

SUPREME COURT OF NIGERIA
25TH JUNE, 1993. SC.149/1991
CORAM:- A. G. KARIBI-WHYTE, S. KAWU, U. OMO,
I. L. KUIGI, E. O. OGWUEGBU, JJSC

MADUABUCHI GEORGE APPELLANT
V.
THE STATE RESPONDENT

COURTS - Invitation to Supreme Court - to follow its former
decision - when facts of the two cases are not the same
- whether proper

CRIMINAL LAW - Murder - severe application of matchet cut - whether
tantamount to an intention to kill

CRIMINAL LAW - Provocation - misunderstanding between two broth-
ers - whether enough to cause temporary loss of self-
control - when retaliation is not proportionate to
provocation - whether any miscarriage of Justice is
occasioned - by lower Court's failure to consider
provocation

CRIMINAL LAW - Insanity - epilepsy - no fits during and after the offence
- whether accused can be excused - failure of trial Court
to comment on the issue of epilepsy - is there any
miscarriage of Justice

EVIDENCE - Murder - counsel's submission that deceased could not
have died - if given immediate medical attention - not
based on any evidence - proper time to lay foundation
for such submission

MURDER - Existence of intention to murder - whether defence of
accident avails

FACTS

The Appellant was arraigned before the Isiala Ngwa Judicial Division of the now Abia State High Court on a charge of Murder. Appellant and the deceased are brothers of full blood. On the day of the incident, the deceased questioned the appellant in respect of something he was cutting inside a room that cannot be cut outside. Appellant who was cutting stock fish alleged that the deceased was beating him from behind. That the deceased also scattered appellant's beddings in the room. The appellant claimed he wanted to hit the deceased with the flat side of the machet so as to stop him from scattering his beddings. He then hit the deceased with the machet but the deceased raised his head and got a cut on the neck. Deceased could not be taken to hospital immediately for there was no transport. The doctor that performed the post mortem examination testified that the deceased died as a result of excessive blood loss from a deep machet cut on the neck cutting up all the blood vessels on that side of the neck.

The trial judge held that the defence of provocation did not avail the appellant who intended to kill. He found him guilty of murder and passed a sentence of death. Appellant's appeal to the Court of Appeal was dismissed. Being dissatisfied, Appellant has further appealed to the Supreme Court which reconsidered the question of provocation and other Defences raised by the Appellant.

HELD (unanimously dismissing the appeal)

1. The learned trial Judge was correct in holding that by giving the machet blow very severely, the appellant intended not only to cause grievous harm but also to kill the deceased. (P. 122 L 5)
2. The misunderstanding between the accused and the deceased were not such as would cause an ordinary man of the same standing as the accused a sudden and temporary loss of self control rendering him subject to passion as to make him for the moment not master of his mind. (P. 122 L 9)
3. Taking into consideration the weapon (machet) used, Appellant's retaliation was disproportionate to the provocation, if any offered by the deceased. (P. 122 L 16)
4. In view of the trial Court's correct finding that intent to murder was - necessary inference to be drawn from the acts of the

accused, sub-issue of intention and accidental killing are disposed of. And there was also no evidence whatsoever on which to base the defence of accident. (P. 122 L 27)

5. No miscarriage of justice is occasioned by the Court of Appeal's failure to consider provocation which was adequately dealt with by the trial Court. (P. 122 L 30)
6. An epileptic who commits an offence during seizure may receive a different consideration as against the Appellant who had no fits just before, during and after the offence. The learned Justice of the Court of Appeal rightly rejected the issue of epilepsy and failure of the trial Judge to comment on it did not lead to any miscarriage of Justice. (P. 124 L 16)
7. Appellant's Counsel's submission that the deceased could not have died if immediate medical attention had been received ignored the fact that there is no evidence as to the length of time between the injury and death. Foundation for such argument should have been laid through defence witness or cross-examination of prosecution witnesses (P. 124 L 23)
8. The decision in *Uwa v. The State* does not avail the appellant who was seventeen years old at time of committing the offence and well over seventeen at conviction. In any case, the two lower Courts and the Supreme Court are not in doubt as to the Appellant's age when he committed the offence, whereas there was doubt in *Uwa's* case that led to allowing his appeal. (P. 125 L 18)

PER OGWUEGBU JSC - *in respect of issues framed by Appellant's Counsel* - "I must say that this is a strange method of framing issues in our appellate courts. The learned appellant's counsel christened his additional grounds of appeal as 'Particulars of issues for determination'..." (P. 119 L 13)

