

**SUPREME COURT OF NIGERIA**  
FRIDAY 11TH APRIL, 2014. SC. 191/2010  
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-**  
**COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,**  
**C. B. OGUNBIYI, JJSC**

UMARU ADAMU ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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MURDER - Ingredients - Proof - Prosecution must establish the death of deceased - Which resulted from act of accused - And that accused knew his act will result in death (H1)

CRIMINAL PROCEDURE - Defence - Resting case on that of prosecution - Accused by this choice decides not to explain any fact - In rebuttal of allegation made against him (H2)

CRIMINAL PROCEDURE - Insanity - Determination of - Whether accused was insane when he committed the act - Is fact to be determined by trial Judge not medical men - And is dependent upon previous and contemporaneous acts (H3)

CRIMINAL PROCEDURE - Insanity - Proof of - Where defence is unsoundness of mind - Onus is on accused to plead and produce evidence - As appellant did not do so - Case was justifiably decided on evidence of prosecution (H4)

CRIMINAL PROCEDURE - Proof - Burden of - Subject to certain exceptions - Burden is on prosecution to prove guilt of accused beyond reasonable doubt (H5)

CRIMINAL LAW - Insanity - Meaning of - Is any mental disorder severe enough - That it prevents a person from having legal capacity - And excuses the person from criminal or civil responsibility (H6)

CRIMINAL PROCEDURE - Insanity defence - Meaning of - Is affirmative defence alleging that mental disorder caused to commit crime

- Successful plea of same may not lead to acquittal - But a special verdict of “not guilty by reason of insanity” (H7)

MURDER - Defence - Consideration of - Court must consider all defence raised by evidence - And any defence by accused no matter how weak or stupid such may appear (H8)

### **FACTS**

Accused/appellant was arraigned before the High Court of Sokoto State for homicide punishable with death under section 221 of the Penal Code. Appellant pleaded not guilty to the charge. The case as presented by prosecution/respondent is that appellant had previously beaten up and threatened to kill his sister with a knife. The matter was resolved and treated as a family affair by the police. However, subsequently upon his return from a visit to see the sister in her matrimonial home, appellant used a knife to cut the throat of his 70 years old step mother who was sleeping at the material point in time. The deceased died as a result of the attack.

PW3 who was informed of the attack came to the scene and met appellant licking the blood on the knife, shouting “Allahu Akbar” (God is great). Appellant was arrested and charged to court. At the trial, respondent called seven witnesses in support of its case. Appellant neither testified nor called any witness in his defence. He rather rested his case on that of respondent. At the end of trial, the learned trial Judge believed the evidence as presented by respondent. Appellant was therefore convicted and sentenced to death. Aggrieved, appellant appealed to the Court of Appeal Sokoto Division. The court dismissed the appeal and affirmed the conviction and sentence passed by the trial court. Aggrieved further, appellant appealed to Supreme Court.

### **ISSUE FOR DETERMINATION**

*“Whether the guilt of the appellant was proved and established beyond reasonable doubt having regard to the evidence adduced at the trial court and affirmed by the court of appeal.”*

**HELD** (Unanimously allowing the appeal in part per

**ARIWOOLA JSC)**

*MURDER - Ingredients - Proof*

**1. However, for the prosecution to secure conviction in a charge of culpable homicide punishable with death under the Penal Code, as in the instant case, the following ingredients must be established:**

- (i) the death of the deceased;**
- (ii) that the death resulted from the act of accused; and**
- (iii) that the accused knew that his act will result in the death or did not care whether the death of the deceased will result from his act. (p. 1340 C)**

*CRIMINAL PROCEDURE - Defence - Resting case on prosecution*

**2. At the trial, the appellant rested his case on the prosecution's case. The law is generally settled, that an accused person who at the close of prosecution's case, decided to rest his case on that of the prosecution as presented against him is only exposing himself to risk and gamble. The reason being that if the case is such that even if all the prosecution witnesses are believed, yet the offence as charged is still not proved, then the accused may get away with the risk of resting his own case on that of prosecution. By that choice, the accused would have decided not to explain any fact in rebuttal of the allegation made against him. (p. 1342 B)**

*CRIMINAL PROCEDURE - Insanity - Determination of*

**3. Ordinarily, in law, everyone is presumed to be sane and of sound mind and accountable for his actions, unless the contrary is proved. But, where there is defect or incapacity of the understanding, as there can be no consent of the will, the act is not punishable as a crime. In the legal sense, whether the accused was sane or insane at the time when the act was committed is a question of fact to be decided by the trial Judge but not by Medical men, however eminent or knowledgeable, and is dependent upon the previous and contemporaneous acts of the accused.**

**Ordinarily, it has been held that evidence to establish insanity as a defence should adduce past history of the accused; con-**

**duct immediately before killing of the deceased; observation of prison warders who had custody of the accused during trial; medical evidence, reputation and general behaviour on sanity or insanity with relatives in accused's neighbourhood, and mental health of the accused family.** (pp. 1342 E/1347 E)

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*CRIMINAL PROCEDURE - Insanity - Proof of*

**4. However, where the defence of an accused person is unsoundness of mind or insanity, the onus is on him to plead same and produce credible evidence of insanity or unsoundness of mind, at the time the alleged crime was committed.**

C

**In the instant case, it can be said that the appellant simply had no defence, to the charge. As I stated earlier, he neither testified nor called any witness in defence. Hence, the case was justifiably decided based upon the case put forward by the prosecution through the witnesses and the various Exhibits produced.**

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**In other words, the issue of insanity or unsoundness of mind as a defence was never pleaded or clearly made as a defence before the trial court by the appellant.** (p. 1342 H)

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*CRIMINAL PROCEDURE - Proof - Burden of*

**5. It is a fundamental principle of our criminal law that in all cases, the burden of proving that any person has been guilty of a crime or wrongful act, subject to certain exceptions, is on the prosecution. And if the commission of a crime is directly in issue in any civil or criminal proceeding, it must be proved beyond reasonable doubt.** (p. 1344 G)

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*CRIMINAL LAW - Insanity - Meaning of*

**6. What then is "insanity"? It is "any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility.**

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**Indeed, it is a legal, not a medical, standard."** (p. 1345 G)

*CRIMINAL PROCEDURE - Insanity defence - Meaning of*

**7. Therefore "insanity defence" means an affirmative defence alleging that a mental disorder caused the accused to commit**

*the crime. However, unlike other defences, a successful plea of insanity defence may not result in an acquittal but instead in a special verdict - "not guilty by reason of insanity" - this usually leads to the defendant's commitment to a mental institution.*

