**MICHAEL AIWORO**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

15TH DAY OF MAY, 1987

SC. 117/1986

**LEX (1987) - SC. 117/1986**

# OTHER CITATIONS

(1987) NWLR (Pt. 58) 526

2PLR/1988/51 (SC)

**BEFORE THEIR LORDSHIPS**

KAYODE ESO, JSC

ANTHONY NNAEMEZIE ANIAGOLU, JSC

SAIDU KAWU, JSC

BOONYAMIN OLADIRAN KAZEEM, JSC

CHUKWUDIFU AKUNNE OPUTA, JSC

**BETWEEN**

MICHAEL AIWORO – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, BENIN JUDICIAL DIVISION

2. HIGH COURT OF BENDEL STATE SITTING AT BENIN-CITY

**REPRESENTATION**

P.O. AKINRELE, S.A.N. - for the Appellant

A.J.. ALUFOHAI, Senior State Counsel Bendel State - for the Respondent

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

CRIMINAL LAW AND PROCEDURE:- Murder – Proof of - Defences of insanity and intoxication - When insanity constitutes a defence

CHILDREN AND WOMEN LAW:- Domestic Violence - Husband, with the aid of an axe, murders 6 month old son, mother and brother-in-law and left wife unconscious, supposing her to be dead also

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE:- Expert evidence - When amounts to hearsay evidence

**MAIN JUDGEMENT**

KAZEEM, J.S.C. (DELIVERING THE LEAD JUDGMENT):

On 26th February, 1987, this appeal was summarily dismissed and the conviction and sentence of death was confirmed. I now give my reasons for doing so. His appeal being unmeritorious. He The appellant was convicted for murder and sentenced to death at the High Court Justice, Bendel State sitting at Benin-City on 15thto the Court of Appeal, Benin-City was also dismissed as has now appealed to this Court.

It was a bizarre and gruesome murder. The appellant decapitated his six months old son and also successively killed his mother and brother-in-law for no just cause. In the statement made to the police immediately after the commission of the offence, he was said to have come in one night, cooked and eaten the rice bought from the market by his wife, and then slept. Waking up a little later, he started picking up trouble with the wife; and shortly after he said he would kill his son and he did so in spite of the wife's protest. He then knocked out the wife unconscious and killed the two others later.

At the trial, his testimony was at variance with his extra- judicial statement to the police. He did not deny the killing. In fact he thought he killed the wife too. But he denied knowing that what he did was wrong. He attributed his action to having smoked a wrap of Indian hemp which a friend bought from an old lady and gave him to smoke. He did not call those two persons to corroborate his evidence. But a psychiatrist who saw him on 9th August; 1984, about seventeen months later in  
the prison, testified and opined that the appellant could have been suffering from a disease of the mind called *schizophrenia;* and that being of unsound mind he could not stand his trial at that time. The appellant was later treated and thereafter he was declared fit to plead and to stand his trial. The psychiatrist did not however see or examine him at the time of the commission of the offences; but he based his opinion on the hearsay facts obtained from the appellant's relatives about the appellant's background.

The learned trial Judge meticulously considered the evidence of the prosecution witnesses and the defence of the appellant. He (carefully considered the defence of insanity, insane delusion and intoxication in relation to the provisions of section 28 and 29 of the Criminal Code of Bendel State. And after examining the principles laid down in a long line of cases by this Court on issues of insanity and allied defences particularly in *Ngene Arum v. The State* (1979) 11 S.C. 91 and *Egbe Nkanu v. The State* (1980) 3 & 4 S.C. 1, he came to the conclusion that the defences of insanity, insane delusion and self-induced intoxication did not avail the appellant.

In the course of this judgment, the learned trial Judge said:

'The mere assertion of the accused person that three minutes after his smoking Indian hemp, he did riot know what he was doing the started fighting his son and wife, this statement of the accused person is certainly not proof."

