

SUPREME COURT OF NIGERIA
9TH JULY, 1993. SC.209/1991
CORAM:- A. G. KARIBI-WHYTE, S. KAWU, S. M. A.
BELGORE, U. OMO, I. L. KUTIGI, JJSC

OFOKE NJOKU APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL LAW - Murder - self-defence - (dictation of inadequate consideration of - whether sustainable - what accused must prove - so as to entitled to self-defence

CRIMINAL PROCEDURE - Murder trial expressed or Implied defence open to the accused - where trivial - whether the consideration thereof - is binding on the tried court

COURTS - Comment by trial - not founded on evidence - whether justified

EVIDENCE - Murder - no evidence of past aggressiveness of deceased - claim that attack on deceased was preemptive - whether justifiable - Prosecution's evidence - whether contradictory

FACTS

The Appellant and deceased were husband and wife. A quarrel arose between them over an allegation by the deceased that only fish bones were in his soup and blamed the Appellant for not recognising his status as the family head. Deceased threatened to discipline the Appellant. They latter retired to the same apartment to sleep, together with their 18 year old son who testified as the first prosecution witness (PW1). The PW1 testified that the deceased had just slept with the matchet by his side when the Appellant picked up a pestle with which she dealt blows on the deceased who died on the spot. Appellant on her part said it was her attack that killed her husband but claimed it was in self-defence.

The Abakaliki High Court preferred PW1's evidence, disbelieved the Appellant and convicted her for murder. Appellant's appeal to the court of Appeal was dismissed. On further appeal to the

Supreme Court, the Appellant asked the court to determine whether the evidence adduced at the trial was sufficiently cogent to discharge the burden of proof beyond reasonable doubt.

HELD (Unanimously dismissing the appeal)

1. The Appellant's submission that the issue of self-defence raised by her was not adequately considered does not arise, since in the instant case the learned trial Judge thoroughly assessed all the evidence both for the prosecution and defence, came to the conclusion of believing the first prosecution witness without believing that the deceased was about to attack the Appellant. (p.64 L34)

2. Although learned trial Judge's comment that "*the accused was tired of her husband*" is unjustified as it was not founded on any evidence, the remark is a mere part of questions the trial Judge had in mind about the Appellant's claim of acting in self-defence. (p.65 L4)

3. Apart from believing there was a quarrel, there was no evidence of the deceased being a troublesome and aggressive person prior to the day of the incident, to justify the Appellant's pre-emptive fatal attack on the deceased. (p.65 L18)

4. For self-defence to arise there must be clear evidence that the victim was attacking or about to attack the Appellant in a manner that previous hurt or death was possible: that the self-defence was contemporaneous with the threatened attack: and that the mode of self-defence was not greater than the threatened attack. (p.66 L12)

5. In all murder cases, it is incumbent on the trial court to consider all expressed defence put up by the accused or defences implied in the evidence before the court including self-defence, provocation, alibi and even insanity however trivial and that is precisely what the trial Judge did. (p.66 L18)

6. What the Appellant's counsel pointed out as contradictions in the evidence of the prosecution are not contradictions and they do not at any rate touch on the substance of the case. (p.66 L27)

PER KUTIGI JSC *“It is certainly not the law that the possession of a matchet by the deceased without evidence of its use in an assault against the appellant entitles the appellant who killed with a pestle to the defence of provocation or self-defence. It is its use that determines whether or not provocation was offered by the deceased to the appellant or whether appellant’s life was in danger.”* (p.73 L20)

REPRESENTATION

Seyi Sowemimo, for the Appellant
O’Connel Ogbonna, Legal Officer, Ministry of Justice, Enugu State,
for the Respondent

CASES REFERRED TO

1. Boms v. The State (1971) 1 All NLR 337
2. Ailosile v. The State (1972) 5 S.C. 332
3. Onubogu v. The State (1974) 9 S.C 1
4. Queen v. Isa (1961) 1 All NLR 671
5. Nwede v. The State (1985) 12 S.C 32
6. Kato Dan Adamu v. Kano N.A. (1956) I FSC 25
7. Abaghor v. Police (1961) 1 All NLR 850
8. The State v. John Ummu (1968) NMLR 15
9. Alhaji Barau v. B.O.C.E. (1982) 10 S.C. 48
10. R V. Onakoya 4 FSC 150
11. Grace Bonis v. The State (1971) All 335
12. Akpankere Apishe & ors v. The State (1971) All NLR 53
13. Okpere v. The State (1971) All NLR 11

