

SUPREME COURT OF NIGERIA
FRIDAY 17TH MAY, 2013. SC. 316/2011
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

THE STATE APPELLANT
V.
BABANGIDA JOHN RESPONDENT

MURDER - Defence - Consideration of - After considering defence of accused - Court can consider other defence available to accused - But failure to do so will not amount to miscarriage of justice (H1)

CRIMINAL LAW - Sanity - Presumption of - Under Criminal Code s. 27 - Every person is presumed to be sane - Until the contrary is proved (H2)

CRIMINAL LAW & PROCEDURE - Insanity - Proof - The burden of proving insanity lies on accused - And it must be discharged on the balance of probabilities (H3)

MURDER - Ingredients - Proof - Prosecution must prove that deceased died - And that the death was caused by act of accused - Which was intentional (H4)

MURDER - Mens rea - Presumption - A person is presumed to intend the natural consequences of his act - Hence accused is presumed to have intentionally killed the deceased (H5)

MURDER - Conviction - Death sentence - Penal Code s. 221 - Once accused has been found guilty - Judge has no jurisdiction to listen to allocutus - And should not reduce sentence to term of years (H6)

FACTS

The deceased - Memunatu Rasaki was on her way to her husband's farm in Moro Local Government Area of Kwara State. She had a baby on her back and her young son was by her side. Suddenly accused/respondent approached her and repeatedly at-

tacked her with a machete. However before the attack, she gave the little baby to her young son who ran away with the baby to the village. The deceased sustained serious injuries on her body which eventually led to her death on the spot. Thereafter, respondent ran off and hid in the bush. He was later arrested in his house. Consequently, he was arraigned before the High Court of Kwara State Ilorin for the offence of culpable homicide punishable with death contrary to section 221 of the Penal Code.

At the trial, prosecution/appellant called three witnesses and tendered several exhibits in support of his case. Respondent gave evidence in his defence but called no witness. In a well considered judgment, the learned trial Judge found respondent guilty as charged. However, after listening to allocutus on behalf of respondent, the Judge reduced the sentence of death to 14 years imprisonment. Respondent was not satisfied. Hence, he filed appeal to the Court of Appeal Ilorin Division. The court on its own raised the defence of insanity and eventually discharged and acquitted respondent of the offence on the ground of lack of motive for murder. Dissatisfied, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower court was right to have held that the defence of insanity avails the accused/respondent.
2. Whether the lower court was right to have held that the prosecution did not prove the essential ingredients of the offence of culpable homicide.

HELD (Unanimously allowing the appeal per **RHODES-VIVOUR JSC**)

MURDER - Defence - Consideration of

1. The trial judge raised the issue of insanity and invited counsel to address him on it. Learned counsel for the respondent said he was not relying on the defence of insanity (see page 68 of the Record of Appeal). Insanity was considered for the first time by the Court of Appeal and reliance was placed solely on exhibit P8, the respondent's confessional statement. The well settled position of the law is that in a charge of Murder

(homicide) after the court considers the defence raised by the accused person, the court should go the extra mile to consider other defence available to the accused person on the facts established in the trial court. Failure of the trial court to consider other defences that may be available to the accused person would not amount to miscarriage of justice. The Appeal Court would consider defences available to the accused person if such defences were not considered by the trial court. (p. 2547 G)

CRIMINAL LAW - Sanity - Presumption of

2. What the Court of Appeal did was to examine the confessional statement of the respondent, (exhibit p.8). Not being able to comprehend the reason for the vicious attack on the deceased by the respondent, concluded that the respondent must have been insane. Is this the correct position of the law? The position of the law is that every person is presumed to be sane until the contrary is proved. See (section 27 of the Criminal Code). (p. 2549 F)

CRIMINAL LAW - Insanity - Proof

3. The burden of proof of insanity lies on the accused person and that burden is discharged on the balance of probabilities as in civil cases.

He must show that the evidence he relies on sufficiently proves insanity. To satisfy the court that the defence of insanity can be sustained, the accused person must show that at the time of committing the offence he was suffering from mental disease which affected his will and ability to control his action. The respondent can only be found not guilty of culpable homicide by reason of insanity if and only if he is able to establish the defence of insanity under section 51 of the Penal Code. Put in another way the defence must prove that:

(a) at the time the offence was committed the accused was suffering from mental disease or natural mental infirmity,

(b) as a result of the accused person's state of mind he was (sic) doing, or control his actions (sic) or to appreciate the gravity of his action. (p. 2550 A)

MURDER - Ingredients - Proof

4. For the prosecution to succeed in a charge of culpable homicide under section 221 of the Penal Code the following must be proved beyond reasonable doubt:

- B (i) **that the person the accused person is charged of killing died.**
- (ii) **that the deceased died as a result of an act by the accused person.**
- C (iii) **that the act of the accused person was intentional and he knew that death or bodily harm was its likely consequence.** (p. 2552 A)

MURDER - Mens rea - Presumption

- D **5. The respondent inflicted several machete cuts on the body of Memunatu Rasdaq, (deceased) with a machete. The postmortem report and postmortem examination, exhibits P6 - P7 confirms this fact. She bled to death. The machete used to inflict the injuries which led to instant death is a lethal weapon.**
- E **The settled position of the law is that a man is presumed to intend the natural consequences of his act. Where, as in this case the respondent caused Memunatu Rasdaq (deceased) serious body injuries from which she died on the spot, he is presumed to have intended to kill her and he is guilty of culpable**
- F **homicide irrespective of this intentions. Whether death was the probable or only a likely consequence of the act is a question of fact. The learned trial judge was correct when he found the respondent guilty of culpable homicide.** (p. 2553 H)

- G *MURDER - Conviction - Death sentence*

- 6. None of the circumstances in subsections (1) to (7) of section 222 could avail the respondent and so the learned trial judge found him guilty of culpable homicide under section 221 of the Penal Code. Once a judge finds an accused person guilty of culpable homicide under section 221 of the Penal Code, the only sentence he can pronounce is death. A judge has no jurisdiction to listen to allocutus and no discretion to reduce death sentence to a term of years once the accused person**
- H

has been found guilty under section 221 of the Penal Code. The sentence of 14 years imprisonment after finding the accused/respondent guilty of culpable homicide contrary to section 221 of the Penal Code was wrong, it is a material irregularity in the proceedings of the trial court and this court could remedy it so that substantial justice might be done. The correct judgment of the trial court is that the respondent is/was sentenced to death. (p. 2556 H) B

