

SUPREME COURT OF NIGERIA
22ND APRIL, 1994. SC 167/1992.
CORAM:- S. M. A. BELGORE, A. B. WALI,
U. MOHAMMED, S. U. ONU, A. I. IGUH, JJSC.

LAWRENCE ASUQUO THOMAS APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL LAW- Proof beyond reasonable doubt - Manslaughter conviction - Whether there is overwhelming evidence in support of the conviction

CRIMINAL LAW- Accident - Manslaughter - Slapping that led to death of the deceased- Where death was not intended thereby- Whether the slapping is an accident

CRIMINAL LAW- Manslaughter - Appellant's unlawful act of slapping the deceased - Though such act was remotely likely to endanger life - Where death resulted therefrom - Whether a case of manslaughter is established

FACTS

Sometime in 1985, the deceased was driving his car in Calabar, with his wife (P.W. 1) sitting by his side when he accidentally hit a motor cycle ridden by the Appellant. Appellant's daughter whom he was taking to school fell into a gutter. The deceased expressed his regret for the minor accident, and promised to repair the motor-cycle. The Appellant who was certainly very angry insisted that the deceased comes out of his car to see the extent of the damage to the motor cycle. Upon compliance by the deceased, the Appellant hit him with such a force that he fell down and hit his head on the tarred road. A Naval Officer (P. W.4) who arrived at the scene arrested the Appellant. The deceased who sustained head injuries was rushed to the hospital and he died later in the day. The motor cycle was found to have no dent or damage as a result of the minor accident.

The Appellant was tried for murder before the High Court. He denied ever hitting the deceased insisting that the deceased fell down on his own. Trial court convicted the Appellant for a lesser offence of manslaughter. Upon his appeal, the Court of Appeal sustained the Appellant's conviction but reduced the trial court's sen-

tence of 10 years to a fine of N1,000.00 or 3 years imprisonment in default. Being dissatisfied, Appellant has further appealed to the Supreme Court against only his conviction to determine whether the defence of accident availed him and whether the prosecution proved its case beyond reasonable doubt.

HELD (*unanimously dismissing the appeal*)

1. The evidence overwhelmingly before the court is that the deceased was bullied by the Appellant to come out of his car and upon his compliance, Appellant slapped the deceased who fell down and in the process hit his head on the tarred road which led to his death. (p. 149 L 32)

2. Slapping is not an accident and in this case it was intentional. The Appellant certainly, never intended to cause death or even gravely hurt the deceased, but by slapping him the Appellant acted rashly (*without enough thought of the consequences*). (p. 149 L 37)

3. Although a person who merely slaps another does not intend to cause grievous harm, Appellant did an unlawful thing by slapping the deceased but ordinarily that type of act was not remotely likely to endanger life. As a result of the slapping, death of the deceased was occasioned and although Appellant's acts fell short of murder it was manslaughter. (p. 150 L 2)

NOTABLE POINTS OF INTEREST

WALI JSC

Intention to cause death or grievous harm

1. There is no evidence of the degree of force the appellant applied in slapping the deceased resulting in his slumping to the ground. Mere slapping or hitting a victim on the head with either an open hand or fist, though in the circumstance of this case was unlawful, is not such an assault that the appellant could be held to have known, or to have had occasion to know that death would be the likely result of his action, nor could it be presumed that grievous bodily hurt would have resulted from such assault. There was no intention to cause death or grievous bodily hurt. (p. 152L 12)

2. The test is always that if the act even though unlawful, is not such that would, from the view of a reasonable man, cause death or

grievous bodily harm though death resulted therefrom, the person charged can only at most be convicted of manslaughter. (152 L 24)

MOHAMMED JSC

Whether a sentence of fine is appropriate for manslaughter

3. "It is however important to bear in mind that the power given in section 328(1) of C.P.A. should rarely be used in respect of more serious felonies like the case, in hand. In *Asuquo Etim & Another v. The Queen* (1964) 1 All NLR. 38, this court observed that forgery and conspiracy to defraud are serious offences and only in exceptional cases could a fine be an appropriate punishment. In a case of manslaughter which is more serious than forgery and where the victim of the attack died on the same day from injuries he sustained when he fell down following the assault of the appellant, a sentence of fine is not an appropriate punishment." (153 L.25)

ONU JSC

Whether slapping is an accident

4. It having been established at the trial that the appellant's act of slapping the deceased did not occur by chance or accident but rather that it was willed, deliberate and intentional, the defence of accident is unavailing to him (157 L 30)

Defence of accident will not avail merely because result was not intended

5. An accused person as in the instant case, cannot take refuge on a defence of accident for a deliberate act even if he did not intend the eventual result. (p. 158 L 15)

Intention to do grievous harm

6. "A slap so forcefully delivered as to eventually lead to the breaking of the deceased's skull clearly portrays an intention to do grievous harm". (P159L3)

Annoyance distinguished from provocation

7. "On the point that the respondent conceded that the appellant was provoked, I agree with learned Ag. D.P.P. that on the authority of *David Aganmonyi v. Attorney General Bendel State* (1987) 1 NWLR

