IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP THE HON. JUSTICE G.O. IMADEGBELO - JUDGE
ON MONDAY THE 7TH DAY OF APRIL, 2014

BETWEEN: **CHARGE: HAB/6C/2000**

THE STATE …… ……. ……. ….. ….. ….. ….. COMPLAINANT
VS
1. VICTOR EMENUWE
2. ONOME INAYE ….. ….. ….. ….. ….. ACCUSED

J U D G M E N T
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The 1st and 2nd accused persons are charged on a two count charge on Information filed on the 9th day of May, 2000.

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 applicable in Edo State.

Particulars of offence

Victor Emenuwe (m) and Onome Inaye (f) on or about the 21st August 1995 at Urhokhuosa village via Ehor in Edo State in the Abudu Judicial Division conspired with each other 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 applicable in Edo State.

Particulars of Offence

Victor Emenuwe (m) and Onome Inaye (f) on or about the 21st August 1995 murdered one Ejiroke Onoroke (m) by drowning him in a stream at Ore in Ondo State.

In proof of its case, the prosecution called three witnesses. The 1st and 2nd accused persons pleaded not guilty to the two count charge on the 19/5/2010.

The 1st and 2nd accused persons testified and called no witness. A brief resume of the prosecution's case is set forth below.

P.W.1 is Joseph Unouoke. He lives at Urhokhuosa at Uhunmwode Local Government Local Government Area, Edo State. He is a farmer. He knows one Ejiroke Onoroke. On the 21/8/1995 he was at home at about 7 pm in the evening, he heard his wife named Janet Onoroke crying that his child named Ejiroke is missing since morning and they have been looking for him. He accompanied her to Urhokhuosa to report to the Odionwere who advised him to report the matter to the police. When he got to Ehor, he reported the matter to the D.P.O. at Ehor that he has been unable to fine his child Ejiroke. He was advised to announce the missing child on the radio. The D.P.O. advised him that if he does not see him, he should come and report. When he got back the community said this type of thing has not happened in that community before. They decided to search each house to find out those that were not at home. When they got to the house of 1st and 2nd accused their children said the 1st and 2nd accused travelled to Emonu Orogun. They sent two people to Emonu one Godwin Adama and Wilson Obodeke, when they got to Emonu, they saw the father of 2nd accused they asked him of the where about of his child he informed them that since six months his child has not reached Emonu. That the last time the 2nd accused visited her father, a child in the community got missing. Then the father asked them which sex is the child they told him it is a male child, the father of the child said the child that was missing in Emoru was also a male child. The father of the 2nd accused and the father of the child missing at Emoru accompanied them back to Urhokhuosa. The father of the missing child from Emoru, saw his child and asked how he got to Urhokhuosa. He told his father that it was when the 2nd and 1st accused bought biscuit for him, when he ate it he followed them to Urhokhuosa, that after they brought him to Urhokuosa, the 1st and 2nd accused took him to Ijebu-Ode. On getting to Ijebu-Ode he saw people who wore white garment. The Alhaji told the 1st and 2nd accused that the child will not be good to make money, that they should take him back as they could not return him to his parents he was now living with the 1st and 2nd accused persons. That is why they now took his child Ejiroke. When they took his child, the Alhaji said the child will not be good to use that they should return him; on getting to Ore – Ondo Lagos road, the 1st and 2nd accused persons killed his child in the river. When the Urhobo/Isoko community asked the children of 1st and 2nd accused when their parents will return, they replied that it will be three days time. On the third day the Urhobo/Isoko community sent eight people to surround the house of the 1st and 2nd accused persons. At 3 pm the 1st and 2nd accused returned. When they got home the 1st and 2nd accused asked their children what happened since they left the community. The people under ambush came out and said that the Isoko and Urhobo community are being driven away by the binis, that the matter was being discussed at the

Odionwere's palace. The people got hold of the 1st and 2nd accused persons. The 2nd accused was now crying that she did not do anything. On getting to Odionwere compound they gave the 1st and 2nd accused to the Odionwere to hold and went to report to the Ehor Police. They were given two policemen. The police took him and the accused to the police station. On getting to Ehor police station it was dark. He was advised to come back the following morning. In the morning he went to Ehor police station. The I.P.O. said he should charter a vehicle that they were going to Ore that they said they left his child at Ore police station. On getting to Ore police station they were shown the children there. He told them his child was not amongst them. He was advised to go to the king's palace, he went his child was not there. They returned to Ehor police station. He was advised to return to Ehor police station the next day. On getting there the I.P.O. informed him that they confessed to the I.P.O. that they have killed his child, he should go and charter another vehicle. The 1st and 2nd accused took them to the place where they killed his child. They showed them the place where they killed his child it was a shallow stream. They reported to Ore police station that they have seen the corpse of his child. They were given eight policemen to go to the place. He bought a mat at Ore market to wrap the corpse. He asked the police at Ore if they had a photographer here they said yes. A photographer accompanied them to the scene. The 1st and 2nd accused when they wanted to bring out the corpse the photographer took them photograph. As he was wrapping the corpse the photographer took them photograph. When the 1st and 2nd accused persons put the corpse in the boot of the car, they were taken photographs, making three photographs. On getting to Ehor police station the D.P.O. advised them to take the corpse to specialist hospital. When the doctor was examining the corpse, he identified the corpse. He was later adviced to bury the corpse. He made statement at the Ehor Police station. He also made statement at the state C.I.D. it is the 1st and 2nd accused persons that killed his child. Photographs taken at the scene of crime are ID1 - ID7.

Under Cross Examination by P. Aigbokhan Esq. the witness stated that the accused persons confessed that they killed his son that is how he knew they killed him. He went in company of three policemen to Ore. They later went to the place where they killed his son. They went in the company of the police to buy the mat. When he discovered his child was missing, he went to the Odionwere before going to the police station. It was not the date he reported to the police that they confessed, it was after two days. When he saw the corpse of his child, it was decomposed it changed. He did not rush straight to the house of the accused when he discovered his child was missing. It is not true that he had a quarrel with the 1st accused over his daughter. He has a daughter. It is not true that 1st accused wanted to marry his daughter. The Police did not identify to him as his child. He knows his child. He is aware of the missing child

at Emonu. The father of the child said it was when the accused came to their village a child was missing. His wife accompanied him to the police station. It was the I.P.O. who took the corpse in company of him and his wife to the police station. He recalls the clothes his son wore when he was missing.

Under re-examination, the witness stated because the corpse of his son was put in water, his colour was no longer fair but black. He could identify his son from the tribal marks on his two cheeks in the form of a cross.

P.W.2 is Alexander Amade police Inspector formerly attached to Nigeria Police Station Ehor Edo State Force NO 96954. In August 1995 he was attached to Ehor Police station, one Joseph Onoroke PW1 and his wife one Janet Onoroke came to the police station and reported a case of missing child, that as they were going to the farm they handed the child to one Onome, the Onome is in court she is the 2nd accused. He recorded statement from them and proceeded for investigation. On getting to the residence of the two suspects, he was informed that they travelled. He left a message that they should report to him on their return. The PW1 informed him and identified the two suspects to hm. He arrested the two suspects. 1st accused person was cautioned and he volunteered statement to him, second accused was cautioned and she volunteered statement to him. Both the 1st suspect and 2nd suspect made confessional statements to him. The 1st accused made statement to him. This is the 1st statement made by the 1st accused person, this is the 2nd confessional statement made by the 1st accused person. The statement of the 1st accused person made on the 23/8/1995 was admitted in evidence as Exhibit A, the statement of the 1st accused person made on the 26/8/1995 was admitted in evidence as Exhibit 'B'. He obtained statements from the 2nd accused person. She made two statements. These are the 1st and 2nd statements made by the 2nd accused person. Statements of the second accused person dated the 23/8/1995 was admitted in evidence as exhibit 'C'. The statement of the 2nd accused person made on the 26/8/1995 was admitted in evidence as exhibit 'D'. The 1st and 2nd accused made statement and signed the statements and there was an attestation form which was signed by Superior Police Officer, he countered signed the statement as the recorder. He identified the attestation form of the 2nd accused person. Attestation form by DSP Ehor police station dated the 4/9/95 was admitted in evidence as exhibit 'E'. He identified the attestation form of the 1st accused person. Attestation form signed by the DSP Ehor police station dated the 4/9/95 was admitted in evidence as Exhibit 'F'. After their statements the 1st and 2nd accused persons took him to the scene of crime accompanied by a photographer and the father of the deceased with two other policemen that accompanied them to Ore camp where the 1st and 2nd accused persons identified the corpse in a stream. The photographer took photographs as they identified the corpse in the stream. The father of the

deceased identified the corpse in the river. They moved to Iruekpen hospital where the doctor carried out post mortem. He cannot recall the whereabouts of the photographs, he identified the photographs. Photographs and negatives were admitted in evidence as Exhibits G, G1 – G7. They took the corpse to Iruekpen General Hospital where the medical doctor carried out post mortem, thereafter the deceased was released to the father for burial. He finally transferred the case to State C.I.D. They have since been transferred from Ehor. He does not know the whereabouts of the medical doctor.

Under cross – examination by J. C. Ebu Esq. the witness stated that Exhibits C and D the statements were thumb printed by the 2nd accused person. The 2nd accused made statement in pigeon English. He signed the statement in pigeon English, they understood the statement. He did not obtain statement from Gbenga as all efforts to get Gbenga proved abortive. The same day he recorded the statements, he took them before the superior police officer. He has given evidence in this suit. What he knows is that the woman said she left the child with the 2nd accused. The 1st day he saw the 1st accused. He met him with his one blind eye. He did not tear gas the 1st and 2nd accused to obtain their statements. The 1st and 2nd accused persons were brought before a superior police officer. The statements of the 1st and 2nd accused were recorded on 23/8/95 and 28/8/95. The attestation is dated 4/9/95. The day the statement is recorded you take it to the superior officer, if he is not there you wait till he comes, he cannot sign attestation form. He did not touch the 1st and 2nd accused, he only recorded statements. He does not have tear gas, he is not in riot squad. He did not use horse whip on the two accused persons.

