

SUPREME COURT OF NIGERIA
15TH APRIL, 1994 SC. 211/1992
CORAM: M. L. UWAIS, O. OLATAWURA,
M. E. OGUNDARE, E. O. OGWUEGBU, Y. O. ADIO, JJSC

MONDAY CHUKWU APPELLANT
V.	
THE STATE RESPONDENT

CRIMINAL LAW & PROCEDURE - Insanity - Murder - Nothing in appellant's evidence capable of making court suspect he was insane - Court's finding that there was no evidence of mental illness at time of murder - Whether proper.

CRIMINAL PROCEDURE - Plea - Murder - Verbatim recording of appellant's plea "I murdered him by right" - Before entering a plea of not guilty - Whether appellant's case prejudiced or adversely affected thereby - Whether such verbatim recording of plea is irregular in view s. 215 of the CPL

CRIMINAL PROCEDURE - Soundness of mind - Murder - Where appellant was treated and cured of mental illness about 3 years to the commission of crime - No evidence of a relapse - Whether appellant's plea suggested any incapability of making his defence.

FACTS

The Appellant (brother of the deceased) was seen hiding in a bush by the PW1 (daughter of the deceased). When the deceased who was riding in a bicycle towards Appellant's hide-out came to that spot, Appellant came out of the bush and attacked the deceased with a stick. He fell down and the PW 1 ran home for assistance. The deceased was later found dead at the scene of the crime and the corpse was taken to the hospital for post-mortem examination. Appellant was charged before the High Court, Owerri, with murder. He pleaded "I murdered him by right", which the trial Judge recorded verbatim but entered a plea of "not

guilty" for the Appellant. In his statement to the Police and oral evidence in court, Appellant agreed that he attacked the deceased, gave reasons for the attack and alleged that the deceased attacked him first.

There was evidence that the Appellant was cured of mental illness about 3 years before the incident and since then it did not appear there was a relapse. The trial court found the Appellant guilty as charged and sentenced him to death. His appeal to the Court of Appeal was dismissed. Appellant has further appealed to the Supreme Court to determine whether the Court of Appeal was right in endorsing the way the learned trial Judge dealt with the Appellant's plea. And whether the lower court was right in affirming the trial court's finding that there was no evidence of Appellant's mental illness.

HELD (*unanimously dismissing the appeal*)

1. It was not shown in what way the verbatim recording of the Appellant's plea had adversely affected or prejudiced his case, so that Appellant's complaint against the said verbatim recording of his plea lacks substance. The situation is the same in relation to the entering of a plea of "*not guilty*" by the learned trial Judge for the Appellant. (p.96 L12)
2. It is not irregular if pursuant to the provisions of s. 215 of the CPL, the plea of an accused to a charge is recorded verbatim by the learned trial Judge. Such recording will be fair to the prosecution and the defence and will prevent any controversy in the future about what exactly the accused said in response to the request to plead to the charge. (p.97 L 11)
3. The Appellant certainly was of sound mind and was consequent capable of making his defence. The Court of Appeal was right endorsing the way in which the trial Judge dealt with the Appellant's plea. And even if the Court of Appeal committed an error in dealing with this aspect of the matter, no miscarriage of justice was occasioned thereby. (p.98 L 34)
4. There was nothing in the reasons given by the Appellant in his written statement or his oral evidence capable of giving the impression or making

the court suspect that the Appellant was insane. The Court of Appeal was therefore right in affirming the trial court's decision that there was no evidence that the Appellant was mentally ill at the time he killed the deceased. (p 1 00 L 34).

NOTABLE POINTS OF INTEREST

ADIO JSC

Forms of pleas that are not direct answers to the charge

1. "Pleas which could not be regarded as direct answers to the charge take various forms. There was the once notorious or popular plea of guilty with explanation. It has been found that in some cases, the explanation, subsequently given after a plea of not guilty, has been entered for such an accused, in fact, showed that the accused was innocent". (p. 97 L26)

Investigation of fact of unsoundness of mind

2. It is only where a judge, holding a trial, has reason to suspect that the accused is of unsound mind and consequently incapable of making his defence that the judge is required by section 223 of the Criminal Procedure Law, in the first instance, to investigate the fact of such unsoundness of mind. In law, every person is presumed to be sane. In the present case, there was evidence that the appellant was once insane and there was also evidence that he had been cured long before the day of the incident and had returned home. There was no evidence of a relapse. (p.9)