(Part 47) 26, that the appellant was merely annoyed and not provoked. Consequently mere signs of irritation as in the instant case would not sustain a defence of provocation.” (p. 159 L. 28)

IGUH JSC

How defence of accident will avail

8. For the defence of accident to avail the appellant, it must be shown that the blow to the deceased by the said appellant occurred independently of the exercise of his will. In the instant case, the appellant took the law into his own hands by giving a blow or hit to the head of the deceased (p. 163 L 7)

Intention to cause harm - When to be inferred from consequences of an act

9. One must be taken to foresee or intend the natural consequences of his act. The appellant’s violent assault on the deceased was not only unlawful but dangerous. It was also not justified or excusable in law. Further more, the consequences of the blow eloquently show that the appellant intended to cause harm or to hurt the deceased even if he did not intend to kill him (p. 163 L. 26)

REPRESENTATION:

K. G. Agabi for the Appellant

A. B. Ikpeni (Mrs.) Ag DPP Cross River State for the Respondent.

CASES REFERRED TO

R. v. Nwanjoku 3 WACA 208

R. v. James Adekanmi 17 NLR 99 at 101

R. v. Dono 12 WACA 519

R. v. Nameri 20 NLR 6

R. v. Idiong & Umo 13 WACA 30

R. v. Ntan(1961) 1 All NLR 590

R. v. Akanbi(1962) WNLR 161

The State v. Abdul Mumim Garba (1980) 1 N.C.R 358

Nafiu Rabi v. The State (1980) NSCC. 291 at 331

Asuquo Etim & Another v. The Queen (1964) 1 All NLR 38

R. v. Barimah⁹ WACA 197

Opayemi v. The State (1985) 2 NWLR (Part 5) 101 at 111

Bozin v. The State (1985) 2 NWLR (Part 8) 465 at 481

- Nwakire v. The Commissioner of Police (1991) 1 NWLR (Part 157) 332 at 336
Oladehin v. Continental Textile Mills Ltd (1978) 2 SC 23
Narumal & Sons Ltd. v. N.B.T.C. Ltd (1989) 2 NWLR (Part 106) 730 at 733
5 Polycarp Ojogbue & Anor. v. Ajie Nnubia & 4 Ors. (1972) 6 S.C. 227
Adelumola v. The State (1988) 3 NWLR (Part 73) 683 at 692
Umoru v. The State (1990) 3 NWLR (Part 138) 363
Osho v. Foreign Finance Corporation (1991) 4 NWLR (Part 184) at 188
10 Timbu Kolian v. R. (1968) 42 A. L. J. R. 295
Oghor v. The State (1990) 3 NWLR (Part 139) 484
The State v. Nwabueze (1980) 1 NCR 41 at 44
R. v. Larkin (1944) 29 Cr. App. R. 18 at 23
15 Chukwueke v. Nwankwo (1985) 2 NWLR 195 S.C.
Ebba v. Ogodo (1984) 4 S.C. 84 at page 98
Obaji v. The State (1965) NMLR 417
Nwede v. The State (1985) 3 NWLR 444 at 451
Aganmonyi v. Attorney General Bendel State (1987) 1 NWLR (Part 20 47)26
Esangbedo v. The State (1989) 4 NWLR (Part 113) 57
Akinfe v. the State (188) 3 NWLR (Part 85) 729 at 733
Nwokedi & Anor v. Commissioner of Police (1977) NSCC 127
Nwachukwu v. The State (1986) 2 NWLR 756 at 765
25 Adelumola v. The State (1988) 3 SCNJ 68
R. v. Henry Larkin (1944) 29 C.A.R. 18

STATUTES REFERRED TO

- Criminal Code Ss. 319(1), 325, 24
30 Evidence Act S.137(1)

LEAD JUDGMENT BY BELGORE JSC

On 27th January, 1994 I dismissed this appeal and adjourned
35 to today for giving fuller reasons for doing so. I now give my reasons.

On 13th March, 1985, Jimbo Mfioke Akpan (hereinafter referred to as the "deceased") was in his car driving along Ekpo Abasi Street Calabar. His wife Aggie, was sitting by his side. On getting to Maine Street the deceased was about to manoeuvre and turn there

and in the process accidentally hit a motor-cycle ridden by Lawrence Asuquo Thomas the appellant. On the motor-cycle's pinion sat appellant's daughter who was being taken to school. The appellant and his daughter, as a result of the impact fell down the daughter actually ending up in a gutter. The deceased expressed his regret for the minor accident but the appellant insisted he should come out of the car to see the extent of damage to his motorcycle. The deceased politely complied and on looking at the motorcycle undertook to get it repaired. The appellant certainly was very angry and aggressive. As the deceased made his promise to repair the motor-cycle the appellant, despite entreaties by the deceased, hit the deceased with such a force that the deceased fell down and thereby hit his head on the hard tarred road. A Naval Officer who arrived at the scene arrested the appellant. In the meantime the deceased had head injuries and had to be rushed to the hospital where he died later in the day. The motor-cycle was later found to have no dent or damage as a result of the minor accident. The deceased, on hitting his head on the road became unconscious and never recovered consciousness up to when he died the same day. The cause of the death, according to medical evidence of P.W.5, was fracture of the skull with cerebral haemorrhage.

