**CHRISTIAN NWOSISI**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

4TH JUNE, 1976.

SUIT NO. SC 372/1975

**LEX (1976) - SC 372/1975**

OTHER CITATIONS

3PLR/1976/94 (SC)

(1976) 6 S.C. (REPRINT) 72

**BEFORE THEIR LORDSHIPS:**

DAMLEY ARTHUR ALEXANDER, C.J.N.

GEORGE SODEINDE SOWEMIMO, J.S.C.

CHUKWUNWIKE IDIGBE, J.S.C.

ANDREWS OTUTU OBASEKI, J.S.C.

**ORIGINATING COURT(S)**

HIGH COURT IN THE ONITSHA JUDICIAL DIVISION

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

CRIMINAL LAW AND PROCEDURE:- Murder – Proof of - Defence of alibi – Duty of court not to disregard evidence of alibi unless there is a stronger evidence against it - Onus on prosecution to prove the charge against an accused person – Whether extends to duty of bringing the evidence on which accused person relies for his defence of alibi

CUSTOMS AND LAW:- Adulterous relationship by married woman condoned by husband – Child resulting therefrom – Right of husband to claim paternity – Implications for justice administration

CHILDREN AND WOMEN LAW: *Women and Security* – Wife of person living with disabilities – Protection from assaults and unwanted advances of third party – Implication for justice administration

CHILDREN AND WOMEN LAW:- *Children and Security/Human Rights -* Right to Life – Legal child of a person living with disabilities but biological child of a third party lover of mother – Brutal murder of 8 month old child due to mother’s refusal to continue sexual affair – How treated

HEALTHCARE AND LAW:- Persons living with disability - Blind and unwell persons in marriage – Right to assert paternity over child born during pendency of marriage even if the product of adultery condoned by the disabled spouse – Implications for justice administration

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE**:–** Corroborating evidence - Contradiction in evidence of witnesses **–** When contradiction is not deemed material – Effect

EVIDENCE**:–** Improper admission of evidence – Where no miscarriage of justice was occasioned as a result - Effect

**MAIN JUDGEMENT**

**ALEXANDER, C.J.N. (Delivering the Judgment of the Court):**

The appellant was charged on information with murder contrary to section 319(1) of the Criminal Code, the particulars of the offence being that he murdered Monica Okeke on or about the 13th of April, 1971, at Obaoji Oba in the Onitsha Judicial Division.

The trial proceeded in the High Court in the Onitsha Judicial Division of the former East-Central State. The evidence in support of the case for the prosecution was as follows. The appellant and P.W.3, Benedetta Okeke the mother of the victim, Monica Okeke, had a sexual relationship in the course of which Monica Okeke was born. This child was, however, claimed as his own by P.W.3’s husband, Ayino Okeke P.W. 10 who was both blind and unwell, and condoned the relationship between the appellant and his wife P.W.3.

P.W.3 refused to have sexual intercourse with the appellant, excusing herself on the ground that the child was only eight months old, and persisted in her refusal in spite of his threatening to kill her and the child. The appellant also accused P.W.3 of having another lover. This she denied. P.W.3 protested to her husband and her father about the appellant’s attitude to her and her father succeeded in getting P.W.4 Okoloji Obodoagwuna, the appellant’s councillor, to warn the appellant to refrain from any further association with P.W.3. The appellant on his part warned P.W.4 not to bring such a message to him again.

On the 13th of April, 1971, P.W.3 travelled from her husband’s house at Isu to her father’s house at Ojoto. In the evening the appellant persuaded P.W.5 Obinano Obichere to accompany him to Ojoto to call P.W.3 from her father’s compound. On their arrival, P.W. 5. went to call P.W.3. for the appellant. P.W.3 came and the appellant had a conversation with her. He again demanded sexual intercourse, saying that he was “under pressure”, but she again refused. After at least two at-tempts to return to the compound, she finally broke off the conversation and went in.

After having eaten, P.W.3 took her child, Monica Okeke, on her back and set off for her husband’s house. She noticed that the appellant was following her. She lost sight of him for some time but he re-appeared and told her that he would ‘finish the life of the child that day’. On her way home P.W.3 had met her former husband, Anamanjo Chinyanti P.W.9, who wanted to accompany her but she refused and he left for his home. This was the testimony of P.W.3. However P.W.9 testified that he heard P.W.3 crying out and asking for his protection and on turning around he saw the appellant running in his direction. Learned counsel for the defence submitted that there were material contradictions in the evidence for the prosecution, particularly as between the testimony of P.W.3 and that of P.W.9, but the learned trial judge in our view, rightly found that there was no contradiction, much less a material one. He also rightly, in our view, found P.W.3 to be a truthful and consistent witness and P.W.9 to be a witness of truth. Indeed, in our view, P.W.3’s testimony was strongly corroborated by the testimony of P.W.9 in regard to all material points and, in particular, in regard to the killing of Monica Okeke. P.W.3 testified.

