

# MILESTONES ON THE BENCH



**HONOURABLE JUSTICE MOBOLAJI AYODELE OJO**  
**(Pioneer President, Ogun State Customary Court of Appeal)**  
**THROUGH THE CASES**

Edited by  
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## Chapter 11

### **Stabbing a Person Continually to Death With A Knife Is Demonstration Of An Intention To Cause Death Or Grievous Harm To Him : State v. Ogunleye Tobi**

#### **1.0 Introduction:**

This is a commentary on the decision of Honourable Justice Mobolaji A. Ojo in the case of *The State v Ogunleye Tobi*<sup>1</sup> delivered at the Ota Judicial Division of the High Court of Justice, Ota, Ogun State. This decision is an addition to the increasing number of decisions by Nigerian courts in the area of cases involving criminal law especially murder.

#### **2.0 Facts:**

In this case, the defendant, Ogunleye Tobi was charged before the court on a one count charge for the offence of murder of one Koladejo Badejo which is contrary to Section 316 and punishable under Section 319 of the Criminal Code Law, Laws of Ogun State.

The deceased, Kolawole Badejo, informed his wife, PW1 that he was going to meet one Babatunde Adebayo (here in after referred to as Tunde) who owed him some amount of money. After waiting for some time for the deceased to return home, PW1 went to Tunde's house who lived three houses away. On getting to Tunde's house, PW1 met her husband and Tunde having an altercation. The defendant (Ogunleye Tobi) met the deceased and Tunde during the argument and then joined them, which led to a fight between the defendant and the deceased. They were separated and PW1 and the deceased later returned home. The deceased was insistent on reporting the matter at the police station and PW1 chose to follow him. On their way to the Police station, it was said that a woman who lived around the environment approached them to ask for the reason for the argument between the deceased, Tunde and the defendant. While the deceased was explaining to the woman, the defendant surfaced from nowhere and stabbed the deceased by his side and at his back. As a result of the attack, the deceased fell to the ground and started bleeding continuously. However, this did not stop the

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<sup>1</sup>Charge Number HCT/ 1C/12 delivered on Tuesday the 2<sup>nd</sup> day of June 2015, at the Ota Judicial Division of the High Court of Justice, Ogun State, Nigeria.

defendant, he went further to stab the deceased on his left leg. The deceased was rushed to the hospital after which the Police arrested the defendant and took him to the police station. PW1 was also taken along, where she passed the night. The next morning, she was told about the death of her husband. PW1 and the accused person made statements to the Police.

PW2, Inspector Olaide Lawal, the Investigating Police Officer (IPO) obtained the confessional statement of the defendant in Yoruba language, translated it to English language and presented the defendant before a Superior Police Officer for the endorsement of the statement. During the trial, objection was raised as to the admissibility of the confessional statement of the defendant. However, the objection was overruled by the court and the confessional statement was admitted in evidence as Exhibit 1. PW2 further said that he took photographs of the scene of the crime. The photographs were marked Exhibits 2, 2A and 2B. The other two statements of the defendant were also tendered by him and marked Exhibits 3 and 3A.

The defendant in his defence, denied causing the death of the deceased. He stated that he was in his room sleeping, when the wife of the deceased knocked his door and informed him that her husband and one Tunde had a fight. The defendant stated that he followed PW1 to her house and still saw the deceased and Tunde fighting, and tried separating them to no avail. The defendant said he was informed by the deceased of a cut to his hand by the knife held by Tunde and he advised the deceased to go for medical care. The defendant stated that on their way in search of a hospital that could attend to the deceased, three men on a motor-bike fought with Tunde as retaliation for his attack on the deceased. While this was on-going, the defendant stated that a police patrol vehicle came and he was arrested alongside the deceased who was later dropped at the hospital. The defendant, stated that he made a statement to the police where he denied killing the deceased and further stated that Tunde was arrested by the police. The defendant claimed that when his case was transferred from Alagbado Police Station, where he made a statement, to State CID Abeokuta, he did not make another statement there. At the trial before Honourable Justice Mobolaji A. Ojo, the evidence given by the defendant was different from the one made in the statement to the police. The defendant said while he was trying to separate Tunde and the deceased who were fighting, Tunde stabbed him. He however denied that he mistakenly stabbed the deceased while retaliating the stabbing by Tunde.

### **3.0 Issues for determination:**

The germane issues that arose for determination in this case are:

- i. Whether the ingredients of the offence of murder are present in this

Case:

- ii. Whether based on the state of evidence before the court, it is safe to conclude that the act of the accused person caused the death of the deceased?
- iii. What is the probative value to be attached to the retracted confessional statement of an accused person? and
- iv. Conditions under which the prosecution will be said to have proved its case beyond reasonable doubt.

#### **4.0 Authorities considered**

##### **41. Cases referred to in the matter:**

- i. *Abbas Muhammad v. The State* (2017) LPELR=42098 (SC)
- ii. *Adamu v. State* (2019) 9 NWLR (Pt. 1675) 478
- iii. *Adeyeye v. The State* (2013) 11 NWLR (Pt. 1364) 47
- iv. *Afolabi v State* (2016) 11 NWLR (Pt. 1524) 497.
- v. *Akinkunmi v. The State*<sup>2</sup> (2022) 9 NWLR (Pt. 1836) 553 SC.
- vi. *Akwuobi v State* (2017) 2 NWLR (Pt. 1550) 421.
- vii. *Amaechi Njoku v. State* (2021) LPELR SC 18211
- viii. *Amao v State* (2022) 10 NWLR (Pt. 1838) 323 SC.
- ix. *Anthony Ebong v The State* LPELR-CA/C/212/2009.
- x. *Anthony Itu v. The State* (2016) LPELR 26063 SC
- xi. *Ayiwa v. COP* (2022) 9 NWLR (Pt. 1834) 89 SC.
- xii. *Bassey v. The State* (2010) FWLR (Pt. 506) 1837.
- xiii. *Ben v. State*<sup>3</sup> (2006) 16 NWLR (Pt. 1006) 582
- xiv. *Burwode v. The State* (2001) FWLR (Pt. 32) 950.
- xv. *Chukwunyere v. State* (2018) 9 NWLR (Pt. 1624) 249.
- xvi. *Eke v. The State* (2011) 45 NSCQR 652.

