is alleged to have shot the late ***Dahi Doma*** with a poisonous bow and arrow with the knowledge that death will be the probable consequences of such an act. The offence is contrary to ***Section 221*** of the Penal Code.

At the end of the trial before the Adamawa State High Court sitting in Yola, (herein refer as the trial Court), the Appellant was on 26th June, 2008 convicted of the offence of culpable homicide punishable with death contrary to ***Section 221(b)*** of the Penal Code. He was sentenced to death by hanging.

Dissatisfied with his conviction and sentence, he had a Notice of Appeal filed against the decision on the 28/09/2008.

The Notice of Appeal is at page 96-98 of the records for this appeal and contains 5 grounds of appeal.

From the 5 grounds of appeal, the learned Counsel to the Appellant distilled 3, issues for determination by this Court and these are:-

1. ***Whether the learned trial Judge was not in error where he held that the prosecutor had proved all the ingredients necessary for establishing the offence of culpable homicide punishable with death.***
2. ***Whether the learned trial Judge was right when he rejected the defence of self defence and of provocation put forward by the Appellant.***
3. ***Whether on the whole, the Prosecution could be held to have proved its case beyond all reasonable doubt.***

The Respondent adopted the three issues distilled by Appellant’s.

**ISSUE 1.**

The Appellant’s learned Counsel submits that in law before the Prosecution would succeed in establishing a murder case, he must establish the existence of these 3 basic ingredients,

1. That a human being died.
2. That the act of the accused caused the death of the deceased.
3. That the accused had the intention to cause the death of the deceased.

***(Refer:- the case of Shande v. State (2004) ALL FWLR (pt. 228) 1955).***

Counsel also submits that despite the fact that the Appellant was alleged to have caused the death of one ***Dahi Doma***, the Prosecution could not present any positive evidence as to who identified the body of the decease; e.g via a coroner’s report to say that ***Dahi Doma*** is death, if he died on the sport and the cause of his death, there was also no medical report. The only evidence is the one on the charge and a charge does not itself constitute evidence, maintains the learned Counsel. It can be inferred that the person who died has not been positively identified to the trial Court by any of the witnesses argued the learned Counsel citing the decision in ***Enewoh v. State (1990) 4 NWLR (pt. 145) 469 21482***. which held thus:-

***“It is not only desirable but essential that the person who identified the corpse of the deceased to the doctor should be called to give evidence whether the failure to call should be fatal to the conviction ought to depend on the evidence available in the case and circumstances…”.***

The learned Counsel submits that the doubt created as to the identity of the person who died should be resolved in favour of the Appellant.

On the second ingredient, Counsel submits that assuming without conceding that a human being died, the law is that there must be causal link between the act of the Appellant and the death of the deceased. What caused the death of the said ***Dahi Doma;*** because non among the Prosecution witnesses ***PW1, PW2 & PW3*** was able to link the death of the deceased to the Appellant by evidence. Counsel relies on the case of ***Adava V. State (2006) ALL FWLR (pt. 311) 1777 at 1787***.

Counsel further submits that both the Appellant and ***PW3*** told the Court in evidence that the deceased was attacked by angry youths after he had fired gun into the air 3 times and the crowd started stoning the deceased before the Appellant went and brought his bow and arrow.

Counsel submits that the Court based its Judgment on speculation because it could not give answer to the following questions;

1. At what part of the body was the deceased shot by the appellant? (No evidence before the Court).
2. What was the effect of the stoning of the deceased by the crowd?
3. Was the death of the deceased caused by the stoning by the youths or the shot from the arrow from the appellant? Counsel cites the case of ***Igabele V. State (2006) ALL FWLR (pt. 311)*** which held that:-

***“Court should not speculate on the evidence but decide on the evidence presented before it. If Court is only entitled to rely on the evidence before it and not on speculation”.***

It is the case of the Appellant that the stoning and shooting of the deceased took place almost simultaneously and that the trial Court was wrong, in the absence of any medical evidence to hold that it was the act of the accused that caused the death of the deceased***. (Refers:- Adava v. State (2006) ALL FWLR (pt.311) 1777 at 1787 (See also Aiguoreghian v. State (2004) 3 NWLR (860) 367 at 419)*** per Tobi JSC who held that:-

***“Conversely, even if the period between the act and the death of the deceased are proximately, a Court can still not find the accused guilty if there are more than one possible causes of death”.***

