

SUPREME COURT OF NIGERIA
4TH MAY, 2001. SC. 190/2000
CORAM:- A. B. WALI, M. E. OGUNDARE, A. I. IGUH, S. O.
UWAIFO, A. O. EJIWUNMI, JJSC.

DANIEL MADJEMU APPELLANT
V.
STATE RESPONDENT

CRIMINAL LAW - Insanity - Implication of raising the defence - It is prima facie an acceptance of the act complained of (H 3)

CRIMINAL PROCEDURE - Evidence - Defence of insanity - Proof - Where an accused seeks to avail himself of the defence - What he must prove to succeed (H 4)

EVIDENCE - Confessional statement - Admissibility - Denial of making a confessional statement by an accused person - Is not sufficient ground to reject its admissibility in evidence (H 1)

EVIDENCE - Confessional statement - Retraction - Where an accused is merely disputing the correctness of contents of the written statement - It is not necessary to have a trial within trial (H 2)

EVIDENCE - Defence of insanity - Lack of evidence - Failure by the defence to adduce evidence of insanity - Is enough to deprive the accused of the defence (H 5)

FACTS

In the High Court of the defunct Bendel State (now Delta state) sitting in Warri Judicial Division, the appellant was charged with the murder of his wife on or about the 16th day of July, 1984 contrary to s. 319 of the criminal code. On the said date, between the hours of 4 a.m - 5 a.m the appellant armed with a cutlass gave his wife who was asleep fatal

cuts including the one on the neck, that almost severed the head from the rest of the body. She died from the fatal wounds. After killing the deceased the appellant dragged her body from their bedroom to the verandah. He then drove his peugeot car carrying with him a blood stained cutlass to the home of the father of the deceased a distance of about 3 miles. He woke up the father of the deceased and informed him that he had murdered the deceased, his wife. With the help of other members of the compound, the father of the deceased overpowered the appellant disarmed and arrested him and took him to the Effurun Police Station from where the case was referred to the Police Station, Warri.

Before then the appellant attempted to commit suicide. At the police station, the appellant made a confessional statement. At the trial, the appellant pleaded not guilty to the charge. He denied making the confessional statement. The learned trial judge after listening to counsel's arguments for and against its admission, ruled that the statement was admissible and it was admitted as Exhibit C. At the conclusion of the trial, the learned trial judge found the appellant guilty, as charged and sentenced him to death by hanging. The appellant unsuccessfully appealed to the Court of Appeal, Benin Division. He has now further appealed to the Supreme court raising two issues.

ISSUES FOR DETERMINATION

“1. Whether from the circumstances of this case the defence of insanity was made out and/or available to the Appellant under Section 28 of the Criminal Code.

2. Whether the Court of Appeal was right when they affirmed the decision of the trial court that it was not necessary to conduct a trial within trial before admitting the appellant's extra judicial statement.

HELD (Unanimously dismissing the appeal per lead judgment of **WALI, JSC**)

Evidence - Confessional statement

1. Mere denial of making a confessional statement by an accused person is not sufficient ground on which to reject its admissibility in evidence when properly tendered. See also the **QUEEN V. ITULE** [1961] 1 ALL NLR

(Pt. 3) 462. (p. 1419 G)

Confessional statement - Retraction

2. “Where an accused is merely disputing the correctness of contents of the written statement or that he made no statement at all it is not necessary to have a trial within trial”. (p. 1420 A)

Criminal Law - Insanity

3. The raising of the defence of insanity provided in section 28 of the Criminal Code is prima facie an acceptance of the act complained of. (p. 1420 H)

Evidence - Defence of insanity

4. It is for an accused who seeks to avail himself of the defence provided by section 28 to prove-

1. that at the relevant time of committing the act complained of he was suffering either from mental disease or from natural mental infirmity, and

2. that the mental disease or natural infirmity was such that at the relevant time he was deprived of the capacity-

(a) to understand what he was doing, or

(b) to control his actions, or

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

See ONAKPOYA V. THE QUEEN [1959] 4 FSC 150. (p. 1421 C)

Defence of insanity - Lack of evidence

5. From the evidence adduced I hold the view that there was nothing to show that the appellant was insane or that he was suffering from natural mental infirmity that deprived him of understanding what he was doing, or to control his actions, or to know that he ought not to do the act or to make the omission. See R. V. OMONI 12 WACA 511.

There is total lack of evidence of insanity or insane delusion offered by the appellant in this case, and failure by the defence to adduce such

evidence is in my opinion, enough to deprive the appellant of the defence under section 28 of the Criminal Code. (p. 1427 B)

NOTABLE POINTS OF INTEREST

B IGUH JSC

1. Presumption of sanity - Required standard of proof for insanity

Issue 1 poses the question whether from the evidence before the court, defence of insanity was established by the appellant. In this regard, attention must be drawn to section 27 of the Criminal Code, Cap. 48, Volume C 11, Laws of the defunct Bendel State of Nigeria, 1976 applicable to Delta State which deals with the defence of insanity. By that section of the Law, every person is presumed to be of sound mind, and to have been of sound mind at any time, which comes in question, until the contrary is proved.

D There is therefore a presumption of law pursuant to the provisions of the said Section 27 of the Criminal Code that every person, and this includes the appellant, is of sound mind, and more importantly, had been of sound mind at any time which comes into question, until the contrary is proved.