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<sup>2</sup>(2022) 9 NWLR (Pt. 1836) 553 SC

<sup>3</sup>(2006) 16 NWLR (Pt. 1006) 582

- xvii. *Emeka v. The State* (2001) 4 NWLR (Pt. 734) 666
- xviii. *Enabuzor v State* (2022) 10 NWLR (Pt. 1839) 509 SC
- xix. *Ivienagbor v. Bazuaye*, (1999) 6 SCNJ 240.
- xx. *John v. The State* (2012) 7 NWLR (Pt. 1299) 336 C.A.
- xxi. *Lawali Nasiru v. The State*, Appeal No SC/1076/2021
- xxii. *Matthew Egheghe v. The State*, SC 304/2017
- xxiii. *Mindi v. State* (2022) 8 NWLR 1 SC
- xxiv. *Nwabueze v The People of Lagos State* (2018) 11 NWLR (Pt. 1630) 201.
- xxv. *Obirina Ochi v. State* (2018) LPELR -45064 CA.
- xxvi. *Ochiba v. The State* (2011) 48 NSCQR 1
- xxvii. *State v. Azeez & Ors* (2005) 4 SC 88
- xxviii. *State v. Egwu* (2022) 8 NWLR (Pt. 1832) 195 SC.
- xxix. *Uguru v. The State* (2002) 9 NWLR (Pt. 771) 90

#### 4.2 Statutes referred to in the case:

- i. Criminal Code, Laws of Ogun State
- ii. Evidence Act 2011

#### 4.3 Exhibits in the case:

- i. Photographs taken at the scene of crime
- ii. Statements of the defendant and that of the wife of the deceased person made to the Police.

### 5.0 Judgment of the Court:

The Honourable Court after careful consideration of the evidence before it, including the confessional statement of the defendant and the position of the extant law held that the evidence of the defendant was disjointed, unorganised and not specific and that the prosecution proved its case beyond reasonable doubt. The Court found the defendant guilty of the offence of *murder as charged and sentenced him to the punishment imposed by the law for the offence, which is death.*



## 6.0 Comments:

The decision of the Honourable Court in the case under review is very important to criminal law jurisprudence in many respects.

From the facts of the case narrated above, nearly all the issues raised were seriously contented by both the prosecution and the defence. In a few instances, both parties agreed on the relevant principle(s) of law, only to disagree as it applied to the case. An example is the requirements to be proved in a case of murder. Both parties agreed to the laid down principles, but in applying the requirements to the case, there were divergent views. Some of the principles are now commented on in this segment of the paper.

### 6.1 Burden of proof in criminal case(s):

In criminal jurisprudence, and in line with the common law philosophy, the criminal justice system in Nigeria is to the effect that the burden of proof of crime is on the prosecution who must prove its case beyond doubt. This is in line with the provision of Section 135 of the Evidence Act 2011. Though this principle of law is trite law, it was an issue that came into contention in the case as both the prosecution and the defence in the case expatiated on it. This was not unexpected as the success or failure of the parties depended on it.

While the defence submitted that the prosecution has not proved its case beyond reasonable doubt and urged the court to discharge and acquit the defendant of the charge, the prosecution on the other hand urged the court to convict and sentence the defendant as charged because the prosecution has proved the case of murder as charged against the defendant.

There are numerous cases where the Supreme Court had pronounced on this important principle of law. On the meaning of proving the case beyond reasonable doubt, the Supreme Court in *Amaechi Njoku v. State*<sup>4</sup> held that the prosecution is said to have proved the case beyond reasonable doubt, when it has proved all ingredients of the particular offence the accused person is charged with. The Court further held that proof beyond reasonable doubt does not mean proof beyond any shadow of doubt.

At the end of the trial, in *Ogunleye Tobi's* case, the learned trial Judge Honourable Justice Mobolaji A. Ojo after analysing the totality of the evidence before him held<sup>5</sup> that the prosecution has proved its case beyond reasonable doubt and thereafter made a pronouncement on finding the defendant guilty of the offence of murder, contrary to section 316 (2) Criminal Code, Laws of Ogun State. His Lordship also relied on the decision in the cases of *Adamu v. State*<sup>6</sup>; *Chukwunyere v. State*<sup>7</sup>, and *Anthony Itu v. The State*<sup>8</sup> to buttress the

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<sup>4</sup>(2021) LPELR SC 18211

<sup>5</sup>At page 21 of the judgment.

<sup>6</sup>(2019) 9 NWLR (Pt. 1675) 478

<sup>7</sup>(2018) 9 NWLR (Pt. 1624) 249

<sup>8</sup>(2016) LPELR 26063 SC

courts finding on this point.

## **6.2 Eye witness account in murder trial:**

There is nothing wrong in the court relying on eye witness account in a murder trial. The prosecution in the case under review, relied heavily on eye witness account which was the evidence of PW1, the wife of the deceased. She gave a vivid account of the event that led to the death of the deceased. The defence however urged the Honourable Court to be circumspect in relying on the evidence because of contradictions. The fact that the prosecution relied heavily on eye witness account is supported by the law. In *Enabuzor v State*<sup>9</sup>, the Supreme Court has laid down the law, that evidence of eye witness or witnesses is one of the ways by which the prosecution can establish the offence of murder. Similar decision was reached by the Supreme Court on this point in *Nwabueze v. The People of Lagos State*<sup>10</sup>, *Afolabi v. State*<sup>11</sup> and *Akwuobi v. State*<sup>12</sup>

## **6.3 Contradictions in prosecution's case:**

Material contradictions in the case of the prosecution would ordinarily be resolved in favour of a defendant in criminal trials, however, contradictions that are merely trivial or inconsequential in nature would be ignored by the courts.

This paper submits that there were contradictions in the evidence of PW1, however, this paper totally disagrees with the defendant that the contradictions were material and irreconcilable. The contradictions as the learned trial judge noted in the judgement had to do with timing of the event that led to the death of the deceased. The contradiction is about thirty minutes to one-hour difference and what can be described as error in the name in the proof of evidence. These supposedly contradictions were rightly clarified and corroborated during the trial. The Honourable Court held<sup>13</sup> on this point that "the discrepancies in the evidence of the PW1 and PW2 on the timing of the account of the incidence is immaterial.". This paper noted the pronouncement of the Supreme Court in the case of *Lenee Okere v. The Inspector General of Police*<sup>14</sup>, where the Supreme Court in a case of murder held thus:

It is well established that contradictions which do not affect the

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<sup>9</sup>(2022) 10 NWLR (Pt. 1839) 509

<sup>10</sup>(2018) 11 NWLR (Pt. 1630) 201

<sup>11</sup>(2016) 11 NWLR (Pt. 1524) 497

<sup>12</sup>(2017) 2 NWLR (Pt 1550) 421

<sup>13</sup>At page 8 of the judgment.