NOTABLE POINT OF INTEREST C

RHODES-VIVOUR JSC

1. Record of Appeal must be properly prepared

Before I conclude I must observe that the Record of Appeal was badly prepared. A Record of Appeal is a very important document that the appeal court relies on when hearing an appeal. The courts are bound by the Record of Appeal and so all proceedings relevant for the appeal as they occurred must be reproduced in the Record of Appeal. A proper table of contents must contain all that is in the Record of Appeal with correct pages reflected. In this Record of Appeal the judgment of the trial court was from page 70 to 84 while the allocutus is before the judgment on pages 68 to 69. It is elementary that allocutus comes after the finding of guilt and not before the judgment is read. The importance of this observation can be seen page 84 where the learned trial judge said: D E

“From the totality of evidence before the court, the accused person is found guilty of the offence of culpable homicide punishable with death. He is convicted of the offence of culpable homicide punishable with death contrary to section 221 of the Penal Code.” F

According to the above the respondent was sentenced to death. But turning to page 69 of the Record of Appeal one sees that the respondent was sentenced to 14 years imprisonment with hard labour after the learned trial judge listened to a moving allocutus. Once again Registrars or counsel who have the responsibility to prepare Record of Appeal should ensure that proceedings are collated with care to reflect the sequence in which they occurred. They must be legible and properly paged. That sadly was not the case under reference. (p. 2554 C) G H

REPRESENTATION

K. Ajibade A. G. of Kwara State with J. A. Mumini DPP Kwara State and O. S. Balogun SCI Ministry of Justice Kwara State, for Appellant
 B Dr. A. Onigbinde with R. Baiyesha, S. David, D. Adeyemi, for Respondent

CASES REFERRED TO

- Oladele v. State (1993) 1 NWLR (pt. 269) 294
- C Ahmed v. State (2000) FWLR (pt. 34) 438
- Nwankwoala v. State (2006) ALL FWLR (pt. 339) 801
- Ojo v. State (1973) 11 SC 331
- Queen v. Yaro Biu (1964) NNLR 45
- Idowu v. State (1972) SC 10
- D Emeryi v. State (1973) 3 SC 215
- Arisa v. State (1988) 3 NWLR (pt. 83) 386
- Origbo v. State (1972) 11 SC 133
- Ughiakha v. State (1984) 2 SC 1
- Sule v. State (2009) 6-7 NMLR 40
- E Bakare v. State (1987) 3 SC 1
- Alabi v. State (1993) 7 NWLR (pt. 307) 511
- Shehu v. State (2010) 4 SCM 180
- Miller v. Minister of Pensions (1947) 2 ALL ER 372

F **STATUTES REFERRED TO**

Penal Code, ss. 51, 221
 Criminal Code, s. 28
 Evidence Act, s. 138(1)

G **LEAD JUDGMENT BY RHODES-VIVOUR JSC**

This is an appeal from the judgment of the Court of Appeal, Ilorin Division delivered on the 18th day of July, 2011. That court set aside the conviction and sentence of 14 years imprisonment with
 H hard labour passed on the appellant by Saleeman J. of an Ilorin High Court and entered judgment acquitting and discharging the appellant.

The facts are these: On the 18th day of June, 2007 the deceased, Memunatu Rasaki was on her way to her husband's farm in

Moro Local Government Area of Kwara State. She had a baby on her back and her young son was by her side. Suddenly the appellant approached her and repeatedly attacked her with a machete. She had several cuts on her body and lost a lot of blood. Before the attack she gave the baby to her young son who ran off with his baby sister to the village. She died on the spot from a catalogue of appalling injuries. After the bloody massacre the appellant ran off and hid in the bush. He was later arrested in his house. On these facts the appellant was charged for the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code.

At trial, the state called three witnesses. The following were tendered and admitted as exhibits.

1. P1 - Cutlass
2. P2 - P5 (3 pictures of dead woman)
3. P6 - P7 (Medical Report, postmortem examination)
4. P8 - Confessional statement of accused/respondent)

The appellant gave evidence in his defence but called no witness. In a well considered judgment the learned trial judge in the concluding paragraph said:

“The prosecution has established the ingredients necessary in this homicide case. It has thus proved the case beyond reasonable doubt as required by Section 308 of the Evidence Act... From the totality of evidence before the court, the accused person is found guilty of the offence of culpable homicide punishable with death. He is convicted of the offence of culpable homicide punishable with death contrary to Section 221 of the Penal Code.”

The respondent was not satisfied with the sentence passed on him. He lodged an appeal. It was heard by the Court of Appeal Ilorin Division. In the penultimate paragraph the Court of Appeal said:

“In view of the above, I hereby over-rule the decision of the lower court and set aside, by that means the conviction and sentence as found in the judgment of the trial court dated 1st day of June 2010 as reflected on page 84 of the proceedings or conviction and sentence of 14 years imprisonment as argued by the respondent counsel in this appeal. The appellant is hereby discharged and acquitted.”

And in the final paragraph. The Court of Appeal directed as follows:

“Further the Nigerian Prison Authority is hereby directed to

take him to a Government Psychiatrist Hospital for check-up and treatment before his final release.”

This appeal is against that judgment. Briefs of argument were filed and exchanged. The appellant’s brief was deemed filed on the 21st day of February 2013 while the respondent’s brief was also
B deemed filed on the 21st day of February 2013.

Learned counsel for the appellant formulated two issues for determination. They are:

1. Whether the lower court was right to have held that the
C defence of insanity avails the accused/respondent.
2. Whether the lower court was right to have held that the prosecution did not prove the essential ingredients of the offence of culpable homicide.

On his part learned counsel for the respondent also formu-
D lated two issues. They are:

1. Whether their lordships of the Court of Appeal Ilorin Judi-
cial Division were wrong to have held that the trial court did not consider the defence of insanity, at the trial of the respondent herein.
2. Whether the appellant proved the ingredients of culpable
E homicide against the respondent at the trial court.