But earlier on, the learned trial Judge after referring to Section 140(1) of the Evidence Law that the burden was on the appellant to prove that he became temporarily insane from intoxication as a result of smoking Indian hemp, observed  
that:

"In this instant case, there is no evidence that the accused person smoked the Indian hemp, *other than the fact that he said he smoked it.* He did not call the Odede (old woman) who sold it to his friend, nor called (sic) the friend who he said gave him the wrap of Indian hemp to smoke., n fact he said he did not know the name of his friend."

In the end, the appellant was convicted of the offences as charged and sentenced to death. On an appeal to the Court of Appeal, Benin-City^ that Court in dismissing it, found that:

"the appellant in this case was not for a moment oblivious of what he was doing and his voluntary statement and evidence on oath in .court bear this out. *Udofia v. The State* (1981) 11 12 S.C. 49. The appellant knew what he was doing and he is responsible for the consequence of his act."

On a further appeal to this court, the first brief filed by Chief Akinrele (S.A.N.) who represented the appellant, was that-he had nothing to urge in favour of the appellant having regard to the circumstances of the whole case. But during the hearing of the appeal, an observation was made by some members of the court that the learned Senior Advocate of Nigeria who was not then present in court to defend his brief, should look further into the issue of insanity and intoxication caused by the alleged smoking of Indian hemp by the appellant, to see whether or not they could have availed him as a defence under Section 28 and 29(2) of the Criminal Code. It was then that a further brief was filed. In that brief, the two defences of insanity and intoxication by taking a narcotic, were thoroughly examined. Learned counsel still felt that no sufficient evidence was adduced to support a defence of intoxication caused by alleged smoking of Indian hemp, it was submitted that ft was a misdirection on the part of the learned trial Judge to say that the mere assertion of the appellant that three minutes after his smoking of Indian hemp, he did not know what he was doing and started fighting his son and wife, was certainly, not proof that he smoked the Indian hemp.

It was further argued that there was the testimony of the appellant himself that he smoked the Indian hemp and whether that evidence was believed or not by the learned trial Judge was a different matter. But to say that it was "certainly no proof" was a gross misdirection by the learned trial Judge which was sufficient to vitiate his findings on the issue of intoxication under Section 29(2) of the Criminal Code. We were therefore urged to allow the appeal on that point alone.

A reference to the earlier part of the judgment of the trial court shows that the above submission is a misconception of what the learned trial Judge meant. At page 58 line 30 to page 59 lines 1-3 learned trial Judge had said that other than the *ipse dixit* of the appellant that he smoked a wrap of Indian hemp, he failed to call those people said to be responsible for giving it to him, to corroborate his own evidence. Indeed the learned trial Judge not only carefully considered the evidence adduced by the prosecution on the conduct of the appellant which did not suggest any insane behaviour, but he also thoroughly reviewed the relevant decided authorities of this court on the point. For instance, how can one reconcile the behaviour of the appellant at the material time with that of an insane man? In his statement (Exh. A) made to the police shortly after the commission of the offence, he said that it was after he had cooked and eaten the rice brought from the market by his wife and slept that he woke up and started tormenting troubles with his wife, and then killed his six-months' old baby and his mother and brother-in-law because he had smoked a wrap of Indian hemp. But at his trial he told a different story that it was a friend who had bought the Indian hemp from an old woman, that induced him to smoke it which caused the whole trouble. However, his wife's evidence contradicted the behaviour at the material time. She said that the appellant returned home late at night on the day of the incident, had his bath and slept; and it was after he woke up that he said he would kill his son; and that in spite of her protest, he did. The Wife (P.W.7) said that the appellant had never at any time exhibited any previous insane behaviour and that she had even left the son with him to look after whenever she went to the market.

