

SUPREME COURT OF NIGERIA
16TH MAY, 1995 SC . 159/1993
CORAM: M.L. UWAI, A.B.WALI, I.L. KUTIGI
M.E. OGUNDARE, U. MOHAMMED, JJSC.

OKETA EKWE APPELLANT
V.
THE STATE RESPONDENT

CRIMINAL LAW - Insanity - Murder - Whether the two lower courts were right - In finding that appellant was in full control of his mental faculties

CRIMINAL LAW - Insanity - murder - Hiding in the bush after the murder - Is not synonymous with insanity.

EVIDENCE - Insanity - Confessional statement - As to how appellant murdered the deceased - Appellant did not behave like an insane person.

FACTS

The appellant voluntarily admitted murdering his friend, Nwofe Adum. Appellant confessed that they finished taking some illicit gin and became intoxicated. On their way home the deceased pushed the appellant down and he sustained minor bruises. In retaliation, appellant used his machete in killing the deceased. He became afraid after the incident, hid himself in the bush and later reported himself to the police.

Tried before the Abakaliki High Court (now in Enugu State), appellant admitted cutting the deceased on the neck with his machete but put up the defence of being tipsy at that time. The trial court convicted the appellant and sentenced him to death. Appellant's appeal to the Court of Appeal was dismissed. He has now further appealed to the Supreme Court on a single issue.

ISSUE FOR DETERMINATION:

Whether in all the circumstances, the defence of temporary insanity by intoxication put forward by the appellant under section 29(2) of the Criminal Code was fully considered by the Court of Appeal.

HELD (Unanimously dismissing the appeal per lead judgment of MOHAMMEDJSC)

Insanity - Whether lower courts were right in finding sanity

1. In order to establish that the appellant was in full control of his mental faculties at the time of the commission of the offence the trial High Court described the scene which followed soon after the appellant had hacked the deceased with a machete on the neck. I entirely agree with the finding of the learned trial judge quoted above. The Court of Appeal is equally right to

affirm the decision. (p. 1133 F)

Insanity - Confessional statement

2. In the appellant's statement before the police which the trial court accepted as a voluntary confession freely made he said that when his friend Nwofe Adum pushed him down and he sustained small bruises on his leg he retaliated by using his machete and cutting him to death. On seeing that his friend had fallen and could not get up he became afraid, dropped his machete at the scene and ran into the bush where he hid himself. A person who was insane could not behave in the way the appellant did. (p. 1134 A)

Insanity - Hiding in the bush after the murder

3. In the case in hand the appellant ran away and hid himself in the bush. An insane person will not run and hide in the bush because he would not know that what he did was wrong and contrary to law. This appeal has no merit at all and it is accordingly dismissed. The judgment of the Court of Appeal in which it affirmed his conviction and sentence is hereby affirmed. (p. 1134 C)

REPRESENTATION

Mrs. Funke Adekoya for the Appellant

R. U. Ezea, Senior Legal Officer, Ministry of Justice Enugu for the Respondent.

CASES REFERRED TO

R. v. Nungu (1953) 14 WACA 379

DPP v. Beard (1920) A.C. 479

Mensah v. The Queen 14 WACA 174

Imo v. The State (1991) 9 NWLR (Part 213) 1 at 21

Nwelebe v. The Queen (1963) 1 S.C.N.L.R. 311

Nkanu v. The State (1980) 3-4 S.C. 1

STATUTE REFERRED TO

Criminal Code ss.29(2) & (4), 28

LEAD JUDGMENT BY MOHAMMED JSC

In a statement, proved to have been voluntarily made, the appellant confessed to murdering his friend, Nwofe Adam, at Mbamili in Abakali Judicial Division. The confession which, in my view, is clear and positive was made in the following words:

"I know Nwo Adum, he is my learned friend and also from Okwefurike Nkaliki Izzi. On 6/1/85 I and my friend Nwofe Adum went to Mbamini Nkaliki Izzi to build

house for one Ezza man living there by name Alogu Ode on casual labour, on reaching there we were informed by Alogu Ode that the work will not go on again as scheduled and we started going home, as we were going we decided to take some illicit gin “kai-kai” and after taking it and we became intoxicated we started going home, as we were going cracking jokes on reaching a place at Mbamini my friend Nwofe A dum pushed me down and as a result I sustained small bruises on my leg in retaliation I used my machete on him and macheted him to death, on seeing my friend fell down and could not get up again I became afraid and drop my machete at the scene and ran into a bush where I hid myself till evening and I started going to Abakaliki. Then this morning been 7/1/851 reported myself at Abakaliki Police Station where I was detained. We did not go with anybody during the incident. I have no previous quarrel with my friend Nwofe Adum. That is all I know about this case.”