Counsel submits that doubts have been created in the mind of the trial Court which must be resolved in favour of the accused person. ***(See Aiguoreghian v. State (supra) at 429),*** per Tobi JSC who stated that:-

***“It is now settled law that when the existence of essential facts on which the parties, is… in doubt, that party on whom the burden rest to establish the fact must fail”.***

Then the case of ***AKpan v. State (1990) 7 NWLR (pt. 160) 101 at 1102***

***“…in a criminal matter where a doubt as to the fact arises on the evidence, such doubt must be resolved in favour of the accused person”.***

Counsel urges this Court to resolve the doubt as to what caused the death of the deceased in favour of the Appellant. (***Refers: Oforlette V. State (2000) 7 SCNJ 162).***

On the 3rd ingredient, Counsel submits that the Prosecution must establish the ***intention*** of the accused. The ***intention*** can be inferred from the weapon and the part of the body that was hit by the weapon. The learned Counsel maintains that there was no evidence of the part of the body that was hit by the Appellant and intention to cause death cannot be inferred without knowing first of the part of the body shot. The Appellant concedes that he shot the arrow on a human body with the intention of causing bodily hurt or harm and whether or not the bodily harm caused by the Appellant was responsible for the death of the deceased was an issue which the trial Court failed to resolve.

Counsel further submits that the Prosecution had failed to prove all the essential ingredients of culpable homicide and the trial Court was in error to have ruled that the Prosecution had established its case. Cites the case ***of Uwagboe v. State (2007) ALL FWLR (pt. 350)*** where the Court held:-

***“The Prosecution must meet these three legal requirements through credible evidence. The three requirements must co-exist and where one of them is absent or tainted with doubt, the charge is said not be proved”.***

Counsel urges this Court to hold that the Prosecution did not prove its case against the Appellant, to set aside the conviction and sentence and to discharge and acquit the Appellant.

The Respondent urges this Court to reject the line of argument of Counsel to the Appellant, because ***Exhibit “A”*** which is a confessional statement made by the appellant and admitted by the lower Court without any objection by the Appellant, contains how he shot and killed a soldier man ***Dahi Doma*** with his arrow. There is also the testimony of the investigation Police Officer ***PW3*** on how the Appellant having shot and killed the deceased thereafter escaped to Baruwa in Taraba State before he was later arrested and brought to C.I.D office in Yola, Adamawa State.

Counsel further submits that the death of the deceased occurred instantly, it is obvious and medical report or evidence becomes irrelevant or ceased to be of practical legal necessity. Identification, of the deceased was done by ***PW3*** i.e the Police investigating officer who confirm that it was ***Dahi Doma***, a soldier of 232 Tank Battalion Yola. He cited the case of ***Sunday Ihuebeka v. the State (2004) SCJN P. 93 at 95*** which says thus:-

***“Where the cause of death is obvious, medical evidence ceases to be of practical legal necessity”.***

Counsel also submits that the authority of ***Enewoh v. the State (1990) 4 NWLR (pt. 145) 469 21482*** cited and relied upon by the Appellant is more helpful to the Respondent than the Appellant’s case. In the above case the person who identified the corpse to the doctor could not testify because he died before the trial and ***Akpata JSC*** affirmed that the need for any one to identify the body of the deceased to a doctor is not a ***sine qua non*** in all murder cases, what is important is that there should be facts from which the Court can infer that the corpse examined by the doctor was that of the deceased.

Counsel also submits that the trail Court did not speculate but based its decision on ***Exhibit “A”*** and the testimony of ***PW3*** which point to the fact that one soldier man attached to 232 Tank Battalion by name ***Dahi Doma*** was shot and killed by the Appellant’s bow and arrow as stated in ***Exhibit “A”*** which is enough to ground a conviction. ***(Refers:- Buje v. the State (2004) 4 SCJN p. 93).***

On the issue of causal link between the act of the Appellant and the death of the deceased, Counsel submits that the Appellant admitted to have shot and killed the deceased with his bow and arrow and that he died instantly. See ***Exhibit “A”.***

Counsel also submits that the case of ***Adava v. The State (supra)*** cited and relied upon by the Appellant is distinguishable with the present case because in this present case the deceased died instantly while in the above case the deceased died after 48 hours in the hospital after he was treated by a doctor.

