**CHRISTIAN EMERYI**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

9TH MARCH, 1973

SUIT NO. SC 158/1972

**LEX (1973) - SC 158/1972**

**OTHER CITATIONS**

3PLR/1973/24 (SC)

(1973) All N.L.R 127

1973 3 SC p.215

[1973] NSCC 91

**BEFORE THEIR LORDSHIPS**

GEORGE BAPTIST A. COKER, J.S.C.

SODEINDE SOWEMIMO, J.S.C.

DAN IBEKWE, AG. J.S.C.

**ORIGINATING COURT(S)**

HIGH COURT OF LAGOS (Kassim J., Presiding)

**REPRESENTATION**

Mr. F.O. AKINRELE, for the Appellant.

Mr. EJIWUNMI, D.D.P.P, Lagos State, for the Respondent.

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

CRIMINAL LAW AND PROCEDURE:- Murder – Proof of crime – Defence – Insanity – When deemed proved – Relevant consideration

CHILDREN AND WOMEN LAW: *Women/Children and Security* – Grievous assault of sleeping baby and three women by neighbor suffering mental illness – Death of one of the women - How treated by court

HEALTHCARE AND LAW:- Mental patient – Delayed access to critical care – Murder committed while waiting for appointment to see a psychiatrist – Implication for justice administration

**PRACTICE AND PROCEDURE ISSUES**

COURT:- Jury trial – When court is deemed to have misdirected the jury in summing up – Legal effect of

**MAIN JUDGMENT**

**SOWEMIMO, J.S.C.** (Delivering the Judgment of the Court):

The appellant, who was the accused in Charge No. LA/36/72, was tried at the Lagos Assizes for the murder of one Funmilayo George, hereinafter referred to as “deceased,” on or about the 6th day of September, 1969. The trial was by jury. The jury returned a verdict of guilty, and the appellant was sentenced to death by Kassim J. He has now appealed to this Court against the conviction.

The fact of the killing is not in dispute. On the morning of the 6th of September, 1969, for no apparent reason whatsoever, the appellant suddenly attacked one Abimbola George, (the prosecution witness) in the compound of a house in which both she and the appellant were resident. Abimbola George ran into a room in the compound and the appellant chased her and inflicted several matchet cuts on her. She raised an alarm, as a result of which the deceased Funmilayo George, who was then in a kitchen cooking, came out and ran towards the room. There was a child lying on a bed in the room into which the appellant had pursued Abimbola George. The appellant attacked the baby and cut off two of his fingers. When the appellant saw Funmilayo George approaching, he switched his attack on to her. On seeing this development, the deceased took to her heels pursued by the appellant who inflicted matchet cuts on her until she fell down.

The mother of the deceased, one Enitan George, (the 3rd prosecution witness) was at the material time in her room when she heard the cries of her daughter Abimbola George (4th P.W.) and on coming out saw the appellant chasing her other daughter, Funmilayo George. She ran after the appellant. When she eventually got to the scene she saw the appellant inflicting matchet cuts on the deceased who was lying on the ground. Enitan George got hold of the appellant and asked him why he was matcheting her two daughters. The appellant there and then attacked and inflicted several matchet cuts on her as well. She fell down unconscious. Later on, the deceased, Funmilayo George, Enitan George, and Abimbola George were taken to the hospital (LUTH). The appellant was eventually apprehended by an officer in the Nigerian Army and later handed over to the police.

This incident took place in the compound of a house known as No. 1 Owodele Street, Ishaga, Surulere. The appellant was sharing a room in the house with another townsman of his, one Okon Ekpo, the 2nd defence witness. The deceased was at the material time living in a room in the same compound with her mother, Enitan George (3rd P.W.) and her sister, Abimbola George (4th P.W.). The appellant moved into that house about three months before the day of this incident. According to the 3rd P.W., the appellant was on good terms with her and her two daughters and there had been no previous quarrel whatsoever between them.

At the trial evidence was led by both the prosecution and the defence on the mental state of the appellant. The learned trial judge, in his summing up described the totality of such evidence as positively “indicative” of insanity. The defence witnesses gave evidence of some abnormal behaviour of the appellant before the 6th of September, 1969. The deposition of one Dr. O.O. Bassey, was tendered as Exh. G, and he described how the appellant was brought to him on a complaint of heat in the head. He referred the appellant to one Dr. Adeyemi. This was in August 1969. The prosecution also tendered Exh. N and N1 as the entries made by Dr. Adeyeml on the appellant on 18th August, 1969.

The learned trial judge summed up the case for the jury, who later returned a verdict of guilty against the appellant. It is against this verdict that the appellant has appealed to this Court.

Mr. F.O. Akinrele, learned counsel for the appellant was granted leave to argue the following grounds of appeal in substitution for those originally filed by the appellant.

