

Burden of Proof in Criminal Matter – When Same Can Shift to the Defendant

In the High Court of Osun State of Nigeria
In the Osogbo Judicial Division
Holden at Osogbo
On Tuesday, the 30th Day of May, 2023

Before His Lordship
Honourable Justice O.A. Ojo
Chief Judge, Osun State

Suit No. HOS/5C/2022

Between

THE STATE

COMPLAINANT

And

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| <ul style="list-style-type: none">1. DR. RAHMON ADEDOYIN 'M' AGED 64 YRS2. MAGDALENE CHIEFUNA 'F' AGED 24 YRS3. ADENIYI ADEROGBA 'M' AGED 37 YRS4. OLUWOLE LAWRENCE 'M' AGED 37 YRS5. OYETUNDE KAZEEM 'M' AGED 38 YRS6. ADEBAYO KUNLE 'M' AGED 35 YRS7. ADEDEJI ADESOLA 'F' AGED 23 YRS | } | DEFENDANTS |
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(Judgement delivered by Honourable A.O. OJO, J.)

Facts

The deceased, Timothy Adegoke, a post-graduate student of Obafemi Awolowo University (OAU), lodged at the Hilton Honours Hotel, Ile-Ife, Osun State, on 5th November 2021. The hotel is owned by the 1st Defendant. His son, Raheem Adedoyin (who is at large), acted as the Managing Director of the said hotel. The 2nd to 7th Defendant are staff of the hotel. On 5th November 2021, when the

deceased lodged in the hotel, the 7th Defendant was the receptionist on duty. She received the lodging payments from the deceased and allocated room 305 to him for 5th and 6th November 2021. The payment, which was made through bank transfer, was made into the personal account of the 7th Defendant, on her request. The 4th Defendant was the Checker on duty, while the 5th Defendant was the manager on duty. On 6th November 2021, the 7th Defendant handed over to the 2nd Defendant, who was the receptionist on duty for the day while the 3rd and 6th Defendants were the manager and checker respectively.

By the evidence of PW2, the wife of the deceased, she spoke with him on 5th November 2021 at about 8:pm and he confirmed to her that he was at the hotel but tired. On 6th November 2021, PW2 called the phone number of the deceased several times without response. She alerted PW1, a cousin of the deceased who went to Ile-Ife in search for him. When PW1 could not find the deceased at the examination centre for his class in OAU, PW1 and the university management went to the More police station to make a report after searches in the hotels and hospitals close by proved abortive. At this time, PW3, a brother of the deceased, had joined in the search. The DPO at the More police station placed a call to the Chairman of the hoteliers in Ife to check with members if the deceased was lodged in their hotel but was told that the name of the deceased was not on any of the hotel's lodge book.

PW2, wife of the deceased, sent a copy of an old hotel receipt of Hilton Hotels to PW3 as the place where the deceased usually lodge when he goes to Ife. The Investigating Police Officer (IPO) – PW4 went together with PW3 to Ife. On their way, investigations into the bank transactions of the deceased revealed that on 5th November 2021, he transferred the sum of ₦37,000.00 into the account of the 7th Defendant. This same amount was reflected on the old receipt and the name of the 7th Defendant was also the recipient. On getting to the hotel, the IPO and PW3 asked for the 7th Defendant and questioned her on whether the deceased lodged in the hotel on 5th November 2021 to which she said No. when confronted with information about the money transferred to her account by the deceased, the 7th Defendant was said to have owned up that the deceased came to the hotel but after transferring the money for lodgement into her account, he left with his bag and did not check into the hotel. The IPO asked for records of the hotel lodgement

which were given to him. Scrutinising the document, the IPO found that some entries and receipts were missing. The 7th Defendant was thereby arrested and taken to the police station where she confessed that the lodgers record for 5th November 2021 was altered to remove one name. she showed the picture of the lodger's record she took with her phone on the said date with the name of the deceased as first on the list and allocated room 305. The 1st Defendant however, when questioned, insisted that the deceased did not lodge in his hotel but handed the five persons who worked with 7th Defendant over to the IPO for interrogations. During interrogations of the persons, the 3rd Defendant whose handwriting matches with the doctored lodger's record was confronted with this fact and he could not deny same. The 3rd Defendant subsequently narrated how the 2nd Defendant, who took over from the 7th Defendant, informed him that the guest in room 305 was not seen and his calls not responded to. Using a spare key, they were able to access the room where they found the lifeless body of the deceased on the bed. They informed the 1st Defendant, while the 7th and 5th Defendant joined them. Thereafter, the managing director (1st Defendant's son), took them to a room in the hotel and administered an oath on them not to disclose to anyone what happened to the guest in the hotel. Later in the evening, the said MD, along with the 3rd and 5th Defendants evacuated the body from the room and took it to Ede Road, Ile-Ife with the deceased's properties (laptop, phones, money) and dumped him by the roadside where they dump refuse. The MD drove them in Hilux vehicle, which was later recovered from the 1st Defendant's property in Abuja.