<sup>14</sup>(2021) LPELR SC 01111

substance of the issue to be decided are irrelevant. The contradictions must be shown to be substantial disparagement of the witness or witnesses concerned, making it unsafe to rely on such witnesses or witnesses. It is not every contradiction, however minute that would be sufficient to damnify a witness. The contradiction that would make a court disbelieve a witness has to be on a material point in the case

Honourable Justice Mobolaji A. Ojo in the case of *Ogunleye Tobi* is therefore backed up by law to have stated in the judgement that the issue of contradictions in timing by PW1 and PW2 which was not more than thirty minutes to one-hour difference cannot be regarded as material contradictions to warrant disbelieving the prosecution. Interestingly, the facts in the case of *Lenne Okere v IGP*<sup>15</sup> is similar to the case under review. His Lordship, U.M.A. Aji J.S.C., alluded to the “so-called contradictions” that the appellants in the case is alleging. His Lordship held that the discrepancies did not go to the root of disbelieving that there was murder of the deceased by the appellant and his team. This is exactly what transpired in *Ogunleye Tobi’s* case.

#### **6.4 Corroboration of the evidence of witness:**

The issue on the law of corroboration also came up in this case. The counsel to the defendant pointed out that some witnesses should have been called by the prosecution to prove their case and failure to do this is fatal. In particular, the nurse who treated the deceased for the wounds sustained was mentioned. The Evidence Act 2011 is very clear on this. Section 200 of the Act states that “Except as provided in Sections 201 to 204 of the Act, no particular number of witnesses shall in any case be required for proof of any fact”. By this law, the general rule is that no particular number of witnesses is required to prove a criminal charge.

The Supreme Court in the case of *Amaechi Njoku v. State*<sup>16</sup>, reiterated this position of the law and held *inter alia* that “Counsel for the Appellant probably forgot that there are authorities for the view that “a single witness, if believed by the court, can establish a criminal case even if it is a murder”. This paper with due respect submits that this statement by the Supreme Court, is also applicable to the defence counsel in the case under review. The decision of the court in the case of *Anthony Itu v The State*<sup>17</sup> also reiterated this fine principle of law.

The facts of the case of *Anthony Itu*, are very similar to the case of *Ogunleye*

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<sup>15</sup>Supra.

<sup>16</sup> (2021) LPELR SC 18211

<sup>17</sup>Supra.

*Tobi* under review. It was a case of murder where the prosecution called only one witness and the defence at the trial court retracted a confessional statement which the defendant claimed was not made voluntarily by him. Furthermore, by Section 131 of the Evidence Act, the prosecution is to call witness or witnesses to prove its case beyond reasonable doubt. This was clearly stated by the Supreme Court in *State v. Azeez & Ors.*<sup>18</sup> where Sanusi J.S.C., clearly stated that “It is not the number of witnesses the prosecution calls that matters, or entitles it to prove its case. Rather, it is the quality of the evidence that is given the witness or witnesses that matter.”

There are exceptions to this general rule, the exception includes cases of treason, treasonable felony and exceeding speed limit. The judgement in the case under review is a case of murder and obviously does not fall into any of the exceptions. It is highly commendable that the learned trial judge highlighted the principle of law discussed above and applied it.

#### **6.5 Speculation versus factual evidence:**

Another issue very relevant in the development of the criminal law which came into focus in the case under review is the duty of the court not to decide issues based on speculation. Honourable Justice Mobolaji A. Ojo did not hesitate to reject the submission of the counsel to the defendant who suggested without any proof of evidence that the death of the deceased “might” have been caused by the negligence of the hospital staff where the deceased was taken to, in managing his condition.” .

His Lordship equivocally stated in the judgement that there was no evidence before him to conclude as suggested by the counsel to the defendant and went on to highlight that duty imposed by law on the courts. His Lordship applied the rule as stated in *Obinna Ochi v. State*<sup>19</sup> where Ogunwumiju JCA<sup>20</sup> held that “It is trite law that courts should not speculate on evidence but rely on and decide on the evidence presented before it. ... A court cannot decide on speculation, no matter how close what it relies on may seem to be to the fact” . His Lordship, Hon Justice Olatokunbo John Bamgbose in His Lordships treatise<sup>21</sup> *2014 Digest of Judgement of the Supreme Court of Nigeria*, considered the case of *Ivienagbor v. Bazuaye*<sup>22</sup>, and opined that the judge in that case distinguished between an inference and speculation. He quoted the judge who said while inference is a reasonable deduction from facts,

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<sup>18</sup>(2005) 4 SC 88

<sup>19</sup>(2018) LPELR -45064 CA

<sup>20</sup>As His Lordship then was,( now Ogunwumiju J.S.C.)

<sup>21</sup>Olatokunbo John Bamgbose, 2014 Digest of Judgement of the Supreme Court of Nigeria Volumes 1 and 2, Paragraph 1038, page 445

<sup>22</sup>(1999) 6 SCNJ 240

speculation is a mere variant of imaginative guess which, even where it appears plausible, should never be allowed by a court of law to fill any hiatus in the evidence before it. His Lordship, Honourable Justice Ojo's position is on all fours with the decisions above. In a flowing and lucid language, His Lordship stated that "it is not the duty of a court of law to indulge in speculation or embark on a voyage of discovery." This work, commends the literary genre and creativity of this great jurist.

#### **6.6 Defence open to the defendant in this case:**

In the course of reviewing this judgement, the issue of self defence came into focus. Although, this work noted that the court did not directly refer to it, neither was anything written about it particularly in the judgement. Suffice to state that the Honourable Judge followed the due process of law, by considering from the evidence before him, if there was any legal defence that could avail the defendant, and found none<sup>23</sup>. However, for the purpose of enriching the knowledge of students of law, legal practitioners and judicial officers who may come across this review, this work will endeavour to briefly write on the law of self-defence.

The defendant, Ogunleye Tobi in the confessional statement to the police, which is exhibit 1 at the trial, which was later retracted as involuntarily made, but admitted by the court as voluntary, attempted to raise the defence of self. It was however noted, though the attempt was made by the defendant, his counsel never referred to it during the trial and in his address before the court. According to the defendant in the confessional statement, the accused injured him with a broken bottle on his hand and had another object in his other hand. He claimed that after seeing this, he took to his heels to avoid further attack, but the deceased pursued him until he, the defendant fell down. He went on to say that a knife fell from the pocket of the deceased and he, the defendant picked it up and stabbed the deceased in his back and leg until the deceased left him. This is the attempt to raise the defence of self defence

Self-defence is one of the defences in criminal law which can be raised by a defendant in the case of murder. The learned authors: Professor Oluyemisi Bamgbose, SAN, and Honourable Justice Sonia Akinbiyi, in their treatise : *Criminal Law*<sup>24</sup> stated that self defence is provided for in Sections 286, 287 and 288 Criminal Code. Section 32(3) of the Criminal Code, which gives justification for an act is also relevant<sup>25</sup>.