P.W.3 is Abdulahi Eguavouen Ikhuoriah. He lives at Iruekpen, Ekpoma Edo State. He is a medical Doctor. He holds an MBBS from the University of Ibadan, 1980. He was formerly in the service of the Health Management Board serving in the government general hospital Iruekpen. On the 26/8/95 he was on duty when the body of the deceased was brought to him for post mortem. The name of the deceased is Sunday Ejiroke identified by Joseph Onoroke. The deceased was brought in a mat, he was about 8 years old, the body was brought in an advanced stage of decomposition and bloated although, offensive odour issued from the corpse, pressure on the tommy led to fluid issuing from both the mouth and nostrils. There was no clear laceration or body injury. The skin on the tongue upper and lower eyelids where chopped off obviously from the effects of cannivorous animals. His opinion the deceased would have died from the effects of drowning. After the post mortem he issued a medical report to that effect. This is the medical report. Medical report dated the 26/8/95 was admitted in evidence as exhibit 'H'.

Under cross –examination by J.C. Ebu Esq. the witness stated prior to the 26/8/95 he have not seen the deceased. He did not know the medical history of the deceased. Drowning in a river or a stream could have been accidental. It is possible for an epileptic patient to drown in a river if he takes a dive.

DW1 is the 1st Accused Victor Emenuwe. He lives at Ikpogbo camp Urhokuosa. Prior to that he lived at Warri. It is the 2nd accused person, his sister whom is responsible for his fees at times she comes home to give him money. He attended Emonu Comprehensive high School. When he wanted to write his Jamb, he went to the 2nd accused at Ikpogbo camp. He approached her for money she did not have while he was there he met the daughter of PW1 and wanted to befriend her. Her father took objection and reported the matter to the Elders who summoned him, 2nd accused was present. The elders decided the mater in his favour as a result of which PW1 said to him "he will see" in the presence of 2nd accused and others whom he could not recall their names. As a result of quarrelling, his sister decided that they should pack to Oghenebore camp. On a certain date he was sitting outside, he saw the PW1 in company of others coming out of a car. PW1 pointed to him and said "I told you you will see" PW1 pointed to the people that they are the persons. Some of these people carried wood and cutlasses. These people started to beat him. He was ordered to enter into the vehicle. They opened the boot and locked him inside. They took him to an unknown destination. He and 2nd accused came out. PW1 said the police should follow him. They got to a river, the PW1 pointed to the police "see it there" the police said they should go to the river to carry what is there. They pushed them into the river to carry the corpse of the child. They started to beat them that was when he got injured in his left eye. They entered the river and brought out the corpse which was already decomposing with marks on its body. That is when they started taking pictures. It was PW1 that brought a mat from the car to wrap the corpse. It was the police that assisted to tie the mat on the corpse. Because of the mat he was unable to identify the corpse. He could only see the eyeball. The police instructed them to carry it as they were putting it in the car they snapped them. They took them to the police station. The next day the police brought him out of the cell and asked him questions and enquired of how he killed someone he replied that he did not kill anyone. The next date, he was hung up by the police, the police beat him up broke his head, the scar on his head was as a result of the beating. They used cutlass to cut him. The following day the police brought him out, they wrote on a paper and told him to sign, he enquired what was in it, the police hit him on the head with a cutlass. He signed. Thereafter, he was taken to the State C.I.D. At the State C.I.D. the police beat them, threatened to kill them hung him up. As the beating was too much he decided to admit that everything was true. Three days later they brought a paper for him to sign as he tried to enquire about it, he was given a slap, he pleaded for them to bring the paper which he now signed.

Under cross – examination by S. E. Okojie Mrs. the witness stated that he is a native of Emonu Orogun town Delta State. He attended the Emonu Comprehensive School. He finished SS3 in 1993. He went to Urhokuosa village. He did not know Ijebu-Ode. He did not discuss with anyone to bring a body for ritual. He did not look for a little boy to steal for rituals nor connive with 2nd accused to steal PW1's 8 year old son. He did not take the boy to Ijebu-Ode. He did not ask the native doctor to make charm for him. It is not true that the native doctor demanded the sum of N20, 000.00 from him before he could perform the rituals. It is not true that he begged the native doctor and he refused. It is not true that when the native doctor refused he decided to return the child. It is not true that he and the 2nd accused decided that there will be a problem and decided to kill the child. It is not true that he took the child to NNPC along Ondo road. It is not true that he was the one looking for intruders while 2nd accused drowned the child until she was sure he was dead. He did not kill any person. He and 2nd accused were in their house. It is not true that the villagers went to another village in Orogun. He cannot see very well to identify the person in Exhibit 'G6'. They were granted bail in this matter the reason they were not released was because there was no one within jurisdiction to take them on bail. It is not true that he took the police to where Ejinoke was drowned. He was inside the boot to the destination when he was brought out. It was the police that wrote the statement. He told the police the school he went to and the year he finished. This case went into trial within trial. All he said is that the police wrote the statement and asked him to sign.

DW2 is the 2nd accused person Onome Inaye. She lived at Oghenegbore camp, now at Oko prison. She is the one assisting in his education. DW1 came to her for money she did not have and instructed him to wait. DW1 approached the daughter of PW1 that he wanted to be her boyfriend. This resulted in quarrel between them and the children of PW1. As a result of this they moved to Oghenebore camp. After three days of staying in the camp, she saw two cars, three policemen and other people. They started to beat the DW1. She saw the DW1 lying on the floor his head was bleeding. They carried him and put him in the boot of the car. They started to beat her and hand cuffed her hands, that she should enter the car. They put her on the bare floor and drove the car away. She did not know where they were taking her to, she opened her eyes, teargas was in her eyes, she did not know where they were taking her to. The journey was long, she was lying down. They got to a place, the told her to come out and opened the boot and got the DW1 out. Two policemen were behind and one in front of them with a gun. They said they should follow them. They followed them to a shallow stream. They instructed them to carry the thing inside the water. They refused. They beat them with gun. They said take the pictures, they bent down and saw that it was a corpse in the river, as they were

beating them she and DW1 bent down to carry the corpse. As they were carrying the corpse they took pictures of them. The police brought a mat, that they should put the corpse in the mat. Her hands were cuffed they rolled the mat and put it in their hands and took photographs of them. They carried DW1 and put him in the boot with the corpse. When they got to Ehor Police Station, the police hung the DW1, they tear gassed his eyes which led to him wearing glasses. The police brought her out and put bottle in her private part. The police broke her teeth with stick and flogged her with koboko. They took the corpse to a doctor, she was not present. The police said she should make statement. She did not go to school. The police brought a paper that she should thumbprint, she did not know the contents. She was forced to thumbprint. Thereafter she was chained and taken outside to sit on water. At the State C.I.D. they were instructed to make statements. They brought out a coffin with a human skull and different colours of cloth that it is their idol, they will use them to serve it. One brought out cutlass and the other gun. She and DW1 carried the coffin on instruction. One of the policemen used cutlass to cut her back. She was instructed to make a statement, she refused and they started to beat her. It was the statement she made at Ehor that they wrote at the State C.I.D. with same beating; that she should sign, that she signed. She cannot read and write. She does not know Patricia Odudu.

Under cross – examination by S.E. Okojie (Mrs.), the witness stated that she is a native of Emonu village in Orogun Delta State. She lived at Urhokuosa for ten years she was married to a man called Peter. She does not know Odudu she has two children. She left the marriage before he died. She did not conspire with the DW1 to steal Ejiroke Onoroke Joseph. She is not the one that carried the child on the back. She did not take the child in company of DW1 to Ijebu-Ode for charm. She did not go to a native doctor to do medicine. It is not true that they could not give the sum of N20,000.00 to the native doctor. It is not true that she and DW1 tried to sell the child. She did not carry the child back. She did not go to Ore or kill the child. It was the police that took them there. She did not carry the child to a small stream. She did not take the police to the river. She did not know where they were going. She did not identify the corpse to the police as the one she killed. Three police put tear gas in her eyes with them in the car. She did not steal child, they lied against her. DW1 testified on 18/6/2013, she told court that he was bleeding on the head on the ground. DW1 did not remember to state this fact. It is what she remembers she will say. She told court that DW1 was beaten the boot was full of blood. It is true that DW1 was brought out of the boot in Ore his body drenched in blood. It is not true that Ejiroke is not the first child she has stolen. It is not true that she confessed twice to stealing the child.

P. Aigbokhan Esq. of learned Counsel for the 1st and 2nd Accused persons formulated three issues for determination.

1. Whether the High Court has jurisdiction to try the case
2. Whether the prosecution has proved the case beyond reasonable doubt
3. Whether trial within trial can be dispensed with for confessional statements obtained by torture.

