**JAMES ANYIM**

**V.**

**THE STATE**

IN THE SUPREME COURT OF NIGERIA

FRIDAY, 17TH JUNE, [1983]

SC.29/1982

**LEX (1983) - SC.29/1982**

**OTHER CITATIONS**

3PLR/1983/7 (SC)

**BEFORE THEIR LORDSHIPS**

MOHAMMED BELLO, J.S.C.

CHUKWUNWEIKE IDIGBE, J.S.C.

KAYODE ESO, J.S.C.

ANTHONY NNAEMEZIE ANIAGOLU, J.S.C.

MUHAMMADU LAWAL UWAIS, J.S.C.

**ORIGINATING COURT**

1. FEDERAL COURT OF APPEAL

2. HIGH COURT OF OYO STATE, ILESHA JUDICIAL DIVISION (Y. O. Adio, J. Presiding)

**REPRESENTATION**

O. O. JIBOWU for the Appellant.

E. O. AWOSUSI, Deputy Director Of Public Prosecutions (With Him L. O. Olakanmi, Ass. D. P. P.) Oyo State, for the Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE:– Murder – Proof of – Defences – Legal Insanity/delusions – Statutory elements - How proved – Whether a question of fact which is dependent upon the previous and contemporaneous acts of the party – Whether the evidence of insanity of ancestors and blood relations are relevant and admissible, and the evidence of a doctor not necessarily always essential - Whether there is a legal defence for pre-emptive killing

CHILDREN AND WOMEN LAW: Women and Justice Administration – Murder - Landlady allegedly killed by tenant with a machete – Plea of insanity by killer – How treated - [Young Women and Romance – Implications for justice administration]

HEALTHCARE AND LAW:- Murder proceedings – Plea of Insanity – Whether lack of medical evidence is fatal – Whether evidence of insanity in family history relevant - whether a doctor’s evidence of abnormality may be rejected by a jury/court, on the facts, so as to reject a plea of insanity

RELIGION/WITCHCRAFT AND LAW:- Delusions leading to criminal activity – where brought on by belief in witchcraft – Relevant considerations

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant was convicted of murder. by the Ilesha High Court, of the Ilesha Judicial Division of the Oyo State (Y. O. Adio, J.), on 26th June, 1979. He had killed the deceased under what he claimed was a belief that his lide was under danger from a planned threat by a group to which the deceased belonged. The trial court considered his plea of insanity under s. 26 of the Criminal Code and rejected same. His appeal to the Court of Appeal was unsuccessful.

DECISION(S) APPEALED AGAINST

The Court upheld the conviction of the accused person and affirmed the decision of the trial court that the defence of insanity, on the facts of the case, did not avail the accused/Appellant.

ISSUE(S) FOR DETERMINATION ON APPEAL

*Whether the issue of delusion and provocation as defences availed the accused person.*

DECISION OF [CURRENT] COURT

1. Proper construction of Section 26 of the Criminal Code Law requires that the trial judge advert his mind to two segments embodied in the section: the first segment dealing with insanity and the second dealing with delusion.

2. The second part of S.26 of the Law requires an appellant to be criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist”.

3. To set up the plea of self-defence under Section 26 of the Criminal Code Law, the delusion must be more than a conception that there plans to kill or grievously assault him and he therefore decided to strike pre-emptively before they would actually kill him. There needed to be a conception of an actual attack. The question of law to be resolved here and which ought to have been dealt with by the trial judge, was whether such a pre-emptive strike, by the appellant, against a supposed intending assailant, is recognised by our law as a valid defence under the second segment of S.26 of the Law aforementioned.

4. The present appellant was not acting in self-defence against the deceased - the victim of his pre-emptive attack who had neither assaulted him nor done anything to him indicating an intention to kill him. Appeal dismissed.

