

**SUPREME COURT OF NIGERIA**  
5TH FEBRUARY, 1993. SC. 88/1992  
**CORAM:- S. KAWU, P. NNAEMEKA-AGU.**  
**A.B. WALI, E.O. OGWUEGBU, S.U. MOHAMMED, JJSC.**

BASIL AKALEZI ..... APPELLANT

V.  
THE STATE ..... RESPONDENT

*APPEALS* - Concurrent findings of two lower courts-  
attitude of Supreme Court thereto

*CRIMINAL LAW* -Defence of provocation - when not avail  
able to the accused

*EVIDENCE* -Murder trial - failure to adduce positive and  
credible evidence - whether defence of  
provocation avails accused

**FACTS**

The Appellant and his niece were returning from a festival. It was alleged that the deceased made love advance to the Appellant's said niece. This annoyed the Appellant. On further dialogue between the deceased and Appellant's niece, the Appellant held the deceased and hit him twice. The deceased took to his heels and the Appellant pursued him. Deceased shouted that he was dead. The deceased later died.

The Appellant was charged in the Imo State High Court with the offence of murder and he pleaded not guilty. Several witnesses including a medical doctor testified for the prosecution. Appellant gave evidence in his defence and called no other witness. The trial court found him guilty as charged and sentenced him to death. Appellant appealed to the Court of Appeal which affirmed the decision of the trial court. Appellant has further appealed to the Supreme Court. Counsel on his behalf urged that the defence of provocation availed the Appellant. Counsel further submitted that the surrounding circumstances of this case created doubt which the Appellant should be given the benefit of.

**HELD** (unanimously dismissing the appeal)

1. The defence of provocation did not avail the Appellant as was rightly found by the two lower Courts, seeing that he was the aggressor itching for a fight while the deceased was on the retreat.

(p. 142 L. 34 )

2. The defence has failed to adduce positive and credible evidence towards the establishment of provocation, and evidence of the prosecution negated the offer of acts of provocation by the deceased. (p. 143 L. 9)

3. The Supreme Court as a general rule will not normally upset concurrent findings of two lower Courts save there is some miscarriage of justice, or a violation of some principles of law or procedure. And none of such exceptions exist in the present case. (p.143 L. 19)

4. Proof beyond reasonable doubt is not attained by the number of witnesses called by the prosecution. It is rather dependent on the quality of the evidence tendered by the prosecution. (p. 144 L. 25)

5. Giving all the surrounding circumstances the court can act on the evidence of one witness if that witness can be believed. In other words, one single credible witness can establish a case beyond reasonable doubt. (p. 144 L.34)

**REPRESENTATION:**

C.A.B. Akparanta for the Appellant

J.C. Duru (Asst D.P.P. Imo state) for the Respondent.

**CASES REFERRED TO**

1. Ogbonna Nwede v. The State (1988) 3 NWLR (Pt. 13) 444

2. Chukwu Abaji v. The State (1965) NMLR 417

3. R. v. Duffy (1949) 1 All ER 932

**134 AKALEZI V. THE STATE (1993) 3 KLR 132; (1993) 2 NWLR**

4. The Queen v. Raji Afonja & 6 Ors (1955) 15 WACA 26
5. Over Seas construction Co. Nig. Ltd v. Creek Enterprises Nig. Ltd (1985) 3 NWLR (Pt. 13) 407
6. Enang v. Adu (1981) 11/12 S.C. 25
7. Okagbue v. Romaine (1982) 5 S.C. 133
8. Rex v. Thompson Udo Essien 4 WACA 112
9. E. O. Okonofua & or v. The State (1981) 6-7 FSC 1
10. Alonge v. I.G.P. (1959) 4 F.S.A. 203
11. Adaje v. The State (1979) 6 -7 S.C. 18
12. Inspector-General of Police v. Nwabueze (1963) 2 All NLR 119
13. Miller v. Minister of Pensions (1947) 2 All ER 372
14. Onofowokan v. the State (1987) 3 NWLR (Pt 61) 538
15. R. v. Maye Nungu (1953) 14 WACA 379
16. Ruma v. Dama N.A. (1960) 5 F.S.C. 93
17. Alonge v. Attorney General Western Nigeria (1964) 1 All NLR
18. R. v. Mason 8 Cr. App. R. 121
19. R. v. Akpakpan (1956) 1 F.S.C. 121
20. R. v. Egbe (1961) All N.L.R. 476