The appellant denied ever hitting the deceased and insisted the deceased fell down on his own. The trial court believed the prosecution's case and disbelieved the story of the appellant. He was charged with murder but convicted of a lesser offence of manslaughter. Court of Appeal dismissed the appeal on conviction but reduced the trial court's sentence of ten years to a fine of N1,000.00 or three years imprisonment in default. Thus the appeal to this court.

Trial court judgment contained the ample summary of what led to the death of the deceased. Court of Appeal has no cause to interfere with the conviction.

Whoever under no provocation takes into his hand the law and thereby physically attacks another obviously takes risk. The evidence overwhelmingly before the court is that the deceased was bullied by the appellant to come out of his car. On complying the appellant slapped him and thereby fell down and in the process hit his head on the hard tarred road. This led to his death. This has been a rash act on the part of the appellant. Slapping, to my mind, is not an accident and in this case was intentional. Certainly the appellant never intended to cause death or even gravely hurt the deceased, but by slapping him despite the entreaties of the deceased he acted rashly.

It is true that a person who merely slaps another does not intend to cause grievous harm; he did an unlawful thing by slapping the deceased but ordinarily that type of act was not remotely likely to endanger life. But certainly the appellant wanted the deceased to come out of his car so as to slap him. As a result of the slapping, the death of the deceased was occasioned. All these acts of the appellant fell short of murder but it was manslaughter. The death occurred the same day and the cause of death is directly linked with the fall after the appellant slapped the deceased. It is therefore not covered by S. 314 Criminal Code Law.

I therefore found no merit in the appeal which I dismissed on 27th January, 1994.

WALI JSC

The appellant was arraigned before Ita J. sitting in the High Court, Calabar, Cross River State, charged with the murder of Jimbo Mfioko Akpan, contrary to section 319(1) of the Criminal Code. He pleaded not guilty to the charge.

At the end of the trial, the appellant was found guilty of a lesser offence of manslaughter and was accordingly convicted and sentenced to 10 years imprisonment.

Dissatisfied with the decision of the High Court, he appealed to the Court of Appeal Enugu Division, against both conviction and sentence. At the end of the hearing of the appeal, the Court of Appeal dismissed his appeal against conviction but substituted the ten years imprisonment term with a fine of N1,000.00 or 3 years imprisonment.

The appellant has now further appealed to this court against the substituted sentence.

In a nutshell, the facts giving rise to the appellant's prosecution are as follows-

On 13th March, 1985, between the hours of 7-8 a.m the deceased was driving his peugeot 504 car bearing registration number CR 9079 along Ekpo Abasi street Calabar. His wife, P.W.1 was with him at the time. On reaching the junction of Ekpo Abasi street and Maine Avenue, the deceased turned left into Maine Avenue when he collided with the appellant riding on a motor-cycle. At the time, the appellant was carrying a small girl on the motor-cycle. As a result of the impact, the appellant and the motor-cycle fell down in front of the deceased's

car while the small girl was thrown into a near-by gutter.

Bitterly enraged with what happened, the appellant invited the deceased out of his car, gave him a violent slap as a result of which the deceased slumped down hitting his head against the portion of the tarred road. He became unconscious from that time and with the help of P.W.4, he was taken to Ikpeme Medical Centre where he later died on the same day.

Both P.W.1, the deceased's wife, and P.W.4, a Naval Officer were eye witnesses to the incident and gave evidence of what happened on that fateful day. P.W.5, a Medical officer with the ministry of Health Calabar, examined the corpse of the deceased and certified the cause of death to be the fracture of the base of the skull resulting from the injuries sustained on the head.

The learned trial judge, after examining the evidence adduced during the trial came to the conclusion that the defence of provocation was established. The learned trial judge then proceeded to consider, vis-a-vis the provocation suffered, the test laid down in R. v. Nwanjoku 3 WACA 208 and followed in R. v. James Adekanmi 17 NLR 99 particularly at 101 wherein it was stated that-

"The provocation suffered must be judged by the effect it would be expected to have on a reasonable man, and not by the effect it did actually have on a particular person charged."

Having considered and applied the guiding principle above, the learned trial Judge then concluded:

"The accused person's reaction, I do not hold was excessive but the power in the single punch or blow or slap may have been much there is no evidence as to that, for, all that was said unanimously was that the accused slapped or hit the deceased who fell and hit his head on the tarred road and later died from injury sustained therefrom. There being no intent to kill or to cause bodily harm from which death was result proved, the question of murder is outside all consideration not having been proved."

From the evidence before me, I am not satisfied that the accused person is guilty of murder as charged; but from that evidence it is clear that the accused person caused the death of deceased in circumstances not amounting to murder, so, I am satisfied

on the said evidence that the accused is guilty of manslaughter of the deceased person either by virtue of section 179(2) of the Criminal Procedure Law or of section 318 of the Criminal Code."

The Court of Appeal after considering the appeal, affirmed
 5 the finding of the trial court that he was guilty of manslaughter, but partially allowed the appeal on sentence by reducing it to a fine of N1000.00 or 3 years imprisonment.