E Accordingly an accused person who decides to contend that he is insane or that he suffers from insane delusions has the legal burden to rebut or to dislodge this presumption of law, which declares him sane until the contrary is established. In other words, the onus of proof rests on him to

F establish insanity or insane delusions and not on the prosecution to prove the sanity of the accused person at all times material to the commission of the offence with which such accused person is charged. See too Section 140 (3) (c) of the Evidence Act. However, this burden of proof on the accused person in a criminal trial is merely and simply as in civil cases,

G that is to say, on the balance of probability or the preponderance of evidence and not on the basis of proof beyond reasonable doubt as normally obtains in a criminal trial. See R. V. William Echem 14 W.A.C.A. 158, R v. Matthew Onakpoya (1959) 4 F.S.C. 150. (p. 1428 C)

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2. Facts relevant to establishing the defence of insanity

I need to point out also that to establish the defence of insanity, recourse could be had to the following relevant facts, namely:-

- (i) Evidence as to the past history of the accused person.
- (ii) Evidence as to the conduct of the accused immediately preceding the killing of the deceased.
- (iii) Evidence from prison officials who had custody of the accused person before and during his trial. B
- (iv) Evidence of Medical Officers who examined the accused.
- (v) Evidence of relatives about the general behaviour of the accused person and the reputation he enjoyed for sanity or insanity in the neighbourhood.
- (vi) Evidence showing that insanity runs in the family history of the accused; and such other facts which will help the trial court come to the conclusion that the burden of proof placed by law on the defence has been discharged. C

See Onyekwe v. The State (1985) 1 N.W.L.R. (Part 72) 565 at 579, D
Ejinona v. The State (1991) 6 N.W.L.R. (Part 2000) (p. 1429 G)

3. An act or omission which is without apparent motive is not by itself sufficient to establish insanity E

The mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity although if there is other evidence of insanity, such a fact may become a relevant factor to prove insanity. See Ejinima v. The State (1991) 6 N.W.L.R. (Part 200) 627 at 650. (p. F
 1431 B)

UWAIFO JSC

4. Motive is not a necessity for establishing a crime

It is the law that motive is not a necessity for establishing a crime but when it is available it helps in its detection and proof. In fact part of the appellant's statement to the police is that his wife was not co-operating with him, whatever that implied. However, the total absence of motive in the case of murder may be taken together with other circumstances which H may tend to strengthen evidence of mental abnormality in order to establish insanity as required by law: see R v. Inyang (1946) 12 WACA 5. (p. 1433 H)

5. *When a trial within a trial is necessary*

The only issue raised for a decision was whether indeed he wrote the statement or not. That did not call for a trial within a trial. Such proceeding is necessary only when a confessional statement is objected to on the grounds of duress, coercion, promise etc. which may be alleged, on being tendered, calling for the trial judge's determination as to whether the statement was voluntarily made: see *The Queen v. Itule* (1961) 1 All NLR (pt.3) 462. (p. 1434 E)

REPRESENTATION

Chief A. A. Aribisala, with him F.N. Njoku Esq., for the Appellant.
N.D.F. Momah Esq., Asst. Chief Legal Officer, Ministry of
Justice, Delta State for the Respondent.

CASES REFERRED TO

Queen v. Eguabor (1962) 1 ALL NLR 287
Godwin Ikpa v. The State (1981) 9 SC at 39
Dawa maigida v. The State (1980) Vol. 2 NWLR 38
Bassey v. The State (1993) 7 NWLR (Pt. 306) 469 at 471
Ejinima v. The State (1991) 6 NWLR (Pt. 200) 627
Nkanu v. The State (1980) NS CC 114 at 117
R. v. William Echem 14 W.A.C.A. 158
Idowu v. The State (1972) 5 S.C. 10 at 18
Bashiru Ayide v. Queen (1953) N.S.C.C. 300 at 302
R. v. Onabanjo (1936) 3 W.A.C.A. 43
Obidizoo v. The State (1987) 4 N.W.L.R. (Part 67) 748 at 760 - 762
Incek v. The State (1976) 4 S.C. 65 at 67
Richard Igago v. The State (1999) 14 N.W.L.R. (Part 637) 1 at 23

H STATUTE REFERRED TO

Criminal Code Law of the defunct Bendel State now applicable in Delta State, ss. 27 and 28

LEAD JUDGMENT BY WALI JSC

The appellant, Daniel Madjemu was arraigned before the High Court of the defunct Bendel State sitting in Warri Judicial Division, charged with the murder of his wife, Pancake Daniel on or about the 16th day of July, 1984 contrary to section 319 of the Criminal Code. He pleaded not guilty to the charge. At the conclusion of the trial, Omosun J [as he then was] found him guilty, as charged and sentenced him to death by hanging.

Being dissatisfied with the decision of the trial court he appealed against it to the Court of Appeal, Benin Division, which dismissed the appeal and affirmed the conviction and sentence imposed on him. The appellant has now further appealed to this Court.

The facts involved are not in dispute and are therefore as follows:-

The appellant and the deceased were husband and wife living at No. 6/7 Arubayi Street, Okumagba Layout, Warri. On the 16th of July 1984 the appellant and the deceased went to bed. Between the hours of 4 a.m. – 5 a.m. the appellant took a cutlass with which he gave his wife fatal cuts including the one on the neck, that almost severed the head from the rest of the body. She died from the fatal wounds. All this happened when the victim was asleep.

After killing the deceased the appellant dragged her body from their bedroom to the verandah. He then drove his Peugeot car registration No. BD1121WA carrying with him a blood stained cutlass at No. 5 Enerhen Effurun Road, Effurun, a distance of about 3 miles where he woke up the father of the deceased and informed him that he had murdered the deceased, his wife. With the help of other members of the compound, the father of the deceased over-powered the appellant disarmed and arrested him and took him to the Effurun Police Station from where the case was referred to the police station, Warri. Before then the appellant attempted to commit suicide but gave up the attempt.

In compliance with the Rules of this court, the parties filed and exchanged briefs of argument. In the appellant's brief the following two issues were raised:-

"1. Whether from the circumstances of this case the defence of

insanity was made out and/or available to the Appellant under Section 28 of the Criminal Code.