**STATUTE REFERRED TO**

Criminal code Cap 30 vol. 11 Laws of Eastern States of Nigeria

1963. ss. 319, 318, 283

### **LEAD JUDGMENT BY OGWUEGBU JSC**

The appellant was charged on an information in the Aboh-Mbaise Judicial Division of the High Court of Imo State with the offence of murder contrary to Section 319(1) of the Criminal Code, Cap. 30, Vol. II Laws of Eastern Nigeria, 1963.

The particulars of the offence were that on 1st January, 1981 along Chokoneze/Akpodim Road in Ezinihitte Mbaise, the accused/appellant murdered Innocent Ohaka.

The appellant pleaded not guilty to the charge after it was read over in English and explained to him fully in Igbo language and he appeared to have perfectly understood the charge. Seven witnesses testified for the prosecution. The accused/appellant gave evidence in his own defence but called no witness.

At the close of the trial and the address by counsel for the appellant and the respondent, the learned trial Judge in a reserved judgment found the accused guilty as charged and sentenced him to death.

He was not satisfied with his conviction and sentence. He appealed to the Court of Appeal, Port Harcourt Division. This court on the 18th February, 1992 dismissed the appeal and affirmed the decision of the court of trial. He has appealed to this court.

Three grounds of appeal were filed along with the notice of appeal on 10th March, 1992. The grounds of appeal read as follows:-

*“(1) The learned Justices of the Court of Appeal erred in law in holding that ‘the defence of provocation raised by the appellant under no circumstances can avail him and so cannot stand’.*

### ***Particulars of Error***

*(i) There was evidence of a sudden fight upon a sudden quarrel between the appellant and the deceased and that the fight was a continuous one without time to cool.*

(ii) *There was ample evidence on record to show that the appellant was deprived of his self control.*

(iii) *There was also evidence on record to show that the provocative act came from the deceased.*

(2) *The Learned Justices of the Court of Appeal erred in law in holding ‘that the act of pursuing the deceased for a distance of up to 50 metres and stabbing him on the left upper back with a pen knife also provides sufficient evidence of motive and premeditation’.*

### 10 ***Particulars of Error***

(i) *The distance of 50 metres was a mere conjecture by the trial Court.*

15 (ii) *The stabbing was done in the heat of the fight and passion and before there was time to cool.*

(iii) *The evidence on record does not support the Court’s said conclusion.*  
20

(3) *The decision of the Court of Appeal is unreasonable having regard to the evidence before the trial Court.”*

25 Briefs of argument were filed and exchanged by the parties. The appellant at page two of his brief of argument identified the following two issues for determination in the appeal:-

“(i) *Whether the defence of provocation is available to the*  
30 *appellant;*

*(ii) Whether the Court of Appeal was right in affirming the conviction and sentence of the appellant by the trial court.”*

35 The respondent at page four of his brief of argument adopted the above two issues formulated by the appellant.

I think it will be proper at this stage to summarise the facts of this case. On 1st January, 1981 which was the day of “Oji Mbaise” festival, the appellant and his niece Christiana Akalezi were returning

from Akpodim Ezinihitte which was the venue of the festival. Along Chokoneze/Akpodim Road in Ezinihiue Mbaise, the appellant was alleged to have murdered the deceased - Innocent Ohaka by hitting him twice and stabbing him thereafter at the back with a penknife after chasing him for about fifty metres along the said road.

