NWLR (Pt.306) 383**; he submitted that where a confessional statement is in evidence, as in this case, the trial Court, after hearing evidence and evaluating the same, can convict, even on the confessional statement alone, if it is satisfied. He relied on the Supreme Court decision in the case of **Sule vs. The State (2009) 4 NC 456 at 478; HASSAN vs. STATE (2001) 8 MJSC 105.**

He submitted that the trial judge was right in placing reliance on the confessional statement of the Appellant to convict her.

On the 2nd ingredient that the death was caused by the Accused person, counsel submitted that the prosecution had established the offence beyond reasonable doubt, as per the evidence of PW1, PW2, PW3 and pw4; that Appellant in her confessional statement also stated the way and manner her act resulted in the death of the children. He relied on the case of **OJO VS. FRN (2008) 11 NWLR (Pt.1099) 467 at 513.**

Counsel urged us to resolve the issue against the Appellant and dismiss the appeal.

**RESOLUTION OF ISSUES:**

Appellant's Reply brief was on a premise that the Respondent did not frame issue for determination and did not adopt Appellant's issues for the determination of the appeal, and so whether that was not incurably defective brief and did not amount to admission of the appellant's submission?

That, I think, was a strange or novel point to raise in a reply brief. In the first place, Appellant was wrong to say that the Respondent did not frame an issue for determination of the Appeal. I had earlier reproduced the lone issue distilled by the Respondent for the determination of the Appeal.

Even if the Respondent did not distill any issue for determination of the appeal, that, in law, cannot amount to admission of the arguments of the Appellant, as the Appellate Court still has a duty to consider the merit of the appeal by evaluating the entire evidence adduced in the case in the light of the pertinent issues arising for determination in the appeal, considering also the arguments by the parties. The fact that a Respondent did not canvas any argument in an appeal is never a guarantee that the appeal will succeed, as the Court, in its appreciation of the law and evidence in the case may find the arguments of the Appellant unreliable and incapable of sustaining the appeal.

The role of reply brief in appeal is to contest fresh points of law, raised in the Respondent's brief, which were not envisaged or argued in the Appellant's brief and so the Appellant is required to ventilate on it so that the Court would not be misled by the Respondent. It is never meant to be a second chance for the Appellant to reconstruct or better his argument in the appeal. See the case of **NNPC VS. AMINU (2013) LPELR 21396 (CA)**

"...the arguments of the Appellant in the Reply Brief were not on fresh issues of law, arising from the Respondent's brief, but effort to substantiate the alleged diversion or misconstruction of the Appellant's address by the Respondent's Counsel; it was an improvement on the Appellant's address (argument). A Reply Brief is not meant for such purpose, but to tackle fresh issue(s) of law, raised in the Respondent's brief outside the scope of the Appellant's brief, for which Appellant has a duty to explain and debunk to save the Court from being misled."

See also Order 18 Rule 5 of the Court of Appeal Rules 2011; **NIGERIA YEAST AND ALCOHOL MANUFACTURING CO. PLC VS. ALL MOTORS (NIG) PLC (2011) ALL FWLR (Pt.600) 1226; GOODWILL & TRUST INV. LTD VS. WITT & BUSH LTD (2011) ALL FWLR (Pt. 567) 517.**

The main point of contention by Appellant in this appeal is on the quality of evidence adduced by the prosecution on which the trial Court relied upon to convict the Appellant. Appellant's Counsel argued that the alleged confessional statement or additional statement by the Appellant (Exhibit P2A) was not voluntary as the same was made following the direction of the D.P.O. that the Appellant tells the truth. Appellant also picked quarrel with the evidence of PW2 and PW3, saying the same were hear-say evidence and full of contradictions and distortions.

Appellant's Counsel had concluded that the prosecution did not prove beyond reasonable doubt that Appellant, caused the death of the deceased, by poisoning them.

Counsel argued that to succeed in establishing the alleged murder, the prosecution had a duty to establish all the ingredients of offence of murder, which he listed as per the case of **NKEBISI VS. STATE (2010) 5 NWLR (Pt. 1185) 471 at 495 - 496.**

The charge against the Appellant had three counts, each for culpable homicide punishable with death contrary to Section 223 of the Penal Code, Cap 107 Laws of Jigawa State, 1998 and punishable under Section 221 (b) of the Penal Code. One of the Counts (and they were all the same, except for the different particulars of the deceased), states:

"That you AMINA MUSA (f) on or about the 6th day of February, 2009 at about 0700 hours at Tsakani Fulani settlement Area of Roni Local Government Area within the Jigawa Judicial Division committed culpable homicide punishable with death by causing the death of one Yusuf Musa 7 years old by poisoning him and thereby committed an offence contrary to Section 223 of the Penal Code, cap 107 Laws of Jigawa State, 1998 and punishable under Section 221(b) of the Penal Code, cap 107, laws of Jigawa State 1998."

The 2nd and 3rd counts concerned causing the death of Nana Dausiya Musa (f) 3 years old and Hafsatu Ya'u (f) 7 months old, respectively, by the same process of poisoning.

