

**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**  
**MONDAY THE 7<sup>TH</sup> DAY OF APRIL, 2014**

**BETWEEN:**

**CHARGE NO: HAB/9C/2008**

THE STATE ..... COMPLAINANT  
VS  
1. HENRY IKPONMWONSA } ..... ACCUSED  
2. ISAAC ENABUZOR }

**J U D G M E N T**

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The 1<sup>st</sup> Accused person Henry Ikponmwonsa (m) and 2<sup>nd</sup> Accused person Isaac Enabuzor (m) are arraigned on a two count charge of information filed on the 11<sup>th</sup> day of March 2009 as follows:-

**Count 1:**

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

**Particulars of Offence:**

Henry Ikponmwonsa (m) and Isaac Enabuzor (m) on or about the 2<sup>nd</sup> day of March, 2008 at Umuogun Nokhua village in Abudu Judicial Division conspired with one another to commit a felony to wit: murder.

**Statement of Offence:**

**Count II:**

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

**Particulars of Offence**

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

The Prosecution in its bid to prove the charge called nine witnesses. The 1<sup>st</sup> and 2<sup>nd</sup> Accused persons pleaded not guilty to the two count charge in the information. 1<sup>st</sup> and 2<sup>nd</sup> Accused persons testified on oath in their defence and called no witness.

I shall proceed to summarize in a nutshell the case put forward by the prosecution.

PW1 is Osaretin Ehigie, he lives at No. 1 Alohan Street, Oben, Uhumwode Local Government Area Edo State. He is a farmer. He knows the Accused persons. He knows the deceased, he was his eldest brother, he is dead. On the 2/3/2008 two of his brothers in law Osaro and Omorogie came to his house and said that a motorcycle fell on his brother on the farm road and he died. He took his two in-laws to the Police Station that his brother could not have died on the motorcycle. He was asked at the Police Station if his brother had a quarrel with anyone. He informed them that one Henry Ikponmwonsa had quarrel with his brother. That his brother failed to pay Henry Ikponmwonsa the money he used to sponsor his daughter abroad. That his eldest sister Janet Osazuwa was also present when 1<sup>st</sup> accused said he will kill his brother. That his brother went to Chief Inneh to inform him that 1<sup>st</sup> accused threatened to kill him for failing to pay him the money he used to sponsor his daughter (Jennifer) Abroad. Chief Inneh sent for 1<sup>st</sup> accused and enquired of him what transpired, 1<sup>st</sup> accused told Chief Inneh that he will kill the deceased for failing to pay the money he used to sponsor his daughter. The police enquired of him if the deceased paid the money and he replied in the negative. That the reason the girl could not pay is that she is in prison. 1<sup>st</sup> accused got annoyed and left the family meeting that he thought they called him for a good thing, that they should watch he will kill the deceased. The police went to the scene and recorded the scene with a video recorder. He was present. The police said the deceased was shot to death. When 1<sup>st</sup> accused was arrested he told the police that he went in the company of the 2<sup>nd</sup> accused to shoot the deceased. After the 2<sup>nd</sup> accused shot the deceased 1<sup>st</sup> accused stepped on the head of the deceased several times until he died. After the police deposited the corpse at Oben Mortuary one Osarumen Osewenkhia brought out the gun. He made statement to the police. He identified the corpse.

Under cross-examination by R. A. Odeyale (Mrs.) the witness stated that he did not see the 1<sup>st</sup> accused killing the deceased. The 1<sup>st</sup> Accused said several times that he will kill the deceased before his late brother and his sister. It was the police that arrested Osarumen. The deceased reported the matter to the family when Chief Inneh presided. He was present when the 1<sup>st</sup> accused threatened to kill the deceased. He was present when 1<sup>st</sup> Accused admitted to killing the

deceased for failure to pay him and how he gave money to the 2<sup>nd</sup> accused to procure cartridge.

P.W. 2 is Janet Osazuwa. She lives at Orhue street Uhumwonde Local Government, Edo State. She is a trader. She knows the deceased William Ehigie, he is dead. On the 2/3/2008 William Ehigie went to the farm, he did not come back. When she came out his wife informed her that the deceased had not returned from the farm on her way she met two men discussing with the Odionwere that the deceased was found dead on the farm road. People came from the scene and she was informed that it is true that the deceased was shot at the back. The 1<sup>st</sup> accused said he will kill the deceased as he carried his daughter abroad and refused to pay him. The deceased reported the matter to the family, who called the 1<sup>st</sup> accused. He told them that what he has said he will do, that they will see. On the 2/3/2008 her brother died. The PW1 on information that her brother died made a report to the Police. PW1 and the police came with a video recorder. The police asked her if she suspected anyone, she said yes. That 1<sup>st</sup> accused threatened to kill the deceased. That he did not pay him, he went to buy a motorcycle. The police arrested 1<sup>st</sup> accused. 1<sup>st</sup> accused informed the police that he was not the one who killed the deceased, that he gave money to one Isaac (2<sup>nd</sup> Accused) to buy cartridge. The Police were looking for Isaac, he went into hiding in the roof of a house. He confessed to the police that it was 1<sup>st</sup> accused who told him to kill the deceased. The 1<sup>st</sup> and 2<sup>nd</sup> accused persons made their confessional statements in her presence. She made statement to the police. 2<sup>nd</sup> accused made mention of a man's house he hid the gun and the name of the man he bought bullet from. The name of the girl who brought the gun is Osarumen.

Under cross-examination by R. A. Odeyale (Mrs.) the witness stated that the 1<sup>st</sup> accused threatened to kill the deceased, she was present when 1<sup>st</sup> accused threatened the deceased, the Odionwere, now late Chief Inneh was present. No one saw the accused killing the deceased, it was the confession of the accused persons. It was the day her brother bought his new motorcycle that the 1<sup>st</sup> accused came again to threaten him. She told him to report to the police. It was the next day the deceased was killed. They confessed to the offence.

PW3 is Bassey Etemta Force NO 376154 attached to the Nigerian Police Force Iguelaba Division Orhionmwon Local Government Area, Edo State. He knows the Accused persons. He knows one Osaretin Ehigie PW1 and PW2 Janet Osazuwa. On the 2/3/2008, he was in the police station when a case of murder was reported to him for investigation by one Osaretin Ehigie. Osaretin Ehigie made a statement at the Police Station, he recorded the statement in English language where he stated that his brother was found dead along Urhehue and Umugu farm road when he was returning from the farm with his motorcycle.

