**NWASHIRI OFOHA**

**V**

**THE STATE**

SUPREME COURT OF NIGERIA

JANUARY, 1976

SUIT NO. SC 220/1975

**LEX (1976) - SC 220/1975**

OTHER CITATIONS

(1976) 1 S.C. (REPRINT) 30

2PLR/1976/99 (SC)

**BEFORE THEIR LORDSHIPS:**

SODEINDE SOWEMIMO, J.S.C.

CHUKWUNWIKE IDIGBE, J.S.C.

ANDREWS OTUTU OBASEKI, J.S.C.

**BETWEEN**

NWASHIRI OFOHA – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

HIGH COURT OF THE EAST CENTRAL STATE OF NIGERIA HOLDEN AT OKOGWI (Obo-Okoye, J., Presiding)

**REPRESENTATION**

F. O. AKINRELE - for Appellant

A. MORAH (Senior State Counsel, East Central State) - for Respondent

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

CRIMINAL LAW:– Murder – Proof of – Defences – Provocation – What accused person must prove to be availed of the defence

CHILDREN AND WOMEN LAW: Women in Business/Farming – Murder of woman in her farm by co-wife – How treated

RELIGION AND LAW – WITCH-CRAFT:- Belief that ill-health was mysteriously caused by a rival – Whether relevant evidence supporting any legal defence to criminal liability – Implication for justice administration

**MAIN JUDGEMENT**

OBASEKI, AG. J.S.C. (DELIVERING THE JUDGMENT OF THE COURT):

The appellant was tried on information for the murder of Ugadiya Ofoha contrary to Section 319(1) of the Criminal Code and convicted by Obo-Okoye, J. sitting at Okogwi in the High Court of the East Central State of Nigeria.

Aggrieved by the decision, the Appellant appealed to this Court. But at the hearing of the appeal on the appeal on the 11th day of December 1975, Counsel for the appellant had nothing to urge in favour of the appellant and having satisfied ourselves that the conviction was justified by the Evidence on record, we dismissed the appeal without giving reasons then.

We now give our reasons.

The facts of the case are briefly as follows:-

The Appellant Nwashiri Offoha and the deceased Ugadiya Ofoha were widows of the same husband Offoha who died many years previously. They lived together in the family house at Amauzari but not happily. The evidence is that it was the appellant that always provoked the quarrel. Each had her own farm but not in the same area.

On the 6th day of September 1974, Ugadiya went to her farm. Unknown to her, the appellant kept watch on her movement. After the deceased left, the appellant also left for the farm of the deceased. Before the deceased left, she informed Martina Nwokeokibe PW8 of her destination. As Felicia Osuola PW6, Martina Nwaeche PW7 and Okwelekediya Ikeme were walking through the bush path to the market, they came to a point where they heard some shouting “we eyeye” several times, apparently in pain. They stopped and called out to know who was crying. Then they heard that shouting was not from there. The appellant on seeing them took to her heels and disappeared into the bush. This was despite the fact that PW7 was calling her back. This fact was later communicated to Joseph the son of the appellant. Joseph and PW7 and one boy went back in search of the appellant and rescued her from a ditch in to which she had fallen and was taken home. Martina Nwokeokibe P.W.8 on hearing what happened to the appellant rushed to the farm where the deceased went to give her the news. She got there only to be driven back by the ugly sight of her corpse with cuts all over. She rushed back to the village and broke the sad news to the people.

The appellant on being questioned by Lawrence Onwuruike P.W. 4, a brother in law, admitted that she killed the deceased. A report was made to the police who immediately began their investigation. The appellant was helpful to the Police. She admitted the act and took them to the cassava Farm where she showed them the dead body and took them to a distance of about 400 yards to recover the weapon (machet) with which she killed her. The machet was blood stained. She then made a confessional statement exhibit 2A to the Police, that “it was after the deceased raised a machet and cut her on her arm that she overpowered her, wrested the machet from her and killed her with it. She also admitted in Court that she killed the deceased saying that it was after the deceased cut her with the machet that she wrested the machet from her and killed her with it. She also complained of seeing double after her market stool was stolen. These facts can be seen from the evidence of the appellant which reads:

“I know Ugadiya Ofoha. Both of us were married by the same husband. I gather that she is now dead. My market stool was missing ... I do not know what the person who took it intended to do with it. The stood was never seen later. After that I asked the deceased about it and she said she did not know anything about it. I later became sick and started to see double ... I went to the hospital and received treatment. But on my way returning I became worse. I entered the bush and continued to wander about in the bush. I later entered the house of a certain woman ... The deceased cut me with a machet at the back of my right arm. I had nothing with me when I met the deceased in the farm. Our farms were the same. I went there to work. The deceased cut me when I challenged her for cutting the palm leaves on my farm. We quarrelled and she cut me first. I took the machet from her and retaliated. I went away after machetting her. I did not know that I thereafter went inside a pit.

Under cross-examination she said Inter alia:

“I did not suspect somebody of stealing the stool. I left the matter until I became sick and from then I felt someone had made medicine with it against me. I deny that I ever suspected the deceased. We were in good terms ... I went to the farm that day with a machet.”

Q: Is exhibit 3 not the machet you used in killing the deceased?

A: No answer.

Q: But that exhibit 3 is your machet?

A: No, the deceased used it on me and I then used it in killing her.

On these facts, the learned trial Judge convicted the appellant. There was no eye witness, but the confessional statement, both extra judicial and judicial, constituted cogent proof of the act. The confession was true positive and direct. The alarm heard by PW6 and PW7, the recovery of the blood stained machet with the help of the appellant, the presence of the appellant at the scene of crime, and the flight of the appellant from the scene when she heard the voice of PW6 and PW7 demanding to know who was shouting, far proved beyond reasonable doubt that she committed the offence. In dealing with the defence, the learned trial Judge said:

“The defence of provocation in a charge of murder is primarily as prescribed in Section 318 of the Criminal Code, and in the consideration of this Section, all other Sections of the Criminal Code, mainly Section 283 and 284, which are relevant, cannot be disregarded. See Obali v. The State (1965) 1 ALL NLR. 269 where it was also held by the Supreme Court at page 277 that “in relation to murder, provocation in Section 318 of the Criminal Code requires consideration of the nature of weapon or force used as a mode of resentment bearing some reasonable relation to the provocation received, the disproportion being a factor for the jury to consider in determining whether the accused had completely lost control of herself or was acting for a reason other than complete loss of self control caused by sudden provocation.”

Again, in Akang v. The State (1971) 1 ALL NLR 47, Coker, J.S.C. delivering judgment of the Supreme Court has this to say at page 49: “Provocation which reduces what would otherwise amount to murder to manslaughter is a legal concept made up of a number of elements which must co-exist. It is of paramount importance in the consideration of this concept that the act held out as a natural and justifiable reaction of the provoked person be done not in self-revenge, but in ventilation of a natural sudden and contemporaneous feeling of anger caused by the circumstances of the occasion.” In the instant case, the provocation that could be relied on is the cutting of the accused on the arm by the deceased - an act which has not been shown my medical evidence or otherwise to be serious. Would that justify accused’s resentment by cutting back on the deceased to the extent described by medical officer PW8? This is Certainly, on facts in my view, out of proportion with the assault she had received even after taking in to consideration, as I have done, the station in life of the peasant unsophiscated farmer to which the accused belongs. It will be borne in mind that this defence of provocation is being considered out of an inference. The accused has not led any evidence positively that she lost any self control and acted in the heat of passion. The inference which I am rather inclined to draw from the facts of accused is that if it were true that the deceased cut the accused as alleged by the accused, the accused then seized the opportunity to indulge herself in self-revenge owing to the previous bad relation-ship between the two women; and the accused thereby avenged herself by killing the deceased outright. So that acting as Judge and Jury, I am convinced on facts, that the accused, by butchering the deceased to death in that way she did, has done an act entirely undeserved by the circumstances of the occasion, consequently she cannot take shelter under the provisions of Section 318 of the Criminal Code.”

The machet with which the murder was committed was proved to be the property of the appellant. It was proved that she did not farm in the same area as the deceased and that the deceased was killed in her own farm, not in the appellant’s farm. The learned trial Judge rightly in our view rejected that defence of provocation and convicted the appellant.

For the above reasons, we found no merit in the appeal and dismissed it. Appeal dismissed.