REPRESENTATION

Chief F. Akinyosoye, Titilayo Olanrewaju (Miss), for the Appellant
C.C. Okoro Esq., Deputy Director of Public Prosecutions Ministry of Justice, Imo State, for the Respondent

CASES REFERRED TO

1. Bozin v. The State (1985) 2 NWLR (pt. 8) 465
- 5 2. R. v. Duffy (1949) 1 All E. L. R. 932
3. R. v. Nungu 14 WACA 379
4. R. v. Okoro 16 NLR 63
5. Mensah v. The King 11 WACA 2
6. R. v. Adekanmi 17 NLR 99
- 10 7. Macini v. D. P. P. (12942) AC 1
8. Dim v. The Queen 14 WACA 154
9. R. v. Omoni (1949) 12 WACA 511
10. Nnajicfor v. Ukonu (1986) 4 NWLR 505
11. Uwa v. The State (1965) All NLR 372
- 15 12. Obaji v. The State (1965) NMLR 417

STATUTES

1. Criminal Code ss. 283, 284, 318, 316, 27, 28
- 20 2. Constitution of Nigeria 1963 s. 22 (7)

LEAD JUDGMENT BY OGWUEGBU JSC

25 The appellant Maduabuchi George was arraigned before Anyanwu, J of the Isiala Ngwa Judicial Division of the former High Court of Imo State now Abia State High Court on 26th September, 1984, on a charge of murder.

The prosecution's case was that at about 8 p.m. on 18th May, 30 1984. The deceased who was a brother of the full blood of the appellant had supper with his father - George Nwagwugwu (PW.2) when the appellant was away. The appellant returned after they had finished eating. He went into his room to cut something. The deceased questioned him as to what he was cutting inside the room which he could not cut outside. The 35 appellant told the deceased to go away and queried whether he was on the body of the deceased who had taken his own food. PW.2 asked the deceased who was then in the room of the appellant to leave the appellant's room.

PW. 2 was at the back yard when he heard the alarm raised by the

deceased that the appellant had given him a matchet cut. As a result P.W. 2 and the mother of the deceased (D.W. 2) ran into the room of the appellant. The appellant ran out of the room. There was no light in the room. P.W. 2 brought light into the room and the appellant had given the deceased a matchet cut on the neck. Both of them brought the deceased out of the room and raised alarm. Nobody came, D.W.2 held the deceased while P.W. 2 went to the police station at Ugba where he lodged a complaint. 5

The police told P.W. 2 that they had no vehicle and asked him to arrange for a vehicle and bring the victim to the police station. P.W.2 returned home to find that the victim had already died. He also discovered that the appellant had run away. P.W. 1 (Dr. Chima Nwafor) performed the autopsy. 10

Dr. Chima Nwafor testified as P.W.1. He told the court that he carried out a post-mortem examination on the body of Okwudiri George on 19/5/84 after the body was identified by P. W. 2. He stated that the deceased was a well nourished young man with a deep matchet cut extending from the left ear to the anterior aspect of the neck cutting up all the blood vessels on that side of the neck (the jugular and carotid vessels) to and from the brain. 15

He further said that the cut went deep into the ear bone extending to the anterior aspect of the neck exposing the trachea. He certified the cause of death to be due to hypovolemic shock following a matchet blow on the region described and very severely applied. He explained that hypovolemic shock means excessive blood loss. 20

Police Sergeant Esemé Okon testified as P.W. 3. He investigated the complaint lodged by P.W. 2. He went to the scene and saw the deceased in a pool of blood. He completed the necessary Coroner's form which he served on P.W. 1. He stated that there was no vehicle to convey the corpse to the General Hospital at Okpuala Ngwa. He pleaded with P.W. 1 who accompanied him to the scene where the post-mortem examination was performed. 25

After two days, the villagers arranged a search party, arrested the appellant and brought him to the police station. He formally arrested the appellant, charged and cautioned him. He volunteered a statement which he tendered as Exhibit "A". 30

P.W. 4 is an Assistant Superintendent of police attached to Okpuala Ngwa Police station. P.W. 3 took the appellant to him with Exhibit "A". He cautioned the appellant in Igbo and read over Exhibit "A" to the appellant in Igbo. The appellant agreed that he made Exhibit "A" voluntarily before

he (PW.4) countersigned it.