**MAIN JUDGMENT**

**ANIAGOLU JSC:**

Section 26 of the Criminal Code Law of Oyo State which deals with INSANITY has two major segments of mind affliction:

(i) mental disease or natural mental infirmity;

(ii) delusions, on some specific matter or matters.

I am concerned in this appeal, which was dismissed on 12th May [1983] and reasons for the dismissal reserved for today, with the second segment, the provisions of which are that:

“A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.”

The issue has arisen as a result of the conviction for murder, of the appellant, by the Ilesha High Court, of the Ilesha Judicial Division of the Oyo State (Y. O. Adio, J.), on 26th June, 1979. The appellant unsuccessfully appealed to the Federal Court of Appeal on the ground of insanity on which he unsuccessfully urged that the trial Court should have inferred, from the facts adduced in evidence, that he was insane at the time he committed the act.

The appellant was a head labourer under the employment of a contractor, one S. B. Bakare. In their workplace there was a young girl known as “Toyin” who came around to sell cigarettes and other wares to the appellant and to the other labourers. The appellant took fancy to her and would buy her presents, help her collect the debts being owed to her by other labourers, and, generally, would protect her from any molestations from people around. It got to the extent that the other labourers started regarding Toyin as the appellant’s girl-friend. The labourers and the people around teased the appellant by playfully calling him Toyin’s boyfriend. They would ask Toyin if she would marry the appellant and she would jocosely reply in the affirmative.

Apparently, the appellant had taken the matter seriously to heart. This time he bought some presents for the girl who, presumably, equating her acceptance of the gift as tantamount to her acceptance of marriage, refused the offer.

The appellant was not happy about this and particularly so as his co-workers taunted him about the girl’s refusal of the gift. The appellant grew morose and introspective and conceived that his co-workers and the people around were against him. So obsessed about this was the appellant, that on the 4th day of August 1976 he went and made a report at the Police Station complaining that one Lasisi Ogundipe (P. W.8) and some other persons were planning to kill him, although he could not give any reason why they would want to kill him. The Police invited Ogundipe and those others who denied planning to kill the appellant and made written statements to that effect. The Police warned them not to kill the accused and then reassured the appellant.

It would appear that on the next day, 5th August, 1976, at about 1 p.m., the appellant took out his matchet and went on a rampage during which he killed at least two people including the victim of this murder charge, Sadatu Awero, who was his Landlady. Why he did this, and the state of the appellant’s mind, could best be gathered from his evidence in court, part of which read:

“I knew the said Sadatu Awero. She was my landlady. She was the owner of the house in which I was living. I know one girl or lady called Toyin. I met Toyin at the place where I was working. Toyin used to come to the place where I was working. Toyin used to come to the place to sell bread and cigarettes (sic). If anybody was owing (sic) her I used to help her to recover the money. Toyin was not my girl friend. I was not friendly with her I helped to recover her debts because I was the head of the labourers/workers in that place. I even did so only once; I helped to recover her debt only once. It was from one Santana that I recovered the debt. Toyin was in Ilesha before I was arrested. I know where she was living but I have forgotten the name of the street.

As a result of the assistance which I used to give to the said Toyin some of the workers used to ask whether I was her boyfriend and she used to answer in the affirmative. As a result of the comments about me and Toyin our foreman terminated my appointment.

“After my appointment was terminated, whenever people saw me in the streets some of them used to say that I was the boyfriend of Toyin. Even when I was in my house people in taxi cabs when they saw me used to point to me saying “Is this the boyfriend of Toyin? It was one occasion, I think that the name of the driver of the taxi cab is Obi but I do not know the names of the people in the taxi cab.

On another occasion one person rode a motor-cycle to our house. He too pointed to me and said “This is Toyin’s Boyfriend”. I do not know the name of the person. I do not remember the month of the year when the person aforesaid did so.

