**SILAS UKADIKE**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

27TH JUNE, 1973

SUIT NO. SC 70/1973

**LEX (1973) - SC 70/1973**

**OTHER CITATIONS**

3PLR/1973/64 (SC)

(1973) All N.L.R 644

(1973) 6 S.C 14

**BEFORE THEIR LORDSHIPS:**

ELIAS, C.J.N.

FATAI-WILLIAMS, J.S.C.

IBEKWE, Ag, J.S.C.

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

CRIMINAL LAW:- Murder- Proof of - Defence of insanity – Onus of proof – Whether on person asserting same - Standard of proof - Whether the kind of evidence required should rate no higher that the onus on a plaintiff or defendant in a civil suit

CRIMINAL LAW:- Criminal liability - Proof of - Defence of insanity – Rule that mere absence of any evidence of motive for a crime is not a sufficient ground upon which to infer mania/insanity - Where there is as much evidence indicative of insanity rather than the opposite – Whether the absence of any evidence of motive becomes relevant to the point at issue and material to it

CHILDREN AND WOMEN LAW: *Young Persons and access to critical healthcare –* Attack of insanity/mental blackout on 18 year old – Recourse to herbalist – Implication for security of lives, justice administration and family wellbeing– *Young women and security of lives/limbs –* Young woman grievously assaulted by mentally ill brother – How treated

HEALTHCARE AND LAW:- Insanity/Mental unsoundness – Absence of emergency care for insanity sufferers – Recourse to ‘herbalists’ – Implication for crime, family wellbeing and justice administration

HEALTHCARE AND LAW:- Proof of mental unsoundness/insanity – Nature of evidence required – Evidence of a person who is not a credentialed psychiatrist suffices – Evidence of doctor in other fields – How treated

RELIGION AND LAW:- Mental health and belief system – Belief in Spirits of the ancestors – Where complained of as basis for illness – Resort to herbalist – Effect

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE:- Criminal proceedings – Proof of mental unsoundness – Onus of proof – On whom rests - Standard of proof required

**REPRESENTATION**

Mr. F.O. Akinrele, for the Appellant.

Mr. M.C. Ejiofor, Principal State Counsel, for East-Central State.

**MAIN JUDGMENT**

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

In the High Court of Okigwe Judicial Division, the accused was convicted by Nwokedi, J. of the murder of one Cyril Ukadike on June 16, 1970, contrary to section 319(1) of the Criminal Code.

The facts, which are straight-forward, are these. The accused, a young man of about 18 years of age, who was not known to have shown signs of abnormal behaviour before, woke up in the middle of the night previous to the date of committing the offence, and complained to his parents (2nd and 3rd P.Ws.) that his head was “hot and paining” him and that the “spirits” of his ancestors were harassing him. He was persuaded to go back to sleep and, in the following morning, his father went out to look for a native doctor” to come and treat him. In the meantime, the accused attacked his younger sister, beating her up so much that blood flowed from her mouth as she lay on the ground. The mother (2nd P.W.) on seeing this, raised an alarm and rushed out into the street where she met one Edward Ezejiofor (1st P.W.), one of the accused’s former class teachers, who followed her home and who managed to separate the accused from his sister; the latter ran away soon thereafter. Ezejiofor himself was then pounced upon, was given several fist blows and had his dress torn up; he fought back and later got away, unsuccessfully pursued by the accused. Soon afterwards, Ezejiofor said he heard cries from the direction of the house to the effect that the accused had killed somebody. When he and other people arrived at the scene, they found the dead body of a boy lying on the ground with several machet cuts. They saw the accused’s father and mother, but he himself had escaped into the bush and climbed up a tree nearby. The accused’s mother (2nd P.W.) confirmed this whole story and added that he also gave his father (who was returning from a native doctor) a machet cut on the head when the latter tried to stop him from hacking the deceased to death. The accused’s father (3rd P.W.) also confirmed most of the story, and both he and the 2nd P.W. expressed surprise at the sudden behaviour of the accused that morning. He (3rd P.W.) said that there was no history of insanity in his own family or in that of the accused’s mother.