That the motorcycle was on top of him. That he suspects first accused for the death of his brother. He took the statement from the PW1, thereafter a team of policemen led by Supol Emmanuel Adeleye D.S.P. (retired) visited the scene of crime where they met the victim William Ehigie dead with the motorcycle on top of him. He was amongst the team of policemen. He took a photographer and a video coverage man alongside to the scene whom he ordered to take a photograph and a video man to take a coverage of the corpse. He identified the snapshots. The photographs were taken at the scene of the crime which he attached to the case file. These are the photographs and negatives. The photographs and negatives were tendered and admitted in evidence as Exhibits A and A1 respectively. From the scene of crime, the PW1 took them to Chief Inneh's house, there he met the PW2 who told the police that the deceased did not have a quarrel with anyone in the community only the 1<sup>st</sup> accused whom she strongly suspects to have killed her brother. He told her to lead them to the house of the 1<sup>st</sup> accused. She led them to his house, he arrested the 1<sup>st</sup> accused and took him to the police station. At the police station he charged and cautioned him in English language and he volunteered his statement on how he killed the deceased and signed while he counter signed as recorder. In his statement he confessed the 2<sup>nd</sup> Accused whom he hired to kill the deceased. He went to the community in search of 2<sup>nd</sup> accused person. He used the youths in the community in search of 2<sup>nd</sup> accused. The 2<sup>nd</sup> accused was later found inside the roof in one of the buildings. He saw him in the ceiling and told him to come down. As he was coming down from the ceiling, the ceiling broke he fell down and a nail hooked onto his shirt and he fell down. He arrested him. At the police station he charged and cautioned the 2<sup>nd</sup> accused in English language and he volunteered his statement in English. In his statement he corroborated the statement of the 1<sup>st</sup> accused and confessed to killing the deceased. He signed while he countersigned as the recorder. He has a video coverage which he commissioned. This is the original copy of the confession made by the suspects.

The video coverage was played in open court and interpreted by Mr. Friday Enadeghe to interpret the statement of 1<sup>st</sup> accused on the video coverage. The video coverage was admitted in Evidence as ID 1.

The 2<sup>nd</sup> accused person mentioned a gun he used to kill the deceased and when he enquired of the gun he referred him to one of his friends house whom he described to be husband to one Betty. He alerted the youth chairman of Umuogun to assist the police to find the lady to retrieve the gun. He went to Umuogun to retrieve the gun from the youth chairman. He also told him to bring the lady Betty for questioning. He took Betty to the police station and she made her statement voluntarily in English language. The 1<sup>st</sup> accused made statement. This is his statement.

M. N. Ogba Mrs. Counsel for the 1<sup>st</sup> accused person objected to the tendering of the statement of the 1<sup>st</sup> accused on the grounds that it was not obtained voluntarily. The proceeding for a trial within trial of 1<sup>st</sup> Accused person commenced.

### **Trial Within Trail 1<sup>st</sup> Accused Person.**

PW1 is Force NO37154 Mr. Bassey Etiemta attached to Nigeria police station Iguolaba Division. He knows the accused persons, he knows the deceased. He recorded statement from the 1<sup>st</sup> accused person. The 1<sup>st</sup> accused person was charged and cautioned and volunteered his statement in English language, thereafter the statement was read over to him and he understood and he signed below while he countersigned as recorder. This is the statement of the accused person. The statement of the accused person was admitted in evidence as Exhibit 'A' in the trial within trial. There was no time the accused person was threatened with a gun to make the statement. He was not induced to make the statement. There was no threat to the accused person.

Under cross-examination by M.N. Ogba Mrs. the witness stated that he cautioned the 1<sup>st</sup> accused person in English language. He recorded the statement in English language. He countersigned, accused signed. He countersigned as recorder, he has only one signature. The 1<sup>st</sup> accused made his statement in English language and not in Bini language. The 1<sup>st</sup> accused person knows how to read and write. All he has told court in respect of the making of the statement is the truth. The name of his superior officer is Mr. Emmanuel Adeleye Rtd.

Under Re-examination the witness stated that the 1<sup>st</sup> accused did not tell him that he was an illiterate. He made a statement which he read to him. He signed and he countersigned.

DW1 is the 1<sup>st</sup> accused, his names are Henry Ikponmwonsa, he is a farmer, he lives at Omowunokpa village. He does not know the normal way police takes statements. He has not been to the police station before. The day he was arrested police took his statement. He was taken to Iguolaba police station and put behind a counter. In the evening he was taken to the cell, that the supervising police officer was absent to take his statement. The next day and the third day his people came to bail him but the police said their boss has not come. The police brought him out of the cell and questioned him as to what happened between him and Janet that Janet came to report at the police station that is why they are here. He has seen one of the policemen in the court. It is the police that came to court that took his statement, he wrote the statement

only the two of them were present. He sat down while he wrote his statement. It is not what he told the police that the police came to arrest him for which is different from the case in court. The police read the first statement to him. The 2<sup>nd</sup> statement is the one they said he killed the deceased. He was beaten by the police. The I.P.O. did not read the second statement to him. He was cautioned before the second statement was recorded. He did not sign the statement. It is not his signature.

Under cross examination the witness stated that the I.P.O. that came to court recorded his statement. He did not know the policeman before this case, and he and the policeman had no previous quarrel. The policeman is not a Bini man. He said he was beaten by the policeman. The policeman bought him medicine. The second statement the police are forcing on him he did not make that statement. The ruling on the trial within trial of the 1<sup>st</sup> accused person was delivered on the 18/5/2011.

PW3 continues testimony, he recorded the statement of the 1<sup>st</sup> accused person. This is the statement. The statement of the 1<sup>st</sup> accused person Henry Ikponmwonsa dated 4/3/2008 was admitted in evidence as Exhibit B. The statement was recorded by him, he signed he also countersigned. He also recorded the statement of the 2<sup>nd</sup> accused. This is his statement.

At the stage of tendering the statement of the 2<sup>nd</sup> accused person his Counsel D. O. Ehiodu Esq. object that the statement of the 2<sup>nd</sup> accused person was not obtained voluntarily. The court therefore proceeded into a trial within trial of 2<sup>nd</sup> Accused person.

### **TRIAL WITHIN TRIAL 2<sup>ND</sup> ACCUSED PERSON.**

PW1 is Force NO.376154 Bassey Elemta Nigeria Police Iguelaba Division. He knows the 2<sup>nd</sup> accused person and the complainant. He obtained a statement from the accused person. He did not threaten the 2<sup>nd</sup> accused nor did he beat him. He did not hesitate to make his statement. He did not give him anything. The 2<sup>nd</sup> accused did not waste time he confessed to his sin. The 2<sup>nd</sup> accused did not resist at all. The statement of the 2<sup>nd</sup> Accused person was admitted in evidence as Exhibit 'A' in the trial within trial.

Under cross-examination by D. O. Ehiedu Esq. the witness stated that he did not injure the 2<sup>nd</sup> accused person. He arrested him in his house. He did not hang the 2<sup>nd</sup> accused person. The 2<sup>nd</sup> Accused person signed the statement.

DW1 is 2<sup>nd</sup> accused person Isaac Enabuzor. He is a trado-medical Doctor. He made statement to the police. Before he made the statement he took him to a

room, they were the only two persons present. He asked him questions he wrote and wrote, he signed and he also signed. He read the statement to him. If it is read to him he can know it. He made two statements one he signed and the other he made on a later date which he forced him to sign. It is not his signature. The ruling on the trial within trial of the 2<sup>nd</sup> accused person was delivered on the 26/10/2011.

PW3 continues testimony, this is the statement of the 2<sup>nd</sup> accused person. The statement of the 2<sup>nd</sup> accused person was admitted in evidence as Exhibit 'C'. The statement of the 2<sup>nd</sup> accused person was read over to him he signed and he signed as recorder. The D.P.O. ordered that the file be transferred to the State C.I.D. for further investigation. The file, two accused persons and the Exhibits were transferred to the State C.I.D.

