

SUPREME COURT OF NIGERIA
30TH SEPTEMBER, 1994. S.C. 1/1992
CORAM:- M. BELLO CJN, M. L. UWAIS,
E. O. OGWUEGBU, Y. O. ADIO, A. I. IGUH, JJSC.

NWALINNABO APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL LAW - *Insanity - Murder - Circumstances in which the defence could be established - Whether available unto the discharge of burden of proving insanity.*

CRIMINAL PROCEDURE - *Insanity - Murder - Where appellant's confessional statement confirmed his sanity - Existence of other evidence that farther justify conviction - Whether the defence of insanity avails the appellant.*

CRIMINAL PROCEDURE - *Insanity - Where accused adduced no evidence of insanity - Whether prosecution has any onus of disproving insanity.*

CRIMINAL PROCEDURE - *Insanity - Murder - Abnormal behaviour per se by appellant after his arrest - Whether sufficient to establish a defence of insanity.*

CRIMINAL PROCEDURE - *Insanity - Whether trial court's consideration of confessional statement - Before dealing with issue of insanity - Occasioned a miscarriage of justice.*

FACTS

The PW4 invited the deceased, a labourer to thresh rice for him. The Appellant also arrived at the house of PW4 from where he was harvesting yam. The deceased was doing the work for which he was hired when the Appellant begged him for some tobacco snuff. The deceased gave him some and warned him not to come back for more. Appellant later asked the deceased for more tobacco snuff and he refused. Appellant rebuked the deceased and told him that he would suffer. In the night PW5 (wife of the PW4), woke up from her sleep to hear the Appellant shout "my father I have killed somebody for you today." As she peeped through her window, PW5 saw the Appellant inflicting matchet cuts on the deceased. She alerted her husband PW4, who

came out, gripped the Appellant who threatened to kill PW4. Further alarm was raised which attracted the villagers. The Appellant was arrested and tied hands and feet. The deceased died before the arrival of the Police.

Appellant was charged with murder before the Abakaliki High Court in the former Anambra State. He made a confessional statement to the police, and another statement to police denying his confessional statement. Appellant was behaving abnormally after the incident but became normal 2 weeks thereafter. The trial court convicted Appellant for murder and sentenced him to death. Appellant's appeal to the Court of Appeal was dismissed. Being dissatisfied, the Appellant has now appealed to the Supreme Court to determine whether the defence of insanity availed him, and whether the trial court was right to have considered Appellant's confessional statement before dealing with the issue of insanity.

HELD (Unanimously dismissing the appeal per lead judgment of OGWUEGBU JSC)

Insanity - Circumstances of its establishment

1. None of the circumstances in which insanity could be established as set out in *Sanusi v. The State* (1984) 10 S.C. 166 at 177 was met in this case. These include positive acts of the accused before and after the deed complained of; evidence of relations who know the accused person intimately relating to his behaviour and the change which had come upon him; evidence of a doctor who examined and watched the accused over a period of time as to his mental state; the medical history of the family which could indicate hereditary mental affliction or abnormality and such other facts and circumstances which will help the trial Judge come to the conclusion that the burden of proof of insanity placed by the Criminal Code on the defence has been amply discharged. (P. 126L.30)

Confessional Statement of appellant confirming his sanity

2. The confessional statement of the appellant (Exhibit "A") where the appellant stated that after the incident, he did not know himself again equally confirmed that he was sane at the time he committed the offence. I am in total agreement with the courts below that the defence under section 28 of the Criminal Code did not avail the appellant. The evidence of P.W.4., P.W.5 and P.W.6 corroborated Exhibit "A". The appellant could still have been found guilty in spite of Exhibit "A". (P. 127 L. 1)

Where the accused adduced no evidence of insanity

3. The abnormal behaviour of the appellant after the incident evaporated within two weeks. The defence made no effort to have the abnormal behaviour investigated. It is not for the prosecution to disprove insanity where the accused adduced no evidence of insanity. It should only prove sanity in reply to evidence of insanity adduced by the defence *R. v. Nasumu* (1940) 6 W.A.C.A. 74. (P.127 L.11)

Abnormal behaviour after appellant's arrest

4. There is even no evidence of insanity based on insane delusion which the court could have considered. To say that the "appellant behaved abnormally" when he was arrested or in prison custody without more cannot establish a defence under section 28 of the Criminal Code. Such statement may lead to an inquiry as to whether the appellant was suffering from mental disease or natural mental infirmity. One has to make a further inquiry whether that state of mental disease had the effect of depriving the appellant the capacity to understand what he was doing or to know that he ought not to do the act or make the omission. (P.127 L.17)

