**RICHARD WILLIE**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

11TH DAY OF APRIL, 1968

SUIT No. S.C. 380/67

**LEX (1968) - S.C. 380/67**

**OTHER CITATIONS**

2PLR/1968/79 (HC-W)

**BEFORE: -** CHARLES OLUSOJI MADARIKAN, J.S.C.

**ORIGINATING COURT**

HIGH COURT, MID-WEST, HOLDEN AT WARRI (OBASEKI, J. Presiding)

**REPRESENTATION**

COLE - for the appellant

GBEMUDU - for the respondent

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

CRIMINAL LAW AND PROCEDURE:- Homicide – How proved – Burden on prosecution - Defence of insanity - Section 26 of the Criminal Code – What defendant must prove to succeed – Need for accused to go further to show that at the time of doing the act complained of he was insane within the meaning of section 26 of the Criminal Code

CHILDREN AND WOMEN LAW: - Women and Murder – Women and witchcraft – Brutal murder of mother accused of witchcraft poisoning producing stomach-ache in her assailant/son – How treated

RELIGION AND LAW: - Belief in witchcraft as cause of stomach-ache – Implication for crime and justice administration

HEALTHCARE AND LAW:- Access to healthcare and health education – Alleged poisoning and stomach ache – Reliance on home ‘cure’ administered at home by non-medical professional even in the face of deteriorating condition – Mental illness - Implications for crime and justice administration

**MAIN JUDGEMENT**

**MADARIKAN, J.S.C.** (delivering the judgment of the Court):

In charge No. W/1 7C/67, the appellant was convicted in the High Court, Warri, on the 31st October, 1967 of murdering his mother, Akpokveve Oguma, and sentenced to death by Obaseki, J.

The facts of the case were not in dispute. The appellant who was labouring under the impression that the deceased had poisoned him by witchcraft and thereby made him suffer from stomach ache demanded from the deceased an explanation as to why he had such illness. The deceased did not reply. Thereupon the appellant stabbed her with a knife and she fled. The appellant pursued her and assaulted her with a broken stool and also stoned her. He finally dealt a fatal blow on her head with a heavy grinding stone exhibit ‘A’. The case for the prosecution was substantially supported by the statement which the appellant made to the police exhibit ‘C’ and his evidence at the trial.

At the hearing of the appeal Mr. Cole who appeared for the appellant restricted his arguments to the two additional grounds of appeal which he argued together. They read:-

“(1) The appellant did not have a fair trial in that the learned trial judge who is not a medical expert failed to give any or sufficient consideration to the expert opinion of Dr. Stevenson which established that the appellant’s mental state was abnormal.

(2) In view of the testimony of the fast prosecution witness there was sufficient evidence before the court of trial which ought to have been considered on the defence of insanity. The learned trial judge therefore erred by finding that “there is no evidence that accused (appellant) was insane at the time he killed”.

He relied solely on the evidence of Dr. Stevenson which may be summarised thus in so far as it relates to his arguments:

(1) Dr. Stevenson first saw the appellant on the 26th November, 1966, and he observed that the appellant was normal.

(2) He next saw the appellant in December, 1966.

(3) Thereafter he saw the appellant on the 22nd July, 1967, and the appellant talked normally and sensibly to him.

(4) He observed the appellant a day before continuing his evidence on the 18th October, 1967 and formed the opinion that the appellant was not normal then. He concluded his evidence under cross-examination by saying-

I tried to find out from him why he killed his mother, he could give no sensible reason. He confirmed he killed his mother. He did not give me the impression yesterday that he knew it was wrong. He said he was sick at the time and that his mother was trying to cure him and for some reason he became annoyed and killed her. It is likely that the condition “of abnormality was present but latent when he killed his mother. I cannot swear to that. Now I can swear to it that he is abnormal mentally”.

Considering the evidence of insanity the learned trial judge said:

“The accused person gave evidence. Having watched him and heard him in the witness box I have formed the opinion that the appearance of mental abnormality was put up to deceive the Doctor. He had a vivid recollection of things that happened in his life and gave even the minute detail in his evidence. In his evidence he admitted he killed his mother because she was responsible for his illness which grew worse with treatment. He said inter alia:-

‘When I became ill I got a feeling somehow that she was responsible. She did all according to her to cure me of the illness. The harder she tried the worse the illness became. I then asked her to tell me how the illness came about and who was responsible. I petted her to tell me but she would not. I gave her 10 days and tried to get what I wanted out of her but she would not tell me. I decided to kill her and die too. So I killed her. A lot of people told me that my mother was responsible for the illness. At the time I committed the murder it was not their belief that made me kill her. It was because the illness was growing worse instead of growing better.’”

“I find as a fact that when the illness grew worse he decided to kill his mother and he attacked her and with the intention of killing her finally crashed a heavy grinding stone exhibit ‘A’ on her head and killed her. “

There was a feeble attempt to raise the defence of insanity. There is no evidence that accused was insane at the time he killed. This defence has not been established before me and I reject it”.

Mr. Cole argued that the evidence of Dr. Stevenson, an expert witness, as to the mental condition of the appellant was relevant by virtue of section 8 of the Evidence Law, and he further contended that being the evidence of an expert it was wrong for the court to reject it and replace it with the opinion of the judge, namely, “that the appearance of mental abnormality was put up to deceive the doctor”. He also submitted that if the court had accepted the uncontradicted evidence of Dr. Stevenson it would have been sufficient to ground the defence of insanity under section 26 of the Criminal Code.

Now section 26 of the Criminal Code provides as follows:

“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 capacity to know that he ought not to do the act or make the omission”.

In our view, to avail himself of the defence of insanity under section 26 it is not sufficient for the appellant to establish that he was mentally abnormal at the time of his trial, he must go further to show that at the time of doing the act complained of he was insane within the meaning of section 26. In the present case, the offence was committed on the 13th November, 1966 and there is nothing in the evidence of Dr. Stevenson to suggest that the appellant, on whom the onus of proof lies, was insane on that date. Indeed on the 26th November, 1966, Dr. Stevenson observed that the appellant was normal, and on the 22nd July, 1967, he also observed that the appellant talked normally and sensibly. Taken at its highest Dr. Stevenson’s evidence does not tend to show that at the time of killing his mother the appellant was 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. The question is not, what the appellant knew on the 17th October, 1967, but whether his capacity of knowledge was impaired by mental disease or natural mental infirmity on the 13th November, 1966. On the evidence before the lower court the judge, rightly in our view, came to the conclusion that the appellant failed to establish the defence of insanity. Both grounds of appeal must therefore fail.

We dismissed the appeal when it was heard on the 28th March, 1968 and these are our reasons for having taken that course.