2. *Whether the Court of Appeal was right when they affirmed the decision of the trial court that it was not necessary to conduct a trial within trial before admitting the appellant's extra judicial statement.*

The respondent also framed two issues in his brief which are in substance identical to the ones framed by the appellant.

The two issues are as follows:-

“(i) *whether from the evidence and circumstances of this case, the defence of insanity was established and available to the Appellant.*

(ii) *whether the Court of Appeal was right when it affirmed the decision of the learned trial Judge that it was not necessary to conduct a trial within trial; before admitting the Appellant's confessional statement in evidence when the appellant merely denied that he wrote the said confessional statement.*”

For the purpose of this judgment, I shall adopt the issues framed by the appellant. I shall first deal with Issue 2.

Under Issue 2, it was the submission of learned counsel that the trial court was wrong in admitting Exhibit C, the extra-judicial statement made by the appellant, as his voluntary statement, notwithstanding that he denied ever making it. It was also submitted that the Court of Appeal equally erred in its conclusion that Exhibit C was rightly admitted in evidence by the trial court as the question of its voluntariness was made an issue when it was tendered during the trial. Learned counsel cited and relied on the QUEEN V. EGUABOR [1962] 1 ALL NLR 287; GODWIN IKPASA V. THE STATE [1981] 9 SC 35 at 39; DAWA MAIGIDA V. THE STATE [1980] VOL. 2 NWLR 38; BASSEY V. THE STATE [1993] 7 NWLR (Pt. 306) 469 at 471; EGBOGHONOME V. THE STATE [1993] 7 NWLR (Pt. 306) 383 at 398 and EHOT V. THE STATE [1993] 4 NWLR (Pt. 290) 644 at 649 to buttress his submissions.

In reply to the submissions supra, learned counsel for the respondent submitted that it is not in all cases that a confessional statement made by an accused person is subjected to a trial – within – trial and that it is only when such a statement is objected to on ground that it was not voluntary.

Learned counsel contended that in the present case no such objection was taken against the admissibility of Exhibit C during the trial, and that all what happened was that the appellant denied making Exhibit C. The voluntariness of making the statement was not an issue. He therefore urged this court to resolve this issue against the appellant. In support learned counsel referred B and relied on IGAGO V. THE STATE [1999] 14 NWLR (Pt. 637) 1 at 23 and EHOT V. THE STATE [1993] 4 NWLR (Pt. 290) 644.

Exhibit C was tendered and admitted in evidence at the trial through P.W.6, Yekini Salami a Deputy Superintendent of Police. Exhibit C was written by the appellant after he was duly cautioned by Inspector Alonge. P.W. 4 and P.W.6 gave evidence that Inspector Alonge had been killed by armed robbers and that was why he was not called to tender the appellant's statement. P.W.6 stated in his evidence in chief as follows-

"Later in the afternoon of 16th July, 1984, late Inspector Alonge D brought the accused before me with a statement said to be made by the accused person. I showed the statement to the accused. He said he wrote it himself after being cautioned by late Inspector Alonge. I read the statement to the accused person. He admitted it was written by him E voluntarily without any promise or threat. I then filled the attestation form normally used for confessional statements. This is the attestation form. This is the statement I read to the accused and brought by late Inspector Alonge to me with the accused person." F

The only objection raised by appellant's counsel against Exhibit C before it was admitted in evidence was that the appellant did not write the statement. The learned trial Judge after listening to counsel's arguments for and against its admission, ruled that the statement was admissible and was admitted as Exhibit C. What happened therefore in this case was a mere G denial of making Exhibit C or simply a retraction. In the QUEEN V. IGWE [1960] NSCC 38 particularly at page 39, this court opined that mere denial of making a confessional statement by an accused person is not sufficient ground on which to reject its admissibility in evidence H when properly tendered. See also the QUEEN V. ITULE [1961] 1 ALL NLR (Pt. 3) 462; OBOSI V. THE STATE [1965] NMLR 119; THE QUEEN V. EGUABOR [1962] 1 ALL NLR 28 and IGAGO V. THE

STATE [1999] 14 NWLR (Pt. 637) 1 in which the court restated and reaffirmed the principle that-

“Where an accused is merely disputing the correctness of contents of the written statement or that he made no statement at all it is not necessary to have a trial within trial”

B [underlining supplied by me]

Issue 2 is therefore answered in the affirmative.

Under Issue 1 the contention of learned counsel for the appellant is that the evidence given by the appellant shows existence of some form of mental disease or natural infirmity of the mind of the appellant. He submitted that the bizarre and abnormal act of the appellant coupled with the evidence of P.W.1, the Medical Doctor, shows that the appellant was suffering from abnormality of mind at the time he committed the offence as to afford him the defence provided under section 28 of the Criminal Code of Bendel State. Learned counsel cited and relied on **OLADELE V. THE STATE [1993] 1 NWLR (Pt. 269) 294 at 297. NTITA V. THE STATE (1993) 3 NWLR (Pt. 293) 505 at 508** and section 28 of the Criminal Code [Cap 48] Laws of Bendel State of Nigeria, 1976 to support his submissions.

Learned counsel for the respondent in his reaction to the appellant's submissions contended that the defence of insanity under section 28 of the Criminal Code of Bendel State was not available to the appellant having regard to the evidence in the case. He submitted that by the provision of section 27 of the Criminal Code of Bendel State the presumption is that the appellant is presumed to be sane until the contrary is proved and the burden was on him to satisfy the court that the evidence before it proved the contrary. He submitted that the appellant did not adduce any evidence to support the plea of insanity thus failing to discharge the onus placed on him. He referred to the case of **NKANU V. THE STATE [1980] NSCC 114 at 117** and a host of other decided cases to support this submissions. He therefore urged the court to answer Issue 1 in the negative.