The appellant gave sworn evidence in his own defence. His mother Teresa George testified as D.W. 2. The appellant testified that at about 8 p.m. on 18/5/84 he returned home from where he went to buy stock fish. He started to cut it into pieces in his room. The deceased who was in his own room started to ask who was cutting something. The appellant told him that he was cutting something which he wanted to use in cooking soup. The deceased repeated his question and the appellant repeated his answer.

As the appellant continued cutting the stock fish, the deceased came from his back and started beating him. The appellant was shouting as the deceased was beating him. D.W. 2 entered the room and enquired from the deceased why he was beating the appellant and the deceased did not reply. P.W. 2 also came into the room and pleaded with the deceased not to beat him (appellant). He did not heed the plea of P.W.2 who left the room in anger. The deceased stopped beating the appellant and started removing the beddings on the appellant's bed and scattered them in the room.

The appellant stated that he became annoyed, picked the matchet he was using in cutting the stock fish with his left hand. He wanted to hit the deceased with the flat side of the matchet so as to stop him from scattering his beddings. He hit the deceased with the matchet when the deceased raised his head and got a cut on the neck. When he saw blood rushing out on the deceased, he dropped the matchet and ran out. He thought that the deceased would retaliate. He admitted making Exhibit "A". The evidence of D.W. 2 is similar to that of P.W. 2 in all material particulars. She also testified that the appellant was born in March, 1967.

The above is the gist of the evidence led by both the prosecution and the defence.

After reviewing and evaluating the evidence adduced, the learned trial Judge found the appellant guilty as charged and sentenced him to death by hanging. The appellant appealed to the Court of Appeal against the decision of the trial court. His appeal was dismissed. He has appealed to this court being dissatisfied with the decision of the court below.

The appellant filed one original ground of appeal. (See page 68 of the Record of Appeal) and four additional grounds of appeal with the leave of the court. Briefs were filed and exchanged. At page three of the appellant's brief, only one issue was identified for determination, namely:

"The issue for determination is the failure of the Court of Appeal to consider the totality of the evidence before their Lordships and

failure to make specific findings on the evidence adduced by the prosecution witnesses relating to the appellant."

Particulars of the issue for determination:

- (a) Whether the learned trial Judge and the Court of Appeal ought to have considered legal implications of "provocation" and distinction between "actus reus" and "mens rea" before arriving at their respective decisions. 5
- (b) Whether the two lower courts ought to have considered epilepsy as a fall-out of insanity.
- (c) Whether the fact adduced by prosecution amount to accidental killing followed by prolonged interval of medical attention. (See Section 24 of the Criminal Code):" 10

I must say that this is a novel and strange method of framing issues in our appellate courts. The learned appellant's counsel christened his additional grounds of appeal as "particulars of issues for determination". Grounds one and two of the additional grounds of appeal are particular (a) of the "issues for determination" while grounds three and four of the additional grounds of appeal are particulars (b) and (c) of the "issues for determination." 15

Whereas the issue for determination raises the question of evaluation of evidence counsel however proceeded to set out the additional grounds of appeal as "particulars of issues for determination". This is wrong. 20

Issues for determination are not the same thing as grounds of appeal which allege misdirection or error in law. In such cases, the particulars and the nature of the misdirection or error are clearly stated. However, I will treat the so-called "particulars of issues for determination" as subsidiary issues in this judgment. The learned counsel for the respondent adopted the issue for determination formulated by the appellant's counsel. 25

The learned counsel for the appellant proceeded to argue the following matters in his brief of argument: - the problem of intention, the defence of provocation, accidental killing, the medical aspect and the age of the appellant. 30

The problems of intention:

Counsel stated that the problem of the law of murder is the determination of the question whether or not the accused has an intention to kill or at least to cause grievous bodily harm for the purpose of mens rea for the offence. He submitted that the intention to kill is a crucial element. He 35

referred to the evidence of P.W.2 and D.W.2 to the effect that the accused is not hot tempered. He referred to the evidence of the accused where he testified that he wanted to hit the deceased with the flat side of the machete so as to stop the deceased from scattering his beddings. Counsel further submitted that these pieces of evidence are enough to lead to the
5 conclusion that there was a lack of intention to kill and that the appellant's intention was to chastise the deceased.

Learned counsel contended that in the case before us, there was no previous quarrel and the circumstance did not show that the appellant planned to kill the deceased. He said that the circumstance created doubts
10 as to whether there was any intention to kill. The court was urged to resolve the doubt in favour of the appellant. Counsel cited the case of *Bozin v. The State* (1985) 2 NWLR (Pt.8) 465 or (1985) NSCC 1087.