Proof of Insanity

3. The onus of proving insanity as a defence is on the accused since there is a presumption that every person is sane, and to have been sane at any time in question, until the contrary is proved. The burden is discharged if the accused adduces evidence to show that it was probable that he was insane at the time when the offence was committed. (p. 99 L.31)

Insanity - Previous treatment for mental illness - Implications

4. The fact that an accused had received treatment for mental illness or for insanity in the past may or may not be relevant for the purpose of

determining whether the defence of insanity is available to him. It may not be relevant if the treatment was given a long time before the commission of the offence. (p. 100 L 17)

5 *Where reasons given by accused for committing crime do not show unsoundness*

5. Where, as in this case the accused gave reasons for committing the offence, the reasons should be given due consideration and if they are incompatible with a person whose mind is unsound, the accused has not established the defence of insanity. (p. 100 L 22)

OLATAWURA.JSC

15 *No right of appeal from High Court to Supreme Court*

6. "The present issue of plea as raised in the appellant's brief is a direct attack on the judgment of the learned trial court. We have emphasised in our judgments several times that there is no right of appeal from the High Court to the Supreme Court. This will be a violation of s.213(1) of the Constitution of the Federal Republic of Nigeria 1979". (p. 101)

Court's practice of recording words used by accused after explaining the charge to him.

25 7. It has been the practice of court in all trials especially in a criminal trial for the presiding judge to record as much as possible words used by an accused person when the charge has been read and explained to the accused person. In this appeal before us the recording of proceeding conforms with the practice of court and the procedure. (p. 102 L7)

Practice of not accepting a person's plea of guilty to a murder charge

35 8. It has been a long standing practice in this country that a man's plea of guilty to a murder charge is not accepted not only because of the nature of the offence but principally because the only sentence allowed by law is death by hanging. It is the supreme penalty. (p. 102 L 17)

Necessity of recording words used by accused verbatim

9. "It is an essential feature of trial (civil or criminal) that words used by

a witness or an accused person (as in this case) be recorded verbatim except when such words are irrelevant to the proceedings. To paraphrase may sometimes lead to a miscarriage of justice when evidence is being reviewed. Our present strenuous and toilsome manner of recording evidence notwithstanding, justice will be defeated if we do not adhere strictly to verbatim recording more so where we do not record proceedings on tapes.”(p. 102 L 32)

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Whether the way the plea was recorded affected the Judge’s mind

10. Now the issue of whether the way the plea was recorded affected the mind of the trial judge. There was no evidence or anything to show that the true recording of the plea had in anyway affected the mind of the judge. This was not an issue raised by the appellant in the lower court. There was no where in the judgment of the learned trial judge that he arrived at his decision because of the appellant’s earlier plea “I murdered him by right”. (p. 103 L 2)

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OGUNDARE JSC

11. Legal implication of the plea - “I murdered him by right”

“I cannot understand the fuss being made by the appellant on his plea as recorded by the learned trial judge. That plea - ‘I murdered him by right’ - amounts in my respectful view to only an admission of the act of killing and a plea of justification for the act. Such a plea amounts in my respectful view to a plea of ‘not guilty’ and the learned trial judge was right to have recorded a plea of not guilty. (p. 103 L 17)

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OGWEGBU JSC

12. Whether an accused is fit to stand trial - Whose concern

It is quite clear that the question whether an accused person is fit to stand his trial, when there is reason to doubt it, is a matter of common concern to both counsel as well as the court itself. The trial judge or magistrate should have reason to suspect that the accused is of unsound mind before there is an investigation. (p. 105 L 3)

13. Implications of treating an imperfect plea as a plea of guilty

Where the plea was imperfect or unfinished, and the court of trial wrongly
 5 held that it amounted to a plea of guilty, on appeal, the appellate court
 might order that a plea of not guilty be entered and the appellant be tried
 on the charge or information: R. v. Ingleson (1915) I K.B 512. The plea
 in this appeal was not imperfect or unfinished. (P.105 L18).

10 **REPRESENTATION:**

Chief D. C. Njemaze for the Appellant.
 J. C. Igwe (Mrs.) Senior Legal Officer, Imo State, for the respondent.