*My Lords, the investigation carried out by the police before the case was charged to court left much to be desired. With the way the prosecution presented its case and the available evidence, with the greatest respect, the trial court should have found that the provisions of Section 51 of Penal Code is applicable. The verdict of the trial court ought to have been "not guilty for the reason of insanity" hence should have referred him for psychoanalysis in a Psychiatric Unit of a hospital at the pleasure of the Governor of the State. In other words, the prosecution did not appear to have proved the case beyond reasonable doubt as it should, in view of the evidence of mental imbalance that came from its witness. By the description of his act at the time he committed the offence, he could not be adjudged to be a person in control of his acts. His behaviour was no doubt abnormal and unnatural.*

*Therefore, the Court below was, in my view, wrong to have held that the appellant understood what he was doing and also knew that what he was doing was wrong and contrary to law. In my view, the behaviour of the appellant immediately before and immediately after the commission of the crime did suggest unsoundness of mind and mental imbalance on his part. The appellant ought not have been sentenced to death as the trial court did. And the court below erred to have affirmed the decision of the trial court. (pp. 1345 G/1349 C)*

*MURDER - Defence - Consideration of*

*8. However, the law is clear that in all trials of culpable homicide, the court has the onerous duty to consider:*

- (a) all the defence raised by the evidence whether the accused person specifically put up such defence or not; and*
- (b) any defence raised by an accused person no matter how weak, inconsequential or stupid it may appear must be given due attention. (p. 1346 D)*

## NOTABLE POINTS OF INTEREST

### **ARIWOOLA JSC**

#### ***1. “Homicide” and “culpable homicide” – Meaning of***

Homicide generally means “*the killing of one person by another*”.

- B It is also “*the act of purposely, knowingly, recklessly, or negligently causing the death of another human being*”. But culpable homicide means a wrongful act that results in a person’s death but does not amount to murder. (p. 1340 A)

#### ***2. Court – Consideration of defence of insanity – Principles***

When considering the evidence available to or adduced by an accused person in his defence of insanity, the court has held the following radical and fundamental points to be important to be borne in mind and kept in view.

- D (a) The law presumes every person, including any person accused of crime, sane until the contrary is proved..... (See Section 27 of the Criminal Code).

- E (b) The prosecution does not set out to prove what the law presumes in its favour.

- F (c) An accused person who raises insanity as his defence has the onus of proving such insanity cast on him. The standard of such proof is not as high as that cast on the prosecution. It is not proof beyond reasonable doubt but it is proof of reasonable probability, proof sufficient to create a reasonable doubt in the mind of a fair minded jury as to the sanity of the accused.

(d) Insanity is a blanket term embracing a considerable variety of mental abnormalities, mental infirmities, neurosis and Psychosis.

- G (e) To constitute a defence, the mental condition relied on should be such that could and did deprive the accused of capacity:

- H (i) To understand what he was doing; or  
 (ii) To control his action; or  
 (iii) To know that he ought not to do the act or make the omission complained of as constituting the actus reus of the offence charged. (p. 1347 G)

### **REPRESENTATION**

Nnamonso Ekanem Esq. with Obong Israel Esq., for the Appellant

Nuhu Adamu Esq. - AG - Sokoto with L. S. Wali Esq. DDCL, for the Respondent

**CASES REFERRED TO**

Nwangwu v. State (1997) 8 NWLR (pt. 517) 457	
Okeke v. State (2003) 15 NWLR (pt. 842) 25	B
Ani v. State (2002) 48 WRN 94	
Mohammed v. State (1997) 9 NWLR (pt. 520) 169	
Onyenkwu v. State (2000) 2 CLRN 184	
Madjemu v. State (2000) 2 CLRN 41	
Oladele v. State (1993) 1 NWLR (pt. 269) 294	C
Imo v. State (1991) 9 NWLR (pt. 213) 1	
Durwode v. State (2000) 15 NWLR (pt. 691) 467	
Ogbu v. State (2007) 4 SCM 169	
Nwede v. State (1985) 3 NWLR (pt. 13) 444	D
Ali v. State (1988) 1 NWLR (pt. 68) 1	
Mogaji v. The Nigerian Army (2008) 5 SCM 126	
Okagbue v. Commissioner of Police (1965) NMLR 232	
Okoro v. State (1988) 12 SC (pt. 11) 88	E

**STATUTES REFERRED TO**

Penal Code, ss. 51, 221	
Criminal Code, s. 27	
Evidence Act, s. 135(1)	F

**BOOK REFERRED TO**

Black's Law Dictionary 9th Edn. pp. 802, 803, 865

**LEAD JUDGMENT BY ARIWOOLA JSC** G

The appellant had been sentenced to death by hanging until pronounced dead having been found culpable and convicted by the trial court in Sokoto on 29/02/2008 for slaughtering his step mother - Inno Adamu on the 25th August 2002. The said conviction and sentence were affirmed by the Court of Appeal, Sokoto Division on the 11th January, 2010. Dissatisfaction with the decision of the court of appeal hereinafter called "the court below" led to the instant appeal by the appellant. H

The matter that culminated into this appeal originated from

the charge and trial of the appellant in Sokoto. The following charge had been preferred against the appellant:

*“That you Umaru Adamu on or about the 25th August, 2002 at about 0500 hours in Marina Dalhatu Area of Sokoto North Local Government Area within the Sokoto Judicial Division while armed with a knife did commit a heinous act by slaughtering Inno Adamu with the said knife as a result of which she died knowing fully well that her death be the likely consequence of your act and thereby committed an offence to wit culpable Homicide, punishable with death contrary to Section 221 of the Penal Code.”*

After the charge was read to the appellant and he pleaded not guilty, the case proceeded to hearing. The prosecution called seven (7) witnesses but the appellant neither gave evidence nor called any witness in defence of the charge.

The case for the prosecution was that on the 25th day of August, 2002, the appellant, who is a Mason by profession returned to Sokoto from Abuja. No sooner he put down his bag than he started beating his sister whom he met in the house but PW3 - Bello Adamu, his elder brother intervened and separated them. Thereafter, the appellant brought out a knife from his bag and threatened to kill his sister with it. The incident was reported to the Police which later settled the matter with a resolution that it was a mere family affair.

Subsequently, in the early hour of the 25th August 2002 at about 2.00 am, the appellant had gone to the sister's matrimonial home to see her but was driven away by the sister's husband. On arrival back in the house, he used his knife to cut the throat of his 70 years old step mother who was sleeping and slaughtered her and she died. After PW3 was alerted on the incident, he came and found the appellant licking the blood on the knife, saying “Allahu Akbar” meaning God is great.

The trial court considered the testimony of all prosecution witnesses and the various Exhibits tendered including the Statement of the appellant where he admitted that he did what was alleged. He was found guilty, convicted and sentenced to death. The court below upon an appeal by the appellant affirmed the decision of the trial court.