Counsel submits that the trial Court was right to have convicted the Appellant based on his confessional statement. Refers the case of ***Gira v. The State (1996) 4 NWLR pt. 443 pg. 375*** which held that:-

***“It can be inferred that the beating of a deceased with a lethal weapon is intended by the perpetrator to kill the deceased or inflict grievous bodily harm. This is because the law is that a person intends the natural consequences of his conduct”.***

Section 27(1) of the Evidence Act proved that:-

***“A confession is an admission made at any time by a person charged with a crime stating or suggesting, the inference that he committed that crime”.***

Therefore the Appellant intends to kill the deceased which he did because there was shooting of a soldier man with an arrow, which is also a lethal weapon as contemplated by the Supreme Court in the above case.

Counsel urges this Court to hold that the three ingredients have been established to convict the Appellant to wit:-

1. That human being died. ***Exhibit “A”,*** testimony ***of PW3*** and the ***C.I.D*** team leader Sgt. Zaphanic Game.
2. That the act of the accused caused the death of the deceased. ***Exhibit “A”,*** use of lethal weapon and the death occurred instantly.
3. That the accused has intention to cause the death of the deceased. By shooting him with a lethal weapon (arrow) intends to kill him.

On the questions raised by the Appellant’s Counsel to:-

1. What part of the body was the deceased shot by the Appellant?
2. What was the effect of the stoning of the deceased by the crowd?
3. Whether the death of the deceased was caused by stoning of the youths or by the shot from the arrow from the Appellant?

Counsel submits that the questions are not necessary in a situation where the Appellant admits to have shot and killed the deceased. Which is a confession, it is a positive statement and amounts to admission of guilt. Refers this Court to ***Exhibit “A”, S. 27(1) Evidence Act*** and the case of ***Abasi v. State (1992) 5 NWLR pt. 260 pg. 386, Enewoh v. State (supra).***

On the 2nd question, the Appellant has answered it when he said he used his bow and arrow to shoot the deceased to death. ***See S. 27(1) of Evidence Act***.

On the 3rd question, Counsel submits that the Appellant admitted in ***Exhibit “A”*** and also in his testimony before the lower Court to have shot and killed the deceased and also confirmed that he shot a soldier man to avenge for the beating of his wife. ***See again S. 27(2) of Evidence Act.***

Counsel submits that the case of ***Ogabole v. State (2006) ALL FWLR pt. 311 & Adava v. Statae (2006) ALL FWLR (pt.311) 1777 at 1789),*** cited and relied upon by the Appellant is distinguishable from this present case, in the above cases the Appellant did not confess to having committed the crime while this present case the Appellant confessed to have shot and kill the deceased to death.

**ISSUE 2.**

On the 2nd issue, Counsel submits that the Appellant is entitled to the defence of provocation. ***Section 222(1)*** of the Penal Code makes provision for the defence thus:-

***“culpable homicide is not punishable with death if the offender while deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation……”***

Cities the case of ***Musa v. State (2009) ALL FWLR (pt. 492) 1020*** where Fabiyi JSC quoted the definition of provocation as contained in the Black’s Law Dictionary thus:-

***“…… provocation is defined as the act of inciting another to do a particular deed, that which arouses, moves, call forth, cause or occasion. Such conduct or action on the part of the one person towards another as to tend to arouse rage, resentment, or fury in the latter against the former and thereby cause him to do an illegal act against or in relationship to the person offering the provocation…..provocation which will reduce killing to manslaughter must be of such character as will, in the mind of an average reasonable man, stir resentment likely to cause violence, obscure reason and lead to action from passion rather than Judgment…..”***

Counsel submits that the action of the Appellant was as a result of the act of the deceased which aroused rage, resentment, and fury in the Appellant which obscured his reasoning making him act on his passion rather than Judgment as per his evidence both on oath and in exhibit ***“A”***.

In collaborating the unprovoked beating of the people on the queue by the soldier ***PW2*** said ***“….one of them started to beat people who were around and also on the queue...”***

**“The soldier started to beat people for no just cause”.**

These pieces of evidence were not considered nor rejected by the learned trial Judge, argued the learned Counsel.

Also submits that for the Appellant to successfully raise the defence of provocation he must establish the followings:-

1. That the act relied upon by the accused is obviously provocative.
2. The provocative act deprives the accused of self control.
3. The provocative act came from the deceased.
4. The retaliative act or provocative act was instantaneous, and
5. The force used by the accused in repelling the provocation is not disproportionate in the circumstances. ***Shalla v. State (2004) 8 NWLR (pt. 875) 396 at 429.***

***Exhibit “A”*** and the statement of the Appellant contained the ingredient needed for the defence of provocation, argued the learned Counsel.