CASES REFERRED TO

- 15 Iboko v. The State (1965) NMLR 384
 R. V. Ingleson (1919) I. K. B. 512
 Eledan v. The State (1964) All N.L.R. 138
 Udofia v. The State (1981) 11 - 12 S. C 49
 Ejinima v. The State (1991) 6 N.W.L.R. (pt. 200) 62
 20 Ansa v. The State (1988) 3 N.W.L.R. (pt. 83 at p. 400
 Kure v. The State (1988) 1 N.W.L.R. (pt. 71) 404
 Asanya v. The State (1991) 3 N.W.L.R. (pt. 180) 422
 Sanusi v. The State (1984) 10 S.C. 166
 Abu v. The State (1976) 5 S.C. 21
 25 The Queen v. Ogor (1961) All N.L.R. 75

STATUTES REFERRED TO

- Criminal Code Cap. 30 Laws of Eastern Nigeria S. 319
 30 Criminal Procedure Law Cap 31 Laws of Eastern Nigeria S. 217, 215,
 220,223
 Constitution of the Federal Republic of Nigeria 1979 S. 213 (1)

35 **LEAD JUDGMENT BY ADIO JSC**

The charge preferred against the appellant at the High Court, Imo
 State, Owerri Judicial Division, was murder contrary to section 319 of
 the Criminal code, Cap. 30 of the Laws of Eastern Nigeria, 1963, appli-
 cable in Imo State. The allegation against him was that he, on the 6th day

of September, 1980, along Owu Mbaise Road in Owerri Judicial Division unlawfully murdered one Vincent Chukwu.

When the charge was read and explained to the appellant, for his plea, he pleaded:

"I murdered him by right."

The learned trial Judge, in view of the plea of the appellant, entered a plea of "not guilty" for the appellant. The evidence led by the prosecution was that on the 6th day of September, 1980, at about 5.30 p.m., the 1st P.W., was going from her home in Ikeduru to a maternity home in Mbaise when she saw the appellant hiding in a bush. The deceased was riding a bicycle towards the place where the appellant was hiding. When the deceased got there the appellant came out of the bush and attacked the deceased with a stick. The deceased fell down and the 1st P.W., ran home for assistance. The corpse of the deceased was found at the scene of the incident and was removed to the hospital for post-mortem examination. The deceased was the father of the 1st P.W. and the appellant was her uncle. He (the appellant) was a brother of the deceased.

The appellant, in his statement to the police, Exhibit "A", and in his oral evidence in the court, agreed that he attacked the deceased. He gave reasons for the aforesaid attack and he alleged that it was the deceased who first attacked him.

There was evidence that the appellant was once mentally ill and that he had been cured since 1977 when he returned home. Since then it did not appear that there was a relapse.

The learned trial Judge, after due consideration of the evidence before him, found the appellant guilty of the charge and sentenced him to death. He held that the death of the deceased was caused by the act of the appellant. He considered whether any of the usual defences, such as provocation, self-defence and insanity, was available to the appellant and came to the conclusion that none of them was available to him. Dissatisfied with the judgment of the learned trial Judge, the appellant appealed to the Court of Appeal which dismissed the appeal. He has further appealed to this court.

In accordance with the rules of this court, the parties duly filed and exchanged briefs. Two issues were identified for determination in the appellant's brief and two issues were identified for determination in the respondent's brief.

The two issues for determination identified in the appellant's brief, which were based on the grounds of appeal, as suitably amended, are

sufficient for the determination of this appeal. They are as follows:-

(1) *Whether the Court of Appeal was right in endorsing the way in which the learned trial Judge dealt with the plea of the appellant.*

(2) *Whether the Court of Appeal was right in affirming the decision of the learned trial Judge that there was no evidence that the appellant was mentally ill at the time that he killed the deceased.*

The question under the first issue is whether the Court of Appeal was right in endorsing the way in which the learned trial Judge dealt with the plea of the appellant. The learned trial Judge caused the charge to be read and explained to the appellant. That was on the 30th September, 1983 and the following was the plea of the appellant as recorded by the learned trial Judge:

" murdered him by right."

The learned trial Judge entered a plea of "not guilty" and ordered that the appellant, who alleged that he could not financially afford a counsel, should be assigned a counsel to defend him. That was the end of that aspect of the matter as far as the proceedings before the learned trial Judge were concerned.