Counsel submitted that the circumstances where coroner inquest is mandatory are set forth in section 4 of the coroner law. He relied on Section **17, section 11(1)(2), 7, 3 of the Coroners law.** A High Court cannot assume original jurisdiction in a case where the deceased is found in a river or sea and the cause of death that have not been previously examined by the Magistrate Court. **Section 3 (1) Coroner Laws of Edo State.** That the statutory procedure as contained in Section 12 of the Coroner Law of Edo State is that the police or a complainant makes death report (form B) to a coroner having jurisdiction to hold an inquest, stating any particulars concerning the cause of death disclosed by the investigation and giving an opinion as to whether or not the death was due to any unlawful act or omission. **Section 11 (2) of the Coroner Law of Edo State.** That the procedural guidelines for coroner inquest is that the Coroner will order for post-mortem examination (Form B) to a medical doctor who will thereafter make a report of medical practitioner (Form D) to the Magistrate and not to the High Court as in this case. Thereafter the magistrate conducts an inquisition where, how and the cause of the death and to quickly discover all facts and collate evidence before it becomes mature for hearing at the High Court. Failure to comply with this procedure divests the High Court of jurisdiction to entertain this suit. That the jurisdiction over coroner inquest is guided by the place where the body is lying. If the inquest is to be done outside the place where the deceased is lying, the special circumstances must be stated upon the record of the inquest. **Section 7 of the Coroner Law.** The High Court has inherent jurisdiction to control all coroner inquest going on in Edo State, not in an appellate capacity but in a quasi-supervisory style. The control extends not only seeing that the magistrate court keeps within its jurisdiction over violent or unnatural death, but also seeing that it observes the rule of law or natural justice. The only ground where coroner inquest will be dispensed with in proof of cause of death is for the purpose of fast tracking the criminal trial. **Section 10 of the Coroner Law of Edo State.** An inquest produces a verdict but is it not a trial. It is a fact finding inquiry by a coroner for the purpose of determining who the deceased was, when and where the deceased died. **Section 11 (1) (2) of the Coroner Law; Section 7 of Coroner Law Cap. C.17 Laws of Edo State.**

The pristine procedure is that medical doctor prepares his post-mortem report and takes it before a magistrate having jurisdiction, and may build over

witnesses who have been examined before him to appear and give evidence before the magistrate within jurisdiction. It is the medical examination or post mortem that will be brought to the magistrate for inquest and absence of same is fatal. It is not in doubt that the death of the deceased was not questioned by the magistrate even when the deceased died in a suspicious circumstance. No doubt the circumstance of the death of the deceased in this case points to the necessity or desirability of holding an inquest. Counsel submitted that the primary enquiry into the cause of death of a person by way of post mortem is an enquiry into the biological cause of death. The question at that stage is what caused the death and not who caused the death. Thus in a charge of murder and conspiracy to murder, in the circumstances stated above, the deceased cause of death remains indeterminable, it is futile and unnecessary to proceed to the High Court to consider whether it was the accused person who caused the death of the victim of an attack. Before doing this, preliminary investigation by the magistrate is inevitable. Jurisdiction is the authority of the courts to exercise judicial powers which is the totality of powers a court exercise when it assumes jurisdiction to hear a case. Court must have jurisdiction before you proceed to exercise the power. It is trite that jurisdiction can only be acquired by a particular court if it is specifically vested with powers to try the particular matter. This is a matter of strict and hard law donated by coroner law of Edo State. **Drexel & Natural Resources Ltd. V Trans International Bank Ltd. (2008) 18 NWLR (Pt.1119) 399 at 417; Eregbowa Ltd. V Obanor (2010) 16 NWLR (Pt.1218)33; Ohakim V Agbaso (2010) 19 NWLR (Pt. 1226) 172.**

Counsel further submitted that the High Court can only invoke her jurisdiction if the case has been initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. **Amadi V FRN (2008) 18 NWLR (pt. 1119) 259; Okpalauzuegbu V Ezemenari (2011) 14 NWLR (Pt. 1268) P. 492 at 529 paras. B – C; Madukolu V Nkemdilim (1962) 2 SCNLR 341; Alawiye V Ogunsaya (2013) 5 NWLR (Pt.1348) 570 at 609 paras G – H; Skenconsult Nig. Ltd. V Ukey (1981) 1 SC , pg. 6; Bewaji V Obasanjo (2008) 9 NWLR (Pt. 1093) Pg. 540; A.G. Federation V Abacha (2010) 17 NWLR (Pt. 1221) 1; Agbogunleri V Depo (2008) 3 NWLR (Pt.1074) 217.** Counsel submitted that this trial is anti criminal procedure, the charge against the accused persons is incompetent having not fulfilled the condition precedent to the exercise of the court's jurisdiction and therefore liable to be struck out. **A.G. Anambra V Attorney General of the Federation (1993) 6 NWLR (pt. 302) 692 at 737 paras A – D.**

On Issue (3) Counsel submitted that confessional statement cannot fly in the face of evidence of accused persons riddled in torture. **Uzuoku V Ezeonu II (1991) 6 NWLR (pt. 200) pg. 708 at 778 paras D – E.** That in confessional statement, the test is its voluntariness. **Arogundade V State (2009) NWLR (pt.**

1136) 165 at 178. It is this voluntariness when challenged that is tested in a trial within a trial and nothing else. **Agholor V A.G. Bendel State (1990) 6 NWLR (pt. 135)141.** That the confessional statement on the court's record has been denied, no direct evidence and the only available mode of prove is a circumstantial evidence of the prosecution. That the court is enjoined to narrowly examine the circumstantial evidence adduced before relying on it to convict an accused person in the face of opposite and apposite direct evidence of the defence rebutting the allegations. **Rabiu V State (1980) 8 – 11 SC 130; Udediba V State (1976) 11 SC 133; State V Kura (1975) 2 FSC 83 1510; FOR V State (2001) 3 NWLR (pt. 699).** That once there is doubt and there was no trial within trial to resolve the doubt, the controversy must be settled in favour of the accused. The court has no device but to discharge and acquit the accused for the offence charged. **Nnamsoh V State (1993) 5 NWLR (pt, 128) 129; R V Igwe 1960 5 FSC; R. V Onabanjo (1936) 3 WACA 43.** Counsel submitted that for an accused to be convicted on confessional statements, the court must first ascertain whether the confession is consistent with other facts proven. **Haruna V. A.G. F. (2012) All FWLR (pt.632) 1617 at 1635-1636.** The cause of death in this case has been established because the police particularly those at Ore Division did not investigate the complaint much less the whereabouts of the deceased before the incident. A free and voluntary confession is sufficient to ground conviction without any corroboration if the same confession is direct as well as positive and is duly made and satisfactorily proved. **Okonkwo V State (1998) 8 NWLR (pt. 561) 210; Queen V Itule (1961) 2 SCNLR 183; Siadu V State (1982) 4 S.C.; Adeyemi V State (1991) 6 NWLR)pt. 195)1.**

On Issue (2) Counsel submitted that where the body of a deceased is found in the river, the cause of death can only be arrived at through a coroner inquest by a magistrate within the jurisdiction of the Court where the act occurred, without which the High Court of Edo State cannot proceed to determine who is responsible. It is trite that prosecution must prove its case of murder against an accused person by all or any of the following means;

(a) Evidence of an eye witness (es) of the crime
(b) Confession or admission voluntarily made
(c) Circumstantial evidence which is positive, compelling and points to the conclusion that the accused committed the offence.

Ilodigiwe V State (2012) 18 NWLR pt. 1331, 1 at 2980 para F-G; Criminal Investigation Procedure and Evidence – Reform Imperatives in Reforming Criminal Law in Nigeria; J.B. Daudu et al (Ed); NBAA 2012 at pg. 89 and 93; Yakubu V FRN (2009) 14 NWLR pt. 1160, pg. 151 at 165 Counsel submitted that during examination-in-chief, DW1 testified that he was asking the

daughter of PW1 out to the fury of PW1 and the impasse was resolved by the Odionwere. He went further to state that PW1 promised to disgrace him in the community, hence this travail. That the evidence is sustainable by the action of PW1 and PW2. They both conspired and took the deceased to their private doctor far away from Ore, Ondo State so that the accused persons can be convicted. That where there is challenge of credibility from inadequacies propelled by malice, it is sufficient to bury the circumstantial evidence led on which prosecution's case hung. That PW2 never gave evidence of the investigation he conducted on receipt of complaint of a missing child. All he did was to follow PW1 to the house of the accused and arrested them. That in the absence of thorough investigation by PW1, the accused were simply victim of nuptial indifference. The effect is that where there was no proper investigation and the result is that all the issues are resolved in favour of the accused. The totality of evidence led by the prosecution in proof of charge of murder and conspiracy to murder is unreliable. The presumption of innocence of the accused is most sacrosanct in this trial. Yes the deceased was drowned in the water, the result of the inquest would have revealed who drowned him. The result of the investigation made by police officers in Ore, Ondo State was not given in evidence and the investigation report was not tendered. In this case no explanation was made as to the steps taken to get to the root of the culprit and the cause of death of the deceased. The only explanation available before the court is that the accused were beaten and brutalized to admit committing the offence admitted in evidence as Exhibit A, B,C and D, this somersault are material and until it is resolved the burden of prove beyond reasonable doubt has not been satisfied.