Consideration of confessional statements before the issue of insanity

5. The other complaint is the consideration of the confessional statement (Exhibit "A") by the trial Judge before dealing with the issue of insanity. The case of *Oladele v. The State* (1993) 1 N.W.L.R. (Pt. 269) 294 at p.306 where *Olatawura, J.S.C.* frowned at such a procedure was relied upon. It has not been argued that the procedure adopted by the learned trial Judge in the present appeal led to any miscarriage of justice. (R127 L.27)

NOTABLE POINTS OF INTEREST**OGWUEGBUJSC*****1. When the defence of insanity will avail the accused***

The defence of insanity can only avail an accused person if he can show that he was insane at the time he committed the offence. It must be clearly proved that, at the time of committing the act, he was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, he did not know he was doing what was wrong. In cases of insanity, the behaviour of the accused before, during and after the incident are all to be considered. (P.125 L12)

BELLOCJN***2. Essence of defence of insanity - What court should consider***

Although the essence of the defence of insanity is that the accused was insane at the time he committed the offence, the inference whether he was sane or insane at the time the act constituting the offence was committed may be drawn from the evidence of his conduct previous to or contemporaneous with or immediately following the commission of the act constituting the offence; It needs to be emphasized that in considering the defence of insanity a court shall not confine its consideration on the evidence adduced by the defence. The totality of the evidence on the issue, whether established by the prosecution or the defence, must be fairly and fully considered to reach a decision. (P.129L.4)

3. Whether loss of memory per se can ground a defence of insanity

Now, loss of memory, amnesia, is not a sufficient mental disease or sufficient natural mental infirmity without more upon which the defence of insanity may be sustained under section 28 of the code: (P. 129 L.34)

4. Abnormality of the appellant after the offence

In this case on appeal, the abnormality of the Appellant was noted three days after the incident. There is no evidence whatever to show that the abnormality at the relevant time deprived the Appellant his capacity to understand what he was doing or to control his action or to know that he ought not to kill the deceased. Accordingly, the defence under section 28 did not avail appellant. (P.130L.11)

IGUJSC***5. Whether prosecution has any onus of disproving insanity***

It is therefore not the correct position of the law, as the appellant's learned counsel appeared to submit, that there is any onus on the prosecution to disprove insanity in a criminal matter where the defence adduced no evidence of the accused person's insanity. It is only by way of reply to the evidence of insanity led by the defence that the prosecution should be obliged to offer any available evidence as to the sanity of the accused person. (P. 131 L.25)

6. When delusion will not afford the defence of accident

It therefore seems to me plain that delusion which has no causation in mental disease or natural mental infirmity does not afford any defence to an accused Person under the provisions of section 28 of the Criminal Code under consideration. Accordingly the defence of delusion to excuse irrational or delusional

irresponsibility cannot in law be available to an accused person. So too, a defence founded on witchcraft or superstitious belief cannot afford a legal defence under the Criminal Code. (P.132 L.27)

5 **REPRESENTATION**

A. A. Akwiwu (Miss) for the Appellant
C.C. Eneh Assistant Chief Legal Officer, Ministry of Justice Enugu for the Respondent.

10 **CASES REFERRED TO**

- Sanusi v. The State (1984)10 S.C. 166 at 177
- R. v. Nasumu (1940) 6 W.A.C.A. 74
- Ejinma v. The State (1991) 6 N.W.L.R. (Pt.200) 627
- Arum v. The state (1979) 11 SC. 9
- 15 Udofia v. The State (1984) 11 - 12 S.C. 49
- Oladele v. The State (1993) 1 N.W.L.R. (Pt.269) 294 at page 306
- The State v. Ojoriawo (1969) All N.L.R. 609 at page 621.
- Ayinde v. The Queen (1963) All N.L.R. 390
- Walton v. R. (1978) 66 C.A.R. 25
- 20 Loka v. State (1985) All N.L.R. 1 at page 6.
- R. v. Ediom 14 W.A.C.A. 158
- R. v. Onakpoya 4 F.S.C. 150
- Emeryl v. The State (1973) 6 SC. 215 at 266.
- R. v. Dim 14 W.A.C.A. 154
- 25 Ukadike v. The State (1973) 3 E.C.S.L.R. 277
- Rex v. Omoni 12 W.A.C.A. 511 at 513
- Oriefus v. The State (1984) 10 SC. 207 at 219
- Acida v. King 13 W.A.C.A. 342
- Konkonba v. Queen 14 W.A.C.A. 236
- 30 R. v. Podola (1960) 1 Q.B. 325
- Dabia v. The State (1963) 2 CL.R. 14
- Helegah v. The Republic (1973) Vol. 2 P.29 Ghana Law Report