The argument that defence of provocation does not avail the Appellant because he left the scene to go and carry his bow was made in error because it is the duration of time that matters, once reaction time is within minutes that is enough and the Appellant in his evidence at ***pg. 40*** stated that from the polling station to his house is about 100 metres. This evidence was not rejected and the time was too shot for him to have cooled down.

On the issue of ***self defence***, Counsel submits that the trial Judge was wrong to have held that ***self defence*** does not avail the Appellant. That the Appellant has the right to defend his own body or that of other persons against any offence affecting the human body and that the Appellant is entitled to defence of self defence. The act of the soldier on the Appellant’s wife and baby was enough for him to come to their defence. He relied on the following cases; ***Omoregie v. State (2009) ALL FWLR (pt. 458) 230 and Section 60, 222(2)*** of the Penal Code.

The learned Counsel for the Respondent submits that the defence of ***provocation*** cannot avail the Appellant because in defence of provocation one must have acted in a sudden and temporary loss of self control without knowing what one is doing and must have acted before one has time to cool down but in this case the Appellant left the scene, went home, looked for and fetched his bow and arrow then came back. He even testified that when he came back the soldiers were leaving and shooting in the air but the Appellant still went ahead to shot the soldier with his arrow. Counsel refers this Court to the case of ***Kinsley Oghor v. The State (1990) 3 NWLR pt. 139 pg. 484.***

Counsel further submits that the case of ***Musa v. State (2009) ALL FWLR pt. 492*** cited and relied upon by the Appellant’s Counsel supports the Respondent case more than that of the Appellant. Where the Court stated inter alia that:-

**“provocation which will reduce killing to manslaughter must be of such character as will, in the mind of an average reasonable man, stir resentment likely to cause violence, obscure reason and lead to action from passion rather than Judgment”.**

In the instant case, the action of the Appellant was Judgment rather than passion. Because the period the Appellant used to go home, looked for and fetch his bow and arrow was enough to calm him down and it is not even proportionate, the soldier use whip to beat his wife while the Appellant used a lethal weapon in shooting the deceased to death.

Also the case of ***Shalla v. State (2004) NWLR pt. 875 396 at 429***, cited and relied upon by the Appellant supports the case of the Respondent. Where the Court stated inter alia:-

***“the retaliative act and the provocative act was instantaneous” and “the force used by the accused in repelling the provocation is not disproportionate in the circumstances”.***

Counsel also submits that in ***Akpan’s*** case it happen instantly, the Appellant did not leave the scene and there was not time for temper to cool down.

On the issue of self defence, Counsel urges this Court to distinguish between the case of ***Omoregie v. State (2009) ALL FWLR pt. 458 230.*** Cited and relied upon by the Appellant Counsel from this present case. In the above case, the Supreme Court said for an accused to rely on defence of self defence he must show that his action is unavoidable, he is free from fault in bringing about the encounter and it is necessary to save lives. But in this case, *the Appellant watch and left the scene after the beating of his wife has been concluded. He went home, brought his bow and arrow and shot the soldier. He was taking life rather than saving life.*

Counsel further submits that there are restrictions to self defence e.g. the accused is not expected to inflict more harm than necessary and where there is time to report he should report to the necessary authority. He cited Section 62 & 63 of the Penal Code.

**62 provide that:-**

***“the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence”.***

**While 63 provide that:-**

***“there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities”.***

**ISSUE 3.**

The learned Counsel for the Appellant submits that the position of law in criminal trials is that the onus is on the Prosecution to prove his case against the accused beyond reasonable doubt based on the evidence placed before the Court. Refers on the case of ***Amala v. State (2004) 12 NWLR (pt. 888) 520 at 547 E-F).***

Counsel submits that the evidence of the Prosecution as placed before the trial Court was not enough to prove the guilt of the Appellant.

Counsel further submits that he Prosecution has not proved his case beyond reasonable doubt as provided by the law and urges this Court to allow the appeal, discharge and acquit the Appellant.

On the contrary, the learned Counsel for the Respondent submits that the Prosecution has proved his case beyond all shadow of doubt by placing before the Court a confessional statement made by the Appellant, which was counter-signed by a superior Police officer, tendered and admitted by the trial Court without an objection by the Appellant***. (See Exhibit “A”).*** The testimony of ***PW3*** that one **Dahi Doma** was killed by the Appellant corroborated **Exhibit “A”.**

The Appellant himself testified that he shot and kill the deceased, a soldier because he beat his wife and child.