This is a further appeal being dissatisfied with the decision of the court below, based on a sole ground of appeal as follows:



*“The learned Justices of the Court of Appeal erred in law when they held that evidence of appellant’s insanity, elicited from a witness under cross examination is of no moment thus occasioning miscarriage of justice.”*

Pursuant to the relevant rules of court, parties filed and duly exchanged their briefs of argument. B

When the matter came up for hearing on 30th January, 2014, the learned appellant’s counsel referred to his brief of filed on 22/06/2010. He adopted and relied on same to urge the court to allow the appeal, set aside the judgment of the court below that affirmed the judgment of the Sokoto trial High court which convicted the appellant and sentenced him to death. C

In response, the learned counsel for the respondent identified his brief of argument earlier filed on 11/03/2011 but deemed properly filed and served on 16/05/2012. D

In the said appellant’s brief of argument, the following sole issue was distilled from the single ground of appeal.

Issue for Determination:-

*“Whether the guilt of the appellant was proved and established beyond reasonable doubt having regard to the evidence adduced at the trial court and affirmed by the court of appeal.”* E

In the same vein, the respondent formulated its own single issue for determination from the sole ground of appeal filed by the appellant. F

It reads thus:

*“Whether the prosecution had from the totality of evidence adduced at the trial court proved its case beyond reasonable doubt. And whether the defence of insanity raised on appeal by the appellant can avail him of the conviction and sentence by lower court which was affirmed by the Court of Appeal, Sokoto division.”* G

As earlier stated, the appellant filed only a ground of appeal and properly distilled a sole issue therefrom. But the above issue distilled by the respondent cannot be said to be a sole issue from the same single ground of appeal. It should be borne in mind that the respondent neither filed a cross appeal nor a Notice as required by the Rules. Hence, it cannot formulate more than one issue from the sole ground of appeal filed by the appellant. If the appellant had done this, the issue could have been adjudged incompetent. What is H

more, the said issue is rather clumsy and unclear.

In the circumstance, the appeal shall be determined based on the sole issue distilled by the appellant.

In his argument, learned appellant's counsel submitted that in a criminal case, the onus is on the prosecution to prove the guilt of the accused beyond reasonable doubt and failure so to do shall result in the matter being resolved in favour of the accused person. He submitted further that the accused is under no obligation to prove his innocence. He relied on *Nwangwu v. The State* (1997) 8 NWLR (Pt. 517) 457 463.

Learned counsel referred to Section 221 of the Penal Code under which the appellant was charged and Section 51 of the Penal Code as a defence where an offence is committed by a person of unsound mind or a person incapable of knowing the nature of his or her act.

Learned counsel conceded that it is not in doubt that the appellant killed the deceased but contended that for an accused to be convicted of an offence the two ingredients of a crime, that is mens rea and actus reus, must be present. Where one is absent, the prosecution would have failed to prove the charge.

He referred to the testimony of PW3 and PW4 both under examination - in chief and cross examination and contended that the said evidence which came out during the trial clearly points out that the appellant was of unsound mind at the time of the commission of the offence. He relied on *Okeke v. State* (2003) 15 NWLR (Pt 842) 25 at 87; *Ani v. State* (2002) 48 WRN 94. *R. v. Ashigifuwo* 12 WACA 389; *Mohammed v. State* (1997) 9 NWLR (Pt. 520) 169 at 196 - 197.

Learned counsel submitted that the learned Justices of the Court below were wrong to have failed to use the guiding principles enunciated in *Ani v. State* (Supra) to set the appellant free on the ground of insanity. He urged the court to hold that there was no motive as borne out by prosecution witnesses evidence for the appellant to kill his step mother.

Learned counsel submitted that with the available evidence in the case of the prosecution, it was not proved beyond reasonable doubt that the appellant was of sound mind when he carried out the act with which he was charged. He urged the court to allow the ap-

peal, set aside the judgment of the court below that affirmed the decision of the trial High Court of Sokoto which had convicted and sentenced the appellant to death by hanging.

In arguing the sole issue distilled for determination, the learned counsel for the respondent gave the three ingredients of the offence charged in Section 221 of the Penal Code. He referred to the seven (7) Prosecution witnesses and the five (5) Exhibits tendered by the Prosecution and duly admitted. He picked the three ingredients one after the other. On ingredient No. 1, learned counsel contended that the death of the deceased in this case was not in doubt and was proved beyond reasonable doubt.

On the second ingredient, learned counsel referred to the testimony of PW3, PW5, Exhibit 3 and the confessional statement of the appellant to the Police, and contended that they corroborate each other to show that the deceased - Inno Adamu died and that the appellant killed her.

On the third ingredient that the appellant intended killing the deceased or that he knew that death would be the probable consequence of his act, learned counsel submitted that the testimony of PW3 and PW4 who stated, inter alia, that on several occasions, the appellant had mentioned that the knife he brought must suck blood. He referred to Exhibits 2 and 2A, that is, the confessional statement of the appellant in Hausa Language and the translated version in English language; to show that the appellant intended killing the deceased or that he knew that her death would be the probable consequence of his act of slaughtering the deceased.

Learned counsel referred to the spot of the cut - which is the throat, of the deceased and contended that the appellant must have known that death would result by cutting the throat but no other part of the body. He submitted that both the *actus reus* and *mens rea* were present and proved in this case by the prosecution. He submitted further that the prosecution proved all the ingredients of the offence charged beyond reasonable doubt and urged the court to so hold and uphold the decision of the trial court which was affirmed by the court below. He relied on *Onyenkwu v. State* (2000) 2 CLRN 184 at 188 on the defence of insanity raised by the appellant on appeal and submitted that it cannot avail him of the conviction and sentence by the trial court.

On Section 51 of the Penal Code relied upon by the appellant, learned counsel contended that there is the presumption that every person is of sound mind and has been of sound mind at any time which comes in question until the contrary is proved. Learned counsel contended further that the issue of the appellant's insanity was never raised as a defence at the trial court. But that it is the duty of the appellant to raise the defence of insanity and call evidence to prove same.

Learned counsel submitted that it is the law that the burden of proof of insanity lies on the appellant and the standard of proof is the same as in civil cases which is on the balance of probability. He contended that the defence of insanity which only came up during the address of counsel is no substitute for evidence at the trial. The defence did not call any evidence but only rested their case on that of the prosecution.

Learned counsel referred to the testimony of PW3, PW4 and PW5 on their perception of the state of the appellant's mind before and during the period of the incident in question. He submitted that the three Prosecution witnesses were not unanimous on the mental infirmity or unsoundness of his mind before and when the appellant killed the deceased. He cited *Madjemu vs. State* (2000) 2 CLRN 41 at 44-45; *Oladele v. State* (1993) 1 NWLR (Pt. 269) 294 at 296-299; *John Imo v. State* (1991) 9 NWLR (Pt. 213) 1 at 4-8; *Ani v. State* (2002) 48 WRN 94.

Learned counsel contended that, before the trial court, the defence must have called evidence on the followings to establish the mental capacity of the appellant when the incident occurred:

- Positive acts of the accused before and after the deed complained of;
- Evidence of a doctor who examined and watched the accused over a period of time as to his mental state;
- Evidence of relations who know the accused intimately relating to his behaviour and change which had come upon him;
- The medical history of the family, which could indicate hereditary mental affliction or abnormality; and
- Such other facts and circumstances which will help the trial court to come to the conclusion that the burden of proof of insanity placed by law on the defence has been amply discharged.