After considering the issues formulated by both sides, I am of the view that the issues formulated by the appellant best addressed the appellant’s grievance in this appeal. Those issues shall be consid-
F ered. At the hearing of the appeal on the 21st day of February 2013 learned counsel for the appellant, Mr. K. Ajibade, the Attorney-Gen-
eral of Kwara State adopted the appellant’s brief deemed filed on the 21st day of February 2013 and urged this court to allow the appeal.

Learned counsel for the respondent, Dr. A. Onigbinde adopted
G the respondent’s brief deemed filed on the 21st day of February 2013. He urged this court to dismiss the appeal and affirm the deci-
sion of the Court of Appeal that acquitted and discharged the appel-
lant.

ISSUE 1

H Whether the lower court was right to have held that the de-
fence of insanity avails the accused/respondent.

Learned counsel for the appellant observed that from the to-
tality of the evidence led before the trial court the defence of insanity cannot avail the respondent, contending that the Court of Appeal

was wrong to conclude that the trial judge ought to have considered the defence of insanity raised in exhibit P8 before convicting the respondent. He submitted that there was no evidence of insanity or evidence of past history of insanity given on the respondents behalf prior to the date of the incident, contending that the contents of exhibits P8 is insufficient in law to conclude that the respondent is insane. Reliance was placed on *Oladele v. State* (1993) 1 NWLR (Pt.269) p.294, *Willie v. State* (1986) NWLR p.213. He urged this court to resolve this issue in favour of the appellants. B

Learned counsel for the respondent observed that the defence insanity was raised and disclosed on the confessional statement of the respondent, (exhibit p8) and so it was the duty of the trial court to hold that the respondent was not of sound mind and acquit and discharge him. Reliance was placed on *Ahmed v. State* (2000) FWLR (Pt.34) p.438. He argued that the trial court on its own ought to consider any defence that favours the accused person without the accused specifically raising same. Reliance was placed on *Nwankwoala v. State* (2006) ALL FWLR (pt.339) p.801. C D

Contending that failure of the trial court to consider the defence of insanity has occasioned a miscarriage of justice. He urged this court to hold that the Court of Appeal was correct to acquit and discharge the respondent on the fact that he was insane when he committed the offence. E

The respondent, as accused person pleaded not guilty to the charge of culpable homicide contrary to section 221 of the Penal Code. Trial proceeded and his defence was Alibi. Aside from Alibi, he argued that the evidence against him was hearsay and that it was not safe to convict him solely on his confessional statement moreso as there was no nexus between the deceased and him. He never even remotely referred to his mental state or relied on the defence of insanity. F G

The trial judge raised the issue of insanity and invited counsel to address him on it. Learned counsel for the respondent said he was not relying on the defence of insanity (see page 68 of the Record of Appeal). Insanity was considered for the first time by the Court of Appeal and reliance was placed solely on exhibit P8, the respondent's confessional statement. The well settled position of the law is that in a charge of Mur- H

der (homicide) after the court considers the defence raised by the accused person, the court should go the extra mile to consider other defence available to the accused person on the facts established in the trial court. Failure of the trial court to consider other defences that may be available to the accused person would not amount to miscarriage of justice. The Appeal Court would consider defences available to the accused person if such defences were not considered by the trial court.

See Ojo v. State (1973) 11 SC. p.331

C The Court of Appeal had this to say on the state of mind of the respondent.

“...However in this appeal, the plea of insanity is what the appellant is anchoring his defence upon so defers completely in essence from Sule’s case”

D On page 43 of the Record of Appeal, the respondent entered a plea of not guilty and on page 67 of the Record of Appeal the learned trial judge raised the issue of the respondent’s state of mind suo motu and called on counsel to address him on it. This is what transpired.

E State counsel: By position of the law, the onus is on the accused to raise the defence of insanity.

Accused counsel: We have not raised any defence of insanity. However, if the court feels in the interest of justice that the levy (sic) of sanity of the accused be tested or ascertain, we have no objection.

F It is clear from the above the accused/respondent at no time in the trial court entered a plea of insanity. It was in the Court of Appeal that insanity was considered for the first time. The Court of Appeal examined exhibit P8 and said:

G *“...it is necessary at this juncture to point out that the lower court never considered the defence in the statement of the appellant...”*

After examining cases on insanity and exhibit P8 the Court of Appeal said:

H *“...I am of the candid view that as at the time the appellant committed the act he was not himself, he never ran away as he was arrested in the village, this is contrary to other cases where the accused will run away. If the lower court had considered this available defence she would not have come to that conclusion.”*

With the above reasoning the Court of Appeal acquitted and discharged the respondent and ordered the Nigerian Prison Authority to take the respondent to a Government Psychiatrist Hospital for check-up and treatment before his final release.

I will reproduce exhibit P.8, the respondent's confessional statement made on 19/6/2007 relied on by the Court of Appeal to come to the conclusion that the defence of insanity is well established therein.

"...I know One Memunatu Rasaan, we are both living together at Atere Village via Rijoyi, I did not have any quarrel with her before. As I was coming from farm that one Tunde wife gave me to weed for her, I met Memunatu along the Road as she was going to her husband farm with one of his son and she backed the other small one. As I removed cutlass I cut her she quickly removed her daughter that is on her back and handed over her to the senior one. From there I started cutting her with my cutlass, she did not offend (sic) me before and nobody send me to go and kill her. I did not decide to have sex with her. She did not die immediately but I saw her struggling to death, then the son carried the junior sister and ran to the village and myself ran away and hide myself in the bush. The vigilante people did not arrest me in the bush, I was arrested in the village..."

The cutlass that they brought to the Police Station is the one that I used to kill the woman. As I was matcheting her she was shouting but I did not live her. It is after I have done the crime I came to realize that what I have done is bad. I cannot say anything because I know that anybody that killed person himself will be killed... I have never killed anybody before yesterday 18/6/2007 was the first time..."

What the Court of Appeal did was to examine the confessional statement of the respondent, (exhibit p.8). Not being able to comprehend the reason for the vicious attack on the deceased by the respondent, concluded that the respondent must have been insane. Is this the correct position of the law? The position of the law is that every person is presumed to be sane until the contrary is proved. See (section 27 of the Criminal Code).