Counsel submitted further that since the confessional statements made by the accused were not voluntary and the prosecution has not proven otherwise, then evidence including the exhibits A, B, C and D tendered by PW2 deserved to be corroborated before it can ground conviction. It is the law that evidence of a witness which requires corroboration cannot be used to corroborate the evidence of another witness. It therefore means that evidence of PW1 cannot be corroborated by evidence of PW2 **James Gwangwan V State (2012) Vol. 1 WRN 57 at 85; Obi V State (1972) 1 SC 1 at pg. 11.** Counsel submitted that since there was no trial within trial and no foundation was laid to show the reasons for abridging the criminal trial, the trial court cannot now admit the utterly tainted exhibits to convict the accused persons. The Prosecution having failed to prove the offence of murder and conspiracy to murder against the accused beyond reasonable doubt the accused is entitled to be discharged and acquitted of the charges. **Ikomi V State 1986 LPELR 1482 (SC)** During cross examination, PW2 in evidence said that the deceased was kept in the custody of the 2nd accused person by PW1 but PW1 in his evidence testified that the deceased was left at home while they left for farm. The incongruous piece of

evidence should be resolved in the favour of the 1st and 2nd accused persons. This contradiction is material because it goes to the root of the prosecution's case. It is the law that contradiction or inadequacies must be explained by the prosecution and the court cannot pick and choose which of the prosecution witness to believe. **Ahmed V State (1959) 5 SC pt. 11 pg. 33** and that is what beyond every reasonable doubt means. Where a witness called by the prosecution in a criminal case contradicts another witness on a material point, the prosecution ought to lay some foundation such as showing that the witness is hostile before the court can be asked to reject the testimony of one of the witnesses and accept that of the another witness in preference for the evidence of the discredited witness. **Ubani V State (2003) 18 NWLR pt. 851 pg. 224 at 245 paras. E-F** That the basis of the success of any charge is the ingredient in that charge being established coupled with credible and cogent evidence to buttress same. That where the offence charged lacks any of these, then it is not established and the accused person shall, of right enjoy the benefit of this lacuna. There is no evidence that the deceased was drowned by the accused persons. There is nothing to show that the accused persons did or omit to do any act for the purpose of enabling or aiding another person to commit the offence with which they were charged. These facts remain unproven. Counsel submitted that the prosecution has been unable to provide direct or circumstantial evidence pinning the accused persons to the commission of the crime of conspiracy to murder and murder. **Ekaiden V State (2012) FWLR (pt.631) 1587 at pg. 1610.** Where evidence of witnesses is contradictory of each other, it is the duty of the judge to discountenance same and treat the entire evidence as unreliable. It is a duty in law and not one of discretion. **Onubogwu V State (1974) 9 SC 1 at 19 -20.** Counsel submitted that the accused persons in evidence-in-chief and during cross examination gave their location as at the time of arrest to be Oghneprove camp. PW1 and his family live in Okhuosa village. That once an accused success fully pleaded alibi and the prosecution could not investigate or could not produce evidence to pin down the accused person at the place of the commission of the said offence, then the court is bound to hold that the prosecutor has failed to establish its case beyond all reasonable doubt. Such accused will be discharged and acquitted because it is practically inconceivable to adjudge somebody who is elsewhere distant from the scene of the incidence or crime guilty of the offence. **Fatai Azeez V State (2006) All FWLR (pt.337) 485 at 498 – 499; Ubani V State (2003) 18 NWLR pt. 851 pg. 224 at 250 paras. D – E; Umani V State (1988) 1 NWLR (pt.70) 274** That the accused deserved benefit of the doubt because the cause of death of the deceased has not been properly established. That it is a post-mortem report subjected to coroner inquest that can establish river related cause of death as in this case. That in a charge of murder, one of the essential ingredients which the prosecution must prove is the act or omission of the accused person which led to or caused the death of the deceased. Hence, if the

prosecution fails to clearly establish the case of death, a doubt has been raised and the accused person is entitled to discharge and acquittal. **Effiong Ekaidem V State (2012) All FWLR (pt. 631) 1587; Audu V State (2003) 7 NWLR pt. 820 at 516 -551 para E-F.**

Counsel further submitted that to establish a cause of murder by unnatural cause, the prosecution must prove among others that the deceased died as a result of injury caused by the accused person, by inquest and not by speculations or suspicion. In this case, the cause of death of the deceased was not ascertained by a coroner having jurisdiction over the matter. So the allegation that the cause of death of the deceased was caused by the accused has not been ascertained and proven. On his submissions on confessional statements, Counsel relied on the following authorities. **Thompson Ebong V State (2012) All FWLR (pt. 633) 1945 at 1967 -1969** The Supreme Court has held that for a confessional statement to ground a conviction, it must lead only to one conclusion, namely the guilt of the accused person. Where there are other possibilities in the case than the accused or where investigation could have revealed that other persons have opportunity of committing the offence, such an accused person cannot be convicted of the offence. **Ubani V State (2003) 18 NWLR pt. 851, pg. 224 at 241 paras. E-F; Esai V State (1976) 11 SC 39; Thompson Ebong V State (2012) All FWLR (pt. 633) 1945 at 1967 -1969.** In all river related homicide cases, it is very important that the court receives concrete evidence from the prosecution that the deceased died as a result of the act of the accused persons. This is because injuries were not inflicted on the deceased and the cause and circumstances of death is unknown. In a case of this nature judicial break in science would have graphically described and tie the cause of death of the deceased to the guilty person. That Exhibit H withheld from coroner inquest by the prosecution, the court is entitled to presume that the evidence or exhibit would be unfavorable to the prosecution who withheld it. **Section 167 of the Evidence Act.** That in a criminal case where the evidence adduced by the prosecution is inadequate to implicate an accused person, the accused should be given the benefit of the doubt as the prosecution would then have failed to prove the case against the accused beyond reasonable doubt. **Ubani V State (2003) 18 NWLR pt. 851 pg. 224 at 250 paras D- E.** That not haven stopped in UBTH where there are more and qualified surgeons; not having stopped in Central Hospital in Benin tells more of the stealth and conspiracy in unraveling the cause of death and the identity of the accused persons. This cause of death of the deceased was fraught with malice and cannot convict. That the fact that the deceased was taken to a familiar hospital without the order of court, thus a conviction and sentence on this scene will not be proper in law. **Oguntola V State (1996) 2 NWLR (pt. 432) 503.**

S. E. Okojie Mrs. submitted that the prosecution has proved the two count charge against the accused persons beyond reasonable doubt. That the deceased was stolen in Edo State, drowned and killed in Ore Ondo State all by the accused persons and brought back to Edo State to be buried. That in line with the case of **Patrick Njovens and 3 Ors V The State (1998) 1 ACLR 224 at 263 -264,** each of these two states have jurisdiction to try the accused persons. On the Count of conspiracy, counsel submitted that for the prosecution to succeed, it must prove the following ingredients:-

(1) An agreement by two or more persons to cause to be done an illegal act or

(2) An agreement by two or more persons to do an act which is not legal by illegal means.

Counsel submitted that the offence of conspiracy is the meeting of the minds of the conspirators and it is hardly capable of direct proof but overt act of the parties, is usually the only proof of the offence. That conspiracy is a matter of inference from certain criminal acts of the parties done in pursuance of an apparent purpose of common intention. **Patrick Njovens and 3 Ors V The State (1998) 1 ACLR 224 at 231 ratio 2** That the evidence of PW1, PW2 and PW3 were never successfully discredited during cross examination as their evidence not only corroborated each other', but was also direct, unequivocal and compelling. That other facts and prevailing circumstances which are already evidence before this court in this matter corroborated the confessional statements of the two accused persons. That to buttress this point, it was the accused persons who led the police to the scene of the crime where the body of the 8 year old Ejiroke Sunday Onouoke was recovered. That it is more than a mere coincidence that the day the deceased was missing, was the same day both accused persons and one Gbenga a Hiase bus driver who is still at large, decided to travel out of the Urohokhuosa community to the same direction (Ijebu-Ode) only for the deceased to be found drowned in a stream at Ore, a transit town to Ijebu Ode, a few days later. That the only inference that can be drawn from the evidence of all three prosecution witnesses is that the two accused persons conspired together with one Gbenga to steal and use the deceased for money making rituals and having failed in their evil design, decided to kill the deceased to conceal their identity or risk being exposed by the deceased. Counsel therefore submitted that from the totality of the evidence adduced in this case by the prosecution, all the essential ingredients of conspiracy to murder the deceased had been successfully proven against the accused persons with positive, direct and compelling circumstantial evidence beyond reasonable doubt as required by law.

Counsel submitted on the second count which is the murder of the deceased, that section 316 of the Criminal Code defined murder as when a person unlawfully kills another under any of the six (6) circumstances listed under the

said section. That the elements of the offence of murder are; (a) that the accused killed the deceased. This is the actus reus. (That the killing was unlawful. (c) That the accused unlawfully killed the deceased under one or the other of the six circumstances enumerated in section 316 of the Criminal Code Cap 48, Vol. II laws of Bendel State of Nigeria 1976 as applicable in Edo State. **Ogwa Nweke Onah V The State (1988) 1 ACLR 642 at 656.** That the evidence of the three (3) prosecution witnesses have established these three elements. On the first element, the prosecution has established that the accused person killed the deceased person and the evidence adduced at the trial by the prosecution sufficiently established this fact. In fact that the accused persons conspired to kill the deceased and eventually killed him is not in doubt at all. Counsel relied on the evidence of PWs 1,2,3 and on Exhibits 'A', 'B', 'C', 'D' 'E' and 'F', the confessional statements of the 1st and 2nd accused persons respectively and their attestation forms. Counsel relied on exhibits 'G, G1 – G7. Counsel submitted that the accused person's confessional statement to the police which are exhibits 'A' 'B', 'C' 'D' are free and voluntary confessions of the accused persons which are direct, positive and duly made by the accused persons. That the confessional statements have also been properly and sufficiently proved before this court and goes to corroborate the evidence led by the prosecution. As the confession has outside it, sufficient evidence of the circumstances which has further confirmed that the confession led to the recovery of the deceased's corpse in a stream in far away Ore in Ondo State (Ore is a transit town to Ijebu-Ode) by men of both the Edo and Ondo States Police command. The evidence of the prosecution witnesses and the various exhibits refers. **Suleiman Olawale Arogundare V The State (2009) 6 NWLR 165 at 174 para. C-D.**

