**TOM ABUKAR**

**v.**

**THE STATE**

SUPREME COURT OF NIGERIA

31ST OCTOBER, 1969

SUIT NO S.C. 158/69

**LEX (1969) - S.C. 158/69**

**OTHER CITATIONS**

3PLR/1969/4 (SC)

**BEFORE THEIR LORDSHIPS:**

ADETOKUNBO ADEMOLA, C.J.N.

GEORGE BAPTIST A. COKER, J.S.C

CHARLES OLUSOJI MADARIKAN, J.S.C.

**ORIGINATING COURT**

HIGH COURT, MAIDUGURI (Hague J. Presiding)

**REPRESENTATION**

AKINSANYA for COLE - for the Appellant

LIBERTY, Senior State Counsel - for the Respondent

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

CRIMINAL LAW AND PROCEDURE: - Culpable homicide punishable with death under section 221 of the Penal Code – How proved – Defence of provocation – Wife taunting husband with alleged impotency – Whether Legal provocation - When attack bringing about murder is deemed premeditated and not in the heat of passion – How treated

CRIMINAL LAW AND PROCEDURE: - Evidence – Extra-judicial statement made to Police officer – Failure to take accused and his statement before senior Police Officer for confirmation – Effect

CHILDREN AND WOMEN LAW:- *Women and Murder/Healthcare/Religion* - Woman stabbed to death by Husband for allegedly committing adultery and taunting husband with his impotence - Lack of emergency healthcare services for critically wounded victims – Dispensary Assistant as medical practitioner available to pronounce death of woman and direct her burial – How treated

HEALTHCARE AND LAW:- Access to Healthcare – Sexual Impotence – Implications for marriage stability, matrimonial wrongs and justice administration

HEALTHCARE AND LAW:- Medical emergency services – Availability and access to – Dispensary Attendant as the only medic summoned to scene of brutal stabbing of woman – Dispensary Attendant making medical report on a murder crime scene and directing burial of murder victim without the intervention of a doctor or medical examiner – Implication for justice administration

RELIGION AND LAW - SHARIA LAW:- Matrimonial complaints disclosing sensitive issue between man and wife brought before an area court in the evening – Taunt of impotence against man - Propriety of Judge sending complainants/couple away because it was too late – Murder arising same night from unresolved issue – Same judge giving audience to the District Head of the Village who had arrested ‘impotent’ husband for the killing of the wife - Implication for justice administration

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The case for the prosecution was that the accused, his wife, Amina, her guardian and the mother of the accused went to Kyari Shettima (p.w.2), an Area Court judge, in the evening of the 7th January, 1969, to lodge a complaint, but Shettima sent them away because he thought it was too late. Amina however stated to the hearing of the accused that he was impotent but the accused denied being impotent. The party then left Shettima. Later that evening, the accused went to Lawal Mamman (p.w.1), the district head of the village, who noticed that the accused was holding a blood-stained knife. He therefore asked the accused what had happened and the accused replied that he had killed his wife. Mamman took the knife from the accused, tied the accused and took him to Shettima before whom the accused stated that he had stabbed his wife. Mamman and Shettima both went to the house of the accused where they saw accused’s wife, Amina, with a stab wound in her stomach and her intestines protruding out. Mamman then went to fetch the Dispensary Attendant but by the time he brought him to the scene, Amina had died.

DECISION(S) APPEALED AGAINST

The Appellant who was convicted by Hague J. in the High Court, Maiduguri, of culpable homicide punishable with death under section 221 of the Penal Code and sentenced to death.

ISSUE(S) FOR DETERMINATION ON APPEAL

*[Specific issues were not highlighted in the written judgment of the Court but the Court disposed of the appeal based on the three Grounds of Appeal which it outlined as follows:* ]

1. The judge misdirected himself.

2. The judge failed to give sufficient consideration to the defence of provocation.

3. “The learned trial judge ought to have rejected the admissibility of appellant’s statement to the police and the report of the dispensary attendant.