He relied on *Madjemu v. State* (supra).

Learned counsel submitted that none of the requirements listed above was complied with or made available at the trial of the appellant as the defence rested their case on that of prosecution. He referred to the act of slaughtering of the deceased while asleep in the same room with PW5 and submitted that it shows or indicates the motive or intention of the appellant to kill the deceased. Learned counsel gave a poser - why didn't the appellant kill PW5 who was also sleeping in the same room with the deceased or kill both of them? B

Learned counsel referred to the acts of the appellant prior to the killing of the deceased on same day, such as praying in the same mosque in the morning with the congregation before he returned home to carry out the heinous act of killing the deceased by slaughtering her and thereafter kept the knife away in a latrine within the compound. C D

He contended that this cannot be an act of a mad man. He submitted that the appellant's conduct clearly showed that there was intention to kill and that the appellant was of sound mind at the particular time. E

Learned counsel contended that it is a known fact that a mad man does not know the time for prayer, performing ablution and joining a congregational prayer in a mosque. In the same vein, the throwing or hiding away the knife (Exhibit 1) which the appellant used to slaughter the deceased in a latrine can be attributed to or said to be purely act or conduct of a sane person. F

Learned counsel referred to the confessional statement of the appellant - Exhibits 2 and 2A where the appellant admitted that he killed the deceased for the reason that, after his own mother died, the deceased used to harass him by calling him a drug addict. He confessed having kept away the knife he used to slaughter the deceased and showed the police where he had thrown it. The knife was later found in the latrine and produced in court. He finally submitted that the acts of the appellant was act of a person of sound mind. He urged the court to so hold. G H

He finally urged the court to dismiss the appeal and affirm the judgment of the court of appeal which had affirmed the conviction and sentence of the appellant by the trial court.

As earlier shown, the appellant stood trial for culpable homicide. He was found guilty as charged, convicted and sentenced to death.

Homicide generally means “the killing of one person by another”.

B It is also “the act of purposely, knowingly, recklessly, or negligently causing the death of another human being”. But culpable homicide means a wrongful act that results in a person’s death but does not amount to murder. See Black’s Law Dictionary, Ninth Edition pages 802 and 803.

C **However, for the prosecution to secure conviction in a charge of culpable homicide punishable with death under the Penal Code, as in the instant case, the following ingredients must be established:**

D (i) **the death of the deceased;**  
 (ii) **that the death resulted from the act of accused; and**  
 (iii) **that the accused knew that his act will result in the death or did not care whether the death of the deceased will result from his act.** See *Durwode v. State* (2000) 15 NWLR (Pt. E 691) 467 at 487 - 488; *Ogbu & Anor v. The State* (2007) 4 SCM 169 at 185.

From the facts available in this case and as clearly conceded by learned counsel for the appellant, it is not in doubt that a woman called Inno Adamu is deceased and that she was killed by the appellant on the day in question. The point in serious contention is whether the other leg of a crime, that is, the mens rea was present in this case. In other words, it was the contention of the appellant’s counsel that the third ingredient of the crime or offence of culpable homicide was absent in this case. As a result, he submitted that the prosecution failed to prove the charge against the appellant, as required, beyond reasonable doubt. For this argument he relied on the testimony of PW3 and PW4, under examination in-chief and cross-examination, to show that indeed the appellant was of unsound mind when the alleged act of killing took place.

H PW3 is one Bello Adamu. He is an elder brother of the appellant. He testified, inter-alia, as follows:

*“I know Inno Adamu. She is our mother because she is married to our father. I know Salamatu Adamu. She is my younger sister.*

*The same father, the same mother. I know the accused person. He is my junior brother - the same father, the same mother. On the 25/8/2002, something happened before the incident happened. The accused came back from Abuja. He met us in the house with my sister lying in the house. When he came he put his bag down and start (sic) beating the sister. I intervene and said it is not right to start beating the sister. When I separated them then he moved one knife from his bag and said he will kill our sister with that knife. I was worried, so I reported the matter to the police and police settled the matter as a family affair. After that time he slaughtered our step mother...*

*The accused came back to the house; the old woman is (sic) sleeping in the house with other children. The accused entered the house and slaughtered the old woman. After committing the offence the children shouted. Our neighbour came out and the boy called me where I was sleeping. When I came, I saw the accused holding knife licking the knife saying "Allahu Akbar" God is great. I went to the police station and told them what is happening. That is all I know. When I came I met her dead. I did not meet her alive. That is all".*

Under cross examination by Mr. Gana. PW3 stated as follows:

*"From childhood, I know Umaru, the accused has some mental problems. I did not see the accused stab (sic) the deceased. The old woman was about 70 years old."*

PW4, Salamatu Adamu, a school teacher testified that the appellant is her younger brother of full blood. On the day in question she came to the house to meet the deceased already killed and found her in the pool of her blood like a ram. She was at the scene with her elder brother, PW3 when the Police came and the deceased corpse was carried away and later buried.

Under cross examination, PW4 stated that the appellant had quarreled with her before and threatened to kill her too for no just cause. She went further to say that the deceased was their step mother and that only a mad man will kill his mother as the appellant did. She had visited her brother, the appellant in prison and was crying when she saw him in prison.

It is interesting to note that the appellant neither gave evidence nor called any other witness in defence of the charge. The appellant volunteered a statement to the Police in which he clearly admitted that he killed the deceased by slaughtering her with a knife. And that

after he had cut her throat he had a thought of dropping the knife in the latrine in their house and he did so. He then stayed outside from where the policemen arrested him. He stated further that, the statement of the deceased in her lifetime, that he was taking dangerous drugs and that he is a mad man is not correct.

**B At the trial, the appellant rested his case on the prosecution's case. The law is generally settled, that an accused person who at the close of prosecution's case, decided to rest his case on that of the prosecution as presented against him is only exposing himself to risk and gamble. The reason being that if the case is such that even if all the prosecution witnesses are believed, yet the offence as charged is still not proved, then the accused may get away with the risk of resting his own case on that of prosecution. By that choice, the accused would have decided not to explain any fact in rebuttal of the allegation made against him.** See *Nwede v. The State* (1985) 3 NWLR (Pt. 13) 444; *Ali & Anor v. The State* (1988) 1 NWLR (Pt. 68) 1; *Mogaji v. The Nigerian Army* (2008) 5 SCM 126.

**E** In this case, the only defence if at all was from the Prosecution witnesses. This is on the unsoundness of mind of the appellant before and after the commission of the alleged crime. He was said to have behaved in such an unnatural way showing signs of insanity.