By virtue of Section 51 of the Penal Code (section 28 of the Criminal Code):

"Nothing is an offence which is done by a person who, at the

time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

The burden of proof of insanity lies on the accused person and that burden is discharged on the balance of probabilities as in civil cases. See Queen v. Yaro Biu 1964 NNLR p.45, Idowu v. State 1972 SC p.10, Emeryi v. State 1973 3 SC p.215, Arisa v. State 1988 3 NWLR pt. 83 p. 386. **He must show that the evidence he relies on sufficiently proves insanity. To satisfy the court that the defence of insanity can be sustained, the accused person must show that at the time of committing the offence he was suffering from mental disease which affected his will and ability to control his action. The respondent can only be found not guilty of culpable homicide by reason of insanity if and only if he is able to establish the defence of insanity under section 51 of the Penal Code. Put in another way the defence must prove that:**

(a) at the time the offence was committed the accused was suffering from mental disease or natural mental infirmity, and

(b) as a result of the accused person's state of mind he was doing, or control his actions or to appreciate the gravity of his action.

There was not even the remotest attempt by the respondent to establish the defence of insanity. In fact learned counsel for the respondent made it abundantly clear that insanity was not his defence when he said.

"We have not raised any defence of insanity"(see page 68) of the Record of Appeal).

In view of the above the Court of Appeal fell into a painful error when in the absence of any evidence whatsoever it proceeded to sustain the defence of insanity and acquit and discharge the respondent. The question whether the defence amounts to one of insanity is a question of law to be decided by the judge on the basis of medical evidence. That is to say the accused person must show that he was insane within the meaning of section 51 of the Penal Code.

The Court of Appeal fell into grave error when it inferred (wrongly) after examining exhibit P8 that the respondent was insane

because there was absence of evidence of motive for the Murder. On no account should insanity be inferred on such reasoning. Insanity is established by compelling medical evidence produced by the accused person. It is not the business of the court to go on a voyage looking for motive. This is so because the absence of motive is not enough. The onus is not discharged by the respondent denying his own actions or/and claiming that he did not know what came over him when he killed Memmunatu Rасаq. Rather the onus on the accused respondent is discharged by credible evidence which was never produced in court. The defence of insanity ought to and must be rejected since no evidence of previous abnormality was given. See *Origbo v. State* (1972) 11 SC p.133, *Ughiakha v. State* (1984) 2 SC p.1.

The finding by the Court of Appeal that the defence of insanity was raised and disclosed on the confessional statement was wrong. The Court of Appeal was wrong to have held that the defence of insanity avails the accused/respondent.

ISSUE 2

Whether the lower court was right to have held that the prosecution did not prove the essential ingredients of the offence of culpable homicide.

Learned counsel for the appellant submitted that the prosecution (appellant) established the essential ingredients of the offence of culpable homicide pursuant to Section 221 of the Penal Code, contending that the act of the respondent was intentional with the knowledge that death or bodily harm was its probable consequence. Reliance was placed on *Sule v. State* (2009) 6 - 7 NMLR p.40, *Mufutau Bakare v. State* (1987) 3 SC p.1. Concluding, he submitted that the appellant proved the case beyond reasonable doubt. He urged this court to allow the appeal.

Responding, learned counsel for the respondent argued that at the material time when the deceased lost her life, the respondent lacked the capacity to have the required guilty knowledge or murderous intention, due to his being unable to appreciate what he was doing, contending that the third ingredient of murder is lacking. Reliance was placed on *Alabi v. State* (1993) 7 NWLR (Pt.307) p.511, *Shehu v. State* (2010) 4 SCM p.180. He further argued that the third ingredient was not satisfactorily proved and so the case was not

proved beyond reasonable doubt, contending that the Court of Appeal was justified to conclude that the trial court did not afford the respondent the defence of insanity. He urged this court to dismiss the appeal and affirm the judgment of the Court of Appeal.

For the prosecution to succeed in a charge of culpable homicide under section 221 of the Penal Code the following must be proved beyond reasonable doubt:

(i) that the person the accused person is charged of killing died.

(ii) that the deceased died as a result of an act by the accused person.

(iii) that the act of the accused person was intentional and he knew that death or bodily harm was its likely consequence.

Both sides in this appeal agree that (i) and (ii) above were proved beyond reasonable doubt. Learned counsel for the respondent agrees with the Court of Appeal that (iii) was not proved beyond reasonable doubt. In acquitting and discharging the respondent the Court of Appeal had this to say:

“...Back to the ingredients, it is clear from the record that there was the death of a human being and it is clear that the deceased died as a result of machete cut from the appellant, but the bone of contention is was the appellant that macheted the deceased to death sane or insane as of the time of his action?”

The Court of Appeal answered its question when it said:

“..I am of the candid view that as at the time the appellant committed the act, he was not himself, he never ran away as he was arrested in the village...”

The reasoning of the Court of Appeal was that at the time, the respondent hacked Memunatu Rasaq to death he was suffering from mental disease, and the position of the law is that the respondent is exempted from criminal responsibility in view of section 51 of the Penal Code. Earlier on in this judgment I made it abundantly clear that the respondent was not insane, simply because there was not a shred of evidence put forward by his counsel to support the said defence. I further highlighted the fact that his counsel said that he would not be relying on the defence of insanity (see page 68 of the Record of Appeal). Furthermore what the Court of Appeal did was

to infer that the respondent was insane simply because the court was unable to identify motive, oblivious of the fact that insanity is not established by inference but by compelling evidence which includes but not restricted to a Medical Report. In view of these grave lapses and wrong application of the law on insanity ingredient (iii) is proved beyond reasonable doubt as the provision of section 51 of the Penal Code does not avail the respondent. B

Once all the ingredients of an offence, have been proved by the prosecution to the satisfaction of the court, the charge is said to have been proved beyond reasonable doubt and the guilt of the accused person is pronounced by the learned trial judge. C

Indeed section 138(1) of the Evidence Act requires crimes to be proved beyond reasonable doubt. In *Miller v. Minister of Pensions* (1947) 2 ALL ER p.372 Lord Denning MR, said that:

"Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted to fanciful possibilities to deflect the cause of justice. If the evidence is so strong against a man as leaves only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable the case is proved beyond reasonable doubt but nothing short of that will suffice." See also *Lori v. State* 1980 8 - 11 SC p.81. E

Memunatu Rasaq died after being dealt repeated machete cuts by the respondent and at the time the respondent did the heinous act he was of sound mind. In view of this finding the ingredients to prove culpable homicide under section 221 of the Penal Code were proved beyond reasonable doubt. The trial court was right in its conclusion while the Court of Appeal was wrong. F

