

SUPREME COURT OF NIGERIA

16TH APRIL, 2004. SC. 28/2003

**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, A. O. EJIWUNMI,
D. MUSDAPHER, I. C. PATS-ACHOLONU, JJSC**

OSAREMWINDAN AIGUOKHIAN APPELLANT
V.
THE STATE (EDO STATE) RESPONDENT

CRIMINAL LAW - Defence of mistake - The story must be true - Not an insult to intelligence - And should not arise from lack of proper care - To warrant a relief from criminal liability (H1)

CRIMINAL LAW - Murder - Defence of mistake - Test of honest belief - Does not avail the appellant - As his story is bizarre and an affront to intelligence (H2)

MURDER - Intention to kill - Is established against appellant - Regardless of his story (H3)

CRIMINAL PROCEDURE - Murder - Confessional statement of accused - And his evidence in court - Show that he intended to kill the deceased (H4)

FACTS

Before the Benin High Court, the appellant was charged for the murder of one Edomwonyi Aghedo (the deceased). An issue arose which made the trial court conduct a trial within a trial at the end of which it ruled that the appellant's statement to the Police was voluntary.

The appellant's defence was that he saw a deer, shot and killed it. As he proceeded to cut it in pieces to enable him carry it, the animal metamorphosed into a human being who turned out to be the deceased. His story was not believed by the trial court which found him guilty of murder. His appeal to the Court of Appeals failed. Appellant has further

appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the appellant had not established the defence of mistake which the lower courts failed to consider.
2. Whether the trial of the appellant is not a nullity.

HELD (Unanimously dismissing the appeal per lead judgment of **PATS-ACHOLONU JSC**)

Defence of mistake - The story must be true

1. It is the law that where an accused acted under an honest and reasonable belief in a given state of situation, which if true would have justified the act, he may set up such a credible defence. But the story must be true, in other words, capable of being believed and not an insult to intelligence. See *R. v. Tolson* 23 Q.B.D. 168.

There may be a relief from criminal liability or guilt unless the mistake arose from lack of proper care expected from a reasonable man of average intelligence. (p. 775 E)

Defence of mistake - Test of honest belief

2. The test of honest belief which should shore up a defence of mistake rests a priori on whether the accused honestly and in good faith and without any fault or negligence made a mistake in the nature of the situational premise prevailing as at the time and that shall be determined and related to the circumstances as might reasonably be expected to affect his mind to induce belief or otherwise of the defence of mistake. In the present case this is not the case. What we have here is a case of bare-faced murder in which the appellant has now concocted a story so bizarre and incredible as a defence that he hopes he could induce belief in such a fairy tale meant for infants.

It must be admitted that the story of the appellant sounds like a fairy tale, one of those stories usually found in the Classic “*Grimms Fairy Tales*”.

I have said it before and I will say it again that when the statement or evidence of a witness is of such obvious exaggerated proportions that it

enters into the realm of either fantasy or is an affront to intelligence or is reckless in its utterance, it should be ignored and consigned to a garbage and treated with utmost contempt, disdain and of course rejected in its entirety. Such evidence would be shown to be so manifestly hostile to reason and intelligence as to be nigh impossible that it should not be believed by the court. (pp. 776 B & 778 C)

MURDER - Intention to kill

3. When the appellant took shot at the object i.e. the deceased who was standing only 20 feet away from him, he intended to kill him regardless of whatever he said. (p. 778 B)

Murder - Confessional statement of accused

4. There was a clear case of proved confession and a statement to that effect was obtained. It was shown that it was not obtained under duress. The bestially inveterate and gruesome act of this appellant boggles the mind. His evil intentions considerably tied to his primitive concept of life depicts him as one who had no qualms in dealing in such sickening maniacal act. His defence of mistake is so puerile and infantile that he failed to realize the alignment between his statement to the Police and his evidence in court which shows that he knew what he was doing and therefore had intended the consequence of his act. He is a danger to the society and the likes of him should be shown the only place they belong which is Hades. (p. 778 E & G)

REPRESENTATION

A.O. ALEGEH, ESQ., FOR THE APPELLANT.

V.O.A. OVIawe (ASSISTANT CHIEF LEGAL OFFICER, MINISTRY OF JUSTICE, EDO STATE) FOR THE RESPONDENT (EDO STATE)

CASES REFERRED TO

R. v. Tolson 23 Q.B.D. 168

Green v. State, 221 SW. 2d 612.

People v. Fitz Patrick 247 P. 601, 78 CA. 37

STATUTE REFERRED TO

Criminal Code ss. 28, 25

LEAD JUDGMENT BY PATS-ACHOLONU JSC

B This is an appeal which arose from a conviction for murder that was subsequently affirmed by the Court of Appeal. The facts of this case are very simple. The appellant was charged before the Benin High Court for the murder of one Edomwonyi Aghedo. In the course of hearing the case in the High Court, an issue arose as to whether the Statement the appellant made to the Police was voluntary or not and a trial within a trial was conducted. At the end of that short proceedings the presiding judge ruled that the statement made by the prisoner was voluntarily made.