Counsel submits once a confessional statement is proof; the Court can safely rely and convict on it. In this case the Appellant admits to have shot and killed the deceased and that the wounds sustained by the deceased, the identification of the corpse and the medical report is irrelevant.

Counsel further urges this Court to hold and affirm the conviction and the sentence of the trial Court against the Appellant.

Of the three issues formulated for determination in this appeal, I find no difference between the first and third issues. This appeal shall therefore be determined on issues one and two which shall adequately dispose of the appeal.

In challenging the decision of the learned trial Judge, the learned Counsel for the Appellant raised three avenues of escape for the Appellant these are (1) the absence of the tripartite elements for the successful establishment of a murder charge. These elements are:-

1. That a human being died
2. That the act of the accused caused the death of the deceased.
3. That the accused has intention to cause the death of the deceased.

Next is argued the issue of ***provocation*** which has only a mitigating effect on the consequences of a fatal blow. The learned Counsel then moved on to ***self-defence*** which could totally exhonerate the Appellant from guilt.

Finally, the learned Counsel challenges generally, the quality of the case put up by the prosecution and relied upon by the learned trial Judge in convicting and sentencing the Appellant.

In the preceding pages, we have reproduced substantially, the argument of the learned Counsel for the Appellant and the response of the learned Counsel for the Respondent.

Are the defences which are obviously raised in the alternative available to the Appellant? Could he have been availed the benefit of any of these defences? It is very instructive to state that the Appellant did not deny his confessional statement, infact, his affirmed testimony in Court is almost a replica of the ***extra judicial*** statement in ***exhibit “A”*** which is a clear admission of the commission of the offence he was charged with. The law is sought to be applied to the facts stated by the layman Appellant with a view to finding an escape route from the legal consequences of his declared action. The Appellant is entitled to either seek total freedom from responsibility or some mitigation from the full legal effect of the consequences of his act. The alleged victim of his action have of course since been interned in the bossom of history.

The learned Counsel for the Appellant prevaricated from causal linkage, to self defence and then to provocation. The learned Prosecuting Counsel effectively demolished each of these defences raised by the Appellant. The learned trial Judge found the Appellant guilty of culpable homicide punishable with death.

In a charge of this nature, where a life is alleged to have been taken with a criminal intent, the guilt of the Appellant can be established by:-

1. The confessional statement of the accused person; or
2. Circumstantial evidence; or
3. Evidence of eye-witness of the crime. ***(See Lori V. State (1980) 8-11 SC 81; Emeka V. State (2001) 14 NWLR (pt.734) 666; Adio V. State (1996) 2 NWLR (pt.24) 581)***.

The facts of the cases relied upon by the Appellant to challenge the decision of the trial Court are clearly distinguishable with those of the instant appeal. ***(Refer: Adora Vs. State (2006) ALL FWLR (PT 311) 1777 and Igabele Vs. State (2006) 2 NWLR (860) 367)***. Two distinguishing features stand out. These are:-

1. The unequivocal confession of the Appellant to the effect that he used bow and arrow to shoot and kill the soldier man to avenge the assault of his wife and child, and
2. The instantaneous death of the soldier man as a result of the fatal shot from the Appellant’s lethal weapon.

The issue of causal link is therefore a non-issue as a defence for the Appellant. The man did not die 48 hours after the lethal shot as was the case in ***Adara V. The State (2006) ALL FWLR pt. 311 pg. 1777).*** but instantaneously. The Appellant shot to kill and he said so in clear terms upon his arrest at his hiding place after the murder.

In the case of ***Benson Ukwunnenyi V. State (1989) 7 S.C (pt.1)64***, the Supreme Court held that:-

