**YAHAYA IDIRISU**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

20TH JANUARY, 1967.

SUIT NO. SC 445/1966.

**LEX (1967) - SC 445/1966**

**OTHER CITATIONS**

3PLR/1967/34 (SC)

**BEFORE THEIR LORDSHIPS:**

BRETT, J.S.C.

COKER, J.S.C

LEWIS, J.S.C.

**ORIGNATING COURT**

HIGH COURT, MINNA, NORTHERN NIGERIA (HAGUE, AG. J. Presiding)

**REPRESENTATION**

J. A. COLE - for the Appellant

M. B. BELGORE, Ag. D.D.P.P - for the Respondent

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

CRIMINAL LAW AND PROCEDURE: - Northern Nigeria - Culpable Homicide punishable with death – Duty of prosecution to prove same - Criminal Procedure Code, Section 249(3)

CRIMINAL LAW AND PROCEDURE: - Murder - Entitlement of a person standing trial to defend himself and to avail himself of all facilities provided by the law

HEALTHCARE AND LAW: - Medical examiners – Importance of medical report to criminal proceedings relating to murder – Need to carry out same properly – Where medical evidence is inconsistent with other evidence of prosecution – Attitude of court – Right of accused person to cross-examine maker of report – How treated

CHILDREN AND WOMEN LAW: - Women and Murder – Women and Security of Neighbourhood – Rampaging murderer who killed 2 women and 1 man in one village in one night – How treated PRACTICE AND PROCEDURE – EVIDENCE: - Criminal trial – Expert evidence – Admissibility of medical report which contents were at variance with the oral evidence given by prosecution Witness – Where trial judge refused defendant’s application for medical officer to testify – Attitude of appellate court to denial of an accused opportunity to challenge any evidence given against him - Other evidence in support of charge – Whether no miscarriage of justice was occasioned

**MAIN JUDGMENT**

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

We dismissed this appeal on the 6th January, 1967, and now give our reasons for doing so.

The appellant was convicted by Hague, Ag. J., (High Court, Minna, Northern Nigeria) of culpable homicide punishable with death under section 221 of the Penal Code. The charge stated that on or about the 13th December, 1964, at Dapma Village, he caused the death of one Asibi. At his trial the prosecution adduced evidence to show that the deceased, Asibi was one of three persons killed by the appellant on the night of the 13th December, 1964. The husband of Asibi (first prosecution witness) was an eye witness to the killing of his wife: he saw the appellant hit the deceased on the head with a pestle after the latter had opened the door of their house in response to the call of the appellant. She died on the spot.

The prosecution further adduced evidence to show that after striking the deceased dead with a pestle the appellant went to one Baba Wakali (prosecution witness No. 2) who took him thereafter first to the village head (prosecution witness No. 3) and subsequently to the Sarkin Juwa, the head Chief (prosecution witness No. 4) and to these three the appellant stated that he had killed two persons and a third who was unlikely to survive. It was given in evidence that after the appellant was arrested he made a statement to the Police in which he said that he had killed two women and a man with a pestle whilst he was repelling the attack on him by the villagers who had called him a thief and were beating him. The appellant gave evidence in his own defence at his trial. He said much the same as was contained in his statement to the Police but denied saying that he used a pestle on his victims and stated that he struck at least a female with a stick about one inch thick and three feet six inches long. The learned trial judge did not believe the story of the appellant insofar as he stated that he was attacked by the villagers and that he used a stick of the size described by him to defend himself against the angry villagers. The judge preferred and accepted the evidence of the prosecution wit-nesses, especially that of Kpacheye Jibe (first prosecution witness) the husband of the deceased who saw the appellant strike his wife on the head with a pestle, and the several confessions made thereafter by the appellant. He convicted him accordingly: hence this appeal.

In the course of the trial a report, purportedly signed by a medical officer, was put in evidence under section 249(3) of the Criminal Procedure Code Law. The doctor who wrote the report had apparently seen the deceased after her death and examined the corpse and parts of the report stated that the deceased had black curly hair and that she had:-

(i) a contused wound on the right side of the front of the head, 2" by t” scalp deep; and

(ii) a lacerated wound at the transverse back of the left side of the head, 2" by I/2 scalp deep.

When the report was read and interpreted to the appellant, he expressed disagreement with it and counsel appearing for him applied to the Judge that the maker of the report be called as a witness. The Judge refused the application stating that the interests of justice will not be served by an adjournment of the case to enable a doctor to be called.