It is to be noted that there was not evidence that the appellant smoked Indian hemp other than his own *ipse dixit* that he did. He did not call any corroborative evidence on the point; and the evidence of the psychiatrist suggesting that he could have been suffering from *schizophrenia,* was rightly in my view regarded as hearsay by the trial Judge because he neither saw nor examined him at the time of the commission of the offence, the doctor based his opinion as to the appellant's  
background on the story of his relatives.

This court has had occasions to consider the defences of insanity and intoxication under Sections 28 and 29 of the Criminal Code and the case of *Ngene Arum* v. *The State (supra); Egbe Nkanu v. The State (Supra)* and *Udofia v. The State*' (1981) 11 -12 S.C. 49 have thoroughly dealt with the issue, the case of *Egbe Nkanu v. The State (Supra)* is particularly relevant to this appeal in that the facts therein are similar to those herein, In that case, the appellant after drinking some quantity of palm wine and smoking a stick of cigarette (apparently a narcotic) looked for it and got hold of an old 'woman, dragged her to the front of his house and decapitated her. He claimed to be insane when he did it and that he did not know that what he did was wrong. But it was found that the act was pre-meditated.

In that case, Obaseki, J.S.C. said at page 12 thus:-

"My Lord, it is my respectful opinion that the failure of the defence to adduce i evidence from which intoxication can be inferred deprive the appellant of that i defence. Intoxication Is a question of fact to be established by evidence. It is not proved by the mere mention of the word. Similarly, insanity is not proved 20 by the mention of the word ...These defences are also not proved by mere denial of knowledge when that the act was committed! The burden of proof of intoxication as a defence rests on the person charged: Likewise the burden of proof of insanity rests on the person charged, for there is presumption of sanity in every person charged, under our law. (See S.140(1) of the Evidence Law (Cap.49); ft *v. Owarey* (1939) 5 W.A.C.A. 66 applied; and see S.27 of the Criminal Code."

I think that it will be a dangerous trend indeed for a Court to lay it down as a 1 principle that every time it pleases a man to commit a heinous crime such as this, 30 it will be enough to exonerate him from the consequences by saying that he was "mad" or insane because he had taken one form of narcotic or the other which deprived him of ability to know that what he did was wrong,[without calling sufficient credible corroborative evidence to support his own assertion. Section 140(1) of the evidence Law places the burden on him to lead such ‘evidence; and if he fails to do so, he must face the natural consequences of his own action. It was for the above reasons that I dismissed this appeal.

**ESO, J.S.C.**:

I am in complete agreement with the Reasons for Judgment just delivered by my learned brother Kazeem, J.S.C. a preview of which I have had.

The issue which was argued on the prompting of this Court was one of insanity. Insanity is a sort of exception to section 27 of the Criminal Code (Cap. 42) which presumes every person to be\*of sound mind. Everyone is presumed to be responsible for his act except it can be shown by or on behalf bf that person that at the time of the commission of the crime he was not capable of understanding what he 45 did or capable of controlling his action or of knowing that he ought not to do the act or make the omission which has resulted in the death of the deceased.

The appellant said he smoked a wrap of Indian Hemp then he said in his statement that after he had smoked the wrap his body became unusual and he told his wife so. I would like to quote some passages of this statement –

"I cooked the rice while my wife went to see the mother at the opposite house, after cooking the rice, I removed some quantity which I eat with her, after the first, I carried the second one and my wife said that it! was too much, I told her that I will finish it. After about two hours time my body was not sound because I smoke one wrap of Indian Hemp. I told my wife that I am not sound and she said that I have started my crazy, again, I told her that I am not crazy, when N.E.P.A. took light I asked her about the paper we use to fan ourselves when there was no light. I told her to bring the paper. We come quarrel over the paper and she come bring the paper, I asked her where she keep it before, this time Godspower my son don sleep. My father told me when he was alive that I should not marry from the family of my wife that they are very strong, that they can kill me. When I took the paper from my wife I was confused that I can kill, I started fighting her with hands and then used axe on her little. When I was fighting with my wife my mother-in-law came and knocked the door of my house, I was fighting my wife and son Godspower with the axe at the same time. When I opened the door I see that my in-law locked it outside. This time my wife and my son were already lying dead on the floor of my room. As I was shouting my in-law opened the door from outside. She saw me when I hold the axe she ran back to her house I pursued her and killed her near her house back side after killing the woman as I was coming I saw Igbinosun by the main road I said he is the one supporting his people and I killed him with the same axe. This is the axe I used in killing all of them. There was nobody who told me to go and kill this people. I did not plan this before simply it come to my mind and I started killing people."