When I was paid my wages at the end of the month I went to the market and bought tooth brush, clothes and perfumes for Toyin. When I reached where Toyin was living with the things Toyin was not at home. When Toyin came and I wanted to give the things to her, she refused to accept them and she said that she was not old or mature enough to have a boyfriend. It was raining so I stayed on for some time. When the rain stopped I set out for home. One Lasisi Ogundipe (8th p.w.) met me and said “So tan” which in my view meant “Is that all that you could do about Toyin”.

At about 9 p. m. on the same day, Lasisi Ogundipe came to the house in which I was living. He went into the room of my landlady with a matcher. My landlady called out my name. I heard her telling Lasisi Ogundipe that I had known that they wanted to kill me. I heard Lasisi Ogundipe say that I would be killed if I came out to urinate. I then went back into my room and locked the door securely. I eased myself in the room. Early in the morning of the following day Lasisi Ogundipe went out through the back door. I too then went out and called at the Police Station. Before I went out the wife of one Raji came from a house across the road and told my landlady that might be it was not destined that I would be killed in my landlady’s house. My landlady then said that I would surely be killed.

I made a report at the police station. A policeman was asked to accompany me. Lasisi Ogundipe, my foreman and Liadi all working in the same place with me were invited from the site (i.e.) our place of work) to the police station. One Samson, a co-worker, was also invited to the police station. They were all brought to the police station.

One policeman told me that all the persons invited to the police station had been warned and that they would not kill me. He said that I should go away. I could not sleep in my room in the house of my landlady. I decided to go to Imo in Ilesha where there were some of my people. I saw a woman who told me that whether I went to Imo or any other place I would be killed by Ilesha because the “Oba” had his hand in it.”

Testifying further before the trial court the appellant said

“On my way to the police station some people saw me and said “This one. He has finished.” I did not know them before, I did not say anything to them but I thought that it was a fact that Lasisi Ogundipe, our foreman, Liadi, Samson and my landlady wanted to kill me.”

The appellant concluded his evidence-in-chief by narrating how he did the killing. He testified:

I left the police station and went to my apartment in my landlady’s house.

When I got home Sadatu Awero was in a house opposite our house. The son of Sadam Awero (my landlady) who was about seven or eight years old was at home in her house where I lived. I then took a cutlass and started to kill people. I don’t know the number of people I killed. I used the cutlass to kill them.”

The learned trial judge dealt with the issue of insanity and came to the conclusion that the appellant was not insane.

This is how he resolved the issue:

“I now come to the question whether the accused was insane at the time of the incident. The burden of proving insanity in defence to a criminal charge lies on the accused. The onus can be discharged on a balance of probabilities. See R. V. Echem (1952)14 W. A. C.A. 158 cited with approval in Okunnu v. the State (1977) 3 S.C. 151 at p.161 and in Onyendinefu v. The State. FCE/1/117/78 - Judgment of Federal Court of Appeal, Ibadan Judicial Division, delivered on 23rd February, 1979. Throughout the trial, the accused showed no sign of abnormal behaviour in Court and he appeared to me to follow and to understand the proceedings very well. There was no evidence that he showed any sign of insanity at the police station to which he went earlier on the day of the incident. He walked there and walked home. There was evidence that during the incident he sustained what was described as a minor injury and that he was taken to the hospital where he was treated. The accused allowed himself to be treated and there was no evidence that any staff of the hospital observed anything about the behaviour of the accused indicating that he was insane. The 5th p.w. who was the Investigation Police Constable told the Court that throughout the time when he took the accused from the hospital to the police station, took a statement from him and took him back to the hospital, the accused did not show or manifest any sign of violence nor was there any unusual thing about his behaviour. The police tried to contact the relations of the accused but they could not find them. The superior police officer to whom the accused was taken for the confirmation of his statement said that he saw the accused in the hospital on the day of the incident but he did not behave abnormally. Few days to the day of the incident the accused bought certain things and took them to the girl he wanted to befriend. The girl refused, to accept them because, according to the accused she was not old or matured enough to have a boyfriend. The accused calmly went “away and did not insist or create any unusual or unpleasant scene. The evidence of the 8th p.w., Ogundipe, who was a co-worker of the accused, on this point, was that throughout the time that the accused came with a police­man to the place where they were working, the time that they went with the accused to the police station and stayed there up to the time that they were all asked to go home, he did not notice anything abnormal in the behaviour of the accused. I have given this aspect of the matter serious and due consideration and on the totality of the evidence before me I have no doubt in coming to the conclusion that the accused was not insane when he inflicted matchet cuts on the deceased and killed her. Insanity is, therefore, not available to the accused as a defence.”