It was alleged that the deceased made love advances to Christiana Akalezi (the appellant's niece) by holding her and touching her breast. These annoyed the appellant. Christiana Akalezi testified as P.W.5. One Godwin Ibe who was in the company of P.W.5 and the deceased at the time of the incident testified as P.W.1. They were returning from the "Oji Mbaise" festival. He testified that the deceased stopped P.W.5 on their way from the festival and engaged her in amorous discussion in the presence of the appellant, one Nathaniel Ahunanya and himself.

According to P.W.1, while P.W.5 (alias Baby) and the deceased were discussing, P.W.5 demanded the sum of one hundred naira from the deceased. The deceased then asked P.W.5 to follow him to his house if one hundred naira was a condition to selling herself.

At the bidding of Nathaniel Ahunanya, the appellant held the deceased and hit him twice. The deceased took to his heels and the appellant pursued him. The next the witness heard was a shout in Igbo by the deceased meaning that he was dead. This witness stated that the appellant chased the deceased for about fifty metres, P.W.1 ran to the spot. He saw the deceased on the ground and in the meantime, P.W.5, and Nathaniel Ahunanya had run away from the scene. When P. W.1 enquired from the accused, the latter told him that he beat the deceased and he fell down. P.W.1 stated that he lifted the deceased from the ground and observed some blood on his back. He asked the accused what caused the bleeding on the deceased but the accused gave no reply to his question. P.W.1 later reported to the parents of the deceased.

He refuted any suggestion that the deceased gave a blow to the appellant. He later heard that Innocent Ohaka died. He also testified under cross examination that the deceased did not hold P.W.5 or touch her breast.

P.W.5 in her evidence denied knowing anything about the incident.

She denied knowing the deceased and that nobody made any advances to her during the ceremony. She testified that she went to the festival in the company of Nathaniel Ahunanya who also took her home and that she did not come home in the company of the accused.

5 The accused testified as D.W.1. He stated that he was walking home after the festival with Nathaniel Ahunanya and Bright Ahunanya. P.W.5 was walking ahead of them. D.W.1 heard P.W.5 shout. The deceased was holding and touching her breast.

10 The action of the deceased was distasteful to him as it was happening on the road where people were passing and repassing. He stated that he pleaded with the deceased to leave P.W.5 alone and instead, the deceased threatened to fight him. During verbal exchanges the deceased hit him on the jaw. He gripped the deceased  
15 and both of them fell down.

D.W.1 stated that while they were on the ground, the deceased cried out that he had been hurt. The accused and the deceased got up. He observed that the deceased was bleeding from his  
20 back. He became frightened and went away. He said that P.W.5 was present at the scene and saw when the deceased and himself fell on the ground.

25 He admitted having a pen-knife before going for the festival. He suggested that the deceased might have sustained the wound when he fell upon the pen knife which was in his key holder. He stated that he *“did not plan to kill the deceased.”* In answer to cross-examination he stated that his two companions - Bright Ahunanya  
30 and Nathaniel Ahunanya did not do anything when the incident was taking place. He abandoned the pen knife at the scene.

Dr. Daniel I. Ogbonna who performed the post mortem examination on the body of the deceased testified as P.W.6. His evidence in part reads:

35 *“On examination, I found as follows:-*

*(1) A gaping wound 3 cc x 2 cc at the upper back left. The wound extended posteromedially to involve the rib heads and vertebra (sic) column. The wound also penetrated through involve the left lung at thoracic level six and seven.*

*The cause of death was due to the stab wound which involved the vertebra (sic) column and the left lung at thoracic level six and seven."*

As I stated earlier in this judgment, the appellant was convicted and sentenced to death by the learned trial Judge and the Court of Appeal dismissed the appellant's appeal and affirmed the judgment of Nsofor, J. as he then was. 5

Arguing issue one, the appellant's counsel submitted in his written brief which he adopted at the hearing of this appeal that the defence of provocation is available to the appellant. 10