The grounds are:

(1) That the judgment is unreasonably unwarranted and cannot be supported having regard to the evidence.

(2) That the verdict is wrong in law in that the standard of proof required from the accused on the issue of insanity has been established.

(3) That the learned trial judge in the circumstances of the case misdirected the jury on their functions as to the issue of facts in this case in saying that “in the course of this summing-up, I may have occasion to refer to witness who have testified and say what I think of them or what I think of the facts of this case, but you and you alone will ultimately decide who to believe and what facts you find to be established when in law their functions is to decide not necessarily “ultimately.”

The sum total of the argument of learned counsel, was that since all the evidence as to the mental state of the appellant, before and after the date of the incident was, as described by the learned trial judge in his summing-up, indicative of insanity, it was wrong to have left the issue of insanity as open to the jury to determine. The contention was that there was no other evidence beside that referred to by the learned trial judge as indicative of any contrary view to that expressed by the learned trial judge himself. Learned counsel contended that the proper direction would have been that on the evidence before them, the jury could only return a special verdict, based either on an acceptance by them that the defence of insanity has been established or that there was some doubt as to what the mental state of the appellant was at the material time and so give the benefit of that doubt to the appellant. The learned trial judge in his summing-up, directed the jury thus:

‘To establish insanity and to overcome the presumption that every man is sane and accountable for his actions, the defence must prove, first that the prisoner was at the relevant time, that is, at the time he was committing the offence, suffering either from mental disease or from natural mental infirmity, and secondly that the mental disease or natural infirmity was such that, again, at the relevant time, the prisoner was as a result deprived of capacity (a) to understand what he was doing; or (b) to control his actions; or (c) to know that he ought not to do the act or make the omission.

The burden of proof is not as heavy as the burden placed on the prosecution which must prove its case beyond reasonable doubt. The burden placed on the accused of establishing a defence on the ground of insanity will be satisfied if the facts proved by the defence are such as to make it most probable that the accused was, at the relevant time, insane within the meaning of Section 28 of the Criminal Code which I have explained to you above. The burden is not higher than that which rests on a plaintiff or a defendant in a civil case. Where, as in this case, there is sufficient evidence indicative of insanity rather than the opposite, the absence of any evidence of motive may become relevant to the point at issue and material to it. Why did the accused cut Mrs. George and her daughter who did him no wrong? Why did he cut the little girl, Zipporah Ozakpolor, and the very innocent baby lying on its bed, Duncan Subaru? This questions, you may agree with me become relevant and material, [that] there is strong evidence indicative of insanity on both sides, and that on the side of the State is more cogent and more reliable than that on the side of the defence.” (Italics mine)

Learned Counsel for the appellant conceded that this direction was correct. His complaint was that there was evidence both from the prosecution and defence witnesses which sufficiently established the defence of insanity, as set out in the summing-up above but which the learned trial judge failed to direct the jury upon. It is his contention, that on a proper direction that all available evidence was only indicative of insanity, the jury would have returned a different verdict. In our view this argument has merit.

The learned trial judge in his summing-up referred to the evidence of Dr. Johnson, a Psychiatrist, and that of Dr. Bassey, as contained in his deposition Ex. G, and observed thus:

“These two respectable doctors testified on the side of the prosecution and their stories stand unchallenged. Dr. Bassey’s evidence supported the appointment and treatment cards Exhibits N and N1, and substantially the evidence of the accused and his witnesses. You may agree with me that Okon Ekpo D.W.2 who was living with the accused in the same room at the relevant time is a witness of truth, that the demeanour of Edet Otu Ita, “D.W.4 in the witness box was good.”

The learned trial judge only made a passing remark to Exs. N and N1 without telling the jury about their relevance - that is the date of treatment and appointment for the appellant to see a Psychiatrist. The contents of the two exhibits showed that Dr. Adeyemi, to whom Dr. Bassey referred the appellant, examined the latter on his complaint of heat in the head, on 19th August, 1969 and after giving him sedative booked an appointment for him to see a Psychiatrist on 9th September, 1969. These two dates are very material in considering the mental state of the appellant at the time of the commission of the offence. There was also the evidence of the room mate of the appellant, Okon Ekpo (2nd D.W.) which was not challenged by the prosecution. He stated inter alia thus:

“He packed into my room in May in 1969. He was then behaving very well. After some months, he complained that he was feeling headache. One night, at about 11.30, he was crying. I asked him what was the matter. He said that he was feeling some heat in his head and that his head was hot. I took him to the Teaching Hospital at Idi-Araba that night. That was on the 10th of August 1969. We saw one Dr. Adeyemi.”