From the above, it would be seen that the learned trial judge dealt with the first segment of Section 26 of the Criminal Code Law but failed to avert his mind, as he ought to, to the second segment dealing with delusion. I have had to give consideration to this (S.26 of the Supreme Court Act, 1960) as the appellant was undoubtedly entitled to have that portion of the defence, arising from the facts, considered by the court.

The position was, therefore, this, that the appellant had conceived the notion that some people including the deceased, were planning to kill him and he therefore decided to strike before they would actually kill him. He decided to pre-empt their supposed action - to do them to death before they would catch up with him. The question of law to be resolved here and which ought to have been dealt with by the trial judge, was whether such a pre-emptive strike, by the appellant, against a supposed intending assailant, is recognised by our law as a valid defence under the second segment of S.26 of the Law aforementioned when in fact the appellant had not been attacked by anybody and no step had been taken, or act done, by anybody, to re-enforce the appellant’s delusion that he was, imminently, about to be killed.

The second part of S.26 of the Law requires an appellant to be criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist”.

If the facts with respect to which the present appellant’s delusions, namely that the deceased and others were planning to kill him, were real, would the appellant be legally justified in killing them at that planning stage? If the answer was in the affirmative then S.26 would avail the appellant, otherwise, it would not. It is to be remembered that the evidence had not established that the appellant was suffering from any mental disease or from any natural mental infirmity which deprived him of his capacity to understand what he was doing or to control his actions.

Therefore, the decided cases of Rex v. Sunday Omoni (1949) 12 W.A.C.A. 511; Rex v. Ashingifuwo (1948)12 W.A.C.A. 389 and Rex v. Edem Udo Inyang (1946)12 W.A.C.A.5 which were dealing with the first segment of S.28 of the Criminal Code Act whose provisions are identical with S.26 of the Law cannot be said to have any application here where there is no question of mental disease or natural mental infirmity.

Nor, can the “mental black-out” defence which was put up but rejected in Philip Dim v. The Queen (1952)14 W.A.C.A. 154 apply in the present circumstances in which the appellant, far from having a “black-out” had sufficient presence of mind, though delusive, which enabled him to think that a plan was being hatched to kill him.

Perhaps the nearest, of the older cases, to the present appellant’s situation is William Echem v. The Queen (1952) W.A.C.A. 158 - a case of “uncontrollable impulse” (See also Ted Kayode Adams v. D.P.P. (1966)1 All N.L.R. 12) – in which the appellant said that in the night previous he had heard the deceased say to someone that he had been paid money to kill him and that he was so angered that he took an axe and hit the deceased, resulting in his death. In that case, however, a doctor who put the appellant under observation for a period, testified to the serious fracture of the skull which the appellant had earlier sustained which made him suffer “brain trouble”; that the skull injury was likely to affect the appellant’s mind to the extent that although he might know what he was doing and that it was wrong, yet he might not be able to control his action. In the present appeal, no medical evidence was called by the defence. Indeed, no witness was called by him at all and all the evidence available showed the appellant to behave normally prior to the incident. 631

Whether an appellant was insane in the legal sense at the time the act was committed, is, as stated in R. v. Inyang (1946)12W.A.C.A. 5 at p. 7, a question of fact which is dependent upon the previous and contemporaneous acts of the party - the evidence of insanity of ancestors and blood relations being relevant and admissible, and the evidence of a doctor not being necessarily always essential. (See R. v. Rivett (1950)34 Cr. App. P. 87; Ngene Arum v. The State (1979)11 SC. 91). Even where a doctor gives evidence of abnormality a jury may still, on the facts, reject a plea of insanity (David Augustus Walton v. The Queen (1977)3 W.L.R. 903).