***“There is no doubt that the law is that the trial Court has a duty to consider the defence of provocation disclosed by the evidence of the accused. (See Queen V. Itule (1961) 1 ALL NLR 462). Provocation consists of an act or acts which causes or may cause a sudden and temporary loss of self-control resulting in the commission of the offence charged. Where provocation is established it negatives the intention to kill or cause grievous bodily harm which are essential ingredients for a conviction for murder. (See R.V. Akpakpan (1956) 1 FSC 1; (1956) SCNLR 3). Although there is no hard and fast rule for determining acts to constitute sufficient provocation, each case depending upon its peculiar facts, the Court may consider the relationship of the parties. (See Queen V. Jinoba (1961) ALL NLR 627). This Court has held that it is possible to cause provocation to a class of people such as a community. Where the facts are appropriate the Court may draw the inference. (See Apishe V. The State (1971) 1 ALL NLR 50); Shehu Dumeni V. Queen (1955) 15 WACA 75). This is not a provocation of a member of a crowd in respect of which any other member of the crowd is a lawful target, the provocation may having emanated from the crowd.***

***The evidence before the learned Judge and the confession of the 1st Appellant clearly show that the culmination of the provocating events which occurred in the morning of the 26th December, 1983 inspired in the 1st Appellant an actual intention to kill in retaliation for what Paul Onwubiko had been doing to members of the 1st Appellant’s family. The incident. i.e. the murder of Chukwuma Okoro, in respect of which 1st Appellant was charged occurring at about 5p.m the same day, he could not be said to have acted in the heat of passion, caused by sudden provocation, before there was time for his passion to cool (See Oladiran V. State (1986) 1 NWLR (pt.14) 75)”.***

These facts are very similar to those under consideration in this appeal.

The Appellant said the soldier had a gun and a whip, and he used the whip on his wife, not the gun. While his wife and baby were being assaulted, he watched. He even saw his brother assist his wife and rather than rush to the side of his wife to support her, he elected to go to his house for a bow and arrow. In other words, at the time of his decision to go and fetch his lethal weapon, the assault on his wife had actually ceased. His brother helped her up.

We are fortified in this opinion by the decision in ***Sunday Udofia V. The State SC (1984) ALL WLR 444.*** In rejecting a defence of provocation, the Apex Court per ***Oputa JSC***, held that the defence of provocation did not avail Appellant because circumstances which induce a desire for revenge are inconsistent with the legal concept of provocation, similarly, in this appeal, it was the desire for revenge which induced the Appellant to go for his bow and arrow.

Where then is the sudden provocation which deprived the Appellant of his power of Judgment?

In the facts of this appeal, the instantaneous element is non-existent. The person who actually acted instantaneously was the Appellant’s brother who went to the rescue of the wife while being assaulted by the soldier. The Appellant said his brother helped his wife up after she fell down as a result of the soldier’s assault on her.

The danger to life requiring a self-defence was therefore no longer there when the Appellant resorted to self-help not instantaneously, but by going to his house to bring his bow and arrow.

While the wife and baby were being assaulted, the Appellant stood by and watched. Indeed, where is the element of self-defence?

It was his brother who went to the rescue of the wife and baby. The Appellant rather ran to his house to fetch his bow and arrow in order to administer the fatal blow on the alleged assailant of his family. Upon his return, the assailant had been repelled and was running away; where is the danger to life? Where is the grave danger to life which necessitated self defence?

In his own words, upon his return with the bow and arrow, the assailants were leaving and shooting in the air, not at any one. He nonetheless aimed his bow and arrow at the soldier and shot him dead clearly in fulfillment of his intention, his pre-meditated action to avenge the assault on his wife and child.

Given this scenario, the Appellant cannot be said to have acted ***“…in the exercise of a good fact of the right of private defence….without premeditation and without any intention…”*** as required by ***Section 60 and 222(2)*** of the Penal Code.

If at all the right of self-defence is available to the Appellant, such right is moidified by the provisions of section 62 of the Penal Code in these terms:-

**“The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence”. In the instant case, the Appellant used a lethal weapon, arrow to shoot at the soldier man to death while the soldier used whip to beat his wife. This clearly violates the above provision of the Penal Code Law which does not allow the inflicting of more harm that it is necessary.”**

A response with a lethal weapon; to wit:-poisonous bow and arrow, to an act of assault with a whip is certainly way out of proportion and especially when the act had abatted. In the circumstance of this appeal, self-defence does not avail the Appellant. In the case of ***Omoregie V. The State (2009)*** it was held that the fatal action must be unavoidable for self defence and necessary to save life.

The learned Counsel for the Appellant cited the case of ***Akpan V. State (1990) 7 NWLR (pt. 160) pg. 101 at 111*** in support of his argument on provocation. There is however, a sharp difference between the facts of the two cases. In ***Akpan’s*** case, after the provocative act, the deceased took to his heels and the Appellant gave him a chase instantly and caught up with him within a short distance. There was no time for tempers to cool down. In the instant appeal, the provocative act had stopped. The Appellant’s wife had been helped up.