Of course, the fact of the death of the three young children was not in doubt. The remaining task of the prosecution was that of establishing that the death of each of the children (or any of them) was caused by the Appellant, by poisoning them.

In its judgment, the trial Court said:

"Upon considering the evidence of the prosecution and the defence put forward on behalf of the accused, this Court is of the candid view that the prosecution has succeeded in proving all the ingredients of culpable homicide punishable with death against the accused person "page 47 of the Records."

But in a sudden apparent somersault, the learned trial judge said:

"There is no dispute that three children Yusuf, Nana Fauziyya and Hafsatu did not die, it is also not disputable that they didn't drink the Fura prepared by the accused person. It is also disputable that the accused was not the one that gave Maryam PW2 the mother of the children the Fura in question which caused the death of the children after they have (sic) taken or drank (sic) the same Fura. The accused person further confirmed that by stating that she was sorry. She didn't mean to kill the children." (page 47 of the Records)

Of course, the above is a clear contradiction of the holding that the prosecution had proved all the ingredients of the offence of culpable homicide punishable with death! Did the learned trial judge have a different or private meaning for his findings, when he said:

*"There is no dispute that three children, Yusuf Nana Fauziyya and Hafsatu did not die; it is also not disputable that they didn't drink the Fura prepared by the accused person. It is also disputable that the accused was not the one that gave Maryam PW2 the mother of the children the Fura in question which cause the death of the children after they have taken or drank the same?"*

Those findings were actually against the run of evidence, which clearly left no one in doubt that the three children died, and that they all drank the substance called Fura, which the Appellant gave to PW2 (the mother of two of the deceased children). There is also no doubt that she (Appellant) gave the Fura to the PW2 the previous day, as the Appellant herself, had admitted the same. (See pages 24 and 25 of the Records). Those findings by the trial judge were therefore unreasonable and perverse, and completely a reverse of the true position. The said findings are hereby set aside. See **the MOMOH VS. UMORU (2011) LPELR SC 63/2004; see also OBODO VS. OGBA (1987) 2 NWLR (Pt.54) 1; (1987) LPELR SC.95/1986,** where it was held:

"...It is not the function of an appellate Court to disturb the findings of fact of the trial Court unless such findings are shown to be unreasonable or perverse and not a result of a proper exercise of judicial discretion. (NTIARO VS. AKPAM 3 NLR 7 at 10)."

Did the prosecution prove all the ingredients of the charge against the Accused person, as the trial Court held, especially that Appellant's act caused the death of the children?

Appellant had argued that the evidence of PW2 and PW3, which the Court relied on, were hearsay and contradictory or full of inconsistencies. He also argued that the confessional statement which the trial Court relied on was inadmissible as it offended the law.

The trial Court had believed the evidence of PW2 and PW3, saying they were material witnesses. The two women (mothers of the deceased) gave account of what happened after the children had drunk the Fura, earlier given to PW2 by the Accused person; they said the children were vomiting and stooling; Yusuf died on the spot, while the girls did in the hospital.

PW2 had said (page 14 of the Records):

*"On 5/2/2009 at 4:00pm the accused person gave me '****Fura****' ... I didn't use the* ***Fura*** *until on 6/2/2009, I gave the* ***Fura*** *to my children the moment they took the* ***Fura*** *the two of them started vomiting and diarrhea. When the* ***Fura*** *was checked a poison was found in it..."*

PW3 said:

*"...When I heard about the vomiting and diarrhea I went to the house where I met the two kids, when I reached them Yusuf is already dead. Nana Fauziyya was brought out, and when I saw the Fura drunken by Nana I gave the same Fura to my own child. The Fura that people drink... I also gave the same Fura to my daughter ... Hafsatu.  
Hafsatu also died.. as result of the Fura ... she also started vomiting and diarrhea ..."* page 15 of the Records.

I think the evidence relating to the drinking of the Fura, and the source of the Fura, the vomiting and stooling after the drink and the death of the children as a result of drinking the Fura, were clear and direct evidence, without any ambiguity. It is however true that the way the trial judge recorded some part of the evidence of the PW3 left much to be desired, as he was mixing up her name with that of PW2 and confusing direct speeches with reported speeches; But that did not blur or confuse the facts she accounted for, namely what the children drank, what happened to them, who supplied the Fura and the death.

I therefore hold that there were no material contradiction or discrepancy in the evidence of the PW3 or PW2, and in between them, to cast doubt on their testimonies on how the 3 children died, after drinking the Fura.

The allegation was that the Fura was poisoned, and that the Accused person was the person who put the poisonous substance in the Fura, which she gave to the PW2, her co-wife (whom Accused person confessed was a rival and they were not friendly. See page 24 - 25 of the Records). Of course, the medical report (Exhibit P1), issued on one of deceased children (Hafsatu), opined the cause of death to be**: "food poisoning, with '2' Acute respiratory distress."**

It was the Appellant that rather supplied the evidence on how the 'Fura' had the poisonous substance. She did that in her additional confessional statement (Exhibit P2A), when she said:

"... One year ago, my husband Musa Yahaya (m) bought a poison in order to kill rats. I took a poison and put into or inside Fura intention to killed (sic) my rival one Mariyam Musa (f) of the same address. I didn't have mind to kill her childrens (sic) ... we are not living peace (sic) with her, always fight with her because of that, nothing childrens do me, is God that brought it, I am pleaded (sic) you to forgive my offence that I committed..." (See page 58 of the Records).