Having read the record in this appeal and the briefs filed by
 learned counsel, I have come to the conclusion that the findings of
 10 the learned trial judge that the appellant is guilty of manslaughter is unassailable.

There is no evidence of the degree of force the appellant
 applied in slapping the deceased resulting in his slumping to the
 ground. Mere slapping or hitting a victim on the head with either an
 15 open hand or fist, though in the circumstances of this case was unlawful, is not such an assault that the appellant could be held to have known, or to have had occasion to know that death would be the likely result of his action, nor could it be presumed that grievous bodily hurt would have resulted from such assault. There was no
 20 intention to cause death or grievous bodily hurt. See R. v. Dogho 12 WACA 519, R. v. Nameri 20 NLR 6, R v. Idiong & Umo 13 WACA 30, R. v. Ntah (1961) 1 NLR 590, R v. Akanbi (1962) NMLR 161 and The State v. Abdul Mumini Garba (1980) 1 NCR 358.

The test is always that if the act even though unlawful, is not
 25 such that would, from the view of a reasonable man, cause death or grievous bodily harm though death resulted therefrom, the person charged can only at most be convicted of manslaughter.

It was for these and the other reasons given in the lead judgment
 of my learned brother, Belgore, JSC and with which I agree and
 30 adopt as mine, that I dismissed the appeal on 27th January, 1994.

MOHAMMED JSC

35 At the conclusion of the hearing in this appeal, on 27th January, 1994, I and in concurrence with all my learned brothers, dismissed this appeal. I said then that I would give my reasons later. I now give my reasons.

I had the advantage of reading the lead judgment of my

Lord Belgore, J.S.C., and the concurring judgments of my learned brothers and I agree with them and adopt their respective opinions as mine. I only wish to add that as there is no appeal against sentence I ought not interfere with the sentence which the Court of Appeal substituted when it allowed the appeal against the sentence of 10 years imposed by the trial High Court. I am however of the view that I can comment on what I believe is wrong. See *Nafiu Rabi v. The State* (1980) NSCC. 291 at 331; (1980) 8 - 11 S.C. 130.

At the end of his well considered judgment, the learned trial Judge convicted the appellant of manslaughter and sentenced him to 10 years imprisonment with hard labour without option of fine. On appeal to the Court of Appeal, Enugu Division, one of the grounds is that the sentence is excessive. In its judgment, the Court of Appeal, per Awogu, J.C.A., dismissed the appeal against conviction for manslaughter but allowed the appeal on sentence. The court, after considering the fact that it took seven years before the matter reached the Court of Appeal substituted the sentence of 10 years imprisonment for a fine of one thousand naira or three years imprisonment.

Under section 382(1) of the Criminal Procedure Code where a court has authority under any written law to impose imprisonment for any offence and has not specific authority to impose a fine for that offence, the court may, in its discretion, impose a fine in lieu of imprisonment. The Court of Appeal is right therefore to impose a fine in lieu of imprisonment. It is however important to bear in mind that the power given in section 382(1) of C.P.A. should rarely be used in respect of more serious felonies like the case in hand. In *Asuquo Etim & Anor v. The Queen* (1964) 1 All NLR. 38, this court observed that forgery and conspiracy to defraud are serious offences and only in exceptional cases could a fine be an appropriate punishment. In a case of manslaughter which is more serious than forgery and where the victim of the attack died on the same day from injuries he sustained when he fell down following the assault of the appellant, a sentence of fine is not an appropriate punishment.

However, since there is no appeal against sentence, I cannot interfere with the decision of the Court of Appeal. But I make the same comment as my Lord Idigbe, Jsc., said in *Nafiu Rabi v. The State* (supra), as follows:

"There being no appeal or cross-appeal against sentence this

court ought not to interfere with the sentence passed by the Court of Appeal. My Lords, I would therefore, like to make it clear that it is with considerable regret that I am unable to disturb the sentence of 4 years imprisonment for this offence which appears to me to call for
 5 *more severe punishment."*

In the result, the appeal is dismissed.

ONU JSC

10

On 27th January, 1994, I dismissed the appeal of the appellant against the decision of the Court of Appeal sitting in Enugu which had on 13th July, 1992 affirmed his conviction and sentence for manslaughter punishable under Section 325 of the Criminal Code,
 15 as lacking in merit. He had initially stood his trial in the Cross-river State High Court holden in Calabar for the murder of one Mfiok Akpan contrary to section 319 (1) of the Criminal Code and it is his conviction and sentence to 10 years imprisonment with hard labour without an option of a fine by the court but which the Court of Ap-
 20 peal reduced to a fine of N1,000.00 or 3 years imprisonment in lieu thereof that has led to the appeal herein. I then indicated that I would give my reasons today. I will now proceed to do so.

