**OGBU NWAGU**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

26TH DAY OF AUGUST, 1966

SC. 308/1966 (E.N.)

**LEX (1966) - SC. 308/1966 (E.N.)**

OTHER CITATIONS

2PLR/1966/101 (SC)

**BEFORE THEIR LORDSHIPS:**

ADETOKUNBO ADEMOLA, C.J.N.

VAHE ROBERT BAIRAMIAN

GEORGE BAPTIST A. COKER, J.S.C.

**BETWEEN**

OGBU NWAGU – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

HIGH COURT OF EASTERN REGION OF NIGERIA HOLDEN AT AFIKPO (Kassim J., Presiding)

**REPRESENTATION**

F. T. O. AKINSANYA for the appellant.

F. O. OFFIAH, Senior State Counsel, for the respondent

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

CRIMINAL LAW AND PROCEDURE:- Murder – Duty of prosecution to prove same – Defence of provocation - Whether there is any burden on defendant to establish a defence of self-defence or provocation – When trial court is deemed to have misdirected itself - When a sentence of murder ought to substituted for manslaughter – Relevant considerations

CHILDREN AND WOMEN LAW:- Wife-Killing – Couple with 2 children - Where wife is physically bigger than husband - Claim that wife with a third party gave him poison, which did him harm; failed to give him some palm-oil to eat his yam with; held him by the neck, and also by his private part, tapping a knife in his mouth – Whether amounts to provocation for a single stab on the left side with pierced the lower lobe of the lung at wife’s back causing her death

**PRACTICE AND PROCEDURE ISSUES**

COURT:- - Trial court – Criminal proceedings – Misdirection as to onus and burden of proof on accused person – Duty of appellate court thereto

**MAIN JUDGMENT**

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

This appeal was heard on 8 August, 1966, when judgment was reserved Ogbu Nwagu was convicted on 19 May, 1966 by Kassim J. at Afikpo on an information which accused him of murdering Oji Nwokorie at Umudomi Onicha on 29 December, 1965: (Charge AB/71C/66).

His statement to the Police was that Oji was his wife, and they had two children; that after that she and Nwafo Okoro gave him poison, which did him harm; that they had had some other incidents too; that on the 29th December, 1965 in the night, he asked his wife for some palm-oil to eat his yam with; that she held him by the neck, and also by his private part, tapping a knife in his mouth; and that when it fell down, he picked it up and stabbed her. It was only one stab on the left side, but it pierced the lower lobe of the lung at the back, and that caused her death. Her brother said she was much bigger than the appellant. His evidence at the trial was a little confused, but in substance was much like his statement as to the circumstances of the homicide. He explained how in the struggle the knife fell down, and he picked it up and stabbed his wife. The trial judge was of opinion that it was a sham and a poor afterthought, and concluded his judgment with these words-

“I am unable to hold from the evidence before me that the accused established either a defence of self-defence or of provocation.”

That, with respect, is a serious misdirection: for it puts an onus on the accused person to establish a defence as if, upon his admitting that he killed the deceased, it became his duty to prove that he did so in circumstances of excuse or mitigation or else he was guilty of murder. Such an approach runs counter to the view which has prevailed since Woolmington v. Director of Public Prosecutions [1935] A.C. 462; the onus does not shift onto the accused person to establish any defence; and Mr Offiah, who appeared for the State, rightly conceded that the proper verdict in this case was manslaughter.

The Court considers that the conviction for murder was wrong and directs a verdict of manslaughter to be substituted, and sentences the appellant to a term of three years imprisonment with hard labour.

**CASES REFERRED TO**

Woolmington v. Director of Public Prosecutions [1935] A.C. 462