

Judicial Approach to Uxoricide Cases in Nigeria

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Abstract: *The magic in love is the failure to acknowledge the fact that it may one day come to an end and for some couples it ended in tragedy. When love became a trap, some killed to escape. To the unfortunate soul who is now deceased, it merely fortifies the saying that 'we are easily duped by those we love. [1] There is a litany of reported cases in which men had been accused, arraigned and sometimes convicted of killing their wives or female lovers. The thrust of this paper is an examination of these reported cases of domestic violence where same unfortunately resulted in fatalities, to wit; the death of the woman and this is what forms the focus of the paper in which the writer strives to analyze and rationalize the mind and reasoning of the court as evidenced in its judgment with the aim of outlining broad principles of law deducible from Nigerian case law on the issue of uxoricide. The paper is discussed under sub-heads like provocation, circumstantial evidence, interpretation of the Constitution, identification of the accused, insanity, motive and admissibility of confessional statements which were some of the defences and issues of law raised by the accused persons as distilled from the cases discussed. In conclusion, the paper recommends the position of Islamic Mu'amalat (Human Transactions) on divorce to the effect that 'divorce is the most hateful but lawful thing in the sight of the Almighty Allah [2] and it is a better path to tread when love begins to wane between couples than wait till the situation deteriorates or culminates into tragedy.*

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1. Introduction

Uxoricide is the murder of one's wife or female lover. [3] One reads or hears every now and then about women that have fallen victims of this crime. [4] These are women whose sin was that they fell in love with men who turned out to be their murderers. But are they to be blamed for falling in love? Of course not. After all, 'she who has never loved has never lived.' [5]

Uxoricide from observations of happenings in the Nigerian society is not usually a one-time isolated happenstance but mostly preceded by recurrent violence be it physical or in other ways which had been meted out and tolerated by the woman on previous occasions before culminating in that tragic incident that finally cost her life.

Such domestic violence are sometimes encouraged by societal values and even in some cases sanctioned by legislation as exemplified by section 55(1) (d) of the Penal Code applicable in Northern Nigeria which provides that: "Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done by a husband for the purpose of correcting his wife such husband and wife being subject to any native law or custom in which such correction is recognized as lawful".

Such legislation as the one quoted above has seemingly been given judicial approval in decided cases. For instance, in *Akinbuwa v Akinbuwa* [6], the Court of Appeal posited that: "it is an elementary principle of matrimonial law that a minor assault committed by one spouse upon another especially for corrective purposes are pardonable and would go to no issue in a divorce proceeding, provided it is not frequent, or of such character as is likely to cause or produce reasonable apprehension of danger to life, limb or bodily or mental health of the victim."

Various reasons have been put forward for such behaviour on the part of husbands. For example, the Nation Newspaper reports that:

While making other contributions, participants concluded that women are said to be beaten as a result of their nagging behavior as well as refusing to stay where their husbands wanted them to stay. They said this is usually so because of a deep cultural belief in Nigeria making it socially acceptable to hit a woman to discipline her. Other reason is religious-based asking women to obey and submit to everything her husband says either it is in her interest or not... 'domestic violence is not limited to physical abuse but includes sexual, emotional abuse, rape, incest, harassment, denial of education, starvation and more.... [7]

In the same vein, the same print media in another edition reports that: "major reasons men beat their wives include frustrations, poverty and anger." [8]

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The thrust of this paper is an examination of these reported cases of domestic violence where same unfortunately resulted in fatalities, to wit; the death of the woman and this is what forms the focus of the paper in which the writer strives to analyze and rationalize the mind and reasoning of the court as evidenced in its judgment with the aim of outlining broad principles of law deducible from Nigerian case law on the issue of uxoricide.

The paper will be discussed under sub-heads like provocation, circumstantial evidence, interpretation of the Constitution, identification of the accused, insanity, motive and admissibility of confessional statements which were some of the defences and issues of law raised by the accused persons as distilled from the cases discussed.

Provocation

Provocation is a mitigating factor that would reduce murder or culpable homicide punishable with death to culpable homicide not punishable with death but such provocation must be grave and sudden enough to qualify for that effect under section 222(1) Penal Code. Where the provocative act by the deceased is an insult, the trial court ought to elicit from the prosecution witnesses the effect such an act would have on an ordinary reasonable person of the class of the accused.

Insulting words may qualify as provocation but such words must be grave enough as provided for under section 222 of the Penal Code and the words must come squarely within the provisions of the section and the accused should raise the issue of provocation at the earliest opportunity. He should not raise it for the first time in his defence thereby depriving the prosecution the opportunity to call evidence regarding same during the prosecution's case.

2. Provocative Act: Grabbing Husband's Private Part with Intent to Prevent Him from Exercising his Marital Rights.

In *Queen v Jinobu* [9], the appellant was convicted in the High Court of the Eastern Region of the murder of his 14 year old wife, Ugbalekame Umanukeni. It was not disputed that he killed her, and the questions argued before the Supreme Court are whether he was rightly convicted of murder, or whether he ought to have been acquitted, as having acted in self-defence, or convicted of manslaughter, as having killed her in the heat of passion caused by sudden provocation.