H It is obvious from the two issues raised in this appeal that the appellant is seriously pinning his hope on the defence provided under section 28 of the Criminal Code Law of the defunct Bendel State now applicable in Delta State. **The raising of the defence of insanity provided in section**

28 of the Criminal Code is prima facie an acceptance of the act complained of.

To find out whether the two lower courts were right in the conclusion that such a defence is not available to the appellant, an examination of the evidence adduced and the findings made on it by the two lower courts becomes imperative. But before doing so, I think it is pertinent to reproduce section 28 of the Criminal Code which reads thus-

“A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental infirmity as to deprive him of capacity to understand what he is doing or capacity to control his action or the capacity to know that he ought not to do the act or make the omission.”

It is for an accused who seeks to avail himself of the defence provided by section 28 to prove-

1. that at the relevant time of committing the act complained of he was suffering either from mental disease or from natural mental infirmity, and

2. that the mental disease or natural infirmity was such that at the relevant time he was deprived of the capacity-

- (a) to understand what he was doing, or
- (b) to control his actions, or
- (c) to know that he ought not to do the act or make the omission.

See ONAKPOYA V. THE QUEEN [1959] 4 FSC 150; R Echem 14 WACA 151; SODEMAN V. R. [1936] 2 ALL ER 1138; NKANU V. THE STATE [1980] 3 – 4 SC. 1 and ARUM V. THE STATE [1979] 11 SC 91.

The death of the deceased was not in dispute. P.W.1, the Doctor that carried out the autopsy on the corpse stated in his evidence as follows-

“I remember 16/8/84 the corpse of Mrs. Pancake Daniel was brought to the public mortuary for post mortem examination. The corpse was identified to me by one Pius Onimiruren father of the deceased.

On examination of the corpse that day, I found the corpse of an approximately 20 year old lady not yet decomposed with 2 wrapper tied

around her waist. There was sand on her chest and abdomen externally. I saw blood stains on her face and chest. There was a smooth edged very deep cut from the right ear across the right cheek down to the middle of the lower lip. This injury cut across. The right cheek bone and fracturing
 B it and it also cut across the lower jaw where the teeth were hanging loose. There was also another deep smooth edged injury from the base of the occiput cutting across the right side of the neck through the anterior surface of the neck to the left. This injury severely cut across the right
 C jugular vein, cut across and fractured the cervical bones and the tracheas was also severely cut off. The neck was only held together by a piece of skin on the left side of the neck.

In conclusion, the cause of death was as a result of multiple injuries, severe haemorrhage and severe shock. I issued a post mortum
 D report to that effect. These injuries in my opinion were as a result of an application of a smooth edged sharp object applied probably with force e.g. a matchet.”

P.W.2 the father of the deceased narrated thus in his evidence-
 E “I know the accused person. Accused is my in-law. He married my daughter called Pancake. She has 4 children for the accused. Only 2 are living. I remember 16/7/84. At 4. a.m. on that date I heard a knock on my door. I asked who was knocking at the door. He answered that
 F Daniel my daughter’s husband is the one. He asked me to open the door. He said he wanted to see me. I told him to wait while I opened the door. He shouted at me to open the door quickly. I told him to go to the front door where there are protection. I peeped through my window. I saw the
 G accused holding a sharp cutlass. There was blood all over the body of the accused. The security light in front of the house was on. It was shining brightly. I opened my back window. I went out through it. I called my
 H brothers who came to assist me in disarming him. The cutlass was blood stained. So also was the body of the accused. My brothers I called are Vincent Onomirueru, James Pafiakper. They helped me in getting the cutlass from him. I asked him about my daughter and children. He told me he has killed her. I went to the Police station with the accused to give a report. My two brothers followed me too. I reported to the Police that

accused came to my house at 4. a.m. to threaten my life and that he already had killed my daughter. I went first to the Nigeria Police, Effurun. I was then referred to the Nigeria Police, Warri. I went to the accused house. At the gate lay my daughter dead. I identified her to Inspector Alonge as Pancake my daughter. The corpse was taken to the General Hospital, Warri for post mortem examination. I identified her corpse as that of Pancake my daughter to the doctor, P.W.1 before he performed the post mortem examination.”

Both P.W.3 and P.W.5 gave evidence which is in substance similar to that of P.W.2 Both witnesses were at the material time living in the same village and were neighbours.

P.W.6 was the D.S.P. through whom Exhibit C was put in evidence. He testified as follows-

“I remember 17th July, 1984. A case of murder was reported against the accused person on 17th July, 1984. The allegation was that he killed his wife. The matter was referred to the D.C.B. Nigeria Police, Warri for investigation. I took up the investigation with a number of police officers. Late Inspector Alonge was in the team of investigators. We took the accused to the house at Okumagba Layout. I saw the dead woman on the verandah of the house. I instructed late Inspector Alonge to send for a photographer to take photograph of the scene. I collected a piece of cloth soaked with blood from the bed and a machet. They were brought to the station. The scene is at Arubayi Street, Okumagba Layout, Warri, I do not know the number of the house. The accused lived in the house with deceased his wife. On the return from the scene of the killing, Late Inspector Alonge packed the cutlass and the blood stained cloth. I instructed him to do so. The accused was present. Police Form D22 was prepared which I signed. This is the Police Form D22 which was sent along with the cloth and cutlass to Forensic Laboratory Oshodi for examination. This is the Form D22 shown to me. Edokpolor seeks to tender it. Akpedeye has no objection. Tendered and marked Exhibit ‘B’. When the piece of cloth was dried, I discovered it was a pillow case. It was soaked wet.

