

IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION
HOLDEN AT NNEWI
BEFORE HIS LORDSHIP, HON. JUSTICE CHUKWUDI C. OKAA
ON MONDAY THE 22ND DAY OF OCTOBER, 2018
SUIT NO. HN/13C/2013

BETWEEN:
THE STATE

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PROSECUTION

AND

1. EMEKA ORJI
2. CHIZOBA UDEDIKE }

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DEFENDANTS

JUDGMENT

The Defendants were on 22/9/2016, arraigned on a murder charge. The information read as follows:

"STATEMENT OF OFFENCE

Murder contrary to Section 274(1) of the Criminal Code Cap 36 Vol. II
Revised Laws of Anambra State of Nigeria, 1991.

PARTICULARS OF OFFENCE

Emeka Orji and Chizoba Udedike on the 7th day of August, 2012 at African
Primary School, Otolo, Nnewi Judicial Division murdered Ebere Okafor."

The 1st Defendant pleaded "guilty" to the charge, while the 2nd Defendant pleaded "not guilty". Trial commenced on 20/10/2016, with the Prosecution calling five witnesses. The 1st Defendant testified for himself as a sole witness, while the 2nd Defendant testified for himself and called one other witness.

At the invitation of the court, two other witnesses testified as CW1 and CW2. The two court's witnesses were staff of the said African Primary School, Otolo Nnewi, where the alleged murder was committed.

PW1 was Daniel Chika, a trader and resident of Otolo, Nnewi. He knew the deceased, Ebere Okafor and the 1st Defendant. He testified that on 8/8/2012, around 6.00am, he rushed out to meet an engagement but saw blood flowing



from outside into his compound. He called the attention of his wife and on opening the gate, he saw a person lying outside his compound by the big gate.

When he moved closer, he noticed it was a lady. She was lying down prostrate with her underwear pulled down her legs and her dress were pulled up. He identified her as Sister Ebere, a member of his Christian group, the Scripture Union. He also noticed that one of her hands had a cut and on the gate were what seemed to be blood stains of fingers. Ebere was already dead and he also noticed there was struggle as the area was scattered and the leaves of yams and crops were broken into pieces. He started shouting and his neighbours rushed out and they said they heard the girl shouting at night saying that she was dying.

PW1 testified that he reported to the vigilante, as well as the Police. He also informed the deceased's family. As he was making his statement at the Police Station, one Romanus Uka rushed in and informed them that the killer had been arrested. That the vigilante followed the blood trail into the African Primary School, where the deceased's slippers and Holy Bible were found.

Romanus also reported that the vigilante noticed someone was hiding in the school premises, so they pursued the person and he turned out to be the 1st Defendant, who was with a knife and a rope used in climbing palm tree. The 1st Defendant's trousers had blood stains and a blood-stained knife was also recovered from him. The 1st Defendant also confessed that they were two when they killed the deceased.

The witness stated that he returned home and after a while, the vigilante came to his compound with the 1st and 2nd Defendants and showed them to him. They also showed him the stained cutlass and he observed that the trousers of the 1st Defendant was stained with blood. He noted that the Primary School was not fenced.

For the 1st Defendant, O.M. Okeke, Esq., cross-examined PW1 and he stated that he made only one statement at Otolo Nnewi. At the time he made the statement, he only reported what he saw in his compound. He did not write in the statement that he saw blood trail from his compound to the primary school as it was still 6.00am at the time he saw the corpse and he was frightened and in shock and could not have been looking for blood trail. The African school is not directly opposite his house but is very close to his house.

He saw blood stains on the trousers worn by the 1st Defendant. 1st Defendant was arrested while he was wearing the trousers; he did not go home to change.



He stated however that he was not present when the vigilante arrested the 1st Defendant. He never stated details of the blood stain on the 1st Defendant in his statement, as he was already at the Police station before Romanus came to inform him that the 1st Defendant had been arrested. It was one of the vigilante that showed him the blood-stained cutlass which they recovered from the 1st Defendant. He knew the 1st Defendant as a palm fruit cutter prior to the incident. He saw and felt that the deceased was dead.

Cross-examined by O.N. Ubah, Esq., for the 2nd Defendant, PW1 testified he made a statement at Otolo Police Station on 8/8/2012 and when he went to State CID, Awka, they told him they would repeat his statement at Otolo, which they did and he signed same.

He stated that he has lived at Obiuno Otolo Nnewi for many years but is not a native. The deceased is from Otolo, but is not from Obiuno. He never knew the 2nd Defendant until the day of the incident. He is the coordinator of the Scripture Union and that was how he knew the deceased. He did not tell the Police at Awka that he knew the deceased casually or that he did not know her residence.

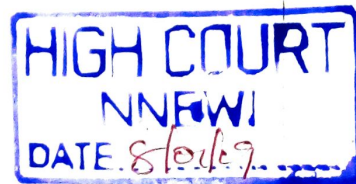
PW1 testified that he did not see any blood stain on the 2nd Defendant. He stated that it was the 1st Defendant that mentioned the name of the 2nd Defendant but he was not present when the 1st Defendant mentioned the name of the 2nd Defendant. There was no re-examination.

PW2 was NWANKWO ALPHONSUS, a Police Corporal, Force No 442329, attached to Otolo Police Station, Nnewi. The following were tendered through PW2 by the Prosecution, to wit.

1. Two photographs of the deceased- exhibits A and A1.
2. Negatives of the photographs- exhibit A2.
3. Statement of the 2nd Defendant at Otolo Police Station- exhibit B.
4. Statement of the 1st Defendant at Otolo Police Station- exhibit C.
5. Police Investigation Report dated 8/8/2012- exhibit D.

He testified that on 8/8/2012, one Chukwuma Obiora reported a case of murder at their station, stating that one Tochukwu Tobenna called and informed him that he saw one of their sisters, by name Ebere Okafor, lying dead in front of one Daniel Chika's compound.

PW2 testified that he was detailed to investigate the report and he visited the scene of the crime, where they saw the deceased lying in a pool of blood with



machete cuts on her right hand, her skirt pulled up, while her pants were pulled down. They also saw blood stain within the environment. They took pictures of the corpse and deposited her at the mortuary.

On same day, the Otolu Central Vigilante assisted them in arresting the 1st and 2nd Defendants, together with exhibits, to wit: a machete stained with blood, a rope, a phone and a machete file. They cautioned both Defendants and they volunteered statements which he recorded. He stated that 1st Defendant claimed to be a staff of African Primary School and mentioned the 2nd Defendant's name in the course of his statement. He wrote his investigation report and the case file and suspects were transferred to State C.I.D., Awka.

Cross-examined by E. Nwankwo, Esq., for the 1st Defendant, PW2 testified that his investigation took two days i.e. 8th-9th August. He stated that the substantive investigation was carried out by the State C.I.D., Awka, while his was just a preliminary investigation.

During his investigation, there was no sign that the 1st Defendant was mentally unbalanced. The 1st Defendant claimed he was a security man at African Primary School, but he did not investigate to confirm whether it was true, as it was only a preliminary investigation. He did not investigate any fight between the two Defendants. He added that the 1st Defendant mentioned the person that gave the deceased the last cut in his statement.

Cross-examined by O.N. Ubah, for the 2nd Defendant, PW2 testified that without the assistance of the vigilante, they would not have arrested the Defendants. The 1st Defendant informed him that the 2nd Defendant was at the scene of the murder on 7th and 8th August, 2012. 1st Defendant also told him that there was a fight between him and 2nd Defendant.

He was not told that 1st Defendant sells Indian hemp. Apart from telling him that he was a security man at African Primary School, 1st Defendant never mentioned any other work. PW2 testified that he was not told that the deceased was a girlfriend to the 2nd Defendant. PW2 was not re-examined.

