**NEEYODE PEBA**

**V.**

**THE STATE**

IN THE SUPREME COURT OF NIGERIA

THE 7TH DAY OF NOVEMBER, 1980

SC. 55/1978

**LEX (1980) - SC. 55/1978**

OTHER CITATIONS

2PLR/1980/28 (SC)

 (1980) 8-11 S.C. (REPRINT) 48

**BEFORE THEIR LORDSHIPS**

GEORGE SODEINDE SOWEMIMO, JSC

KAYODE ESO, JSC

ANTHONY NNAEMEZIE ANIAGOLU, JSC

AUGUSTINE NNAMANI, JSC

MOHAMMADU LAWAL UWAIS, JSC

**BETWEEN**

NEEYODE PEBA Appellant(s)

AND

THE STATE Respondent(s)

**REPRESENTATION**

A. M. O. AKANDE - For Appellant

AND

Respondent not represented - For Respondent

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

CRIMINAL LAW AND PROCEDURE - MURDER:- Proof of

CHILDREN AND WOMEN LAW: Women and Security of Life - Murder of live-in-lover – deceased woman suspected of infidelity – whether finding one’s unmarried lover on the bed of another man amounted to provocation at law

**MAIN JUDGMENT**

M. L. UWAIS, J.S.C. (DELIVERING THE LEADING JUDGMENT):

This is an appeal from the decision of the Federal Court of Appeal, affirming the conviction of the appellant by the Rivers State High Court, Bori, on a charge of murder. When the appeal came before us on 9th October, 1980, we dismissed it. The reasons for our doing so will now be given.

The allegation made by the prosecution at the trial before the High Court  was that the appellant killed the  deceased - a woman who had been living with him, when he found her lying on the bed of another man. There was no eye-witness to the killing but the appellant made a confessional statement to the police after his arrest in which he admitted killing her with a matchet and he gave full account of how the incident came about.

At the time of making the confessional statement the appellant spoke in his vernacular and a translation was simultaneously made into English before the statement was taken down in writing. When the appellant gave evidence in his defence he retracted that portion of the statement that alleged that he killed the deceased. His reason for the retraction was that the  interpretation of the said portion was faulty and that it did not represent what he said. However, the learned trial Judge rejected the denial as he was entitled to do.

Suffice it to say that the appellant appealed to the Federal Court of Appeal against his conviction by the trial court for murder and as no substance was found in the grounds of appeal canvassed before the Federal Court of Appeal, the  appeal was dismissed.

Mr. Akande, who appeared for the appellant before us was given leave to file and argue three additional grounds of appeal. However only one of these which sought to urge that the federal Court of Appeal and the trial Judge misdirected themselves in failing to find provocation in the conduct of the deceased was argued. Sections 283, 284 of the Criminal Code were referred to by counsel and Section 318 thereof was quoted. The decision of the Privy council in *Parker v queen (1963) CLR 665* was also cited before it was submitted inter alia that the conviction of the appellant for murder should, by reason of provocation, have been reduced to manslaughter.

A point which had caused us some concern was then raised by the court suo motu. It is whether the Federal Court of Appeal was competent to have heard the appeal before it which appears to have been filed out of time. Learned counsel for the appellant conceded that the notice of the appeal to the Federal Court of Appeal was filed 51 days after the appellant was convicted by the High Court. In view of what follows hereafter it will not be necessary to consider the submissions of Mr. Akande on the question of provocation.

The record of proceedings shows that the judgments of the High Court was given on 19th April, 1978 and the notice of appeal to the federal Court of Appeal was thumb impressed by the appellant on 9th June, 1978. This was not brought to the notice of the Federal Court of Appeal and the court did not seem to be aware of it. Section 25 of the  Federal Court of Appeal Act, No. 43 of 1976, as relevant here, provides as follows:

"25 (1) x x x x x x x x x x x x x x x x x x x x x x x xx

(2)     The  periods for the giving of notice of appeal or notice of application for leave to appeal are –

(a) x x x x x x x x x x x x x x x x x x x x x x x x

(b) In an appeal in a criminal cause or matter thirty days from the date of the decision appealed against.

(3)  x x x x x x x x x x x x x x x x x x x x x x x x

(4)     The Court of Appeal may extend the periods prescribed in sub-sections (2) and (3) of this section except in the case or (sic) a conviction involving the sentence of death." (Parenthesis and underlining mine.)

It is clear from the foregoing that the Federal Court of Appeal lacked jurisdiction when it heard the appeal, the notice of which was given out of time (see *Berepegha Frubide v. The State (1969) 1 All NLR 255 and Egbo Ojojo v The State (1970) 1 All NLR 33*). It being so the  proceedings before the Federal Court of Appeal which include the decision appealed against are null and void and of no effect whatsoever.  
  
  
However it is to be observed that Section 25 subsection (2) (b) of the Federal Court of Appeal Act, No. 43 of 1976 has since been amended by the Federal Court of Appeal (Amendment) Act, No. 59 of 1979, which enlarged the time for filing notice of appeal in criminal cases from 30 to 90 days. The 1979 Act came into force, with retrospective effect, on 31st August, 1978 but the present case did not come within its ambit. The enlargement of time notwithstanding, the fetter under Section 25 subsection (4) of the 1976 Act, which inhibits the Federal Court of Appeal to extend the time prescribed for filing appeal in the case of a conviction that involves a sentence of death, remains.

These are the reasons for which I dismissed the appeal and affirmed the conviction and sentence for murder imposed by the High Court.

**G. S. SOWEMIMO, J.S.C.**:

I have read in draft the reasons for judgment which my Lord, Uwais has just delivered. I wish to state that I agree with all the reasons given by him for dismissing the appeal.

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

It is for the reasons stated by my learned brother, my Lord, Uwais, JSC., in his judgment just delivered and which I had an advantage to see in draft that I agreed that the appeal of Neeyode Peba be dismissed on 9th October, 1980.

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

My Lords, I had read in draft the reasons for judgment just delivered by my learned brother, Uwais, JSC., and I agree.

**A. NNAMANI, J.S.C.:**

My Lords, I have had the advantage of reading in draft the reasons for judgment just delivered by my learned brother Uwais, JSC. I agree with the reasons he has given for dismissing the appeal.