Later in the afternoon of 16th July, 1984, late Inspector Alonge

brought the accused before me with a statement said to be made by the accused person. I showed the statement to the accused. He said he wrote it himself after being cautioned by late Inspector Alonge. I read the statement the accused person. He admitted it was written by him voluntarily without any promise or threat. I then filled the attestation form normally used for confessional statements. This is the form. This is the statement I read to the accused and brought by late Inspector Alonge to me with the accused person.”

In Exhibit C, the appellant stated as follows:-

“The morning, I Daniel Madjemu, kill my wife on ground she does not carpeting [cooperate] with me in the house, troublesome, I kill her with cutlass which are [1] brought to Police. She shouted only once. Nobody came to me. She was sleeping at the time I cut her neck.” [words in bracket supplied by me for clarity].

In his evidence the appellant confirmed that he wrote Exhibit C by himself and corroborated its contents in material particulars when he testified thus-

“I remember 16th July, 1984. I woke up about 3-4 a.m. the room was smooky. I went to lock at the time. I went to the parlour. I got to work at 5 a.m. It was not the time I go to work. So I went outside to urinate. I came back. I entered to the room. I went to bed. I woke up suddenly. I looked for a matchet. I cut my wife. I decided to take my life too. I began to cut my neck. I cut it but had not the heart to continue. I stabbed myself in the stomach. I sustained injury. I was in great pains. I opened the door and brought the body of my wife outside into the verandah.”

The appellant went on to confirm the evidence given by P.W.2, his in-law He said-

“I took the cutlass and drove to my father-in-law at Enerhen. I went there to report that I killed their daughter and I wanted them to kill me. I woke my father-in-law up. P.W.1 is my father-in-law. I told him her daughter is dead. He told me to wait in the front of the house. As I waited two of my brother’s in-law came. I gave the cutlass to P.W.3 with the plea that he should kill me as I have killed their daughter. I was confused. It was then the Police came and took me to the Nigeria Police station,

Effurun. I was then transferred to "A" Division. I made statement to the Police. I had no quarrel with my wife before I killed her. I do not know what pushed me to get up. I did not know I was killing her. It was after the killing that I know what I had done. I decided to kill myself."

The learned trial Judge after a thorough and painstaking review of the evidence before him, commented and found as follows-

"The learned counsel for the accused submitted that automatism is what the action of the accused is in killing his wife, meaning an act which is done by the muscles without any control of mind, a reflex action or an act done by a person who is not conscious of what he is doing. Automatism, no doubt, is meant to be supported by the evidence of a smoky room. The accused saw none. Then the sudden waking up and looking for a matchet which he found and killed his wife. The accused had no mental illness and was not known to have behaved abnormally. Indeed, evidence suggests he was perfectly normal person, a good husband. Evidence was led to show that one of the 4 children died a few weeks before the killing. There is no evidence to suggest that this affected his mind to make him kill the deceased."

Commenting on whether the defence under section 28 of the Criminal Code was available to the appellant, the learned trial Judge stated-

"There is no evidence of insanity or almost total absence of evidence in proof. The accused has not raised it. There is no evidence that the accused was at the relevant time suffering from mental disease or from natural mental infirmity, and so was deprived of capacity to understand what he was doing or control his actions or to know that he ought not to kill the deceased. Dr. Azebokhai testified that at the time of his examination, the accused was well oriented in time space and consequence of events. He was normal, though, agitated. He said people can be temporarily insane for hours and regain sanity. It can be a black out. He did not find out if the accused had any history of insanity. Events prior to the killing and after do not suggest that accused was insane. Paragraph 2 of section 28 deals with insane delusions. There is no evidence that accused acted under insane delusions."

The learned trial Judge further commented-

“It is established that the deceased was killed by the voluntary act of the accused. An act is not to be regarded as involuntary because the doer does not remember it – *HILL V. BAXTER* [1958] 1 ALL ER 193 or because he could not resist it or because it is unintentional or its consequences are and he asked his in-laws to kill him. He know what he did. See the case of *EFFIONG UDOFIA V. THE STATE* [1981] 11 – 12 SC 49, 55 and 61 in which *OBASEKI J.S.C.* considered the authorities on section 28. In my opinion, the defence of insanity based on delusion is not available to the accused. The accused’s attack on his defenceless wife was an out-burst of impulsive violence over which he had control. He decapitated her.”

The Court of Appeal, in its lead judgment delivered by Akaahs J.C.A and with which Akintan and Ba’aba JJCA, agreed, after referring to a number of this Court’s decisions dealing with section 28 of the Criminal Code, had no difficulty in agreeing with the findings of the learned trial Judge when he stated-

“The trial Judge had found that the case of the accused was that of delusion but that the second arm of Section 28 of the Criminal Code would not avail him because even if it had been true that his wife had actually given him some poison from which it had become plain that he would soon die, that would not justify or excuse his killing his children so that they would not suffer when he dies. The Supreme Court held that it is not for the prosecution to disprove insanity where the accused has not adduced evidence of insanity. It should only prove sanity in reply to evidence of insanity proffered by the defence and not as part of its case.”

The learned Justice also stated-

“Since there was no evidence of automatism, the plea was rightly rejected by the trial Court. The deceased was killed by the voluntary act of the appellant and the act of the appellant in killing the deceased cannot be regarded as involuntary merely because he was confused and did not know why he did it.”

On the admission of Exhibit C in evidence by the trial Court, the learned justice also took pains to consider some leading authorities on the Issue after which he concluded-

“Since no objection was taken in the trial Court on the voluntariness of Exhibit “C” it is not open to the learned Counsel on appeal to now say Exhibit “C” is inadmissible for want of voluntariness. The second issue argued in this appeal is equally resolved against the appellant.”

