**ISE IBU OJO**

**V****.**

**THE STATE**

SUPREME COURT OF NIGERIA

28TH NOVEMBER, 1973

SUIT NO. SC 176/1972

**LEX (1973) - SC 176/1972**

**OTHER CITATIONS**

2PLR/1973/57

(1973) 11 S.C. (REPRINT) 199

BEFORE THEIR LORDSHIPS

TASLIM OLAWALE ELIAS, C.J.N.

GEORGE SODEINDE SOWEMIMO, J.S.C.

DAN IBEKWE, J.S.C.

**ORIGINATING COURT**

HIGH COURT AUCHI, IN THE MIDWESTERN STATE

**REPRESENTATION**

Mr. M. A. BASHUA, for the Appellant.

Mr. W. O. O. AGAHOWE, (Principal State Counsel, Mid-Western State), for the Respondent.

**MAIN ISSUES**

CRIMINAL LAW AND PROCEDURE:- APPEAL*:*-Murder- Proof of – Defences – Insanity – Where Court misapprehended “partial delusion” for “black-out” - Whether fatal to conviction based thereon

CHILDREN AND WOMEN LAW:- Matricide - Unlawful killing of mother by her son – How treated by court

HEALTHCARE AND LAW:- “Partial delusion” and “black-out” – Forms of insanity – Failure of court to distinction between both – Whether fatal

**PRACTICE AND PROCEDURE**:-

APPEAL:- Grounds of appeal – When court deems two grounds as having been argued together – Legal effect

**MAIM JUDGMENT**

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

The appellant, who was the accused in charge No. HAU/10/72 before the High Court Auchi, in the Midwestern State, was convicted of the charge of unlawfully killing his mother and sentenced to death on 19th May, 1972. He has appealed to this Court against his conviction.

At the hearing of the appeal only two out of the six ground of appeal filed were argued before us. They are:

“5. That the prosecution having failed to rebut the defence of delusion, hallucination and dissolution, the learned trial judge erred in rejecting these defences and for their criminal effects on the defences of accident, mistake and extraordinary emergency.

“6. In view of the fact the defence of the accused is that of that of partial delusion the learned trial judge was wrong in law in not properly directing his mind to the provision of paragraph 2 of section 26 of the Criminal Code and thereby occasioned a miscarriage of justice.”

The fact of the killing is not in dispute. The defence of the accused is that, on the material day, he thought he had attacked a snake, whereas in fact it was his mother on whom he had inflicted fatal injuries with matchet cuts.

The learned trial judge, after a review of the evidence before him, rejected the evidence given by the accused in his defence. He held that the appellant had deliberately lied when he said that it was in the mistaken belief that he was killing a snake that he killed his mother. On this issue the learned trial judge had this to say:

‘The accused is a young man of about twenty-one years of age, of average development and height, quite strong, intelligent and mentally alert.

After watching him very carefully and judging from his reactions to the examination and those I addressed to accused is a cunning person with a deep and wicked mind and from his calm disposition throughout his trial, I am satisfied that the accused’s mind remained untouched by the brutality of his matricidal act in respect of which he continued to exhibit an air of unrepentant detachment contrary to even what he himself said in court as to how, his mother, in her lifetime, was loving and helpful to him and how she always felt concerned about his illness.

The accused did not impress me as a witness of truth; In fact, I am satisfied that accused is not a person to be believed on his oath and that he lied deliberately to this court when he said that he saw a snake with the aid of the lamp he carried that night on his return from a visit to his friend by name Sadiku and that what he was cutting with his matchet - Exh. “D” that night appeared to him as a snake and not a human being; I am satisfied, and I also so find, that accused suffered from no illness the chest pain that night and that he set out that right deliberately, for reason or reasons known to him, to kill his mother, identified her where she slept with the aid of the lamp he carried in one hand and set upon and killed her with the cutlass he armed himself with for that purpose.”

At the hearing of the appeal, learned counsel for the appellant chose to argue ground 6 first and relied on the same arguments to support ground 5 as well. In this wise, we consider the two grounds as having been argued together. Counsel referred to that portion of the judgment in which the learned trial judge suggested a possible defence of a ‘black-out’ instead of that urged on him by the counsel who defended the accused in the lower court. We think it will be more intelligible to refer to the whole paragraph on which counsel for the appellant had based his complaint. The learned trial judge said:

‘To my mind, having considered the submissions made on accused’s behalf against the back-ground of the evidence adduced before me by the prosecution witnesses and by the accused, the defence of the accused is not one of mistake, accident, and/or extra-ordinary circumstance under section 22, 23 and 24 of the Criminal Code respectively because nowhere in accused’s statement to the police i.e. Exh. “E” or in his defence in court did he say that he knew, during or at the later stage of wielding his matchet, that he was cutting his mother while in fact engaged in trying to kill an actual snake and because this court has found that there was, in fact, no snake seen by the accused that night.

Further to the above, the defence of the accused to my mind is one of “blackout’- i.e. that as a result of the attack of his illness i.e. chest-pain, he did not know and was not conscious of what he was doing at the material time.”