Counsel for the Appellant had argued, strongly, that the confessional statements by the Appellant offended the law; that the DPO's directive that Appellant should tell the truth induced the statement and so it was made on the prompting of the DPO, contrary to the words of caution administered to the Appellant and against the provisions of Section 27 of the Evidence Act. Thus, the confessional statement was not voluntary.

But, the Appellant never contested the voluntariness of the confessional statement at the trial and so was raising this issue, on appeal, for the first time, as the trial court never considered it or contemplated the denial in its judgment.

Appellant did not seek the leave of his court to raise the issue as fresh issue, the same having not been considered in the judgment appealed against. The law is trite and the rules well known to the learned senior counsel, Bulama Esq, that appellant cannot raise, on appeal, a case different from what he had at the trial court that the rule governing appeal is that both the ground of appeal and the issue therefrom must be founded upon and rooted in the decision of the trial court, appealed against. See the case of **UNILORIN VS. OLAWEPO (2072) 52 WRN 42; OJEMEN VS. MOMODU (1993) 1 NWLR (PT.323) 685; OSENI VS. BAJULI (2010) ALL FWLR (PT.511) 873; OSSAI VS. FRN (2012) LPELR 1969 CA; (2013) 13 WRN 87.**

The law is also trite that an accused person, who objects to the admission of his confessional statement on account of involuntariness, has to raise the objection, timeously, at the time of tendering the same, and call for a trial-within-trial, to resolve the issue of voluntariness or otherwise of the confessional statement. See the case of **OSENI VS, STATE (2012) LPELR - SC.14/2011; ALARAPE VS. THE STATE (2001) FWLR (PT.41) 1872 AT 1875. See also USMAN SALAHUDEEN VS. THE STATE (2013) LPELR - CA/K/1/C/2072**.

In the case of **OJI vs. FRN (2013) ALL FWLR (PT.668) 920**, ratio 3, it was held.

"...Where an accused person is defended by counsel, it is the duty of such counsel to object to the tendering of a statement purportedly made by the accused on the ground that the statement was not voluntary before a mini trial becomes necessary. Where such counsel failed to play his part and the statement was admitted he cannot properly raise the absence of mini trial on appeal. In the instant case where the accused counsel failed to object to the procedure adopted by the trial court and where the proceedings established that the arraignment of the trial court was valid, the accused was rightly convicted..." See also EGBEDU VS. STATE (1991) 11 - 12 SC 98; OKOROH VS. STATE (1990) NWLR (Pt.125) 128.

In this case (at hand) Appellant was represented by counsel at the lower court. When the confessional statements (P2 and P2A) were tendered the defence counsel (Louisa Mbamalu Esq) simply said:

"I strongly object to the admissibility of the statements, because the accused person said she never gave any statements to the police. Even though the accused person denied having any statement we have no objection. We are just drawing the attention of this Court to the weight to be attached to the document on coming into a decision." See page 21 of the Records."

The defence counsel was "blowing hot and cold" at the same time, approbating and reprobating. And it is obvious she allowed the confessional statements to go in unscratched. Her allegation that the Accused person did not make any statement to the Police could not be true!

Thus, the documents were admitted without objection and so the confessional statements were not contested, denied or retracted by the Accused person at the trial. Appellant cannot, therefore, canvass argument, on appeal, to dissociate herself with the confessional statements, on appeal, or reject the same.

Even where an appellant had retracted his confessional statement at the trial, the court can still rely on the retracted confessional statement to convict him, where the statement is a direct, positive disclosure of facts that pin down the Accused person to the offence. See the case of **STEPHEN JOHN & ANOR VS. THE STATE (2011) LPELR SC.269/2070; BLESSING VS. FRN (2013) 12 WRN 36; STATE VS. SALAWU (2011) 18 NWLR (PT.1279) 883**, See again **SALAHUDEEN VS. THE STATE** (supra), where it was held:

**It has been stated, several times, that a confessional statement is the best and strongest evidence of guilt, as by it the Accused person surrenders himself and closes every door of defense against himself**. See the case of **YUSUF VS. THE STATE (2012) LPELR - 7878 (CA)**; See also **OJI VS FRN (2013) ALL FWLR (PT.668) 920**, where we held, relying on Tobi JSC in the case of **AKPA VS. STATE (2008) ALL FWLR (PT. 420) 644**-

"A confession is the strongest evidence of guilt on the part of accused, stronger than the evidence of an eye witness, because the evidence, borrowing the daily axiom, comes out from the mouth of the horse, who is the accused,"

See also **OMOJUH VS FRN (2008) ALL FWLR (Pt.415) 1656**.