The findings by the trial court which were affirmed by the Court of Appeal are aptly supported by the evidence and I find little or no room of improving on them.

From the evidence adduced I hold the view that there was nothing to show that the appellant was insane or that he was suffering from natural mental infirmity that deprived him of understanding what he was doing, or to control his actions, or to know that he ought not to do the act or to make the omission. See R. V. OMONI 12 WACA 511; SANUSI V. THE STATE [1984] 10 SC 166 and EJINIMA V. THE STATE [1991] 6 NWLR (Pt. 200) 627.

There is total lack of evidence of insanity or insane delusion offered by the appellant in this case, and failure by the defence to adduce such evidence is in my opinion, enough to deprive the appellant of the defence under section 28 of the Criminal Code. In NKANU V. THE STATE [1980] NSCC 114 at 117, OBASEKI JSC commented as follows-

“the defence of insanity involves on acceptance of responsibility for the act complained of. It therefore places the legal onus on the appellant to satisfy us that the evidence led before the High Court sufficiently proves insanity.”

Having considered the issues raised and canvassed in this appeal, I find no merit in them and they are accordingly dismissed. The concurrent findings of the two lower courts are hereby affirmed. See NWUZOKE V. THE STATE [1988] 2 SCNJ 344 at 346 and ATISA V. THE STATE [1988] 3 NWLR (Pt. 83) 387 at 399.

OGUNDARE JSC

I agree entirely with the reasoning and the conclusion reached by my learned brother, Wali JSC in his judgment just delivered. I have nothing

more to add. I too dismiss the appeal and affirm the judgment of the Court below.

B IGUH JSC

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Wali, J.S.C. and I am in entire agreement with him that this appeal is devoid of substance and ought to be dismissed.

C Issue 1 poses the question whether from the evidence before the court, the defence of insanity was established by the appellant. In this regard, attention must be drawn to section 27 of the Criminal Code, Cap. 48, Volume 11, Laws of the defunct Bendel State of Nigeria, 1976 applicable to Delta State which deals with the defence of insanity. By that section of **D** the Law, every person is presumed to be of sound mind, and to have been of sound mind at any time, which comes in question, until the contrary is proved. There is therefore a presumption of law pursuant to the provisions of the said Section 27 of the Criminal Code that every person, and this **E** includes the appellant, is of sound mind, and more importantly, had been of sound mind at any time which comes into question, until the contrary is proved. Accordingly an accused person who decides to contend that he is insane or that he suffers from insane delusions has the legal burden to rebut **F** or to dislodge this presumption of law, which declares him sane until the contrary is established. In other words, the onus of proof rests on him to establish insanity or insane delusions and not on the prosecution to prove the sanity of the accused person at all times material to the commission of the offence with which such accused person is charged. See too Section 140(3) **G** (c) of the Evidence Act. However, this burden of proof on the accused person in a criminal trial is merely and simply as in civil cases, that is to say, on the balance of probability or the preponderance of evidence and not on the basis of proof beyond reasonable doubt as normally obtains in a criminal **H** trial. See R. V. William Echem 14 W.A.C.A. 158, R v. Matthew Onakpoya (1959) 4 F.S.C. 150, Emeryl V. The State (1973) 6 S.C. 215 at 226, R. V. Philip Dim 14 W.A.C.A. 154, Nkanu v. The State (1980) N.S.C.C. 114 at 117.

The defence of insanity or insane delusions is also further provided for in Section 28 of the said Criminal Code. This Section of the Law provides thus:-

“A person is not criminally responsible for an act or omission if at the time of doing that act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.

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

Accordingly, for the defence of insanity to succeed, an accused person must establish: -

(1) that he was at the time of the commission of the offence suffering either from “mental disease” or from “natural mental infirmity”; and

(2) that the ailment was such that at the relevant time, he was as a result deprived of capacity:

- (i) to understand what he was doing; or
- (ii) to control his actions; or
- (iii) to know that he ought not to do the act or make the omission for which he stands trial.

See R. V. Omoni (1949) 12 W.A.C.A. 511 at 513, M. A. Sanusi v. The State (1984) 10 S.C. 166 at 177, Ejинима v. The State (1991) 6 N.W.L.R. (Part 200) 627.

I need to point out also that to establish the defence of insanity, recourse could be had to the following relevant facts, namely:-

- (i) Evidence as to the past history of the accused person.
- (ii) Evidence as to the conduct of the accused immediately preceding the killing of the deceased.
- (iii) Evidence from prison officials who had custody of the accused

person before and during his trial.

(iv) Evidence of Medical Officers who examined the accused.

(v) Evidence of relatives about the general behaviour of the accused person and the reputation he enjoyed for sanity or insanity in the neighbourhood.

(vi) Evidence showing that insanity runs in the family history of the accused; and such other facts which will help the trial court come to the conclusion that the burden of proof placed by law on the defence has been discharged.

See Onyekwe v. The State (1985) 1 N.W.L.R. (Part 72) 565 at 579, Ejinona v. The State (1991) 6 N.W.L.R. (Part 200) 627.

In the present case, there is absolutely nothing on record to suggest that the appellant, no matter how remotely, led any evidence whatsoever in support of the defence of insanity or insane delusions. There is total lack of evidence that the appellant at all times material to the commission of the offence for which he was charged was suffering from such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he was doing or control his actions or to know that he ought not to kill the deceased, his wife. Events prior to and after the murder of the deceased did not suggest any insanity or insane delusions on the part of the appellant. On the contrary, P.W.1, Dr. Ezebokhai, who observed the appellant immediately after the murder on the 16th July, 1984 was emphatic that the appellant at the time he saw him was well orientated in time, space and consequence of events and that he was in all respects normal. There is also no evidence that the appellant acted under any insane delusions. Again, on the contrary, there is evidence that immediately after the brutal murder, the appellant drove himself to the house of P.W.2, the father of the deceased, a distance of about 3 miles and reported the murder to him.

