**OKON JOHN UDO**

**V**

**THE STATE**

SUPREME COURT OF NIGERIA

1ST DECEMBER, 1976.

SUIT NO. SC 173/1976

**LEX (1976) - SC 173/1976**

**OTHER CITATIONS**

2PLR/1976/109 (SC)

(1976) 12 SC 63

**BEFORE THEIR LORDSHIUP**

GEORGE SODEINDE SOWEMIMO, J.S.C.

MUHAMMED BELLO, J.S.C.

ANDRES OTUTU OBASEKI, Ag. J.S.C.

**REPRESENTATION**

O. O. JIBOWU for Appellant.

E. B. JAMES, Principal State Counsel, Cross River State for Respondent.

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

CRIMINAL LAW AND PROCEDURE*:-* Murder - Proof of - Confessional statement – Denial of statement at trial – How treated

CRIMINAL LAW AND PROCEDURE*:-* Defences *-* Pleas of Insanity - Presumption of sanity – Statutory foundation – Where deemed not rebutted – Relevant considerations

AGRICULTURE AND FOOD LAW:- Farm labour/Employment – Wages – Dispute arising therefrom – Implication for safety of lives and justice administration

CHILDREN AND WOMEN LAW: *Women/Children and Security/Dispute Resolution –* Gruesome assault and murder of mother and her children due to wage related disputes directly unconnected with them

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE:- Unsworn evidence of a child – Admissibility – Whether requires Corroboration

**MAIN JUDGMENT**

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

We dismissed this appeal and affirmed the conviction and sentence on 11th November, 1976. We now state our reasons.

The appellant was convicted in the High Court, Calabar, on a charge of murder of Paulina Akpan and was sentenced to death on 5th April, 1976. The facts of the case proved by the prosecution at the trial are simple. The Appellant was a farm labourer. On 2nd February, 1974, at about 7.00 p.m., he went to the house of his employer, Etim John, to demand for the payment of his wages. It appears for some reason, which was not disclosed by the evidence, his employer refused to pay him and consequently, a fight ensued between the Appellant and his employer’s wife, Mrs. Etim John. Enraged by the events, the Appellant ran to his house and, having armed himself with a matchet, he returned to his employer’s house and matcheted Mrs. Etim John to death. Then he proceeded to a neighbouring house, to wit the house of Effiong Udosen (PW1) wherein he butchered two children. Paulina Akpan, for whose murder the Appellant was convicted, was the mother of the two children butchered. She was carrying one of the corpses of the children to Akpan when the Appellant emerged from the bush and inflicted several stabs with his matchet on her nose, ribs and stomach. She died there on the spot. The only eye-witness to the butchery was her eleven-year old child (PW2), who was also stabbed on the hand by the Appellant. At about 8.30 p.m. the police arrived at the village. P.C. Ndarake Atteh (PW5) saw the Appellant in another house stabbing a goat. The officer shot at the Appellant but missed his target. The Appellant fell down and then got up and ran into the bush. The officer found two matchets stained with blood at the place the Appellant had fallen down.

On 5th February, 1974, the Appellant was arrested on the beach by a fisher-man (PW4), who took him to the Chief of their village. The Appellant had a matchet in his possession and the fisherman disarmed him of it. In his evidence, the fisherman stated:

“Before I took him to the Chief I asked him why he was running away. His reply was that someone had killed his mother and her two children. When I took him before the Chief he told the Chief that he had been a domestic servant to someone who would not take care of him so he had to run away.

On the following morning when his hands were tied he then confessed that he had killed someone. He said he killed one person.”

The fisherman further stated that the Appellant’s hands were tied because the Appellant had taken another matchet in the chief’s compound and had been causing trouble.

On 6th February, 1974, the Appellant made a voluntary confessional statement to the police officer (PW6) which was admitted in evidence at the trial as Exhibit 5. After having stated therein that he had matcheted his employer and the employer’s wife on account of his employer’s refusal to pay him his wages, he proceeded to state in Exhibit 5 as follows:

“I ran to the house of Effiong Udosen who is brother to him, (his employer), with my matchet in my left hand and while my right hand was handling the matchet I got from the house of Etim Ikotebinya. When I got to his brother’s house who is Effiong Udosen, I saw the house members running after, I then matcheted his wife named Paulina Akpan and his other three children. When I matcheted Paulina Akpan she fell down.