This portion of the evidence becomes material when the expert opinion of Dr. Johnson is considered. She said under cross- examination thus:

‘The person who weeps unnecessarily is mentally ill. He is suffering “from depression which is a mental illness.”

The evidence that appellant wept on the night of 10th August, 1969 before he was treated by Dr. Adeyemi is at least indicative of mental illness. That is the first indication of the type of illness that the appellant suffered from at a time less than a month before the incident of the 6th of September, 1969. The learned trial judge failed to direct the jury on this important fact and we consider the criticism of the learned counsel on this omission as justified.

There is no direct evidence in this case of the mental state of the appellant on the 6th of September, 1969. As we have pointed out earlier, there was evidence which at least negatived the presumption of sanity. The evidence of defence witnesses, which was not challenged or contradicted, about the abnormal behaviour of the appellant in August, 1969 is relevant. The prosecution also put in evidence the deposition of Dr. Bassey, Exhibit G, and the hospital cards made out by Dr. Adeyemi - Exs. N and N7. These three exhibits confirmed the evidence of Okon Ekpo (2nd D.W.) of the complaint of the appellant of having “some heat in his head” on or about 10th or 18th August, 1969. The prosecution also confirmed that Dr. Adeyemi considered the ailment of the appellant to be such as to warrant his being referred to a Psychiatrist. Dr. Adeyemi booked an appointment for the appellant to see a Psychiatrist on the 9th of September 1969. The appellant committed the offence on 6th September, 1969. The first time that a doctor saw the appellant after the incident was on 4th April, 1970. The evidence of Dr. Johnson was that as on the date, the appellant, was definitely insane. This evidence becomes relevant when coupled with the evidence of involuntarily crying by the appellant on the 10th of August, 1969, a symptom described by Dr. Johnson as indicative of mental illness. There is therefore strong circumstantial evidence, which the learned trial judge should have put before the jury as proved facts which may be considered as most probable that the appellant was insane at the time of committing the offence or either at least sufficient to create a doubt as to the mental state of the appellant on 6th September, 1969. The learned trial judge had, in the earlier portion of his summing up, told the jury that all the evidence from both prosecution and defence indicated insanity. If that were so, the question for the jury to decide is whether the evidence sufficiently established the plea of insanity or created some doubt in their minds as to the mental state of the appellant at the time of the incident. If the jury had been so properly directed they would not have returned the verdict which they did. The direction of the learned trial judge did not put the matter properly before the jury.

The portion complained of as a misdirection reads:

“Gentlemen, you should return a verdict of guilty if you are satisfied that, by the evidence before you, the prosecution has proved beyond reasonable doubt that the death of the deceased was due to the act of the accused, and that either the accused intended the death of the deceased or that of some other person, or that he intended to do the deceased or some other person some grievous harm.

The accused has given you some explanation which you may agree was supported by the evidence for the state. You should consider the whole of the case and should say whether you are satisfied that the defence of the accused has satisfactorily met the case for the State or has thrown doubt on it. If you are so satisfied, you must return a verdict in his favour.

If you accept his defence of Insanity as 1 have explained ft to you, you will return a special verdict under Section 229 of the Criminal Procedure Act that you find proved that the accused committed the act alleged but that you find him not guilty of murder on the ground of unsoundness of mind when he committed the act.”

This portion of his summing up gave the impression that it was open to the jury either to accept or reject the evidence about the mental state of the appellant. This, of course, is not consistent with the earlier portion of his summing up, where the learned trial judge had stated categorically that all the evidence both from the prosecution and the defence indicated insanity and therefore negatived the presumption of sanity.

Learned counsel for the appellant has argued that in view of the evidence for the prosecution, which is indicative of insanity at all material times mentioned by the witnesses, and that of the defence witnesses, which tends to establish that appellant was suffering from some torn of mental illness before the date of the incident, at least a doubt must have been created as to the actual mental state of the appellant on the 6th of September 1969. In such a case the doubt should have been resolved in favour of the appellant

We are in agreement with the contention of the learned Counsel for the Appellant that on the evidence before the jury, there was at least a doubt as to the actual mental state of the appellant when he committed the act of 6th of September, 1969. We are of the view that If the learned trial judge had properly directed the jury on this aspect of the matter, the jury would not have returned the verdict of guilty. We hold therefore, that the verdict of the jury is not supported by the evidence.

We will therefore allow the appeal and quash the conviction and sentence and substitute therefor instead a special verdict that when the appellant killed Funmilayo George on the 6th of September 1969, he was suffering from unsoundness of mind.

We therefore order that the appellant, Christian Emeryi, be confined in the Mental Hospital, Yaba for treatment at the Psychiatrist Centre, Yaba and to await the further order of the appropriate authority.

Appeal Allowed.