STATUTES REFERRED TO

- 35 Criminal Code. Cap. 30 Vol. 11, Laws of Eastern Nigeria 1963 ss. 319(1), 28, 27
- Evidence Law of Eastern Nigeria, 1963 s. 140 (3) (c)

LEAD JUDGMENT BY OGWUEGBU JSC

The appellant (Nwali Nnabo) was arraigned before Offiah, J. sitting at the Abakaliki High Court in Anambra State with the offence of murder contrary to S.319(1) of the Criminal Code, Cap. 30 Vol. 11, Laws of Eastern Nigeria applicable in Anambra State. He was alleged to have murdered one Agbe Nweke at Ivakpa Okpoitumo Ikwo in the Abakaliki Judicial Division on or about 15: 1: 84. 5

The appellant pleaded not guilty to the charge. Eight witnesses were called by the prosecution. The appellant gave evidence in his own defence and called no witness. At the end of the trial, he was found guilty of the offence and sentenced to death. He unsuccessfully appealed to the Court of Appeal, Enugu Division against his conviction. He has further appealed to this court not being satisfied with the decision of the court below. 10

From the grounds of appeal filed, the following issues were formulated in appellant's brief of argument for determination:- 15

"1. Does the defence of insanity avail the appellant under section 28 of the Criminal Code?"

2. Was the trial court right to have considered the confessional statement (if the appellant "Exhibit A" first before dealing with the issue of insanity?" 20

The respondent formulated the following two issues in its brief:-

"(a) Whether from facts of this case and the evidence available to the trial Judge, the appellant is entitled to the defence of insanity under S.28 of The Criminal Code.

(b) Whether the consideration of the confessional statement of the appellant "Exhibit A" first before dealing with the issue of insanity affected the Justice of the case. 25

The two sets of issues are the same and I will however, consider the appeal in line with the appellant's issues for determination. It will be necessary to state the facts briefly in order to appreciate the issues being canvassed. 30

The evidence showed that on 14:1:84, P.W.4 invited the deceased, a Labourer to his compound to thresh rice for him. The appellant also arrived at the house of P.W.4 on 31/1/84 to stay and harvest the yams he planted in area on 15: 1: 84, the deceased was killed. The circumstances of his death were given in evidence by P.W.4 and P.W.5. 35

The deceased was doing the work for which P. W.4 hired him when the appellant went to beg him for some tobacco snuff. The deceased gave him

some and warned him not to come back to ask for more. At about 6p.m. the same day after the deceased had finished the day's work, the appellant went to ask him for more tobacco snuff and the deceased refused. P. W. 5 (the wife of P.W.4) had earlier given the appellant 20 kobo to buy his own snuff. The deceased was resting in front of the house of P.W.4 when the appellant made
5 this second request. When the deceased refused the second request, the appellant rebuked him and told him that he would suffer. In the meantime, P. W. 5 had bought 20 kobo worth of tobacco snuff which she gave to the appellant.

In the night, P.W.4 showed the deceased where to sleep. The de-
10 ceased opted to sleep where P.W.4 kept his rice in a room under the same roof. The appellant was shown another room to sleep. P.W.5 in her evidence stated that she woke up from her sleep to hear the appellant shout "Eko". After this, the appellant shouted again:

"My father I have killed some-body for you today."

15 P. W. 5 peeped through her window and saw the appellant inflicting matchet cuts on the deceased. She closed the window and shouted on her husband (P.W.4) to the effect that the appellant was killing the deceased. P.W.4 who was attracted by the alarm came out and gripped the appellant. The appellant threatened to kill P.W.4.
20 Another alarm was raised and the villagers assembled. The appellant was arrested and tied hands and feet. The incident was reported to the police. The deceased died before the arrival of the police.