The learned authors quoted *Black's Law Dictionary*<sup>26</sup>, that  
self-defence is the protection of one's property or person

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<sup>23</sup>At page 20 of the judgment.

<sup>24</sup>Professor Oluyemisi Bamgbose, SAN, Hon. Justice Sonia Akinbiyi, *Criminal Law*, (2014) Evans Brothers (Nigeria Publishers) Limited

against some injury attempted by another. The right of such protection is guaranteed on the ground that it is an excuse for force in resisting an attack on the person, therefore self-defence gives justification for an act.

The authors further stated that self-defence can be said to be a justifiable defence against attack, to the body of one self or that of another person. Such attack should ordinarily be a crime but as decided in *John v The State*<sup>27</sup> it is one that is justifiable. A successful plea of the defence exculpates an accused from criminal liability, that is, the result is an absolute acquittal of the charge. In the case of *Lawali Nasiru v The State*,<sup>28</sup> the ingredients of self-defence were highlighted by Augie J.S.C.,: that

the accused must be free from fault in bringing about the encounter; there must be present an impending peril to life or of greater bodily harm either real or so apparent as to create honest belief of an existing necessity; there must be no safe or reasonable mode of escape by retreat; there must have been a necessity for taking life... all the above ingredients must exist and be established... the person relying on it believed that there was no other way of saving himself from death or grievous bodily harm other than using such force as he did and that he tried to disengage from the event...(Furthermore,) for an accused to avail himself of the defence of self, he must show that he took reasonable steps to disengage from fight or make physical withdrawal.

To further clarify the position of the law on the law of self-defence, Ogunbiyi J.S.C., in the case of *Adeyeye v. The State*<sup>29</sup> stated that the right questions to ask in raising self-defence to avail an accused and which must be answered before the trial court are: (1). On the evidence, was the defence of self-defence necessary? (2). Was the injury inflicted proportionate to the threat offered or was it excessive.? The court said that if the answers to both questions are negative, then the defence of self cannot avail the accused. The case of *Matthew Egheghe v The State*<sup>30</sup>, is also instructive.

The defendant in the case under review tried to come under the protection of the law on self- defence however, he retracted this statement and in his evidence before the court said he was not the person who stabbed the deceased but another person. Unfortunately for the defendant, there were

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<sup>25</sup>At page 160 of the treatise.

<sup>26</sup>6<sup>th</sup> edition.

<sup>27</sup>[2012] 7 NWLR (Pt. 1299) 336 C.A

<sup>28</sup>Appeal No SC/1076/2021

<sup>29</sup>(2013) 11 NWLR (Pt. 1364) 47

<sup>30</sup>SC 304/2017 judgment delivered on Friday 10 January 2020

independent pieces of evidence, especially the eye witness evidence of PW1, to link him to the murder and to debunk the evidence he tried to build up for the defence of self. Further, the counsel to the defendant did not lead the defendant in the trial to raise the defence, neither did he raise this defence in his address. Consequently, the Honourable Court applied the procedure expected of the court in homicide cases and laid down by the Supreme Court in the case of *Matthew Egheghe v The State*<sup>31</sup>, that:

it is the duty of the court to consider all defences available to the accused person... the courts do not fish for or speculate over defences available to an accused...the facts which constitute such defences must be apparent enough from the evidence on record to enable the court to consider them... It must therefore be reiterated that the courts must not, in the absence of evidence of such defence or defences on record, speculate... the appellant in the present case ...is only but fishing for defences which cannot avail or are irreconcilable...<sup>32</sup>

Coming back to the judgement delivered in *The State v Ogunleye Tobi*, the sagacious jurist, Honourable Justice Mobolaji A. Ojo drew attention to this principle of law, and applied it<sup>33</sup>. His Lordship stated that the court had examined the entire evidence in the case to see what legal defence or defences that could be available to the defendant and found none. This reveals that the painstaking attention to law and thoroughness of the trial judge in the case is noteworthy as it shows great industry on the part of the court and attention to details.

In grounding the conviction for the offence of murder, and sentencing the defendant to the mandatory punishment of death by hanging, Honourable Justice Mobolaji A. Ojo throughout the entire proceedings, relied on relevant provisions of the law alongside judicial decisions. This is evident in the comprehensive manner in which the principles are discussed, the systematic and thoroughness deployed by the learned jurist to expound the issues for determination, as well as questions of law that arose during the course of trial.

#### 6.7 Retracting confessional statement

An accused person may retract the confessional statement hitherto made by him pending the filing of a charge against him. However, such a retracted statement would be viewed closely by the court to determine the weight and probative value to be attached to it.

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<sup>31</sup>Supra.

<sup>32</sup>Especially the judgment of His Lordship, U.M.A. Aji J.S.C.

<sup>33</sup> Page 20 of the judgment.

- xvii. *Emeka v. The State* (2001) 4 NWLR (Pt. 734) 666
- xviii. *Enabuzor v State* (2022) 10 NWLR (Pt. 1839) 509 SC
- xix. *Ivienagbor v. Bazuaye*, (1999) 6 SCNJ 240.
- xx. *John v. The State* (2012) 7 NWLR (Pt. 1299) 336 C.A.
- xxi. *Lawali Nasiru v. The State*, Appeal No SC/1076/2021
- xxii. *Matthew Egheghe v. The State*, SC 304/2017
- xxiii. *Mindi v. State* (2022) 8 NWLR 1 SC
- xxiv. *Nwabueze v The People of Lagos State* (2018) 11 NWLR (Pt. 1630) 201.
- xxv. *Obinna Ochi v. State* (2018) LPELR -45064 CA.
- xxvi. *Ochiba v. The State* (2011) 48 NSCQR 1
- xxvii. *State v. Azeez & Ors* (2005) 4 SC 88
- xxviii. *State v. Egwu* (2022) 8 NWLR (Pt. 1832) 195 SC.
- xxix. *Uguru v. The State* (2002) 9 NWLR (Pt. 771) 90

#### 4.2 Statutes referred to in the case:

- i. Criminal Code, Laws of Ogun State
- ii. Evidence Act 2011

#### 4.3 Exhibits in the case:

- i. Photographs taken at the scene of crime
- ii. Statements of the defendant and that of the wife of the deceased person made to the Police.