**F Ordinarily, in law, everyone is presumed to be sane and of sound mind and accountable for his actions, unless the contrary is proved. But, where there is defect or incapacity of the understanding, as there can be no consent of the will, the act is not punishable as a crime. In the legal sense, whether the accused was sane or insane at the time when the act was committed is a question of fact to be decided by the trial Judge but not by Medical men, however eminent or knowledgeable, and is dependent upon the previous and contemporaneous acts of the accused.** See *R. v. Revitt*, 34 Cr. App 87, *Josephine Ani v. The State* (2002) 8 SCM 1; (2002) 48 WRN 94.

**H However, where the defence of an accused person is unsoundness of mind or insanity, the onus is on him to plead same and produce credible evidence of insanity or unsoundness of mind, at the time the alleged crime was committed.**

**In the instant case, it can be said that the appellant sim-**



**ply had no defence, to the charge. As I stated earlier, he neither testified nor called any witness in defence. Hence, the case was justifiably decided based upon the case put forward by the prosecution through the witnesses and the various Exhibits produced.**

**In other words, the issue of insanity or unsoundness of mind as a defence was never pleaded or clearly made as a defence before the trial court by the appellant.** <sup>B</sup>

As shown on pages 67 to 68 of the record, the trial court after considering and evaluating the testimony of PW3 on the status of the appellant's mind when the incident took place, and the statement of the appellant made to the Police, the learned trial Judge came to the following conclusion. <sup>C</sup>

*"It is clear that the accused know (sic) the nature of his act, otherwise why will he think of dropping the knife in the toilet if not to conceal what he did. It therefore follows that if the accused knew the nature of his act and that it is contrary to law like he try (sic) to conceal the knife, he used in cutting the throat of the deceased, the defence of unsoundness of mind can not avail him in the circumstance of this case. The accused knew what he was doing was wrong contrary to law. Having examined the entire evidence presented including consideration for possible defence of insanity or unsoundness of mind of the accused or a careful analysis and evaluation, it is in my conclusion from the totality of it all that the prosecution has proved its case against the accused person beyond reasonable doubt. The accused is therefore found guilty of the offence of culpable homicide punishable with death contrary to and punishable under section 221 (b) of the PC and is hereby convicted as charge (sic)"* <sup>E</sup>

Upon consideration of the appeal of the appellant against the above decision of the trial Judge, the court below had found as follows:- <sup>F</sup>

*"It is noteworthy that learned counsel for the appellant herein like his learned friend for the appellant at the trial court agreed that the appellant caused the death of the deceased. It is also instructive to note that the issue of insanity was not raised by the defence. The appellant made an extra-judicial statement to the Police (Exhibit 2) where he admitted the commission of the crime leading to this appeal but the issue of insanity did not feature in it. Instead of the issue* <sup>H</sup>

*of insanity, his complaint was that the deceased used to call him a mad person and a drug addict which he did not like. To compound the case of the defence, the appellant did not give evidence and did not call any witness. The defence simply rested its case on that of the prosecution. ...*

B *The defence agreed that the prosecution has proved its case but no effort was made to rebut the proof. The defence even admitted that the appellant was responsible for the deceased's death. No attempt was made to explain the reason for the action of the appellant, except for the issue of insanity raised by his counsel at the stage*  
 C *of the addresses. The law is well settled that address by counsel is no substitute for evidence."*

Based on the aforesaid findings by the court below, it came to the following conclusion:-

D *"From the totality of evidence before the lower court, I have no doubt that the appellant understood what he was doing and also knew that what he was doing was wrong and contrary to law. In the circumstances, I hold that the behavior of the appellant immediately before and immediately after the commission of the crime did not*  
 E *suggest any insanity on his part. The learned trial Judge was right to have rejected the defence of insanity."*

The court below eventually finally dismissed the appeal and affirmed the conviction and sentence of the appellant by the trial court.

F As earlier noted, the sole issue for determination of this appeal as distilled by the appellant is - whether the guilt of the appellant was proved and established beyond reasonable doubt having regard to the evidence adduced at the trial court and affirmed by the court of  
 G appeal.

***It is a fundamental principle of our criminal law that in all cases, the burden of proving that any person has been guilty of a crime or wrongful act, subject to certain exceptions, is on the prosecution. And if the commission of a crime is directly in issue in any civil or criminal proceeding, it must be proved beyond reasonable doubt.*** See R v. Basil Ranger Lawrence (1932) UNLR 6, per Lord Atkin; Abeke Onafowokan v. The State (1987) NWLR (Pt. 61) 538; (1987) LPELR-266 (SC).

However, in Woolmington v. DPP (1935) AC 426 at 481 per

Lord Sankey, L.C. the Court held as follows-

*"if at the end of and on the whole case, there is a reasonable doubt created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with malicious intentions, the prosecution has not made out the case and the prisoner is entitled to an acquittal."* See also *Okagbue v. Commissioner of Police* (1965) NMLR 232; where this court held that the burden of proving the accused guilty rests throughout on the Prosecution.

In the *Onafowokan v. The State* (supra) this court, per Oputa, JSC; on p. 26 states thus:-

*"it is legally correct that no onus of proof lies on the appellant - This however should be interpreted to mean that the primary onus of establishing the case or the guilt of the accused is always on the prosecution except in very special and limited circumstances like cases of insanity where the law presumes him sane and casts on him the onus of establishing the contrary. But where the prosecution has made out a prima facie case which if unanswered will lead to his conviction then the duty of adducing such evidence as would make the jury find any issue in his favour is definitely on the accused."* See also; *Osarodion Okoro v. The State* (1988) 12 SC (Pt. 11) 88; (1988) NWLR (Pt. 94); *Oteki v. Attorney General Bendel State* (1986) 2 NWLR (Pt. 24) 648; *Adeyinka A. Laoye v. The State* (1985) NWLR (Pt. 10) 832; (1985) LPELR-1954 (SC).

It must be noted that in this case, not only that the appellant did not put up any defence for his action that led to the death of his step mother, the issue of mental disorder or insanity came out in the evidence of prosecution witnesses and in the address of his counsel.

***What then is "insanity"? It is "any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility. Indeed, it is a legal, not a medical, standard."***

***Therefore "insanity defence" means an affirmative defence alleging that a mental disorder caused the accused to commit the crime. However, unlike other defences, a successful plea of insanity defence may not result in an acquittal but instead in a special verdict - "not guilty by reason of insanity" - this usually leads to the defendant's commitment to a mental***

**institution.** See Black's Law Dictionary, Ninth Edition, Page 865.

It is note worthy that the appellant was charged, convicted and sentenced under Section 221 of the Penal Code which provides thus:

*"Except in the circumstances mentioned in Section 222, culpable homicide shall be punishable with death:*

B *(a) If the act by which 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."*

C In the instant case, there is no doubt and this was clearly admitted by the appellant that the deceased was killed by him by cutting her throat in her sleep. And there was no explanation from the appellant to justify the killing of the deceased by him.