A confessional statement is the best evidence, as it comes from the Accused person to establish the truth of the case against him. It also implies a self entanglement in the web of the offence. **SALAHUDEEN VS. THE STATE (SUPRA); YUSUF VS. THE STATE (2012) LPELR 7878 (CA); OMOJUH VS. FRN (2008) ALL FWLR (PT. 475) 1656.**

In the case of **BLESSING VS. FRN** (supra), this court held that:

"The law recognizes three ways of proving the guilt of an accused person, namely:

(a) Confessional Statement

(b) Evidence of eye witness and

(c) Circumstantial evidence that pins the accused to the crime.

Out of the three; Confession, the equivalent of admission in civil proceedings, is the most potent and reliable mode of establishing crime. See **AKPA VS. STATE (2009) 39 WRN 27 (2008) 14 NWLR (PT.1105) 72**; **OSENI VS. STATE** (supra).

The reason is obvioVS. By a confession, entrenched in Section 27(1) of the Evidence Act 2004 (now 28 of the Evidence Act, 2011), an accused person himself admits and concedes to committing the offence in question. Thus, the accused person gives himself up to the law and becomes his own accuser and witness.

With the Exhibits P2 and P2A, wherein the Appellant confessed to the crime, and stated that the target of her mischief was the PW2 (her co-wife) not the little children that died after drinking the poisoned Fura, the offence was established by the Appellant herself.

I think Appellant should rather be grateful to the trial court, which, after finding her guilty, as charged of culpable homicide punishable with death, strangely opted to punish her under Section 225 of the Penal Code, on the allegation of proof of lesser offence, thereby reducing the death sentence to imprisonment for 10 years.

Since there is no appeal against this, I shall not comment any further on it.

I therefore resolve the issues against the Appellant, as I see no merit in the appeal. The appeal is, accordingly, dismissed.

Parties to bear their costs.

**DALHATU ADAMU, J.C.A.:**

I have had the advantage of reading before now the lead judgment of my learned brother Mbaba JCA in this appeal. I agree with his reasons and conclusion reached that all issues in the appeal have been resolved against the appellant. Consequently there is no merit in the appeal which is hereby dismissed by me. Parties are to bear their respective costs.

**HABEEB ADEWALE OLUMUYIWA ABIRU, J.C.A.:**

I have had the privilege of reading the lead judgment delivered by my learned brother, Ita George Mbaba, JCA. His Lordship considered and resolved the issues in contention in this appeal. I agree with the reasoning and abide the conclusions. I wish to make some comments.

The Appellant was charged with three counts of culpable homicide punishable with death. She was alleged to have caused the death of three children, Yusuf Musa aged seven years, Nana Dausiya Musa aged three years and Hafsat Ya'u aged seven months by poisoning contrary to the provisions of Section 223 of the Penal Code Law of Jigawa State and punishable under Section 221, of the Law. The central issue for determination in this appeal is whether the Respondent led credible, cogent and sufficient evidence before the trial Court to sustain the charge against the Appellant.

It is settled that the burden of proving that any person has committed a crime or a wrongful act rests on the person who asserts it and this is, more often than not, the prosecution.

Where the commission of crime by a party is in issue in any proceedings be it civil or criminal, it must be proved beyond reasonable doubt. In discharging the burden, all the essential ingredients of the crime alleged must be proved beyond reasonable doubt. The burden never shifts. Therefore, if in a criminal trial, on the whole of the evidence before it, the court is left in a state of doubt, the prosecution would have failed to discharge the burden of proof which the law lays upon it and the defendant will be entitled to an acquittal. It must, however, be stated that proof beyond reasonable doubt is "not proof to the hilt" and is thus not synonymous with proof beyond all iota of doubt. It simply means establishing the guilt of the defendant with compelling and conclusive evidence to a degree of compulsion which is consistent with a high degree of probability. Thus, if the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable", the case will be said to have been proved beyond reasonable doubt - **Sabi Vs State (2011) 14 NWLR (Pt.1268) 421, Iwunze Vs Federal Republic of Nigeria (2013) 1 NWLR (Pt.1324) 119, Njoku Vs State (2013) 2 NWLR (Pt.1339) 548, Osuagwu Vs State (2013) 5 NWLR (Pt.1347) 360, Ajayi Vs State (2013) 9 NWLR (Pt.1360) 589**.

A charge of culpable homicide punishable with death is the same as a charge of murder and it has been held in a plethora of cases that the essential ingredients that the prosecution must prove in order to secure a conviction are (i) that the deceased died; (ii) that the death of the deceased resulted from the act of the defendant; and (iii) that the defendant caused the death of the deceased intentionally or with knowledge that death or grievous bodily harm was its probable consequence - see, for example, **Sule Vs State (2009) 19 NWLR (Pt.1169) 33, Nkebisi Vs State (2010) 5 NWLR (Pt.1188) 471, Mbang Vs State (2010) 7 NWLR (Pt.1194) 431, Usman Vs State (2011) 3 NWLR (Pt.1233) 1, Uluebeka Vs State (2011) 4 NWLR (Pt.1237) 358, Ilodigwe Vs State (2012) 18 NWLR (Pt.1331) 1**. The Prosecution must meet the above ingredients through credible evidence. The three ingredients must co-exist and where one of them is either absent or tainted with any doubt, then the charge is said not to be proved - Sabi Vs State supra.