The use of a poisonous arrow is a clear ***intention*** of the person who shoots the arrow at the victim who was fatally knocked down. The Appellant did not doubt the consequence of his act; he confessed that he shot the soldier man dead because he knows that was the expected result of the use of his poisonous arrow. The man died on the spot!

What the Appellant did was fatally shoot a man from behind-he said when he came back, the soldiers were leaving – infact running away and shooting in the air not at any one while youths were throwing stones at them as they left.

The evidence of the Appellant as an accused before the trial Court is reproduced at page 50 of the record for this appeal. Part of the testimony of Appellant is as follows:-

***“On 3/5/2003, election into the State House of Assembly took place……at about 11:30am one Ahmadu Makaniki came and called his agents and had some discussion with them. We did not know them. He then left and brought two Soldiers and two Policemen who came in their vehicle. When they came close to us one of the soldiers alighted from the vehicle with a gun and whip in his hand. He then started to beat people who were on the queue. He then reached my wife and beat her. He kicked her with his legs and she fell down with her four months old baby. The whip also hit the small baby and blood started to rush out from the baby. My brother then took the baby who later on got revived.***

***On seeing this, I went home and took my bow and arrow. When the soldiers saw me with the bow and arrow, they ran away and started shooting their guns in the air. I then shot my arrow at them and people started shouting and throwing stones at the soldiers. From the polling station to my house is a distance of about 100 metres. My brother who took the baby has been killed by soldiers. I grew annoyed and took my bow and arrow as a result of the beating the soldier did to my wife and baby. I did not see my arrow hitting any of the soldiers. I ran away for the village after shouting at the soldiers because every body had left the village. I shot at the soldiers with my bow and arrow to avenge the beating of my wife and baby”.***

The three (3) essential ingredients of murder appear clearly established in the confessional statement of the Appellant. ***(Stanley V. State (2004) ALL FWLR pt. 228 pg. 1955.***

Appellant says there is no positive evidence of the identification of the corpse of the deceased, no corona’s form, no medical report. The Respondent says these are not necessary since the prosecution was armed with a positive confession and admission of the Appellant that he caused the dead of the deceased. ***Exhibit “A”*** which is the confession of the Appellant was admitted without an objection. The Appellant did not deny making the statement. His evidence in Court re-affirms his confessional statement.

Further, there is no question as to the identity of the man who was killed-he- is described clearly in the charge as **Dahi Doma** of 232 Tank Battalion Yola. Of course, one would have expected an official of the said Battalion to have testified to the fact of the said deceased having been assigned on duty at the scene of crime. This would however, be details; it would not change the fact that the man was shut dead by the lethal bow and arrow of the Appellant ***exhibit “A”*** facilitated the work of the prosecution therein, the Appellant stated clearly that he wanted to avenge the assault on his wife and child.

By virtue of ***Section 221*** of the Penal Code, the ingredients of the offence of culpable homicide punishable with death are:-

1. That the deceased died;
2. That the death was caused by the accused person;
3. That the accused person had the intention of causing the death of the deceased or to cause him grievous bodily injury.

The burden of establishing these ingredients lie squarely on the prosecution as per **Section 138(1) of the Old Evidence Act**, by the provisions of ***Section 36(3) of the 1999 Constitution*** of the Federal Republic of Nigeria, every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty. Consequent upon this constitutional provision, the burden of proof in criminal cases is on the prosecution who must prove its case beyond reasonable doubt and rebut the presumption of innocence. ***(N.A.F. v. Obiosa (2003) 4 NWLR (pt.810) 233; Obiakor v. State (2002) 10 NWLR (pt. 776) 612, Akpa v. State (2007) 2 NWLR (pt. 1019) 500, Alabi v. State (1993) 7 NWLR (Pt. 307) 511, Solola v. State (2005) 11 NWLR (pt. 937) 460 referred to).*** The law requires that a crime must be proved beyond reasonable doubt. However proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt that would be humanly impossible. Thus where compelling evidence exist placing responsibility on the Appellant, the trial Court needs not dance around the clear facts but must go ahead and apply the law to the clear facts.

The Prosecution does not always require an eye-witness account in order to convict an accused of culpable homicide if the charge can be proved otherwise.