He stated that there is credible and positive evidence of provocation on record. He said that for the defence to avail an accused in a charge of murder under Section 318 of the Criminal Code, the accused must have done the act for which he is charged (i) in the heat of passion. (ii) the act must have been caused by sudden provocation; and (iii) the act must have been committed before there was -time for his passion to cool. 15 20

The court was referred to the cases of Ogbonna Nwede v. The State (1985) 3 NWLR (Pt.13) 444 at 451 and Chukwu Obaji v. The State (1965) NMLR 417 at 422. It was his submission that the facts established by the evidence led satisfied the above three requirements. We were also urged to consider the antecedent facts and the subsequent events directly leading to the death of the deceased and that the Court of Appeal was wrong to have based its decision on the antecedent facts alone. 25

Learned appellant's counsel stated that there is evidence on record that the appellant and the deceased in the heat of passion quarreled and immediately thereafter fought. 30

Counsel submitted that the conduct of the deceased on the date of the incident in suddenly confronting the niece (PW.5), engaging her in an immoral discussion and holding her in a public road and in the view of the appellant and passers-by was sufficient to provoke a reasonable person in the position of the appellant and that it did in fact provoke him. 35



The court was urged to apply the standard of rural people whose code of honour or moral standard might not necessarily be the same as those who live in cosmopolitan areas. In the form, relationships are closer and protected than those living in urban towns. Counsel also called in aid Sec. 283 of the Criminal Code and relied on the  
5 definition of provocation in that section of the Criminal Code.

The learned appellant's counsel urged that in considering the degree of provocation the question should be judged from the point  
10 of view of what would amount to provocation in the case of an ordinary reasonable man of the same standing in life and degree of civilization as the appellant and that the onus of proof of absence of provocation remains throughout on the prosecution.

15 It was submitted that the surrounding circumstances of this case created doubt which the appellant should be given the benefit of.

In his reply to issue one, Mr. Duru Assistant Director of Public Prosecutions, Imo State who appeared for the respondent, referred the court to the evidence of the appellant on provocation, namely,  
20 that the deceased touched P.W.5 on the breast, the appellant resented and pleaded with the deceased to leave P.W.5. The deceased instead indicated that he would fight with him and in the course of verbal exchanges, the deceased hit him on the left jaw. He referred to the  
25 evidence of P.W.5 which was not helpful to the appellant and those of P.W.1 and P.W.6. We were also referred to the case of *R. v. Duffy* (1949) 1 All E.R. 932 and *The Queen v. Raji Afonja & 6 ors.* (1955) 15 W.A.C.A. 26 at 27.

30 Counsel submitted that in the instant case, the force used was disproportionate to the provocation, if any. The case of *Chukwu Obaji v. The State* (1965) NMLR 417 was cited. We were urged to reject the defence of provocation.

I will examine the evidence led to discover whether the facts  
35 showed any provocation or sufficient provocation which can reduce the killing to manslaughter. In the case of *R. v. Duffy* (supra), Devlin J. defined provocation as "some act, or series of acts done by the dead man to the accused which would cause in any reasonable per-

son and actually causes in the accused, a sudden and temporary loss of self control, rendering the accused so subject to passions to make him or her for the moment not master of his mind.”

The evidence of P.W.1 (Godwin Ibe) runs thus:

“.. I was returning from my sister’s house at Umunama to Akpodim on 1st January, then I saw one Innocent Ohaka and one Emmanuel Nwachukwu. Innocent Ohaka saw the sister of the accused person and one Nathaniel Ahunanya. Innocent stopped Baby. Both Baby and Innocent Ohaka engaged themselves in a discussion or talk. 5 10

As they were discussing Baby demanded N100.00 (one hundred naira) from Innocent Ohaka. Innocent Ohaka then asked Baby to follow him to his (Innocent Ohaka’s) house, if N 100.00 (one hundred naira) was her (Baby’s) problem, if she sold herself. 15