There was a conflict of evidence as to whether the appellant and the deceased had been living together as man and wife, but the fact that the killing took place in his bedroom in the middle of the night (as is confirmed by the blood-stains) supports his story that they had been. There were no eye-witnesses to the killing itself. The learned Judge was of the opinion that even on the view of the facts most favourable to the appellant, the appellant was guilty of murder and he therefore found it unnecessary to reach or record any findings of fact on the matters on which there was room for doubt. It was now left to the Supreme Court to decide whether the Judge was right in holding that it was open to him, on the evidence, to do anything but convict the appellant of murder.

On the appellant's own story he and the deceased were living together and had sexual intercourse together. He had previously been married four times and had lost his wives to other men. He was extremely fond of the deceased and suspected her of having a lover. The events in question took place at night and on the previous day he had been at a funeral and returned home after 10.00p.m. The deceased returned after him and there was some argument as to where she had been. He undressed in his bedroom and wished to have sexual intercourse with her, when she caught hold of his private parts, causing him intense pain. He picked up what he thought was a stick from under the bed and had

struck her two blows before he realized that it was not a stick but a matchet. He then raised an alarm and ran away.

The deceased died of a four-inch wound in the left chest which made an opening in the pleural cavity and from loss of blood from other wounds on the scalp, the wrist and the hand, the left hand and the left lower leg. The doctor who conducted the post mortem described the body as savagely cut up, though the wounds were not immediately fatal and the deceased's life might have been saved by a blood transfusion given in time. This is no defence, but gives some indication of the severity of the wounds. The Judge found that the appellant knew that what he used on the deceased was a matchet and that he had an actual intent at the time to kill her.

The Supreme Court in this case held that:

We do not consider that on this evidence it could have been held that the appellant believed on reasonable grounds that he could not otherwise preserve himself from death or grievous harm by using such force as he did and the plea of self-defence within s.286 of the Criminal Code must fail. As regards provocation, we have no doubt that a forcible grasping of a man's private parts such as described is, to quote from s.283 of the Criminal Code, a wrongful act of such a nature as to be likely, when done to an ordinary person, to deprive him of the power of self-control and to induce him to assault the person by whom the act is done. It is impossible to go beyond that and lay down as a rule of law that an assault of this nature will invariably constitute sufficient provocation to reduce an unlawful and intentional killing from murder to manslaughter, under s.318 of the Criminal Code, or that it can never do so. The answer in each case must depend on the particular facts, including the relationship of the parties, and an assault of this nature committed by a wife with intent to prevent her husband from exercising his marital rights may well be greater provocation than it would be if the parties were not husband and wife or if the motive of the assault were different. The trial Judge omitted to consider the relationship of the parties, and when dealing with the issue of provocation he made the comment that "the deceased was a girl of fourteen and it was therefore easy for the accused to ward off the deceased without resorting to striking her with a matchet". There was no evidence of the girl's physique and if the Judge meant to imply that a girl of fourteen could not cause a very high degree of pain by grasping a man's private parts we are, with respect, unable to agree. In all the circumstances of this case we are unable to say that on the findings of the trial Judge provocation was sufficiently excluded, and the appellant must be given the benefit of doubt. We therefore substitute for the verdict found by the court of trial a verdict of guilty of manslaughter, and in substitution for the sentence of death we pass a sentence of ten years' imprisonment.

Provocative Act: Refusal to have Sexual Intercourse with Husband

In *Olugbo Tubode v The State* [10] the Supreme Court rejected the defences of provocation and self-defence relied

upon by the appellant. Precisely, Bello, JSC [11] (as he then was) enthused that:

The appellant butchered his wife with a cutlass to death because she had denied him sexual intercourse. He said he had been nursing grievances against her on that account for two months before his barbaric act. This is a plain case of premeditated murder. It is not surprising that learned counsels have nothing to urge in his favour. The appeal has no merit. It is dismissed. Conviction and sentence are re-affirmed.

Likewise, Obaseki, JSC(as he then was) at p.128-129 of the report says:

I agree with both learned counsel that the appeal is devoid of merit. The evidence conclusively establishes that the appellant matcheted his wife to death in cold blood for refusing sexual intercourse with him. The refusal had been on for about 2 months and on this fateful day, the ferocity with which the refusal was greeted can better be imagined than described. The several matchet cuts on the head, neck, side of face severing the ear, hands bear testimony to the deep animosity the appellant had for the wife. The defence of provocation was rightly rejected.

Provocative Act: Refusal to Prepare Food for Husband

In *Queen v Eseno* [12], the appellant was tried and convicted of the offence of murder by Kaine, J., in the High Court of Calabar Judicial Division holden at Uyo. The deceased was his wife. The case for the Crown was that the deceased after a quarrel with the appellant left him to live with her brother. The appellant continued to visit her in the brother's house and ate his food there. Later the deceased refused to prepare food for him. The appellant left that day in annoyance. He waylaid the deceased who was going out with their two children. The appellant jumped out of the bush, and in the presence of the children attacked the deceased with his matchet; he dealt her blows until she died on the spot. He then chased the son, King John Akpan, a lad about 16 years of age, who ran to the village shouting. The appellant then disappeared and hid himself in the bush where a search party later found him and arrested him.