Under cross examination by D. O. Ehiedu Esq. the witness stated that he is sure the statement was signed by the accused. He signed after that the accused and the Exhibits were transferred to the State C.I.D. for further investigation.

PW4 is Festus Agese A. P. NO 99997 Police Inspector formerly attached to State C.I.D. Benin City now attached to State Anti Kidnapping Squad Asaba. He knows the accused persons, one William Ehigie, PW1 and PW2. On the 6/3/2008, he was on duty in his office at the State C.I.D. Benin when a case of conspiracy and murder was reported by Osaretin Ehigie against the accused person at the Iguelaba police station was transferred and referred to his team. His team comprises himself, Sgt. James Sani, Sgt. Okon Asuquo and others. The case file from Iguelaba police station, two accused persons and one barrel gun were handed over to him including the complainant and witnesses. A motorcycle belonging to the deceased was handed over to him at Iguelaba police station. He obtained statements from the complainant and witnesses. He re-arrested the two accused persons. 1<sup>st</sup> accused person was charged with the offences of conspiracy and murder. He volunteered his statement in English language in his presence, which was recorded in English language in his presence by Sgt. James Sani, the statement was read over to the 1<sup>st</sup> accused person whom said it was correct and he signed. He took the accused person before his superior police officer Benson Dunu who read the statement to the 1<sup>st</sup> accused person. 1<sup>st</sup> accused said it was correct. He put some questions to him he answered and he endorsed the attestation. The accused person signed the attestation form and the officer signed. This is the statement of 1<sup>st</sup> accused person. The statement of the 1<sup>st</sup> accused person made on 6/3/2008 was admitted in evidence as Exhibit 'D'. The attestation form of 1<sup>st</sup> accused is admitted in evidence as I.D.2. The 2<sup>nd</sup> accused person was charged with the offences of conspiracy and murder, he was cautioned in English language. He volunteered his statement in English language. His statement was recorded in

English language which was read over to him. He said it was correct and 2<sup>nd</sup> accused signed. He took him to his superior police officer ASP Benson Dunu who read the same statement to 2<sup>nd</sup> accused and put questions to 2<sup>nd</sup> accused and the attestation form was completed. This is the statement of the 2<sup>nd</sup> accused person.

At the state of tendering the statement of the 2<sup>nd</sup> accused person, 2<sup>nd</sup> accused, Counsel for the 2<sup>nd</sup> accused D. O. Ehiedu Esq. informed the court that the 2<sup>nd</sup> accused says he was forced to sign the statement. The court therefore proceeded to conduct a trial within trial.

### **Trial within Trial 2<sup>nd</sup> Accused.**

PW1 is Festus Agese A.P. NO99997 police Inspector formerly attached to the State C.I.D. Benin City now attached to the State Anti Kidnapping Squad Asaba. He know the 2<sup>nd</sup> accused, he recorded his statement. He did not force the 2<sup>nd</sup> accused to sign his statement. He did not beat the 2<sup>nd</sup> accused. He did not promise him anything. Right from the time 2<sup>nd</sup> accused was brought before him he was quite remorseful on what transpired between him, 1<sup>st</sup> accused and the deceased.

Under cross examination by D. O. Ehiedu Esq., the witness stated that the 2<sup>nd</sup> accused was not brutalized nor hung. It is not true that the 2<sup>nd</sup> accused was forced to sign an already made statement. The statement of the 2<sup>nd</sup> accused person was admitted in evidence as Exhibit 'A' in the trial within trial.

DW1 is the 2<sup>nd</sup> accused person, his names are Isaac Enabuzor. He lives at Omu-Ogun Nokwa. He is a tradomedical doctor. When he was at the State C.I.D., the police officer took him to the backyard at midnight, he hung him, he brought a paper to him after he had brought him down. He said he should sign. He told him to read it to him, he refused. He took him to another room with white and red cloth native pot and a human skull. That if he does not sign the document, what happened to these people's skulls will happen to him, so he signed.

Under cross examination by S. E. Okojie (Mrs.) the witness stated that he did not know the I.P.O. previously and they did not have a previous quarrel. He made a statement at Iguelaba police station. He knows what was read to him at Iguelaba police station. A ruling was delivered in the trial within trial of the 2<sup>nd</sup> accused on the 9/11/2011.

P.W.4 continues his evidence. The statement of the 2<sup>nd</sup> accused person made on the 6/3/2008 was admitted in evidence as Exhibit 'E'. This is the attestation form signed by his superior officer Sani who was on course. The attestation

form signed by ASP Benson Sani was admitted in evidence as 'I.D.3'. He brought out the Exhibit Barrel gun handed over to him and showed it to the two accused persons. The 2<sup>nd</sup> accused person identified the gun to be his own and also identified it to be the one he used in killing the deceased. He registered the gun as Exhibit. The Exhibit keeper is also on course. This is the gun. Locally made single barrel gun was admitted in evidence as Exhibit 'F'. In the course of his investigation the post mortem had already been done by the Divisional Police, these and the photographs were contained in the case file handed over to him. The motorcycle found at the scene was kept at Iguelaba police station. At the close of investigation he duplicated the case file and sent it to the office of the D.P.P.

Under cross-examination by Q. C. Osawe-Odeh Legal Aid Officer, the witness stated that Exhibit 'F' was handed over to him by the police who transferred the case file to him. In the course of his investigation, he discovered that an issue of travelling abroad between the daughter of the deceased and a relation of 1<sup>st</sup> accused whereby 1<sup>st</sup> accused took the daughter of the deceased abroad and has not been paid for the services and 1<sup>st</sup> accused took it upon himself to recover the debt. He is not aware that 1<sup>st</sup> accused was arrested before the incidence.

P.W.5 is Rufus Ekoswele, he lives at Umu-Ugu Nokhwa, he is a video coverage man and a photographer. He knows the accused persons. He knows the deceased. He knows the I.P.O. one Bassey Etemta. On the 2/3/2008, one Mr. Bassey a police officer in Umu-Ugu Nokwa came to him to record an event. He recorded the event and produced a video record of the event. The video record of the event was admitted in evidence as Exhibit 'G'. He also took photographs of the event. The witness identified Exhibits A and A1.

Under cross-examination by Q. C. Osawe-Ode the witness stated that he could not recall the date he took the photographs. He is a local photographer and video coverage. The incident occurred on a road side, the area was bushy.

Under cross-examination by J. C. Ebu Esq. the witness stated that he is not a police photographer but a commercial one. He recorded the accused persons at the police station. At the police station while he was recording, the policemen did not carry guns or battens. He did not see any gun with them. The accused persons were not chained. While he was recording them there were no lawyers there. He took photographs before the video coverage.

P.W.6 is Jackson Agbonlahor from Umo-Ugu Nokwa. He knows the 2<sup>nd</sup> accused person. On a certain date the 2<sup>nd</sup> accused came to him in the evening that he has bush meat in the bush. He gave him two catridges, after four days

he found out that the 2<sup>nd</sup> accused committed murder. He made statement at the police on how 2<sup>nd</sup> accused came to him to give him cartridge.