PW3 was MATHEW JOHNSON, Force No. 152443, an Inspector attached to C.P.S., Awka. As at 2012, he was attached to State C.I.D., Awka. The following documents and items were tendered through him.

1. Police Investigation Report dated 27/8/2012 - exhibit E.
2. Statement of 2nd Defendant dated 9/8/2012 - exhibit F.



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| 3. Statement of 1 st Defendant dated 9/8/2012 | - | exhibit G. |
| 4. Three machetes | - | exhibit E-E2. |
| 5. Machete file | - | exhibit E3. |
| 6. One Techno handset | - | exhibit E4. |
| 7. One tree climbing rope | - | exhibit E5. |

He testified that in the course of his duties on 8/8/2012, a case of murder of one Ebere Okafor was transferred to State C.I.D., Awka from Otolo Police Station for continuation of investigation. The file was transferred alongside both Defendants and some exhibits- three cutlasses, a palm tree climbing rope, a Techno phone and a metal file.

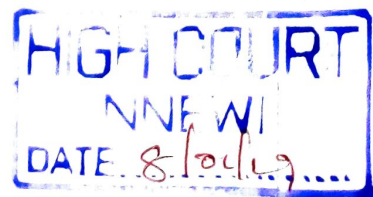
He took the statements of the complainants, cautioned the suspects they willingly volunteered their statements. The 1st Defendant made his statement in Igbo language and same was interpreted to PW3 by one PC. Akaneme Austin and he recorded it in English language. He read the statement over to the 1st Defendant. He also recorded the 2nd Defendant's statement and was assisted in the process by CPL. Ishmael, a member of his team.

In the course of his investigation, he discovered that 1st Defendant occupied a room at Obiuno Primary School, making it his temporary home. On the night of 7/8/2012, one Ebere Okafor was macheted in the said school. He discovered droplets of blood from the room in the school to the road and across the road to the gate of the compound of Mr. Daniel.

Upon inquiry, 1st Defendant informed him that it was 2nd Defendant who used the machete on Ebere. That 2nd Defendant jumped into the school premises through the fence and was trying to open one of the school rooms so that he can have carnal knowledge of the deceased there. That he asked the 2nd Defendant why he came to the school at that time of the night and quarrel ensued between the two of them.

That 1st Defendant informed him that there was a fight between him and the 2nd Defendant and that while he (1st Defendant) was trying to use the machete on the 2nd Defendant, the machete cut the deceased who started bleeding and ran out of the school premises.

He noted that their investigations showed that 1st Defendant was not a staff of the school. He wrote an investigation report.



PW3 was cross-examined by Emeka Nwankwo, Esq., for the 1st Defendant and he testified that he visited the scene of the crime. That from the school to Mr. Daniel's compound is about 50 feet. He interviewed Mr. Daniel and he told him he saw the deceased in front of his house in the morning. He also interviewed other persons but none of them witnessed the incident and none heard the deceased's cry.

He testified that at paragraph 42 of his investigation report, he stated that the 1st Defendant looked like a mentally deranged person. He however investigated and found that the 1st Defendant was a palm tree climber, who cuts palm fruits and that a mad person cannot climb trees and harvest palm fruits. He did not subject the 1st Defendant to any medical evaluation. 1st Defendant told him he had no family, so there was no relation to inquire from. 1st Defendant also told him that his abode is the room in the school and he saw pots, buckets and kitchen utensils in the room. There were no desks or chairs in the said room.

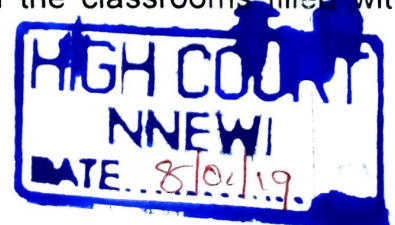
PW3 testified that he did not interview the head of the school as he was indisposed. He was in the school to interview him but he was outside the State. When he interviewed the 1st Defendant, there was no wound on his body. The 2nd Defendant did not also have any bodily wound. He saw the deceased at the mortuary and there was a machete cut on one of her hands.

He stated that the exhibits were recovered at the scene of their crime. They were recovered and transferred alongside the Defendants to the State C.I.D., Awka. He stated that the Defendants confirmed that the exhibits belonged to them. That while the Techno phone belonged to 2nd Defendant, the machete, file and rope belonged to the 1st Defendant. He added that the 1st Defendant used the machete on the deceased.

The 2nd Defendant's counsel, O.N. Ubah, Esq., was in court but he informed the court that he had no cross-examination questions for the PW3.

MR OKECHUKWU EZULIKE, a security vigilante of Umuzu Mbala, Otolu, Nnewi testified as PW4. He testified that in the morning hours of 8/8/2012, he received a phone call and was informed that a young lady was lying dead at the gate of a premises opposite the African Primary School. They were also called and informed that someone was seen with a knife covered with blood.

He summoned his vigilante men and rushed to the place. At the back of the primary school, they saw the 1st Defendant surrounded by neighbours. They took him into the primary school, where they saw one of the classrooms filled with



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blood. On inquiry from 1st Defendant, he said he was not alone and mentioned the 2nd Defendant.

They took the 1st Defendant in their vehicle to the 2nd Defendant's house but learnt he was at work. They reached him on phone and he directed them to where he was. On getting there, the 1st Defendant identified the 2nd Defendant and they arrested him and took him to Otolu Police Station. He noted that they saw the 1st Defendant with a blood-stained machete and that there was a blood trail from the classroom to where the corpse of the lady lay.

Cross-examined by O.M. Okeke, Esq. for the 1st Defendant, PW4 testified that he joined Otolu Central Vigilante in 2009 and he is a Field Commander. He stated that the Vigilante did not investigate the matter; they only arrested the Defendants and handed them over to the Police. It was Nnamdi Odozun, the head of the Mbanagu Vigilante that called him on phone to inform him about the corpse lying opposite the primary school and it was on the second call that he (PW4) was informed that 1st Defendant had been found.

PW4 testified that he did not see the corpse. He admitted that in his statement to the Police, he did not say that he saw the 1st Defendant with a blood-stained machete. He stated that he saw the 1st Defendant at the back of the primary school surrounded by people and he was with a climbing rope and a blood-stained machete. He stated that he saw the Defendant holding the blood-stained machete and that he stated so in his statement to the Police. He denied that it was at the back of the primary school that he saw the blood stain.

The witness stated that he did not find out from the 1st Defendant how the 2nd Defendant was involved in the murder. He never knew the 1st Defendant prior to the incident. He had no idea whether the 1st Defendant was mentally deranged.

Cross-examined by O.N. Ubah, Esq. for the 2nd defendant, PW4 testified that he did not know the 2nd Defendant prior to the incident, but he knew the deceased. He was never told that the deceased was a girlfriend to the 2nd Defendant. PW3 was not re-examined.

PW5 was DR. DOUGLAS NKEMDILIM, a chief medical officer with the State Ministry of Health. He tendered a medical report in evidence as exhibit F.

He testified that on 8/8/2012, he was invited by a policeman from Otolu Police Station to the mortuary to examine the corpse of one Ebere Okafor. He stated that he saw her fresh with her clothes soaked with blood. On examination, she



was lifeless and had a deep sharp injury on her right popliteal fossa (a part of the body behind the right knee). It was obvious that the blood that soaked her clothing came from the sharp injury.

On 22/8/2012, the policeman brought a post mortem form on which he wrote his findings, signed, stamped and returned same to the Police. He stated that the possible cause of the injury must have been a sharp object. He noted that from the amount of blood that soaked the body of the victim and the colour of the lower part of her eyes, he made an impression that her death was due to excessive loss of blood.

Cross-examined by Emeka Nwachukwu, Esq., for the 1st Defendant, PW5 testified that he graduated as a medical doctor on 12/9/1983. He stated that having practiced medicine since 1983, he is a specialist in general practice and holds a Masters in Public Health.