Nathaniel Ahunanya then told the accused Basil Akalezi to hold Innocent Ohaka. As Basil Akalezi (the accused) held Innocent Ohaka, he the accused hit the deceased (Innocent Ohaka). Innocent Ohaka objected. He asked him (the accused) not to hit him again. But the accused person hit Innocent Ohaka for the second time again. 20

Innocent Ohaka took to his heels. But the accused gave him a chase. As the accused pursued the deceased, the next thing I heard was a shout of ‘Anwunanam - Anwunanam’ meaning I am dead: I am dead: It was the deceased Innocent Ohaka who was shouting. The accused person pursued the deceased up to a distance (of what both counsel estimate to be) fifty (50) metres. I ran up to them - (the deceased and the accused) when I heard the shout.” 25 30

In answer to cross-examination, P.W.1 stated:

“The deceased and the accused person’s sister were having friendly discussion They were discussing how both of them would go to the house of the deceased. The issue of money would not come in, if they were discussing of love affair. The deceased did not hit the accused person and run away. The deceased at no time hit the accused person. The deceased however ran away when the accused person hit him (the deceased).” 35

*The other evidence of an eye witness was that of the accused (appellant). He said in his evidence in chief:-*

*“After the ceremony, on our way back home, I saw one Bright Ahunanya and one Nathaniel Ahunanya. While I was in their company my sister (the P.W.5) was walking ahead of us.*

5 *As I was walking, I heard my sister shout. I ran up to her. I saw someone holding and touching her. The person holding and touching my sister I now understood was Innocent Ohaka, the deceased. The deceased was touching my sister by her breast. He Innocent Ohaka was touching Christiana Akalezi in a manner distasteful to me. This was happening in the road. There were people passing and repassing along the road at the time. In the course of our verbal exchanges, the deceased hit me on my left jaw. I then gripped the deceased. Both of us fell down. While we were on the ground, the*  
 10 *deceased cried out that he had been hurt. I got up from the ground. The deceased also got up. I observed that the deceased was bleeding from his back. I took fright. I went away Christiana Akalezi was present at the scene. She saw when I and the deceased fell to the ground.”*

The learned trial Judge rightly in my view believed the evidence of P.W.1 that Innocent Ohaka did not hold P.W.5 and did not touch her on her breast. He also believed and accepted the evidence of P.W.1 that the deceased did not give the accused any blow at all and that the accused hit the deceased twice. He disbelieved the accused. He came to the conclusion that the deceased did not offer the  
 25 appellant any provocation.

The learned trial Judge also found that even if the deceased gave the accused a blow, the force offered in retaliation was excessive and disproportionate. He came to the conclusion that the defence of  
 30 provocation did not avail the appellant from whatever angle the issue was considered.

The Court of Appeal considered the defence of provocation and held that the learned trial Judge adequately considered and rightly rejected the defence of provocation.

35

I am in total agreement with both courts. The defence of provocation as defined in *R. v. Duffy* (supra) did not arise. The

appellant was the aggressor itching for a fight while the deceased was on the retreat.

In my view, the discussions which the deceased had with the PW.5 were insufficient to cause any reasonable person a sudden and temporary loss of self control rendering him so subject to passion as to make him for the moment not the master of his mind. Present day Nigeria is advancing and should call for a higher measure of self control.

In this case, the evidence before the trial court did not contain any material on which a verdict of manslaughter instead of murder can be returned.

The evidence of the prosecution negated the offer of acts of provocation by the deceased. The defence must adduce positive and credible evidence to establish provocation and this it failed to do. See *Nwede v. The State* (1985) 3 NWLR (Pt. 13) 444.

Of great importance to the appeal is that there are two concurrent findings of fact of two courts - the trial court and the Court of Appeal on provocation. The appellant faced an uphill task in the appeal. This court, as a general rule, will not normally disturb or upset concurrent findings unless there is some miscarriage of justice or a violation of some principles of law or procedure: See *Overseas Construction Co. Nig. Ltd v. Creek Enterprises Nigeria Ltd.* (1985) 3 NWLR (Pt.13) 407 at 413- 414, *Enang v. Adu* (1981) 11-12 S.C 25 at 42 and *Okagbue v. Romaine* (1982) 5 S.C. 133 at 170-171. There is no miscarriage of justice or violation of any principle of law or procedure in this case. In view of the foregoing I will answer the first issue for determination in the negative.