On 16:1:84, Dr. Daniel Nweke (P.W 1) attached to the General Hospital, Abakaliki performed a post-mortem examination on the body of the de-
25 ceased. The body was identified by Nwangwu Nweke, the younger brother to the deceased. P. W.1 testified that the body was that of an adult male about, forty five years old with extensive and multiple deep and sharp matchet cuts across the face involving both eyes and nose with partial amputation of the left hand at the level of the wrist joint across the right anterior chest wall. He
30 also found a long deep penetrating cut at the right of the abdominal contents. In this opinion, the injuries or cuts were consistent with machetes cuts and that cause of death was due to acute peripheral circulatory failure of traumatic origin meaning excessive loss of blood resulting from the machete cuts.

35 P.W. 8 Police Corporal Ezejiofor completed the investigation which was started by Police Sergeant Obaji. He visited the scene on 19: 1:84. He testified that the statement of the appellant could not be obtained immediately as he appeared to be behaving abnormally; that when served with food he would be shouting on the deceased to come and eat with him. On 29: 1: 84, he

went to the Prisons and formally arrested the appellant. He charged and cautioned him. He testified that the appellant volunteered a statement in Ibo.

The learned counsel appearing for the appellant objected to the statement being admitted in evidence on the ground that it was not made voluntarily. A trial within the trial was conducted. The objection was overruled and the statement was admitted in evidence as Exhibit "A". It reads:

"On the month of December, 1983 I came and stayed at one Oka Ede's house to enable me harvest my yams which I planted in his area. Reaching on the 13th day of January, 1984 one Agbeh Nweke a native of Odeligbo Otputitumo arrived at one Oka Ede's house to trash rice for him. He arrived at night time. On the following day being 14/1/84 he started trashing the rice. Agbeh Nweke was my good friend even on that day he was trashing rice for Oka Ede, he gave me his snuff and I snuffed it. I have never in my life have misunderstanding with him. When night reached on that 14/1/84, Oka Ede instructed both myself and Agbeh Nweke to go and sleep at his palace. Then both myself and Agbeh Nweke went and slept at said palace. Reaching in the midnight of 15/1/84, I used my knife and killed one Agbeh Nweke. I did not know what pushed me to do such a thing. Because we were very good friend before. Nobody instructed me to kill the said Agbeh Nweke. It was satan work that pushed me to do such a thing one Agbeh Nweke was shouting when I was giving him matchet cut, and as a result, one Oka Ede, James Ede, John Nwoba, Pius Utulo, Nweke Oka, Elizabeth Oka and Igboke Ede came and held me. They beat-me up one Pius Utulo wanted to matchet me with his matchet but one James told him not to do that. That hence he is a Mobile Policeman that he can got me arrested. Later they tied me both my hands and legs. After that I did not know myself again. The relationship between me and Oka Ede is that he married from my family. He is marrying one Elizabeth a daughter to one Nwanchor Oganyi of the same family with me. That is all."

P.W.8 told his superior officer that the appellant made a confessional statement. Both of them went back to the Prisons where the appellant was being detained. When confronted with Exhibit "A", he denied making it and volunteered another statement - Exhibit "b" which reads thus:

"On 14/1/84 at night time both myself and Agbeh Nweke were sleeping one Oka Ede came and killed one Agbeh Nweke. I did not know the type of instrument used by Oka Ede to killed (sic) one Agbeh Nweke. Why Oka Ede accused me of killing one Agbeh Nweke is that I did not allow him to kill me. I was with Agbeh Nweke by the time Oka Ede killed him. The following people beat me up. They are one Oka Ede, John Nwoba, Nweke

Oka, Igboka Ede. Elizabeth Oka, Monica. Oka, Pius Utulo many others. Because I did not allow Oka Ede to kill and me, that is why the accused me of killing Agbeh Nweke. Oka Ede said that he will kill me and used his money and end it. That nobody will ask of me. The rationship between me and Oka Ede is that Oka Ede married one Elizabeth Oka from my family. I
 5 *Was in Oka Ede's house to go job for people and get food to eat. Oka Ede has earlier told me and Agbeh Nweke to sleep in one of his room. And the day of the incident both myself and Agbeh Nweke slept at the same room, that was why I knew that Oka Ede was the one who killed him. During my staying at Oka Ede's house, he used to brought many native doctors and piging to his*
 10 *house always. I did not know when I was brought to the Prison Yard."*

In his evidence at the trial, the appellant denied the charge. He testified in part: "I am not sure of what happened on the day of the incident." He further stated that he made only one statement to the police and that it was
 15 made in the presence of the Chief Warder - Patrick Ebo. The said Chief Warder testified on 25:2:85, Part of his evidence reads:

"I am Chief Warder in charge. I know P. W.8 Harrison Ezejiofor.. I know the accused. On 29:1:84 P. W. 8 Ezejiofor came to my office and told me he wanted to see the accused to make a statement. I asked him why he came
 20 *to the prisons for a statement instead of taking it at the Police Station. He said that the accused was not normal when he arrested him. I sent an escort to bring the accused from the cell. When the accused came, I asked him if he knew the Cpl. (P.W.8). He said he knew him. I told him P.W.8 was there to take a statement from him. P.W.8 cautioned the accused before obtaining a state-*
 25 *ment from him. The accused then made a statement which was recorded by the corporal. The statement was read over to the accused and he admitted that it was correct. There was no promise held out to the accused before he made the statement nor there was any treat (sic). I saw the accused on 18:1:84 when he was brought to the prison. He was behaving abnormally*
 30 *when he was brought to the prison."*

It is now convenient to consider the first issue: whether from the facts of the case the defence of insanity avails the appellant under S.28 of the criminal Code. Section 28 of the Criminal Code Cap. 30 Laws of Eastern Nige-
 35 ria, 1963 applicable in Anambra State provides:

"A person is not criminally responsible for an act or omission if at the same time of doing the act or making the omission he is in such a state of mental decease or natural mental infirmity as to deprive him 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. A person whose mind, at the time of doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitle to the benefit of the foregoing provisions of this sections, is criminally responsible for the act or omission to the same extent as if the real state of 5 thing had been such as he was induced by the delusions to believe to exist."

The law is that every person is presumed to be of sound mind and to have been of sound mind at all times material to the incident being investigated until the contrary is proved. See Section 27 of Criminal Code. The defence of insanity can only avail an accused person if he can show that he was insane at the time he committed the offence. It must be clearly proved that, at the time of committing the act, he was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, he did not know he was doing what was wrong. 10

The evidence of P.W.8 and the Chief Warder who testified as P.W.2 during the trial within the trial raised the question of the appellant behaving abnormally when he was taken to the prisons. The evidence available was in respect of his behaviour after the incident. In cases of insanity, the behaviour of the accused before, during and after the incident are all to be considered. 20

In his second statement Exhibit "B" and in his evidence in court, the appellant claimed that it was P.W.4 (Oka Ede) who killed the decease. The appellant was cross-examined by the prosecuting counsel as follows:

"Q. You told the court that you did not know what happened on the day of the incident but that you know it was Oka Ede who killed him. How 25 did you know that it was Oka Ede?"

A. Because he asked me to come and work for him.

Q. When did you know that it was Oka Ede who killed him?"

A. I saw with my own eyes.

Q. You no longer could remember what happened after Oka Ede 30 killed him?"

A. I was raising alarm and Oka Ede asked people to arrest me saying I was the one who did it. "

In his examination-in-chief, the appellant testified in part: *"I did not know why when I was taken to the Police. It was in prison custody after 35 I had stayed long there that I heard of Agbeh Nweke's death"*

In Exhibit "A" the appellant after confessing that he killed the de ceased stated:

"After that, I did not know myself again."

If the appellant did not know what happened on that day of the incident as he claimed in his evidence in chief, it is difficult to believe what he said in Exhibit "B" and under cross examination that it was P.W. 4 who killed the deceased.

5 *P.W.5 –Elizabeth Oka who is the second wife of P.W. 4 and a relation of the appellant testified that the appellant did not show signs of abnormality that day before they retired to bed.*

The appellant gave contradictory version of what happened in Exhibit "A" and "B" as well as in his evidence in court. The learned trial
 10 *judge found that Exhibit "A" was made by the appellant about fourteen days after the incident and that he remembered vividly the events and gave detailed account of the killing.*

He stated:

"He was in no doubt as to what he did and how he was tied hands
 15 *and feet after the commission of the offence. A person capable of giving a vivid recollection of incidents at the time of killing can hardly claim that he was insane at the time without strong evidence of other acts tending to show that his mind was unbalanced when he committed the crime or did the act-*
See Dabia v. The State (1963)2 C.L.R. 14 cited and adopted in Helegah v.
 20 *The Republic (1973) vol. 2. p. 29 Ghana Law Report. From the evidence it seems to me that the conduct of the accused was more consistent with the presumption of sanity. I am therefore in agreement with the learned Legal Adviser, Mr. Amaefuna, that the defence of insanity does not avail the accused..... The accused in my view has no defence what so ever to the*
 25 *charge."*

The court below came to the conclusion that the learned trial Judge rightly considered and rejected the defence of insanity.