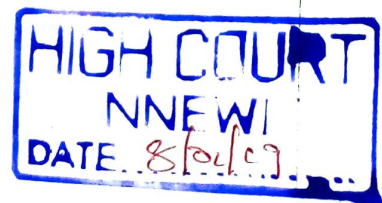
He stated that he thoroughly examined the deceased's body, in the course of which he discovered only one deep cut. He stated that the deceased bled to death due to the deep cut. He admitted that he was told that the deceased sustained injuries. He added that 3.00am was the approximate time of death as stated in his medical report.

PW5 was not cross-examined by 2nd Defendant's counsel O.N. Ubah, Esq. although he was in court. PW5 was not re-examined.

Case for the defence was opened on 10/7/2017 with the 1st Defendant, EMEKA ORJI, testifying as DW1. He testified that he was formerly living at African Primary School, Nnewi as a security man. That on 7/8/2012, he was at the school when the 2nd Defendant came into the school with his girlfriend, opened one of the school doors and they both entered into the room. He added that they came into the school around 11.30pm.

On hearing the noise from them, he entered into the room and asked the 2nd Defendant what they were doing in the room. He asked them to leave but they attacked him. The 2nd Defendant hit him with a knife on the head and as he wielded his own knife to retaliate, the knife cut the deceased and both of them ran away. He pursued them and while the 2nd Defendant escaped, the deceased went to the road and he (DW1) returned to the school until day break.

He testified that he reported the incident to the school teachers when they came to work. Security men later arrested him and he also narrated the incident to



them and took them to the 2nd Defendant's home but met his absence. The 2nd Defendant later surfaced and was arrested.

DW1 stated that if the 2nd Defendant did not run, he would have killed the two of them. He noted that 2nd Defendant and the deceased jointly attacked him while the deceased had stick, the 2nd Defendant had a cutlass. Aside the injury on his head, he sustained no other injury. He noted that the Police saw the injury on his head and added that prior to the 7/8/2012, he did not know that the deceased was the 2nd Defendant's girlfriend.

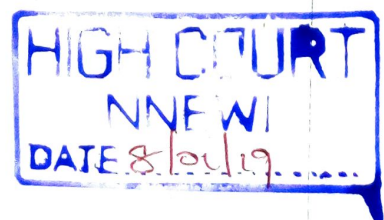
Cross-examined by C. Madukife, Esq., for the Prosecution, DW1 admitted that the incident took place on 7/8/2013, but maintained that school was in session at that time. He stated that he had worked for four years at the school and was employed by the school's headmistress but he does not know the name of the said headmistress. He does not know the names of the teachers he saw in the morning before the vigilante came.

He stated that when he saw the deceased and the 2nd Defendant, they were both dressed. He was shown exhibits A and A1 and he denied that it was when he was trying to have unlawful carnal knowledge of the deceased that he killed her. He stated that he was then a palm fruit cutter and that it was the machete he used for cutting fruits that he used to kill the deceased. He added that if the 2nd Defendant had not escaped, he would have also killed him because they wanted to kill him.

DW1 stated that when he pursued the 2nd Defendant and the deceased, they were properly dressed. He would not know how the deceased became undressed as shown in exhibits A and A1. He denied that it was while the deceased was resisting his attempt to have unlawful carnal knowledge of her that she became undressed.

He stated that he does not know Bethram Chukwuma and that it was him, not Bethram that was the school's security man. He does not know Edith Ejimbe or the headmistress of the school. He added that all the school teachers knew him.

He testified that at the time the vigilante arrested him, he admitted that he killed the deceased and that he would have killed both the deceased and the 2nd Defendant because both of them sought to kill him. He stated that he never told the vigilante that it was the two of them, i.e. himself and 2nd Defendant, that killed the deceased.



DW1 noted that himself and the 2nd Defendant knew each other prior to the incident and that 2nd Defendant is also known as Ejima. He had no previous quarrel with the 2nd Defendant prior to the incident.

He testified that it was not true that the deceased was returning from a night vigil as the incident happened within the school premises. He denied that the vigilante recovered the deceased's slippers, bible and scarf inside the school premises.

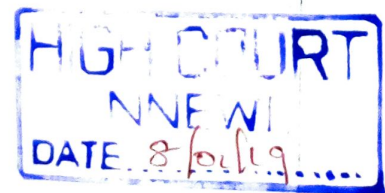
Cross-examined by O.N. Ubah, Esq., for the 2nd Defendant, DW1 testified that he saw only the 2nd Defendant and the deceased in the school room. The said school room houses the properties of the school and that of teachers, such as chairs, books and files. He stated that he told the Otolu Police that the 2nd Defendant was armed with a torch. He maintained that it was the 2nd Defendant that he saw. DW1 was not re-examined.

DW2- CHIZOBA UDEDIKE (2nd Defendant) entered his defence same day and testified as DW2. He is a welder and resides at Otolu, Nnewi. He stated that he neither knew the deceased nor the 1st Defendant. He met the 1st Defendant when the latter came to their compound to cut palm fruits. The 1st Defendant was carrying a small bag containing clothes and his tools, together with a small leather.

He stated that when he saw the leather, he confronted the 1st Defendant who said they were his working tools. He opened the bag and found that it contained not only his tools but marijuana. He threw the marijuana into a burning fire and the 1st Defendant pursued him with a knife. When his (DW2's) brother came and saw 1st Defendant outside the locked gated, he told him what transpired and 1st Defendant said he would kill him (DW2).

DW2 testified that he did not conspire with the 1st Defendant to murder the deceased. He stated that on the night of 7/8/2012, he was in his father's compound. He added that he told the Police that he was in his father's compound on the night of the incident.

Cross-examined by C. Madukife, Esq., for the Prosecution, DW2 denied that he was in the business of selling and buying Indian hemp with the 1st Defendant. He denied writing any statement. He stated that he is a welder and his master is Anaemezia. He denied admitting in his statement that he dealt in Indian hemp.



He stated that the vigilante arrest him in his master's place. They asked if he knew the 1st Defendant and he answered in the negative but the 1st Defendant stated that he knew him.

The vigilante called him on phone prior to coming to his work place and told him that it was his elder brother that gave them his number. His elder brother also called him asking whether he got himself into trouble and he answered in the negative.

DW2 testified that he told the Police that he was not involved with the 1st Defendant in the murder of the deceased. He denied that it was while he and the 1st Defendant were trying to rape the deceased that she was murdered. He maintained that he does not know the deceased and that he was in his father's house that night. He stated that African Primary School is about seven poles from his house and he used to go there on Sundays to watch others play football. He does not know the 1st Defendant's house and has never seen him on the days he watched football.

Cross-examined by O.M. Okeke, Esq., for the 1st Defendant, DW2 testified that he did not go to any other place on 7/8/2012. That he went to his master's house/work place. He would not know if the vigilante first came to their house before they called him as he was already at his place of work. He has never slept in his master's house and the distance from his house to his master's house is a bit far. He left his house for his master's house at 7.00am but would not know when he arrived there.

He testified that he slept in his father's house on 7/8/2012 and that he sleeps in same room with his mother, brother and sister and they can attest that he slept in the room. He stated that the wake keep of Mrs. Amamchukwu was held on 7/8/2012, and that his sister was in attendance but he did not attend because he was tired. He stated that he went to sleep and that his sister returned around 10.00pm and he opened the gate for her.

2nd Defendant denied knowing the person in exhibit A. He denied going to Daniel's house to see the person killed there. He denied telling the Police that he dealt in Indian hemp. He added that he did not know what was in his statement as he was forced to sign it. He did not go to African Primary School on 7/8/2012. He denied that it was while he was having a scuffle with the 1st Defendant that the deceased was cut with a knife. He also denied that the 1st Defendant pursued him with a machete on 7/8/2012. DW2 was not re-examined.