In his own evidence the doctor D.W.2 after examining the background of the Appellant said -

"Since admission into prison custody, the warder reported that the accused has been physically aggressive. He used to stay in one place all day and night. He was lacking in interaction with fellow inmates and even warders when he talked to me his speech was slow and was devoid of any emotional expression. From the above I am of the opinion that the accused was suffering from major psychiatric illness called *schizophrenia,* that is he was of unsound mind, and could not stand trial then. As a result, he was commenced on appropriate treatment, since then he showed remarkable improvement, he is fully aware of the gravity and consequence of his action, and led to his arrest. I also feel that smoking of Indian hemp only precipitated, acute manifestation of this illness, also I am of the view that he was in a disturbed state of mind (unsound mind) when he committed the offence."

What did the learned trial Judge find in regard to the Appellant's mental state?

The learned Judge said:-'That from the totality of the evidence in this Court, outside the evidence of the Medical Doctor (D.W.2), there is completely no evidence of previous or contemporaneous acts, suggestive of insanity. The accused person himself had not said he was insane. She submitted that the evidence of D.W.2 is only relevant to show that at about August, 1,984, nearly one year, after the accused per-son has committed the offence, that the accused person, was suffering from mental disease, the doctor (D.W.2) named, and that is how far the evidence can go. She urged the court to disregard the evidence of tracing the history as they were hearsay and if the defence was serious, it should have called those relatives to give direct evidence. That this was also the reasoning of Obaseki, J.S.C. at page 104 in the *Arum's case (supra).* She urged the court to take the reasoning of Obaseki, J.S.C. in this case, as the doctor saw the accused per-son months after the commission of his crime."

He then examined s.28 of the Criminal Code as to the .onus of proof and content of proof of insanity. The learned Judge then relied on bur decision in *Arum v. The state* (1980) 1 N.C.R. 81, *and* after full consideration concluded that the action as enumerated by the Doctor were certainly hot sign of insanity. He regarded the statement credited to the report of the doctor as mere 'hearsay as the relatives of the appellant who made the" statements to the doctor Were not called. Pausing here for a moment, the learned Judge was right. And short of this hearsay upon which the doctor based his conclusion is there any evidence to infer insanity. The answer as given by the learned trial Judge and the Court of Appeal is certainly No. The appellant's statement to the police on the day of mass murders is potent enough to believe the later cloak of insanity. He gave a detailed account of how he committed the gruesome murders. Certainly it would be grave danger to reduce the law of insanity to one of mere fancy and one which some airy fairy pretence could exonerate ah accused person.

It is true the appellant had no duty to prove his own defence of insanity beyond reasonable doubt. But there must be credible evidence weighed along the circumstances. The detailed account of the dastardly act by the Appellant is certainly not consistent with a mind afflicted with insanity.

For these reasons I too will dismiss the appeal and affirm the judgment and orders of the Trial Court and the Court of Appeal.

**ANIAGOLU, J.S.C.:**

I have been opportuned to read in draft the 'Reasons for 'judgment' just delivered by my learned brother, Kazeem, J.S.C. I am in entire agreement with him. It was for those reasons that I too dismissed the appeal of the appellant on 26th February, 1987.

**KAWU, J.S.C.:**

There was evidence that the appellant on the 18th March, 1983 decapitated his six-month old son, Godspower Aiworo, murdered his mother and brother-in-law and inflicted serious wounds "on his wife who, somehow miraculously survived the murderous attacks. The appellant fled the scene immediately after his dastardly acts.