D As a result, the prosecution can be said to have proved the charge against the appellant beyond reasonable doubt, the appellant having gambled and taken the risk of resting his case on that of the prosecution as presented.

***However, the law is clear that in all trials of culpable homicide, the court has the onerous duty to consider:***

***(a) all the defence raised by the evidence whether the accused person specifically put up such defence or not; and***

***(b) any defence raised by an accused person no matter how weak, inconsequential or stupid it may appear must be given due attention.*** See *Apishe v. The State* (1971) 1 All NLR 50; *Takhta v. The State* (1969) 1 All NLR 270; *Williams v. I.G.P.* (1965) NMLR 470.

G From the evidence of the prosecution's witnesses, in particular, PW3, the appellant was known from childhood to have exhibited that he has some mental problems. Indeed, immediately preceding the incident in question, the appellant was reported to have, without any justification, resorted to beating his younger sister before he was separated by PW3, their elder brother. Similarly, immediately after H the appellant had killed the deceased, he was found outside the house licking the blood on the knife used to slaughter the deceased saying "Allahu Akbar" What is more, the appellant did not run away or go into hiding. He was found outside and arrested by the police. All these appear rather unnatural and may only show that the appellant

even though he actually did the act, but may be incapable of knowing or comprehending the actual nature of the act or that it is contrary to the law.

Perhaps this argument in the appellant's favour may collapse in the presence of the act of the same appellant in throwing away into the latrine, the weapon of the crime, that is, the knife used to slaughter the deceased. Yet, he was again the person who without being forced led the police to the latrine to recover the said knife. The evidence of the appellant's misbehaviour before and after the act complained of should be a defence the court of trial was duty bound to consider, even though not directly put up by the appellant as a defence.

It is apposite at this juncture to consider the provisions of Section 51 of the Penal Code which provides as follows:

*"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 the law."*

My Lords, I am of the view that if the trial court and of course the court below had considered the defence of unsoundness of mind coming from the testimony of the prosecution witnesses and the above provisions of Section 51 of the Penal Code, it may have been clearer to them that the appellant did not seem to be in control of his action.

**Ordinarily, it has been held that evidence to establish insanity as a defence should adduce past history of the accused; conduct immediately before killing of the deceased; observation of prison warders who had custody of the accused during trial; medical evidence, reputation and general behaviour on sanity or insanity with relatives in accused's neighbourhood, and mental health of the accused family.** See Udo Akpan Udofia v. The State (1988) 7 SC (Pt. 111) 59 at 62.

When considering the evidence available to or adduced by an accused person in his defence of insanity, the court has held the following radical and fundamental points to be important to be borne in mind and kept in view.

(a) The law presumes every person, including any person accused of crime, sane until the contrary is proved... (See Section 27 of the Criminal Code).

(b) The prosecution does not set out to prove what the law presumes in its favour.

(c) An accused person who raises insanity as his defence has the onus of proving such insanity cast on him. The standard of such proof is not as high as that cast on the prosecution. It is not proof beyond reasonable doubt but it is proof of reasonable probability, proof sufficient to create a reasonable doubt in the mind of a fair minded jury as to the sanity of the accused.

(d) Insanity is a blanket term embracing a considerable variety of mental abnormalities, mental infirmities, neurosis and Psychosis.

(e) To constitute a defence, the mental condition relied on should be such that could and did deprive the accused of capacity:

(i) To understand what he was doing; or

(ii) To control his action; or

(iii) To know that he ought not to do the act or make the omission complained of as constituting the actus reus of the offence charged. See *M. A. Sanusi v. The State* (1984) 10 SC 166 (1984) LPELR-SC 49/1983, Per Oputa, JSC, *Ogbu v. The state* (1992) 10 SCNJ 88, (1992) NWLR (Pt. 259) 255; *Ngene Arum vs. The State* (1979) 11 SC 91 at 119; *Popoola v. The State* (2013) 17 NWLR (Pt. 1382) 96 at 122.

As I stated earlier, there was no evidence from the defence on the mental capacity of the appellant, but the only evidence on whether or not the appellant had any mental problem came from the prosecution witness under cross examination. The witness had stated that he knew that the appellant had some mental problem from childhood.

By the above evidence coming from the prosecution witness, it means that the prosecution was aware of the mental imbalance of the appellant. In my view, the appellant no longer had the onus to prove his mental status at the time the incident took place.

In *Yahaya Mohammed v. The State* (1997) 9 NWLR (Pt. 520) 169 at 201 this court, per Mohammed, JSC in considering defence of insanity opined that in a murder case where the accused puts up a defence of insanity, the cardinal issue is whether the accused was sane or insane in the legal sense, at the time the act was committed. This is a question of fact dependent upon the previous and contemporaneous acts of the accused. In that case, the court went further to

state as follows:

*“The appellant by the description of his act at the time of the commission of the offence could not be adjudged to be a person in control of his acts. His behaviour was definitely abnormal...”*

*It is relevant to observe that the prosecution had not called any evidence to counter any suggestion that the appellant was not normal and sane at the time he committed the offence. This could be done by putting him under doctor’s observation or that of a prison warder where he was detained pending trial. All these will help in knowing whether the appellant had mens rea to commit the offence charged.*

**My Lords, the investigation carried out by the police before the case was charged to court left much to be desired. With the way the prosecution presented its case and the available evidence, with the greatest respect, the trial court should have found that the provisions of Section 51 of Penal Code is applicable. The verdict of the trial court ought to have been “not guilty for the reason of insanity” hence should have referred him for psychoanalysis in a Psychiatric Unit of a hospital at the pleasure of the Governor of the State. In other words, the prosecution did not appear to have proved the case beyond reasonable doubt as it should, in view of the evidence of mental imbalance that came from its witness. By the description of his act at the time he committed the offence, he could not be adjudged to be a person in control of his acts. His behaviour was no doubt abnormal and unnatural.**

**Therefore, the Court below was, in my view, wrong to have held that the appellant understood what he was doing and also knew that what he was doing was wrong and contrary to law. In my view, the behaviour of the appellant immediately before and immediately after the commission of the crime did suggest unsoundness of mind and mental imbalance on his part. The appellant ought not have been sentenced to death as the trial court did. And the court below erred to have affirmed the decision of the trial court.**

Accordingly, and in the final analysis, this appeal succeeds in part. The appellant is adjudged not guilty for the reason of unsoundness of mind. The judgment of the Court below which affirmed the

conviction and sentence of the trial Court is hereby set aside.

However, as it behoves the court to protect and ensure the safety of the public and that of the appellant. My Lords, I believe it will not be justice, to say the least, to release the appellant into the society from custody despite his mental status which is adjudged im-  
B balance. The appellant should be ordered to remain in prison cus-  
tody at the pleasure of the State Governor and be regularly sent for  
psychoanalysis at a Psychiatric Hospital until he will be certified by a  
Psychiatric Medical Doctor to be mentally fit to live in the community.