MRS. OBIANUJU OZOUGWU was DW3. She is a sister to the 2nd Defendant. She testified that the burial of one Mrs. Uchenna Amamchukwu took place on 7/8/2012, hence, she came from her husband's house to her maiden home to attend the burial. Around after 9.00pm, she decided to go to the burial and on waking up the 2nd Defendant, who was then asleep, he informed her that he would not attend as he was tired and just came back from the venue of the burial, having assisted in arranging seats and canopy.

She left for the venue of the burial and around 11.00pm, she decided to go home as she started feeling cold. On getting home, the gate was locked and after knocking repeatedly, the 2nd Defendant opened the gate for her. They both went to bed.

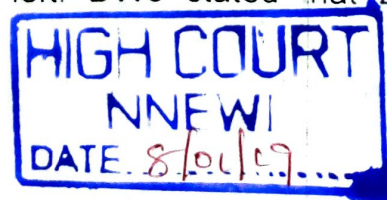
In the morning, 2nd Defendant informed their mother that he was going to tell his master that he would not be working for the day, but unfortunately, the 2nd Defendant called her on phone while he was still at his master's place to inform her that he was under arrest by the vigilante. She asked him the reason for the arrest and he said he did not know. DW3 added that throughout the period the 2nd Defendant was under arrest, the Police never came to their house to interview them.

Cross-examined by C. Madukife, for the Prosecution, DW3 testified that she does not know the 1st Defendant and that 1st Defendant was not their neighbour. She does not know the relationship between both Defendants. She stated that she left their house for the burial around 9.00pm, while 2nd Defendant was at home. She returned between 11.00pm-12.00am and added that she was not with the 2nd Defendant between the time she left and the time she returned. She made no statement to the Police; none of their relations made statement to the Police.

Re-examined, DW3 testified that when she returned around 11.00pm-12.00am, she met the 2nd Defendant.

DW3 was cross-examined by O.M. Okeke, Esq., for the 1st Defendant and she testified that there are rooms in her father's house, that she has no personal room in the house and that on the day of the incident, she was in the family room in their house. She noted that 2nd Defendant was in the same room with her.

DW3 testified that her brother was not lying when he said it was around 10.00pm that he opened the gate for her. She admitted that she was not sure of the exact time. She would not know what the 2nd Defendant was doing while she was at the burial, but she knew he was sleeping when she left. DW3 stated that 2nd



Defendant is not married and she does not know his girlfriend. She does not know the deceased or her relationship with the 2nd Defendant.

At the court's invitation, two witnesses who were staff of the said African Primary School testified as witnesses for the court.

CW1 was UCHE NWOSU, a P.T.A. teacher of Uzoegbo Obiuno School, Otolo Nnewi, a.k.a. Africana Obiuno.

Cross-examined by 1st Defendant's Counsel, she testified to being a teacher in the said school. She was not in charge of employment in the school and would not know the number of persons employed in the school. She testified that there is no list of employees in the school and she does not know the 1st Defendant as a security man in the school.

Under cross-examination by 2nd Defendant's counsel, she testified that she knew the 1st Defendant as a palm wine tapper but denied that 1st Defendant kept his work tools at the school. She does not know the 2nd Defendant as she only saw him for the first time in court.

CW2 was Bethrand Ekwuamuwa. He testified to being a security man as at 2012 at the African Primary School.

Under cross-examination by O.M. Okeke, for the 1st Defendant, CW2 testified that he was employed as the only security man at the school by the then headmistress, Edith Ejembe and that he was employed as a day security man. He knew all the employees in the school at that time. He noted that he was the sole security man and they were not two. He also noted that the school had no night watchman. He added that the 1st Defendant was not a security man in the school.

Cross-examined by O.N. Ubah, for the 2nd Defendant, CW2 testified that he is a native of Otolo Nnewi and he does not know any of the Defendants.

Parties filed final written address at the close of trial. 1st Defendant's final written address was filed on 26/6/2018 and it raised a sole issue for determination, to wit:

"Whether the defence of self-defence avails the 1st Defendant".

2nd Defendant's final written address was filed on 29/3/2018 and it also raised a sole issue, to wit:

CERTIFIED TRUE COPY
OBI P.E.
PRINCIPAL/REGISTRAR

HIGH COURT
NNEWI
DATE 08/01/19

"Whether the Prosecution proved the case against the Defendant beyond reasonable doubt".

The Prosecution's final address was filed on 6/6/2018 and also raised a sole issue, to wit:

"Whether the prosecution has made out a case of murder against the Defendants to ground their conviction."

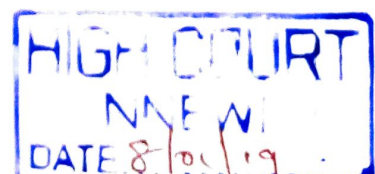
For the Prosecution to discharge the burden of proof of murder reposed on it under Section 274(1) of the Criminal Code Law of Anambra State, it has to lead evidence establishing:

- (a) that there was a killing;
- (b) that the killing was unlawful;
- (c) that it was the act or omission of the accused which caused the death of the person killed;
- (d) that the act or omission of the accused which caused the death of the deceased must have been intentional, that the accused had the knowledge that death or grievous harm was the probable consequence of his action or omission.

All these ingredients must co-exist. The burden of proving the ingredients of the offence remains throughout on the Prosecution. See **ABDULLAHI VS. STATE (2008) 17 NWLR 1115, TANKO VS. STATE (2008) 16 NWLR (PT.1114) 597, ANYANWU VS. STATE (2012) 16 NWLR (PT.1326) 221 CA.**

The 1st accused entered into a plea of guilty while the 2nd accused entered into a plea of not guilty. The court despite the plea of guilty entered a plea of not guilty for the 1st accused person.

The Prosecution's first witness was PW1 who testified that on 8/8/2012 around 6.00am, he rushed out from his house to meet an engagement but saw blood trail flowing from outside his compound into the compound. On opening the main gate to his compound, he saw the body of a person lying outside his compound by the gate. Moving closer, he noted it was a lady, lying down prostrate with her underwear pulled down her legs and her dress pulled up. He identified her as Sister Ebere, a member of his Christian group-the Scripture Union. He equally noticed that one of her hands had a cut and on the gate were what seemed to be blood stains of fingers of two hands. Ebere was already dead and he also noticed



there was struggle as the area was scattered and the leaves of yams and crops were broken into pieces

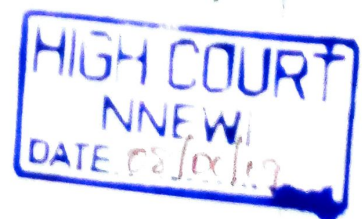
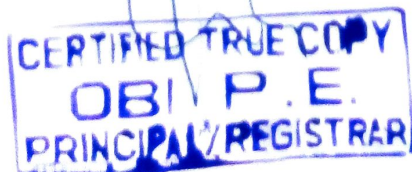
He started shouting and his neighbours all came out and they said they heard the girl shouting at night that she was dying. He went to the Police to report. He was at the Police still making a statement when one Romanus Uka rushed in to inform the Police that the vigilante followed the blood trail into the African Primary school where the deceased's slippers and Holy Bible were found

PW1 stated that he returned home and after a while the vigilante came to his compound with 1st and 2nd Defendants and showed the two to him. They also showed him the stained cutlass and he observed the trousers of the 1st Defendant was stained with blood. He noted that the Primary School was not fenced

Cross-examined, he stated he did not write in his statement to the Police that he saw blood stain from his compound to the Primary School as it was still 6 00am at the time he saw the corpse in shock and frightened, he could not have been looking for blood trail. The primary school was not directly opposite but is very close to his house. He saw blood stains on the trousers worn by the 1st Defendant. He was not present when the vigilante arrested the 1st Defendant. It was one of the vigilante men that showed him the blood-stained cutlass they recovered from the 1st Defendant. He knew 1st Defendant as a palm fruit cutter. He never knew the 2nd Defendant until the day of the incident. He did not see any blood stain on the 2nd Defendant

PW2 was Nwankwo AlphonSus a Police Corporal. He testified that on 8/8/2012, one Chukwuma Obiora reported a case of murder at their station stating that one Tochukwu Tobenna called and informed him that he saw one of their sisters, Ebere Okafor, lying dead in front of one Daniel Chika's (PW1) compound. On being detailed to investigate, he visited the scene of crime and saw the deceased lying in a pool of blood with machete cuts on her right hand, her skirt pulled up, while her pants were pulled down. Blood stains were also seen within the environment. He took pictures of the corpse which he tendered as Exhibits A, A1-A2.