Further to the above, the Defendants were arraigned before the High Court of Osun State on an eighteen-count Charge of conspiracy to commit murder, unlawful killing, among others. The Defendants pleaded not guilty to the Charge. The prosecution called witnesses and tendered various exhibits. While other Defendants testified or themselves and called other witnesses, the 1st Defendant rested his case on that of the prosecution.

Issue for Determination

Whether the prosecution has succeeded in proving the counts of charges in this case beyond reasonable doubt.

Arguments

The summary of the submission by counsel for the Defendants was that the prosecution failed to discharge the burden of proof of the elements of the counts of offences with which the Defendants were charged, beyond reasonable doubt. They argued that the case of the prosecution is based on suspicion which cannot ground a conviction in law. They submitted further that the prosecution witnesses have been discredited under cross-examination, thereby leaving their evidence without value.

For the prosecution, however, it was argued that the prosecution has proved its case against all the Defendants and that the circumstantial evidence are strong and compelling enough to prove the counts of offences against the Defendants.

Court's Judgement and Rationale

Rehashing the trite principle of law on burden, standard and means of proof in criminal cases, the court held that it is now established beyond conjecture that in criminal cases, the burden of proof is squarely on the prosecution to prove all the elements of the offence beyond reasonable doubt. The burden of proof is static, as a Defendant is presumed innocent until the contrary is proved – Section 36(5) Constitution of the Federal Republic of Nigeria, 1999. Though the standard required is proof beyond reasonable doubt, this does not amount to proof beyond all shadows of doubt or proof to the hilt. Nonetheless, if there is doubt in the prosecution's case, the doubt is to be resolved in favour of the Defendant. With respect to the means by which the prosecution can prove its case and discharge the burden of proof thereon, the established ways are: (i) evidence of eye witnesses/direct evidence; (ii) confession of the Defendant; and (iii) circumstantial evidence – **ASEKERE v STATE (2022) 8 NWLR (Pt. 1824) 431**.

To establish a case of murder, the prosecution prove the following elements of the offence: (i) the death of a person; (ii) cause of the death; (iii) that the death was caused by an act or omission of the accused person/Defendant; (iv) that the act of the accused person was done intentionally or with knowledge that death or grievous bodily harm was the probable consequence. Relating the above to the instant case, it is a fact that someone by the name – Timothy Adegoke died. His

corpse was found and identified by his brother – PW3. The evidence before the court also shows that he died in room 305 of Hilton Honour Hotel, Ile-Ife owned by the 1st Defendant between the 5th and 7th November 2021, when the 2nd to 7th Defendant were on duty. The cause of death according to the prosecution is severe haemorrhage (bleeding) secondary to severe traumatic injury. The prosecution relied on the evidence of PW5 (a pathologist) and the autopsy report tendered in evidence. The Defendants however relied on the evidence of DW1, another pathologist and the “orphaned” autopsy report he issued, which states that the cause of death could not be anatomically determined due to advanced decomposition and embalmment. In his oral evidence, DW1 stated that though he could not ascertain if the death was due to natural causes, he was certain that the death was not due to any violent traumatic act or bleeding as there was no sign of any cut on the body of the deceased.

Exercise its discretion on the conflicting expert opinions on the death of the deceased, the court relied on the case of **ODIAWA v FRN (2008) LPELR-4230 (CA)** to the effect that the court is at liberty to reject one and adopt the other. Some facts relating to the incident also serve as guide in the exercise of discretion by the court, such as blood oozing out of the nose of the deceased when he was found in room 305 by the 2nd and 3rd Defendants and as stated in the statement of the 3rd Defendant to the police when his memory was fresh. When the corpse was found where it was dumped, it was wrapped in a carton and tied with rope as shown in the photograph tendered in evidence and affirmed under cross-examination. When the corpse was exhumed during police investigation, it was found wrapped in blood-stained duvet and tied with two different ropes with cut on the chest. The police investigation and forensic analysis of stains on the walls of the room 305, show the stain as blood of a human being. DW1 admitted under cross-examination that the embalmment did not make it impossible to ascertain the cause of death and out of the seven pathologists who were present at the autopsy, only two disagreed on the cause of death being severe haemorrhage. Given the above facts, the court found the autopsy report tendered by PW5 to be more logical and reasonable. More so, the two pathologists who disagreed were at the autopsy session to represent the Defendants and with interests to serve. Thus, the prosecution proved the cause of death as severe haemorrhage secondary to traumatic injury.