The facts of the case which have already been so admirably stated in the judgment of my learned brother Belgore, JSC, I deem
 25 unnecessary to recapitulate here. Suffice it to say, that I endorse them as giving the case its clear setting and background that I propose to go straight to consider the issues submitted as follows:-

The two issues identified by the appellant as arising for determination which coincidentally are similar to the two founded upon
 30 by the respondent are:

1. *Whether the defence of accident availed the appellant.*
2. *Whether the prosecution proved his (sic) case against the appellant beyond reasonable doubt.*

35 Arguing both on the appellant's brief and in oral expatiation thereon, learned counsel for the appellant Mr. K. G. Agabi submitted that the learned justices of the Court of Appeal held the learned trial judge to have been in error when he failed to consider the defence of accident merely because the appellant had denied it. After being re-

ferred to a passage in the record of proceedings, learned counsel argued that having so held, the learned justices of the court below unfortunately did not state the process of reasoning by which they came to their conclusion that it was clear that appellant meant to harm the deceased. It is enough, it is contended, for a court to state its conclusion without stating the reasoning or the process of reasoning by which it arrived at that conclusion. The learned justices, it is further argued, should have indicated the various angles from which they had viewed the matter so that it would be apparent to all that " *from whatever angle one views the alleged accident the appellant meant to cause the deceased harm when he hit him.*"

It was then submitted that a defence is entitled to be considered however weak or frivolous it may seem or however stupid, fanciful or doubtful. The cases of *R. v. Barimah* 9 WACA 197; *Opayemi v. The State* (1985) 2 NWLR CPt.5) 101 at 111; *Bozin v. The State* (1985) 2 NWLR (Pt.8) 465 at 481 and *Nwakire v. The Commissioner of Police* (1991) 1 NWLR (Pt. court or a Court of Appeal to state its conclusions without considering the evidence as a whole. Reliance was placed for the proposition on the cases of *Oladehin v. Continental Textile Mills Ltd.* (1978) 2 SC 23 and *Narumal & Sons Ltd v. NBTC Ltd.* (1989) 2 NWLR (Pt.106) 730 at 733. The judgment of the court, it is maintained, should demonstrate a full and dispassionate consideration of all the issues properly raised. The case of *Polycarp Ojogbue & Anor v. Ajie Nnubia & Ors.* (1972) 6 SC. 227 was relied upon.

It was further contended that in any case, the test is not whether the appellant intended to cause harm but whether he intended to cause death or grievous bodily harm. The learned trial judge for his part, it is added, found that there was no intention to kill or cause bodily harm when at page 44 of the record he held:

"There being no intent to kill or to cause bodily harm from which death has resulted the question of murder is outside all consideration not having been proved"

A conclusion for which the learned trial Judge gave his reasons, albeit that there was no evidence as to the nature or severity of the blow. Learned Counsel after referring to the findings of the learned trial Judge as to the in excessiveness of appellant's reaction and

appellant's lack of intention to kill, they having never known each other, it was argued that it would appear that the learned Justices of the court below thought they were upholding the learned trial judge's views when they stated that the appellant meant to cause the deceased harm when he hit him but that it is apparent from the foregoing that this was contrary to the view which the learned trial Judge took of the matter. However, if the learned Justices without specifically saying so, intended to reverse findings of fact made by the trial Judge, it is maintained, then they could not do so without clear proof that such findings were wrong.

Learned Counsel further contended that the learned trial Judge having found that the appellant was provoked and that he was reacting to the provocation which the law does not forbid but rather permits reaction thereto and this, subject to the reaction being found to be proportionate to the provocation offered. It was then argued that if in the words of the learned trial Judge at page 43, lines 33-34 of the trial court's record to the effect that-

"The accused person's reaction I do not hold, was excessive....."

then how could the appellant be guilty of any offence? After arguing variously that the death of the deceased could not reasonably have been foreseen and that the appellant could have fallen back on the provision of section 24 of the Criminal Code namely, on the defence of accident, he should have first admitted the act before doing so. After stating that appellant was not doing anything unlawful since it is neither unusual to slap a person nor is death the usual consequence of a slap, it was learned counsel's further submission that the appellant was rather defending or reacting to an assault in that he and his daughter were knocked down and wounded. The case of Bayo Adelumola v. The State (1988) 1 NWLR (Pt.73) 683 at 692 (per Oputa, J.S.C.) as to what constitutes the word accidental in section 24 of the Criminal Code (ibid) was cited in support thereof, adding that in the instant case, the appellant's conviction for manslaughter was unjustifiable, death neither having been intended nor a foreseeable consequence. Learned Counsel further maintained that if the act of the appellant in slapping the deceased is deemed or considered to be unlawful, the offence of manslaughter would be committed when it was shown that such an unlawful act was at-the same time dangerous, relying for authority on the case of Audu Umoru v. The State (1990) 3 NWLR (Pt.138) 363 but which, he argued, the learned justices of the court below rather than being consistent in

applying to decide this case which is on all fours with the instant case, rather distinguished it. On the need for the court below to be consistent and to be bound by its previous decisions the case in *Osho v. Foreign Finance Corporation* (1991) 4 NWLR (Pt.184) 157 at 188 was called in aid.