I must observe that in a charge of culpable homicide, after the trial judge considers the defences put forward by the defence counsel, the judge should proceed to consider only defences not considered by the defence and which are available on the facts established in the trial court. The facts established at trial is one of cold blooded murder for reasons best known to the respondent, moreso as learned counsel for the respondent at no time intended to rely on the defence of insanity even when prompted by the learned trial judge. G H

The respondent inflicted several machete cuts on the body of Memunatu Rasaq, (deceased) with a machete. The postmor-

tem report and postmortem examination, exhibits P6 - P7 confirms this fact. She bled to death. The machete used to inflict the injuries which led to instant death is a lethal weapon. The settled position of the law is that a man is presumed to intend the natural consequences of his act. Where, as in this
 B **case the respondent caused Memunatu Rasag (deceased) serious body injuries from which she died on the spot, he is presumed to have intended to kill her and he is guilty of culpable homicide irrespective of this intentions. Whether death was**
 C **the probable or only a likely consequence of the act is a question of fact. The learned trial judge was correct when he found the respondent guilty of culpable homicide.**

Before I conclude I must observe that the Record of Appeal was badly prepared. A Record of Appeal is a very important document that the appeal court relies on when hearing an appeal. The courts are bound by the Record of Appeal and so all proceedings relevant for the appeal as they occurred must be reproduced in the Record of Appeal. A proper table of contents must contain all that is in the Record of Appeal with correct pages reflected. In this Record
 E of Appeal the judgment of the trial court was from page 70 to 84 while the allocutus is before the judgment on pages 68 to 69. It is elementary that allocutus comes after the finding of guilt and not before the judgment is read. The importance of this observation can be seen page 84 where the learned trial judge said:

F *“From the totality of evidence before the court, the accused person is found guilty of the offence of culpable homicide punishable with death. He is convicted of the offence of culpable homicide punishable with death contrary to section 221 of the Penal Code.”*

G According to the above the respondent was sentenced to death. But turning to page 69 of the Record of Appeal one sees that the respondent was sentenced to 14 years imprisonment with hard labour after the learned trial judge listened to a moving allocutus. Once again Registrars or counsel who have the responsibility to prepare Record
 H of Appeal should ensure that proceedings are collated with care to reflect the sequence in which they occurred. They must be legible and properly paged. That sadly was not the case under reference.

I now turn to the sentence passed by the learned trial judge. The judgment of the trial court is from page 70 to 84 of the Record

of Appeal. The concluding paragraph of the judgment reads:

“The prosecution has established the ingredients necessary in this homicide case. It has thus proved the case beyond reasonable doubt as required by section 308 EA. See the case of State v. Azeez 2008 35 NSCQR p. 426. From the totality of evidence before the court, the accused person is found guilty of the offence of culpable homicide punishable with death. He is convicted of the offence of culpable homicide punishable with death contrary to section 221 of the penal code.”

Page 69 of the Record of Appeal contains allocutus proceedings. After the learned trial judge listened to counsel, his lordship said:

“The Court will temper justice with mercy hoping fervently that the convict will embrace the golden opportunity and be a complete changed being and even a professional in any of the training available in prison, the convict Babangida John is sentenced to 14 years imprisonment with hard labour”.

In the judgment the learned trial judge found the respondent guilty of the offence of culpable homicide punishable with death. After listening to allocutus the learned trial judge sentenced the accused person/respondent to 14 years hard labour. The questions to be answered are:

1. What is the sentence to be pronounced when an accused person is found guilty of culpable homicide contrary to section 221 of the Penal Code.

2. Does a trial judge have discretion or jurisdiction to reduce a sentence under section 221 of the Penal Code.

Section 221 of the Penal Code states:

“221. Except in the circumstances mentioned in section 222 culpable homicide shall be punished with death -

(a) If the act by which the death is caused is done with the intention of causing death; or

(b) If the doer of the act knew or had reason to know that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause.”

Section 222 of the Penal Code reads:

“222(1) Culpable homicide is not punishable with death if the offence whilst deprived of the power of self control by grave and

sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

(2) Culpable homicide is not punishable with death if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

(3) Culpable homicide is not punishable with death if the offender, being a public servant acting for the advancement of public justice or being a person aiding a public servant so acting exceeds the powers given to him by law and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant or for assisting such public servant in the due discharge in such duty and without ill will towards the person whose death is caused.

(4) Culpable homicide is not punishable with death if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel and unusual manner.

(5) Culpable homicide is not punishable with death when the person whose death is caused being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

(6) Culpable homicide is not punishable with death where a woman intentionally causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the children or by reason of the effect of lactation consequent upon the birth of the child.

(7) Culpable homicide is not punishable with death when a person causes the death of another by doing any rash or negligent act.

None of the circumstances in subsections (1) to (7) of section 222 could avail the respondent and so the learned trial judge found him guilty of culpable homicide under section 221 of the Penal Code. Once a judge finds an accused

person guilty of culpable homicide under section 221 of the Penal Code, the only sentence he can pronounce is death. A judge has no jurisdiction to listen to allocutus and no discretion to reduce death sentence to a term of years once the accused person has been found guilty under section 221 of the Penal Code. The sentence of 14 years imprisonment after finding the accused/respondent guilty of culpable homicide contrary to section 221 of the Penal Code was wrong, it is a material irregularity in the proceedings of the trial court and this court could remedy it so that substantial justice might be done. The correct judgment of the trial court is that the respondent is/was sentenced to death.

In conclusion this appeal has merit. The judgment of the Court of Appeal is hereby set aside and the judgment of the High Court in Suit No.KWS/4C/2009 delivered on the 1st day of June, 2010 by Suleiman, J. convicting the respondent of culpable homicide punishable with death under section 221 of the Penal Code and sentence of death are hereby restored.

MOHAMMED JSC

The appeal is against the decision of the Court of Appeal Ilorin of 18th July, 2011 which set aside the conviction and sentence of 14 years passed on the Appellant for the offence of culpable homicide punishable with death and discharged and acquitted the Appellant. Not satisfied with the Court of Appeal's decision, the prosecution is now on appeal to this Court.