On the defence of provocation, the learned Counsel for the appellant referred the court to section 283, 284 and 318 of the Criminal Code
15 and submitted that for an accused to avail himself of the defence under S. 318 of the Criminal Code, the accused must have done the act which caused the death:

- (a) In the heat of the passion
- (b) Which is caused by grave and sudden provocation and
- 20 (c) The act must have been done before there is time for
passion to cool

We were referred to the case of *R v. Duffy* (1949) 1 All ELR 932 where Delvin, J defined 'provocation' as some act or series of acts done by the dead man to the accused which would cause in any reasonable person,
25 temporary loss of self- control, rendering the accused so subject to passion as to make him or her for the moment not master of his/her mind.

Counsel stated that the judgment of the trial court did not exhaustively discuss the principles of provocation and the Court of Appeal did not even mention it. He submitted that it is the duty of the courts to consider a
30 defence put forward by an accused in a criminal case no matter how stupid or improbable the defence is.

The learned counsel for the respondent in his reply to the above submissions stated that the degree of retaliation by the appellant is out of proportion to the alleged acts of the deceased which even if true, did not
35 amount to such provocation as would reduce one offence to manslaughter. He cited the case of *R v. Maye Nungu* 14 WACA 379 at 380.

On the sub-issue of mens rea, counsel referred the court to the evidence of P.W. 1 - Dr. Chima Nwafor who performed the post-mortem examination and the finding of the learned trial Judge on provocation. He

submitted that the learned trial Judge disposed of the question of mens rea.

The issue of provocation was not canvassed in the Court of Appeal. It was raised in the court of trial. The learned trial Judge in my respectful opinion adequately disposed of it at page 16 from line 35 to page 17 lines 1-25 of the record of appeal where he said:

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"He also submitted that the accused was provoked to do what he did by (sic) the deceased who scattered the beddings of the accused and pushed the accused down. I do not think that this submission is sound. What did the accused intend to result from his act when he picked up a matchet and dealt a blow on the neck 10 of the deceased and caused him injury described by the P.W. 1? Certainly he intended to kill him. In any case he intended to do the deceased grievous bodily harm. S.316 of the Criminal Code provides as followsI am firmly of the view that the accused in striking the deceased with a matchet intended not only to cause 15 him grievous bodily harm but also to kill him. I do not also see how the alleged scattering of the beddings of the accused in the room could amount to such provocation as would reduce the offence to manslaughter."

P.W. 1 in his evidence in chief said:

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"The deceased was a young man well nourished, with a deep cut extending from the left ear to the anterior aspect of the neck cutting up all the blood vessels on that side of the neck (.....) to and from the brain. The cut went deep into the ear bone extending to the anterior aspect of the, neck exposing the trachea. I certify 25 the cause of death to be due to hypovolemic shock following a matchet blow on the region described very severely applied. Hypovolemic shock means extensive blood loss."

The appellant in his examination in chief at page 9 lines 8-14 of the record said:

"I became annoyed, picked up with my left hand the matchet which I was earlier using and wanted to hit him with the flat side of the matcher so as to stop him from scattering my beddings. The time I hit him with the matchet was the time he raised his head 35 and he got cut on the neck."

The type of injury described by P.W. 1 could not have been caused in

the circumstance narrated by the appellant that is, wanting to hit the deceased with the flat side of the matchet and the deceased raising his head and being cut on the neck. This is far from the truth.

The region of the neck where the cut traversed was wide. It went deep. Extensive blood loss resulted from the matchet cut which was very
5 severely applied.

I agree with the learned trial Judge that the appellant by giving the deceased the matcher blow, in the manner described above intended not only to cause him grievous harm but also to kill him. The learned trial Judge was also right in rejecting the defence of provocation.

10 The questions and answers as to who was cutting what, the beating and the scattering were not such acts which would cause an ordinary man of the same standing as the accused a sudden and temporary loss of self control rendering him subject to passion as to make him for the moment not master of his mind. See R. v. Okoro 16 NLR63, Mensah v. The
15 King 11 WACA 2, R. v. Adekanmi 17 NLR 99 and Mancini v. D.P.P. (1942) AC 1 at 9.

The retaliation was disproportionate to the provocation if any offered by the deceased. The instrument or weapon used by the appellant in effecting the murder must be taken into consideration. In this case, a matchet
20 was used. Can it be said that a matchet is an instrument not likely to cause death when severally applied to the neck as in this case? I think not.