The appellant gave evidence at the trial and at the end of the case, the learned trial Judge gave very careful consideration to all the statutory defences open to the appellant and came to the conclusion, rightly in my view, that none of them availed him. He was accordingly convicted and sentenced to death. His appeal to the Court of Appeal was dismissed. He has further appealed to this Court.

When the appeal came up for hearing on 26th February, 1987, it was summarily dismissed, and the decisions of the lower courts affirmed. We then indicated that we would, today, give our reasons for our decision.!

I have had the advantage of reading, in draft, the lead reasons for Judgment just delivered by my learned brother, Kazeem, J.S.C. I am in entire agreement with those reasons and will respectfully adopt them as my reasons for dismissing the appeal on 26th February, 1987.

**OPUTA, J.S.C.:**

On the26th day of February, 1987, this Court heard the 45 Appellant's appeal. At first Chief Akinrele, S.A.N, for the Appellant filed a brief in which he said he had nothing useful to urge in favour of the Appellant. For the Respondent, Mr. Hayble, the Director of Public Prosecutions filed a brief. He too had nothing to urge in favour of the Appellant. Later, following an observation made by this Court, Chief Akinrele filed a second brief where he passionately so argued that the issue of insanity resulting from the Appellant taking intoxicants was not adequately considered by the trial Court as well as the Court below. In his oral argument in elaboration of points made in his brief, Chief Akinrele submitted that it was the duty of the trial Court to make a finding one way or another on the question whether or not the Appellant smoked Indian Hemp. If he found, he did, then the Court will probe the effects of taking the intoxicant on the Appellant. Did it produce a condition of insanity in the Appellant? If the answer is yes, then a third question will arise namely, was the Appellant so mad that at the time he committed the offences charged he did not know what he was doing or that he did not know that he ought not to do what he did or that what he did was wrong? That is the methodical way of approaching the issue of insanity when raised as a defence. Mr. Akinrele then submitted the approach of the two Courts below was wrong and urged the Court to allow the appeal. After listening to oral arguments on both sides, I dismissed the appeal and indicated that I will give my reasons today, the 15th day of May, 1987. Hereunder are those reasons.

The facts of this case are rather bizarre and sadistic and are in the main not in dispute. In his own extra judicial statement tendered as Exhibit A, the Appellant admitted killing his wife, beheaded his six months old son, Godspower. He killed both mother and son with an axe. As though these were not enough, he opened the door of the room where lay the lifeless bodies of his wife and child, ran out pursued his mother-in-law whom he also killed at her backhouse. After this third victim the Appellant saw Igbinosun, his brother-in-law along the main road. He again pursued him, caught up with him and killed .him. This was the fourth victim on that fateful night. These were the sordid facts of this sad case. It is unnatural for a man without any apparent reasons to set on his wife, his son, his mother-in-law and his brother-in-law and kill them one after the other. These acts of the appellant do constitute circumstantial evidence of unnatural behaviour perhaps suggestive of insanity.

But insanity *per se* is no defence in our law. Insanity becomes a defence if, and only if, the insanity complained of, irrespective of what caused it, deprived the person accused of homicide of;-

(i) capacity to understand what he was doing, or

(ii) capacity to control his actions, or

(iii) capacity to know that he ought not to do the act or make the omission resulting in death.

