**NTIBUNKA AND ANOTHER**

**V.**

**THE STATE**SUPREME COURT OF NIGERIA

14TH DAY OF JANUARY, 1972

SUIT NO. SC 338/1971

**LEX (1972) - SC 338/1971**

OTHER CITATIONS

2PLR/1972/107 (SC)

(1972) 1 S.C. (REPRINT) 50

**BEFORE THEIR LORDSHIPS:**

LEWIS, J.S.C.

UDO UDOMA, J.S.C.

SOWEMIMO, Ag. J.S.C.

**BETWEEN**

1. ONUS NTIBUNKA

2. CYPRIAN EJIANU

AND

THE STATE

**ORIGINATING COURT**

HIGH COURT HOLDEN AT OWERRI (Balonwu J., Presiding)

**REPRESENTATION**

E. A. AKINOLA, for the Appellants.

P. I. AMAIZU (Senior State Counsel), for the Respondent.

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

CRIMINAL LAW:– Murder – Proof of - Whether Court can convict on circumstantial evidence – Alibi – How discharged

CRIMINAL LAW AND PROCEDURE:- Sentencing of murder convicts – Where judge omitted to record sentence as required – Whether a certificate from the Registrar of the same Court in regard to the same accused persons which sets forth the appropriate sentence suffices

CHILDREN AND WOMEN LAW: Women and Security – Women in Business/Farming – Woman who left for her farm found dead – How treated

**MAIN JUDGMENT**

**LEWIS, J.S.C.** (DELIVERING THE JUDGMENT OF THE COURT):

On the 31st of August, 1971, Balonwu J. in the Owerri High Court convicted Unus Ntibunka and Cyprian Ejianu of the murder of Okwerenkedia U. Agwu in Charge No. HOW/8C/71, and on the 8th of January, 1972 we dismissed the appeals of the two accused and now give our reasons for so doing.

The case for the prosecution turned on circumstantial evidence as no-one witnessed the actual killing of the deceased woman. She had on the 18th of March, 1970 gone off to farm having been warned before she went by the 1st accused in the presence of the 1st P.W. not to go near the breadfruit trees or she would die. The 1st P.W. who was the maid of the deceased who was in fact her Aunt followed her later that day to the farm to take her food but when she got there she could not find her though she saw the wearing apparel of the deceased by some bloodstains on the ground. She ran off to seek help and when she got to the roadside saw the two accused coming towards her from the opposite direction, and remembering the words of the 1st accused to the deceased earlier that day got frightened and hid in the bush as they passed. She noticed, however, as they did so that they were holding a shovel, a matchet and a stick and both had bloodstained trousers.

The 2nd P.W. said in his evidence that in the evening of the 18th of March after receiving a report from the 1 at P.W. he went at about 10 p.m. with the others to the deceased’s farm to search, with the aid of a hurricane lamp, for the deceased and they eventually found her body in a pit on the farm. They thereupon hid themselves and he then described in his evidence what happened as follows:

“In the night, I was feeling rather sleepy, when I heard a noise which alerted me. As I watched carefully, I saw the first accused with a shovel, coming towards the pit where the corpse of the deceased lay. This was about 2 a.m. As the first accused was standing by the pit, looking around, I saw the second accused coming with a matchet towards the pit. At that stage, I shouted. Members of my search team then came out of their hiding places, and we all pursued the two accused persons. We ran after them. We and they suffered. I caught the first accused. Later, I heard Lawrence Onuegbu shouting that he had caught the second accused. I wanted to matchet the first accused, but others told me not to do so.”

The 8th P.W. who was also there that night confirmed the 2nd P.W.’s story and Lawrence Onuegbu (the 9th P. W.) also confirmed it and said that he was the one who actually caught the 2nd accused as he tried to run away that night from the pit where the corpse of the deceased was.

The defence of each of the accused was an alibi but the learned trial Judge carefully considered the alibi of each of them and rejected them and found that he believed the evidence of the 1st, 2nd, 8th and 9th P.Ws. as to what happened.

Mr. Akinola for the accused urged on us that the prosecution had not proved the case against the accused beyond reasonable doubt and that the learned trial Judge gave too much weight to the evidence of the 1st P.W. especially when she was a relative of the deceased. He submitted that the learned trial Judge should have believed the alibi of each of the accused. As, however, the learned trial Judge in his judgment in no way misdirected himself as to the evidence of the 1st P.W. which he believed and indeed specifically warned himself that the prosecution witnesses were related to the deceased and as he carefully dealt with the alibi of each of the accused but disbelieved them we saw no merit in this submission. Indeed we noted that the 1st accused even admitted in cross-examination that his evidence was disbelieved.

Mr. Akinola then urged that the death of the deceased might have been by her accidentally falling so that killing was not established, but as the learned trial Judge correctly quoted the evidence of the Doctor who examined the body of the deceased when in his judgment he said:

‘The doctor found that the body was that of an African Woman, aged about 48 years, in a fairly good condition; that the neck and head were swollen with a laceration on the face; that there was a laceration on the nose, and on the lower lip. In his opinion, the cause of death was asphyxia and cerebral contusion, which is a damage to the brain cells, which can be caused by a heavy blow from a blunt object”,

We think he was entitled to infer therefrom that the death of the deceased was as a result of a deliberate attack on her and from the surrounding circumstances he was also entitled to find as he did that the evidence pointed irresistibly and unmistakenly to the accused being the persons who killed her.

We therefore came to the conclusion that the accused were rightly convicted and dismissed the appeal of each of them for the reasons which we have now given.

We would only wish to add that the learned trial Judge concluded his judgment with the words:

“In view, therefore, of the foregoing circumstances, I find each of the accused men guilty of murder as charged, and convict them accordingly.

Findings:

1st accused guilty.

2nd accused guilty.

The accused are informed of their right to appeal to the Supreme Court against their conviction and sentence within 30 days.”

This does not show what sentence he passed and this should have been recorded. However, we noted in the record of the appeal a certificate from the Registrar of the Owerri High Court in regard to the 1st accused which inter alia said:

“I HEREBY CERTIFY THAT at the Sessions of the High Court of the Owerri Judicial Division held at Owerri by the Honourable Mr. Justice Moses Onuora Belonwu on Tuesday the 31st day of August, 1971, Linus Ntibunka (m) was convicted of Murder of Okwerenkedia U. Agwu and that the following sentence was passed upon the said Linus Ntibunka (m):

‘The Sentence of this Court upon you is that you be hanged by the neck until you are dead and may the Lord have mercy on your soul.’,

and a certificate also in similar terms in regard to the 2nd accused, so that it is dear that in fact the proper sentence was passed on each of them. It is not necessary therefore for us to direct, as we have recently had cause to do in another murder appeal, that the trial Judge pass the required sentence, but we do draw attention to the importance of recording in the judgment the sentence that is passed.

Appeal dismissed.