STATUTES REFERRED TO:

1. Criminal Code s. 319 (1.) Cap. 30 Vol. II, Laws of the Eastern Nigeria 1963
2. Evidence Act s. 137, s, 178

LEAD JUDGMENT BY BELGORE JSC

The appellant, a housewife, was tried and convicted under S. 319 (1) of Criminal Code Law of former Anambra State for the murder of her husband, Njoku Igboke. The trial took place at Abakaliki Judicial Division. The prosecution’s case was that on the 29th day of December, 1977 at Amagu Izzi the deceased arrived home from the

market and asked for his supper which the appellant gave him. He complained that the fish in the stew was full of bones and implying it was not good. It would seem he made a big issue of it but the appellant apologised and promised to get better fish to cook next time. At the time he came home their son, Njoku Igboke, 18 years old, had just finished eating his own meal. So he was around when his father the deceased, complained that his stew was full of fish bone's rather than fish and in the words of the young man (who was P.W.1) "he protested that only fish bones were in his soup and blamed the accused for not recognising his status as the head of the family".

He threatened to discipline her. The deceased, the appellant and P.W.1. then retired to the same apartment to sleep for the night. P.W.1 then claimed he was on the same mat with his mother while the deceased was on another one opposite them. Here the divergent stories started. The prosecution's case was that the deceased had just slept when the appellant picked up a pestle with which they normally wedged the door and with it dealt three blows on the deceased's head. The deceased groaned, stretched his legs and then became motionless. At the time of the attack the deceased was facing away from the appellant and P.W.1., and had his hands under his head with his matchet that he customarily kept by his side. The appellant picked up the matchet of the deceased and ran out and away. According to P.W.1, the incident occurred around 9 p.m.

The appellant's story in defence as told by her in her voluntary statement to the police and as P.W.4, Nwazufu Erinye, a neighbour, said she told him was that because of the heated argument on the stew full of fish bones rather than fish, he threatened he would kill her bringing out his matchet which he kept by his side. Although, in her voluntary statement, Exhibit C, she said as follows:

"....I told him to forgive that the following day I would buy another fish to cook for him. He said both of us would die. He then took his matchet to cut me, I quickly went to a corner of the house, got hold of a pestle, I gave him two hits by side of the head and he fell down and died.....My son named Igboke Njoku was at home during the incident."

When P.W.4., who was the village councilor, went to the house of the deceased, he saw the deceased lying on a mat with his two hands clasped under his head with extensive flow of blood. The medical

report of the autopsy Exhibit D says inter alia as follows:

"A 4 cm vertical laceration wound (sic) surrounded by a marked scalp contusion of the left side on the scalp behind the right ear and covered with blood. Depressed fracture of the frontal bone on the left side. Extradural hemorrhage on the left side of the anterior crarial
 5 *tossa.*

I certify the cause of death in my opinion to head injury."

Though the appellant in her evidence on oath in court elaborated fully her version of what happened, it is not much different from her voluntary statement. She agreed her attack on her husband killed him but she claimed she did so in self defence.
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Learned trial Judge preferred the version of the P.W.1, the son of both the deceased and the appellant; that is to say the deceased had gone to sleep on the mat when stealthily the appellant from the back rained blows on his skull with a pestle. He disbelieved the story of the appellant that she pre-empted the deceased attacking her with a matchet as he threatened, he rather found the appellant rashly rushed at the sleeping deceased and smashed his skull. The Court of Appeal refused to interfere with the decision and dismissed the appeal lodged by the appellant and this led to this appeal.
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The only question advanced as an issue for determination in the appellant's Brief runs as follows:

".....whether the evidence adduced at the trial was sufficiently cogent to discharge the burden beyond reasonable doubt".
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Seyi Sowemimo, Esqr, of counsel, for the appellant in a well written and researched Brief of Argument, argued that the appellant's main contention of self-defence was not adequately considered and cited circumstances in the case of *Grace Bonis v. The State* (1971) All NLR 334, 337 where the evidence of the appellant that she was held by the throat was not considered. In the instant case, learned trial Judge thoroughly assessed all the evidence in the case both for prosecution and for defence and came to the conclusion that he believed the evidence of P.W.1., the son of the deceased and the appellant, and that he never believed the deceased was about to attack the appellant. Exhibit 1 is a confession not as to guilt but as to why she attacked and that she indeed used the pestle to smash her husband's head. The Court of trial believed and held she was not about to be attacked with matchet by the deceased. What he believed was the
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PW.1's evidence that it was the practice of the deceased to sleep with the matchet by his side at night.

Counsel for the defence raised a lot of dust on Court of Appeal not frowning on the trial Judge's findings that "the accused was tired of her husband. There was a design to effect death which was achieved in a cruel manner with a dangerous weapon" 5
and

"The accused did not suggest that the husband was not of good character of even temper and quiet disposition. She did not say he was a drunkard and that she lived in terror of him. They did not live in a state of unhappiness" 10

These quotations ought to be viewed in their context not out of context. While the first quotation is unjustified for nowhere was there evidence that the appellant was fed up with her husband, but the remark is a mere part of questions trial Judge had in mind about the defence of the appellant that she acted in self defence. Apart from believing there was some quarrel there was no evidence of the accused prior to that day being a troublesome man and aggressive person to justify the appellant's fatal attack on him to pre-empt him. He found further as follows: 20

"I find as a fact that accused was not exposed to any serious threat nor did she act in an agitated frame of mind. There was nothing to excite the accused to a heat of passion so that it could be said that her mind was uncontrollable and incapable of competent reflection. The deceased often kept his matchet beside him whenever he went to sleep. In the locality, the matchet is an instrument of defence as well as of attack. Assuming what the accused said was true, which was not, she exceeded the limit of lawful self-defence. Accused was tired of her husband. There was a design to effect death which was believed in a cruel manner with a dangerous weapon. With a wooden hammer or mortar pestle, Exhibit 'A', the accused battered the head of her husband to death which was sudden and instantaneous." 25 30

From the evidence before me, accused struck the husband twice in the head with considerable violence. The husband had not offered real violence to her; the accused struck in anticipation to a non-threatened act of violence. The husband did not aim the matchet at her when she struck. She did not strike in the course of a quarrel. The husband was already in bed with eyes closed and backing the 35

aggressor. It did not happen accidentally; she struck twice on a vital human organ like the head inflicting a very disproportionate injury. A person who wittingly inflicts such grievous bodily harm must know that she is endangering life or would likely cause death."

5 It is clear the trial Judge was explaining how he could have presumed that a plea of self defence was made out; all he had as evidence before him was a sudden disagreement which had ended when the deceased retired to sleep. He did not believe the deceased was about to attack the appellant. The Court of Appeal certainly saw the reasoning was not perverse. The evidence of P.W.1, appellant's
10 son, was clear and cogent and the trial court believed him. Court of Appeal found no reason to interfere with the finding.

For defence of self-defence there must be clear and unambiguous evidence before Court of trial that the victim was attacking
15 or about to attack the appellant in a manner that grievous hurt and or death was possible and had to defend himself; that the self defence was instantaneous or contemporaneous with the threatened attack; and that the mode of self-defence was not greater or disproportionate with the threatened attack. In all murder cases it is incumbent on trial court to consider all defences put up by the accused
20 expressed or implied in the evidence before the court including self-defence, provocation and even insanity and alibi. However, trivial, the defence must be looked into and that is precisely what the trial judge did in his style by explaining what he would normally look for
25 in a situation availing the appellant right of self-defence in law. It is however a different thing if trial court merely conjectures Akpankere Apishe & Ors. v. The State (1971) All NLR 50; Okpere v. The State (1971) All NLR 1.

30 It was submitted that there were contradictions in the evidence of the prosecution. With greatest respect to learned counsel for the appellant, what he pointed out as contradictions are not contradictions and they do not at any rate touch on the substance of the case. Certainly this case is far from being on all fours with Onubogu v. The
35 State (1974) 9 S.C. 1; Queen v. Isa (1961) All NLR 668, 671.