None of the circumstances in which insanity could be established as set out in Sanusi v. The State (1984)10 S.C. 166 at 177 was met in this case. These include
 30 *positive acts of the accused before and after the deed complained of evidence of relations who know the accused person intimately relating to his behavior and the change which had come upon him; evidence of a doctor who examined and watched the accused over a period of time as to his mental state; the medical history of the family which could indicate hereditary mental affliction*
 35 *or abnormality and such other facts and circumstances which will help the trial judge come to the conclusion that the burden of proof of insanity placed by the criminal code on the defence has been amply discharged.*

The confessional statement of the appellant (Exhibit "A") where the

appellant stated that after the incident, he did not know himself again equally confirmed that he was sane at the time he committed the offence. I am in total agreement with the courts below that the defence under section 28 of the criminal code did not avail the appellant. The evidence of P.W.4., P.W.5. and P.W.6 corroborated Exhibit "A". The appellant could still have been found guilty in spite of Exhibit "A".

In the instant appeal, the prosecution tendered evidence of abnormal behavior of appellant and that the trial court rightly considered it and found it insufficient. See *Ejinma v. State* (1991)6 N.W.L.R. (Pt. 200)627. The abnormal behavior of the appellant after the incident evaporated within two weeks. The defence made no effort to have the abnormal behavior investigated. It is not for prosecution to disprove insanity where the accused adduced no evidence of insanity. It should only prove sanity in reply to evidence of insanity adduced by the defence – *R.v.Nasumu* (1940) W.A.C.A.74.

There is even no evidence of insanity based on insane delusion which the court could have considered. To say the "appellant behaved abnormally" when he was arrested or in prison custody without more cannot establish a defence under section 28 of the Criminal Code. Such statement may lead to an inquiry as to whether the appellant was suffering from mental disease or natural mental infirmity. One has to make further inquiry whether that state of mental disease had the effect of depriving the appellant the capacity to understand what he was doing or to know that he ought not to do the act or make the omission; *Ejinma v. The State* (1991)6 N.W.L.R. (Pt. 200) 627. *Arum v. The State* (1979) 11 SC 9 and *Udofia v. The State* (1984) 11-12 S.C. 49.

The other complaint is the consideration of the confessional statement (Exhibit "A") by the trial Judge before dealing with the issue of insanity. The case of *Oladele v. The State* (1993) 1 N.W.L.R. (Pt. 269) 294 at 306 where *Olatawura, J.S.C.* frowned at such a procedure was relied upon. It has not been argued that the procedure adopted by the learned trial Judge in the present appeal led to any miscarriage of justice. Rather what *Olatawura, J.S.C.* said in *Oladele's* case is that if the defence of insanity succeeded where an accused person based his defence mainly on insanity, it would affect the confessional statement made by that person.

In that case, the defence led evidence through a prison doctor who examined and treated the accused in the prison soon after the offence and also the evidence of a psychiatrist who observed the accused person. The trial court failed to give due weight to the evidence of the two vital witnesses and

convicted the accused on his confessional statement. The conviction was

affirmed by the Court of Appeal. This court set aside the conviction and sentence. One can therefore say that in Oladele's case, the accused discharged the burden of proof placed on him. That is not the case in the appeal before us.

In the result, the appeal fails and it is hereby dismissed. The conviction and sentence passed on the appellant by the trial court and confirmed by the Court of Appeal are hereby confirmed.

BELLO CJN

10 I have had the opportunity to read in draft the lead judgment of my learned brother, Ogwuegbu, JSC. I agree with his reasoning and conclusion. I also dismiss the appeal. I would only add some comments on the main issue canvassed, namely the defence of insanity.

15 Under section 27 of the Criminal Code of Anambra State every person is presumed to be of sound mind until the contrary is proved. The onus of proving the contrary lies on the accused person. He will discharge the onus if he proves within the balance of probability that at the material time he was insane as prescribed by section 28 of the said code. It reads:

20 *"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 him of capacity III 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.*

25 *A person whose mind, at the time of his doing or omitting to do an act, is affected by delusion on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is Criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist."*

30 Thus for the defence to succeed under the section, it must be established:-

(1) That the prisoner was, at the relevant time, suffering either from natural infirmity; and

(2) that the mental disease or the natural mental infirmity was such that, at the relevant time, the prisoner was, as a result deprived of capacity:-

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(a) to understand what he was doing; or

(b) to control his action; or

(c) to know that he ought not to do the act or make the omission.