Appropriate to the circumstances of the instant case on appeal is the decision in the case of Clement Iwuanyanwu v. The State (1964)1 All N.L.R. 413 whose facts are akin to those of the present appeal. It was a question of a delusive belief by the appellant that the deceased would kill him, in that case by sending to him, evil spirits in the form of witchcraft. The Supreme Court (Bairamian, Onyeama and Coker, JJ.S.C.) rejected the defence of insanity under the second limb of S.26. In the judgment of the Court delivered by Onyeama, 3‘. S. C., the Court held at p.414 that:

“It was clear from the evidence that the appellant, believing that the deceased and the others were going to kill him by witchcraft, killed the deceased first. Section 28 of the Criminal Code cannot avail him, for if the facts were as he imagined, the deceased had not yet attacked him when he stabbed him. He killed him to prevent him sending the evil spirits; he knew what he was doing and why he was doing it; section 28 says that the appellant “is criminally responsible for the act... to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.” On this supposition, the appellant killed someone who was going to send evil spirits to him and who had told him sometime previously that he would kill him at night in that way if he did not go home. At the time the appellant killed the deceased, the deceased was not attacking him; and the whole purpose of the murderous attack on the deceased was to prevent his own death in the future to be caused by Juju. On the assumption of the delusions, he was not acting in self-defence at the moment that he stabbed and is not exonerated under the second paragraph of section 28".

Equally, the present appellant was not acting in self-defence against the deceased - the victim of his pre-emptive attack who had neither assaulted him nor done anything to him indicating an intention to kill him or even to assault him.

In the second additional ground of appeal filed before the Federal Court of Appeal, appellant’s Counsel raised the issue of provocation maintaining that the

“threat by the deceased to kill the accused on record which amounts to assault from which provocation and the defence of self are established...”

was a sufficient fact from which the trial court should have held the defence of provocation as proved. The Court of Appeal did not specifically deal with this in its judgment apparently because Counsel for the appellant (Mr. Kowolafe), in his argument, did not pursue the issue of provocation, resting his argument solely on insanity under S.26. He was clearly wise in not pursuing that issue as no issue of provocation could arise on the facts adduced in the evidence accepted by the trial court.

In his brief before this Court, Counsel for the appellant, Chief Jibowu, stated that he could not find any issue of law or fact which he could reasonably canvass in favour of the appellant. I entirely agree with him that both on the facts and the law nothing could usefully be urged in favour of the appellant.

It was for the foregoing reasons that the appeal was dismissed, and rightly so in my view, as hereinbefore stated.

**BELLO, JSC**.

I had the privilege of reading the Reasons for judgment just delivered by my learned brother, Aniagolu J.S.C. I agree the defence of insane delusions under section 26 of the Criminal Code Law of Oyo State does not avail the Appellant on the facts of the case.

**UWAIS, JSC**.

I have had the privilege of reading in draft the reasons for judgment read by my learned brother Aniagolu, J.S.C. As it was for the same reasons that I dismissed the appeal on 12th May, [1983], I have nothing to add.

**KAYODE ESO, J.S.C.**

I agree with the reasons just given by my learned brother Aniagolu, J.S.C. for dismissing the appeal of James Anyim in this case.

The defence of insanity was not proved at all.

**IDIGBE, J.S.C.**

I have had a preview of the reasons just given by my Lord, Aniagolu J.S.C. for his concurrence in the unanimous decision of this Court on the 12th day of April, [1983] that this appeal be dismissed and I agree entirely that it was for those reasons so ably stated by him that I shared in the view that this appeal be dismissed.