For the foregoing reasons I find no merit in this appeal and I accordingly dismiss it. I affirm the judgment of the Court of Appeal which upheld the conviction and sentence of trial court under S. 319 (1) Criminal Code Law of Anambra State.

KARIBI-WHYTE JSC

I agree entirely with the reasoning and the conclusion of my learned brother, Belgore, J.S.C. in this appeal dismissing the appeal of the Appellant. The evidence before the court did not support the defences of provocation or self-defence raised on behalf of the Appellant. It was a clear case of calculated cold blooded murder perpetrated by a wife on her husband. There is no merit whatsoever in this appeal.

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KAWU JSC

I have had the privilege of reading, in draft, the lead judgment of my learned brother, Belgore, J.S.C. which has just been delivered. I am in complete agreement with his reasoning and also with his conclusion that the appeal is completely devoid of merit and should be dismissed.

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It is plain on the evidence adduced that it was the act of the appellant that caused the death of the deceased - her husband. She made a confessional statement to this effect (Exh. C) and confirmed the same in her evidence in court. Her confession was corroborated by the evidence of P.W.1 who was an eye witness to the incident. The defences of provocation, accident and self defence were in my view, rightly rejected by the learned trial Judge. On the totality of the evidence, I am satisfied the appellant was properly convicted. The appeal is dismissed and the appellant's conviction and the sentence of the death imposed on her are hereby confirmed.

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OMO JSC

This is an appeal against the affirmation by the Court of Appeal of the conviction and sentence of the appellant for the murder of her husband by the Anambra State High Court.

The appellant who admitted hitting the deceased with several blows of a mortar pestle delivered on his head, claimed to have in self-defence because she only struck the deceased after he had threatened to kill her with the machet he had beside him as he slept on his mat. This defence was belied by their 18 year old son whose evi-

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dence was that the deceased (his father) was the victim of an unprovoked and surreptitious attack by the appellant (his mother).

The sole issue raised for determination in this appeal is whether the evidence adduced at the trial was sufficiently cogent to discharge the burden of proof by the prosecution, which is proof beyond reasonable doubt. Before coming to the conclusion that the answer to the issue raised is in the affirmative, my learned brother Alfa Belgore, J.S.C. in his lead judgment which I have previewed in draft, has considered the evidence led before the trial court. He found that there was cogent evidence before the trial court on which it properly relied in deciding that the offence charge was committed by the appellant.

I entirely agree with the conclusion of my learned brother, and for the reasons set out in his judgment, that there is no merit in this appeal. I adopt the reasons conclusions of that judgment as mine. Accordingly I also dismiss this appeal, and affirm the judgment of the court below.

KUTIGI JSC

The appellant was at the Abakaliki High Court charged with the murder of her husband NJOKU IGBOKE contrary to section 319(1) of the Criminal Code Cap. 30 Vol. II, Laws of Eastern Nigeria, 1963. She was convicted and sentenced to death.

At the trial the prosecution called five witnesses to prove its case, only one of them Igboke Njoku, the son of the marriage, was an eye witness. He testified as P.W.1. He narrated the events as he saw them on pages 4 - 5 of the record as follows:-

"Njoku Igboke was my father and he is now dead. On 29/12/77 morning I went to shoot at birds in the bush with my catapult string. When I came home I met my parents in house. My mother, the accused served me lunch and as I was eating my father demanded his own. When he was served his own by the accused, he protested that only fish bones were in his soup and blamed the accused for not recognising his status as the head of the family. He threatened to discipline her. Later my parents and I retired to sleep in the same apartment. I lay on the same mat with my mother whilst my father lay on another mat opposite us. None of us had yet slept when my mother got up and picked up the pestle with which we wedge our

door leading outside and dealt three blows with it on my father's head. At the time the blows landed, my father was facing away from us with his eyes closed. My father groaned and his legs stretched out as he became motionless. The accused immediately dropped the pestle and picked up my father's matchet which he always kept by his side whenever he was sleeping, and ran away. 5

I started to cry and went and invited my elder sister who was being married in the neighbourhood. My sister's name is Ofoke Njoku. She followed me to our compound, raised alarm which attracted people from the neighbourhood. Our people searched for the accused but could not find her. The following morning the police was invited and the corpse of my father was taken away to the hospital mortuary." 10