The Court of Appeal gave consideration to the foregoing aspect of this appeal and Onu JCA (as he then was) reading the lead judgment stated inter alia, as follows:-

"I will begin the consideration of this appeal by saying that the duty of a court is to record the evidence and events in proceedings before it including the recording of the accused person's plea in the exact words of the accused This accords with what obtains in sections 156 and 157 (1) of the Criminal Procedure Code, applicable in the Northern States of Nigeria, the former which is in pari materia with the provisions of section 215 of the Criminal Procedure Law, Cap, 31 of the Laws of Eastern Nigeria 1963 applicable to Imo State. Be that as it may, I take the firm view and so agree with the respondent's submission that this duty to record everything does not override the practice of entering a plea of 'Not guilty' in a capital offence irrespective of overt admission by an accused that he committed the offence".

After stating that the procedure adopted by the learned trial Judge did not breach the rule of fair hearing as defined in section 33 of the 1979 Constitution. His Lordship pointed out that the appellant had not shown how the plea of the appellant as recorded had affected the mind of the learned trial Judge in his judgment. On the question whether or not the appellant was fit to plead, His Lordship stated, inter alia as follows:-

"On fitness of the appellant mentally to stand his trial, no reason was adduced and nothing on the record suggests, that he was either mentally impaired or that he was unfit to plead. Hence, the test was inapplicable. See Iboko v. The State (1965) NMLR 384. A trial Judge need not carry out an investigation on the mental condition to determine the sanity or insanity of an accused if there is no reason to make him suspect that the accused is of unsound mind..... Hence, the presumption of sanity, in my view, prevailed and all I can venture to say about the plea in the exact words of the appellant recorded at his trial simply amounts to justification in self defence rather than even a plea of guilty as canvassed by the appellant and therefore does not raise the issue of a plea of "guilty" and 'not guilty' all in a wrap or at a go."

The submission in the appellant's brief was that the learned trial Judge erred in law in recording the exact statement of the appellant when he was asked to plead to the charge, instead of entering a plea of not guilty which would have warranted the application of or compliance with section 217 of the Criminal Procedure Law, Cap. 31 of the Laws of the Eastern Nigeria, 1963. The appellant complained that the Court of Appeal erred in law in endorsing what the learned trial Judge did and in using the legal principle applicable to a civil matter to determine a criminal case and in applying the provisions of the Criminal Procedure Code of Northern Nigeria to a criminal case to which the Criminal Procedure Law of Eastern Nigeria, 1963, applied. Finally, it was submitted that the Court of Appeal failed to appreciate that the irregularity in the recording of the plea of the appellant by the learned trial Judge affected the mind of the Judge and led him to return a verdict of guilty in the case. In the view of the appellant, the learned trial Judge treated the plea of the appellant as a plea of guilty.

The submission in the respondent's brief was that the Court of Appeal was right in endorsing the act of the learned trial Judge in recording verbatim what the appellant stated in response to his being asked to plead to the charge, and in entering a plea of 'not guilty' for him and that by allowing the trial of the appellant to proceed on that basis the learned trial Judge had enabled the provision of section 217 of the Criminal Procedure Law to be complied with. It was also argued that a trial Judge was not under any obligation to investigate the fitness of an accused to stand his trial where there was no reason to suspect that the accused was insane.

One really can't see the substance in the complaint against the recording, verbatim, by the learned trial Judge, which was endorsed by the Court of Appeal, of what the appellant said in response to his being requested to plead to the charge that was read and explained to him. It was not shown in what way the recording, verbatim, of the appellant's plea had adversely affected the appellant or prejudiced his case. The situation is the same in relation to the entering of a plea of "*not guilty*" by the learned trial Judge for the appellant in the circumstance and which was endorsed by the Court of Appeal. On the question of the fitness of the appellant to plead, the provisions in Part XXIV of the Criminal Procedure Law, Cap. 31 of the Laws of Eastern Nigeria, 1963, applicable in Imo State and dealing with recording of plea are relevant. In particular, the provisions of sections 215, 217 and 220 thereof are as follows:-

"215. The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith.

217. Every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon his trial.

220. If the accused person when called upon to plead shall stand

mute of malice or will not and cannot answer directly when called upon to plead to the charge the court shall enter or cause to be entered a plea of not guilty on behalf of such person and the plea so entered shall have the same force and effect as if such person had actually pleaded the same, or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind in accordance with the provisions of Part XXV and if he shall be found to be of sound mind shall proceed with his trial."