In his evidence in chief before the trial High Court, the appellant admitted using his machete to cut the deceased on the neck. He however put up a defence that he was tipsy when he macheted the deceased to death. At his trial the learned trial judge considered the defences of self defence, provocation and temporary insanity through intoxication and rejected them. In a well considered judgment the appellant was convicted and sentenced to death. Dissatisfied with the decision the appellant appealed to the Court of Appeal, Enugu Division.

The Court of Appeal in its judgment, per Oguntad, JCA, with which Uwaifo and Akintan, JJ.C.A, concurred, considered, among other issues, the defence of insanity due to intoxication raised by the appellant and after considering the evidence of the appellant in which he told the trial court that he consumed illicit gin voluntarily, the learned justice held that the defence was not available to him. The Court of Appeal dismissed the appeal and affirmed the conviction of the appellant and the sentence imposed on him by the trial court. This is a further appeal from the judgment of the Court of Appeal. The single ground of appeal filed has been based on the defence of insanity by virtue of intoxication, and it reads:

“The learned Justices of Appeal erred in law not considering the effect of the appellant ‘s admitted intoxication in determining mens rea in committing the act complained of.

PARTICULARS OF ERROR

The Justices found the Appellant to have the relevant intent to make him culpable of murder because he was deemed to intend the reasonable consequences of his actions. The Justices however only considered the Appellants intoxication with a view to determining whether a defence of insanity by virtue of intoxication would succeed, and not whether the intoxication would negative any intent to cause grievous harm.,

Relief sought from the Supreme Court:

To set aside the finding of guilty of murder of the Lower Court and substitute it with a finding of guilty of manslaughter with a consequent

The learned counsel for the appellant Mrs. Funke Adekoya submitted in the appellant's brief of argument that the issue for determination of this appeal is whether in all the circumstances of the case the defence of temporary insanity by intoxication put forward by the appellant under Section 29(2) of the Criminal Code, was fully considered by the Court of Appeal. Mrs. Adekoya in expatiating her submission on this issue referred to Section 29(4) of the Criminal Code which states:

"Intoxication shall be taken into Account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence."

Learned counsel conceded that a person is presumed to intend the reasonable consequences of his actions. See R. v. Nungu (1953) 14 WACA 379. However, she argued, this presumption is rebuttable if the appellant produces evidence negating intent. Such evidence is like the evidence of intoxication which the appellant put forward in his defence. In short, Mrs. Adekoya's main argument in this appeal is that neither of the two lower courts made any findings as to whether the intoxication of the appellant could have been such as to limit his ability to form the intent to kill the deceased. She referred to the case of DPP v. Beard (1920) A.C. 479 in which it was held:

"Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent."

In conclusion Mrs. Adekoya submitted that if the Court of Appeal had properly reviewed the evidence before the lower court as to the alcohol taken, the amount, the lack of motive, the total irrationality of the attack, the wrong weight attached to the seemingly sane behaviour of the appellant hours after the incident had occurred, it would have come to a different conclusion as to the ability of the appellant to form a specific intent with regard to the offence. The learned counsel relying on the relief sought from this court referred to the case of Kofi Mensah v. The Queen 14 WACA 174 where the trial court did not consider whether excessive consumption of alcohol could have been a defence. On appeal, the West African Court of Appeal held that the conduct of the appellant negated any preconceived intent to kill and the failure to consider whether the evidence of intoxication might have negated any intention to kill and warranted a verdict of manslaughter was a serious misdirection. Counsel now urged us to follow Kofi Mensah's case and find the appellant not guilty of murder but guilty of manslaughter and therefore reduce the sentence of death by hanging to a sentence of a term of imprisonment.

Learned counsel for the respondent formulated an issue based on the defence of intoxication which has been put forward by the appellant. The second issue is whether the lower court was right in affirming the sentence and conviction made by the High Court. It should be observed that learned counsel for the appellant relied on S.29(2) of the Criminal Code in her submission that the appellant was temporarily insane through intoxication when he committed

the offence. Section 29(2) of the Criminal Code reads:

“(2) intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person: or B

(b) the person charged was by reason of intoxication insane, temporarily or otherwise at the time of such act or omission.”