On the second and third elements, that the killing was unlawful and that the accused persons unlawfully killed the deceased under one or the other of the six circumstances enumerated in Section 316 of the Criminal Code Cap 48 Vol. II Laws of Bendel State of Nigeria 1976 applicable in Edo State (means rea). Counsel submitted that section 316 of the criminal code defined murder as when a person unlawfully kills another under any of the 6 listed circumstances. That Section 316 (1) which states among other things that if the offender intends to cause the death of the person killed, clearly apply to this case. Subsection 2 and 3 also apply. That the accused persons having failed to get the cooperation of the native doctor because of their inability to pay the sum of N20,000, still conspired to kill the deceased and did eventually drown him in a stream in Ore, that the evidence of PW3, the medical doctor clearly showed that the deceased died of drowning and urged the court to hold that the murder of the deceased by the accused persons was brutal and cold blooded. That the killing of the deceased by the accused persons was also premeditated, well planned and very well executed. In exhibits 'A', 'B; 'C', 'D', the accused persons stated vividly

how both of them stole the deceased from his home, how they decided to kill the deceased, how they took the deceased to a stream at Ore in Ondo State and how the first accused person watched for intruders while the second accused person dipped the deceased in the stream and held him there until he was drowned and died. Counsel submitted that the prosecution has discharged the onus placed on them to prove the charge against the accused persons beyond reasonable doubt and urged the court to so hold. That a man is presumed to intend the natural consequences of his act. Accordingly where the accused persons stole the deceased from his home for money making rituals and failed, and then conspired to kill the deceased, with 1st accused person watching for intruders while the 2nd accused person drowned the helpless child in a stream in Ore till he died, they are presumed to have intended to kill the deceased and urged the court to so hold. **Emmanuel Audu V The State (2003) 7 NWLR 516 at 554-555 para E-H**

Counsel further submitted that the accused persons address before this court is misconceived, lack merit and should be discountenanced. That the defence made heavy weather of the following issues in his address.

Firstly that this charge was necessitated to previous animosity between the accused and PW1. Counsel urged the court to discountenance the defense of the accused persons that the instant charge was necessitated by previous animosity occasioned by 1st accused person's love advances to PW1's daughter. PW1 vehemently denied ever having any quarrel with the accused persons over his daughter or for any other reason. Counsel urged the court to believe the testimony of PW1 as he was not shaken at all under the heat of cross examination, and treat accused persons' assertion as the afterthought which it is. Assuming but not conceding that this was the true position, the position of the law is that where the evidence of a witness is sufficiently probative of the offence charged as in the instant case, the fact that such witness may have other interest of his own to serve, is by itself not sufficient to reject such evidence. That even where such interest exists and trial court did warn itself on it, the evidence, if true, will not be weakened in validity merely because the witness has a grouse against the accused. **Shaffu Atiku V The State CA/K/114C/2007** also cited in **(2010) 9 NWLR (pt. 1199) 241 at 251**.

On whether the High Court has jurisdiction to try this case Counsel submitted where according to the defense counsel, the coroner law was not complied with. The learned defense counsel completely relied on the personal opinion of **Daudu; J.B. in "Criminal Investigation Procedure and Evidence Reform Imperatives" in Reforming Criminal Law in Nigeria; J.B. Daudu et al(Ed) N.B.A. 2012,** in coming to his conclusion. That the opinions rendered in the above book are the personal opinion of J.B. Daudu (SAN). This is not the

decision of any court of law in Nigeria. Counsel submitted that this matter is properly before this Honourable Court as there was a proper inquest and all the sections of the Coroner Law relied on by the defense, namely sections 3 (1), 4,7,10 11 (1) & (2) and 12 of the Coroner Law Cap 46 Laws of Bendel State of Nigeria, 1976 now applicable in Edo State, were duly complied with. Counsel submitted that a coroner inquest was duly carried out and the post mortem was done only on the directive of the coroner. That no High Court will assume jurisdiction over a criminal matter which it has no jurisdiction. This matter was brought before this Honourable Court by way of information that is to say consent was sought for by the office of the Honourable attorney general through the offence of the Director of Public Prosecutions (DPP) from the presiding judge and granted before the information was filed. That the information was filed since the year 2000.

Counsel further submitted that both the police IPO and the doctor informed this Honourable Court that post mortem was carried out on the deceased and that presupposes that there was an inquest as you cannot talk of a post mortem being carried unless there was an inquest. That this case, due process was followed and the coroner, who had the right to order the inquest, ordered it and a report of the medical practitioner as in Form 'D' was made. Exhibit 'H' tendered by PW3 which is boldly headed 'Form D' The Coroner Ordinance (Chapter 46) Report of Medical Practitioner. That the absence of medical evidence would not have been fatal to the prosecution's case as medical evidence though desirable in establishing the cause of murder, is not always essential in all cases of murder. In the absence of medical evidence, the cause of death can be established by oral evidence showing beyond reasonable doubt that the death of the deceased arose from the act of the accused. **Audu V The State (supra)**. Counsel submitted that PW2 and 3 not mentioning expressly that there was an inquest is not also fatal to the prosecution's case just as mentioning it expressly and duly tendering from 'C' and other relevant forms would have been superfluous. That it is trite that every police Investigating Officer or doctor will not on their own carry out a post mortem on a deceased and even where such was done, the medical examination will not be referred to as a post mortem examination. That the proof of evidence in this matter which includes the various coroner forms and post mortem report together with the information were duly served on the defense counsel and if the defense had issues with the post mortem report, he ought to have cross examined the prosecution witnesses on it but he failed to so do and the prosecution cannot at this stage tender the coroner forms. Counsel urged the court to hold that the common course of business has been followed in procuring Exhibit 'H' as there is nothing to the contrary before this Honourable Court. Section 167 and subsection (C) of the said section 167 of the Evidence Act 2011. Counsel urged the court to discountenance the submission of defense counsel on this issue and hold that

there was an inquest hence the post mortem which resulted in post mortem report which is Exhibit 'H'. Counsel submitted that the defense counsel has not actually tried so hard to disprove the prosecution that the accused persons stole and drowned the 8 years old Ejiroke Onuoke Sunday. His quarrel however is that the technicalities involved in prosecuting the accused persons was not to his understanding, followed. That it is trite and in fact the Nigerian courts have held that they are ready to do justice at all costs and are not ready to kowtow to technical issues which merely pursue the shadow of the matter and leave the substance and have held further that where the road to doing justice is confronted with or edged out by technicalities this court will carefully remove the brakes or hurdles on the way to justice and do justice to the parties. **Chief Adeoye Adio Facunwa & Anor V Chief Nathaniel Adibi & 2 Ors (2004) Vol.120 LRCN 4548 at 4563U.**

On whether trial within trial can be dispensed with for accused statements obtained by torture Counsel submitted again how the defense counsel came by this realization that the accused persons were tortured beats one's imagination. That section 29(2) of the Evidence Act 2011 clearly outlined the circumstances in which a court can order a trial within trial, and the circumstances in which the confessional statements in this instant case does not fall within them. That the statements of the accused persons were admitted in evidence on the 4th day of May 2011. That the accused persons' statements were admitted in evidence without objection from the defense counsel or the accused persons. That once a statement complied with the law and rules governing the method for taking it, and if it is tendered and not objected to by the defense, whereby it was admitted as an exhibit, then it is good evidence and no amount of retraction will vitiate its admission as a voluntary statement. **Ikemson V The State (1998) 1 ACLR 67 at 92.** That the time to object to the voluntariness of the confessional statement is at the time of tendering the statement and not when the accused persons opened their defense or during their defense. **Ogudo V State SC 34/2010.** It is cited in **(2011) 202 LRCN 12**. The accused persons statements are already exhibits before this Honourable Court and it is too late in the day at defense and address stage for the accused persons to cook up lies. That the confessions of the accused persons were free, voluntary, direct, positive and properly proved and are sufficient to sustain conviction. That an admission made at any time by a person charged with an offence (even before it had been decided to formally charge him with committing a crime without administering a caution) suggestion that he committed the offence is a relevant fact against him. **Section 29(1) of the Evidence Act 2011** and the case of **Suleiman Olawale Arogundare V The State (2009) 6 NWLR 165 at 174, paras. E-H.** Finally on this issue Counsel submitted that this is a very straight forward case, well investigated by the police and not PW1 (as alleged by defense counsel in his address). **Emmanuel Nwaebonyi V The State (1994) 5 NWLR pt. 343, 138 at 150,** the supreme

court as per Wali JSC as he then was, gave six (6) guide lines on the weight to be attached to a confessional statement whether or not retracted. That the facts led by the prosecution at the trial showed that the confession has outside it evidence to show that the confessions are true. The evidence of the prosecution witnesses corroborated the confessional statements of the accused persons in its entirety. The relevant statements made in it of facts were tested and found to be true when the accused persons led PW2 and his team, PW1 and the photographer to the scene of crime in far away Ore and recovered the deceased's corpse and this only led to one conclusion that the accused persons killed the deceased and there are no other probabilities. The accused persons had the opportunity of committing the murder as they stole the deceased from his home in Edo State for money making rituals but ended up drowning him in a stream at Ore. The accused persons duly confessed to the crime and the confessions are consistent with other facts which have been ascertained and proven by the prosecution s the accused persons clearly stated how they stole, killed him and their motive for doing so. That the cause of death of the deceased is very well known. He was drowned by the accused persons in far away Ore. There is no doubt about it all.

On contradiction in the prosecution's case Counsel submitted that there are no contradictions whatsoever in the case of the prosecution as argued by the defense. **Ogbuagu JSC in Archibong V The State; Lazarus Atato V Ag. Bendel State (2005) 4 ACLR 25 at 51.** Counsel urged the court to treat the minor details as mere discrepancies. The defense counsel quarreled with the court allowing the prosecutions to re-examine PW1, Counsel submitted that there was clearly an ambiguity created by the defense counsel's cross examination and there would have been a miscarriage of justice if this honourable court had denied the prosecution the privilege of re-examining PW1. That the defense counsel submitted on PW1 stating during cross examination that his child changed because he was rotten among other things. That it is clear that the defense's Counsel records court's proceedings the way he feels would suit him as against what was actually said or done in the court. PW1 repeated stated before this court that he gave marks to his son on the face, which marks according to PW1, were still clearly visible on the corpse of the deceased.