There is nothing irregular if, pursuant to the provisions of section 215, the plea of an accused to a charge is recorded verbatim by the learned trial Judge. That will, apart from other things, be fair to all concerned (the prosecution and the defence) and will prevent any controversy in the future about what exactly the accused said in response to the request to him to plead to the charge. It is not unusual that some accused persons, instead of making the usual and straightforward plea of "guilty" or "not guilty", engage in making pleas which could not be regarded as direct answer to the charge. In such cases, the provision of section 220 is inter alia, that a plea of 'not guilty' should be entered on behalf of such an accused person and that the plea so entered shall have the same force and effect as if such person had actually pleaded the same. Where that is the case, the provision of section 217 of the Law will become applicable and it is that every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon this trial.

Pleas which could not be regarded as direct answers to the charge take various forms. There was the once notorious or popular plea of "guilty with explanation." It has been found that in some cases, the explanation, subsequently given after a plea of "not guilty" has been entered for such an accused, in fact, showed that the accused was innocent. See R. v. Ingleson, (1915) 1 K.B. 512. Each case depends upon its own facts and circumstances. What the accused says in response to his being requested to plead to the charge, instead of a plea of "guilty" or "not guilty" depends on the impression that he wants to give to the court. He may want to give the impression that he was justified in doing what he did. He may be merely play - acting as in Eledan v. The State (1964) All N.L.R 138 or be really insane. It is only where a Judge, holding a trial, has reason to suspect that the accused is of unsound mind and consequently incapable of making his defence that the Judge is required by

section 223 of the Criminal Procedure Law, in the first instance, to investigate the fact of such unsoundness of mind. In law, every person is presumed to be sane. In the present case, there was evidence that the appellant was once insane and there was also evidence that he had been cured long before the day of the incident and had returned home. There was no evidence of a lapse. Indeed, the statement, Exhibit "A", which he made to the police soon after the time of the incident showed that he alleged certain reasons for doing what he did. Whether those reasons were true or genuine is a different matter. The appellant stated in the statement, inter alia, as follows:-

"I was the person who killed my Senior brother Vincent Chukwu (m) of the same address by giving him fist blows all over his body including his chest while riding his bicycle along Owu Mbaise road. The reason why I killed him was because he has (sic) earlier showed (sic) me some planks which he deceased will (sic) use in bury me. Moreover, there was a day the deceased my brother tied me with a rope then I managed and loose the rope. Nobody helped me to loose the rope. When I regained freedom, the deceased Mr. Vincent Chukwu went and took a cutlass in order to matchet me, but I managed to ran (sic) away. He the deceased went out and I went along Owu Mbaise road and waylaid him. Immediately I saw him riding on his bicycle, I had to give him fist blows till he died. When he (sic) saw that he was dead, I returned home where by people arrested me and tied both my hands and legs. I have to add that these my relations who arrested me are as follows: Michael Nwaneze, Christopher Opara, Longinus Ugwoji and Peter Ukadiala, that is all I know."

If the reasons alleged by the appellant for the killing of the deceased are considered along with his answer in response to his being asked to plead to the charge and with other circumstances of the case, it is quite clear or obvious that the appellant intended to give the impression that he was justified in killing the deceased or he must merely be playing-acting. He was certainly of sound mind and was consequently capable of making his defence. The Court of Appeal was, therefore, right in endorsing the way in which the learned trial Judge dealt with the plea of the appellant. There was no miscarriage of justice as a result of the error, if any, committed by the Court of Appeal in dealing with this aspect of the matter.

I now come to the question raised under the second issue which is whether the Court of Appeal was right in affirming the decision of the learned trial Judge.

That there was no evidence that the appellant was mentally ill at the time that he killed the deceased. The learned trial Judge decided, and the Court of Appeal affirmed the decision that the defence of insanity was not available to the appellant. The Court of Appeal on the point, stated inter alia as follows:-

"In the instant case, evidence disclosed that sometime around 1976, (appellant in his testimony put it at around 1978, the appellant was mentally ill and that he was treated by a native doctor); further, that since his return he had behaved normally until about two days to the killing of the deceased; i.e, 16th September, 1980, when there was a quarrel between the appellant and the deceased. Nothing was said by way of defence or evidence (medical or otherwise) at the trial of the appellant's unsoundness of mind In which case, it needs to be stressed that the respondent's act constituted an act of revenge (for which motive is inferable. See R. v. Blake (1942) 8 W.A.C.A. 118."

The submission, in the appellant's brief, was that throughout the trial of the appellant his mental state was in doubt and that the Court of Appeal wrongly placed a very high burden of proving insanity on the appellant. It was the submission of the respondent that every person is presumed to be of sound mind until the contrary is proved as provided in section 27 of the Criminal Code and that the onus of proving insanity was on the appellant. It was also submitted that there was no evidence of abnormal behaviour on the part of the appellant at the time of the incident or shortly before it or even at the trial nor, was there any evidence of a relapse of the illness of the appellant.