There was no contest between the parties that the said three children were dead. The first, second and third prosecution witness as well as the Appellant, as the sole defence witness, testified in proof of this fact. A medical report confirming the death of Hafsat Ya'u was also tendered and admitted in evidence as **Exhibit P1**. The first ingredient of the offence of culpable homicide punishable with death was thus established without much ado.

On the second ingredient of the offence of whether it was the act of the Appellant that caused the death, the law is that to establish this ingredient beyond reasonable doubt, the Respondent must establish the cause of death unequivocally and then there must be cogent evidence linking the cause of death to the act of the Appellant - **Udosen Vs State (2007) 4 NWLR (Pt.1023) 125, Oche Vs State (2007) 5 NWLR (Pt.1027) 214** and **Ekpoisong Vs State (2009) 1 NWLR (Pt.1122) 354**. This point was made a long time ago by the Supreme Court in the case of Lori Vs State (1980) 8-11 SC 81 at 95-96 where Nnamani, JSC said:

"In a charge of murder, the cause of death must be established unequivocally and the burden rests on the prosecution to establish this and if they fail the accused must be discharged...It is also settled law that the death of the victim must be caused by the accused or put differently, it must be shown that the deceased died as a result of the act of the accused."

The point was reiterated by the Supreme Court in Oforlete Vs State (2000) 12 NWLR (Pt 631) 415 thus:

"In 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 a criminal proceeding, beyond reasonable doubt. The first and 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 not 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."

There was un-contradicted and consistent evidence in the testimonies of the second and third prosecution witnesses that the three children took ill immediately after drinking "Fura" and they started vomiting and had diarrhea and that while Yusuf Musa died shortly thereafter, Nana Musa and Hafsat ya'u were taken to the hospital where they subsequently died. There was no contradiction in the testimonies of the witnesses on this point and the testimony was corroborated by the Appellant in her testimony in her defence. An autopsy was performed on the corpse of Hafsat Ya'u and the report of the cause of death was tendered by the Respondent from the Bar, with the leave of the lower court and concurrence of counsel to the Appellant, and it was admitted as **Exhibit P1**. Counsel to the Appellant argued in his brief of arguments that the lower Court ought not to have accorded any probative value to the autopsy report because it stated in part that "the child was brought with history of ingesting poisoned "Fura" few hours prior to presentation" and that the person who gave the history ought to have been called to testify and failure to do so meant that the autopsy report was a documentary hearsay and it was not in any way admissible in evidence.

With respect to Counsel to the Appellant, his argument on the point was "much ado about nothing". What is material on an autopsy report is the cause of death; the history is merely part of the preliminary information obtained for the purpose of completing the form. The medical doctor who prepared the report stated thus: "I certify the cause of death in my opinion to be food poisoning with...acute respiratory distress." This was the professional opinion of the doctor. Now, Section 42 (1) of the Evidence Act 2004 (now Section 55 (1) of Evidence Act 2011) states that either party to the proceedings in any criminal case may produce a certificate signed by a Government pathologist or by any pathologist specified by the Director of Medical Laboratories of the State and the production of any such certificate may be taken as sufficient evidence of the facts stated therein. The Courts have interpreted this provision to mean that production by either party of a certificate signed by the medical officer was sufficient evidence of the facts stated in the autopsy report - **Isiekwe Vs State (1999) 9 NWLR (Pt.617) 43, State Vs Ajie (2000) 11 NWLR (Pt.678) 434** and **Oguno Vs State (2011) 7 NWLR (Pt.1246) 314**. The medical report was signed by the Chief Medical Officer of Kazaure General Hospital and the Lower Court was bound in the circumstances to accept the autopsy report as sufficient evidence of its contents - **Ehot Vs State (1993) 4 NWLR (Pt.290) 644 and State Vs Ajie (2000) 11 NWLR (Pt.678) 434**. The Appellant had the option to request the attendance of the Chief Medical Officer in lower Court for questioning on whether the medical history obtained colored his professional opinion as to the cause of death but she did not exercise this option. The Appellant cannot now be heard to complain about the sufficiency of the professional opinion of the Medical Doctor as to the cause of death.

Even where there is no autopsy report of an autopsy report is inconclusive, a Court has the duty to examine the evidence before it and draw necessary inferences as to the cause of death - **Essien Vs State (1984) 3 SC 14, Adekunle Vs State (1989) 5 NWLR (Pt.123) 505** and **Aiguoreghian Vs State (2004) 3 NWLR (Pt 860) 367**. Thus, where there is evidence that a deceased person was hale and hearty before the occurrence of an offending act and death is instantaneous or nearly so and there is no break in the chain of events from the time of the that caused injury to the deceased to the time of the death, the death of the deceased will be attributed to that act, even without medical evidence of the cause of death - **Essien Vs State supra, Azu Vs State (1993) 6 NWLR (Pt.299) 303, Aiguoreghian Vs State (2004)  supra, Akpa Vs State (2008) 14 NWLR (Pt.1106) 72**.