Patricia Ukadike (4th P.W.), another sister of the accused, gave full eye-witness’s account of the whole incident. She said that the accused met her and the deceased as they were returning from the farm that morning, suddenly seized the latter’s matchet, and gave him several matchet cuts so that the deceased fell down and died there and then. As their father ran to the scene on hearing her raise an alarm, the accused dealt him a matchet cut and escaped into the bush until the police arrived, arrested him and took him away. The deceased’s body was then removed to the hospital for autopsy.

The two police officers (5th and 6th P.Ws.) gave evidence of the investigation of the incident and the subsequent arrest of the accused. Corporal David Ogoke (5th P.W.) said that the accused was arrested in the bush after putting up some resistance, that he interviewed him immediately thereafter, and that the accused was “unable to make any coherent statement then as he was extremely restless and rolled himself on the ground all the time.” When he took him to the Mbano police station, another police officer (6th P.W.) took over from him the investigation of the case. The accused was later removed to the Owerri prisons. It does not appear that any statement was ever taken from the accused even after he had calmed down. Also, Dr. Umunna, who performed the postmortem on the deceased’s body at the Umunkwo Community Hospital, was not available to give evidence at the trial; there was evidence that his whereabouts were unknown and that no report of his post-mortem examination was available. There was accordingly no medical evidence of the cause of death of the deceased.

Led in evidence by his counsel, the accused calmly said that he left school in 1967 after completing his Elementary Standard Six, that he later became a farmer, that he learnt from his mother (2nd P.W.) that the deceased who was his half-brother was dead, but that he could not recollect anything about the circumstances of the deceased’s death He further said that he had had no previous quarrel with the deceased, that it was from his mother that he also learnt of his attacks on his father, his younger sister and his former class teacher on the day of the incident, and that he was surprised and sorry when his mother told him that he killed the deceased. While he said, under cross-examination, that he remembered having been first taken to Mbano police station and later to the Owerri prisons where one Dr. Jeremiah Iwenofu (1st P.W.) of the Owerri General Hospital visited him on several occasions, he did not remember having killed anyone, but he would agree that it was wrong to kill someone. Dr. Iwenofu testified that, about a month after the incident, he saw the accused for the first time in the Owerri General Hospital on August 18, 1970, in the course of his official duties. His evidence was thus summarised by the learned trial Judge:

“He said that even at that time, the accused talked very glibly about killing someone as if killing a person was the right to do. At times, according to him, accused was incoherent and disorientated and appeared unable on several occasions to distinguish right from wrong. After observing the accused for sometime, he formed the impression that accused’s case was one for a psychiatrist and recommended reference of accused’s case to that quarters. On 17th March, 1972, he again saw the accused and by that time accused had become a completely different person from what he was when he saw him earlier. He now talked sense and was able to answer all his questions intelligently. He thought physical illness such as cerebral malaria could produce temporary insanity.”

The learned trial Judge then observed that there was no evidence before him that the accused was even a victim of cerebral malaria; he, however believed the evidence of the 3rd and the 4th P.Ws. and found as follows:

“I am also satisfied from the evidence before me that the deceased died on the spot where he was attacked with matchet by the accused. Even though Doctor Umunna who performed the post-mortem examination was not available to give evidence of cause of death, I am satisfied that the deceased died from the injuries sustained from the matchet attack by the accused.”

In our view, the material consideration was thus put by the learned trial Judge himself:

‘The question that arises is why did the accused kill the deceased? Was the accused insane at the time that he killed the deceased? If I accept the defence that the accused was insane at the time of the murder, then accused would escape responsibility for the death of the deceased.”

However, after reviewing the evidence of all the witnesses who appeared before him, the learned trial Judge observed that there was no evidence of history of insanity in the family of the accused, that all the evidence tended to show that he was “a normally behave person” except that on that occasion “that act of the accused in running into the bush soon after the murder was in my view an act more consistent with sanity than with insanity,’ that although “the accused suffered from some delusion,” yet “such delusion to my mind cannot amount to mental infirmity sufficient to neutralise the capacity of the accused to control his actions before, during the subsequent to the murder of the deceased,” that Dr. Iwenofu not being a psychiatrist could not give evidence ‘that the accused was in fact insane at the time he committed the murder,’ and that he was “unable to find any evidence of provocation given to the accused by anybody.” He, therefore, convicted the accused of the murder of the deceased.