The learned Ag. Director of Public Prosecutions, Cross River State, Mrs. Ikpeeme, both in the brief of argument she filed on the respondent's behalf and in her oral submission, argued that the defence of accident does not avail the appellant based on the provisions of section 24 of the Criminal Code and on several decided authorities. I see the force in the learned Ag. D.P.P's contention. Indeed, as Awogu, J.C.A. said in his lead judgment at pages 91 and 92 of the Record and concurred in by Oguntade and Akintan, J.J.C.A. after quoting from the judgment of Windeyer, J. in *Timbu Kolian v. R.* (1968) 42 A.L.J.R. 295.

"The appellant's denial of slapping the deceased only tainted his credibility. Having found as a fact that he did so, the learned Judge was in error not to consider the defence of accident merely because of the denial. In fact, the position of the appellant was that the deceased fell on his own. It is clear, however, that from whatever angle one views the alleged accident in the instant appeal, the appellant meant to cause the deceased harm when he hit him; it led to the death of the deceased. The medical evidence did not suggest that the death resulted from any other causes than the resultant consequences of the slapping.

In my view, the defence of accident is unavailable to the appellant. He was rightly convicted of manslaughter."

This is an impeccable conclusion arrived at by the court below which I am not prepared to disturb, moreso when the appellant was not able to establish in his defence, that the incident happened independent of his will. In other words, it having been established at the trial that the appellant's act of slapping the deceased did not occur by chance or accident but rather that it was willed, deliberate and intentional, the defence of accident is unavailing to him. In *Adelumola v. The State* (supra) this court had held that a willed deliberate act negates the defence of accident. It was further held in that case that it was the act of the appellant which led to the death of the deceased, otherwise he could not have given the deceased such a slap which culminated in a plurality of events leading to the death of the deceased. See also *The State v. Nwabueze* (1980) 1 NCR 41 at 44 where the question was whether the act of the accused or the situa-

tion created by him caused the death of the deceased. In the instant case there is no doubt on the totality of the evidence adduced before the trial court and that placed on the record before the court below from which to come to any other conclusion. Furthermore, the act of
5 slapping the deceased was unlawful and dangerous- unlawful because it was an intentional assault which was neither justified nor excused in law and dangerous because the falling down of the deceased following the slap is evidence of the force behind the slapping vide the evidence of PW.1 at page 2 lines 24-25 of the Record to the
10 effect that

"The accused gave the deceased a hit and he fell down hitting his head on the tarred road."

See R. v. Larkin (1944) 29 Cr. App. R 18 at 23 and Umoru v. The State (supra) at 371. Thus, an accused person as in the instant
15 case, cannot take refuge on a defence of accident for a deliberate act even if he did not intend the eventual result. See Oghor v. The State (1990) 3 NWLR (Pt.139) 484 wherein accident was defined as the result of an unwilled act and means an event without the fault of the person alleged to have caused it. As Kolawole, J.C.A. put in Oghor
20 (supra) at page 502:

"There is judicial acceptance of the expression "an event which occurs by accident" used in section 24 of the Criminal Code that it connotes an event totally unexpected by the doer of the act and also not reasonably to be expected by any reasonable person" See
25 *Adelumola v. The State (supra) per Oputa, J.S.C. at page 692.*

Clearly, therefore, the appellant's act in the instant case was unlawful and not accidental. Hence, the unimpeachable finding of the trial court at page 44 of the Record which the court below affirmed when
30 it said:

"From that evidence it is clear that the accused person, caused the death of the deceased in circumstances not amounting to murder. the accused is guilty of Manslaughter."

Furthermore, to exemplify the impact of the deceased's fall
35 on the head leading to his death, P.W.5 Doctor John Oduak Nkang had this to say at page 12, lines 23-27.

"At the back of the head celebrum there was a wound being

a cut of 1/2 inch deep and 2 inches long The wound penetrated the outer skin and the skull was broken"

A slap so forcefully delivered as to eventually lead to the breaking of the deceased's skull clearly portrays an intention to do grievous harm. I am not persuaded by the argument that the court below in its well considered judgment meant at any time to reverse the penultimate conclusion arrived at by the trial court. What indeed it did was to evaluate or properly evaluate the evidence before the trial court wherein the court held erroneously that the act of slapping the deceased cannot be unlawful because of the finding of what it called proportionate retaliation. See *Chukwueke v. Nwankwo* (1985) 2 NWLR (Pt.6) 195 S.C. and *Ebba v. Ogodu* (1984) 1 SCNLR 372; (1984) 4 Sc. 84 at p.98; *Narumal & Sons Ltd. v. Niger Benue Transport Company Ltd.* (1989)2 NWLR (Pt.106) 730 Sc. Indeed, and as we pointed out at the hearing of this appeal had the appellant appealed against sentence we would have been minded to restore the sentence passed on him by the trial court.