“After some time I saw the accused under a banana tree holding a knife in one hand and a stick in the other. He said he was sorry for me, that he wanted to finish my child’s life. He raised up the matchet and I tried to ward it off with my right hand, and he gave me a matchet cut on the shoulder and back of my hand. With the stick he was holding in the left hand he pushed away my hand, and gave the child a cut on the head and another on the neck and the child’s neck dropped sideways ... As he, the accused, was cutting me I was shouting that Christian has killed me and my child. The accused was running with a matchet and trying to prevent anybody who approached from interfering. Then accused gave me two matchet cuts on the head, before I ran into a woman’s house. The accused told me not to be shouting his name ... The child had died and I used the blood soaked clothes to cover the dead child.’

P.W.9. testified that he heard P.W.3 crying out to him for his protection and he went on to say-

“On turning I saw the accused running towards me. Before I could warn him not to do anything he gave me a matchet cut across my upper and lower jaw. When he gave me the cut I fell down and he started giving matchet cuts to P.W.3. P.W.3 was carrying a child on her back. When the accused gave her a matchet cut she started to shout: ‘Christian has killed me and my child’ the child gave a pathetic cry. When the child cried out, I got up and tried to hold the accused. Then he gave me another matchet cut at the back of my head. I ran into the compound of my brother called Obishile.”

P.W.1 Dr. Anyaegbunam Azike, Senior Medical Officer in charge of Nnewi General Hospital testified that on examination of the body of the deceased, a female child aged about eight months he found a lacerated, wound, concentric in shape bisecting the right ear and involving the skull bone, that in his opinion the cause of death was shock from haemorrhage and that an instrument with a sharp edge like an axe or a cutlass could have caused such a wound.

The appellant put up the defence of alibi in his statement to the Police, Exhibit 2, and testified on oath in support of his case. He testified at that the material time when the child, Monica Okeke, was killed he was at the house of one Dorothy Muokwe to whom he referred as his grandmother in his written statement to the Police, Exhibit 2 and as his aunt in his oral testimony at Ojoto where he had gone to sleep, that he could not therefore have had the opportunity to kill her and did not kill her or wound anyone at the scene of the Incident. He did not call any witness to support his case or his defence of alibi. The trial judge carefully considered the appellant’s defence of alibi and rejected it. The trial court also quite rightly disregarded the testimony of P.W.8, the investigating police officer, to the effect that he had inquired from Dorothy Muokwe who said that the appellant did not sleep in her house that night, as being mere hearsay. Learned counsel for the appellant made a half hearted application to call Dorothy Muokwe (whose deposition had been taken in the lower court) as a witness for the defence. Learned counsel for the prosecution stated that she had no objection as the witness’s name was at the back of the indictment. The application was nevertheless withdrawn. In Yanor 8 Anor v. The State (1965) N.M.L.R. 337 this court held that on the defence of alibi, the law is that evidence of the alibi should not be disregarded by a trial court unless there is stronger evidence against it and that, while the onus is on the prosecution to prove the charge against an accused person, the latter has the duty of bringing the evidence on which he relies for his defence of alibi. Having regard to overwhelming evidence which was accepted by the trial Court, of the two eye witnesses, P.W.3 and P.W.9, of the appellant’s presence at the scene and of his actual commission of the offence, the defence of alibi was in our view rightly rejected, as also the wild suggestion unsupported by any evidence whatever, that the murder was committed by another lover of P.W,3.

It is observed that the learned trial judge made use of Exhibit 1, the depositions taken in the Magistrate’s Court, quite improperly in our view, as evidence of the presence of P.W.9 at the scene of the murder and of the location at which the murder was committed. Exhibit 1 was admitted in evidence at the instance of the defence with a view to discrediting the testimony of P.W.3 by attempting to show that P.W.3 had previously made statements on oath in a deposition in the Magistrate’s Court which were inconsistent with her present testimony an attempt which proved to be unsuccessful. The contents of Exhibit 1 were therefore inadmissible for the purpose for which they were used. See R. V. Akanni (1960) 5 F.S.C. 120 and R. V. Ukpong (1961) 1 All N.L.R. 25. However, we are firmly of the view that there has been no miscarriage of justice as a result of the improper admission of this evidence, and we are also satisfied that the proviso to section 26(1) of the Supreme Court Act. No. 12 of 1960, would have been rightly applied in the circumstances, If the point had been raised by the appellant.

The learned trial judge rightly, in our view believed the evidence of the witnesses for the prosecution and rejected the defence of the appellant and came to the only possible conclusion, on the evidence before him, that the appellant is guilty of the murder of Monica Okeke, and convicted the appellant accordingly and sentenced him to death. Upon the hearing of his appeal, learned counsel for the appellant conceded rightly in our view, that he could find nothing useful to argue in favour of the appellant. The learned Senior State Counsel of Anambra State for the respondent agree that there was nothing useful that could be argued in favour of the appellant.

We are satisfied that the findings of fact of the trial court were amply supported by the evidence, and we accordingly, on the 6th of May, 1976, dismissed the appeal and affirmed the conviction and sentence of the appellant.

Appeal dismissed.