Police Inspector Michael Eke (PW.3) investigated the case. The appellant took him to the scene of the crime. Inside a hut he saw the body of the deceased with the head completely smashed. The appellant gave him the pestle she said she used on the deceased. The pestle was admitted in evidence as Exhibit A. He also recovered a matchet, Exhibit 8 from the scene. The appellant later volunteered a statement under caution which was also admitted as Exhibit C in the proceedings. He later collected post mortem examination report, Exhibit D, from Abakaliki General Hospital. 15 20

Only the appellant testified in her own defence at the trial. She called no witnesses. In her evidence before the court she admitted killing the deceased but contended that she did so on provocation or by mistake or in self defence. Her evidence on page 15 of the record reads in part - 25

"He started to talk harshely to me and when I answered back he took up his matchet and said he will give me a cut in the mouth to make me shut up. He said I was his commodity and he bought me with his money and he could even kill me. I then picked up a pestle in readiness to ward off his matchet if he tried to give me the threatened cut. I did not wait for him to cut me before I landed two pestle blows on his head, he fell down and fainted. I tried to raise him up but he was unconscious and dead." 30 35

In her statement to police (Exh. C) she stated inter alia -

"He told me that I cooked but only kept the bones for him to eat. I told him to forgive that by the following day I would buy an-

other fish to cook for him. He said that both of us would die. He then took his matchet to cut me, I quickly went to a corner of the house and got hold of a pestle. I gave him two hits by the side of the head and he fell down and died."

5 The learned trial judge carefully reviewed the evidence on both sides. He rejected appellant's defences and found her guilty as charged.

Dissatisfied with the judgment of the High Court the appellant appealed to the Court of Appeal, Enugu Division. Four grounds of appeal were filed. They read as follows-

10 *"1. The learned Judge erred in law in convicting me for murder when the prosecution has not proved the offence of murder against me beyond all reasonable doubt.*

2. The learned trial Judge erred in law by accepting the lone evidence of P.W.1 Igboke Anigo (sic) which was heresay (sic) and not
15 *an eye witness account, the Judge failed to examine critically the fact that P.W.1 Igboke Anigo (sic) has been schooled to say I killed deceased or else face the wrath of deceased relatives.*

3. That my action was not premeditated for I acted in reasonable self defence considering the disparity in strength between the
20 *deceased and accused.*

4. That the decision is unwarranted, unreasonable and cannot be supported in law."

25 The Court of Appeal considered all these grounds of appeal and particularly the defences of provocation, accident and self-defence and came to the conclusion that the appellant was rightly convicted of murder. Her appeal was accordingly dismissed.

30 Still dissatisfied with the judgment of the Court of Appeal, the appellant had further appealed to this court. Only one ground of appeal was filed on page 64 of the record. It the omnibus ground.

Counsel on both sides filed and exchanged briefs of argument. They were adopted and relied upon at the hearing. In addition oral submissions were made to amplify the briefs.

35 Mr Seyi Sowemiwo learned counsel for the appellant submitted only one issue for determination on page 2 of his brief thus -

The main question for determination in this appeal is whether the evidence adduced at the trial court was sufficiently cogent to discharge the burden of proving the appellant's guilt beyond reasonable doubt."

His submissions may be summarised as follows -

1. The Court of Appeal failed to make its own finding on the crucial question of whether or not P.W.1 the only eye witness was in the room when the deceased was killed. Such a finding was necessary in determining which evidence between P.W.1 and the appellant was to be believed. He referred to the judgment on page 58 of the record and to the case of BOMS V. THE STATE (1971) 1 ALL NLR 334. 5

2. That appellant's conviction was affirmed on the wrong premises by the Court of Appeal which treated the statement, EXH. C., as a confession corroborated by the evidence of P.W.1 EXH. C was not a confession because the appellant stated therein that she struck the deceased with the pestle in self-defence. 10

3. That the testimony of P.W.1 was in conflict with that of the appellant. P.W.1. said the deceased was lying down and was probably asleep when he was struck, whereas the appellant stated that the blows were struck as a pre-emptive strike in the cause of her exchanges with the deceased. 15