On the issue of provocation, the short answer that there was no evidence that appellant was provoked may be gathered from the evidence of the appellant himself at p.17, lines 14-17 of the Record. Testifying as D.W.1, the appellant had this to say:

".....I went to the woman, collected my daughter and embraced her and I checked to see if she had any wound and discovered she only had a little scratch on the left forearm." (Italics is mine)

A little scratch on the forearm does not and would not, in my view, constitute provocation. See *Chukwu Obaji v. The State* (1965) NMLR 517 and *Ogbonna Nwede v. The State* (1985) 3 NWLR (Pt.13) 444 at 451. On the point that the respondent conceded that the appellant was provoked, I agree with learned Ag. D.P.P. that on the authority of *David Aganmonyi v. Attorney General Bendel State* (1987) 1 NWLR (Pt.47) 26, that the appellant was merely annoyed and not provoked. Consequently mere "*signs of irritation*" as in the instant case would not sustain a defence of provocation. Since the deceased never consented to the slap, on that ground alone, the slapping was definitely unlawful. And since I am satisfied that there was no provocation, the reaction of the appellant in the instant case was not and cannot be permitted by law. To suggest as the defence has therefore done in this case that "*he did so without any criminal malice. The manner in which he did so did not suggest that he desired the conse-*

quences which befell" in my view means that the learned trial Judge had ruled out malice aforethought as a basis for the commission by the appellant of this offence, hence the reduction of the punishment to manslaughter. See Kenny's outline of Criminal Law, 18th Edition, pages 36-37. It is for these reasons, that I uphold the conviction of the appellant for manslaughter by both the trial court and the court below as fully justified in that appellant was doing an unlawful act when he struck the deceased and he died as a result.

On issue 2 which is as whether the case against the appellant was proved beyond reasonable doubt, it was appellant's contention that the burden is throughout on the prosecution to prove its case beyond reasonable doubt. The case of *Esangbedo v. The State* (1984) 4 NWLR (Pt.113) 57 was called in aid thereof. It is further contended that it is the duty of the prosecution to prove its case by evidence of such a quality and quantity as to leave the court in no reasonable doubt as to the guilt of the accused. Reliance was placed on the case of *Akinfe v. The State* (1988)3 NWLR (Pt.85) 729 at 733 for the proposition that where the prosecution fails to prove an essential element in a criminal charge, an appellant convicted in such a trial is entitled to have his appeal allowed and the conviction quashed. The case of *Nwokedi & Anor v. Commissioner of Police* (1977) NSCC 127; (1977) 3 S.C. 35 was also cited in support thereof. Applying these principles to the instant case, it was further contended, it is apparent that the prosecution failed to prove the case beyond reasonable doubt-in fact that it failed to prove an essential ingredient of the offence of murder or manslaughter to wit intention may be inferred from the circumstances of the case. It is argued in addition that there is no single circumstance from which it can even remotely be inferred that the appellant intended to kill the deceased or cause him grievous bodily harm. After referring us to several excerpts in the Record of Proceedings, it was submitted in conclusion, that it is not the law that once evidence produced in support of an offence charged fails; a conviction for a lesser offence follows; rather the evidence led and the facts found though insufficient for a conviction of the aggravated offence charged must support the conviction for the lesser offence. The case of *Nwachukwu v. The State* (1986) 2 NWLR (Pt. 25) 756 at 765 was cited in support of the proposition.

My answer to this issue is that I am satisfied beyond peradventure that the combined effect of the evidence of P.W.1, P.W.4.

and PW.5 as well as the medical evidence established beyond reasonable doubt, proof of the offence. For instance, PW.1 Aggie Akpan and wife to the deceased, describing the incident of 13th March, 1985 leading to the deceased's death later that day, had this to say at page 2 of the record:

"..... The accused gave the deceased a hit and he fell down 5 hitting his head on the tarred road. Demonstrating, witness said it was upper cut and the deceased landed on the tarred road and hitting his head there."

At page 6 of the Record, PWA - Patrick Agholor, a Naval Officer who saw it all said among others that- 10

"The accused gave the deceased a slap and he slumped down to the main road"

PW.5, Doctor John Oduak Nkanga, who performed the post mortem examination on the deceased's corpse said inter alia at page 12 of the Record thus: 15

"..... The corpse was that of a man of about 1.7 meters tall, well built and well nourished. There were no signs of injuries on the extremities of the body. At the back of the head cerebrum (where small brain is located) there was a wound, being a cut of 1/2 inch deep and 2 inches long.... the cause 20 of the death was the fracture of the base of the skull....."

The duty which lay on the prosecution in the instant case to prove its case beyond reasonable doubt therefore, has, in my view, been duly discharged. See *Akinfe v. The State* (supra) and section 137 (1) Evidence Act. In addition, I hold that the facts in the *Umoru Case* (supra) are distinguishable from those in the instant case. For, while in that case the Court of Appeal allowed the appeal because the deceased died three days after the act was committed and no post mortem examination was conducted on the corpse. In the instant case, not only was a post mortem examination conducted on the deceased's corpse by PW.5 at the University Hospital Calabar, there is evidence that the deceased after being slapped and he fell down, was rushed in a state of unconsciousness to Ikpeme Clinic in Calabar where he died in the noon of the same day. There was thus no doubt as in the *Umoru Case* (supra) as to the cause of death. 35

From the foregoing, answer to Issue 2 is accordingly rendered in the affirmative.

It is for the fuller reasons for judgments of my learned brother Belgore, J.S.C., a preview of which I had and with which I entirely

agree, that I dismissed and hereby dismiss this appeal as lacking in merit. I affirm the conviction and sentence passed on the appellant.