Thus, in **Ben Vs State (2006) 16 NWLR (Pt.1006) 582**, where the deceased was struck on the head with a stick and he fell down unconscious and never regained consciousness until he was pronounced dead some hours later in the hospital, the Supreme Court held that the trial Court rightly found that the cause of death was the lethal blow to the head without a need for medical evidence. The rationale for this position, which is founded on sound logic and common sense, is that since that act is the most proximate event to the death of the deceased, it should be regarded as the deciding factor even where it may be taken as merely contributory to the death of the deceased - **Jeremiah Vs State (2012) 14 NWLR (Pt.1320) 248.**

In the instant case, there was no suggestion that any of the three children had any case of ill-health prior to the drinking of the "Fura" and there was un-contradicted and consistent evidence that they took ill immediately after drinking the "Fura", vomiting and having diarrhea, the natural symptoms of food poisoning, and that one died a few hours thereafter and two others subsequently in the hospital. The autopsy report merely confirmed what the evidence led had expressed; that the death of the three children was caused by food poisoning brought about by their drinking the "Fura". The Respondent thus led cogent evidence on the cause of death of the three children.

This takes us to the second limb of the second requirement in a charge of culpable homicide punishable with death - whether the Respondent proved beyond reasonable doubt that it was the act of the Appellant that led to the cause of death of the deceased. It is settled law that a case can be proved beyond reasonable doubt either by direct eye witness account or by circumstantial evidence from which the guilt of a defendant can be inferred or by a free and voluntary confessional statement of guilt which is direct and positive - **Emeka Vs State (2001) 14 NWLR (Pt.734) 666, Nigerian Navy Vs. Lambert (2007) 18 NWLR (Pt.1066) 300, Mbang Vs State (2010) 7 NWLR (Pt.1194) 431, Ahmed Vs Nigerian Army (2011) 1 NWLR (Pt.1227) 89, Dele Vs State (2011) 1 NWLR (Pt.1229) 508, Ilodigwe vs State (2012) 18 NWLR (Pt.1331) 1**.

It is obvious from the records of appeal that the Respondent relied on both circumstantial evidence and the confession of the Appellant. The confessional statements were tendered and admitted in evidence as **Exhibits P2** and **P2A**. Counsel to the Appellant contested the voluntariness of the additional confessional statement of the Appellant, **Exhibit P2A**, saying that it was obvious from the evidence of the fourth prosecution witness that it was written after the Appellant had been told to tell the truth by the Divisional Police Officer and that this amounted to prompting and coercion of the Appellant. The records of the Court show that the issue of involuntariness of either the first confessional statement or of the additional confessional statement was not raised at the point the statements were tendered in evidence and neither was it made an issue at anytime during the trial. It is not an issue that can be raised for the first time in the appellate Court - **Nwachukwu Vs State** (2004) 17 NWLR (Pt.902) 262, **Federal Republic of Nigeria Vs Iweka** (2013) 3 NWLR (Pt.1341) 285.

The only point of objection raised by Counsel to the Appellant in the lower Court at the point of tendering the statement was that the Appellant denied ever making any statement to the Police. Reading through the testimony of the Appellant as the defence witness, however, nowhere therein did she deny making the confessional statement or contest the voluntariness of the statement. It is settled law that during trial, an accused person who desires to impeach his statement is duty bound to establish that his earlier confessional statement cannot be true by showing any of the following (i) that he did not in fact make any such statement as presented; or (ii) that he was not correctly recorded; or (iii) that he was unsettled in mind at the time he made the statement or (iv) that he was induced to make the statement - **Hassan Vs State (2001) 15 NWLR (Pt.735) 184, Kazeem Vs State (2009) WRN 43 and Osetola Vs State (2012) 17 NWLR (Pt.1329) 251**. The Appellant did not raise and/or establish any of these situations in her evidence before the Lower Court. The Appellant did not categorically state that she did not make the confessional statements tendered as Exhibits P2 and P2A. All she said was that the testimony of the fourth prosecution witness that she confessed to the commission of the crime was not true.

The law is that where an accused person does not challenge the making of a confessional statement but merely gives oral evidence which is inconsistent with or contradicts the contents of the statement, the oral evidence should be treated as unreliable and liable to be rejected and the contents of the confessional statement upheld unless a satisfactory explanation of the inconsistency is proffered - **Gabriel Vs State (1989) 5 NWLR (Pt.122) 457, Ogoala Vs State (1991) 2 NWLR (Pt.175) 509, Egboghonome Vs State (1993) 7 NWLR (Pt.306) 383, Oladotun Vs State (2010) 15 NWLR (Pt.1217) 490**, **Federal Republic of Nigeria Vs Iweka (2013) 3 NWLR (Pt.1341) 285**. There was thus no retraction of the confessional statements, Exhibits P2 and P2A, to warrant the need for the lower Court to look for corroborative evidence - **Osung Vs State (2012) 18 NWLR (Pt.1332) 256.**

Going further and assuming that there was indeed a retraction of the confessional statement by the Appellant, it is settled law that a confession does not become inadmissible merely because a defendant denies having made it. The denial of a statement made by a defendant to the police is only an issue of fact to be decided in the judgment and it is not an issue which affects admissibility of the statement - **Akpa Vs State (2008) 14 NWLR (Pt.1106) 72, Sule Vs State (2009) 17 NWLR (Pt.1169) 33, Mbang Vs State supra, Nwokearu Vs State (2010) 15 NWLR (Pt.1215) 1** and **Dele Vs State supra**.