***See Usman Maigari v. the State (2010) 16 NWLR pt. 1220 pg. 407, Ntaha v. Statae (1972) 4 SC 1, Ikemson V. State (1989) 3 NWLR (pt.110) 455, Saidu V. State (1982) 3 SC 41 referred to)***. On the other hand, an accused person can be convicted solely on his confessional statement if made voluntarily with no ***ex-tra judicial*** influence of whatever character. In the instant case, there is a confessional statement and death was instantaneous.

Mohammed JSC, held in the case ***of Morutfu Bolanle v. the State (2010) ALL FWLR pt. 513 pg. 1293 at 1286***, that:-

***“The commission of crime by a person must be proved beyond reasonable doubt. However, proof beyond reasonable doubt does not means proof beyond all shadow of doubt. If on the entire evidence, the trial Court is left with no doubt that the offence was committed by the accused person, that burden of proof beyond reasonable doubt is discharged and the conviction of the accused person will be upheld even on the credible evidence of a single witness. If on the other hand, on the totality of the evidence, a reasonable doubt is created, the prosecution would have failed to discharge the burden of proof which the law vests upon it, thereby entitling the accused person to discharge and acquittal…”***

In the instant appeal, the prosecution was armed with an admission to the fact of an instant death resulting from the fatal shot of the Appellant who aimed his lethal bow and arrow intently at the deceased and shot him down.

There is no question as to whether there was an intention to kill. There was a clear intention to kill the deceased who had infuriated the Appellant by beating up the Appellant’s wife who was carrying the Appellant’s baby. ***Exhibit “A”*** which bears the confessional statement of the Appellant is very clear and direct. The Appellant shot to kill and he did kill the deceased.

Now like a drowning man holding onto a straw, the Appellant seeks to escape responsibility by raising defences which clearly expose a desperate searching for a reason to justify a dastardly act.

Contrary to the submission of the learned Counsel to the Appellant, the learned trial Judge adequately addressed each of the defences raised for the Appellant. I find part of the Judgment of the learned trial Judge worthy of reproduction anon:-

**“The defence also raised the defence of self defence. For the defence to avail on accused person, the his act must be instantaneous while the act of the deceased was on going.**

**In this case after the deceased had beat the wife of the accused and baby, the accused left the scene, went home, took him bow and arrow, came back and then shot at the deceased even at a point where he was running away.**

**Certainly by the time the accused committed the act, the act of the deceased against which he now claims self defence was completed. The act of the accused was not therefore instantaneous and when the act of the deceased was on going.**

**I therefore find and hold that the accused is not entitled to rely on the defence of self defence and it accordingly fails. The learned defence counsel had contended that there was no medical evidence as to the cause of the death of the deceased.**

**It is however an accepted principle of law in homicide cases that where the cause of death is obvious, medical evidence ceases to be of practical legal necessity. *(See Sunday Ihuebeka Vs. The State (2000) 4 SCNJ P.93 at 95*). In the instant case, from both exhibit “A” (confessional statement of the accused) and his evidence in Court and the evidence of PW3, the deceased died as a result his being shot by the accused with an arrow. In fact he died instantly. Medical evidence in this case therefore ceases to be of practical legal necessity, and I so hold.**

**The defence has also contended that the cause of the death of the deceased has not been established. It was however held in the case of Sani Buje Vs. The State (1991) 4 NWLR part 185 P. 287 at 291) thus:-**

**“Where a person is attacked with a lethal weapon resulting in his death on the spot, it is unnecessary to prove the cause of death as it can properly be inferred that the wound inflicted caused the death.”**

**In the instant case, the deceased was shot with an arrow by the accused. An arrow is a lethal weapon. The deceased died on the spot.**

**Based on the authority of *Buje Vs. The State (supra),* therefore it is unnecessary to prove the cause of death as it can be properly inferred that the wound inflicted by the arrow shot caused the death of the deceased and I so find and hold.**

**From all that I have considered in this Judgment, I am satisfied that prosecution has proved its case as required of it by law against the accused person and I so hold. All the defences raised by the defence fall”.**

In the case of ***Moses Jua v. the State (2010) 4 NWLR pt. 1184 pg. 217 at 250-261,*** the Supreme Court restated the ingredients of culpable homicide punishable with death as stated in Section 221, giving it judicial expression. The apex Court however cited with approval, the decision in ***Babaga v. The State (1996) 7 NWLR pt. 460 pg. 279 at 296***, per Onu JSC, that:-

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