DECISION OF SUPREME COURT

1. In our view, there was overwhelming evidence to support the finding of the learned trial judge that the accused stabbed the deceased with a knife thereby inflicting a wound on her which resulted in her death.

2. We are firmly of the view that failure to take the statement of an accused person recorded by a police constable to a superior police officer to give the accused an opportunity of confirming or denying the statement cannot, eo ipso, render the statement inadmissible in evidence although it is a matter to be considered in deciding what weight to attach to the statement.

**MAIN JUDGEMENT**

**MADARIKAN, J.S.C.:-**

We now give our reasons, as we said we would, on the 19th of September, 1969, when we dismissed the appeal of this appellant who was convicted by Hague J. in the High Court, Maiduguri, of culpable homicide punishable with death under section 221 of the Penal Code and sentenced to death.

The case for the prosecution was that the accused, his wife, Amina, her guardian and the mother of the accused went to Kyari Shettima (p.w.2), an Area Court judge, in the evening of the 7th January, 1969, to lodge a complaint, but Shettima sent them away because he thought it was too late. Amina however stated to the hearing of the accused that he was impotent but the accused denied being impotent. The party then left Shettima. Later that evening, the accused went to Lawal Mamman (p.w.1), the district head of the village, who noticed that the accused was holding a blood-stained knife. He therefore asked the accused what had happened and the accused replied that he had killed his wife. Mamman took the knife from the accused, tied the accused and took him to Shettima before whom the accused stated that he had stabbed his wife. Mamman and Shettima both went to the house of the accused where they saw accused’s wife, Amina, with a stab wound in her stomach and her intestines protruding out. Mamman then went to fetch the Dispensary Attendant but by the time he brought him to the scene, Amina had died.

Both in his statement to the police (exhibit ‘C1’) and in his evidence at the trial, the accused admitted stabbing the deceased with a knife. His defence was fully spread out in exhibit ‘Cl’, the English version (exhibit ‘C2’) of which reads as follows:-

“I Tom Abukar to state what I know. That on the 7th January, 1968, we went before the Alkali of Gulumba, we have a case with my wife by name Amina, because my wife said that she don’t like me that I had no penis. It is about two years now she have been telling me like that. Then the Alkali told us that we should go and come back the next day on the 8th January, 1968, and we went together with her. In the night at about eight 20,00 hrs, after I have finished eating, I went to the place where my wife Amina is, on my arrival I met her with somebody a man, then the man ran away, and I was annoyed and I stabbed her with a knife. But I don’t know the man because it was the night. Then I left for Lawan Mamman Walasa and told him that I have stabbed my wife, he took me before court. Then I was brought before District Head Gulumba. That is all.”

His testimony at the trial was substantially the same as the statement (exhibit ‘C1 ‘) which he had made to the police. He testified thus:-

“I remember what happened about eighteen months. My wife was Amina. She is now dead. I married her two years ago. She was a good wife to me. I did have a quarrel with her. She accused me in court of not being a man. I was annoyed by this. This happened in court on a Monday. The Alkali heard some evidence and told us to return the following day. That evening I called my wife outside and asked why she had said I was not a man in front of so many people. She repeated this. I was so annoyed I stabbed her. It was in the night. I do not know what part of her body, I stabbed. I went to 1st p.w.’s house. I knew a man was chasing my wife. His name is Kyari. He lives at Walasa. Before I stabbed her I saw a man with her. He ran away, I have been on remand for 18 months. I regret killing her.”

In our view, there was overwhelming evidence to support the finding of the learned trial judge that the accused stabbed the deceased with a knife thereby inflicting a wound on her which resulted in her death.

In considering the defence of provocation raised by the accused, the learned trial judge said:-

“However provoking the deceased’s conduct may have been it was not of the grave and sudden nature which the law requires.”

Learned counsel for the appellant attacked this portion of the judgment and argued that the judge thereby misdirected himself, and also that he failed to give sufficient consideration to the defence of provocation. These were his main complaints on the 1st and 2nd grounds of appeal which he argued together.