Although the essence of the defence of insanity is that the accused was insane at the time he committed the offence, the inference whether he was sane or insane at the time the act constituting the offence was committed may be drawn from the evidence of his conduct previous to or contemporaneous 5 with or immediately following the commission of the act constituting the offence. See *The State v. Oloriawo* (1969) All N.L.R. 609 at page 612.

It needs to be emphasized that in considering the defence of insanity a court shall not confine its consideration on the evidence adduced by the defence. The totality of the evidence on the issue, whether established by the prosecution or the defence, must be fairly and fully considered to reach a 10 decision.

The evidence relating to the defence of insanity in this appeal may be stated. From the evidence of PW4 and PW5 there was nothing abnormal with the Appellant when he went to sleep on the 15th January 1984 at night. 15 PW5, who was awakened by the shouts of the deceased and the Appellant, testified that the Appellant was shouting "My father I have killed somebody for you to-day!" while he was inflicting the fatal machet cuts on the deceased. According to the Chief Warder the Appellant was abnormal on 18th January, 1984 when he was taken to the Prison. The police officer also testified 20 that the Appellant was abnormal on 19th January and he could not obtain his statement until on 29th January, 1984 wherein, after having confessed and described his arrest by the villagers, he stated. "Later they tied me both my hands and legs. After that I did not know myself again." Again in his second statement Exh. B, made on 1st February, 1984 he stated "I did not know when 25 I was brought to the Prison yard."

It is clear from the foregoing that the Appellant knew what he was doing when he was inflicting the machet cuts on the deceased. He knew he was killing the deceased but lost his memory immediately thereafter. He was observed to be abnormal on 18th January until he regained his memory in 30 Prison about two weeks after the incident.

Now, loss of memory, amnesia, is not a sufficient mental disease or sufficient natural mental infirmity without more upon which the defence of Insanity may be sustained under section 28 of the code: *Ayinde v. The Queen* (1963) All NLR 399. However, abnormality of the mind, is defence under section 28, if it is established that:

"- - that at the time of the killing the abnormality of mind in question substantially impaired the mental responsibility of the appellant for his acts- on the balance of probabilities, then the defence is made out.

The Court must consider the evidence upon the whole facts, including the nature of killing, the conduct of the accused before, at the time of, and after it, and any history of mental abnormality. The task is to be approached from a broad common sense way. If there is unchallenged evidence that there is abnormality of mind and consequent impairment of mental responsibility
5 *and no facts or circumstances appear that can displace or throw doubt on that evidence, it seems that, that must be a material factor for the court to consider. See Walton v. R (1978)6 C.A.R.25," per Coker JSC in Loka v State (1985) All NLR 1 at page 6.*

In this case on appeal, the abnormality of the Appellant was noted
10 three days after the incident. There is no evidence whatever to show that the abnormality at the relevant time deprived the Appellant his capacity to understand what he was doing or to control his action or to know that he ought not to kill the deceased. Accordingly, the defence under section 28 did not avail appellant.

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UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Ogwuegbu, J.S.C. I agree with his reasoning and conclusion. I therefore adopt the judgment as mine.

20 Accordingly, the appeal fails and it is hereby dismissed. The decision of the Court of Appeal is hereby confirmed.

ADIO JSC

I have had the privilege of reading, in advance, the judgment just
25 read by my learned brother, Ogwuegbu, J.S.C., and I agree that the appeal fails and I too dismiss it. I confirm the conviction of the sentence passed on the appellant.

IGUHJSC

I have had the advantage of reading in draft the judgment just delivered by my learned brother, Ogwuegbu J.S.C. I agree entirely with him that there is no merit in this appeal which I will also dismiss.

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I wish however to make a brief comment by way of emphasis only on

the issue of the defence of insanity raised by the appellant in this appeal. The same issue was canvassed before the trial court and the court below and both courts arrived at the concurrent findings that the defence of insanity did not avail the appellant.