This court had considered whether intoxication is a defence to a criminal charge under section 29(2) of the Criminal Code in the case of John Imo v. The State (1991) 9 NWLR (Part 2 13) 1 at page 21. In a unanimous decision, C my learned brother, Wali, JSC., writing the lead judgment, held:

“Prima facie, drunkenness is not a defence to criminal charge, as every person of the age of discretion is presumed to be sane and to have intended the natural consequences of his actions. But evidence of drunkenness which renders the accused person incapable of forming the specific intent essential to constitute the crime, with other facts proved, are taken into consideration in order to determine whether he had that intent. D

Be it noted that mere absence of motive for a crime however atrocious it may be, in the absence of proof of insanity, or evidence of drunkenness that produces such a degree of madness, even for a time, as to render the accused incapable of distinguishing right from wrong, cannot avail the appellant of the defence provided in Sections 28 and 29 of the Criminal Code: see Nkwuda Nwelebe v. The Queen (1963) 1 S.C.N.L.R. 311. The test to be applied is whether by reason of drunkenness, the accused person was Incapable of forming an intention of committing the offence. See Egbe Nkanu v. The State (1980) 3-4 S.C. I, where Obaseki, JSC., gave a thorough consideration of both sections 28 and 29 of the Criminal Code.” F

The Court of Appeal in this case affirmed the finding of the trial High Court on the defence of intoxication put forward by the appellant and concluded that the defence was not available to the appellant since the evidence from the appellant’s own mouth is that he voluntarily consumed Illicit gin. In order to establish that the appellant was in full control of his mental faculties at the time of the commission of the offence the trial High Court described the scene which followed soon after the appellant had hacked the deceased with a machete on the neck, in the following narrative: G

“He proceeded thereafter to P. W. 3 and gave his machete exhibit F to him for delivery to his son. He also exchanged greetings with P.W.7 quite normally after which he made his pregnant remarks about meeting again in the next world Thereafter he proceeded straight to Abakaliki Police Station to report himself” These are the acts of one in full control of his faculties and I am unable to hold that the accused was by reason of his alleged intoxication insane, temporarily or otherwise at the time of the commission of this offence. H

The accused also knew that what he did was wrong otherwise he would not have handed his machete to P.W.3 or proceeded to the police to report himself immediately after the murder.”

I entirely agree with the finding of the learned trial judge quoted above. The Court of Appeal is equally right to affirm the decision. In the appellant’s statement before the police which the trial court accepted as a voluntary confession freely made he said that when his friend Nwofe Adum pushed him down and he sustained small bruises on his leg he retaliated by using his machete and cutting him to death. On seeing that his friend had fallen and could not get up he became afraid, dropped his machete at the scene and ran into the bush where he hid himself. A person who was insane could not behave in the way the appellant did. The facts of the case of Kofi Mensah v. The Queen (supra) which the appellant’s counsel referred to were clearly distinguishable from the facts of this case. In Kofi Mensah, the appellant who killed a woman he wanted to marry by shooting her with a gun put forward a defence that he was so drunk and could not recollect what happened to him until the moment when he found himself lying beside her and covered in blood.

In the case in hand the appellant ran away and hid himself in the bush. An insane person will not run and hide in the bush because he would not know that what he did was wrong and contrary to law.

This appeal ‘has no merit at all and it is accordingly dismissed. The judgment of the Court of Appeal in which it affirmed his conviction and sentence is hereby affirmed.

UWAIS JSC

I have had the opportunity of reading in draft the judgment read by my learned brother Mohammed, JSC. I entirely agree with the judgment. Accordingly, the appeal lacks merit and it is hereby dismissed. The decision of the lower court is affirmed.

WALI JSC

I have had the privilege of reading in advance the lead judgment of my learned brother, Uthman Mohammed, JSC and I entirely agree with it.

If the appellant was temporarily insane as a result of the alcohol he had consumed, as the learned counsel for the appellant wanted us to believe, he could not have remembered to pass away the machete he used in committing the murder to his son for keeping and thereafter to run away into the bush to hide; nor could he be able to remark to PW7 that they would meet in the next world. These are statements consistent with a person that is in full control of his mental faculty and therefore capable of distinguishing right from wrong.

The appeal lacks merit and for the fuller reasons given in the lead judgment, I also hereby dismiss this appeal. The conviction and sentence the lower courts

are hereby further affirmed.

KUTIGIJSC

I agree with the judgment just delivered by my learned brother Mohammed, JSC B
which I was opportuned to read before now. The appeal is dismissed.

OGUNDAREJSC

I have had the privilege of reading in advance the judgment of my C
learned brother Mohammed, JSC just read. I agree entirely with him and for the
reasons given by him I too, dismiss this appeal and affirm the judgment of the
court below.

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