On reply on points of law P. Aigbokhan Esq. of learned Counsel for the Accused person relied on the following cases: **Eguamwense V Amaghizemwen (1993) NWLR pt. (315) p. 1 at 25 para F; Provinsional Council Osu V Makinde (1991) 2 NWLR pt.175) P 163 at 618 para F; Personal Income Tax Act Cap. P8 LFN 2004; Adighije V Nwagy (2003) FWLR (pt 143) 251; F.B.N. Maiwada (2013) 5 NWLR (pt.1348) P444 at 488 para A-C, F-G; Orakwu Resources V NCC (2007) 16 NWLR (pt. 1060) P. 302 para. B-D; Nwanbueze V Okoye**

(1988) 4 NWLR (pt. 91) 644 Section 29 (2) (3) (4) (5) of the Evidence Act 2011; Section 48 of the Evidence Act 2011.

It is pertinent to state that the cardinal principle in a criminal trial and afortiori, a murder case, that the onus is always on the prosecution to prove the guilt of the accused person beyond reasonable doubt. In order words the burden of proof lies on the prosecution and it never shifts. See the following cases: **Esangbedo V State (1989) NWLR pt. 113 57; Mbenu V State (1988) 3 NWLR (pt. 84) 615 at 626; Woodmington V DPP 1935 AC 462; Oteki V A.G. Bendel State (1986) 2 NWLR (pt.24); Idemudia V State 37 LRCN 688 Gira V State (1996) 37 LRCN 688; Igbabele V State (2000) 6 NWLR (pt. 975) 100 at 127; Shurumo V State (2010) 19 NWLR pt. 1226 73 at 79**.

In a prosecution on a charge of murder, under section 319 (1) of the Criminal Code, as in the instant case, the prosecution is required to prove certain ingredients. The ingredients have been restated by Onu JSC in the case of **Igbabele V State (supra) at pg. 116** as follows:-

i. That the deceased died
ii. That the act or omission of the accused which caused the death of the deceased was unlawful.
iii. That the act or omission of the accused which caused the death of the deceased must have been intentional with knowledge that death or grievious harm was its probable cause.

See the following cases.

Agbogede V State 1 All NLR (pt.448) 270; R. V Ntah (1961) 1 All NLR (pt.4) 90; Ogba V State 1992 2 NWLR (pt.222) 164; Kalu V State (1993) 6 NWLR (pt. 279) 59 at 80; Okeke V State (1992) 2 NWLR (pt.590) 246 at 273; Uguru V State (2002) 9 NWLR (Pt. 771) 90 at 93.

"These three conditions must co-exist and where one of them is absent or tainted with doubt, the charge is not said to be proved." **Obade V State (1991) 6 NWLR (198) 435.** It is trite law that in a murder trial, the prosecution must show conclusively that death was caused by the act of the accused. In order words, there must be a nexus between the act of the accused person and the death of the victim. See the following cases:- **Omini V State (1997) 72 LRCN 3044; Igbi V State (2000) 75 LRCN 303 at 324; Lori V State 1980 8 11 SC 81 at 95 – 96; Uguru V State supra at pg. 94.** From the foregoing, I shall now proceed to examine the evidence of the prosecution witnesses and the defence of the accused persons.

It is manifest in the instant case, and not disputed that the deceased Ejiroke Onoroke is dead vide exhibits H, G, G1-G7 negative and photographs taken by a photographer. Exhibit G is the negative. Exhibit G1 is photograph of the corpse in the stream. G2 is photograph of the 1st and 2nd accused persons retrieving the corpse from the stream. G3 is the photograph of 1st and 2nd accused carrying the corpse tied in a mat. G4 is photograph of 1st and 2nd accused attempting to retrieve the corpse. G5 and G6 is the corpse lying on a mat. G7 is photograph of 1st and 2nd accused persons carrying the corpse in a mat. Exhibits G, G1-G7 speak for themselves. This is confirmed by the evidence of PW3 Abdulahi Eguavouen who performed post mortem examination of the corpse having been identified to him by PW1. He described the injuries he found on the corpse of the deceased as follows: -

"The body was brought at advanced stage of decomposition and bloated although, offensive odour issued from the corpse, pressure on the tommy led to fluid issuing from both the mouth and nostrils. There was no clear laceration or body injury. The skin on the tongue upper and lower eyelids where chopped off obviously from the effects of cannivorous animals. His opinion the deceased would have died from the effects of drowning."

The most important consideration is whether from the evidence of PW3 the medical doctor if the death of the deceased was caused by the act of the 1st and 2nd accused persons. On the 21/8/1995 the 1st and 2nd accused persons conspired together and stole the PW1's son at Urhokhuosa village. The 1st and 2nd accused persons confessed to the police at Ehor police station that they stole the child for ritual purposes. The native doctor demanded for the sum of N20,000. They could not meet the terms of the native doctor. In order to conceal what they have done, they decided to drown the deceased in a shallow stream at Ore. It was based on the confession of the 1st accused person the PW1 chartered a vehicle the 2nd time, they went in company of the police to Ore. The 1st and 2nd accused persons took them to the place where they drowned the deceased. There the deceased was wrapped in a mat bought by PW1. At the scene, Exhibits G, G1 – G7 were taken. The corpse of the deceased was identified by 1st and 2nd accused persons in a stream and the PW1 who stated under re-examination that "I can identify my son from the tribal marks on his two cheeks in the form of a cross." Exhibits A, B, are confessional statements of the 1st accused person. Exhibits F is the attestation form. Exhibits 'C' 'D' are the confessional statements of the 2nd accused person and Exhibit 'E' is the attestation form. These statements were tendered through the PW2 the investigating police officer. At the stage of tendering the statements of the 1st and 2nd accused persons no objection was raised by defence Counsel nor the accused persons. 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 pt. 98; Ibrahim V State (2011) 1 NWLR (pt. 1227) 1 at 8.** The Supreme Court in Alarape V Sate 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 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 proven in the matter.

In the instant case, Exhibits 'A', 'B', 'C', 'D' confessional statements in respect of the 1st and 2nd accused persons were tested. The confessional statements were corroborated by the evidence of the PW1 and PW2 and Exhibits 'G' 'G1' – 'G7'. It is the confession of the 1st and 2nd accused that led to the re-covering of the corpse of the deceased in a shallow stream. The photographs taken on the scene of crime corroborated the confessional statements. The accused persons had the opportunity to commit the crime. The confessional statements are consistent with facts which have been ascertained and been proven. The facts contained therein so far as can be tested are true.

I have considered the evidence before me, I am satisfied that the 1st and 2nd accused persons volunteered Exhibits 'A', 'B' 'C' 'D' to the police and were taken before a Senior Police Officer who read Exhibits "A'', 'B', 'F' to the 1st accused person and Exhibit 'C' and Exhibits 'D', 'E' to the 2nd accused person. I accept the evidence of PW2 that the 1st and 2nd accused persons admitted before him that they made it.

I find as fact that there is a nexus between Exhibits 'A' and 'B' confessional statements of 1st accused person Exhibit 'C' and 'D' confessional statement of the 2nd accused persons, Exhibit G, 'G1' – 'G7' and 'H' and the death of the deceased Ejiroke Onoroke on the 21/8/1995. Where a confessional statement has admitted all the essential elements of an offence, and shows unequivocal, direct and positive involvement of the accused in the crime alleged, the court can rely on it alone to convict the accused. **Major Amachree V Nigeria Army (2003) 3 NWLR (pt.807) 256; Odu V F.R.N. (2002) 5 NWLR (pt.761) 615; R V Kanu (1952) 14 WACA 30.** It is quite clear from exhibits 'A' and 'B' confessional statement of 1st accused person and exhibit 'C' and 'D' confessional statements of the 2nd accused that the 1st and 2nd accused intended to kill the deceased.

Having failed in their attempt to use the deceased for rituals, on their way from Ijebu Ode they interrupted their journey stopped at a shallow stream, in order that their evil scheme would not be discovered decided to kill the deceased. They agreed to do this and to execute their plan 2nd accused person drowned the deceased while 1st accused was assigned the task to watch out for passerby. The 1st and 2nd accused persons drowned the deceased in the shallow stream. I find as fact 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 grievious bodily harm was its probable consequence.

The relevant question posed at this stage is whether the 1st and 2nd accused persons were justified to kill the deceased? It is trite law that before any killing can amount to murder, it must be shown to be lawful. See the case of **State V Oka (1975) 9 – 11 SC; Section 316 of the Criminal Code Cap. 48 Vol. II, Laws of Bendel State of Nigeria as applicable to Edo State** which provides as follows:-

"Section 316"

Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstance; that is to say –

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

(2) if the offender intends to do to the person killed or to some other person some grievious harm;

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

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

(5) if death is caused by administering or overpowering things for either or the purposes last aforesaid;

(6) if death is caused by willfully stopping the breath of any person for either such purposes; is guilty of murder."

What then is the evidence preferred by the prosecution against the 1st and 2nd accused persons. The 1st and 2nd accused persons stole the deceased Ejiroke and took him to Ijebu – Ode for rituals. The native doctor demanded the sum of N20,000.00 from them. They could not afford the sum. On their return journey they decided to kill the deceased to conceal their crime. They stopped at Ore and decided to drown the deceased. 1st accused was on the lookout for passerby while 2nd accused drowned the deceased in a shallow stream. The act of 1st and 2nd accused persons in killing the deceased is unlawful.