The facts are not in dispute. On 18th June, 2007, the Appellant met the deceased Memunat Rasaki on her way to the farm and matcheted her to death in the presence of her young son and a baby she was carrying on her back. The Appellant inflicted several cuts by cutlass on the deceased until her death. The son of the deceased escaped with the baby of the deceased from the scene and alerted her husband. Appellant escaped from the scene and was arrested later.

The 2 issues raised in the appeal are -

(1) Whether Court of Appeal was right in holding that the defence of insanity avail the accused Respondent.

(2) Whether Court of Appeal was right to have held that the prosecution did not prove the essential ingredients of the offence of culpable homicide.

From the evidence on record, the fact that there was no reason for the accused person's attack on the deceased resulting in her death, does not mean that the accused was insane. The law is trite that the presumption of sanity on the accused can only be dislodged by the accused himself who alleged insanity on the balance of probability see *R v. Echem* (1952) 14 WACA 158 and *Embryi v. The State* (1973) 3 S.C. 215. The evidence in the statement of the accused Exhibit 8 that he did not know what caused him to attack and kill the deceased, is not enough evidence disclosing insanity especially when throughout the trial, the accused did not show any evidence of insanity. Also there is no evidence of past history of insanity on the part of the accused person.

On whether or not the offence of culpable homicide punishable with death had been proved against the Respondent, the findings of the trial Court at page 83 of the record shows that the offence had been proved beyond reasonable doubt against the Respondent to justify his conviction. It is for the above and fuller reasons contained in the lead judgment that I also see merit in this appeal which is hereby allowed. The judgment of the Court below of 18th July, 2011 discharging and acquitting the Respondent is set aside and replaced with the judgment of the trial Court finding the Appellant guilty of culpable homicide punishable with death under Section 221 of the Penal Code, the only lawful punishment for which under the law is the sentence of death which is hereby passed on the Respondent Babangida John who shall be hanged by the neck until he is dead.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is meritorious and should be allowed. I agree that the court below erred in finding the respondent not guilty of culpable homicide contrary to section 221 of the penal Code for causing the death of the deceased -

Memunatu Rasaki. In a rather sanguine manner, the respondent hacked her down by inflicting machete cuts on her severally until she died on the spot while on the way to her husband's farm. After he was satisfied that the woman had given up the ghost, the respondent ran away to hide in the bush but was later arrested on the same day - 18th June, 2007. B

The judge garnered evidence adduced by both sides and was duly addressed. She found the offence proved under Section 221 of the Penal Code but sentenced him to a term of 14 years imprisonment. The respondent appealed to the court below which clung tenaciously to defence of insanity which his counsel did not show that the respondent was relying on, at the trial court. There was no medical evidence as to the state of mind of the respondent before the offence was committed. The court below, 'filled with the milk of human kindness', as it were, relied heavily on issue of insanity to acquit and discharge the respondent. C D

This appeal by the State is against the stance posed by the court below. Before this court, briefs of argument were filed and exchanged. The two issues formulated by the appellant read as follows:- E

1. Whether the lower court was right to have held that the defence of insanity avails the accused/respondent.

2. Whether the lower court was right to have held that the prosecution did not prove the essential ingredients of the offence of culpable homicide. F

The respondent's learned counsel also decoded two issues for determination as follows:-

1. Whether their lordships of the Court of Appeal Ilorin Judicial Division were wrong to have held that the trial court did not consider the defence of insanity, at the trial of the respondent herein. G

2. Whether the appellant proved the ingredients of culpable homicide against the respondent at the trial court.

Let me say it right away that the burden of proving insanity in defence to a criminal charge lies on the accused. See: *Queen v. Yaro Biu* (1964) NNLR 45; *Idowu v. The State* (1972) All NLR 435 at 443; *Emeryi v. The State* (1973) 3 SC 215. It is basic that for an accused to establish the defence of insanity, he must depict the following: H

1. That at the material time of committing the offence, the accused was suffering either from mental disease or natural mental infirmity, and

2. That the mental disease or natural mental infirmity was such that at the relevant time the accused was as a result, deprived of capacity -

(i) to control his action; or

(ii) to know that he ought not to do the act or make the omission - Refer to *Sanusi v. The State* (1984) 10 SC 166; *Ihonre v. The State* (1987) 4 NWLR (Pt. 67) 778.

The respondent herein, had no medical evidence as to the state of his mind immediately before the offence was committed. Medical evidence is a sine qua non to rest a plea of insanity. See: *Idowu v. The State* (supra) at page 443. It cannot just be presumed from the content of Exhibit 8 - the respondent's statement in which he evinced sufficient knowledge of the consequences of his action when he said -

"She (the deceased) did not die immediately but I saw her struggle to death when the son carried his junior sister and ran to the village and myself ran to the bush."

There was no speck of medical evidence of insanity on the respondent. No evidence was proffered by him to establish the factors of mental infirmity. The court below, no doubt, erred when it found in favour of the respondent on issue of insanity. A judge should avoid apparent sentimental adjudication. He must call a spade by its real name; not a shovel; especially when a decision relates to a capital offence, as herein.

For the above and the detailed reasons adumbrated in the lead judgment, I too hereby allow the appeal and set aside the decision of the court below. The conviction of the respondent for culpable homicide punishable with death by the trial court is hereby restored. I abide with the further warranted order contained in the lead judgment.

H

PETER-ODILI JSC

I am in agreement with the judgment delivered by my learned brother, Bode Rhodes-Vivour JSC. I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Ilorin Judicial Division delivered on the 18th day of July, 2011. The respondent herein (appellant before the lower court) was arraigned before the Kwara State High Court, Coram: Hon. Justice Halima Suleiman on a one count charge of culpable homicide pursuant to Section 221 of the Penal code. At the end of the trial, the learned trial Judge found him guilty as charged and convicted him with a 14 years imprisonment sentence. B

Dissatisfied with his sentence the accused/respondent appealed to the Court of Appeal, Ilorin which court set aside the conviction and sentence and discharged and acquitted the respondent. Dissatisfied the appellant has come before this court on two grounds. C

FACTS

On the 18th day of June 2007 the accused was alleged to have matcheted a woman, one Memunat Rasaki to death. The incident took place at a remote farming settlement called Rigiyo Atere camp via Banni in Moro Local Government Area of Kwara state. It was alleged that the deceased was on her way to the farm in the company of her young son and a baby which was backed by her. The accused accosted her and attacked her with a cutlass and he did not stop cutting her until she died. Her son escaped with the baby and alerted the husband of the deceased. The accused escaped from the scene and was arrested later in the evening that day by a combined team of local vigilantes and the police. D E