C In the circumstance, the appellant is hereby ordered to remain  
in prison custody and be regularly sent for psychoanalysis until he  
shall be certified to be mentally fit and safe to live in the community.

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D **MUHAMMAD JSC**

I read in draft, the Judgment just delivered by my learned brother, Ariwoola, JSC. I am in agreement with him in allowing the appeal in part.

E On the issue of whether the appellant was insane or not, there  
is need to recap what PW3, Mr. Bello Adamu [43 years] who is a full  
brother to the appellant said:

*"I know the accused person he is my junior brother the same  
father the same mother. On the 25/8/2002 something happened....  
F the accused came back from Abuja he met us in the house with my  
sister lying in the house when he came he put his bag down and  
start[ed] beating the sister. I intevened and said it is not right to start  
beating the sister. When I separated them then he moved one knife  
from his bag and said he will kill our sister with that knife. I was wor-  
G ried so I reported the matter to the Police and Police settle[d] the  
matter as a family affair:.... In the night my sister is married to one E.  
S. of Wamakko Local Government in the night of the day he was to  
commit this offence he went to the house of the sister around 2 a.m.  
and knocked and the husband came out and ask[ed] him what he  
H wanted he said he wants to see his sister, the husband said he will not  
see her this night 2 a.m. until in the morning. He locked the door he  
went and came again saying that he want to see the sister the hus-  
band it locked the house and said if he returns again he will beat him  
up and lock his house. The accused came back to the house the old*



woman is sleeping in the house with other children, the accused entered the house and slaughtered the old woman. After committing the offence the children shouted our neighbours came out and the boy called me where I was sleeping and call[ed] me when I came I saw the accused holding knife licking the knife saying “Allahu Akbar “ God is greet [sic] went to Police station and told them what is happening that is all I know when I came I met her dead I did not meet her alive that is all” B

On cross-examination, PW3 stated:

“From childhood I know Umar the accused has some mental problems.” C

It is thus clear from the circumstances of the case and the clear evidence especially by PW3, the appellant was suffering some mental derangement. Mental derangement or insanity whether partial or full, when it influences a person to misconduct himself, is taken to provide some defence to an accused person leading to his complete discharge and acquittal or reduction in the sentence provided by law, as the case may be and depending on the extenuating circumstance. D

The appellant could not have been found guilty of the offence for the simple reason of his mental capacity. The trial Court and the Court below were oblivious of this fact, though there was some evidence of insanity, That is why my brother, Ariwoola, JSC, found as follows: E

“He was not guilty for reason of insanity/unsoundness of mind”. F

I agree with my lord, I adopt the conclusion of the leading Judgment, the appeal is partially allowed by me.

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### **MUNTAKA-COOMASSIE JSC**

This is a criminal appeal against the judgment of the Court of Appeal Sokoto Division hereinafter referred to as court below. The court below affirmed the decision of the trial court. The Appellant, Umaru Adamu, without any slightest provocation slaughtered a 70 year old woman and licked the blood dripping from the knife with which he used shouting “Allahu Akbar” that is “God is Great”. The Appellant was over powered, arrested and charged to High court of Justice Sokoto for the offence of culpable Homicide punishable with death under section 221 of the Penal Code; thus:- G H

Homicide punishable with death under section 221 of the Penal Code: thus:-

Charge

*“That you Umaru Adamu on or about the 25th of August, 2002, at about 0500 hours in Marina Dalhatu Area of Sokoto North Local Government Area within the Sokoto Judicial Division while armed with a knife did commit a heinous act by slaughtering your step - mother by name Inno Adamu with the said knife as a result of which she died knowing full well that her death be the likely consequence of your act and thereby committed an offence to wit:- culpable homicide punishable with death contrary to Section 221 of the Penal code”.*

The charge was read and explained to the accused person, now appellant who pleaded not guilty to the charge.

The prosecution called seven (7) witnesses while the accused/appellant neither testified nor called any witness.

After hearing the evidence, in conclusion the trial judge, Abubakar Risku J. found that the prosecution proved their case against the accused person. He was found guilty and convicted for the offence as charged i.e. culpable Homicide punishable with death contrary to section 221 (b) of the Penal code.

After listening to the appellant in allocutus the trial judge sentenced the accused to death by hanging. The accused being aggrieved appealed to the Court of Appeal by filing a Notice of Appeal containing one single ground of appeal. One issue was also formulated by the Appellant.

The Court of Appeal unanimously dismissed the appellant's appeal before it. The respondent in the court below filed and argued their briefs of argument. He then urged this court to dismiss the appeal and uphold the judgment of the trial court. The lead judgment of the Presiding Justice, Belgore, JCA stated that on p. 109.

*“I agree with the learned trial judge that the fact that the Appellant thought of dropping and indeed dropped the knife with which he had slaughtered the deceased into a latrine showed that he knew that what he did was wrong. Exhibit 2 which gave a vivid account of how the appellant had slaughtered his step-mother was supported by the evidence of PW5, the eye witness and the medical report, exhibit 3.*

*From the totality of evidence before the lower court, I have no doubt that the appellant understood what he was doing and also knew that what he was doing was wrong and contrary to law. In the circumstances, I hold that the behaviour of the appellant immediately before and immediately after the commission of the crime did not suggest any insanity on his part. The learned trial judge was right to have rejected the defence of insanity* B

*In sum, this appeal being unmeritorious, is hereby dismissed. The conviction and sentence are hereby affirmed.*

*Not being happy with the judgment of the court below, the Appellant further filed an appeal to the Supreme Court of Nigeria on a Notice of Appeal containing one ground of appeal. One issue was formulated by the appellant as follows:-* C

*“Whether the guilt of the Appellant was proved and established beyond reasonable doubt having regard to the evidence adduced at the trial court and affirmed by the Court of Appeal”.* D

I was privileged to have read in draft the lead judgment of my learned brother Ariwoola, JSC and I entirely agree with him that the appeal shall be allowed in part. The Appellant may constitute a serious danger to the society in which he lives. It may not be wise to release him to the said society. The mandate of this court is for the Appellant to remain in prison custody until the Psychoanalyst holds otherwise and the state Governor is satisfied that the Appellant is now safe to be released. E

F

### **NGWUTA JSC**

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, Ariwoola, JSC, and I agree with the reasoning and conclusion therein. I desire, however, to chip in a few words by way of support. G

There are enough facts indicative of mental incapacity of the appellant at the time he slaughtered his step-mother. For no apparent reason he beat up his own sister and later attempted to kill her with his knife. Perhaps, if the Police did not treat the attempt by the appellant to kill his sister as a mere family affair, the poor old woman would have been alive today. H

He, the appellant, visited his sister at 2 a.m. but was driven

away by his brother-in-law. This is not a normal way to treat a normal brother-in-law. What prompted the visit by 2 a.m.? In a proper police investigation, the brother-in-law would have shed some light as to the mental state of the appellant

Having killed his step-mother, the appellant sucked the blood of his victim from the knife he killed the woman with; shouting “Allahu Akbar” (God is Great). This is not the normal behaviour of one who is not known to be a cannibal or a religious fanatic of the live-and-let-die orientation. Sucking the blood of his victim and praising God for the unprovoked killing are acts inconsistent with ordinary or normal human behaviour.