On the same day, the Otolu Central Vigilante assisted the Police in arresting the 1st and 2nd accused, together with a machete stained with blood, a rope, a phone and a machete file. They cautioned both accused persons and they volunteered



statements which he recorded. The statements were tendered as Exhibits B and C while the Police Investigation Report was admitted as Exhibit D.

Cross examined, he stated that the substantive investigation was carried out by State C.I.D., Awka, while he only carried out the preliminary investigation. He saw no sign of mental imbalance on the 1st Defendant. The 1st Defendant claimed he was a security man at African Primary School but he did not confirm or investigate that, neither did he investigate any fight between the two accused persons. 1st Defendant informed him that the 2nd Defendant was at the scene of the murder on 7th and 8th day of August 2012, and that both of them fought.

PW3 was inspector MATHEW JOHNSON, at the material time attached to State C.I.D. Awka. On 8/8/2012, a case of murder of one Ebere Okafor was transferred from Otolu Police Station for continuation of investigation, alongside the Defendants and exhibits. He took statements of the complainants, cautioned the suspects who willingly volunteered their statements. He discovered in the course of investigation that 1st Defendant temporarily occupied a room at Obiuno Primary School. On the night of 7/8/2012 Ebere Okafor was macheted in the said school. He discovered droplets of blood from the room in the school to the road and across the road to the gate of the compound of PW1.

Upon enquiry, 1st Defendant informed him that it was 2nd Defendant that macheted Ebere. That 2nd Defendant jumped into the school premises through the fence and was trying to open one of the school rooms so as to have carnal knowledge of the deceased. He confronted the 2nd Defendant and quarrel ensued between them. There was a fight and while he, 1st Defendant, was trying to use the machete on the 2nd Defendant, the machete cut the deceased who bleeding, ran out of the school premises. Investigation revealed that the 1st Defendant was not a staff of the school. He tendered the Police Investigation Report- Exhibit E, statement of the 2nd Defendant- Exhibits F, statements of the 1st Defendant- Exhibit G, 3 machetes- Exhibits E-E2, machete file- Exhibit E3, techno handset- Exhibit E4 and a climbing rope- Exhibit E5.

Cross-examined, PW3 stated that the 1st Defendant confirmed that the machete belonged to him, the techno phone belongs to the 2nd Defendant while the machete file and rope belonged to the 1st Defendant. The machete was what the 1st Defendant used in macheting the deceased.

PW5 was OKECHUKWU EZURUIKE. He testified to knowing the Defendants and Ebere Okafor. On 8/8/2012 around 10am, he was called on phone and

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informed that a corpse of a young lady was lying on the gate of a premises opposite African Primary School. He and his men rushed to the place. They were also informed that someone was seen with a knife covered with blood.

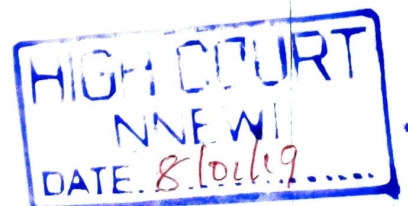
On getting to the back of the Primary School, they saw the 1st Defendant surrounded by neighbours. They picked him and took him into the school and saw that one of the classrooms was filled with blood. On asking, he informed them he was not alone that killed the young lady, and mentioned 2nd Defendant. They took him along to 2nd Defendant's house but did not meet him. On being directed, they proceeded to his place of work where the 1st Defendant identified him. The 2nd Defendant who asked what his offence was was taken to the police station. They saw the 1st Defendant with a machete filled with blood stain, blood stains were also seen in the class room and a blood trail for the classroom to where the corpse lay.

Cross-examined, he stated that it was Nnamdi Ofodum of Mbanagu vigilante that called him to relay the information of the finding of the corpse. It was the second call that informed them of the finding of the 1st Defendant. He did not see the corpse; he did not say in his statement that he saw the 1st Defendant with machete that has blood stain. They saw the 1st Defendant at the back of the school surrounded by people. He, 1st Defendant, had a rope climber and blood-stained machete. 1st Defendant was holding the machete. He did not know the 2nd Defendant and was not told that Ebere was the girlfriend of 2nd Defendant.

PW5 was DOUGLAS NKEMDILIM, a Chief Medical Officer. He testified that in the course of his duties, he examined the body of Ebere Okafor on 8/8/2012.

He saw the dead body of Ebere Okafor; a fresh body with her clothes soaked in blood. On examination, she was lifeless and had a deep sharp injury on her right popliteal fossa which is a part of the body behind the right knee. It was obvious that the blood that soaked the clothing of the dead body came from the sharp cut injury. The possible cause of the injury must have been a sharp object. His findings as to the cause of death is that from the amount of blood on the victim, the colour of the lower portion of her eyes, he had the impression of death due to excessive loss of blood. The medical death report and coroner was admitted as Exhibit F.

Cross-examined, he did not discover any other cut. She bled to death because of the deep cut. The approximate time of death was 3.00am on 8/8/2012.



DW1 was 1st Defendant. He is from Onueke Ikwo in Ebonyi State, formerly living at African Primary School a security man. On 7/8/2012, he was at the Primary School when the 2nd Defendant came in with his girlfriend into the School compound, opened the school doors he had already closed, both of them entered into one of the rooms. He confronted them on hearing a noise. They told him that they were not doing anything. He asked them to leave as he will not allow anybody in the premises at that hour.

The two of them attacked him. The 2nd Defendant picked a knife and hit him on the head. He took his own knife to cut and hit the 2nd Defendant, the knife then cut Ebere the deceased. The both of them ran and he pursued them and the 2nd Defendant ran away. He could not see him again. The deceased came to the road. He returned to the school until day break.

The school teachers came to work and he reported to them what happened. Thereafter, the security men came and arrested him and he told them what happened and took them to the 2nd Defendant's home where they met his absence. He later resurfaced and he was arrested. If the 2nd Defendant did not run, he would have killed the two of them. It was the deceased and the 2nd Defendant that jointly attacked him. The deceased had a stick while the 2nd Defendant had a cutlass. Apart from the injury on his head, he did not sustain any other injury. The Police saw the injury. He did not know that Ebere was 2nd Defendant's girl friend before that date.

Cross-examined, he admitted that the incident took place on 7/8/2012. It was not true that the school was not in session. He did not know the name of the headmistress of the school, though it was the said headmistress that employed him. He was already in the school's employment 4 years before the date of the incident.

It was the vigilante that arrested him. When he saw the 2nd Defendant and the deceased they were all dressed. He was shown Exhibits A & A1 and he denied that it was when he was trying to have unlawful carnal knowledge of the deceased that he killed her. He did not know the names of the teachers he saw in the morning before the vigilante came.

It was true that he is a palm fruit cutter. It was the machete he used for cutting fruits that he used to kill the deceased, Ebere. He would have killed the 2nd Defendant but he was lucky to have run away because they wanted to kill him.