The reason why (sic.) killed the wife of Effiong Udosen and his two sons is because his brother Etim Ikot Ebinya owed me N4.00 (four Naira). After I have killed the wife of Effiong Udosen and his two sons, I ran away... I ran to Ikot Ukpa village. In that Ikot Ukpa village, I was in the bush. Before I ran out of Obot Akpang on the night of that Saturday, I left two of the matchets I was holding and ran away with the third matchet in my hand. When I got to the beach of Ikot Ukpa on 4th February, 1974, I saw one canoe man who was afraid of me.”

On the 7th February, 1974, the Appellant was taken before two superior police officers, namely, ASP Festus Umoh and Sgt. David Ikot Ekpo, to whom the Appellant confirmed that he had made his statement, Exhibit 5, voluntarily.

The Medical Superintendent (PW3) who performed a post-mortem examination on the body of Paulina Akpan, found deep lacerations on her mouth, her head and her left shoulder and certified the cause of death to be traumatic shock from multiple injuries caused by matchet cuts.

The Appellant was the only witness for the defence at the trial. His defence was an unqualified denial of having caused the death of Paulina Akpan. He testified that on 2nd February, 1974, he had gone to the house of Etim Udosen to demand for the payment of his wages; that not only Etim had refused to pay him but also Etim’s wife had picked a quarrel with him; that when he attempted to run away, Etim’s wife pursued him and hit him with a stick and that her husband, Effiong Udosen and the children of Etim also joined her in beating him. He further testified that Etim’s wife gave him a matchet cut on his right arm and when he tried to extricate himself from her, the matchet she held gave her a cut. He denied having killed Pauline Akpan. He also denied having made Exhibit 5 and having been taken before the two superior police officers for its confirmation by him.

In a reserved judgment, the learned trial judge with meticulous care and detail considered the evidence adduced by the prosecution and that of the Appellant and the submissions of counsel on both sides. He believed the prosecution witnesses and accepted their evidence. He did not believe the Appellant and rejected his defence. He found from the medical evidence that the cause of Paulina Akpan’s death was due to multiple injuries caused by matchet cuts.

In receiving the evidence relied upon by the prosecution showing that the Appellant was responsible for inflicting the fatal injuries on the deceased, Paulina Akpan, the learned trial judge appreciated that it was the unsworn evidence of a child but whom the trial judge found was possessed of sufficient intelligence justifying the reception of the unsworn evidence and that the child understood the duty of speaking the truth. The trial judge further found that the unsworn evidence of the child was corroborated, as is required by section 182(3) of the Evidence law applicable in the State, by the voluntary confession of the Appellant in Exhibit 5, the Medical evidence and the matchets found in possession of the Appellant.

Although insanity was not pleaded by the defence at the trial, the learned trial judge thought it proper to consider that defence in view of the fact that the Appellant ran amok and committed butchery without apparent reasonable cause. Having considered the fact that the Appellant escaped from the scene of the crime when the police arrived at the village; that he hid in the bush for three days after the incident and his vivid account of the events surrounding the commission of the offence as narrated by the Appellant in Exhibit 5, the learned trial judge concluded that the conduct of the Appellant was more consistent with the presumption of sanity under section 27 of the Criminal Code applicable in the State than rebutting that presumption. He found no evidence to justify a verdict of insanity within the meaning of section 28 of the Criminal Code. He convicted the Appellant accordingly.

At the hearing of the appeal before us, both counsel for the Appellant and for the Respondent had nothing to urge in favour of the Appellant. The grounds of appeal filed by the Appellant read as follows:

GROUNDS OF APPEAL

1. That the Learned Judge erred in law by convicting me for the murder of the deceased.

2. That I was being owed, and after four months I went to collect the money.

3. That instead of the money being paid, the wife to the debtor started a fight and the debtor assisted her, so I had to defend myself.

4. That so many people came to offer them assistance, I had to run for dear life.

5. That when I left the debtor and the wife they were still alive even till date.

6. That the deceased was not the debtor, and I never had any quarrel nor fight with her.”

The aforementioned grounds amount to the general ground that the decision is unreasonable and cannot be supported having regard to the evidence. In our view, the evidence against the Appellant is overwhelming and the decision of the learned trial Judge is impeccable. We accordingly dismissed the appeal for lack of merits.

Appeal dismissed.