Under cross-examination by A. Onochie Esq, the witness stated that he is a farmer and trader, he sells bicycle parts and farming. He does not sell cartridges. He uses it for his personal use. He knows the 1<sup>st</sup> accused person, he is a farmer only, 2<sup>nd</sup> accused he knows as a hunter.

Under cross-examination by J. C. Ebu Esq. the witness stated that he did not sell anything on that day. 2<sup>nd</sup> accused did not give him money. The cartridge in his double barrel is for his personal use.

P.W.7 is John Owie a medical practitioner. He holds an MBBS degree from the University of Benin. On the 5/3/2008, he was summoned by the Criminal Court to examine the corpse of a middle aged man identified to be William Ehigie. The corpse was identified by Chief Friday Omara. One Osaretin was present who identified the corpse. He is attached to the Cottage hospital Oben which is a government hospital. On that day about 11 a.m., he discovered a gunshot wound on the left side of the neck. The major blood vessels in the neck were ruptured. The shell of the cartridge were lodged in the wound, were removed and handed over to the police. In his opinion the injury sustained was enough to kill the deceased.

Under cross-examination by A. Onochie Esq. the witness stated that he is a doctor in a General hospital and not a qualified pathologist. He was able to ascertain the death. The corpse was brought in the morning of 3/3/2008. He carried out the autopsy on the 5/3/2008.

Under cross examination by D. O. Ehiedu Esq., the witness stated that he is not a pathologist. By virtue of his training he undertook courses in pathology. He was given coroner forms by the police. When autopsy is being carried out no one stays with him. They identified the corpse and left.

PW8 is Beauty Asegolu, she knows the accused persons. She knows William Ehigie, he is dead. On the 2/3/2008 between 7 to 8 p.m. in the evening, she saw a long gun at the back of their door. The witness identified Exhibit 'F' as the type she saw. She raised an alarm. Called her mother-in-law and enquired who entered the house, she informed her that it was Isaac 2<sup>nd</sup> accused and he came in company of 1<sup>st</sup> accused. That 1<sup>st</sup> accused did not enter the house. Prior to this she had known the 2<sup>nd</sup> accused as they are from the same tribe and live in the same community. People came and they were advised to call the youth chairman. The youths came and they handed over the gun to them. It was the next morning they heard that someone has been murdered. The youths called the police and she was arrested. The 2<sup>nd</sup> accused confessed that he was the

one that kept the gun there without any knowledge of any one in the house. She made statement to the police.

Under cross examination by A. Onochie Esq., the witness stated that she knows the 1<sup>st</sup> and 2<sup>nd</sup> accused persons. She knows the 1<sup>st</sup> accused person they are from the same community. She has no relationship with the deceased, they are from the same community. When she saw the gun she raised an alarm. Her mother-in-law and Isaac are from the same tribe. She said 2<sup>nd</sup> accused came into the house to greet her, 1<sup>st</sup> accused was outside. She got this information from her mother-in-law.

Under cross examination by D. O. Ehiedu Esq. the witness stated that she told court what she saw and what her mother-in-law told her. She does not know if the deceased was a hunter. Her mother-in-law said the 2<sup>nd</sup> accused came, he was the one who greeted her.

PW1 recalled, his names are Osaretin Ehigie, he took the deceased to the hospital with one Friday. He identified the corpse of the deceased William Ehigie to the doctor.

Under cross-examination by A Onochie Esq. the witness stated that the deceased is his eldest brother. He was killed by the 1<sup>st</sup> and 2<sup>nd</sup> accused. How he knew 1<sup>st</sup> accused begged him at the police station. He also begged him anytime he comes to court. He also worried his brother that he will kill him. The 1<sup>st</sup> accused confessed to everyone that he is the one who killed his brother even to the entire village.

Under cross-examination by D. O. Ehiedu Esq. the witness stated that he knows the 2<sup>nd</sup> accused. The 2<sup>nd</sup> accused confessed that he was the one that killed his brother. He bought a cartridge from PW6, he said to the entire village. They killed his brother. The accused persons confessed that they killed his brother.

PW9 is Benson Dunu DSP O/C and Fraud section/Community police State Headquarters Benin. He knows the accused persons. He knows the PW4, he was an I.P.O. while he was the sectional head of crack section, Benin City. On the 23/4/2008 PW4 brought 1<sup>st</sup> accused before him with his confessional statement. The accused was charged with the offence of murder. He cautioned him in English language, read over the confessional statement he made to him. He admitted as correct and right statements made by him. He filled the attestation form in relation to the confessional statement made by him. He signed and he countersigned. He was the one who attested the statements. This is the attestation form. Attestation form in respect of Henry Ikponmwonsa dated the 23/4/2008 was admitted in evidence as Exhibit 'J'. He attested to two

forms. On the 23/4/2008, the 2<sup>nd</sup> accused person was brought before him charged with the offence of murder. He attested the O/C section head crack Benin City by Inspector Festus Agese P.W.4. He cautioned the accused person in English language, read over the statement made by him and he accepted as the statement made by him to the police. He filled the attestation form which he signed. He also countersigned. This is the attestation form. Attestation form in respect of Isaac E nubuzor dated the 23/4/2008 was admitted in evidence as Exhibit 'K'.

Under cross-examination by A. Onochie Esq. for 1<sup>st</sup> and 2<sup>nd</sup> accused persons the witness stated that it is not true that he is not the one that made the statement. It is not true that the reason they signed the form was because he told them that someone will come for their bail. He found out from PW4 that he carried out his investigation properly.

DW1 is the 1<sup>st</sup> accused his names are Henry Ikponmwonsa. He does not know why he is in court, the case he is called for by the police is not what he is in court for. The date police arrested him is on the 29/2/2008. He bought clothes from one madam Ehigie in the month of December 2007 for the sum of N10,000.00, he paid N5,000.00 leaving a balance of N5,000.00. On the 29/2/2008 she came for the money, they quarreled she said he will see. She came with one Osaretin and two men who said they were policemen. He was arrested and taken to the police station. The next morning, he was brought out of the cell and questioned by the police if he bought cloth from Janet he replied yes, he was owing her. This is the matter he had. He does not know the 2<sup>nd</sup> accused. He knows nothing about the case. It is the children of the deceased who went to destroy his house for a case he knows nothing about. He met the 2<sup>nd</sup> accused person in the police station for the first time. He does not know him previously. He did not make any statement at the State C.I.D. only at Iguelaba. He did not make statement at Iguelaba that he killed the deceased.

Under cross examination by D. O. Ehiedu Esq. the witness stated that he does not know the 2<sup>nd</sup> Accused person.

Under cross-examination by S. E. Okojie (Mrs.) the witness stated, he has eight children. He does not know mama John who lives in Spain. He does not know Magdalene. He heard of Jenifer, he knew Jenifer as a child to William. He does not know Jenifer. He did not sponsor her. Why should he be angry that William bought a bike. He did not do business with William only Janet. He does not know the 2<sup>nd</sup> accused. He did not plan with 2<sup>nd</sup> accused to kill William Ehigie. He did not give the 2<sup>nd</sup> accused N400.00 to buy catridge. It is not true that he had in the company of 2<sup>nd</sup> accused tried previously to kill the deceased. On the 2/3/2008 he did not wait for the deceased on the farm road to shoot him. He did

not go in company of 2<sup>nd</sup> accused with a loaded gun on a motor bike to kill the deceased. He did not block the farm road and did not order the 2<sup>nd</sup> accused to kill the deceased, he was at the station at that time. He did not kill anyone. He made statement on the 29/2/2008. The statement dated the 4/3/2008 is the statement written by the police. All those statements were written by the police. He only made statement at Iguelaba police station. The police changed the statement. The video was done while the police carried gun to threaten him to say what he said as they instructed. The Police forced him to confess.