4. The premises on which the trial court relied for convicting the appellant was markedly different from the ones adopted by the Court of Appeal. While the trial court relied on the evidence of P.W.1. and disbelieved the testimony of the appellant, the Court of Appeal affirmed the conviction based on the confessional statement (EXH. C) as corroborated by P.W.1's testimony. 20

5. The Court of Appeal did not give due consideration to the totality of the evidence on record before arriving at its decision. The cases of AKOSILE V. THE STATE (1972) 5 SC. 332, ONUBOGU V. THE STATE (1974) 9 SC. 1, QUEEN V. ISA (1961) 1 ALL NLR 671 (1961) 2 SCNLR 347 and BOM V. THE STATE (1971) 1 ALL NLR 337 were cited in support. The court was urged to discharged and acquit the appellant. 25 30

Responding, Mr. Akubailo learned Director of Public Prosecutions submitted as follows-

(a) There were no contradictions in the testimony of P.W.1, 35 and if there were any at all, they were minor discrepancies only which are not material to the case.

(b) That the learned trial Judge believed and accepted the evidence of P.W.1 in its entirety while the appellant was disbelieved. The

Court of Appeal agreed with the findings of the trial court.

(c) The learned trial Judge in the course of his judgment considered the defences of provocation, accident and self-defence and resolved rightly that none availed the appellant. The Court to Appeal also examined the findings of facts made by the trial court and came
5 to the conclusion too that the appellant was properly convicted and that none of the defences raised availed her. He referred to pages 27, 28 and 59 of the record.

(d) Appellant's statement (EXHIBIT C) was a confession. She
10 admitted killing the deceased although she said she did so in self-defence, or by mistake or on provocation. The court considered these defences and found them not established. He referred to the case of NWEDE V. THE STATE (1985) 12 SC. 32; (1985) 3 NWLR (Pt.13) 444.

(e) The prosecution proved the charged against the appellant
15 beyond reasonable doubt and that the appeal lacks merit and should be dismissed.

The single issue submitted by appellant's counsel for determination in this appeal is whether or not the evidence adduced at the
20 trial was sufficiently cogent to discharge the burden of proving beyond reasonable doubt the guilt of the appellant.

I have at the beginning of this judgment reproduced the evidence of the only eye witness and son of the marriage Igboke Njoku (PW.1). At the risk of repetition, he stated in part -
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*"I lay on the same mat with my mother whilst my father lay on another mat opposite us. None of us had yet slept when my mother got up and picked up the pestle with which we wedge our door leading outside and dealt three blows with it all my father's head. At the
30 time the blow landed my father was facing away from us with his eyes closed. My father groaned and his legs stretched out and he became motionless. The accused immediately dropped the pestle and picked up my father's machet which he always kept by his side whenever he was sleeping, and ran away."*

35 The learned trial Judge in his judgment had this to say about PW.1 on page 24 of the record -

"This witness (PW.1) was recalled at the instant of the defence and subjected to another prolonged rigorous cross-examination, but he stood his ground calmly, I was very much impressed with his un-

biased evidence and I believe him."

Continuing on page 26 he observed thus -

"P.W.1 the child of the marriage now aged 22 years did not side either parent if the quarrel over fish bones in the broth. He was with both parents at the time and saw everything that transpired. He said after the row, the father called everything bye-gone and lay down to rest. He was not certain whether the father had slept off or not, but he had closed his eyes, backing the son and the mother who lay opposite him. This must have been long after the quarrel over the soup. The accused could not have demolished her husband with two hammer blows in succession if he was standing and conscious."

Now, the commission of a crime by a person must be proved beyond reasonable doubt. The burden of proof lies on the prosecution and it never shifts (see section 137 of the Evidence Act). And if on the entire evidence the court is left in a state of doubt, the prosecution would have failed to discharge the onus of the proof and the accused person will be entitled to an acquittal. In this particular case, according to P.W.1, the deceased died instantly after the appellant had struck him three-pestle blows on the head. Medical evidence was therefore not necessary to establish the cause of death (see KATO DAN ADAMU V. KANO N.A. (1956) 1 FSC 25 (1956) SCNLR 65, so that the trial court having accepted and believed the evidence of P.W.1. was entitled to proceed to convict the appellant on his (P.W.1) evidence alone. The law is that except where it is specifically provided by law, no particular number of witnesses shall in any case be required for the proof of any fact (see for example section 178 of the Evidence Act). I am not aware of any such special provision in cases of murder.