At page 17 lines 26-31 of the record, the learned trial Judge held:

25 *"I accept the submission of Mr. O. B. A. Oji learned State Counsel for the prosecution that on the authority of Dim v. The Queen 14 WACA 154 the accused is taken to intend the natural and probable consequences of his act and that intent to murder was a necessary inference to be drawn from the acts of the accused in this case."*

This finding with which I entirely agree disposes of the sub-issues of
30 intention and accidental killing. There was also no evidence what so ever tending to raise the defence of accident.

In my view no miscarriage of justice is occasioned by the failure of the Court of Appeal to consider provocation which was adequately dealt with by the trial court.

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The Medical Aspect:

Under this heading, learned counsel for the appellant argued paragraph (b) of his "particulars of issues for determination" namely, "whether

the lower courts ought to have considered epilepsy as a fall out of insanity" along with what he termed "prolonged interval of medical attention."

I am at a loss to understand what learned counsel meant by the expression "epilepsy as a fall-out of insanity." The court invited counsel to explain what he meant by this expression in the course of his oral submissions. He could not offer any explanation. 5

He however submitted in his brief of argument that the issue of insanity was raised in the Court of Appeal and that the only evidence to sustain it is the evidence of P.W. 2 who testified that the appellant suffered from epilepsy in 1982 and had not been normal since then.

After going through the opinions expressed by medical researchers 10 on mental disorders, counsel submitted that his plea is not to equate epilepsy with insanity. He said that the appellant's history of epilepsy affected him and made him lose control of his action. He referred the court to S.27 of the Criminal Code.

I must say that there was no evidence upon which counsel for the 15 appellant anchored his submission.

In his evidence P.W. 2 (father of the deceased and the appellant) testified under cross-examination at page 6 lines 18 - 24 of the record as follows:

"The accused is not a hot tempered person. But in 1982 he 20 suffered from (sic) epilepsy, since then he had not been normal. I know that he was not normal because when he went back to school he no longer followed what was happening in school and so I asked him to leave school."

This was the only evidence before the court on the disease of epilepsy 25 which afflicted the appellant in 1982 -two years before the offence charged. I will at this stage refer to the provisions of Sections 27 and 28 of the Criminal Code to see if the appellant comes within provisions of S.28 of the said Code. Sections 27 and 28 provide:

"27. Every person is presumed to be of sound mind, and to have 30 been of sound mind at any time which comes in question, until the contrary is proved."

"28. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive 35 him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission."

For the defence to establish insanity and overcome the presumption

under S.27 of the Criminal Code, he must establish that at the relevant time, he was suffering either from mental disease or from natural mental infirmity i.e. a defect in mental power which was neither produced by his own fault nor the result of disease of the mind. See *R v. Omani* (1949) 12 WACA 511.

5 The appellant will also establish that the mental disease or natural infirmity such that, at the relevant time, he was as a result deprived of capacity to understand what he was doing or to control his actions or to know that he ought not to do the act or make the omission.

Epilepsy is defined in Webster's New Twentieth Century Dictionary
10 as a chronic disease of the nervous system characterized by convulsions and, often unconsciousness and also called falling sickness.

Apart from the evidence of P.W. 2 there is no other material before the trial court to bring the conduct of the appellant within the provision of S.28 of the Criminal Code. The last epileptic fit was in 1982. The offence
15 was committed two years after and the appellant did not commit the offence during seizure.

An epileptic who commits an offence during seizure may receive a different consideration as against the appellant who had no fits just before, during or after the offence. The learned Justices of the Court of Appeal
20 rightly rejected the issue of epilepsy. I also agree with the court below that the failure of the learned trial Judge to comment on it did not lead to any miscarriage of justice. See *Nnajofofor v. Ukonu* (1986) (Pt.36) 4 NWLR 505 at 517.

As to the time lag, learned appellant's counsel stated the evidence
25 of P.W. 1 is to the effect that the deceased died as a result of extensive blood loss. He then submitted that if the deceased had received immediate medical attention, the blood loss could have been avoided and the deceased could not have died.

This ignored the fact that there is no evidence before the trial court
30 as to the length of time it took from the time the injury was inflicted to the time the deceased died. Counsel should have laid the foundation for this argument either through his witness (D.W.2) or through the prosecution witnesses during their cross-examination. There is also no evidence of the distance between the scene of the murder and the police station.