The onus of proving insanity as a defence is on the accused since there is a presumption that every person is sane, and to have been sane at any time in question, until the contrary is proved. See section 27 of the Criminal Code. The burden is discharged if the accused adduces evidence to show that it was probable that he was insane at the time when the offence was committed. See *Udofia v. The State*, (1981) 11-12 S.C. 49; *Ejinima v. The State*, (1991) 6 N.W.L.R. (Pt.200) 627 and *Arisa v. The State* (1988) 3 N.W.L.R. (Pt.83) 386 at p.400. However, one could not, in fairness to the accused, strictly limit the inquiry into the question whether the defence of insanity was available to the accused to

the date on which the accused allegedly killed the deceased. Acts of the accused immediately before and after the date of the actual commission of the alleged offence are relevant. See *Kure v. The State*, (1988) 1 N.W.L.R. (Pt.71) 404; and *Asanya v. The State*, (1991) 3 N.W.L.R. (Pt.180) 422. In *Kure's* case the accused was in psychiatric hospital for treatment for nine months immediately after the alleged offence. In the present case, the evidence before the court was that the appellant had mental illness but that he had been cured some years before the incident in question. He had returned home and there was no evidence of a relapse immediately before, on the day of the incident or immediately after he committed the offence. The offence was committed on the 6th of September, 1980, and on the following day, that is 7th September, 1980 the appellant made a written statement (Exhibit "A") to the police. What the appellant said in the statement was coherent and there was nothing therein to suggest that he was insane. Further, there was no evidence that the person who obtained the statement from the appellant had difficulty in doing so. The fact that an accused had received treatment for mental illness or for insanity in the past may or may not be relevant for the purpose of determining whether the defence of insanity is available to him. It may not be relevant if the treatment was given a long time before the commission of the offence. See *Udofia's case supra* and *Sanusi v. The State* (1984) 10 S.C. 166. Further, whereas in this case, the accused gave reasons for committing the offence, the reasons should be given due consideration and if they are incompatible with a person whose mind is unsound, the accused has not established the defence of insanity. See *Abu v. The State*. (1976) 5 S.C. 21. Some of the reasons alleged by the appellant in his statement were that the deceased showed him (appellant) some planks which the deceased would use to bury the appellant and at another time the deceased wanted to inflict injury on the appellant with a machet but the appellant managed to escape. When he testified orally, the appellant told the court that it was the deceased who first hit him with his bicycle. When he asked the deceased why he did that, the deceased continued to hit and beat him. So, he (appellant) was provoked and he hit the deceased with his hand and the deceased fell down. There was nothing in the reasons given by the appellant in his written statement (Exhibit "A") or his oral evidence capable of giving the impression or of making the court suspect that the appellant was insane. The Court of Appeal was, therefore, right in affirming the decision of the learned trial Judge that there was no evidence that the appellant was mentally ill at the time that he killed the deceased.

The appeal lacks merit and the judgment of the Court of Appeal is hereby affirmed. The appeal is hereby dismissed.

UWAIS JSC

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I have had the privilege of reading in draft the judgment read by my learned brother Adio, J.S.C. I entirely agree. Accordingly, the appeal lacks merit and it is hereby dismissed. The judgment of the Court of Appeal is hereby affirmed.

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OLATAWURA JSC

I had a preview of the lead judgment of my learned brother Adio, J.S.C. I agree with his reasoning and conclusions.

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It is useful to elaborate further on the second issue raised by the appellant in so far as his plea is concerned. It reads:

"Whether or not the plea of the appellant as recorded by the learned trial judge was proper and if not proper whether or not the plea so recorded affected the mind of the learned trial judge."

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It is necessary to point out that the only issue raised by the appellant before the lower court was *"whether or not the accused/appellant had a fair hearing during the trial."* It was the State i.e., the respondent that raised two issues in the lower court.