In the finding of the learned trial Judge, as affirmed by the court below, the appellant's attack on his defenceless wife was an out-burst of impulsive violence over which he had total control and I have no reason to fault the same. There is also the written statement of the appellant under caution to the Police in which he admitted killing the deceased on the ground that she was not "carpeting" (co-operating!) with him in the house. From

the evidence before the court, it is clear to me that events before and immediately after the killing of the deceased showed that the appellant at all material times was in full control of his reasoning faculties. Both courts below so found and I have no reason to interfere with this finding. Nor does the claim by the appellant that he killed the deceased because he was confused or did not know why he did it form any basis of insanity. See Idowu v. The State (1972) 5 S.C. 10 at 18. In the same vein, the mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity although if there is other evidence of insanity, such a fact may become a relevant factor to prove insanity. See Ejinima v. The State (1991) 6 N.W.L.R. (Part 200) 627 at 650, R. v. Ashigifuwo (1948) 12 W.A.C.A. 389, Bashiru Ayide v. Queen (1953) N.S.C.C. 300 at 302. I think the court below was entirely right when it held as follows: -

"I find myself in total agreement with the finding of the learned trial Judge that there is no evidence of insanity. There is also no evidence that the accused was at the relevant time suffering from mental disease or from natural mental infirmity which deprived him of capacity to understand what he was doing or control his actions or to know that he ought not to kill the deceased."

In my view the defence of insanity was not established by the appellant in the present case and issue I must be answered in the negative.

Turning now to issue 2, the point must be made that it is not in all cases where the confessional statement of an accused person is sought to be tendered and objected that a trial court must conduct a mini trial or trial within trial before such a statement may be admitted in evidence or its admissibility determined. It is only when an objection to its admissibility is taken on the ground of involuntariness that a trial court must conduct a trial within trial to determine its voluntariness and consequent admissibility or otherwise in evidence. See R. v. Onabanjo (1936) 3 W.A.C.A. 43, and R. v. Kassi (1939) 5 W.A.C.A. 154. Where, however, an accused is merely disputing the correctness of the contents of the statement or that he made no statement at all, it is not necessary in law to have a trial within trial. See R. v. Igwe (1960) 5 F.S.C. 55, The Queen v. Eguabor (1962) 1 S.C.N.L. 409, Obidiozo v. The State (1987) 4 N.W.L.R. (Part 67) 748 at 760 – 762, Incek

1432 Madjemu v. The State (2001) 5 KLR Iguh JSC
v. The State (1976) 4 S.C. 65 at 67 and Richard Igago v. The State (1999)
14 N.W.L.R. (Part 637) 1 at 23.

In the present case, no objection was taken on behalf of the appellant with regard to the voluntariness of the contents of the statement, Exhibit C. The objection as to the admissibility of Exhibit C was taken on the ground that the appellant did not write or make the statement at all. This is clearly not a case where a trial within trial is a necessity in the determination of its admissibility. The position would have been otherwise if the ground of objection was based on its involuntariness or that it was made under inducement, duress, promise or threat. See too Godwin Ikpassa v. The State (1981) 9 S.C. 35 at 39 and R. v. Imadebhor Eguabor (1962) 1 All N.L.R. 287. Issue 2 is accordingly resolved in the affirmative.

It is for the above and the more detailed reasons contained in the leading judgment of my learned brother, Wali, JSC that I, too, dismiss this appeal as lacking in substance. The judgment of the trial court as affirmed by the Court of Appeal is hereby further confirmed.

E

UWAIFO JSC

I read in advance the judgment of my learned brother Wali JSC and I am in agreement with it. The facts of the case have been fully stated in the said judgment. They are clear and simple though callously brutal. I shall state my views very briefly on the issue of insanity raised by learned counsel for the appellant. It is based solely on the nature of the confessional statement made by the appellant. He wrote it himself in these dramatic words:

G *"I took the cutlass and drove to my father-in-law at Enerhen. I went there to report that I killed their daughter and I wanted them to kill me. I woke my father-in-law up. P.W.1 is my father-in-law. I told him her daughter is dead. He told me to wait in the front of the house. As I waited H two of my brother's in law came. I gave the cutlass to P.W.3 with the plea that he should kill me as I have killed their daughter. I was confused. It was then the Police came and took me to the Nigeria Police Station, Effurun. I was then transferred to 'A' Division. I made statement to the*

Police. I had no quarrel with my wife before I killed her. I do not know what pushed me to get up. I did not know I was killing her. It was after the killing that I know what I had done. I decided to kill myself."

The appellant has raised two issues for determination as follows:

"(i) Whether from the evidence and circumstances of this case, B the defence of insanity was established and available to the Appellant.

(ii) Whether the Court of Appeal was right when it affirmed the decision of the learned trial Judge that it was not necessary to conduct a trial within trial; before admitting the Appellant's confessional statement C in evidence when the appellant merely denied that he wrote the said confessional statement."

Issue No i

It is for the defence to lead evidence which will be sufficient to support the defence of insanity under s. 28 of the Criminal Code. Such D evidence must be to establish that the accused person was at the time of the act or omission in a state of mental disease or natural mental infirmity, and that the mental disease or natural mental infirmity was such that at the relevant time, he was deprived of capacity to understand what he was doing, E or to control his actions, or to know that he ought not to do the act or make the omission. It is not a defence of insanity that the accused behaved abnormally. Abnormal behaviour has so much uncertainty about it as to why and how. If it is an abnormality arising from a mental condition, which F substantially impaired the ability of the accused to control his rationality or responsibility in a given situation, it must be such as falls within s. 28 of the Criminal Code. It could be from the evidence of a medical specialist in mental illness—i.e. a psychiatrist—or evidence of the history of the accused. G The burden is on the defence to produce the evidence on the balance of probabilities: see *Arum v. The State* (1979) 11 SC 91; *Udofia v. The State* (1981) 11-12 SC 49.