DW1, the 1st accused person in his defence gave evidence on oath and called no witness. He stated that he approached the daughter of the PW1 for friendship. The PW1 reported him to the elders who after deliberation decided the case in his favour. The PW1 said "he will see". As a result quarrels, he and the DW2 decided to move to Oghenebore camp. On a certain date he saw the PW1 in company of others, PW1 pointed out to him and said "I told you you will see". The PW1 pointed out to them that they are the persons. Some of the persons were armed with wood and cutlasses. He was ordered to enter into the boot of the vehicle, he was taken to an unknown destination. At the destination he and DW2 came out. PW1 said the police should follow him. They got to a river the PW1 pointed to the police "see it there". The police said they should go into the river to carry out what is there. They pushed them into the river that they should go and carry out what is there. They entered the river and brought out the corpse which was already decomposing with marks on its body. That was when they started taking pictures. PW1 brought a mat. It was the police that assisted to tie the mat on the corpse. Because of the mat, he was unable to identify the corpse. He could only see the eyeball. The Police instructed them to carry the corpse. As they were carrying it they took them photographs. They took them to the police station and enquired of how he killed someone. He denied killing anyone. The next day he was hung by the police, the police beat him and broke his head, the scar on his head was as a result of the beating. The police wrote on a paper and asked him to sign he refused he was hit on the head with cutlass. He signed. Thereafter he was taken to the State C.I.D. he was threatened, hung up beaten so he decided to admit everything is true and he signed the statement.

It is quite clear from defence put forth by the DW1 is a total denial of the charge he did not kill anyone. He did not make a confessional statement. He was forced to sign the statements. What then is the effect of exhibits 'G' 'G1' – 'G7' photographs of the scene of crime and of the DW1 and DW2 carrying out the corpse from the stream? A perusal of these exhibits it is quite clear that there are no marks or injury on the DW1 whom was not wearing a shirt. At what stage of investigation will it be said the police tortured him, cut him with cutlass or hung him, was it before or after the making of Exhibits G G1 – G7? I find that it

was based on the confession of the DW1 and DW2 that they drowned the deceased, that led to the recovering. They also led the police to the scene of crime. I find the defence of the DW1 spurile, unbelievable and an attempt to hoodwink the court. The DW1 also raised the issue of a dispute with the PW1, which I have examined and found out to be improbable bearing in mind the evidence put forth by the prosecution witnesses in particular the PW2 investigating police officer whom never informed the court nor made reference to the fact in his report that the DW1 informed him of the quarrel or malice between the parties. The position of the law is that so long as such evidence has been carefully considered by the trial court and is found to be direct, unassailable and true, the mere fact that the witness is the accused's mortal enemy will not render his evidence unreliable. **Ogulana V State (1995) 5 NWLR (pt. 395) 266 at 285.**

DW2 is the 2nd accused person, in her defence she stated that DW1 approached the daughter of PW1 that he wanted to befriend her which resulted in quarrel between them and the children of PW1. As a result of this they moved to Oghenebore camp. Three days later she saw two cars. Three policemen and other people. They beat up DW1. She saw DW1 on the floor his head was bleeding. They carried him and put him in the boot of the car. They started to beat her, hand cuffed her hands and ordered her to get in the car. They put her on the bare floor and drove away. She did not know where they were taking her, she was lying down. They got to a place. They told her to come down. They brought out DW1. They said they should follow them. They got to a shallow stream. They instructed them to carry out the thing in the water. They refused. They beat them with guns. As they were being beaten the DW1 bent down to carry the corpse. As they were carrying the corpse they took them photographs. The police brought a mat and told them to put the corpse in the mat. Her hands were hand cuffed. They rolled the mat and put it in their hands and took photographs of them. At Ehor police station police they hung the DW1, tear gassed his eyes which led to him wearing glasses. They put bottle in her vagina and flogged her with koboko. They took the corpse to a doctor, she was not present. The police brought out a paper, she was forced to thumbprint. She did not know the contents. At the State C.I.D. they were instructed to make statements. The police threatened them with gun and cutlass that they will use them to serve their idol a human head in coffin, the police cut her back with cutlass. She was instructed to make a statement, she refused. It was the earlier statement she made at Ehor that they wrote at the State C.I.D. that she should sign. She does not read and write.

The defence put forth by the DW2 is total denial of the charge, she did not kill anyone. She did not know where they were going to. She was lying down on the floor of the vehicle. The police tear gassed her eyes she could not see. She was hand cuffed. Her eyes were tear gassed. The teargas did not affect the

other occupants in the vehicle. She did not make a confessional statements. She was forced to sign the statements. What then is the effect of Exhibit 'G', 'G1' –'G7' photographs of DW1 and DW2 carrying the corpse from the stream vis – avis the defence of DW2. From these exhibits it can be seen that the DW2 was not handcuffed. There were no marks or injury on her person nor on the DW1, they both looked remorseful in the photographs. It was the confession of the DW1 and DW2 that lead to the discovery of the crime. DW1 and DW2 showed to the police the scene of crime and not the other way round. At what stage of investigation will be said that the police cut her with cutlass, tortured her to make the same confession, was it before or after the making of Exhibits 'G' 'G1' –'G7'? I find that DW2 was not handcuffed in the photographs. The head of DW2 was not cut and bleeding as she stated in her defence. I do not believe the scenario of events narrated by DW2. I find her defence improbable spurile, unbelievable and an attempt to hoodwink the court.

On address of Counsel for the 1st and 2nd accused persons that a trial within trial was not conducted. The statements of the 1st and 2nd accused persons were tendered through the Investigating Police Officer on the 4th day of May, 2011. The 1st and 2nd accused persons did not retract their statements. The practice in trial courts is for an accused person who denies the voluntariness of his extra judicial statement made to the police to object to the statement when the prosecution seeks to tender it in evidence when this is done at that stage, the court proceeds to test the voluntariness of such statement by conducting a trial within trial on the admissibility of the statement and the onus is on the prosecution to prove that it was free and voluntary and it is the prosecution which should begin. **Sunday Effiong and State 1998 8 NWLR (pt. 562) 362; Auta V State (1975) 4 SC 125; Gbadamosi V State (1992) 9 NWLR (pt. 266 – 465); Kanu V The King (1952) 14 WACA 30.** In the instant case the 1st and 2nd accused persons statements Exhibits 'A' 'B', 'C' 'D' were properly admitted in evidence as its voluntariness was not challenged at the appropriate time. There was no irregularity in its admission as confessional statements. Consequently, Exhibits 'A', 'B' 'C' 'D' were free and voluntary confession of guilt by the 1st and 2nd accused persons and were fully consistent in itself. It was also corroborated by the evidence of prosecution witnesses which showed that the confession was true.

In the instant case, the confessional statement having been admitted in evidence and marked as an Exhibit, it could no longer be made the subject of any trial within trial. **Nwachukwu V State (2004) All FWLR (pt.206) 525.** The appropriate point to raise the voluntariness of a confessional statement is when it is about to be tendered in evidence especially where, as in this case, the accused person is represented by counsel, and it is assumed he ought to know what to do at every stage of the proceedings. In the instant case, the 1st and 2nd

accused persons who did not object to the admissibility of Exhibits 'A' 'B' 'C' 'D' the confessional statements cannot later validly complain that same was made under duress. **Nwanchukwu V State supra; Okaroh V State 1988 3 NWLR (pt.81) 214 Obidiozo V State (1987) 4 NWLR (PT.67) 748; Sunday Effiong V State (1998) 8 NWLR (pt.562) 362.** Learned Counsel for the accused persons submitted on the defence of alibi that the 1st and 2nd accused live at Oghenerprowe camp as at the time of arrest. While PW1 and his family live at Okhuosa village (underlining mine). Alibi is a defence which an accused person alleges that at the time when the offence with which he is charged was committed, he was elsewhere and notice of intention to raise the defence of alibi must be given by the accused or suspect at the first possible opportunity in answer to the charge by the police at the investigation stage to enable the truth or falsity of the allegation to be established by the police. **Ozaki V State (1990) 1 NWLR (pt.124) 92 SC; Adio V State (186) 3 NWLR (pt.31) 714; Adedeji V State (1971) 1 All NLR 75; Gachi V State (1965) NMLR 333; Ogoala V State (1991) 2 NWLR (pt.175) 509 SC.**

With due respect to learned Counsel for the accused persons, alibi relates to the scene of crime and not the residence of the suspect. Moreover, no alibi was pleaded by the 1st and 2nd accused persons. The defence did not arise during investigation by police. It is evidenced before court that the PW1, DW1 and DW2 live in a camp in Urhokhosa village if they chose to state in their defence that they live elsewhere that in itself does constitute an alibi.

On submissions of learned counsel for the accused person that there exists contradictions in Exhibit 'H' the medical report, I see none. Exhibit 'H' is headed 'Form D'. The Coroners Ordinance Chapter 46, Report of Medical Practitioner. Cause of death can be proved by direct or circumstantial evidence. Where the prosecution relies on direct evidence, such as the medical evidence of the medical doctor who performed a post mortem examination of the deceased such medical evidence must be satisfactory and cogent in establishing that it is the injury inflicted on the deceased by the accused that led to the death of the former. **Aiguoreghian V State (2004) 3 NWLR (pt.860) 307; Adelimle V State (1989) 5 NWLR (pt. 123) 505; Essien V State (1984) 3 SC 14;** On contradictions in the evidence of PW1 and PW2, whereby PW2 said the deceased was kept in custody of 2nd accused person while PW1 said he was left at home while they went to farm. I have however been able to lay my hands on other case law authorities which point firmly decided on it. I begin with the case of **Ogoala V State (1991) 2 LRCN PG. 660, 675** in which Nnaemeka – Agu JSC stated inter alia.