The hearing of the appeal took place on the 21st day of February 2013, at which learned counsel for the appellant adopted the brief of argument settled by J. A. Mumini Esq. and filed on 0(sic)/2/12. In the brief were distilled two issues for determination which are as follows: F

1. Whether the lower court was right to have held that the defence of insanity avails the accused/respondent (Ground 1) G

2. Whether the lower court was right to have held that the prosecution did not prove the essential ingredients of the offence of culpable Homicide (Ground 2) H

The learned counsel for the respondent adopted their brief settled by Dr. Akin Onigbinde filed on 21st February 2013. Learned counsel also framed two issues for determination. viz:

1. Whether their Lordships of the Court of Appeal, Ilorin Judi-

cial Division were wrong to have held that the trial court did not consider the defence of insanity, at the trial of the respondent herein.

2. Whether the appellant proved the ingredients of culpable homicide against the respondent at the trial court.

The two issues of the parties are substantially similar but I would want to use the issues as couched by the appellant.

ISSUE ONE

This issue asks the question if the court of Appeal was right to have held that the defence of insanity availed the accused/respondent. In answer to poser, learned counsel for the appellant said the defence of insanity was not available to the accused/respondent since the rebuttal of the presumption of sanity rested with him to establish insanity on the balance of probabilities. He cited *R. v. Echem* (1952) 14 WACA 158; *Emeryi v The State* (1973) 3 SC 215.

Learned counsel stated at his arrest, the respondent made Exhibit 8 wherein he admitted killing the deceased and said he did not know what came over him to do so. That there was no evidence that respondent exhibited any abnormality throughout the trial and did not raise insanity as a defence which would have brought on a consideration thereof by the trial court. That it was not enough for the court to utilize what was contained in Exhibit 8 to found the insanity at the time of the commission of the offence. He referred to *Ntiita v. The State* (1993) 3 NWLR (Pt. 288) 505; *Oladele v The State* (1993) 1 NWLR (pt.269) 294; *Willie v The State* (1968) NMLR 213.

It was submitted for the appellant that in a rare show of judicial tolerance and flexibility, the learned trial judge called on the defence counsel to address the court on the mental state of the accused person but the defence counsel declined to lead evidence suggesting mental infirmity or insanity of the accused at the time of the offence. He cited *Jakida v. The State* (1969) 6 NSCC 270 at 273; *Idowu v The State* (1972) ALL NLR 435 at 443.

Learned counsel contended that there was no medical report of insanity from the accused or any evidence led by the defence establishing the ingredients of mental infirmity. Reacting to the contentions of the appellants, learned counsel for the respondent submitting that the long standing legal principle is that in criminal matters the court should not restrict itself to the defence raised by the accused person but must consider also all other defences available open

to the accused whether by the accused or not. He relied on Ahmed v. State (2001) FWLR (pt.34) 438 at 468; Oguntoru v State (1996) 2 NWLR (Pt.432) 503.

It was further submitted for the respondent that the defence of insanity was raised and disclosed in the confessional statement of the respondent, Exhibit 8 from which can be seen that the necessary mens rea at the material time was absent and there was no premeditation to commit the offence of murder. He cited Section 51 of the penal code. Okeke v State (2003) FWLR (pt. 159) 1381 at 1429 - 1430 etc. B

The issue to be resolved here is the matter of the defence of insanity which the lower court held availed the appellant on the ground that in Exhibit 8, the extra-judicial statement of the appellant which was confessional raised the issue of insanity. There is a natural presumption of sanity with capacity of knowing what he is doing which inures to an accused. Therefore to rebut that the burden is placed at the feet of the person who alleges otherwise and in this instance would be the appellant who would take the advantage in not only rebutting sanity at the time of the offence but clearly that he lacked mental capacity of knowing what he was doing at the time of committing the offence for which he is charged. In the said Exhibit 8, the appellant admitted killing the deceased woman. He gave details of the transaction from the very beginning, up to the attack on the deceased and concluded by saying that it was after he had killed her that he saw that what he did was bad. I would here refer to the cases of R. v. Echem (1952) 14 WACA 158; Emeryi v The State (1973) 3 SC 215. C D E F

The appellant in evidence in court denied knowing the deceased and did not say much even though he was coherent. He also said nothing that would have created the semblance of a mental instability. The Court of Appeal in reviewing what transpired at the trial court stated: G

“Without being immodest, the appellant stated in his extra-judicial statement;

“it was after I had done the crime that I came to realize, that what I have done is bad. The above should have created a serious doubt in the mind of the lower court and which should have been to the advantage of the appellant who was the accused... On this singular issue, I am of the candid view that as at the time the appellant H

committed the act, he was not himself, he never ran away as he was arrested in the village, this is contrary to other cases where the accused will run away. If the lower court had considered this available defence, she would not have come to that conclusion."

B The stance of the learned counsel for the appellant is that the defence of insanity under the law would not apply even if there was exhibition of insanity at the trial and there was evidence that such unstable mind was absent at the material time of the offence. Indeed that stand of the appellant's counsel is borne out by the essential ingredients upon which the defence of insanity can be anchored.

C To establish the defence of insanity these points must exist, viz:

1. That at the relevant time of the commission of the offence the accused was suffering either from mental disease or natural mental infirmity; and

D 2. That the mental disease or natural mental infirmity was such that at the relevant time the accused was as a result, deprived of capacity:

(a) To understand what he was doing; or

(b) To control his actions: or

E (c) To know that he ought not to do the act or make the omission. See *Ntita v. The State* (1993) 3 NWLR (Pt. 288) 505; *Oladele v. The State* (1993) 3 NWLR (pt.269) 294; *Sanusi v. State* (1984) 10 SC 166.