If it can be said that the motive for the killing was that the victim called him a drug addict, there is no evidence that his sister whom he attacked earlier had ever called him names or provoked him in any way. Appellant had the onus to prove insanity if he relies on same but the trial Court had a duty to consider any defence open to him whether specifically raised or appearing in evidence, as in this case, the evidence of the prosecution witnesses. See *Uche Williams v. The State* (1992) 8 NWLR (Pt. 261) 515 at 522; *R v. Fadinu* (1958) SCNLR 750; *Udofia v. The State* (1984) 12 SC 139.

A conviction stands only if the prosecution proves its case beyond reasonable doubt. See *Augustine Onuchukwu & Anor v. The State* (1998) 4 NWLR (Pt. 547) 526 ratio 5. See also Section 135 (1) of the Evidence Act, 2011. There can be no proof beyond reasonable doubt unless the mental capacity of the accused at all times material to the act constituting the offence charged is established once raised or is apparent from materials before the trial Court. There were enough facts from the trial Court to consider the case of the appellant under Section 51 of the Penal Code.

Perhaps, learned Counsel who appeared for the appellant in the trial Court did not realize the enormity of his duty to his client and the Court in the murder trial. His address is not evidence. He should have let the appellant take the stand, call witness or elicited more facts in cross-examination to leave no one in doubt that the appellant’s case is within the provision of Section 51 of the Penal Code.

For the above and the fuller reasons in the lead judgment I also allow the appeal in part, set aside the conviction for murder and sentence of death passed on the appellant by the trial Court and

affirmed by the Court below. I find the appellant not guilty for reason of unsoundness of mind. I abide by other consequential orders made on the lead judgment. Appeal allowed in part.

---

### **OGUNBIYI JSC**

B

The accused/appellant was charged before the High Court Sokoto for the offence of culpable homicide punishable with death contrary to section 221 of the Penal Code. He pleaded not guilty to the charge. At the trial court, seven witnesses testified for the prosecution. The appellant neither called any evidence nor did he testify in his defence but rather rested his case on that of the prosecution. The appellant was accordingly convicted and sentenced to death by hanging.

C

On appeal to the Court of Appeal Sokoto Division, the appellant's appeal was unanimously dismissed, and the conviction and sentence by the trial court was affirmed; hence the appeal now before us. The lone issue raised on the appellant's brief of argument read as follows:

D

Whether the guilt of the appellant was proved and established beyond reasonable doubt having regard to the evidence adduced at the trial court and affirmed by the lower court.

E

The law is well settled that the prosecution has the onus to prove the accused guilty of the offence charged beyond reasonable doubt. It is also the law which is firmly established that the responsibility placed on the prosecution, under our adversarial system of adjudication does not shift but remains constant. In other words, it is not for the accused in a criminal trial to prove his innocence. The constitution presumes him as such until proved guilty beyond reasonable doubt and which does not extend to a proof beyond shadow of doubt. See the case of *Nwangwu v. The State* (1997) 8 NWLR (Pt. 517) Page 457.

F

G

The appellant in the appeal at hand is questioning the extent and standard of proof by the prosecution. It is the contention on behalf of the appellant that the prosecution had failed to prove him guilty of committing the offence charged and in the circumstance he should be discharged and acquitted. The appellant's counsel is vigorously challenging the credibility of the evidence adduced before the

H

trial court which counsel alleges was wrongly upheld by the lower court.

For purpose of determining the issue before us, the relevant factors to be considered are the evidence by the witnesses and exhibits admitted at the trial court, in particular the accused's statement, if any.

The totality of the submission put forward by the learned appellant's counsel Ekanem, Esq. is centered on the provision of section 51 of the Penal Code which serves as a defence on the ground of insanity. It is the counsel's contention that the appellant was clearly of unsound mind at the time of the commission of the offence. The provision of section 51 of the Penal Code under reference states thus:-

*"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 the law."*

The learned appellant's counsel in his submission on the correct position of the law relating to such a defence has been well captured in the view held by Iguh, JSC in the case of Ani v. State (2002) 48 WRM 94 when he said:-

*"The law is settled that insanity is primarily a question of facts to be determined by the trial court which ought to take into consideration each and every admissible pieces of evidence tendered before it, including medical evidence when available together with the whole fact and surrounding circumstances of the case particularly such vital fact like the nature of the killing, the conduct of the accused before the act and immediately after the killing and any past history of mental abnormality."*

It is significant to restate at this point that the effect of section 51 is to serve as a defence at the instance of the accused person. The onus therefore lies on him to timeously raise the defence at the trial. It is on record that the accused/appellant was represented by a counsel. The appropriate time to have raised such a defence was at the trial court and not at this stage. The law is trite that an appeal is not a different case from that begun at the trial. It is rather a continuation of same. I further wish to add that the defence open to the accused under section 51 does not fall within one of the requirements expected to be proved by the prosecution for purpose of proving the

accused guilty of the offence charged. The defence is meant to protect or counteract the proof against the accused/appellant, whom the law sees, by reason of the defence, is not guilty of committing the alleged offence.

The appellant's confessional/statement did not indicate any reason of insanity as it is now the case. The appellant also neither testified nor did he call any evidence, but chose to rest his case on that of the prosecution. The decision in the case of *Ani v. State* (supra) is well pronounced that the issue of insanity is a question of fact to be decided by the trial judge. Being a question of fact therefore it ought to be a matter of evidence to be placed before the trial court. Generally, the onus lies on the appellant to have raised and adduced evidence in proof of same. This is more so especially where the presumption of law is evident that every person is of sound mind and intends the natural consequences of his act. The rebuttal of this presumption is dependent on the contrary which must be proved. Although the issue was only raised at an address stage of the trial, the element of insanity was alluded to by the prosecution witnesses 'PW3' and 'PW4' and which should have put the trial court on the guard as to the mental state of the accused person.

It is my further observation that the conduct of the appellant before and after the act speaks volume and leaves much to be desired. In other words, it is on record that the accused went and prayed early morning prayers in a congregation after which he returned and committed the heinous act. The evidence also revealed that he licked the blood stained knife after the murder. This behavior could not have been an act of a sane person. On the totality, I am of the view that the appellant be given the benefit of doubt.

My learned brother Hon, Justice Ariwoola, JSC had adequately dealt with the issue raised in this appeal. With the few words of mine and more particularly the fuller reasoning by my learned brother in the lead judgment, I also allow this appeal in part. The appellant is adjudged not guilty for the reason of insanity hence he should remain in prison custody at the pleasure of the Governor.