It is clear from the evidence of the accused that he pitched his defence of provocation on two props, viz.,

1. That he knew Kyari had been making advances to his wife and that before stabbing his wife, he saw a man with her;

2. that his wife taunted him by saying that he was impotent.

With regard to the first point, the learned trial judge found as a fact that the evidence of the accused that, at the time of the incident, he found a man with his wife was an after-thought; and with regard to the second, the learned trial judge stated:

“There remains the issue of whether the accused was provoked beyond endurance by the insulting remarks of his wife, concerning impotence. While her complaint, by its very nature, must have been highly annoying to the accused, it is clear from the evidence that he premeditated the attack on his wife. I accept the evidence of 4th p.w., and find that he entered his wife’s bedroom in a furtive manner and with intent to inflict a wound on her which would bring about her death and did in fact result in death shortly afterwards.

Consequently, counsel for the defence’s plea for a reduction of the existing charge must be rejected. However provoking the deceased’s conduct may have been it was not of the grave and sudden nature which the law requires.”

No attempt has been made to challenge these findings which, in our view, are fully supported by the evidence. We are therefore unable to accept the arguments of counsel on the 1st and 2nd grounds of appeal.

The 3rd ground of appeal is as follows:-

“The learned trial judge ought to have rejected the admissibility of appellant’s statement to the police (exhibit `C1') and the report of the dispensary attendant (exhibit B’).

Exhibit ‘Cl’ was the statement of the accused which was recorded by Thomas Bodang (p.w.5), a police constable, who testified at the trial that he cautioned the accused, recorded his statement and read it over to him before he affixed his thumb impression thereon. The statement was admitted in evidence as exhibit ‘CI’ without any objection. Before us on appeal, learned counsel for the appellant contended that as exhibit ‘C1’ amounted to a confession, it should have been taken before a superior police officer to afford the accused an opportunity to confirm or deny that he voluntarily made the statement. Learned counsel however conceded that there was no rule of law requiring such procedure to be followed but he strongly urged that it is a practice which is invariably followed and that failure to follow it, especially in the instant case where the accused was charged with a capital offence, deprived the accused of the opportunity of denying what the police alleged was his voluntary statement; and for that reason, counsel submitted that the statement ought to have been rejected as being inadmissible.

We are firmly of the view that failure to take the statement of an accused person recorded by a police constable to a superior police officer to give the accused an opportunity of confirming or denying the statement cannot, eo ipso, render the statement inadmissible in evidence although it is a matter to be considered in deciding what weight to attach to the statement. (See R. v. Nwigboke & others (1959). 4 F.S. C.101 at page 102). In the instant case, however, there was abundant evidence in support of the court’s findings as the evidence of the accused at the trial was substantially the same as what was contained in his statement to the police. Furthermore, two of the prosecution witnesses testified that the accused told them that he had stabbed his wife; one of them said that the accused stated that he had killed his wife and the other said that the accused told him that he had stabbed his wife and that “she is living, but will die.”

Learned counsel further contended that the report of the dispensary assistant (exhibit ‘B’) ought to have been rejected as inadmissible. The circumstances under which exhibit ‘B’ was admitted in evidence were as follows.

Ali Umaru Ndolo was the dispensary assistant who was invited to the scene of the incident soon after the death of the deceased. He testified at the trial describing the injuries on the deceased thus:-

“I saw the body on the floor of a room. The intestines had escaped from the left side of her stomach. One wound was visible on the left of the abdomen. I wrote a report immediately. I directed the burial of the body.”

He was crossed-examined by counsel for the accused who produced the report in question and asked the witness whether he had made it. The witness then confirmed that he had made the report whereupon counsel sought leave to tender the report through the witness and it was admitted in evidence and marked exhibit B’. In our view, exhibit ‘B’ was properly admitted in evidence at the instance of the defence and it is not now open to the defence to challenge its admissibility.

This disposes of all the grounds of appeal urged upon us on behalf of the appellant, and as we could find no substance in any of them, we dismissed the appeal.

Appeal dismissed.