What is required is that before the court would believe and act on such a retracted confession it should subject the confessional statement to the following tests:

i. whether there is anything outside the confession which shows that it may be true:

ii. whether it is corroborated in any way;

iii. whether the relevant statements of facts made in it are mostly true as far as they can be tested;

iv. whether the defendant had the opportunity of committing the offence;

v. whether the confession is possible; and

vi. whether the alleged confession is consistent with other facts that have been ascertained and established.

See the cases of **Osuagwu Vs State (2009) 1 NWLR (Pt.1123) 523, Kabiru Vs. Attorney General, Ogun State (2009) 5 NWLR (Pt.1134) 209, Nwokearu Vs State supra** and **Dele Vs State** supra.

In the first statement, the appellant said that on Thursday, 5th of February, 2009 at about 2pm, she prepared the food called "Fura" in Hausa language and gave it to her rival by name Maryama Musa and that her rival gave the food to her children, Yusuf Musa and Nana Musa, to drink and the children thereafter died. In the second statement, the Appellant continued thus:

"...One year ago, my husband Musa Yahaya (m) bought poison in order to kill rats. I took a poison and put into or inside the Fura intention to killed (sic) my rival one Maryama Musa ... I didn't have mind to killed (sic) her childrens (sic), because we are not living peace (sic) with her, always fight with her because of that, nothing the childrens (sic) do me, is God that brought it, I am pleaded you (sic) to forgive my offence that I committed..."

The second prosecution witness, Maryam Musa, testified in part thus:

"I know the accused person. The accused person is my co-partner in marriage to our husband PW1. On the 5/2/2009 at4.00pm the accused person gave me "Fura". I don't take Fura, but she gave her son or daughter to keep the Fura in my room. When I came back on 5 / 2/ 2009, I didn't use the Fura until on 6/2/2009, I gave the Fura to my children. The moment they took the Fura the two of them started vomiting and had diarrhea....The names of my kids that drank Fura one of them is Yusuf and the name of the other child Nana Kamarasiya...Yusuf died around 12.00pm. Nana Fauziyya was taken to the hospital and she was admitted in the hospital, she died in the hospital..."

The third prosecution witness, Maimuna Ya'u testified that she saw Fura in the room of the second prosecution witness and that she gave the same "Fura" that the children of the second prosecution witness drank to her child, Hafsatu, to drink and that:

"...Hafsatu also died. She died as a result of the Fura I gave her; she also started vomiting and had diarrhea. I went home and gave her water, she was unconscioVS. I was told to take my daughter to the hospital. She was admitted in the hospital. My daughter died in the hospital on admission ..."

The testimonies of these two prosecution witnesses were not challenged or contradicted under cross-examination. It must be noted that Counsel to the Appellant attacked portions of the testimonies of these two witnesses in his brief of arguments as amounting to hearsay and for being contradictory. Reading through the entire case put forward by the Respondent, it is obvious that the portions of evidence of the witnesses that the learned Counsel complained of dealt with peripheral and inconsequential matters and not with the facts material to the proof of the allegations against the Appellant in the charge. In a criminal trial, it is settled law that to be fatal to the case of the prosecution, challenges to the testimony of a prosecution witness must relate to material facts and must be substantial, and not be on peripheral and inconsequential matters - **Osetola Vs State (2012) 17 NWLR (Pt.1329) 251, Osung Vs State (2012) 18 NWLR (Pt.1332) 256, Famakinwa Vs State (2013) 7 NWLR (Pt.1354) 597, Musa Vs State (2013) 9 NWLR (Pt.1359) 214 and Iregu Vs State (2013) 12 NWLR (Pt.1367) 92.**

The testimony of the Appellant as the sole defence witness was a bundle of confusion and it was replete with contradictions but she admitted that the second prosecution witness was her co-wife and that both of them were not living in harmony. She stated that she prepared "Fura" on Thursday and gave a part of it to the second prosecution witness and that it was on Friday morning that children of the second prosecution witness drank "Fura", fell ill and thereafter died. She stated that she did not see the second prosecution witness prepare any other "Fura" for her children on Friday morning and that the children were physically fit before they took the "Fura" and that the children died as a result of the "Fura" that they drank. These pieces of evidence, along with the above reproduced evidence of the second and third prosecution witness were evidence of facts outside the confessional statements of the Appellant that point to the truth of the facts contained in the confessional statements. They corroborate the facts in the confessional statements. The objections of Counsel to the Appellant on the usefulness of the confessional statements of the Appellant in these proceedings were thus unfounded.

The above stated testimonies of the second and third prosecution witnesses, when taken together with the confessional statements of the Appellant, show clearly that it was the act of the Appellant that caused the death of the three children. The Respondent thus led cogent evidence to establish the second ingredient of the charge against the Appellant.