#### 5.0 Judgment of the Court:

The Honourable Court after careful consideration of the evidence before it, including the confessional statement of the defendant and the position of the extant law held that the evidence of the defendant was disjointed, unorganised and not specific and that the prosecution proved its case beyond reasonable doubt. The Court found the defendant guilty of the offence of murder as charged and sentenced him to the punishment imposed by the law for the offence, which is death.



## 6.0 Comments:

The decision of the Honourable Court in the case under review is very important to criminal law jurisprudence in many respects.

From the facts of the case narrated above, nearly all the issues raised were seriously contented by both the prosecution and the defence. In a few instances, both parties agreed on the relevant principle(s) of law, only to disagree as it applied to the case. An example is the requirements to be proved in a case of murder. Both parties agreed to the laid down principles, but in applying the requirements to the case, there were divergent views. Some of the principles are now commented on in this segment of the paper.

### 6.1 Burden of proof in criminal case(s):

In criminal jurisprudence, and in line with the common law philosophy, the criminal justice system in Nigeria is to the effect that the burden of proof of crime is on the prosecution who must prove its case beyond doubt. This is in line with the provision of Section 135 of the Evidence Act 2011. Though this principle of law is trite law, it was an issue that came into contention in the case as both the prosecution and the defence in the case expatiated on it. This was not unexpected as the success or failure of the parties depended on it.

While the defence submitted that the prosecution has not proved its case beyond reasonable doubt and urged the court to discharge and acquit the defendant of the charge, the prosecution on the other hand urged the court to convict and sentence the defendant as charged because the prosecution has proved the case of murder as charged against the defendant.

There are numerous cases where the Supreme Court had pronounced on this important principle of law. On the meaning of proving the case beyond reasonable doubt, the Supreme Court in *Amaechi Njoku v. State*<sup>4</sup> held that the prosecution is said to have proved the case beyond reasonable doubt, when it has proved all ingredients of the particular offence the accused person is charged with. The Court further held that proof beyond reasonable doubt does not mean proof beyond any shadow of doubt.

At the end of the trial, in *Ogunleye Tobi's* case, the learned trial Judge, Honourable Justice Mobolaji A. Ojo after analysing the totality of the evidence before him held<sup>5</sup> that the prosecution has proved its case beyond reasonable doubt and thereafter made a pronouncement on finding the defendant guilty of the offence of murder, contrary to section 316 (2) Criminal Code, Laws of Ogun State. His Lordship also relied on the decision in the cases of *Adamu v. State*<sup>6</sup>; *Chukwunyere v. State*<sup>7</sup>, and *Anthony Itu v. The State*<sup>8</sup> to buttress the

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<sup>4</sup>(2021) LPELR SC 18211

<sup>5</sup>At page 21 of the judgment.

<sup>6</sup>(2019) 9 NWLR (Pt. 1675) 478

<sup>7</sup>(2018) 9 NWLR (Pt. 1624) 249

<sup>8</sup>(2016) LPELR 26063 SC

courts finding on this point.

## 6.2 Eye witness account in murder trial:

There is nothing wrong in the court relying on eye witness account in a murder trial. The prosecution in the case under review, relied heavily on eye witness account which was the evidence of PW1, the wife of the deceased. She gave a vivid account of the event that led to the death of the deceased. The defence however urged the Honourable Court to be circumspect in relying on the evidence because of contradictions. The fact that the prosecution relied heavily on eye witness account is supported by the law. In *Enabuzor v State*<sup>9</sup>, the Supreme Court has laid down the law, that evidence of eye witness or witnesses is one of the ways by which the prosecution can establish the offence of murder. Similar decision was reached by the Supreme Court on this point in *Nwabueze v. The People of Lagos State*<sup>10</sup>, *Afolabi v. State*<sup>11</sup> and *Akwuobi v. State*<sup>12</sup>

## 6.3 Contradictions in prosecution's case:

Material contradictions in the case of the prosecution would ordinarily be resolved in favour of a defendant in criminal trials, however, contradictions that are merely trivial or inconsequential in nature would be ignored by the courts.

This paper submits that there were contradictions in the evidence of PW1, however, this paper totally disagrees with the defendant that the contradictions were material and irreconcilable. The contradictions as the learned trial judge noted in the judgement had to do with timing of the event that led to the death of the deceased. The contradiction is about thirty minutes to one-hour difference and what can be described as error in the name in the proof of evidence. These supposedly contradictions were rightly clarified and corroborated during the trial. The Honourable Court held<sup>13</sup> on this point that "the discrepancies in the evidence of the PW1 and PW2 on the timing of the account of the incidence is immaterial.". This paper noted the pronouncement of the Supreme Court in the case of *Lenee Okere v. The Inspector General of Police*<sup>14</sup>, where the Supreme Court in a case of murder held thus:

it is well established that contradictions which do not affect the

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<sup>9</sup>(2022) 10 NWLR (Pt. 1839) 509

<sup>10</sup>(2018) 31 NWLR (Pt. 1630) 201

<sup>11</sup>(2016) 11 NWLR (Pt. 1524) 497

<sup>12</sup>(2017) 2 NWLR (Pt 1550) 421

<sup>13</sup>At page 8 of the judgment.

<sup>14</sup> (2021) LPELR SC 01111

substance of the issue to be decided are irrelevant. The contradictions must be shown to be substantial disparagement of the witness or witnesses concerned, making it unsafe to rely on such witnesses or witnesses. It is not every contradiction, however minute that would be sufficient to damnify a witness. The contradiction that would make a court disbelieve a witness has to be on a material point in the case

Honourable Justice Mobolaji A. Ojo in the case of *Ogunleye Tobi* is therefore backed up by law to have stated in the judgement that the issue of contradictions in timing by PW1 and PW2 which was not more than thirty minutes to one-hour difference cannot be regarded as material contradictions to warrant disbelieving the prosecution. Interestingly, the facts in the case of *Lenne Okere v IGP*<sup>15</sup> is similar to the case under review. His Lordship, U.M.A. Aji J.S.C., alluded to the “so-called contradictions” that the appellants in the case is alleging. His Lordship held that the discrepancies did not go to the root of disbelieving that there was murder of the deceased by the appellant and his team. This is exactly what transpired in *Ogunleye Tobi’s* case.