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The present issue of plea as raised in the appellant's brief is a direct attack on the judgment of the learned trial court. We have emphasised in our judgments several times that there is no right of appeal from the High Court to the Supreme Court. This will be a violation of S. 213(1) of the Constitution of the Federal of Nigeria 1979. It is fair to point out that Ground 2 of the Grounds of Appeal properly attacked the judgment of the Court of Appeal whereas the issue formulated to cover this ground delimits the ground by restricting the issue to whether the mind of the learned trial judge was not affected by the way the plea was recorded. In my view, the proper issue which would have covered this ground should have been whether the Court of Appeal was right in saying that the mind of the learned trial judge was not affected in the manner the plea was recorded. It does not appear to me to be a minor point since the issue raised must cover the grounds of appeal or in other words must arise

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from the grounds of appeal filed. It is in the light of the above observation made by me that I will now make my contribution on this issue, i.e. the manner the plea was recorded.

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It has been the practice of court in all trials especially in a criminal trial for the presiding judge to record as much as possible words used by an accused person when the charge has been read and explained to the accused person. In this appeal before us the recording of proceedings conforms with the practice of court and the procedure. On 25th October, 1982 when the accused person finally appeared with his counsel before Aguta, J. (as he then was), the learned trial Judge's note reads thus:

15 *"Charge read and explained to the accused who understands same and pleads: "I murdered him by right". Note: Court enters a plea of "Not Guilty".*

It has been a long standing practice in this country that a man's plea of guilty to a murder charge is not accepted not only because of the nature of the offence but principally because the only sentence allowed by law is death by hanging. It is the supreme penalty. I cannot readily find an authority why the plea of guilty to a murder charge is not acceptable to the court but I rely on my experience in the Courts as a Clerk or Registrar of Court, counsel and a judge with only 23 years in our courts. In some other jurisdictions e.g. England where the punishment for murder is sentence for life, such a plea of guilty to a murder charge is not unusual. See *R. v. Vent* 25 C.A.R. 55 and also Practice Direction (Plea of Guilt: Statement of Facts) (1968) 1 W.L.R. 529. If ordinarily this sentence of death by hanging is to be carried out as in the cases of other offences, there may be a miscarriage of justice. It is for this reason alone that no sentence of death is carried out until after the decision of this Court.

It is an essential feature of trials (Civil or Criminal) that words used by a witness or an accused person (as in this case) be recorded verbatim except when such words are irrelevant to the proceedings. To paraphrase may sometimes lead to a miscarriage of justice when evidence is being reviewed. Our present strenuous and toilsome manner of recording evidence notwithstanding, justice will be defeated if we do not adhere strictly to verbatim recording more so where we do not record proceedings on tapes.

Now the issue of whether the way the plea was recorded affected the mind of the trial judge. There was no evidence or anything to show that the true recording of the plea had in anyway affected the mind of the judge. This was not an issue raised by the appellant in the lower court. There was no where in the judgment of the learned trial judge that he arrived at his decision because of the appellant's earlier plea "*I murdered 5 him by right*".

It is for this reason and the fuller reasons by Adio JSC, that I have come to the inevitable conclusion that the appeal lacks merit and is hereby dismissed.

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OGUNDARE JSC

I have had an advantage of a preview of the judgment of my learned brother Adio J.S.C just delivered. I agree entirely with him that this appeal is lacking in substance and deserves to be dismissed.

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I cannot understand the fuss being made by the appellant on his plea as recorded by the learned trial Judge. That plea - 'I murdered him by right' - amounts in my respectful view to only an admission of the act of killing and a plea of justification for the act. Such a plea amounts in my respectful view to a plea of 'not guilty' and the learned trial Judge was right to have recorded a plea of 'not guilty'. I do not see how his recording the actual words of the plea by the Appellant would amount to mis-carriage of justice bearing in mind that both in his statement to the Police Exhibit A and in his evidence on oath at the trial he admitted the act of killing and raised circumstances which in his view justified his act of killing. The learned trial Judge after considering the totality of the evidence before him found, and quite rightly in my view, that the circumstances relied on by the appellant would not exculpate him from the consequences of his act.

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For the reasons given by my learned brother in his lead judgment which reasons I hereby adopt as mine, I find no merit in this appeal and I consequently dismiss it. I affirm the judgment of the court below.

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OGWUEGBU JSC

I have had the advantage of reading the judgment prepared by my learned brother Adio. J.S.C. I agree with him that the appeal lacks

merit and should be dismissed. Two issues identified by the appellant for determination are:-

1. *Whether or not the Court of Appeal was right in holding that there was no evidence suggesting that the appellant was mentally impaired or that he was unfit to plead.*

2. *Whether or not the plea as recorded by the learned trial judge was proper and if not proper whether or not the plea as so recorded affected the mind of the trial Judge.*

The learned appellant's counsel submitted that the plea of the appellant at his trial, to wit,

"I murdered him by right."

was enough to make the learned trial judge suspect that the appellant was of unsound mind and that the trial Judge should have complied with the provisions of Section 223(1) - (5) of the Criminal Procedure Law, Cap. 31 Vol. 11, Laws of Eastern Nigeria, 1963 applicable to Imo State of Nigeria.