The present appeal has been brought against this decision. The only two grounds of appeal argued before us are as follows:

“(1) That the learned trial Judge erred in law in convicting the appellant when there was a preponderance of evidence of insanity.

(2) That the judgment is unreasonable unwarranted and cannot be supported having regard to the evidence.”

Mr. Akinrele, learned counsel for the appellant, in his submission that there was preponderance of evidence of insanity on the part of the accused, set forth his argument by reference to the following four main points:

(i) That there was abundant and uncontradicted evidence that the accused had in the middle of the night preceding the morning of the incident complained of the “spirits” of his ancestors worrying him, and also that his head was “hot” and “paining” him;

(ii) That he was found in the morning following this complaint attacking everybody- sister, brother, father and teacher – without any apparent cause or reason;

(iii) That when arrested by the police, he was unable to make any coherent statement because he was “extremely restless and rolled himself on the ground all the time”; and

(iv) That he was seen by a medical doctor in the ordinary course of his duties looking after the prisoners in custody and found to be abnormal.

It was his submission that the learned trial Judge, who found that all these facts were established, was wrong to have rejected them and convicted the accused. The learned trial Judge wanted Dr. Iwenofu to be a psychiatrist before his evidence could be “acceptable” to him as to the behaviour of the accused when, according to the learned counsel, any ordinary persons such as a warder could have given such evidence. He further contended that the doctor’s evidence should not have been rejected merely because he saw the accused about one month after the accused had committed the offence. In view of the decision in Rexv. Inyang 12 W.A.C.A. 5, at p.7, the learned trial Judge was wrong in saying that the doctor had no opportunity to observe the accused before the killing of the deceased. Mr. Akinrele further submitted that, besides the accused’s own oral evidence, there was medical evidence that he had a “black-out,” and that the learned trial Judge was wrong in holding that mere absence of motive does not lead to an inference of insanity on the part of the accused. We think that this submission is a sound one. Although in Rex v. Dim 14 W.A.C.A. 154, it was held that ‘where the only evidence tending to show insanity is the accused’s statement in the witness box that he had a ‘black-out’ the apparent absence of motive is not necessarily to be taken as indicative of insanity,’ besides the accused himself, who gave evidence, testified that he was abnormal on that occasion.

Again, learned counsel for the appellant submitted that Corporal David Ogoke (5th P.W.) gave evidence that the accused was unable to make any coherent statement immediately following his arrest, “as he was extremely restless and rolled himself on the ground all the time.” It is his contention that this is evidence of contemporaneous facts showing the appellant’s state of mind during the material time, as also the evidence of his parents that the appellant woke up on the middle of the previous night and that he complained of “attack of something in his head.” We think that there is merit in this submission. Mr. Akinrele made a final submission that the mere fact that the accused fled after the offence is no evidence of guilt, and we agree with him.

Mr. Ejiofor, learned Principal State Counsel for the East-Central State, began by reading out section 28 of the Criminal Code which 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 understand what he is doing, or of capacity to control his actions, or 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 an 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.”

He then argued that the only evidence of insanity on the part of the appellant is that of his father, mother and sister. He further contended that, although the appellant’s behaviour was shown to have been abnormal at the material time, The State v. Inwuanyanwu 8 E.N.N.LR. 85, at p.92 is authority for the proposition that not every instance of abnormal behaviour is evidence of insanity. He also agreed with the learned trial Judge that the fact that the appellant ran away into the bush immediately after the offence was evidence of his guilt. We do not accept these submissions of Mr. Ejiofor for the reasons already stated above.