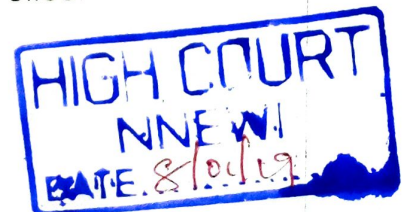
The deceased was properly dressed when he pursued them. She was not in the state shown in Exhibit A and A1 when he pursued them. She was not in the state of undress when he killed her. He would not know how she came to be in the state of undress in the pictures. It is not true that it was while she was resisting his attempt to unlawfully have carnal knowledge of her that she became undressed.

He did not know Bethram Chukwunia. It was himself and not Bethram who was the school security. He did not know Mrs. Edith Ejembe or the headmistress of the school. All the school teachers knew him.

He admitted to the vigilante at the time of arrest that he killed Ebere. What he told the vigilante was not that the two of them, himself and the 2nd Defendant, killed Ebere. What he told the vigilante was that it was the 2nd Defendant and the deceased that he would have killed because both sought to kill him and that was why he took them to the 2nd Defendant's house. He and 2nd Defendant knew each other. 2nd Defendant is also called Ejima. He has no previous quarrel with the 2nd Defendant before the incident. It is true that he intentionally wanted not only to kill the deceased, Ebere, but also the 2nd Defendant. He did not intentionally kill Ebere as both of them sought to kill him. It is not true that Ebere was coming home from a night vigil as the incident happened within the school premises. It is not true that the vigilante recovered Ebere's slippers, bible and scarf from the school premises.

DW1 further testified that he saw only the 2nd Defendant and Ebere in the school room. Properties of the school and teachers were also in the room, chairs, books and files.

DW2 was the 2nd Defendant. He testified not knowing the deceased, Ebere. He knew the 1st Defendant before the incident, having met him when the 1st Defendant came to their compound to cut palm fruits with a small bag and tools. He DW2 opened the bag and saw working tools and marijuana. He removed the marijuana and threw it inside a burning fire. The 1st Defendant pursued him with a cutlass and he ran away. That when his brother saw the 1st Defendant outside the locked gate and asked him where he was inside the compound what happened, he (DW2) told him that the 1st Defendant vowed to kill him. He denied conspiring to murder Ebere. He did not know Ebere. On the night of 7/8/2012, he was in his father's compound and he said so to the Police.



Cross-examined, he maintained he did not know the deceased. When the vigilante arrested him and asked him if he knew the 1st Defendant, he told them he did not. The 1st Defendant acknowledged knowing him. He slept in his father's compound in the same house with his brother, sister and mother.

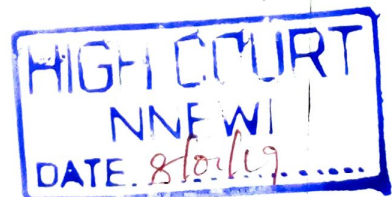
That on 7/8/2012, Mrs. Amamchukwu had a wake keeping. His mom and sister were in town that day. His sister invited him to accompany them to the wake but he refused as he was tired. His sister later returned from the wake and he opened the gate for her around 10.00pm. From his place to the primary school is 11 poles. He did not go the primary school on 7/8/2012.

DW3 was MRS. OBIANUJU OZOUGWU. She testified that 2nd Defendant is her brother. On 7/8/2012, she came back to her maiden home for the wake keeping of late Mrs. Uchenna Amachukwu at 9.00pm, met her brother (2nd Defendant) sleeping and requested him to accompany him to the wake but he declined. She left for the wake him and at around 11.00pm feeling cold and being pregnant, she returned home and the gate was locked. She knocked and her brother, 2nd Defendant, opened the gate.

In the morning, 2nd Defendant informed the family he will not be going to work that day and that he will go and inform his master. He later called her from the master's place that he was under arrest by the vigilante but had no idea why he was arrested. She informed their mother. All through the period the 2nd Defendant was in Police custody, the Police never came to their house to interview any of them.

Cross-examined, she did not know the 1st Defendant and never met him. She did not know the relationship between the 1st and 2nd Defendants. She left for the burial at 9.00pm, leaving the 2nd Defendant in the house. She came back between 11.00pm-12 midnight. She was not with 2nd Defendant between 9.00pm and 11.00pm-12.00am. 2nd Defendant was not lying when he said it was 10.00pm as she is not sure of the exact time. 2nd Defendant is single. She does not know his girlfriend. She does not know the deceased or his relationship with the 2nd Defendant.

On the invitation of the Court, UCHE NWOSU a PTA teacher was sworn in as a witness and cross-examined by the Defendants' Counsel. She is not in charge of employment in the school and does not know the number of staff in the school. The 1st Defendant is not a security man in the school; rather, he is a palm wine



tapper, but does not keep his palm wine tapping tools in the school. She does not know the 1st Defendant and saw him only in court.

CW2 was Bertrand Ekwumiwu. Cross-examined after being sworn in by Counsel to the Defendants, he testified being employed by the then headmistress Edith Ejembe as a day security man. He knows all the employees. He was the sole security man. The school had no night watchman. He did not know any of the Defendants.

On the ingredient of whether the deceased was dead, the Prosecution called PW1, PW2, PW3 and PW5 and they all gave uncontroverted evidence in proof of the death of the deceased. PW1 gave evidence of seeing a blood trail from outside his gate into his compound and on getting to the outside of the gate he saw the lifeless body of the deceased, Ebere. PW2 testified that upon the report of one Chukwuma Obiora, he visited the scene and saw the lifeless body of the deceased and described vividly the marks of violence on her body. He tendered Exhibits A, A1-A2, the gory picture of a young lady with her underwear pulled down her waist and her dress pulled up. PW5 performed the post mortem on the body of the deceased. The DW1 did not deny but admitted the death of the deceased. From the overwhelming evidence before me, I hold that the deceased was dead.

On the 2nd ingredient of the offence of murder- **whether the two accused cause the death of the deceased**. The Prosecution called PW4. He testified that on being informed of a corpse of a lady in front of a compound and that a man was seen at the back of the school, he stated:

"On getting to the back of the Primary school we saw the 1st Defendant surrounded by neighbours. We then picked the 1st Defendant and took him into the Primary school and saw that one of the classrooms was filled with blood. On asking him, he, 1st Defendant informed us he was not alone in the killing. The 1st Defendant mentioned the 2nd Defendant. We took him in a vehicle to the 2nd Defendant's house".

PW4 also testified thus:

"It was a machete we saw the 1st Defendant with. The machete was stained with blood. We also saw blood stain in the class room and a blood trail from the classroom to where the corpse of the young lady lay."

Cross-examined, PW4 while admitting that he was not present at the primary school when the deceased was killed, reconfirmed his testimony that they saw

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the 1st Defendant at the back of the primary school surrounded by people. He was with a rope climber and the blood-stained knife. 1st Defendant was holding the machete.

PW1 the owner of the compound where the corpse lay outside of its gate testified that when the two accused was brought to his compound, he was shown the cutlass and he observed that the trousers of the 1st accused was stained with blood.

PW1 emphatically maintained that the Primary school was not fenced. He maintained seeing the blood-stained trouser he saw the 1st Defendant wore.

PW2, the police officer, testified that he went to the scene on 8/8/2012 and met the deceased lying down on a pool of blood with machete cuts on her right hand and her skirt pulled down. They also saw blood stains within the environment.

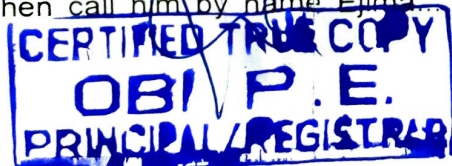
PW3 who was the IPO from State C.I.D., Awka stated he discovered droplets of blood from the room in the primary school to the road and across the road to the gate of the compound of PW1.