DW2 is the 2<sup>nd</sup> Accused person. His names are Isaac Enabuzor, he is a native doctor. He does not know the 1<sup>st</sup> accused person. On the 29/2/2008 he was in the police station. On the 27/2/2008 at about 5 a.m. in the morning he was in the house, he heard a knock he opened the door and saw PW3 with some policemen. He accompanied them to the police station, the day had not yet come to light. At break of day, he went to the police station, PW3 took him to his boss who enquired of him why he has not been paying them their money, he replied that it was because he went for Christmas. He pays the police N20, 000.00 monthly in order not to be arrested as he sells Indian hemp. The boss grumbled that PW3 should lock him up in the cell. PW3 locked him in the cell. On the 28/2/2008, the police took him to his house, conducted a search and found five bags of Indian hemp in his house, he offered the police N10, 000.00 which they took from him. He was taken to the station with the Indian hemp and recorded in the entry book that he was arrested for possession of Indian hemp. He threatened to remove PW3 from work based on this fact PW3 brought him out of the cell and showed him the 1<sup>st</sup> accused person, why will he not know the 1<sup>st</sup> accused, that when it is time he will co-operate. The Police tortured him and threatened him to sign the statement he did not know what was in the statement. At dawn his brother came to bail him the police said he should go and bring N300, 000.00 (three hundred thousand naira) his brother could not bring it that is why he is here.

Under cross-examination by S. E. Okojie Mrs. the witness stated that he is aware that the sale of Indian hemp is an offence. The police is aware he sells Indian hemp. He did not lie when he said he was arrested for failure to pay N300, 000.00 to the police. 1<sup>st</sup> accused is not his friend and did not give him N400.00 to buy catridge. It is not true that 1<sup>st</sup> accused gave him N7, 000.00 to kill the deceased. He did not shoot at the deceased. He was not the one that hid the gun. It is not true that they confirmed the death of the deceased. After killing the deceased they did go and celebrate in a beer parlour. It is not true that he was hiding in the roof and when he was asked to come down his shirt got torn. It was when they were beating him at the police station. He was beaten by the police to admit knowing the 1<sup>st</sup> accused. He did not confess publicly to the police and the entire community that he killed the deceased in

Exhibit 'G'. he made statement at the Iguelaba police station concerning Indian hemp. He did not confess at the State C.I.D. to killing the deceased. It is true that the police demanded N300, 000.00 from him. PW3 demanded N150, 000.00 from him if not he will take him to N.D. L.A. It is not true that he conspired with 1<sup>st</sup> accused to kill the deceased. It was because of Indian hemp he was arrested.

A. Onochie Esq. of learned Counsel for the 1<sup>st</sup> Accused person submitted in relation to the charge of conspiracy against the 1<sup>st</sup> accused person in this matter, the prosecution has failed to prove beyond reasonable doubt that; there was an agreement between the 1<sup>st</sup> and 2<sup>nd</sup> accused person with the intention to commit crime i.e. murder. That in view of the evidence of P.W. 1-9. none of them said he/she was present when the accused persons conspired with one another but relied heavily on hearsay, suspicions, fabrications and the confessional statement of the accused persons. That the confessional statement of the 1<sup>st</sup> accused person exhibit B, D, G, cannot be relied upon in criminal conspiracy in the absence of direct evidence and urged the court to discharge the 1<sup>st</sup> accused person on the charge of conspiracy. It is not contended that the deceased died as shown in the evidence of prosecution witnesses particularly Exhibit 'H'. That the case of the prosecution is totally founded on suspicion without concrete evidential proof that the 1<sup>st</sup> accused person actually committed an act which led to the death of the deceased. That Exhibits "B", "D", "G", "A1", and "A2" tendered by the prosecution before this court emanated as a result of the manipulations of the police towards the procurement of such evidence and should be rejected on that ground. That Exhibit 'H' is so manifestly unreliable and should be rejected on that ground. However counsel submitted that it cannot be relied upon to ascertain or determine the cause of death of the deceased.

Counsel submitted further that none of the prosecution witnesses gave evidence before this court as eye witness. **Aigurehian V State (2004) Vol. 12 WRN.** That in respect of the third element for the sustenance of the charge of murder which is evidence that the act or omission of the accused which caused the death of the deceased was intentional with the knowledge that the death or grievous bodily harm was its probable consequence. Counsel placed reliance on his argument above on the second element. Counsel submitted that the 1<sup>st</sup> accused stated before this court that the deceased was killed on the 2/3/2008, while he was in police custody and there is no way it could have been possible to murder or plan the murder of the deceased while in police custody. That 1<sup>st</sup> accused person added that he met the 2<sup>nd</sup> accused person for the first time in police cell, and they never knew each other before. Besides, the 1<sup>st</sup> accused person said he was seriously beaten and forced to make exhibits B, D, and G which he did not know anything about. Though the court can convict on the

sufficient ground of the confessional statement of the accused person if the court is satisfied with the truth of the confession as held in **Gabriel V State (2010) 6 N.W.L.R. (pt.1190) 280 at 290.** However, it is also desirable to have outside the confession some corroborative evidence no matter how slight or some circumstance which makes it probable that the confession is true and correct. **Yahaya V State (2005) 1 N.C.C. 120 at 123.** That in the instant case, the evidence led by the prosecution before this court cannot be said to be one which establishes, the guilt of the accused person. That the prosecution's case is seriously flooded with doubt, based on suspicion and fabrication of evidence against the 1<sup>st</sup> accused person. **Shekete V Nigeria Airforce (2002) 2 C.L.R.N. 290 at 294 ratio 1.** Counsel submitted that where it is impossible upon the evidence to conclude that the deceased died from the act of the accused, the accused must be discharged and acquitted. **R. V Abengowe (1963) 3 W.A.C.A. 85.**

D. O. Ehiedu Esq. of learned Counsel for the 2<sup>nd</sup> accused person submitted that the burden of proof in criminal trial rests on the prosecution. That if on the whole after a proper evaluation of the evidence by the court, the prosecution case raises any iota of doubt, then the prosecution would have failed to discharge the onus of proof. That if at the end of evidence, there are substantial contradictions on any material point in the evidence called by the prosecution, an acquittal will result on the basis that it cannot be said that the case has been proved beyond reasonable doubt. **Ogola V State (2009) 7 ACLR pg. 357 at 369 ratio 9; Danjuma V State (2003) 3 ACLR pg. 524 at 526 ratio 4; Section 137 Evidence Act.** That in the circumstance of the above, where the evidence of the prosecution is contradictory, it raises doubt in the mind of the court and where there is doubt; the court is enjoined to resolve the doubt in favour of the accused person.