Before us on appeal counsel for the appellant contended that the medical report was wrongly admitted as there was no proof that it was made by a medical practitioner: that the judge wrongly relied upon it when the contents were at variance with the oral evidence given by the prosecution Witness and accepted by the Judge and that the Judge wrongly refused to accede to the application of the appellant to call the medical officer as a witness. Section 249(3) provides as follows:-

“(3)(a) A written report by any medical officer or registered medical practitioner after he has examined any person or the body of any person may at the discretion of the court be admitted in evidence for the purpose of proving the nature of any injuries received by such person or, where such person has died, the nature of the injuries received by such person, and where possible, the physical cause of his death.

(b) On the admission of such report the same shall be read over to the accused and he shall be asked whether he disagrees with any statement therein and any such disagreement shall be recorded by the court.

(c) If by reason of any such disagreement or otherwise it appears desirable for the ends of justice that such medical officer or registered medical practitioner shall attend and give evidence in person the court shall summon such medical officer or registered medical practitioner to appear as a witness.”

It is not disputed that the written report of the medical officer can be at the discretion of the court admitted in evidence for the purpose stated in sub-paragraph (a) of section 249 (3) and the report admitted in this case bore the signature of somebody who described himself as a medical practitioner. When the statement was admitted in evidence, there was no objection on this point and we are of the view that there is no substance in the argument that it was not proved that the re-port was signed by a medical practitioner. Besides, the provisions of section 250A(1) of the Criminal Procedure Code Law are relevant on this point. That section provides as follows:-

“250 A. (1) The court shall, in the absence of evidence to the contrary, presume that the signature to any report or document referred to in section 249 or section 250 is genuine and that the person signing it held the office or the qualifications which he professed at the time when he signed it.”

It is clear therefore that in the circumstances the point raised by counsel cannot be sustained.

After the receipt in evidence of the report it was read and explained to the appellant and as pointed out by counsel certain portions of the report are not in agreement with the oral evidence before the court. Counsel pointed out that the report stated that the deceased had black curly hair when in fact a witness had stated that her head was shaven; that she had two wounds on the head when in fact the eye witness to the killing of Asibi said she was struck once on the head and that in any case the Identification of the corpse by the fifth prosecution witness, Pakachi Pakpapat, was unsatisfactory in view of the fact that he was called to Identify a number of corpses which he picked up one by one and gave their names to the doctor. The learned Acting Director of Public Prosecution did not resist the argument that these discrepancies did occur between the written report, admitted in evidence, and the oral evidence accepted by the judge but submitted that in the peculiar circumstances of this case the discrepancies are of no material significance and that there had been no miscarriage of justice in refusing to call the doctor to testify.

We have come to the conclusion that but for the nature of the other evidence given in this case and, rightly in our view accepted by the learned trial Judge, the point made by counsel was substantial and that the request of the appellant to call the doctor as a witness should have been granted. It is desirable that when a request is made by an accused person for the maker of a statement such as is now in point to be called as a witness such application should not be lightly refused. A person standing trial is entitled to defend himself and to avail himself of all facilities provided by the law. Section 249(3)(c) gives to such a person the right to have the maker of a report received in evidence by virtue of this section attend and give evidence in person in the court where the accused person will at least have the opportunity of cross-examining him and where it is manifest from the disagreements over the written report that a chance of defending himself had been denied to the accused it would be difficult to resist the conclusion that a miscarriage of justice had occurred.

In the particular instance, however, we think that the evidence accepted by the learned trial Judge involving the way and manner in which Asibi was killed; the fact that she died on the spot and the repeated confessions of the appellant himself to several of the prosecution witnesses, put beyond doubt the question not only of his complicity but also of the cause of death of the woman, Asibi. The argument in respect of the report admitted in evidence must therefore fail.

Again it was argued for the appellant that the judge did not consider properly or at all the defence of self-defence “as established by evidence and urged by the defence.” The evidence shows that all the prosecution witnesses denied the suggestions put to them in the course of their testimony that there was a fight in the village on the night in question and the evidence of the first prosecution witness accepted by the judge left no room for any speculation as to whether or not the appellant was attacked by anybody. The story of an attack on the appellant rested solely on his own statement to the Police and his testimony both of which were disbelieved. We think the defence of the appellant that the whole village turned out on him was given as much consideration as it deserved. It is simply fantastic and we would have been surprised if the Judge had accepted his evidence that he tried to fight back all the villagers with a stick about one inch think and three feet six inches long. The appellant had confessed to one of the prosecution witnesses that he killed three persons in the village with a pestle because they refused to give him food. The story of the attack by the villagers was clearly an afterthought and the evidence in support of it nebulous. We think the Judge took the correct view of the evidence before him.

This disposes of all grounds of appeal urged in favour of the appeal and we therefore dismissed it.

Appeal dismissed.