#### **6.4 Corroboration of the evidence of witness:**

The issue on the law of corroboration also came up in this case. The counsel to the defendant pointed out that some witnesses should have been called by the prosecution to prove their case and failure to do this is fatal. In particular, the nurse who treated the deceased for the wounds sustained was mentioned. The Evidence Act 2011 is very clear on this. Section 200 of the Act states that “Except as provided in Sections 201 to 204 of the Act, no particular number of witnesses shall in any case be required for proof of any fact”. By this law, the general rule is that no particular number of witnesses is required to prove a criminal charge.

The Supreme Court in the case of *Amaechi Njoku v. State*<sup>16</sup>, reiterated this position of the law and held *inter alia* that “Counsel for the Appellant probably forgot that there are authorities for the view that: “a single witness, if believed by the court, can establish a criminal case even if it is a murder”. This paper with due respect submits that this statement by the Supreme Court, is also applicable to the defence counsel in the case under review. The decision of the court in the case of *Anthony Itu v The State*<sup>17</sup> also reiterated this fine principle of law.

The facts of the case of *Anthony Itu*, are very similar to the case of *Ogunleye*

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<sup>15</sup>Supra.

<sup>16</sup> (2021) LPELR SC 18211

<sup>17</sup>Supra.

*Tobi* under review. It was a case of murder where the prosecution called only one witness and the defence at the trial court retracted a confessional statement which the defendant claimed was not made voluntarily by him. Furthermore, by Section 131 of the Evidence Act, the prosecution is to call witness or witnesses to prove its case beyond reasonable doubt. This was clearly stated by the Supreme Court in *State v. Azeez & Ors.*<sup>18</sup> where Sanusi J.S.C., clearly stated that: "It is not the number of witnesses the prosecution calls that matters, or entitles it to prove its case. Rather, it is the quality of the evidence that is given the witness or witnesses that matter."

There are exceptions to this general rule, the exception includes cases of treason, treasonable felony and exceeding speed limit. The judgement in the case under review is a case of murder and obviously does not fall into any of the exceptions. It is highly commendable that the learned trial judge highlighted the principle of law discussed above and applied it.

#### **6.5 Speculation versus factual evidence:**

Another issue very relevant in the development of the criminal law which came into focus in the case under review is the duty of the court not to decide issues based on speculation. Honourable Justice Mobolaji A. Ojo did not hesitate to reject the submission of the counsel to the defendant who suggested without any proof of evidence that the death of the deceased "might" have been caused by the negligence of the hospital staff where the deceased was taken to, in managing his condition."

His Lordship equivocally stated in the judgement that there was no evidence before him to conclude as suggested by the counsel to the defendant and went on to highlight that duty imposed by law on the courts. His Lordship applied the rule as stated in *Obinna Cchi v. State*<sup>19</sup> where Ogunwumiju JCA<sup>20</sup> held that "It is trite law that courts should not speculate on evidence but rely on and decide on the evidence presented before it. ... A court cannot decide on speculation, no matter how close what it relies on may seem to be to the fact". His Lordship, Hon Justice Olatokunbo John Bamgbose in His Lordships treatise<sup>21</sup> *2014 Digest of Judgement of the Supreme Court of Nigeria*, considered the case of *Ivienagbor v. Bazuaye*<sup>22</sup>, and opined that the judge in that case distinguished between an inference and speculation. He quoted the judge who said while inference is a reasonable deduction from facts,

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<sup>18</sup>(2005) 4 SC 88

<sup>19</sup>(2018) LPELR -45064 CA

<sup>20</sup>As His Lordship then was, (now Ogunwumiju J.S.C.)

<sup>21</sup>Olatokunbo John Bamgbose, 2014 Digest of Judgement of the Supreme Court of Nigeria Volumes 1 and 2, Paragraph 1038, page 445

<sup>22</sup>(1999) 6 SCNJ 240

speculation is a mere variant of imaginative guess which, even where it appears plausible, should never be allowed by a court of law to fill any hiatus in the evidence before it. His Lordship, Honourable Justice Ojo's position is on all fours with the decisions above. In a flowing and lucid language, His Lordship stated that "it is not the duty of a court of law to indulge in speculation or embark on a voyage of discovery." This work, commends the literary genre and creativity of this great jurist.

#### **6.6 Defence open to the defendant in this case:**

In the course of reviewing this judgement, the issue of self defence came into focus. Although, this work noted that the court did not directly refer to it, neither was anything written about it particularly in the judgement. Suffice to state that the Honourable Judge followed the due process of law, by considering from the evidence before him, if there was any legal defence that could avail the defendant, and found none<sup>23</sup>. However, for the purpose of enriching the knowledge of students of law, legal practitioners and judicial officers who may come across this review, this work will endeavour to briefly write on the law of self-defence.

The defendant, Ogunleye Tobi in the confessional statement to the police, which is exhibit 1 at the trial, which was later retracted as involuntarily made, but admitted by the court as voluntary, attempted to raise the defence of self. It was however noted, though the attempt was made by the defendant, his counsel never referred to it during the trial and in his address before the court. According to the defendant in the confessional statement, the accused injured him with a broken bottle on his hand and had another object in his other hand. He claimed that after seeing this, he took to his heels to avoid further attack, but the deceased pursued him until he, the defendant fell down. He went on to say that a knife fell from the pocket of the deceased and he, the defendant picked it up and stabbed the deceased in his back and leg until the deceased left him. This is the attempt to raise the defence of self defence

Self-defence is one of the defences in criminal law which can be raised by a defendant in the case of murder. The learned authors: Professor Olujemisi Bamgbose, SAN, and Honourable Justice Sonia Akinbiyi, in their treatise : *Criminal Law*<sup>24</sup> stated that self defence is provided for in Sections 286, 287 and 288 Criminal Code. Section 32(3) of the Criminal Code, which gives justification for an act is also relevant<sup>25</sup>.

The learned authors quoted *Black's Law Dictionary*<sup>26</sup>, that

self-defence is the protection of one's property or person

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<sup>23</sup>At page 20 of the judgment.

<sup>24</sup>Professor Olujemisi Bamgbose, SAN, Hon. Justice Sonia Akinbiyi, *Criminal Law*, (2014) Evans Brothers (Nigeria Publishers) Limited

against some injury attempted by another. The right of such protection is guaranteed on the ground that it is an excuse for force in resisting an attack on the person, (therefore self-defence gives justification for an act.