D The defence of the appellant in the Court of first instance was to the effect that he saw a deer, took an aim at the “*animal*”, shot and killed it and proceeded to cut it to pieces because it proved too heavy for him to carry away in one piece. His story was that it was at the point of its being cut in small measures that the “*animal*” metamorphosed into a human being who turned out to be no less a person than the deceased. The High Court refused to believe his story and found him guilty of murder. On appeal to the Court of Appeal, that court equally confirmed the judgment of that court, whereupon the appellant appealed to this court and framed 3 issues for consideration and they are as follows:

1. Whether the appellant had not established the defence of mistake which the lower courts failed to consider.
2. Whether the trial of the appellant is not a nullity.
- G 3. Whether the appellant had not established a defence of insane delusion.

The respondent being the State also formulated 3 issues and they are:

- H 1. Whether upon the evidence, the defence of mistake is available to the appellant.
2. Whether from the circumstances of this case the defence of insanity under section 28 of the Criminal Code is available to the appel-

lant.

3. Whether upon a consideration of the evidence the defence of insane delusion or delusion is available to the appellant.

In the course of the proceedings in this court, when it was pointed out to the learned counsel for the appellant that issue No. 1 which he formulated could not possibly co-exist with issue No. 3, he dropped issue 3 like a hot iron and argued mainly on issue No. 1.

The kernel of the defence of the appellant's case as established or made out in his brief is that he shot a deer and believing same to be a deer but which turned or transformed into a human being. The appellant relied on the provision of section 25 of the Criminal Code, which states as follows:

"A person who does or omits to do an act under the honest and reasonable but mistaken belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist. The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject."

The appellant holds firmly that what transpired in that bush was a case of mistake and no more as there was no previous history of any quarrel between the deceased and the appellant. **It is the law that where an accused acted under an honest and reasonable belief in a given state of situation, which if true would have justified the act, he may set up such a credible defence. But the story must be true, in other words, capable of being believed and not an insult to intelligence. See R. v. Tolson 23 Q.B.D. 168.** In that case the respondent was convicted of bigamy in the court of first instance having undergone second marriage after an honest belief that her husband who had deserted her for a period of more than 7 years was dead. It was held that such honest and reasonable belief would entitle her to an acquittal. **There may be a relief from criminal liability or guilt unless the mistake arose from lack of proper care expected from a reasonable man of average intelligence.** See the American case of *Green v. State*, 221 SW. 2d 612. In *People v. Fitz Patrick* 247 P. 601, 78 CA. 37 it was held that where an

accused was charged with accepting a bribe and there was evidence both that he accepted money with intent that it should influence his official action and also as a contribution towards his election expenses, there was no question of mistake of fact as he accepted the money for each of the purposes one of which purpose is definitely a crime. **The test of honest belief which should shore up a defence of mistake rests a priori on whether the accused honestly and in good faith and without any fault or negligence made a mistake in the nature of the situational premise prevailing as at the time and that shall be determined and related to the circumstances as might reasonably be expected to affect his mind to induce belief or otherwise of the defence of mistake. In the present case this is not the case. What we have here is a case of barefaced murder in which the appellant has now concocted a story so bizarre and incredible as a defence that he hopes he could induce belief in such a fairy tale meant for infants.**

It must be admitted that the story of the appellant sounds like a fairy tale, one of those stories usually found in the Classic “Grimms Fairy Tales”. It is in “Macbeth” by Shakespeare that Life was described as “a poor player that shrieks and frets his hour upon the state and then is heard no more. It is like a tale told by an idiot, full of sound and fury signifying nothing”. There is an expression of, “Tell it the Marines”. It means that such a story is a fib, a barefaced falsehood that no discerning individual of an average intelligence will believe.

It is interesting to restate the evidence of the appellant in the High Court, in the light of the above observation.

“I then got to a very big farm of corn, cassava and yam, I saw a big deer. This was between 8 and 10 a.m. (in the morning). The deer was very close to me at a distance of about 22 feet from me. I then aimed my gun and shot at the deer. I then went to where the deer fell and I saw that it was a very big deer. Because the deer was so big and I could not carry it out of the bush just like that. I cut a rope from the bush to tie its legs and hands together so that when I pass a strong stick between the tied legs and hands I could hang the stick a strong stick between the tied legs