Section 223 of the Criminal Procedure Law of Eastern Nigeria, 1963 no doubt provides for an investigation of insanity, if the question arises, at any stage, whether before the accused pleads to the charge or after, and even after evidence has begun to be heard.

The record of the learned trial Judge on 25/ 10/82 when the appellant pleaded to the charge reads:

"Onyelike for the State.

Onyeukwu N. I. (Mrs.) for the accused.

Charge read and explained to the accused who understands same and pleads: "I murdered him by right." Note: Court enters a plea of "Not Guilty". By agreement of counsel case adjourned to 11/1/83 for hearing. Accused to remain in custody.

(Sgd.) R. U. Aguta

Judge.

25/10/82

Section 223(1) provides:

"When a judge holding a trial or a magistrate holding a trial or an inquiry has reason to suspect that the accused is of unsound mind and consequently incapable of making his defence the judge, jury, or magistrate, as the case may be, shall in the first instance investigate the fact of

such unsoundness of mind." (Italics is for emphasis only).

It is quite clear that the question whether an accused person is fit to stand his trial, when there is reason to doubt it, is a matter of common concern to both counsel as well as the court itself. The trial judge or magistrate should have reason to suspect that the accused is of unsound mind before there is an investigation.

Reading the above plea of the appellant, there is nothing whatsoever to put the learned trial judge on enquiry as to the fitness of the appellant to stand his trial. If anything, the appellant was affirming the commission of the offence and asserting that he had the right to do so. That in effect meant that he had excuse or was justified in doing what he did and the learned trial judge was perfectly right in entering a plea of "Not Guilty". The plea therefore did not call in aid the provisions of S. 223 of the Criminal Procedure Law. The case of the Queen v. Ogor (1961) All N.L.R. 70 cited by appellant's counsel is inapplicable.

Where the plea was imperfect or unfinished, and the court of trial wrongly held that it amounted to a plea of guilty, on appeal, the appellate court might order that a plea of not guilty be entered and the appellant be tried on the charge or information: R. v. Ingleson (1915) 1 K.B. 512. The plea in this appeal was not imperfect or unfinished.

As to whether the Court of Appeal was right in affirming the decision of the learned trial judge that there was no evidence that the appellant was mentally ill at the time he killed the deceased, one has to consider the evidence of the appellant at the trial and his statement to the police on 7/9/80 - Exhibit "A".

In Exhibit A the appellant said:

"I was the person who killed my senior brother Vincent Chukwu by giving him fist blows all over the body including his chest while riding bicycle along Owu Mbaïse road. The reason why I killed him was because he has (sic) earlier showed me some planks which he deceased will use in bury (sic) me"

Exhibit A was made a day after the commission of the offence.

In his evidence on oath on 6/7/83 during his trial nearly three years after, he testified as follows:-

"The deceased is my uncle He rode on the cycle on to me beside the bush. I cleared; and asked him why he should hit me with his

bicycle. He said that I should "show him my power today." After this, he started boxing me and giving me blows. I asked him if there was anything wrong. He continued hitting me. So I was provoked and I retaliated by hitting him with my hand. I had had previous simple misunderstandings with him in the past but there was nothing serious."

From the above accounts, there is no evidence to relate to the appellant's unsoundness of mind at the time of the alleged offence, at the trial or thereafter. The only evidence of his mental condition was that about 1977, he was mentally sick; he was taken to a native doctor and was treated for seven months and was discharged. He behaved normally thereafter.

The burden of establishing a defence on the ground of insanity rests on the appellant and the burden is not higher than that which rest on a plaintiff or defendant in civil proceedings: R. v. Onakpoya (1959)4 F.S.C. 150; (1959) SCNLR E 384. This burden was not discharged by him and the presumption of sanity was not rebutted: See Section 27 of the Criminal Code. The court below was perfectly right to affirm the decision of the learned trial Judge.

For the above reasons and the more detailed reasons contained in the judgment of my learned brother Adio, J.S.C. I too dismiss the appeal. It is devoid of any merit. The appeal is accordingly dismissed. The decision of the court below is hereby affirmed.