In the first place, it is interesting to observe that the learned trial Judge, after citing section 28 of the Criminal Code in some detail, made the following findings:

(a) “No doubt, accused might have been a victim of some mental aberration. But I do not think that accused’s state of mind, then could be regarded as evidence of ‘such natural mental infirmity i.e a defect in mental power neither produced by his own fault nor the result of the disease of the mind that deprived him at the time of the murder of a capacity to understand that what he was doing was wrong or to control his actions or to know that he ought not to do the act which he did.”

(b) “I have no doubt as I said earlier that the accused suffered from some delusion when he claimed that he was attacked in the night preceding the murder by the spirits of his ancestors. But such delusion to my mind cannot amount to mental infirmity sufficient to neutralize the capacity of the accused to control his actions before, during and subsequent to the murder of the deceased.”

(c) “I accept that the accused’s behaviour on the day of the incident was abnormal perhaps to the extreme.”

(d) “Although the conduct of the accused defies explanation, I have no alternative but to find the accused guilty of the murder of Cyril Ukadike.”

We think that the leaned trial Judge should not, in view of these findings, have so interpreted “delusion” within the context of section 28 of the Criminal Code as to convict the accused of murder. In R v. Tabigen (1960) FS.C.8, the Federal Supreme Court had occasion to point out, inter alia, as follows:

“We do not regard a defect in mental power as equivalent merely to an inability to master the passion. In the Mental Deficiency Act 1913 as amended, mental defectiveness is defined as a condition of arrest or incomplete development of mind and that or something like it may well be the meaning to be given to natural mental infirmity in the criminal Code.”

We would also refer to the following dictum of Verity, C.J., in R. v. Omoni 12 W.A.C.A. 511:

‘The Nigerian Law being what it is, it may be well to state quite clearly what in our opinion the defence must prove under that law, to establish insanity and to overcome the presumption that every man is sane and accountable for his action. First it must be shown that the prisoner was, at the relevant time, suffering either from mental disease or from ‘natural mental infirmity’ as we have interpreted its meaning (i.e. a defect in mental power neither produced by his own default nor the result of the decease of the mind). Then it must be established that the mental disease or the natural mental infirmity, as the case may be, was such that, at the relevant time, the prisoner was as a result deprived of capacity:

(a) to understand what he was doing or

(b) to control his action or

(c) to know that he ought not to do the act or make the omission. It must further be remembered that if the defence be one of partial delusion, the provisions of the second paragraph in the Nigerian Section 28 are applicable and that they are similar to the Rule in MacNaughten”s case 8 E.R. 718 as to delusion.”

It is well established that, while anyone relying on insanity as a defence is under a duty to produce evidence in support of it, the kind of evidence required should rate no higher that the onus on a plaintiff or defendant in a civil suit: R. v. Onakpoya 4 F.S.C. 150; R. v. Ediom 14 W.A.C.A. 158. We think that the evidence produced in favour of the appellant in this case entitled him to the benefit of section 28 of the Criminal Code.

We would also point out that the learned trial Judge was wrong in discounting the argument put forward before him to show that the appellant’s behaviour amounted not only to mental abberration but could not otherwise be accounted for. While he was right in saying that the court has no duty to ascertain the motive for the act of the accused, we are of the view that he overlooked the true import of the following observation in R. v. Inyang 12 W.A.C.A. 5, at pp. 6-7, which he himself cited:

“Mere absence of any evidence of motive for a crime is not a sufficient ground upon which to infer mania. Where there is as much evidence indicative of insanity rather than the opposite as there was in this case, the absence of any evidence of motive may become relevant to the point at issue and material to it.”

We consider that the appellant’s case is one “where there is sufficient evidence indicative of insanity rather than the opposite.”

We accordingly set aside the judgment of Nwokedi, J. given on December 8, 1972, in the High Court of Okigwe Judicial Division, together with the conviction of the appellant for the murder of Cyril Ukadike. We substitute therefor a special verdict that when the appellant killed Cyril Ukadike on June 16, 1970, he was by reason of unsoundness of mind incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law. We, therefore, order that the appellant be confined in a mental hospital for treatment pending any further order of the Commissioner for Justice of the East-Central State: See sections 229 and 230 of the Criminal Procedure Law (Cap.31 of the Laws of the East-Central State).

Appeal allowed.