The third requirement of the offence of culpable homicide punishable with death is - whether the Appellant caused the death of the deceased intentionally or with knowledge that death or grievous bodily harm was its probable consequence. This is what is known as "specific intention" necessary for sustaining a murder charge. It is the law that a person intends the natural consequences of his action and if there was an intention to cause grievous bodily harm and death results, then the defendant must be held culpable for the offence of murder - **Nwokearu Vs State (2010) 15 NWLR (Pt.1215) 1, Njoku vs State (2013) 2 NWLR (Pt.1339) 548.** The Appellant, in the instant case, supplied the answer to this requirement in her confessional statement wherein she stated that she poisoned the "Fura" with the intention of killing Maryama Musa, the mother of two of the children. It is irrelevant to this requirement that it was the three unfortunate children, and not the mother, the intended target, that bore the consequences of the evil intention.

The Respondent clearly led very credible and cogent evidence to prove the charge against the Appellant beyond reasonable doubt.

It will be a disservice to conclude these comments without touching on the quality of the judgment delivered by the lower Court in this matter. Reading through the judgment, the learned trial Judge, with respect, displayed an amazing lack of understanding of the enormous responsibility placed on his shoulders as an adjudicator of disputes between people and whose decision can have, most often than not does have, a tremendous impact on the fate of the disputants. This is particularly more so in a criminal charge of the nature brought against the Appellant which carries the death penalty. After summarizing the evidence led by the parties and the submissions made by their Counsel, the learned trial Judge deliberated and reached its decision on a criminal charge of this magnitude in one and a half pages. And even the little deliberation carried out was confused and confusing and did not make any sense.

The opening paragraph of the deliberation went thus:

"Upon considering the evidences of the prosecution and the defence put forward on behalf of the accused, this court is of the candid view that the prosecution has succeeded in proving all the ingredients of culpable homicide punishable with death against the accused person. There is no dispute that three children Yusuf, Nana Fauziyya and Hafsatu did not die, it is also not disputable that they didn't drink the Fura prepared by the accused person. It is also disputable that the accused was not the one that gave Maryam PW2 the mother of the children the Fura in question which caused the death of the children after they have taken or drank the same Fura. The accused person further confirmed that by stating that she was sorry. She didn't mean to kill the children."

These statements portrayed the learned trial Judge as an unserious minded person who had no inkling of what he was doing. This was not all. The learned trial Judge concluded his deliberations thus:

"Without much ado I hereby hold the view that the prosecution has proved its case beyond reasonable doubt against the accused person. This court hereby found (sic) the accused person guilty as charged and she is hereby accordingly convicted on the three counts of charges."

The learned trial Judge thereafter wrote a heading termed "Allocutus" and called on the Counsel to the parties to address him on mitigation of sentence. The Counsel did and the learned trial Judge then wrote a lengthy ruling and he, in the exercise of a perceived discretion, sentenced the Appellant to ten years imprisonment on each count and ordered that the sentences were to run concurrently. It will be recalled that the charge against the Appellant, and for which the learned trial Judge found her guilty as charged, was three counts of culpable homicide punishable with death under Section 221 of the Penal Code Law of Jigawa State. In **State Vs John (2013) 12 NWLR (Pt.1368) 337**, the Supreme Court stated at 364 E-F thus:

"Once a Judge finds an accused person guilty of culpable homicide under Section 221 of the Penal Code, the only sentence he can pronounce is death. A Judge has no jurisdiction to listen to allocutus and no discretion to reduce death penalty to a term of years once the accused person has been found guilty under Section 221 of the Penal Code."

The learned trial Judge obviously did not know what he was doing. It is essential that all persons who hold the high office of a High Court Judge and the like must always and constantly display learning, understanding and an appreciable level of awareness of their responsibilities in the performance of their duties and obligations. It is the only way that such a person can show that he is deserving of being entrusted with the office and the responsibilities that go with it.

It is for the reasons stated above, and fuller deliberations contained in the lead judgment, that I too find no merit in this appeal, despite the tardiness displayed by the learned trial Judge. I hereby also dismiss the appeal.

**CASES REFERRED TO**

Adekunle V. State (1989) 5 NWLR (Pt.123) 505

Agudo V. State (2011) 18 NWLR (Pt.1278) 1

Ahmed V. Nigerian Army (2011) 1 NWLR (Pt.1227) 89

Aiguoreghian V. State (2004) 3 NWLR (Pt 860) 367

Ajayi V. Fisher (1956) 1 FSC 90

Ajayi V. State (2013) 9 NWLR (Pt.1360) 589

Akpa V. State (2008) 14 NWLR (Pt.1106) 72

Akpa V. State (2008) 14 NWLR (Pt.1106) 72

Akpa V. State (2008) 14 NWLR (Pt.1106) 72

Akpa V. State (2008) ALL FWLR (PT. 420) 644

Alarape V. The State (2001) FWLR (PT.41) 1872

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Anyaebisi V. R.T. Briscoe (1977-1988) SCJE Vol.2 Page 511

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Ayub Khan V. State (1991) 1 NWLR (Pt.123) 127

Azu V. State (1993) 6 NWLR (Pt.299) 303

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