Counsel submitted further that the evidence emanating from the prosecution in the instant case is so contradictory in material facts as to render the entire testimonies of the prosecution witness improbable and unbelievable and unreliable. That a proper evaluation of the evidence of PW1, PW2, PW3, PW4 and PW5 reveals irreconcilable contradictions as they contradicts themselves and each other both in their extrajudicial statement to the police and their oral evidence in court. Counsel submitted that PW7 the medical doctor admitted under cross examination that he is not a qualified pathologist and that nobody was there when he performed the autopsy. Counsel urged the court to discountenance with his evidence as he lacks the requisite qualification to carry out the autopsy. That in the absence of an eye witness as to who witnessed when the 2<sup>nd</sup> accused or any other person killed the deceased, the prosecution can only rely on circumstantial evidence which again cannot help the prosecution's case, because for circumstantial evidence to be sufficient to

support a conviction in a criminal trial, particularly murder it must be cogent, complete and unequivocal. It must be compelling and must lead to one and only one irresistible conclusion that the 2<sup>nd</sup> accused person and no other one else is the murderer. **Ahmed V State (2003) 3 ACLR pg. 157 ratio 2; Igabele V State (2006) 5 LRCNCC pg. 30 at 35 ratio 13; Nweke V State (2006) 5 LRCNCC pg. 358 at 361 ratio 1 and 3.** That circumstantial evidence should be used and applied sparingly because of the possibility of fabrication which may cause suspicion. In using circumstantial evidence to determine the guilt of an accused, it must be shown by credible evidence that there are a number of circumstance coexisting and which are accepted by credible evidence so as to make a complete unbroken chain of evidence. **Achibong V State (2008) 6 LRCNCC pg. 290 at 296 ratio 9.** Counsel submitted that if there is any circumstantial evidence in the instant case which is not conceded, would it be said to be compelling, unequivocal, cogent and point to just one irresistible conclusion that the 2<sup>nd</sup> accused person and no other person murdered the deceased. There is no dispute that death occurred as the deceased died in an unexplainable circumstance. The question then is who killed the deceased. PW1 and PW2 in their statement to the police said they suspected the 1<sup>st</sup> accused person. They added that it was the 1<sup>st</sup> accused who murdered the deceased. The only evidence against the 2<sup>nd</sup> accused person was what they were told. That the death of the victim cannot be said to point only to the accused particularly when there was no eye witness to affirmatively and unequivocally said he saw or witnessed the shooting of the deceased. Counsel submitted that PW7 removed the cartridge and handed over to the police. He maintained that the injuries sustained were enough to kill the deceased. The said cartridge was not tendered by the police. There was no evidence as to the medical history of the deceased as at the time the incident occurred as to know whether the deceased falls within any of the categories of persons who could not inflict himself with such injuries. The court cannot presume in the absence of such medical history that the deceased does not fall within any of the categories. That from the totality of the evidence led by the prosecution, the prosecution has failed woefully to prove the guilt of the 2<sup>nd</sup> accused person beyond reasonable doubt.

S. E. Okojie (Mrs.) of learned Counsel for the State submitted on count 1, that for the prosecution to succeed, it must prove the following ingredients:-

- (i) An agreement by two or more persons to cause to be done an illegal act or
- (ii) An agreement by two or more persons to do an act which is not illegal by illegal means. **Patrick Njovens V The State 1998 ACLR 224 at 231 ratio 2**

That Exhibits 'G', 'B', 'C', 'D' and 'E' are true confessions of the accused persons and that they were not in any way forced or compelled to make them. That as can be clearly seen in exhibit 'G' that the accused persons were very sober and remorseful while making the confessions. Their accounts of the circumstances in which they conspired and killed the deceased clearly corroborated each others. In exhibit 'G', they encouraged each other to tell the truth and stop hiding facts as the matter was no longer a secret. That PW9 is one Benson Dunu DSP and at the time of testifying, was O/C anti fraud. He was the attesting officer to the two accused persons' confessional statements (exhibits 'D' and 'E' respectively), made at the State Criminal Investigation Department and stated that both accused persons confirmed their confessional statements before him. That the evidence of PW1 to PW9 was never successfully discredited during cross examination as their evidence not only corroborated each other's, but was also direct, unequivocal and compelling. That the following evidence buttressed the confessional statements. That the 1<sup>st</sup> accused person gave the 2<sup>nd</sup> accused person N400 to buy cartridges for exhibit 'F' and PW6 testified that 2<sup>nd</sup> accused person bought 2 cartridges from him for N400 and three days later the police arrested him for the murder of the deceased. PW8 testified that both accused persons were in their house to hide exhibit 'F'. 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.

The elements of the offence of murder are set out in the case of **Onah V State 1988 1 ACLR 642 at 656**. On the first element, Counsel submitted that the prosecution has established that the accused persons 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 PW1 to PW9 and on exhibits 'A' to 'K', which include the confessional statements of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons respectively and their attestation forms. That the accused person's confessional statement to the police which are exhibits 'B', 'C', 'D' and 'E' and 'G', 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. Counsel therefore urged the court to convict the accused persons as charged especially as the confession has outside it, sufficient evidence of the circumstances which has further confirmed that the confession is true. That 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, counsel submitted 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). 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 killing of the deceased by the accused persons was premeditated, well planned and very well executed. In exhibits 'B', 'C', 'D' 'E' and 'G', the accused persons stated vividly how both of them decided to kill the deceased, how they first set out to kill the deceased but pitied him and refrained from it, and how they eventually carried out their plan. Counsel submitted therefore that the prosecution has discharged the onus placed on it 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. **Emmanuel Audu V The State (2003) 7 NWLR 516 at 554 – 555 paras. E – H.**

It is pertinent to state that it is the cardinal principle in a criminal trial and a fortiori, a murder case, that the onus is always on the prosecution to prove the guilt of the accused person beyond reasonable doubt. In other words the burden of proof lies on the prosecution and it never shifts. See the following cases.

- i. **Esangbedo V State (1989) NWLR (pt.113) 57**
- ii. **Mbenu V State (1988) 3 NWLR (pt.84) 615 at 626**
- iii. **Woolmington V D.P.P. 1935 A.C. 462**
- iv. **Oteki V A.G. Bendel State (1986) 2 NWLR (pt. 24)**
- v. **Idemudia V State (1999) 69 LRCN 1043 at 1063**
- vi. **Gira V State (1996) 37 LRCN 688**
- vii. **Igbabele V State (2006) 6 NWLR (pt. 975) 100 at 127**
- viii. **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 re-stated by Onu JSC in the case of **Igbable 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 grievous harm was its probable cause.