Section 27 of the criminal Code, Cap. 30 Laws of Eastern Nigeria, 1963 applicable in Anambra State provides that every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved. There is therefore a presumption of law that every person, including the appellant, is of sound mind and, more importantly, had been of sound mind at any time which came into question, until the contrary is proved. An accused person who decides to contend that he was insane at any time material to the commission of the offence for which he stands trial or that he suffered from insane delusions at any such time has the legal burden to rebut the aforesaid presumption of law which presumes him sane until the contrary is proved. The onus rests squarely on him to prove insanity or insane delusions as a defence. See too Section 140 (3) (c) of the Evidence Law of Eastern Nigeria, 1963, applicable in Anambra State. It must however be emphasized in very clear terms that the quantum of this burden on an accused person to establish the defence of insanity or insane delusions is merely as prescribed in Civil cases, that is to say, on the balance of probabilities or the preponderance of evidence. See *R. V. Ediom* 14 W.A.C.A. 158, *R. V. Onakpoya* 4 F.S.C. 150, *Emeryl v. The State* (1973) 6 SC. 215 at 226, *R. V. Dim* 14 W.A.C.A. 154 and *Ukadike v. The State* (1973) 3 E.C.S.L.R. 277. It is therefore not the correct position of the law, as the appellant's learned counsel appeared to submit, that there is any onus on the prosecution to disprove insanity in a criminal matter where the defence adduced no evidence of the accused person's insanity. It is only by way of reply to the evidence of insanity led by the defence that the prosecution should be obliged to offer any available evidence as to the sanity of the accused person. See *R.Y. Nasumu* (1940) 6 W.A.C.A. 74.

The defence of insanity or insane delusions is contained in section 28 of the said Criminal Code. This provides as follows:-

"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 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.

A person whose mind, at the time of his doing or omitting to do an act is affected by delusions on some specific matter or matters but who is not otherwise entitled to the benefit of the foregoing provisions of this section is

criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist. “

For the defence of insanity to succeed, therefore, the accused person must establish that he was at the time of the commission of the offence for which he is standing trial suffering either from “mental disease” or “natural mental infirmity” and that the ailment was such that at the relevant time, he was deprived of capacity:

- (1) to understand what he was doing or
- (2) to control his actions or
- (3) to know that he ought not to do the act for which he was charged.

See *Rex v. Omoni* 12 W.A.C.A. 511 at 513 and *M.A. Sanusi v. The State* (1984) 10 SC. 166.

A person whose mind, at the time of the commission of an offence, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the first arm of section 28 of the said Criminal Code, is criminally responsible for his act to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist. But as was observed by this court per Obaseki, J.S.C. in *Goodluck Oviefus v. The State* (1984) 10 SC. 207 at 219 -

“*On a correct and proper reading and consideration of the section, I am unable to hold that delusion that has no causation in mental disease with natural mental infirmity does afford any defence. I make this point because of the growing fashion in the unbridled use of the term delusion by counsel appearing for accused appellants...*”

It therefore seems to me plain that delusion which has no causation in mental disease or natural mental infirmity does not afford any defence to an accused person under the provisions of section 28 of the Criminal Code under consideration. Accordingly the defence of delusion to excuse irrational or delusional irresponsibility cannot in law be available to an accused person. So too, a defence founded on witchcraft or superstitious belief cannot afford a legal defence under the Criminal Code. See *Usman Acida v. King* 13 W.A.C.A. 342 and *Konkonba v. Queen* 14 W.A.C.A. 236.

In the present case, the appellant failed to establish that at the time of the commission of the offence for which he was convicted, he was suffering either from “mental disease” or “natural mental infirmity” and that his condition was such that he was at all material times deprived of capacity to understand what he was doing to control his actions or to know that what he was doing was wrong. There was also no evidence of insane delusion which was available for consideration by the courts below. The appellant in his evidence

before the trial court appeared to suggest that he did not know what happened on the date of the murder. In my view, this wild claim was rightly rejected by the two courts below. At all events loss of recollection is not by itself conclusive evidence of either insanity or insane delusions. See *Ayinde v. Queen* (1963) 1 All N.L.R. 393 and *R.V. Podola* 1960 1 O.B. 325. It seems to me plain from the accepted evidence before the trial court as affirmed by the court below and the law applicable thereto that the appellant's defence of insanity was rightly rejected.

In the light of the above and for the more detailed reasons set out in the lead judgment of my learned brother, Ogwuegbu, J.S.C., this appeal accordingly fails and it is hereby dismissed by me.

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