As to the second issue i.e. whether the Court of Appeal was right in affirming the conviction and sentence imposed on the appellant by the trial court, the learned counsel for the appellant stated that the evidence of the PW.1 did not accord with the surrounding circumstances of the case as a whole.

It was submitted that PW.1 could not have heard and seen what exactly transpired between the appellant and his group on the one hand and the deceased on the other hand; that the only persons

whose evidence would have been more credible and convincing in this regard besides P.W.5 herself were the Ahunanya brothers being material and essential witnesses.

Counsel stated that the failure to call them was fatal to the prosecution's case. Learned counsel referred to the case of Rex v. Thompson Udo Essien (1938) 4 W.A.C.A. 112. The sum total of the points canvassed is that the prosecution did not prove its case beyond reasonable doubt. We were urged to allow the appeal.

In his reply to the above issue, the learned counsel for the respondent stated there is no rule of law which imposes an obligation on the prosecution to call a host of witnesses; that the prosecution needs to call enough material witnesses to prove its case and has a discretion in the matter. He cited the cases of E. O. Okonofua & Or. v. The State (1981) 6-7 S.C. 1 at 18, Alonge v. Inspector-General of Police (1959) 4 F.S.C. 203, (1959) SCNLR 516 Adaje v. The State (1979) 6-9 S.C 18 at 29 and Inspector-General of Police v. Nwabueze (1963) 2 All NLR 119.

It was further submitted that there was ample evidence on the face of the record from which the trial Judge rightly arrived at the conclusion even though there was no eye witness to the actual stabbing and that from the totality of the evidence on record, the prosecution proved its case beyond reasonable doubt as contemplated by Sec. 138 (1) of the Evidence Act. He urged us to dismiss the appeal.

Proof beyond reasonable doubt is not attained by the number of witnesses fielded by the prosecution. It depends on the quality of the evidence tendered by the prosecution. In the case of Miller v. Minister of Pensions (1947) 2 All E.R. 372, it was held that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt and if the evidence is strong against a man, as to leave only a remote probability in his favour, which can be dismissed with the sentence: "*of course it is possible, but not in the least probable*", the case is proved beyond reasonable doubt.

The court can act on the evidence of a single witness if that witness can be believed given all the surrounding circumstances. One

single credible witness can establish a case beyond reasonable doubt. The principle that the onus of proving a criminal case beyond reasonable doubt means no more than this: that the primary onus of establishing the guilt of the accused is always on the prosecution except in very special and limited circumstances like insanity where the law presumes an accused person sane and casts on him the onus of establishing the contrary: *Onafowokan v. The State* (1987) 3 NWLR (Pt.61) 538. 5

I am satisfied that the prosecution proved its case against the appellant beyond reasonable doubt and there is no basis for me to interfere with the concurrent findings of the courts below. 10

After a full consideration of this matter, I am satisfied that the appeal has no merit and is hereby dismissed. The conviction and sentence passed on the appellant are hereby confirmed. 15

### **KAWU JSC**

I have had a preview of the lead judgment of my learned brother, Ogwuegbu, J.S.C. which has just been delivered. I am in complete agreement with his conclusion that the appeal lacks merit and should be dismissed. I am satisfied that both the trial court and the Court of Appeal adequately considered the defence of provocation put up by the appellant and that both courts rightly came to the conclusion that it did not avail the appellant. On the evidence adduced, in my view, provocation, as defined by Devlin, J in *R. v. Duffy* (1949) 1 All E.R. 932 was not made out. I see no merit in this appeal and it is accordingly dismissed. I affirm the judgment of the Court of Appeal confirming the appellant's conviction and the sentence of death imposed on him. 20 25 30