Also, since in our law, Section 27 of the Criminal Code Cap. 42 of 1958 presumes every person to be of sound mind at anything which comes in question, until the contrary is proved, it follows that the onus of establishing insanity, or of dis-proving sanity, lies on the defence. Thirdly, that onus is discharged on the balance of probabilities. If it should appear more probable from the totality of the evidence (oral and circumstantial) that he was insane as defined by Section 28 Cap. 42 of 40 1958 of the Criminal Code, then the Appellant is entitled to an acquittal. Because of the above the trial Court has a duty to consider quite dispassionately the whole evidence including the nature of the killing (or as in this case the killings) the con-duct of the- accused both before and after the killing complained of, an evidence of a history of mental disorder or psychic afflictions in the family etc. This Court 45 had in many cases re-stated these guiding principles; see *Ngene Arum v. The State* (1979) 11 S.C. 91 at p.94; *Egbe Nkanu v. The State* (1980) 3/4 S.C. 1; *Udofia v. The State* (1981) 11- 12 S.C. 49; *Loke v. The State* (1985) 1 N.W.LR.1.

What was the defence of the Appellant? How did the two Courts below deal with this defence? In his extra-judicial Statement, Exhibit A, the Appellant alleged 50 he smoked "one wrap of Indian Hemp" and that after two hours "my body was not sound and she said that I have started my craze again, I told her that I was not crazy." In the middle of the Statement (Exhibit A) the Appellant continued "I was confused that I can kill, i started fight her with hand and the axe ... I was fighting my wife and son Godspower with axe....My son Godspower is six months 8 days old and he is my only child and Helen is my only wife. I have no quarrel with my in-law and Igbinosun. I killed all of them". If the Appellant's Statement to the Police, (Exhibit A, is believed then the four killings were both motiveless and purposeless. There is here a clear absence of motive but as has been observed by our Courts from time to time, absence of motive in itself alone, and by itself alone, is not evidence of insanity. But where there is as much evidence indicative of insanity rather than the opposite, the absence of motive becomes not only relevant to the issue **1**of insanity but also may, in a proper case, tilt the balance! in favour of an accused person. What other evidence have we in this case relating to the state of mind of the Appellant?

In his oral testimony in Court, the Appellant repeated his story of how a friend offered him Indian Hemp. He smoked it and started fighting his wife and child.

Under cross-examination the Appellant said that he did not know what he was doing it when "he was fighting his wife and child". He also said he did not know the instrument he used in fighting his wife and child." He also did not know whether it was an axe he used on his mother-in-law. The Appellant concluded that at the time he "fought" his wife, son, mother-in-law and one Igbinosun, he did not know what happened to him and his head was off. There was evidence that when in custody the appellant was taken to Uselu Mental Hospital and was visited by a prison doctor.

The doctor Idowu Molamo, D.W.2, testified that on 9/8/84 the Appellant was sent to him for medical examination. The only direct evidence from the doctor was when he talked to me, his speech was slow and devoid of any emotion". But from what the doctor gathered from relatives of the Appellant and from warders and prison officials, the doctor formed the opinion that the Appellant was suffering from major psychiatrist illness called schizophrenia, that is he was of unsound mind, and could not stand trial then". The doctor also added:-

"I also feel that smoking Indian Hemp only precipitated acute manifestation of 1 this illness also I am of the view that he was in a disturbed state of mind (unsound mind) when he committed the offence".

Now the Doctor, D.W.2 gave evidence on 25/2/85. The offences charged were committed on 18/3/83 over two years before the doctor's evidence. How did the trial Court deal with the defence of the Appellant? On the issue of ; the intoxicant, Indian Hemp, the trial Court was gravely in error in holding that the *ipse dixit* of the Appellant that he smoked one wrap of Indian Hemp was no evidence. It was evidence. Whether the trial Court believes him or not is quite a different matter. Also whether one wrap of Indian Hemp could produce a state of insanity is another matter. But the trial Court could not possibly resolve that issue jj without any evidence at all that he ever smoked Indian Hemp as he alleged. In view of the initial presumption of sanity of the Appellant, the onus was still on him to show that he lost that sanity by smoking one wrap of Indian Hemp. Here his mere *ipse dixit* will not be enough. Admissibility of evidence touching on insanity and the sufficiency of such evidence are two different things. Trial Courts should do well to keep both concepts apart. It is however perfectly legitimate for a trial Judge to hold that the facts taken as a whole satisfied or did not satisfy him that at the time of the act the person accused though not mentally normal yet he was not insane in the sense of that expression as it is used in Section 28 of the Criminal Code: see *Rex v. James Anuku* (1940) 6 W.A.C.A. 91.