Learned counsel for the appellant argued that a sane person would not behave the way he did. He said there was no apparent reason why he H should have killed his wife and in that manner. It is the law that motive is not a necessity for establishing a crime but when it is available it helps in its detection and proof. In fact part of the appellant's statement to the police

is that his wife was not co-operating with him, whatever that implied. However, the total absence of motive in the case of murder may be taken together with other circumstances which may tend to strengthen evidence of mental abnormality in order to establish insanity as required by law: see
 B R v. Inyang (1946) 12 WACA 5; Kure v. The State (1988) 1 NWLR (pt. 71) 204; Ejinima v. The State (1991) 6 NWLR (pt. 200) 627.

In the present case there was no evidence whether from a medical expert or from other sources either traced to the family history of the appellant or to his own antecedents, or even evidence coming shortly after
 C the offence was committed, to suggest that at the time of the incident he was insane. The strange behaviour of his as narrated by him; standing alone, cannot be evidence of insanity: see Ogbu v. The State (1992) 8 NWLR (pt. 259) 255. To accept that as evidence of insanity is to make the simulation
 D of insanity easily practically available in matters of this nature. I therefore answer issue (i) in the negative.

Issue No. ii

At the trial, the appellant said he did not write the confessional
 E statement (exhibit C) when it was tendered. There was no suggestion of any event or incident from which it could be said that the voluntariness of the statement was in issue. The only issue raised for a decision was whether indeed he wrote the statement or not. That did not call for a trial within a
 F trial. Such proceeding is necessary only when a confessional statement is objected to on the grounds of duress, coercion, promise etc. which may be alleged, on being tendered, calling for the trial judge's determination as to whether the statement was voluntarily made: see The Queen v. Itule (1961) 1 All NLR (pt.3) 462; The Queen v. Eguabor (1962) 1 All NLR 28; Igogo
 G v. The State (1999) 14 NWLR (Pt. 637) 1. I accordingly answer Issue ii in the affirmative.

I, too, dismiss this appeal, as my learned brother Wali JSC has done, as there is no merit in it. I affirm the decision of the lower court.
 H _____

EJIWUNMI JSC

I was privileged to have read in advance the draft of the judgment

just delivered by my learned brother WALI, JSC. In that judgment he had, in my respectful view considered the issues raised in this appeal having regard to the facts disclosed in the printed record.

It is pertinent to observe that the facts disclose a most heinous act of murder committed by the appellant when on the night of the 16th July 1984 he caused the death of his 20 year old wife whom he brutally attacked with a matchet while she laid down sleeping. The condition in which he left her dead was given in evidence at the trial of the appellant, by 1st PW, Doctor Azebo Khai the Senior Medical Officer, who performed post mortem examination on the body of the deceased. The evidence reads in part thus:

“On examination of the corpse that day, I found the corpse of an approximately 20 year old lady not yet decomposed with 2 wrapper (sic) tied around her waist. There was sand on her chest and abdomen externally. I saw blood stains on her face and chest. There was a smooth edged very deep cut from the right ear across the right cheek down to the middle of the lower lip. This injury cut across the right cheek bone and fracturing it and it also cut across the lower jaw where the teeth were hanging loose. There was also another deep smooth edged injury from the base occiput cutting across the right side of the neck through the anterior surface of the neck to the left. This injury severely cut across the right jugular vein, cut across and fractured the cervical bones and the trachea was also severely cut off. The neck was only held together by a piece of skin on the left side of the neck”.

The Doctor then went on to say that the cause of death was as a result of multiple injuries, severe haemorrhage and sever shock. He also added that the injuries were, in his opinion, the result of application of a smooth edged sharp object applied probably with force, e.g. a matchet.

While there was no eye witness who saw the appellant kill the deceased, the subsequent conduct of the appellant point clearly to the fact that he was the one who killed the deceased. Indeed the evidence accepted at the trial and which stands undenied is that it was the appellant who, after he had brutally murdered his wife, came the same night with the matchet with which he killed the deceased, to report the incident to the father of the

deceased.

It is manifest from the record that the appellant has not denied that he killed the deceased. However, it is the contention of learned counsel for the appellant that the defence of insanity was available to the appellant, and that the Courts below should have found the appellant not guilty of the offence.

It must be noted that the Courts below quite properly considered whether, this defence was available to the appellant. And quite rightly, the courts below came to the conclusion that that defence was not available to the appellant.

I think it may be restated that for the defence to operate in favour of the appellant, there must be evidence to show that at the time relative to the commission of the offence the appellant was suffering from such mental or natural mental infirmity that as a result he was deprived of capacity: -

(a) to understand what he was doing; or

(b) to control his actions; or

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

See R v. Omoni (2 WACA) 511 AT 513; EJIRINA V THE STATE (1991) 6 NWLR (Pt. 2000) 627; for the appellant in such circumstances, the onus is discharged upon a balance of probabilities. See ARISA V THE STATE (1988) 3 NWLR (Pt. 83) 386.

From the evidence before the trial court it is my considered view that the learned trial judge rightly found that the defence was not available to the appellant, and the court below was right to have affirmed that decision of the trial court. In this court it is my humble view that nothing has been advanced by learned counsel for the appellant to persuade me to reverse the judgment of the court below. I therefore dismiss the appeal for the reasons given and the fuller reasons contained in the leading judgment of Wali, JSC.

H