and hands I could hand the stick on my shoulder with the big deer hanging from that stick. When I had tied the legs and hands of the deer and put the stick between the tied legs and hands. I tried to raise them up but I could not. The deer was too heavy for me to lift up with the stick between its tied legs and hands. I then brought out my cutlass and started B to butcher the deer. As a big animal, I cut the neck of the deer. Then I cut the two palms of the deer from its wrist. I then cut the penis of the male deer and kept it aside. I was then ready to pieces the other parts of the deer into the bits I could carry from the bush into the main road. As I held C the body of the deer and was about to cut it into pieces. I just found that what I was holding was a human being. I then shouted, I now saw that the animal was a human being. I then recognized the human being to be Edomwonyi Aghedo who is now dead. I then cried and blow a whistle D and raised an alarm. Someone from the main road answered me and I ran to the main road where I heard the whistle of the person who answered by whistle call. As I came out of the bush to the main road I saw an operator who used to cut timber in the bush. The man asked me what happened and I told him that I shot a deer but that as I was butchering the deer it E turned to a human being in the bush. I told the man how far I had already butchered the deer before it turned into human being and the man who is an Urhobo man shouted. The man knew me very well told me that if I went home to break the news as I had wanted to do, then people will just F kill me with their hands. I then became afraid. He asked me to go and dig the parts of the person I had already cut from the corpse into the ground and then go home quietly, so that, if the corpse is seen after, people will think that it was "Gbomogbomo" people, that is, people who G steal and kill and use children for money, who killed Edomwonyi Aghedo."

What is clear as day light is that he saw what he killed. His evidence showed that he killed a deer which when it was being cut into pieces turned to be a normal human being. This testimony is the most bizarre story I have heard since I qualified as a legal practitioner. Was the H human who turned to be a deer walking on all four limbs and bearing all the physical characteristics of an animal. There are some questions that may be asked in response to the evidence of the appellant which he has

really provided the answers. Did he shoot the deceased? The answer is yes. Did the incident take place in the night? It took place at about 8 a.m. in the morning. Was there a fog that would have prevented or obscured him from shooting at the object mistakenly. The answer is No. In fact the
 B object was only about 20 feet away from him. Is there any evidence that people in that community have magic powers or supernatural powers of transforming into animals either at will or by whatever means. There is no such evidence. The appellant's counsel submitted that there was no
 C prior quarrel with the deceased before the incident. **When the appellant took shot at the object i.e. the deceased who was standing only 20 feet away from him, he intended to kill him regardless of whatever he said.**

I have said it before and I will say it again that when the
 D statement or evidence of a witness is of such obvious exaggerated proportions that it enters into the realm of either fantasy or is an affront to intelligence or is reckless in its utterance, it should be
 E ignored and consigned to a garbage and treated with utmost contempt, disdain and of course rejected in its entirety. Such evidence would be shown to be so manifestly hostile to reason and intelligence as to be nigh impossible that it should not be believed by the
 F court. **There was a clear case of proved confession and a statement to that effect was obtained. It was shown that it was not obtained under duress.**

There is something inherently obscene and horrendously nauseating and reprehensible about the act of the appellant in that not being content with having killed the deceased, he dismembered him by cutting
 G out the parts he would use for whatever purpose he had in mind whether to eat the dismembered body or use it for fetish purpose. We shall never know. **The bestially inveterate and gruesome act of this appellant boggles the mind. His evil intentions considerably tied to his primitive concept of life depicts him as one who had no qualms in dealing in such sickening maniacal act. His defence of mistake is so puerile and infantile that he failed to realize the alignment between his statement to the Police and his evidence in court which shows that**

he knew what he was doing and therefore had intended the consequence of his act. He is a danger to the society and the likes of him should be shown the only place they belong which is Hades.

This is a very straightforward case which the appellant aided in no small measure in resolving it. There is obviously no merit whatsoever in the appeal. I therefore dismiss the appeal, which is worthless. I endorse and affirm the judgment of the court below.

KUTIGIJSC

I read in advance the judgment just delivered by my learned brother. Pats-Acholonu. J.S.C. I agree with him that the appeal lacks merit. It is hereby dismissed. Conviction and sentence are affirmed.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Pats-Acholonu, JSC I agree with him that the appeal is without substance and must be dismissed. For the reasons given in the leading judgment I also dismiss this appeal and affirm the decision of the court below.

EJIWUNMI JSC

I have had the privilege of reading the draft of the judgment of my learned brother, Pats-Acholonu, JSC. In that judgment, he had lucidly reviewed the facts of the case and discussed the legal consequences of the issues raised thereon to dismiss this appeal. As I have also read the facts that led to the conviction of the appellant and its affirmation by the court below. I have no doubt too that there is nothing in favour of the appellant. I also dismiss the appeal.

MUSDAPHER JSC

I have had the honour to read before now, the judgment of my Lord Acholonu, JSC just delivered in this matter with which I am in entire agreement. This is an appeal on facts against the concurrent findings of the court below. The law is now settled that the Supreme Court will not interfere with the concurrent findings of facts of the two courts below, unless there is some miscarriage of justice or a violation of some principles of law or procedure. There is no doubt, in my mind that the story of the appellant that the “deer” turned into a human being as he was butchering it is fantastic. I agree with the two courts that the appellant was dishonest and unreasonable in the fantastic story he has told. I accordingly dismiss the appeal and affirm the decision of the court below.

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