The authors further stated that self-defence can be said to be a justifiable defence against attack, to the body of one self or that of another person. Such attack should ordinarily be a crime but as decided in *John v The State*<sup>27</sup> it is one that is justifiable. A successful plea of the defence exculpates an accused from criminal liability, that is, the result is an absolute acquittal of the charge. In the case of *Lawali Nasiru v The State*,<sup>28</sup> the ingredients of self-defence were highlighted by Augie J.S.C., : that

the accused must be free from fault in bringing about the encounter; there must be present an impending peril to life or of greater bodily harm either real or so apparent as to create honest belief of an existing necessity; there must be no safe or reasonable mode of escape by retreat; there must have been a necessity for taking life... all the above ingredients must exist and be established... the person relying on it believed that there was no other way of saving himself from death or grievous bodily harm other than using such force as he did and that he tried to disengage from the event...(Furthermore,) for an accused to avail himself of the defence of self, he must show that he took reasonable steps to disengage from fight or make physical withdrawal.

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<sup>28</sup>Appeal No SC/1076/2021

<sup>29</sup>(2013) 11 NWLR (Pt. 1364) 47

<sup>30</sup>SC 304/2017 judgment delivered on Friday 10 January 2020

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#### 6.7 Retracting confessional statement

An accused person may retract the confessional statement hitherto made by him pending the filing of a charge against him. However, such a retracted statement would be viewed closely by the court to determine the weight and probative value to be attached to it.

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<sup>31</sup>Supra.

<sup>32</sup>Especially the judgment of His Lordship, U.M.A. Aji J.S.C.

<sup>33</sup> Page 20 of the judgment.

This case among others made landmark pronouncement on the probative value that can be attached to a retracted confessional statement. In this case, although the confessional statement of the accused person was retracted, the court established that the law is settled that even when an accused person has retracted his confessional statement, conviction can still be secured solely on the confessional statement. In support of this established principle by the court, is the decision of the Supreme Court in the case of *Akinkunmi v The State*<sup>34</sup> where the Supreme Court stated that where an accused person in his evidence in court changed the story he had earlier told the police in the course of investigation and denied his confessional statement, the court may still convict the accused on the confessional statement, provided the required conditions are met to the satisfaction of the court.

**6.8' Distinction between classes of confessions and the probative value to be placed on them:**

The confession made by an accused person could fall into any of the following categories: voluntary, involuntary or retracted, whatever the category, the courts have a duty to place appropriate probative value on the confessional statement. In deciding the probative value to be placed on the retracted confessional statement of the defendant in this case, the Honourable Court referred to the illuminating judgement of Hon Justice Rhodes-Vivour, JSC, in *Ogudo v. The State*<sup>35</sup> and quoted the dictum of Hon Justice Rhodes – Vivour JSC *in extenso* that:

It is important, I highlight the position of the law on confessions, voluntary and involuntary, retracted confession. By virtue (of) section 27 (1) and (2) of the Evidence Act, a confessional statement is a statement by an accused person charged with an offence stating that he committed the offence.

A confession cannot be used against an accused unless the court is satisfied that it is voluntary. Where a confessional statement is made voluntarily by the accused person, such an accused usually enters a guilty plea and a conviction based entirely upon evidence of confession of an accused person would not be upset on appeal...If after a trial within trial, it is found that the confession was made voluntary, it would be admitted in evidence and considered with other evidence led in the trial...

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<sup>34</sup>(2022) 9 NWLR (Pt. 1836) 553 SC

<sup>35</sup>(2011) 12 SCNJ 1



Retracted confessions are usually extra-judicial, statements which amount to confessions which turn out to be inconsistent with testimony at the trial. The inconsistency rule deals with such situations. It is that where a witness makes an extra-judicial statement which is inconsistent with his testimony at the trial, such testimony is to be treated as unreliable while the statement is not regarded as evidence on which the court can act.

This rule developed in the interest of justice to resolve conflict between previous statement and later evidence for the prosecution or defence. The object was to ensure that the evidence relied on by the court is credible. The party who retracts is always afforded an opportunity, while in the witness box to explain the inconsistency. See *Onubogu v. State* (1974) 9 SC 1. The inconsistency rule is restricted to the evidence of a witness, who made the extra-judicial statement, which is in conflict with the evidence given at the trial. The previous statements are not evidence, which the court can act on and the evidence given at the trial is taken by the court as unreliable...

A court can convict on the retracted confessional statement of an accused person, before this is done, the trial judge should evaluate the confession and testimony of the accused person and all the evidence available.

This entails the trial judge examining the new version of events presented by the accused person, which is different from his retracted confession and the judge asking himself the following questions: (a) Is there anything outside the confession to show that it is true? (b) Is it corroborated? (c) Are the relevant statements made in it of facts true as far as they can be tested? (d) Did the accused have the opportunity of committing the offence charged? (e) Is the confession possible? (f) Is the confession consistent with other facts which has been ascertained and have been proved? See *Kanu and Anor v King* (1952) 14 WACA 30; *Mbenu v. State* (1988) 3 NWLR (Pt.) 84, 615...

Though, the court can convict only on the extra-judicial confessional statement of the accused person, but it is desirous to find some independent evidence. That is to say, it is desirable to have outside the confession some evidence, be it

slight of circumstance which make it probable that the confession was true...

Honourable Justice Mobolaji Ojo, went further to consider more judicial authorities on the point including *Haruna v. The Attorney General of the Federation*<sup>36</sup> and *Oseni v. The State*<sup>37</sup>. It is submitted with respect that the Court applied the law correctly in this matter and the justice of the case was met based on the circumstances of the case.

### **6.9 Re-stating the ingredients of the offence of murder:**

The duty of the prosecution is to prove the guilt of the defendant beyond every iota of doubt. Consequently, the elements of an offence must be proved to secure conviction of the accused person. In this instance, the elements of the offence of murder were restated again as : that the that the deceased must have died; the act of the defendant cause the death of the deceased ; that there was intention to cause the death of the deceased .

As stated above, on the requirements to be proved in the case of murder, both parties to the case agreed. However, the contention was on whether it has been proved beyond reasonable doubt or not as required by law. For avoidance of doubt and for purposes of refreshing the knowledge of students, legal practitioners, scholars and judicial officers who may come across this paper, the requirements are discussed. In *State v Adu*<sup>38</sup> where the Supreme Court again reiterated the ingredients for murder which the prosecution must establish. These are:

- a. That a person died;
- b. That the death of that person was caused by the accused;
- c. It was the accused's act which caused the deceased's death and it was done with the intention of causing bodily harm; and
- d. The accused knew that death or grievous bodily harm would be a probable consequence of his act.