See the following cases:-

- i. **Abogede V State 1 All NLR (pt.448) 270**
- ii. **R V Ntah (1961) 1 All NLR (pt. 4) 90**
- iii. **Ogba V State (1992) 2 NWLR (pt. 222) 164**
- iv. **Kalu V State (1993) 6 NWLR (pt.279) 59 at 80**
- v. **Okeke V State (1992) 2 NWLR (pt.590) 246 at 273.**
- vi. **Uguru V State (2002) 9 MWLR (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.”* See **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 other words, there must be a nexus between the act of the accused person and the death of the victim. See the following cases:-

- (i) **Omini V State (1999) 72 LRCN 3044**
- (ii) **Igbi V State (2000) 75 LRCN 303 at 324**
- (iii) **Lori V State (1980) 8 – 11 SC 81 at 95 – 96.**
- (iv) **Uguru V State (1980) 8 – 11 SC 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 William Ehigie is dead vide Exhibits A and A1; The photographs and negatives taken by PW5 Rufus Okoswele on instructions by the police. Exhibits A and A1 speak clearly for themselves, they show the corpse of the deceased, lying, on an earth road with a hole in the neck and spill of blood by his neck. This is confirmed by the evidence of PW7 John Owie the Medical Doctor who performed the postmortem 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:-

*“He discovered a gunshot wound on the left side of the neck. The major vessels in the neck were ruptured. The shell of the cartridge were lodged*

*in the wound, were removed and handed over to the police. The injury sustained was enough to kill the deceased.”*

The most important consideration is whether from the evidence of PW7, the medical Doctor whether the death of the deceased was caused by the injuries he sustained through the act of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons.

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

1. Whether there is anything outside the confession to show that it is true
2. Whether the statement is corroborated no matter how slightly;
3. Whether the facts contained therein so far as can be tested are true;
4. Whether the accused had the opportunity of committing the offence.
5. Whether the confession was consistent with other facts which has been ascertained and proved in the matter.

In the instant case, Exhibits “B and “D” and Exhibits ‘C’ and ‘E’ confessional statements in respect of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons were tested. The confessional statements were corroborated by the evidence led by the prosecution witness and Exhibit ‘G’ the video recording. The 1<sup>st</sup> and 2<sup>nd</sup> accused persons had the opportunity to commit the crime. The confessional statements are consistent with facts which have been ascertained and have 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 1<sup>st</sup> and 2<sup>nd</sup> accused persons volunteered exhibits B, C, D, E to the Police and they were taken before PW9 Benson Dunu (DSP O/C) who read Exhibits ‘B’ and ‘D’ to 1<sup>st</sup> accused person and Exhibits ‘C’ and ‘E’ to the 2<sup>nd</sup> accused person. I accept the evidence of the PW9 that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons admitted before him that they made it.

At this stage, I shall examine the video coverage exhibit 'G' the oral confession of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons which was played in open court during trial. In summary it showed the scene of crime with the deceased on an earth road, a pool of blood gushed out of his neck injury, foot print of sand on his head. PW2 Janet Osazuwa informing the police that she suspected the 1<sup>st</sup> accused who had threatened to kill the deceased. The recording showed the 1<sup>st</sup> and 2<sup>nd</sup> accused persons at the Police Station being interviewed by the Police. 1<sup>st</sup> accused said it was the devil that caused it. They used a gun. 1<sup>st</sup> accused confessed without any threat, there was no mark or injury on his person. That they waited on the farm road. That 2<sup>nd</sup> accused shot him that it was 2<sup>nd</sup> accused who said he has a gun. In the recording, 1<sup>st</sup> accused was very remorseful. 2<sup>nd</sup> accused in the video coverage said 1<sup>st</sup> accused gave him money to buy catridge. On the day they killed the deceased, he carried the gun and killed the deceased. After killing the deceased they went to Bigman Palour to drink. That he hid in the ceiling of one house. 2<sup>nd</sup> accused in the recording had an injury on his head and his shirt was torn. This fact was explained by PW4 in his testimony to have occurred when he fell out of his hiding place in the ceiling. There were no bruises on the body of 2<sup>nd</sup> accused. 2<sup>nd</sup> accused was remorseful. That it was the 1<sup>st</sup> accused that stepped on the head of the deceased. That he shot the deceased while on motion.

I find as fact that there is a nexus between exhibits 'B' and 'D' confessional statements of 1<sup>st</sup> accused person, Exhibit 'C' and 'E' confessional statement of the 2<sup>nd</sup> accused persons, Exhibit 'G' and Exhibit 'F' (locally made single gun held by the 2<sup>nd</sup> Accused person on instruction of 1<sup>st</sup> accused and the death of the deceased William Ehigie on the 2/3/2008. 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.

- i. **Major Amachree V Nigerian Army (2003) 3 NWLR (pt.801) 256**
- ii. **Odu V FRN (2002) 5 NWLR (pt. 761) 615**
- iii. **R V Kanu (1932) 14 WACA 30**

It is quite clear from exhibits 'B' and 'D' confessional statements of 1<sup>st</sup> accused person and Exhibits 'C' and 'E' confessional statements of 2<sup>nd</sup> accused coupled with Exhibit 'G' and 'F' that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons had the intention of killing the deceased. They planned on how to kill him, 1<sup>st</sup> accused gave N400.00 to 2<sup>nd</sup> accused to buy catridge, 2<sup>nd</sup> accused bought catridge from PW6. The evidence of PW6 corroborated this fact. The 1<sup>st</sup> and 2<sup>nd</sup> accused set out to kill the deceased on the first attempt they failed, they tried again and shot the deceased on the neck and he died. I find that the act of 1<sup>st</sup> accused person and

2<sup>nd</sup> accused person in causing the death of the deceased was done intentionally with knowledge that death or grievous bodily harm was its probable consequence.

The relevant question at this stage is whether the 1<sup>st</sup> and 2<sup>nd</sup> 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 unlawful. See the case of **State V Oka (1975) 9 – 11 SC 17; 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 circumstances; 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 grievous harm;*
- (3) If death is caused by means of an act done in the prosecution of an 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 proffered by the prosecution against the 1<sup>st</sup> and 2<sup>nd</sup> accused persons. 1<sup>st</sup> accused sponsored the daughter of the deceased abroad for a fee, he failed to pay the 1<sup>st</sup> accused. 1<sup>st</sup> accused was angry and approached the 2<sup>nd</sup> accused to assist him in killing the deceased. He gave 2<sup>nd</sup> accused N400.00 (four hundred Naira) to buy cartridge. 2<sup>nd</sup> accused bought cartridges from PW6. They went to the farm road. 2<sup>nd</sup> accused carried the gun

exhibit 'F' and shot the deceased on the motorbike. 1<sup>st</sup> and 2<sup>nd</sup> accused persons made confessional statements to the police which were attested to by PW9. Their confessional statements were further corroborated by exhibit 'G' video recording of the event and evidence from the prosecution witnesses. 1<sup>st</sup> and 2<sup>nd</sup> accused persons act in killing the deceased with a gun is unlawful.

DW1, the 1<sup>st</sup> accused person, in his defence stated that he was arrested on the 29/2/2008, (prior to the incident) for his inability to pay for the balance of money for clothes he purchased from one madam Ehigie. He does not know the 2<sup>nd</sup> accused person. He did not make a statement at Iguolaba police station that he killed the deceased. He met the 2<sup>nd</sup> accused person in the police station for the first time. He did not know him previously. Under cross-examination by learned Counsel for the State Mrs. S. E. Okojie he stated that he made statement on the 29/2/2008. The statement dated the 4/3/2008 is the statement written by the police. All those statements were written by the police. He only made statement at Iguolaba police station. The video was done while the police carried gun to threaten him to say what he said as they instructed.