F The guides above in my humble view do not exist in the case at hand. Even taking the confessional statement of the accused/appellant, has in it, stated clearly the action of a man of full mental capacity at the time he carried out the killing. That he later in that statement mentioned, realising that what he had done was bad is not enough to peg a defence of insanity which the appellant himself did not raise. The trial court even out of the abundance of caution tried to see if such could avail the appellant and found nothing in the evidence to support such. This court had in *Idowu v. The State* (1972) ALL NLR 435 at 443 per Elias CJN held:

H "As regards the plea of insanity, we agree with the learned trial Judge that it is settled law that the burden of proving insanity in defence to a criminal charge lies on the accused: *Queen v. Yaro Biu* (1964) NNLR 45. The learned counsel for the appellant, however, referred us to section 51 of the penal Code which reads:

Nothing is an offence which is done by a person by reason of unsoundness of mind is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Considering the Penal code provision on the defence of insanity in context with the evidence proffered in court, the slant albeit with the serious result of exculpation from blame on account of insanity taken by the Court of Appeal is difficult to either fathom or accept. In fact the only way, the findings and decision of the Appeal court could be explained is that the learned justices of that court allowed their sympathy for the accused/appellant to becloud their application of the law and legal principles that were evidently on display particularly where no medical evidence had been brought forward. In the light of the foregoing there is no hesitation in resolving this issue in favour of the appellant.

ISSUE TWO

This poses the question whether the prosecution did not prove the essential ingredients of the offence of culpable homicide. For the appellant was posited that the legal ingredients of the offence of culpable homicide namely:

- (a) That the deceased had died
- (b) That the death of the deceased came about from the act of the accused
- (c) That the act of the accused was intentional with the knowledge that death or bodily harm was its probable consequence. He relied on *Sule v The State* (2009) 6 - 7 NMLR 40 at 45.

It was further submitted that the third ingredient which had to do with whether or not respondent knew that death or serious bodily harm will be the probable consequence of his act shows that a person is presumed in law to intend the natural consequence of his act. That where a person causes another grievous bodily harm leading to his death, he is presumed to have intended to kill that person and he would be guilty of murder irrespective of his intention. He referred to *Sule v. State* (2009) 6 - 7 NMLR 40 at 48; *Mufutau Bakare v. The State* (1987) 3 SC 1 at 5.

In response, learned counsel for the respondent said the failure of the prosecution to either show through its own witnesses or cross-examination that the accused person was in the right state of mind as at the time of the incident even though the prosecution had

sufficient time to investigate and disprove the defence of insanity will leave a huge lacuna in the case of the prosecution. That was the stand of the Court of Appeal which this court should accept. He cited *Edoho v. The State* (2010) 5 SCM 52 at 80; *Karimu v State* (1989) 1 SCNJ 74 at 92; *Folarin v The State* (1995) 1 NWLR (pt.371) 313.

B The ingredients of the offence of culpable homicide on which the appellant was charged, convicted and sentenced by the trial court but which the appeal court set aside, would be stated hereunder, viz:

(a) That the deceased had died

C (b) That the death of the deceased was resulted from the act of the appellant

(c) That the act of the appellant was intentional with the knowledge that death or bodily harm was its probable consequence, See *Sule v The State* (2009) 6 - 7 NMLR 40 at 45.

D The first two ingredients are not disputed and in the third ingredient what is in issue is whether appellant's act was intentional or not while the respondent's counsel says it was not the Court of Appeal agreed basing on insanity. However after the answer in issue 1 and the fact that the proof put up by the prosecution, beyond reasonable doubt has established the third ingredient. See *Mufutau Bakare v The State* (1987) 3 SC 1 at 5. I see nothing impugning the well established proof of the prosecution as found by the trial court which the Court of Appeal erroneously dislodged. I resolve this issue

E in favour of the appellant.

F From the above and the well reasoned lead judgment, I too allow the appeal. I set aside the decision and orders of the Court of Appeal and restore the judgment of the trial High court which convicted the respondent of culpable homicide punishable with death under Section 221 of the Penal code. That sentence of death by hanging is restored. This is because an allocutus is inapplicable in a sentence of death under Section 221 of the Penal Code as it is not to be varied.

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AKA'AH'S JSC

My learned brother, Rhodes - Vivour JSC made available to me the draft of his well articulated judgment. I am in complete agreement with his reasoning and conclusions that the lower court was

wrong to find the respondent not guilty of culpable homicide contrary to Section 221 of the Penal Code for reason of insanity. The learned trial Judge suo motu raised the issue of insanity but learned counsel of the accused/respondent stated clearly that he was not relying on the defence of insanity.

Notwithstanding the fact that the manner in which the respondent attacked the deceased was mind - boggling, it was left for the respondent to state the reason which prompted him to carry out the vicious attack on the deceased and without a medical history indicating the accused's insanity, a later claim by him to being insane will be highly suspected. It is not a defence of insanity that an accused behaved abnormally. If the abnormality arises from a mental condition which substantially impaired the ability of the accused to control his rationality or his responsibility in a given situation, it must be such as falls within Section 28 of the Criminal Code and in the present instance under Section 51 of the Penal Code. In the instant case, the strange behaviour of the respondent, standing alone, cannot be evidence of insanity. To accept that as evidence of insanity is to make the simulation of insanity easily available in matters of the nature of the respondent's and this is what the lower court decided. See *Ogbu vs State* (1992) 8 NWLR (Part 259) 2551, *Madjemu vs State* (2001) 9 NWLR (Part 718) 349. To establish the defence of insanity, recourse could be had to the following relevant facts namely:

- (a) Evidence as to the past history of the accused person
- (b) Evidence as to the conduct of the accused immediately proceeding the killing of the deceased;
- (c) Evidence from prison officials who had custody of the accused person before and during his trial;
- (d) Evidence of medical officers who examined the accused;
- (e) Evidence of relatives about the general behaviour of the accused person and the reputation he enjoyed for sanity or insanity in the neighborhood;
- (f) Evidence showing that insanity runs in the family history of the accused;
- (g) 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 - per Iguh JSC in *Madjemu vs State* supra at page 366. See also: *Onyekwe vs State* (1988) 1 NWLR (Part 72)

565; Ejinima vs State (1991) 6 NWLR (Part 200) 627.

None of the above mentioned factors was taken into consideration before the lower court came to the conclusion that the respondent was not guilty of culpable homicide on account of insanity. The lower court was therefore wrong to overturn the conviction of the accused/respondent. The appeal has merit and it is hereby allowed. The conviction of the accused for culpable homicide contrary to section 221 of the Penal Code entered by the Kwara State High Court Ilorin on 1/6/2010 is hereby restored.

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