In her written address, Charity Madukife, Esq., submitted that the evidence adduced by the Prosecution conclusively proved that the Defendants unlawfully caused the death of the deceased. That the court can infer from the circumstantial evidence that the death of the deceased person was caused by the acts of the accused persons as it fixed the accused persons to the crime and excludes the possibility that some other person committed the crime. Reliance was placed on **JUA VS. STATE (2010) 4 NWLR (PT.1184) 217**.

Counsel submitted that the 1st Defendant pleaded guilty to the charge and all through his statements at both police stations and his evidence in court, he admitted responsibility for inflicting machete cuts on the deceased, which cuts PW5 stated was responsible for the death of the deceased.

As I have stated earlier, the 1st Defendant pleaded guilty to the charge of murder. The 1st Defendant in his statement to the Police on 9/8/2012- Exhibit G stated:

"...yesterday being 7/8/12 at about 10 pm to 12pm midnight, I was at my duty post as security night watchman when one boy whom I know very well as Ejima jumped into one of the classrooms as soon as he jumped in, he open door for one unknown girl to enter. As soon as the girl entered the room they began to point touch, that make me to know some people were there. I then call him by name Ejima. I asked him why he jumped in



through the window and open my door for a woman which I locked. I told him that he would have got me informed if he want to make use of that place with his woman. Because he is with machete, he began to fight me with the machete, together with his woman. He first cut me on my neck and my left leg (leg nail) first toe, because I was holding sharp machet which I have been using for palm harvest. I then used it to defend myself but machet mistakenly land at his girlfriend hand. That was how her hand get cut. His girlfriend was holding torch and matches only. It was Ejima that gave her cut. Two of them planned to kill me because I asked them to leave my work place and go to their house."

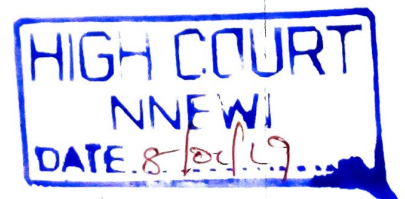
The 1st Defendant's statement on 9/8/2012 was a repeat of the statement he made on 8/8/2012 at Otolu Police Station.

In his oral testimony, DW1 stated that the 2nd Defendant and his girlfriend entered the school premises and entered into a classroom and he hearing a noise confronted them and they told him they were not doing anything. He asked them to leave and the two of them attacked him, 2nd Defendant, with knife hit him on the head and he took his own knife to cut and hit the 2nd Defendant. The knife cut Ebere and both of them ran and he pursued them. The deceased ran to the road and he returned to the school.

At cross examination, the 1st Defendant stated:

"It is true that I am a palm fruit cutter. It was the machete I used for cutting fruits that I used to kill the deceased, Ebere. I would have killed the 2nd Defendant but he was lucky to have run away because they wanted to kill me. The deceased was properly dressed when I pursued them. She was not in the state that was shown in Exhibits A and A1. It was not in the state of undress that I killed her. I would not know how she came to be in a state of undress in the picture."

In his final written address, Emeka Nwankwo, Esq., Counsel to the 1st Defendant submitted that it is settled law that where the circumstances of the killing of the deceased are positive, direct and unequivocal and irresistibly leads to the inference that it is the Defendant that committed the act, but did so under defence, the onus is still on the Prosecution to establish the fact that the defence in the circumstance is not available to the Defendant. The only duty for the Defendant is to lead evidence that he is entitled to that defence. Reliance was placed on **SHEFU VS. STATE (2014) 15 NWLR (PT. 1429) 5.**



Counsel argued that the 1st Defendant timeously raised the plea of self defence in his extrajudicial statement- Exhibits C and G and in his oral testimony, he never denied killing the deceased but that he did so because the 2nd Defendant and the deceased were about to kill him. That the plea of self defence was fortified by the Police Investigation Report- Exhibit D, which confirmed that he, 1st Defendant, sustained machete cut on the neck and leg. Counsel submitted that the plea of self defence was unassailable as the 1st Defendant was under a reasonable belief that he was in immediate danger of death.

For the Prosecution, Charity Madukife, Esq., submitted that the defence does not avail the 1st Defendant as it was never his evidence that the deceased attacked him with cutlass. In one breath, he claimed the deceased was hit with a cutlass and in another breath, he stated the deceased attacked him with a stick and wanted to kill him. Secondly, assuming but without conceding that the deceased attacked him with a stick, the 1st Defendant's use of machete was not proportionate to the threat. She cited **AJUNWA VS. STATE (1988) 2 NWLR (Pt.89) 380, UDOFIA VS. STATE** (citation not supplied).

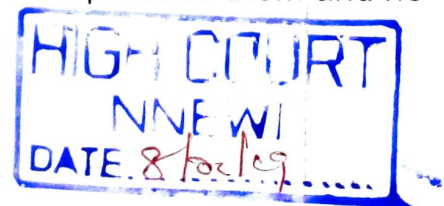
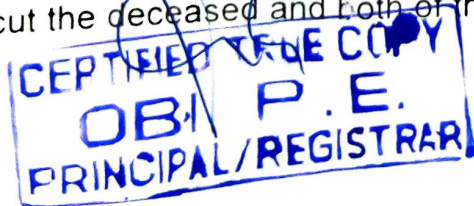
In **NWOKEARU VS. STATE (2010) 15 NWLR (Pt. 1215) 1**, the Court of Appeal stated that for the defence of self defence to avail the Prosecution must not disprove that:

- (a.) the nature of the attack by the deceased was such as to cause a reasonable apprehension of death or grievous harm to the accused.
- (b.) the accused in fact apprehended immediate death or grievous harm.

From the evidence before me, the 1st Defendant was never employed as a security man for the primary school, as he could not name the headmistress of the school for whom he claimed to have worked for 4 years prior to the incident. The teacher from the school and the sole security man in the school also categorically denied that the 1st Defendant was employed as a security man. So assuming without ruling that the 2nd Defendant and the deceased were in the classroom, the 1st Defendant had no business nor duty in confronting them.

From the evidence before me, the 1st Defendant by his own showing, the deceased was holding a torch and machete. See Exhibit C & G- statement of 1st Defendant.

In his oral testimony, he somersaulted and stated that it was the two of them that attacked him but he added that he took his knife to cut and hit the 2nd Defendant but the knife cut the deceased and both of them ran and he pursued them and he



could not see the 2nd Defendant again. The deceased came to the road and he returned to the school.

From the 1st Defendant's own testimony, it was the 1st Defendant that provoked the assault from his own testimony as he was not a school security man. He, the 1st Defendant in deploying a machete that was to be used for cutting palm fruits to machete the deceased, who by his own testimony had only a torch and matches. The machete cut on the deceased was not proportionate to the assault of threat offered, neither was the nature of the assault by torch or matches enough to cause the 1st Defendant a reasonable apprehension of death or grievous harm.

1st Defendant's counsel submitted that the 1st Defendant had a cut on the leg and neck and referred to the IPO's report- Exhibit D. It is settled law that the guiding principles of self defence are necessity and proportion. From the evidence led by the Prosecution, the threat offered by the deceased's matches and torch was disproportionate with the force used in repelling it and the necessity of the occasion did not demand even such a self defence.

The 1st Defendant in oral testimony betrayed his state of mind when he stated:

"It is true that I am a palm fruit cutter. It was the machete I used for cutting palm fruits that I used to kill the deceased. I would have killed the 2nd Defendant but he was lucky to have run away."

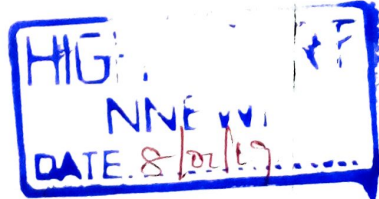
I therefore hold that from all the evidence of Prosecution witnesses, the defence of self defence did not avail the 1st Defendant at all. The plea fails.

