**USENI LAMU**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

17TH MARCH, 1967

SUIT NO. SC 748/1966

**LEX (1967) - SC 748/1966**

**OTHER CITATIONS**

3PLR/1967/42 (SC)

**BEFORE THEIR LORDSHIPS:**

LIONEL BRETT, J.S.C.

MICHAEL OGUEJIOFO AJEGBO, J.S.C.

IAN LEWIS, J.S.C.

**ORIGINATING COURT**

HIGH COURT OF NORTHERN REGION OF NIGERIA (Jones, J.., Presiding)

**REPRESENTATION**

J. A. COLE - for the Appellant

Mallam M. B. BELGORE, D.P.P., North, - for the Respondent

**CONNECTED AREAS OF PRACTICE**

CRIMINAL LAW, CHILDREN AND WOMEN LAW

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

CRIMINAL LAW AND PROCEDURE: - Criminal Appeals - Supreme Court - Evidence wrongly admitted occasioning miscarriage of justice

CRIMINAL LAW AND PROCEDURE: - Murder - Culpable homicide punishable with death – Duty of prosecution thereto - Defence of insanity and memory loss – When considered not proved – How treated

HEALTHCARE AND LAW:- Defence of insanity and memory loss – Accused person subject to fits of some sort of depression and partial amnesia – Access to mental health treatment and implications for crime and justice administration

CHILDREN AND WOMEN LAW:- Women and Murder – Husband’s insistence on forceful return of his wife to matrimonial results in killing of wife’s relative in whose house she had sought refuge – Husband hit relative on head with a stick and shot him with an arrow – Acquittal of husband – Relevant considerations

CHILDREN AND WOMEN LAW: - Women and Justice administration – Criminal proceedings - Evidence of spouse – Whether a spouse of a monogamous marriage is a competent witness for the prosecution on any charge not coming within section 160(1) of the Evidence Law – Whether same applies to wife of a polygamous marriage

CHILDREN AND WOMEN LAW:- Women, Marriage and Religion - Whether there is a legal presumption of polygamy as the nature of the marriage of a woman who swears her judicial oath using a knife or professes adherence to traditional religion– Whether needs to be proved strictly – Implication for justice administration

RELIGION AND THE LAW:- Evidence of non-Christian wife of accused person – Witness sworn on a knife and professes adherences to traditional religion – Burden of prosecution to prove that the nature of her marriage is non-monogamous – Where prosecution fails to so prove – Whether renders her an incompetent witness for the prosecution on any charge not coming within section 160(1) of the Evidence Law – Whether presumption of polygamous marriage can be inferred from act of swearing on a knife or expressing traditional/indigenous religion- Implication for justice administration

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE:- Proceedings not coming within section 160(1) of the Evidence Law - Onus of proving that the spouse of an accused person is a competent witness for the prosecution – On whom lies - Whether presumption arises from the nature of oath taken or from the religious belief professed by the spouse – Wrongly admitted evidence – Where same removal raises a doubt as to the conviction made – Duty of appellate court thereto where prosecution fails to invite court to consider a retrial

INTERPRETATION OF STATUTES: - Evidence Act s.226 (1); Supreme Court Act; 1960 s.26 (1), proviso - Northern Nigeria Evidence Law s.160 (1)

**MAIN JUDGMENT**

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

The appellant was convicted of culpable homicide punishable with death. In the words of the judgment of Jones, J., the prosecution evidence consisted mainly of two eye-witnesses, Ladi Julde the wife of Julde, the deceased, and Saduja Useni, the wife of the appellant. Their story was that one evening Saduja, who was Julde’s aunt, went to Julde’s house, where he and Ladi were, and sat down there. The appellant arrived and asked Saduja to go home with him. She refused and according to herself was encouraged in her refusal by Julde. The appellant then picked up a stick and hit Julde on the head with it; after that he went to his house, came back with a bow and arrow and shot Julde in the thigh. Julde died soon after; the post mortem showed bleeding inside the skull and from the left femoral vein and a big branch of it, and either injury was sufficient to cause death.

The appellant said in evidence that he went to Julde’s house to take his wife home and that while he tried to drag her away by pulling one arm Julde tried to keep her there by pulling the other. He said that he was drunk at the time and did not remember what took place after that. His defence of insanity was rejected, but the judge, while accepting that he was subject to lifts of some sort of depression and partial amnesia”, came to no clear finding on whether he was suffering from a genuine loss of memory about the killing of Julde. If he was, it would increase the burden on the prosecution for the reason explained in Broadhurst v. The Queen (1964) A.C. 441, namely that the court must reflect that by force of circumstances it had only heard one side of the case, and it is desirable that there should always be an express finding where a loss of memory is alleged. Saduja, who was a pagan and was sworn on a knife, was not proved by the prosecution to have been the appellant’s wife by a non- monogamous marriage. The onus of proving that the spouse of an accused person is a competent witness for the prosecution on any charge not coming within section 160(1) of the Evidence Law is on the prosecution and no presumption arises from the nature of the oath taken or from the religious belief professed by the spouse: R. v. Idiong (1950) 13 W.A.C.A. 30. It follows that Saduja’s evidence was wrongfully admitted and that the appeal must be allowed unless this Court can hold that no substantial miscarriage of justice has occurred and apply the proviso to section 26(1) of the Supreme Court Act.

Section 226(1) of the Evidence Act provides that:-

‘The wrongful admission of evidence shall not of itself be a ground for the reversal of any decision in any case where it shall appear to the court on appeal that the evidence so admitted cannot reasonably be held to have affected the decision and that such decision would have been the same if such evidence had not been admitted.”

We have already quoted the judge’s general description of the evidence for the prosecution in this case. Immediately after that passage he says, referring to the two eye-witnesses:-’Their evidence is consistent. They both say that ..........:’ etc. Later he refers to certain parts of the evidence of each of them separately. He doubts the part of Ladi’s evidence where she says that Julde advised Saduja to go away but says he has no doubt that her evidence is truthful in essentials. He describes Saduja’s evidence as fuller than Ladi’s and nearer to that of the appellant, but without saying which of the two he considers more accurate except as regards Julde’s trying to prevent Saduja from leaving, on which point he prefers Saduja’s evidence. Later still he calls Saduja’s evidence “useful corroboration” of Ladi’s identification of the stick and arrow used.

If Saduja had not been called as a witness, and the only eye-witness had been Ladi, the judge would certainly have been entitled to convict on her evidence; we might even say that it is probable that he would have done so. However, since he thought it worth commenting on the fact that the evidence of the two women was consistent, and preferred Saduja’s evidence on one point, and described Saduja’s evidence as useful corroboration of Ladi’s on another point, we find it impossible to say that Saduja’s evidence cannot reasonably be held to have affected the decision. The judgment makes it clear that Ladi’s evidence gained additional credit from the fact that Saduja’s was (on the whole) consistent with it. In view of this, and of the possibility that the appellant was suffering from a loss or memory, we do not feel justified in applying the proviso.

The appeal is therefore allowed and the conviction and sentence are set aside. M. Belgore did not invite us to consider ordering a retrial and judgement and verdict of acquittal are entered.

Appeal allowed.

CASES REFERRED TO:-

Broadhurst v. The Queen (1964) A.C. 441

R. v. Idiong (1950) 13 W.A.C.A. 30