35 The last issue to be considered in this appeal is the age of the appellant. Counsel submitted that the court should take into cognisance of a person though seventeen yet his behaviour is of a level below his age. The court was referred to the case of *Uwa v. The State* (1965) All NLR 356.

Learned counsel finally stated that the appellant was exactly sev-

enteen years old when the offence was committed, has the history of epilepsy and could have been affected by his immaturity. We were urged to allow the appeal.

The learned respondent's counsel said that the appellant was seventeen years at the time of the commission of the offence on 18/5/84 and not on 20/1/86 when he was convicted and sentenced to death. He further stated that the appellant's age did not call for consideration. He urged the court to dismiss the appeal. 5

In *Uwa v. The State* (supra), the defendant committed murder in August, 1964; he was convicted and sentenced to death on 1st June, 1965. In February, 1965, he told the doctor that he was thirteen when baptised in 1960. The trial Judge reckoned that he had attained seventeen when convicted and was liable to sentence of death. 10

On appeal it was argued on his behalf that under S.22(7) of the Constitution of 1963, the court must go by the penalty in force at the time of the offence. This court held that it was doubtful whether the defendant had attained the age of seventeen by the time of conviction. The court took the view that he had not. The appeal was allowed in regard to sentence. 15

In this case the appellant was seventeen years old at the time the offence was committed. He was well over seventeen at the time of conviction. In any case, the trial court, the Court of Appeal and this court are not in any doubt as to whether the appellant had attained the age of seventeen years at the time the offence was committed. In *Uwa's* case, there was that doubt hence the appeal was allowed. Epilepsy having been earlier discussed does not call for further consideration again. 20 25

In the final result this appeal fails. It is hereby dismissed. I uphold the conviction and sentence of the trial court and confirm the judgment of the court below.

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KARIBI-WHYTE JSC

I have read the judgment of my learned brother Ogwuegbu, J.S.C. I agree with him that this appeal lacks merit and should be dismissed. 35

The only defence worth considering is that of provocation raised by the statement of the appellant. On close examination of the facts, it seems quite clear that the acts relied upon are not such as to make a

reasonable person lose his self-control and commit the offence charged, or of such a nature as to make appellant commit the offence.

My learned brother Ogwuegbu, J.S.C. has stated the facts in this appeal in his characteristic lucidity. Appellant complained that he was beaten
5 up by his elder brother and his beddings in his room scattered. His reaction to this was to cut his elder brother on the neck with the knife he was using to cut stock-fish. This was his reaction to the provocation offered by the deceased.

Even if it is admitted that the beating he had and the scattering of
10 his beddings in his room amounted to provocation, it cannot be said that this is the kind of retaliation of reasonable man in the circumstances of the appellant. See *R. v. Okoro* (1942) 16 NLR 63. It is obvious that the retaliation is disproportionate to the provocation offered by the deceased See *Obaji v. The State* (1965) NMLR 417. It is well settled that where the
15 reaction to the provocation is disproportionate the defence is not available. Proportionality can be determined by the nature of the weapon used in retaliation, and the obvious disparity in relative physical strength of the parties. Appellant has not stated that his brother used or threatened to use a dangerous weapon on him.

20 The defence of provocation cannot therefore on the facts of this case be available to the appellant.

For the above reasons and the much fuller reason in the judgment of my learned brother Ogwuegbu, J.S.C. I also hereby dismiss the appeal, and affirm the judgments of the courts below.

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KAWU JSC

I am in complete agreement with the lead judgment of my learned
30 brother, Ogwuegbu, J.S.C. which has just been delivered. I agree with his conclusion that the appeal lacks merit and should be dismissed. On the totality of the evidence adduced at the trial, I have no doubt whatsoever that the appellant was properly convicted of the unprovoked murder of the deceased. I am also satisfied that the evidence of P.W. 2 does not establish
35 the defence of insanity and that the lower courts were right in rejecting that defence.

I will also dismiss the appeal and affirm the conviction of the appellant and the sentence of death passed on him.

OMO JSC

I have had the opportunity of reading in draft the judgment of my learned brother, Ogwuegbu, J.S.C. I entirely agree with same and adopt the reasoning and conclusions therein as mine. I have nothing useful to add thereto. 5

Accordingly I also dismiss this appeal and affirm the judgment of the court below.

KUTIGI JSC

I read in advance the judgment of my learned brother Ogwuegbu, J.S.C. just delivered. I agree that the appeal has no merit and it is hereby dismissed. Appeal dismissed. 15

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