> *"So, in ordinary parlance to contradict is to speak or affirm the contrary. Hence in the law of evidence, a piece of evidence is contradictory to*

another when it asserts of affirms the opposite of what the other asserts and not necessarily when there are minor discrepancies in, say, details between them. As I see it, contradiction between two pieces of evidence goes rather to the essentiality of something being or not being at the same time whereas minor discrepancies depend rather on the person's astuteness and capacity for observing meticulous details..."

Earlier in the case of Gabriel V State (1989) 5 NWLR (pt. 122) pg. 457, 468 – 469 Nanaemeka – Agu, JSC state thus;

"A piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated, not when there is just a minor discrepancy between them. .. Two pieces of evidence contradict one another when they are by themselves inconsistent. On the other hand, a discrepancy may occur when a piece of evidence stops short of, or contain a little more than, what the other piece of evidence says or contains minor differences in details…"

In the same vein, in the case of **Akpan State V State (1991) 3 LRCN p.800, p810 – 1811, Wali JSC stated inter alia**

"It is not unexpected that PW1 and PW2 would be able to narrate the account of what happened with mathematical precision... The contradictions referred to by learned Counsel are not of any substantial nature to have any effect on the substance of the prosecution's case…"

In the case of **Sele V State (1993) 10 LRCN p.49, 58 Belgore, JSC** had this to say.

"Contradictions, to be fatal to the prosecution's case, must go to substance of the case and not be of a minor nature. If every contradiction, however trivial to the overwhelming evidence before the court will vitiate a trial, human faculty to miss minor details due to lapse of time and error in narration in order of sequence will make nearly all prosecutions fail."

See also the following cases on the point; **Namsoh V State (1993) 13 LRCN p.891, 901; Oladele V State (1991) 1 NWLR (pt. 170) p.708, 721; Shittu Yusuf V Shaibu Bawa (2003) FR p.1, 14; Bodi V Agyo (2003) 4 FR p.44, 60; Ogbu & Anor V State (2003) FR pg. 1 at 14.**

Having regard to the state of the law as expounded by the numerous authorities referred to above, and in consideration of the evidence against which allegation

of contradiction have been levied, can it be said that the defence has scaled the hurdle in order to carry along the court? The answer is simply "no".

I shall consider the address of Counsel for the defence when he said the PW1 said "my child changed because he was rotten". What the PW1 said is that "The body changed from fair to black. The body got swollen but I know he was my son".

Under re-examination in which learned Counsel quarreled with the court not to allow the PW1 said "I could identity my son from the tribal marks on his two cheeks in the form of a cross."

In order to eliminate any possible mistake of an autopsy being performed on a corpse other than that of the deceased in respect of whom an accused is charged with causing his or her death, evidence of the identity of the relevant corpse is necessary and such evidence can come in any of the following ways.

(a) It could be given by the person who did the identification of the corpse to the doctor which itself will be tied to the evidence of the doctor

(b) it could be evidence of some peculiarities known about the deceased's physical features or found or associated with him or her body from which identify could hardly be mistaken **Enewoh V State 1989 5 NWLR (pt.119) pg. 98 at 101.**

The evidence of the PW1 in the instant case is very important and in conjunction with the medical with all certainty that the medical evidence relates to the deceased whom the accused is charged with causing his death. On submissions of learned Counsel for the defence that on inquest was not carried out therefore the trial is a nullity and the court lacks the jurisdiction to entertain same as the condition requirement of an inquest was not carried out.

I have perused the coroners law and I find that the words in section 4 of the Coroners Law C17 Laws of Edo State should be given its ordinary meaning.

The rule is that every statute is to be expounded according to its manifest and expressed intention. **William V Akintunde (1995) 3 NWLR (pt.38) 114; Jidenwo V Chukwuma (2000) 7 NWLR (pt. 641) 418**

"Section 4 of the coroners law provides

> "*Whenever a coroner is informed that the body of a deceased person is lying within jurisdiction and that there is reasonable cause to suspect that*

such person has died either a violent or an unnatural death, or has died a sudden of which ***the cause is unknown…..which in the opinion of the coroner, makes the holding of an inquest necessary or desirable****, such coroner shall, subject as hereinafter in this section provided hold an inquest on such body as soon as practicable. Subsections (b) provides as follows:*

(b) where the coroner is informed that criminal proceedings have been or are about to be instituted against any person already in custody or about to be arrested in respect of such death, the inquest shall not be continued or resumed, until such proceedings have been concluded.

It is quite clear from the above provisions that an inquest is not mandatory. Firstly, it is at the discretion of the coroner. Secondly it is not a requirement when criminal proceeding are to be instituted or the person is in custody or about to be arrested in respect of the death. At the time the corpse was recovered by the 1st and 2nd accused persons, they were already in the custody of the police. Moreso, learned Counsel conceded in his address that the only ground where inquest will be dispensed with in proof of cause of death is for the purpose of fast tracking the criminal trial. See Section 10 of the Coroner Law of Edo State. The purpose of an inquest is to determine cause of death when same is unknown. This is distinguishable from the instant case whereby there is a nexus between the cause of death and the 1st and 2nd Accused persons who led the police to the scene of crime and made confessional statements to the police. However, the address of learned counsel for the accused persons in this regard does not arise from the evidence led by the prosecution, Counsel did not cross-examine the PW2 in order to obtain this information, neither was it raised in the defence of the 1st and 2nd accused persons. The defence Counsel cannot address in vacuum on evidence not led before the court. Address of Counsel cannot take the place of evidence. **Ugorji V Onwuka 1994 4 NWLR pt. 397 226 at 230.**

"Although address is important, cases are decided on credible evidence. No amount of brilliance in an address can make up for lack of evidence to prove and establish or disprove and demolish points in issue."

See the following cases:

Okeji V Olokoba (2000) 4 NWLR (pt.654) 513; Nigeria Airways Ltd V Okutubo (2002) 15 NWLR (pt. 790) 370

Moreso, the court has the requisite jurisdiction to try this charge. As a general principle an accused person is usually tried by a court which has jurisdiction in the division or district:

(a) where the offence was wholly or partially committed

(b) where the person against whom or the thing in respect of which the offence was committed resides.

See Section 64 Criminal Procedure Act Cap 48 Vo. 11 Laws of Bendel State; **R V Shodipo (1948) 12 WACA 374; R V Osoba (1961) 1 All NLR. 1.**

On the count of conspiracy, in **Majekodunmi V R (1952) 14 WACA 64, the West African Court of Appeal adopted the well known definition of Willies J, in Malcaby V R LR 3 H. C. 317, as follows**

> *"A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. So long as a design rests on intention only."*

At page 66, the court of Appeal added thus:

> "*The gist of the offence of conspiracy lies not in doing the act or effecting the purpose of which conspiracy is formed, but in the forming of the scheme or agreement between the parties."*

There is ample evidence from the prosecution in the evidence of PW2 and the contents of exhibits 'A', 'B', 'C', 'D' on how the 1st and 2nd accused persons planned together to steal the deceased and use him for ritual purpose. As their intention could not be realized, and in order to conceal their crime they planned to drown the deceased. The 1st accused watched for trespassers while 2nd accused drowned the deceased. I find and hold that the 1st and 2nd accused persons conspired with one another to kill the deceased Ejiroke Onoroke.

It is my view, on the state of the evidence before me, in the instant case that the 1st and 2nd accused persons must have appreciated that to drown the deceased would have caused his death. There is no doubt whatsoever that the 1st and 2nd accused persons intended to cause the deceased bodily harm as they knew that death would be the probable consequence. This is clear manifestation of intent to kill which resulted in the death of the deceased. See the following cases. **Uwe Idighi Esai & Ors V State (1976) 11 SC 39 at 42; State V Nde Ifu (1964) ENLR 28; Akinkunmi & Ors V State (1987) 3 SC 152; Nyam & Ors V State (1964) 1 All NLR 356.**

I hold that the evidence of unlawful killing has been disclosed against the 1st and 2nd accused persons. It is unlawful according to our law to kill a human being unless the homicide is authorized, justified by law. Section 306 of the Criminal Code Vol. II Laws of Bendel State of Nigeria 1976. It is clear from the evidence before this court that the accused persons intended to kill the deceased and in fact did so. It is my considered view, that the killing is neither justified, authorized or executed by law. It is therefore unlawful. **Omini V State (supra)**

Having considered the totality evidence before me, I have come to the irresistible conclusion that the 1st and 2nd accused persons murdered the deceased in cold blood. I find as fact that Ejiroke Onoroke (m) is dead and that he died by being drowned by the intentional and voluntary act of the 1st and 2nd accused persons. I am satisfied that the 1st and 2nd accused persons deliberately and intentionally murdered the deceased.

In the result, arising from the foregoing analysis, I hold that the prosecution has proved the guilt of the 1st and 2nd accused persons beyond reasonable doubt. In the circumstances, I find the 1st accused person Victor Emenuwe (m) and 2nd accused person Onome Inaye (f) guilty of the murder of Ejiroke Onoroke (m) and I hereby convict accordingly.

Allocutus
Sentence.

There is only one sentence provided for the offence of murder under section (319) (1) of the Criminal Code. There is no alternative.

Victor Emenuwe (m) Onome Inaye (f) you have been found guilty by this court of the murder of Ejiroke Onoroke (m). The sentence of this court upon you is that you be hanged by the neck until you be dead.

May the Lord have mercy on your souls.

HON. JUSTICE G. O. IMADEGBELO
J U D G E
7/4/2014

COUNSEL:

S. E. Okojie (Mrs.) Chief Legal Officer ….. State
P. Agbokhan Esq. ….. ….. ….. ….. ….. 1st and 2nd accused persons.