However in addition to the evidence of P.W.1 the appellant herself made a statement EXH. C. and she additionally gave oral evidence in court. There was no doubt at all that both in EXH. C. and in her testimony before the court, the appellant admitted landing pestle blows on the head of the deceased and that he fainted and died. To my mind therefore both the trial court and the court of Appeal were right when each of them held that the appellant confessed to the crime, even though from her account of the tragedy, she killed him in self-defence or by accident or by provocation. The learned trial Judge was therefore bound to have considered these

defences in his judgment which he did (see ABAGHOR V. POLICE (1961) 1 ALL NLR 850). These are some of his findings on page 27 of the record -

"On the evidence,

1. *I find as a fact that the accused was not exposed to any*
5 *serious threat nor did she act in agitated frame of mind.*

2. *There was nothing to excite the accused to a heat of passion so that it could be said that her mind was uncontrollable and incapable of competent reflection.*

3. *The deceased often kept his matchet beside him whenever he went to sleep. In the locality, the matchet is an instrument of defence as well as attack.*

.....
From the evidence before me, the accused struck the husband
15 *twice in the head with considerable violence. The husband had not offered real violence to her, the accused struck in anticipation to a non-threatened act of violence. She did not strike in the course of a quarrel. Her husband was already in bed with eyes closed and back-*
20 *ing the aggressor. It did not happen accidentally....."*

It is certainly not the law that the possession of a matchet by the deceased without evidence of its use in an assault against the appellant entitles the appellant who killed with a pestle to the defence
25 of provocation or self-defence. It is its use that determines whether or not provocation was offered by the deceased to the appellant or whether appellant's life was in danger. Whether the evidence from the prosecution tends to negate the offer of acts of provocation, the defence must adduce credible evidence to establish provocation and
30 self defence. There is a total absence of evidence amounting to provocation for the murder of the deceased in this case. Equally too the appellant was unable to show by evidence that his life was endangered by any act of the deceased that the only means of escape was to have killed the deceased (see THE STATE V. JOHN UMUNU
35 (1968) NMLR 15; NWEDE V. THE STATE (supra).

The Court of Appeal found and I agree with it, that the findings and conclusions of the learned trial Judge were amply supported by the evidence led at the trial. We would not normally interfere with the findings of facts by the trial court except where such findings are

perverse or unreasonable ALHAJI BARAU V. B.G.C.E (1982) 10 S.C. 48.

It is therefore not correct as contended by the learned counsel for the appellant that the premises on which the trial court convicted the appellant were different from those relied upon by the Court of Appeal in affirming the conviction. The trial court and the Court of Appeal both agreed and accepted the evidence of P.W.1 which was clearly sufficient to support conviction. But both courts proceeded to examine the testimony of the appellant and her statement (EXH. C) which are in all material particulars the same as the evidence of P.W.1 with the exception of the defences raised by the appellant. So clearly EXH. C was corroborated by the evidence of P.W.1 and the lower courts so found. I think they were right. (see NWEDE V. THE STATE (supra). The defences were then considered and rejected as shown above. There is no doubt the appellant admitted killing the deceased in EXH. C and even in her evidence in court. That was the charge against her. The burden of establishing that she did so by accident or under provocation or in self-defence rested squarely on her. It would have been discharged on a balance of probabilities (see R. V. ONAKOYA) 4 FSC 150; (1959) SCNLR 384). The trial court and the court of Appeal found that she failed to discharge that burden and rightly rejected the defences. I must say that I am unable to find any contradictions and or inconsistencies in the evidence of P.W.1 or any other prosecution witness for that matter. A careful reading of the record clearly shows that the lower courts dispassionately considered the evidence led at the trial before arriving at their conclusions. There are no reasons for any interference.

For the more and fuller reasons contained in the lead judgment of my learned brother Belgore, J.S.C., I am also satisfied that the appeal lacks merit and it is hereby dismissed.