### **NNAEMEKA-AGU JSC**

I have had a preview of the judgment just delivered by my learned brother Ogwuegbu, JSC, in this appeal. I agree with his reasoning and conclusions as contained therein. 35

Adverting to the question of provocation raised in the first

issue, it appears to me that learned counsel on appellant's behalf wrongly held, based his contentions on the evidence of the appellant before the court of trial rather than upon the findings of that court. In my view, this was in error. For, it should be regarded as a pretty well-settled principle of law that this Court, which does not enjoy the advantage of seeing or hearing witnesses, considers the merits or demerits of every appeal coming before it on the findings by, and not on evidence given before, the court of trial, save where it has been clearly shown that those findings were perverse or otherwise wrong. Going by this established practice, I agree that no case of provocation was made out by the appellant. Shorn of all the unconfirmed allegations of the appellant which had been rejected by the learned trial Judge and the Court of Appeal, the simple question is whether a defence of provocation would be available to the appellant who had stabbed the deceased, Innocent Ohaka, to death with a pen knife after hitting him twice in the face and, without any retaliation by the deceased, chased him for over fifty metres - simply because he (the deceased) had engaged his (appellant's) niece, Christiana Akalezi (PW.5), in an amorous discussion in the presence of the appellant, one Nathaniel Ahunanya, and one Godwin Ibe.

Although it was suggested in *R v. Maye Nungu* (1953) 14 W.A.C.A. 379 that mere use of words could scarcely amount to such a provocation as could reduce an offence of murder to manslaughter, more recent decisions of this Court have put it beyond question that, in appropriate cases and circumstances, provocative words only could avail an accused person of such a defence. See *Ruma v. Daura* N.A (1960) 5 F.S.C. 93; (1960) SCNLR 212. So, in *Alonge v. Attorney-General of Western Nigeria* (1964) 1 All NLR, 115, at p. 16, it was held that the statement in the English case of *R. v. Mason* 8 Cr. App. R. 121 that "*mere words or provocation or abuse could not have the effect of reducing the crime from murder to manslaughter*" no longer represents the law in Nigeria. But all the Nigerian authorities on the point agree that for words to suffice certain basic ingredients must be satisfied. The words themselves must be such as to incense a reasonable man of such an accused person's standing and education in life to anger of such a nature as to lead him to passion or loss of self control, and the accused person must not have had the

time to cool down before he did the act with fatal results which led to the charge: see on this *R. v. Akpakpan* (1956) 1 F.S.C. 1; (1956) SCNLR 3 also *R. v. Egbe* (1961) 1 All NLR 476; (1961) 2 SCNLR 174. In the instant case, the courts below were right to have found that the words of mere amorous advances to P.W. 1 were not such as to have had such an effect, and that, in any event, a chase of over fifty metres after the appellant had inflicted upon the deceased two blows in the face and the only reaction of the deceased was to take to his heels afforded to the appellant, even if there was any provocation, sufficient time and opportunity to cool down. The defence of provocation was, therefore, not established. I agree that the prosecution proved its case to the hilt and have not been persuaded that any of the connected findings of facts by the two lower courts ought to be disturbed.

For the above reasons and the fuller reasons contained in the leading judgment of my learned brother, Ogwuegbu, JSC, I agree that the appeal fails and ought to be, and is hereby, dismissed.

---

**WALI JSC**

I have the privilege of reading before now, a copy of the lead judgment of my learned brother, Ogwuegbu, JSC I entirely agree with his reasoning and conclusion and I hereby adopt the same as mine. For the same reasons stated therein, I also hereby dismiss this appeal as lacking in merit and confirm the conviction and sentence passed on the appellant by the lower courts.

---

**MOHAMMED JSC**

I have read, in draft the lead judgment of my learned brother, Ogwuegbu, JSC, and I agree that the appeal lacks merit and it ought to be and is hereby dismissed. The conviction and sentence of the appellant by the trial court and upheld by the Court of Appeal are hereby affirmed.