In this case in spite of his initial mistake in saying that the Appellant's assertion that he smoked a wrap of. Indian Hemp was no evidence, the learned trial Judge did in fact evaluate the entire evidence. He believed the prosecution witnesses whom he described as witnesses of truth. He disbelieved the Appellant whom he said did not impress him as a witness of truth. In this case however the facts were not In dispute. The Appellant admitted both in his Statement, Exhibit A and in his sworn testimony in Court that he killed all of his four victims. What was in dispute was his mental condition. It was here that the trial Court had a duty to make a definite finding. He referred to this Court's decision in *Nkanu v. The State* (1980) 3-4 5 S.C. where the defence of insanity due to intoxication was fully considered. He also referred to our decision in *Arum v. the State* (1979) 11 S.C. 91 and set out in detail the principles governing the Courts in dealing with evidence of insanity, delusion or witchcraft. It is good to state these principles but it is better to apply them properly to the facts and circumstances of the case in hand. On the principles established in *Nkanu and Arum* above, it is clear that the evidence of the Doctor, D.W.2 fell far short of establishing insanity in the Appellant.

Where a defence of insanity had been suggested but. not proved an appellate Court will not interfere. The Court below was right in not interfering with the verdict of the trial Court in this case. From the evidence before him, the learned trial Judge was unable to conclude that the Appellant was insane. It is thus impossible as an appellate Court to reverse that judgment; see case of *Ronald True* 16 Cr. App. R. 165. The facts and circumstances of this case may entitle the learned trial Judge to make a recommendation for mercy to the Committee on the Prerogative of Mercy. But that is an entirely different matter from the issue of guilt. One has to comment on the Appellant's Statement to the Police made on thevery day of the murder, 18/3/83, when the events were fresh in his mind. This Statement, Exhibit A is relevant to any inquiry into the Appellant's state of mind at the time he committed the offences charged. That Statement was very detailed; it was coherent and the Appellant had a clear or and lucid recollection of all that happened that fateful night. In my view the Statement Exhibit A was indicative of *sanity* rather than insanity. In Exhibit A the Appellant said *inter alia:-*

"When N.E.P.A. took light I asked my wife about the paper we use to fan ourselves when there was no light. I told her to bring the paper, We come quarrel over the paper and she come bring the paper: When I took the paper from my wife I was confused that I can kill."

Is this not a suggestion that the Appellant acted from anger rather than insanity?

He was angry that his wife removed the paper from where it was usually kept.

Another rather intriguing portion of the Appellant's Statement, Exhibit A is:-

"My father told me when he was alive that I should not marry from the family of my wife that they are very strong, that they will kill me."

The Appellant on that tragic night killed his wife, his son, his mother-in-law and his brother-in-law. Did he do this to prevent his wife's family (who were strong) killing him? No direct answer was given but the events of the night of 18/3/83 are silently but eloquently suggestive of yes as a likely answer. But whatever is the correct answer the Appellant failed to establish even a *prima facie* case of insanity. The defence of insanity is a very serious and a very delicate defence. It will be, to 45 say the least, disastrously dangerous to allow any fanciful defence of insanity to obstruct the course of justice. If an accused pleads insanity as his defence, that insanity has to be proved by preponderance of evidence, otherwise a trial Court would be right to regard him as sane. That is what happened in this case.

I have had the privilege of a preview of the lead reasons for judgment of my learned brother Kazeem, J.S.C. I am in complete agreement with those reasons.

In the final results, it was for the reasons I gave above and for the further reasons given by my learned brother Kazeem, J.S.C., which I now adopt as mine, that I dismissed that appeal.

Appeal dismissed.