The evidence of the Prosecution witnesses, especially Exhibits A and A1 (the photographs of the deceased) showed that the underwear of the deceased was pulled down from her waist to the legs while her skirt was pulled up. The DW1 was asked and he stated:

"The deceased was properly dressed when I pursued them. She was not in the state that was shown in Exhibit A and A1 when I pursued her. It was not in the state of undress that I killed her. I would not know how she came to be in a state of undress."

I do not believe one iota of what the DW1 said.

There was also evidence that there was a blood trail from the classroom to the gate of PW1 where the body was dumped. See PW1 and PW4's evidence. The



Prosecution also gave evidence of blood stains on the trousers of DW1. See PW1's evidence and on the machete. I am inclined to believe the Prosecution witnesses that the 1st Defendant not only killed the deceased as he admitted, he pursued the deceased to where she lay and a struggle between him and the deceased ensued as PW1 in his evidence observed that:

"There was a struggle as the crops within the area were scattered and the leaves of the yams crops broken into pieces.... My neighbours who rushed out were saying that the girl was heard shouting I am about to die repeatedly in the night crying for her brother to hear her dying cry."

The pulling down of her pants to her knees and the pulling up of her skirt put together, with the blood stains on the trousers of the 1st Defendant leads to an inference that the 1st Defendant was not telling the truth as to all that happened that night. He, the 1st Defendant, was callous to the extreme that even after inflicting the cut that bled the girl to death, he did nothing to call for help and the girl bled to death. DW1 had no explanation for the deceased's state of undress as he clearly and without remorse stated in evidence that:

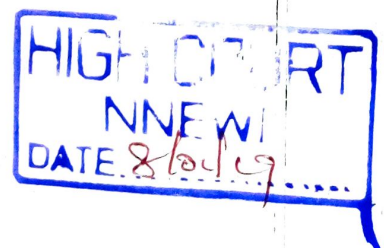
"It was not in the state of undress that I killed her. I would not know how she came to be in a state of undress in the picture."

With respect to the 2nd Defendant, the Prosecution witnesses did not in their testimonies mention the 2nd Defendant except the PW4, the vigilante, whose only evidence was thus:

"On asking the 1st Defendant he informed us that he was not alone that killed the young lady. He mentioned the 2nd Defendant. We took him in our vehicle to the 2nd Defendant's house."

The only witness who mentioned 2nd Defendant was the 1st Defendant who stated that the 2nd Defendant on the 7/8/2012 came with the deceased to the school room and on confronting the 2nd Defendant why he should come to the school without his permission, the 2nd Defendant attacked him with knife and it was in the process of retaliation that he macheted the deceased in defence. See Exhibits C & G.

The 2nd Defendant in his statement to the police at Otolu Newi Exhibit E denied going to the school, denied knowing the deceased and stated that on the night of 7/8/12 he was at home all through the night, he denied killing the deceased.



The 2nd Defendant in his oral testimony maintained his stand that he was at home on the 9th of August, 2012 and called his sister DW2, who gave evidence that she was at her maiden home and attended a wake keep for a neighbour and at the time she left for the wake keep, her brother 2nd Defendant was home and that when she returned from the wake at between 11.00pm-12 midnight she woke the 2nd Defendant who opened the gate to their home for her.

From the evidence before me, it was only the 1st Defendant that mentioned the name of the 2nd Defendant. He however claimed responsibility for the killing of the deceased. He never for once mentioned that 2nd Defendant aided him in the killing of the deceased.

The settled law is that where the accused makes a statement to the Police before trial, indicating that he will rely on a defence of alibi as in the instance case, it is for the state to have the statement investigated before the trial and where appropriate, to use the results of the investigation to rebut the defence of alibi. See **SOWEMIMO VS. STATE (2004) 11 NWLR (PT. 885) 515 SC**. The accused must however offer evidence as to where he was at the time of the crime and with whom he was at the material time. See **ONYEGBU VS. STATE (1995) 4 NWLR (PT. 391) 510 SC**.

The Prosecution called PW1-PW4 and none of the witnesses connected the 2nd Defendant to the crime. The PW2, the IPO, who conducted the initial investigation did nothing else than take their statement and forwarded the file to State C.I.D., Awka. PW4, the Inspector from State C.I.D., Awka did not fare better; he made no attempt to investigate the alibi of the 2nd Defendant. The investigation report- Exhibit E and his oral testimony was bereft of any investigation of the alibi.

Two brothers of the deceased reported to the Police and gave their names but the Police failed to find out from them the relationship of 2nd Defendant to the deceased and no statement was received from them. From the Report- Exhibit E, Chukwuma Obiora, brother to the deceased was said to have stated that the deceased was not sound mentally and that she stays at Eke Amobi, where she sells firewood, while Okafor Peter said the deceased was a well behaved person through depressed. A thorough investigation would have helped in debunking or confirming the alibi of the 2nd Defendant.

DW3 in her oral testimony gave evidence that the Police did not visit their home or interviewed any of them. Her evidence was not controverted. The settled law

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OBI P. E.
PRINCIPAL/REGISTRAR

HIGH COURT
NEW
DATE 8/10/19

is that an accused person is not required to prove his alibi, rather, the onus is on the Prosecution to disprove the alibi. Consequently, once there is the slightest defence of alibi, the plea must be investigated. Failure of the Prosecution therefore, to investigate the alibi raise is fatal to the Prosecution's case. See **AIGUOREGHIAN VS. STATE (2004) 3 NWLR (PT.860) 367.**

Apart from the non investigation of the alibi, there is no iota of evidence led by the Prosecution that the 2nd Defendant caused the death of the deceased.

On the ingredients of **whether the act of the accused person was intentional with the knowledge that death or grievous harm was its probable consequence.**

From the evidence of the 1st Defendant in his statement to the Police- Exhibits C & G and his oral testimony, he was aware that the machete he deployed to machete the deceased was one used in cutting palm fruits. The classroom where he macheted the deceased from the evidence of PW4 was filled with blood. PW4 also said that the knife found with 1st Defendant was stained with blood and that there was blood trail from the classroom to where the corpse of the deceased lay. PW1 in his evidence also stated that there was a blood trail from outside his main gate into his compound. The medical doctor- PW5 placed the time of death at 3.00am and that the deceased died as a result of bleeding from a cut from a sharp object.

All the above pieces of evidence found corroboration in the testimony of the 1st Defendant who testified that he used his cutlass to machete the deceased. 1st Defendant said the cut was on the hand of the deceased. See Exhibits C and G.

The PW5, a medical doctor, who performed the post mortem described the injury thus:

"On examination she was lifeless and had a deep sharp injury on her right popledal fossa which is a portion the right knee. It was obvious that the blood that soaked the clothing of the dead body came from the sharp injury.

"...my findings as to the cause of death is that from the amount of blood that soaked the body of the victim, the colour of the lower portion of her eyes, I made an impression of the death as due to excess loss of blood."

It was not therefore true that it was only on the hand that the deceased got the machete cut. The machete cut was at the knee of the deceased and that would



have accounted for the blood trail from the school compound to the compound of PW1

I am satisfied that the 1st Defendant knew the consequence of what he did as he was not even remorseful when he testified in evidence that he was even ready to kill the person he claimed was accompanied the deceased.

I therefore find the 1st Defendant guilty as charged. I however did not find the 2nd Defendant guilty of the offence. He is discharged and acquitted.

ALLCUTUS:

Okeke: 1st Defendant is a first offender. He never planned to kill the deceased. Urged the court to temper justice with mercy.

1st Defendant: I have nothing to say.

Court: I sentence the 1st Defendant to death by hanging.

Char ty Madukife, for the Prosecution.

Emeka Nwankwo with O.M. Okeke, for the 1st Defendant.

O.M. Ubah, for the 2nd Defendant.



CHUKWUDI C. OKAA
(JUDGE)
22/10/2018



Certification also
Certified 29 February
2020 per P.O. 680

Jul 8-1-19

Pd on CR No
1086704
8/11/2019