I find as fact that the defence of the 1<sup>st</sup> accused person is an afterthought, a mere denial of his confession in exhibits 'B' and 'D'. From the narration in exhibit 'G' the 1<sup>st</sup> accused encouraged the 2<sup>nd</sup> accused person that they should say the truth, that it was no longer secret. The 1<sup>st</sup> accused person was very remorseful in exhibit 'G'. There was no threat to him, one could hear the police putting questions to him and he answered without any prompt or threat.

DW2 is the 2<sup>nd</sup> accused person, in his defence he stated that he does not know the 1<sup>st</sup> accused person. He was arrested on the 29/2/2008 for a case of being in possession of Indian hemp as he sells Indian hemp. He pays the police N20,000.00 monthly in order not to be arrested. He threatened to remove the PW3 from office for demanding money from him. As a result of this PW3 brought him out of the cell and showed him the 1<sup>st</sup> accused person and said why should he not know him. That the police threatened him to sign the statement he does not know what was in the statement.

I find that the defence of the 2<sup>nd</sup> accused person is an afterthought and mere denial of his confession in exhibits 'C' and 'E'. From the narration in Exhibit 'G' the 1<sup>st</sup> accused person encouraged the 2<sup>nd</sup> accused person to tell the truth, he agreed. The 2<sup>nd</sup> accused person was quite remorseful. The evidence of the PW3 and PW9 confirmed this fact. The trial had previously proceeded into trial within trial and the evidence from the prosecution witnesses in particular evidence of the PW3 and PW9 corroborated the fact that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons were remorseful coupled with the video coverage with the confessional statements of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons are true. The evidence of PW8 in

its entirety is not hearsay as submitted by learned Counsel for the 1<sup>st</sup> accused person. She identified the gun exhibit "F" in open court which she found behind the door to her house. The portion of her evidence that is hearsay is the evidence she obtained from her mother-in-law. On the address of Counsel for 2<sup>nd</sup> accused person that the PW7, the medical doctor is not a qualified pathologist and his evidence be discountenance. There is evidence from the prosecution witnesses that the deceased died of gunshot injuries. From the voluntary act of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, this fact is not in contention. The PW7 under cross-examination said by virtue of his training he took courses in pathology. His evidence cannot be discountenanced.

In homicide cases where the cause of death is obvious, medical evidence ceases to be of practical necessity where the deceased died almost immediately from the voluntary act of the accused, medical evidence will not be necessary.

- i. **Aiguorehia V State (2004) 3 NWLR (pt.860) 367 at 396**
- ii. **Eremeh V State (1981) 5 NWLR (pt 119) 98**
- iii. **Bande V State (1972) ANLR 811**
- iv. **Uguru V State (2002) 9 NWLR (pt.771) 90**
- v. **Ihuebeka V State (2000) 4 S.C. (pt. 1) 203**

On the submission of defence Counsel that there were material contradictions in the evidence of the prosecution witnesses, I see none. Contradictions means to state the opposite of a fact. **Oguola V State (1991) 2 LRCN p. 660, 675; Gabriel V State (1989) 5 NWLR pt. 122 pg/ 457, 457, 468.**

On submissions of learned Counsel for the 1<sup>st</sup> accused that Exhibits 'B'D' 'G' 'A1', 'A2' are manipulations of the police, PW6 gave evidence that the 2<sup>nd</sup> accused bought catridges from him which fact confirmed the evidence in the video coverage and further corroborated exhibits 'B', 'D', 'G', 'A1', and 'A2'.

Bearing in mind the evidence of the prosecution witnesses, Exhibits B,C,D,E,G and F which fixed the 1<sup>st</sup> and 2<sup>nd</sup> accused persons at the scene of crime. Alibi is a defence by which an accused person alleges that at the time when the offence was committed he was elsewhere; notice of intention to cause the defence of alibi must be given by the accused or suspect at the first possible opportunity in answer to a charge by the police at the investigation stage to enable the truth or falsity of the allegation to be established by the police.

- i. **Okoeuwa V State (1988) 2 NWLR (pt. 76) 333**
- ii. **Ikunne V State (2000) 5 NWLR (pt.658) 550**

The defence stage is not the proper time for an accused person or suspect to raise the defence of alibi. Moreso, the 1<sup>st</sup> and 2<sup>nd</sup> accused persons had the opportunity to confront the PW3 and PW9 with their alibi during trial but failed to do so, I find their defence that they were in detention before the date of the incident purile and unbelievable.

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

*“A conspiracy consist 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 that:

*“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 parties.”*

From Exhibits ‘B’, ‘C’, ‘D’, ‘E’ and ‘G’, confessional statements of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons, and the video recording, are ample evidence abound on how they conspired with one another and planned to kill the deceased. As I have earlier stated their confessional statements have been tested and there is sufficient evidence from exhibit ‘G’ and evidence from the prosecution witnesses which further confirmed that the confession is true. I find as fact and I so hold that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons conspired with one another to kill the deceased William Ehigie.

It is my view, on the state of the evidence before me in the instant case that the 1<sup>st</sup> accused person and 2<sup>nd</sup> accused person must have appreciated that a gunshot wound on the neck of the deceased would have caused his death. There is no doubt whatsoever that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons intended to inflict injury with a dangerous weapon exhibit ‘F’ on the body has 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.

- i. **Uwe Idighi Esai & Ors V State (1976) 11 SC 39 at 42**
- ii. **State V Nde Ifu (1964) ENLR 28**
- iii. **Akinkunmi & Ors V State (1987) 3 SC 152.**
- iv. **Nyam & Ors V State (1964) 1 All NLR 356.**

I hold that the evidence of unlawful killing has been disclosed against the 1<sup>st</sup> and 2<sup>nd</sup> accused persons. It is unlawful according to our law to kill a human being unless the Homicide is authorized, justified by law. Section 316 of the Criminal Code Vol. II, laws of the defunct Bendel State of Nigeria 1976. It is clear from the evidence before this court that the 1<sup>st</sup> and 2<sup>nd</sup> 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 of the evidence adduced before me, I have come to the irresistible conclusion that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons murdered the deceased in cold-blood. I find as fact that William Ehigie (m) is dead and that he died from the injuries caused by the intentional and voluntary act of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons. I am satisfied that the 1<sup>st</sup> and 2<sup>nd</sup> accused persons deliberately and intentionally murdered the deceased with a gun exhibit 'F'.

In the result, arising from the foregoing analysis, I hold that the prosecution has proved the guilt of the 1<sup>st</sup> and 2<sup>nd</sup> accused persons beyond reasonable doubt. In the circumstances, I find the 1<sup>st</sup> accused person Henry Ikpomwonsa (m) and 2<sup>nd</sup> accused person Isaac Enabuzor (m) guilty of the murder of William Ehigie (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.

Henry Ikponmwonsa (m), Isaac Enabuzor (m) you have been found guilty by this court of the murder of William Ehigie (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 soul.

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

**COUNSEL:**

S. E. Okojie Chief Counsel	.....	.....	.....	.....	State
A. Onochie Esq. Legal Aid	.....	.....	.....	....	1 <sup>st</sup> Accused person
D. O. Ehiedu Esq. ....	.....	.....	.....	.....	2 <sup>nd</sup> Accused person