*The Supreme Court went further to hold that:*

To establish the offence of murder, the prosecution must prove beyond reasonable doubts that the deceased died. They must also prove the cause of death which cause must be traceable to an act or omission of the accused person and they must prove that the act or omission of the accused person was intentional knowing that death or grievous bodily harm was a consequence. A conviction for murder would be sustained if the prosecution is able to prove the ingredients

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<sup>36</sup>(2012) LPELR -SC72/2010.

<sup>37</sup>(2012) LPELR -SC14/2011.

<sup>38</sup>(2022) 7 NWLR (Pt. 1830) 461 SC

of murder beyond reasonable doubt.

In *Enabuzor v. State*<sup>39</sup>, the court went further to state that these conditions must co-exist and where one of them is absent or tainted with doubt, the charge is not said to be proved. These elements were also validly reaffirmed in the case of *State v Egwu*<sup>40</sup>.

#### **6.10 Confessional statement of a defendant:**

In situations where confessional statement is direct, positive and unequivocal, the court can rely on it and convict the accused person. This is the position of the law and it is sacrosanct.

#### **6.11 Prove beyond reasonable doubt:**

The duty of the prosecutor is to prove the guilt of a defendant beyond doubt. In essence the slightest material doubt will be resolved in favour of an accused person. In this instance, the defendant submitted that there were doubts in the case of the prosecutor the doubts pointed out include, that PW1 mentioned Tunde as her husband's killer in her statement to the police but in her evidence in court, he mentioned the defendant and that the prosecution failed to provide medical evidence to prove the cause of the death of the accused.

#### **6.12 On the need for medical certificate in murder case(s):**

The law is that where the cause of death is so obvious, particularly where the deceased died almost immediately as a result of the act of the defendant, there is no need for medical evidence as to cause of death. Authorities for this position of the law includes the decision in the cases of *Bassey v. The State*<sup>41</sup> and *Ugwu v. The State*<sup>42</sup>

In this case, the Honourable Court also considered whether or not it will be safe, in the absence of a medical report, for the court to conclude that the act of the accused person caused the death of the deceased. In expounding this point, Honourable Justice Mobolaji Ojo reiterated the decision of the Court of Appeal in *Anthony Ebong v. The State*<sup>43</sup> that the cause of death maybe proved by direct evidence or circumstantial evidence and that medical evidence is not required to establish cause of death in all causes. Where there is sufficient evidence before the court as to the cause of death, medical evidence then becomes irrelevant. On the same point the Supreme Court in the case of *Amao v. State*<sup>44</sup> held that:

where death is caused by infliction of wounds of such severity that

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<sup>39</sup>(2022) 10 NWLR (Pt. 1839) 509 SC

<sup>40</sup>(2022) 8 NWLR (Pt. 1832) 195 SC.

<sup>41</sup>(2010) FWLR (Pt. 506) 1837

<sup>42</sup>(2002) 9 NWLR (Pt. 771) 90

<sup>43</sup>LPELR-CA/C/212/2009.

death must have been anticipated as the only natural result of the act, the person who has inflicted such wounds is guilty of murder. In other words, where injuries inflicted upon the deceased are graphically described to lead to no other conclusion than that the deceased died as a result of the attack and the injuries, the court can convict even if there is no medical evidence and even if the body of the deceased is not recovered...

Amina Adamu Augie J.S.C in the case of *Abbas Muhammad v. The State*<sup>45</sup> also pronounced on this point of law when His Lordship stated thus: "...Where cause of death is obvious, it is not a vital component of proof to have medical evidence to establish it..." His Lordship, Augie J.S.C., quoted the dictum of Ogunbiyi J.S.C., in the case of *Ben v. State*<sup>46</sup> that "...medical evidence is not essential in establishing this issue where the deceased was attacked by a lethal weapon and died instantly..." Similar to the case under review, the appellant in *Abbas Muhammad v. The State*<sup>47</sup>, was alleged to have picked up a lethal weapon which fell from the hand of the deceased who was trying to hit the appellant, and used it on the leg and back of the deceased, the deceased died the following day in the hospital.

In the case under review, this time-tested principle of law was followed and applied by the Honourable Court this assisted the court in arriving at a just decision. In reaching the same conclusion that the "deceased died within hours after the savage attack on him by the accused person"<sup>48</sup>

#### **6.13` The number of witnesses called is irrelevant:**

It is the quality of witnesses called to testify in a case that is material, not the number of witnesses called to testify in favour of the prosecution. The authorities for this position of the law includes *Ochiba v. The State*<sup>49</sup> and *Eke v. The State*<sup>50</sup> where the courts had held that the prosecution need not call a number of witnesses as the court may base its conviction on the evidence of a single witness, once the prosecution can prove its case on the evidence of that one witness.

#### **6.14 Evidence of the defendant:**

"The evidence of the accused in court is disjointed, imprecise and

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<sup>44</sup>(2022) 10 NWLR (Pt. 1838) 323 SC

<sup>45</sup> (2017) LPELR – 42098 (SC) 29-30

<sup>46</sup> (2006 )16 NWLR( Pt. 1006) 582

<sup>47</sup> Supra.

<sup>48</sup> At page 18 of the judgement.

<sup>49</sup> ( 2011) 48 NSCQR 1

<sup>50</sup>(2011) 45 NSCQR 652

uncoordinated. This in my view, is because the accused was not telling the truth but was only spinning out a choreographed line of defence. ...The accused is not a witness of truth

#### **6.15 Defence for the defendant:**

The learned trial judge held in this case that he has examined the entire evidence to see what legal defence (s) could be available to the defendant, but found none and went on to sentence the defendant, and convict him to the mandatory punishment of death by hanging

#### **7.0 Conclusion**

The case of *The State v. Ogunleye Tobi* lend its voice on so many issues for a conviction of the offence of murder. It establishes the probative value that can be attached to a retracted confessional statement

The judgement in *The State v. Ogunleye Tobi* by Honourable Justice Mobolaji Ojo stands out as a landmark decision for its strict adherence and applicability to the principles of law. The lucid style of writing by the learned judge, the exposition and interpretation of the law, reference to recent and relevant cases and illuminating judgements make it a very relevant reference material in criminal jurisprudence, to a wide spectrum of persons in the legal field. The case is a reference point and *locus classicus* for important aspects of criminal law such as the probative value to be placed on retracted confessional statement of accused persons, the instances where medical certificate may be dispensed with in murder case, the number of witnesses that may be called in a criminal trial, the elements of a murder offence, self-defence, corroboration of the evidence of a witness and the value to be placed on an eye witness account in a murder trial.