IGUH JSC

5 On the 27th January, 1994, this appeal was heard by this court and after hearing learned counsel in elaboration of their written briefs of arguments for and against the issues raised in the appeal, I summarily dismissed the appeal and then indicated that I would give my reasons for doing so today.

10 I have since had the privilege of reading in advance a copy of the lead reasons for judgment of my learned brother, Belgore, J.S.C. and I agree entirely with them. I wish, however, to add a few words of my own.

 The facts have been fully set out in the lead reasons for judgment of my learned brother and I need not go over them again. It suffices to state that on the 13th March, 1985 at about 7.30 a.m there occurred a road traffic collision between a Peugeot 504 saloon car driven by the deceased and the appellant's motor cycle at a road junction in Calabar. There were no injuries as a result of this collision
15 which in all respects was entirely minor. The deceased on noticing what had happened stepped out of his car and was pleading with the appellant not to be annoyed with the incident promising to repair the motor cycle if at all it sustained any damage. It was at this stage that the appellant viciously gave the deceased what PW 1. the deceased's
20 wife describe as an "*upper-cut*" or a blow which left the said deceased flat on the tarred road. He was rushed unconscious to the hospital where he died the same day shortly afterwards.

 The appellant at the conclusion of his trial was found guilty of manslaughter and sentenced to ten years imprisonment by the Calabar High Court. Against this conviction and sentence, the appellant
30 appealed to the Court of Appeal which in a unanimous judgment on 13th day of July, 1992 dismissed his appeal and affirmed his conviction but reduced the sentence to a fine of N1000.00 or 3 years imprisonment in the alternative. It is against this decision of the Court of
35 Appeal which affirmed the conviction of the appellant that he has now appealed to this court.

Before us, two issues were raised for determination. These are as follows:-

1. *Whether the defence of accident availed the appellant.*

2. Whether the prosecution proved the case against the appellant, beyond reasonable doubt.

On the first issue, section 24 of the Criminal Code provides that a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident. However, for the defence of accident to avail the appellant, it must be shown that the blow to the deceased by the said appellant occurred independently of the exercise of his will, in the instant case, the appellant took the law into his own hands by giving a blow or hit to the head of deceased. The tremendous force behind this unwarranted and unlawful assault was such that it landed the deceased on the ground. In the process, the deceased hit his head on the tarred road as a result of which he died a few hours later. The assault was clearly willed, deliberate and intentional. It was also calculated to cause harm or to hurt the deceased. It seems to me clear that this unwarranted assault on the deceased having been established to be intentional, deliberate and willed on the part of the appellant, the defence of accident must be ruled out. See *Adelumola v. The State* (1988) 1 NWLR (Pt.73) 683; (1988) 3 SCNJ. 68. An event which occurs by accident connotes an act totally unexpected, unwilled, unintentional and without any fault as against an act which is deliberate, willed or intentional. See *Oghor v. The State* (1990) 3 NWLR (Pt. 139) 484. The appellant's criminal assault on the deceased in the present case was clearly unlawful, deliberate and intentional. It was therefore not accidental. Accordingly the answer to issue number one is in the negative.

On the second issue, it must firstly be appreciated that one must be taken to foresee or intend the natural consequences of his act. The appellant's violent assault on the deceased was not only unlawful but dangerous. It was not justified or excusable in law. Further more, the consequences of the blow eloquently show that the appellant intended to cause harm or to hurt the deceased even if he did not intend to kill him. In *Timbu Kolain v. R.* (1968) 42 A.L.J.R. 295, Windeyer, J dealing with an aspect of the law of manslaughter very similar to the issue under consideration in the present appeal put the matter as follows:-

It has always been the law and the Code has made no alteration in this that if a man strikes another without his consent intending to harm or hurt him, although not to kill him, if death ensues as a result of the blow, the homicide is criminal. If the intention was to cause grievous bodily harm,

it is murder; if lesser harm or hurt was intended, it is man slaughter. It matters not that the man who delivered the blow did not intend to kill. It matters not that death occurred because, unknown to him, the person he struck was frail and easily killed. If his blow actually caused the death of the person who he intentionally hit it is manslaughter at least."

Similarly in R. v. Henry Larkin (1944) 29 C.A.R. 18 the point was made by Humphrys, J. as follows, namely:-

"Where the act which a person is engaged in performing is unlawful, then if at the same time it is dangerous act, that is, an act which is likely to injure another person, and quite in advertently the doer of the act causes the death of that other person by that act, then he is guilty of manslaughter; if, in doing that dangerous and unlawful act, he is doing an act which amounts to felony, he is guilty of murder and he is equally guilty of murder if he does the act with the intention of causing grievous bodily harm to person whom in fact he kills "

In the light of the above well established principles of the law and having regard to the findings of fact of both the trial court and the court below which I am not prepared to disturb, the answer to the second issue must be in the affirmative.

In the final result, I found no merit in the appeal which I dismissed and the conviction and sentence passed on the appellant by the court below thereby affirmed.

Appeal dismissed.