Learned counsel in his submission contended that the learned trial judge did not consider the defence of partial delusion which was, according to him, open to the accused. Reliance was placed by counsel on the evidence of accused that he was suffering from a certain ailment when he committed the offence. Further reference was made to his earlier evidence that he had been suffering from this ailment and had had treatment at Okene hospital and that his deceased mother occasionally brought some medicine to him to use. But the learned counsel did not draw our attention to the finding of the learned trial judge that he did not believe the accused at all. He used the stronger expression that the accused “lied deliberately’.

This defence can only be available if there are facts found which sufficiently support such a defence. It is this aspect of the defence which the learned counsel contended should have been considered under the provisions of Section 26 of the Criminal Code of the Western State. That section provides:

“A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to know that he ought not to do the act or make the omission.

A person whose mind, at the time of his doing or omitting to do and 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 provision of this section is the same as that of Section 28 of the Criminal Code of the Laws of the Federation. The learned trial judge examined the defence of insanity under Section 26 of the Criminal Code of the Western State, which is the applicable law in the Mid-Western State. On the second paragraph of sections 26 which deals with defence of delusions, the learned trial judge said:

“I do not accept the accused’s story of a “black-out” as I believe that it was false and that accused connected it as a defence for his brutal act of matcheting his mother to death in the statement he made to the police. I am reinforced in this belief by accused’s statement to the police that he, in fact, killed a snake which someone took from him that night - nothing of which, in fact, happened as he later said in his evidence in court; and also by the fact that the accused, in court, said that the snake he saw by the three women that night was “very big” - about 1 foot in diameter and that it was close to the woman when he saw it, and that when he went and armed himself with a matchet, he came back to meet the snake still stationary and that he then proceeded to cut it with his matchet. This story by the accused about the so-called snake, to me is incredible, fabricated, and fantastic and unworthy of being believed.

I find a lot of similarity between the facts of this case and those in the case of Phillip Dim v. The Queen as reported in (1952) Vol 14 of the West African Court of Appeal Reports at pages 154 -157 and in my view, the facts and circumstances of this case are more unfavourable to the accused in this matter than in the case just referred to in which the appeal against conviction for murder by the said Phillip Dim was dismissed.”

From the above it seems clear that the learned trial judge’s mind was beclouded by his view that the “partial delusion” from which the appellant alleged he was suffering was in fact a “black-out.” A “black-out” suggests ‘loss of memory’. We are satisfied, however, that this misconception did not affect the consideration which the learned trial judge gave to the partial delusion, which the appellant said that he suffered from after experiencing some pain in his chest. The learned trial judge believed the evidence of the prosecution witness that, for the period of four years when the accused lived in the village, he did not show any sign of abnormal behaviour or suffer from any other abnormality. As a matter of fact, apart from the appellant himself, no other person saw or knew of the incident whereby he alleged that he cut himself with his matchet. The appellant did not say that he saw a snake in place of his mother where she slept. On the contrary, with the aid of a lantern which he was carrying that night, he saw his mother and the other two women sleeping at the apartment he arranged for them. The snake he alleged he saw was lying on the side of her mother. With the aid of the light from the lantern, he got a matchet and attacked the ‘snake’. But, surprisingly, when the village head questioned him as to why he killed his mother, he replied that she had refused to hand over to him the refund of dowry paid by his former wife. The appellant earlier stated in defence that he was with one Sadiku when he had his usual attack of chest pains and that Sadiku suggested that he should return home.

He however, failed to call Sadiku as a witness. The learned trial judge held that the defence of partial delusion, that is, mistaking a snake for his mother, was an after-thought. We are unable to say that, on the evidence and findings of the learned trial judge, his conclusion was not justified.

It is a settled principle that an accused in a murder charge is not restricted in the consideration of his defence to the defence raised by him, but it is open to the court to consider other defences available to the accused on the facts preferred or established before the court of trial. On appeal, the appeal court will consider all the defences open to the appellant on the facts established in the court of trial, in spite of the fact that such defence or defences were not considered in the lower court. The limitation must always be observed that counsel must be satisfied that there are facts established which are likely to be considered as adequate proof of such defences. In a trial court, the judge will, beside any defences put up by an accused, consider such other defence or defences as are open to an accused on such facts as are found by him and which may be considered as adequate proof. A court of appeal will always, as this court has established the principle in several of its judgments, consider all defences available to an appellant in the type of offence mentioned earlier, whether raised on appeal by counsel or not, provided there are facts established in the lower court capable of being considered as adequate proof of such defences. Counsel should, however, avoid raising contradictory defences as in this case, for instance, partial delusion and provocation.

We are therefore satisfied that the learned judge did consider the defence of insanity based on partial delusion as set out in paragraph two of section 26 of the Criminal Code of the Western State. We agree with the learned trial judge that not only was there no adequate proof of partial delusion, which he wrongly described as ’black-out,’ but also that appellant deliberately killed his mother. In this we would like to adopt the view of the West African Court of Appeal in Dim v. Queen 14 WACA 154, where Jibowu (Ag. S.P.J.) as he then was, said in delivering the judgment of the Court at page 157 as follows:

“We agree with the learned judge that the defence of ‘black-out’ (partial delusion) will exploited and become prevalent if the defence is allowed without adequate proof.” (words in bracket and the Italics are ours).

In the circumstances of this case for the reasons which we have given, we are satisfied that there was no adequate proof of the partial delusion alleged by the appellant, and we therefore confirm the verdict of the trial judge.

The appeal fails and is accordingly dismissed.

Appeal dismissed.