On whether the cause of death was caused by the act or omission of the Defendants and the intention of the Defendants, it can be seen that the case of the prosecution is based on circumstantial evidence. The facts in support of this are – the deceased paid for lodgement in the 1st Defendant's hotel for two nights and made a transfer to the 7th Defendant to this effect. The CCTV in the hotel covering the reception and the floor of room 305 was working when the deceased lodged in the hotel. The 1st Defendant and his son, the MD of the hotel were at the hotel in the night of 05/11/21. The 5th Defendant, who was the manager left the hotel about 8:am on 06/11/21, while informing the 7th Defendant he as travelling. The deceased was not seen at the hotel till 07/11/21 when 2nd Defendant used a spare key to access the room and found him dead on the bed. After the incident, the MD visited the hotel and administered oath of secrecy on the concerned Defendants not to disclose the death of the deceased. Later at night, the 3rd and 5th Defendants with the MD, evacuated the body of the deceased and dumped him at the road side along Ede Road, Ile-Ife. The mattress in room 305 was taken out and burnt while a new mattress was put in. Renovation works and painting was done and the CCTV in the hotel was removed. The lodger's book of the hotel for 05/11/21 was re-written by the 3rd Defendant to remove the name of the deceased and the receipt issued to the deceased removed from the receipts issued for lodgings on the date. The court found that the various pieces of evidence, when put together, are cogent and lead to the compelling and irresistible conclusion that room 305 was broken into by other persons and the deceased was killed. Those who were in charge of his custody also failed to inform the law enforcement agencies of his death, coupled with the cause of death as shown in the autopsy report as bleeding from cut inflicted on the chest, it can be seen that death was intended.

Regarding the submission that the 1st Defendant cannot be found guilty by virtue of his ownership of the hotel or vicariously liable for the crime of his son who is at large, the court found that the guilt of the 1st Defendant is established by his presence at the hotel on the night of 5th November 2021 when the deceased was last seen, knew of the death of the deceased when he was called by the 3rd Defendant, but still went ahead to inform the IPO that the deceased did not lodge in his hotel. He was also privy to the new receipt issued for presentation to the police and frenzy of steps taken to conceal the death of the deceased. Even in the

face of the evidence and dismissal of his no case submission, the 1st Defendant still opted not to call evidence in his defence, resting his case on that of the prosecution and attempting to take advantage of the evidence of other Defendants which attempted to exonerate him. Relying on Section 135(3) of the Evidence Act, the court found that *the prosecution having proved commission of crime by circumstantial evidence beyond reasonable doubt, the burden shifted to the 1st Defendant to prove reasonable doubt - THE STATE v HARUNA (2017) LPELR-43351 (CA)*. On the issue of *alibi* raised in passing by counsel for the 1st Defendant that he was in Abuja for about two weeks, the court held that the defence cannot avail the 1st Defendant who failed to raise the defence at the first opportunity and give details to enable the police investigate same. On the issue of duplication of charges, the court found that the counts which were brought under different sections of the Criminal Code Law of Osun State, were not duplicated. More so, *for a duplication in a Charge to be material, it must be shown to have misled the Defendant and cause a prejudice or miscarriage of justice to the Defendant - MUSTAPHA (SAN) v FRN (2017) LPELR-43131 (CA)*. The 1st Defendant was not misled in this case and his counsel did not establish any prejudice against him.

1st, 3rd and 5th Defendants convicted for conspiracy to commit murder and unlawful killing and sentenced to terms of imprisonment and death by hanging.

2nd, 4th and 6th Defendants discharged and acquitted.

7th Defendant discharged and acquitted for conspiracy to commit murder and unlawful killing but convicted for fabricating evidence.

Hilux Van and hotel premises used for commission of crime were forfeited to the State.

Children of the deceased placed under education up to university level at the expense of the 1st, 3rd and 5th Defendants/Convicts.

Rahman Adedoyin, son of the 1st Defendant/Convict, who is at large, was declared wanted and Interpol authorized to launch a world-wide manhunt for his arrest and prosecution for his role in the gruesome murder of the deceased.

Prosecution's case succeeds in part.

Representation

Mrs. Fatimah Adeshina for the Prosecution

Williams A. Ajayi, Esq. with Abdulwasiu Wiridi, Esq. for the 1st Defendant

Henry Odunayo, Esq. for the 2nd, 4th and 5th Defendants

Muyideen Adeoye, Esq. with Levy Chiefuna Esq. and O.U. Yusuff, Esq. for the 3rd and 6th Defendants

Okon Edet Ita, Esq. for the 7th Defendant.

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