In his evidence in his own defence, and indeed in his statement to the Police, the appellant said he was attacked by three men he saw on the road with the deceased. He said he was beaten up by these men and as he was defending himself with the matchet he was holding (in his statement it was his own matchet; in his evidence, he seized the matchet from one of his attackers) he used it on his own wife by mistake. He admitted his son King John Akpan was present at the scene.

The learned trial Judge accepted the evidence of the witnesses for the Crown; he relied on the evidence of the son, King John Akpan, who he said was evidently present at the scene from the evidence of the appellant himself. He said the appellant was lying, especially with regard to the attack on him by three men.

The learned trial Judge also considered the matter of provocation and found, rightly in the view of the Supreme

Court that a refusal to prepare food for the appellant would not constitute provocation in law.

Provocative Utterance: Calling a Husband Who is a Muslim a Dog

The Supreme Court of Nigeria in *Ruma v Daura Native Authority* [13] held that it is provocation for a Moslem to be called a dog, particularly if the insult comes from a woman to a man. The facts of this case was that the appellant was convicted by the Native Court of the Emir of Daura of the murder of his wife and sentenced to death. He appealed against his conviction to the Moslem Court of Appeal which dismissed his appeal. He then appealed to the High Court of the Northern Region which likewise dismissed his appeal, and he then lodged an appeal to the Supreme Court.

Mr. Cole, who appeared for the appellant, submitted first that it is clear that the appellant is a Moslem and secondly that the Supreme Court should take judicial notice of the fact that to call or liken a person to a dog is a very serious term of opprobrium to any Moslem, particularly when the insult is offered by a woman to a man.

Mr. Cole also submitted that the High Court of the Northern Region went too far in saying that there was no evidence of provocation such as, if the case were tried under the Criminal Code, would reduce the offence from murder to manslaughter, and he urged the Supreme Court to order that the appellant be retried by the High Court of the Northern Region sitting at first instance.

Mr. Folarin, Crown Counsel who appeared for the prosecution before the Supreme Court, could offer no opposition of any substance to the submission advanced by Mr. Cole.

The Apex Court in a considered judgment held thus:

With the greatest respect to the learned Chief Justice of the Northern Region and Mr. Justice Bate, we consider that there is sufficient evidence of possible provocation to require that that issue be fully investigated by the hearing of evidence upon it. It was not possible owing to the system of law operating both in the Native Court and the Moslem Court of Appeal for either of those Courts to take cognizance of the possibility of provocation. In order that the issue of provocation may, therefore, be fully investigated, we think that the proper order to make in this appeal is that the appellant be retried before the High Court of the Northern Region at first instance, and we therefore order accordingly. The conviction by the Native Court is, therefore, quashed and the sentence passed by that Court set aside. Neither of the Judges who heard the appeal at the High Court will, of course, preside at the retrial.

Provocative Act: A Wife Calling Her Husband who is a Muslim a Pagan

In *Kumo v The State* [14], the appellant was charged with culpable homicide punishable with death for the killing of his wife. The evidence was that the defendant, a Moslem killed his wife in a fit of anger caused by her calling him a

pagan. The learned trial judge was satisfied with this evidence but found, in the absence of any evidence on the point, that the defendant's anger was disproportionate to the situation and sentenced him to death.

By virtue of the explanation to section 222(1) of the Penal Code, it is a question of fact whether the provocation is grave and sudden enough to reduce the offence from culpable homicide punishable with death to culpable homicide not punishable with death – which is punishable under section 224.

The State Counsel conceded before the Supreme Court that calling a Moslem of the defendant's class a pagan was a provocative incident, and that on a generous reading of the defendant's Hausa statement to the Police he killed his wife at the time she called him a pagan.

The Court held that it was a mistake for the trial Judge to take it upon himself to say that the insult given to the defendant did not amount to such provocation as would mitigate his offence when there was no evidence of the effect that such an insult would have on an ordinary reasonable man of the class to which the defendant belongs: The prudent course in a case like this would have been for the Judge to ask some of the Moslem witnesses what they thought of kind of insult to a Moslem. Also, on the evidence before the Court the defendant should have been convicted of culpable homicide not punishable with death and sentenced under section 224 of the Penal Code.

Provocative Act: Calling Husband a Slave

In *Queen v Edache* [15], in this case, the charge against the appellant was that on the 13th April, 1961, he did commit culpable homicide punishable with death in respect of ADA OKEWA and thereby committed an offence under section 221 of the Penal Code of Northern Nigeria.

The deceased woman was the wife of the appellant. It appears that there had been a marital dispute between them, in consequence of which the deceased woman had left the accused and gone to live in her mother's compound. On the day of the incident the accused had been unsuccessful in proceedings in the Native court and after the proceedings the deceased woman went back to her mother's compound. The appellant came to the compound and shortly afterwards the deceased woman was heard to cry out "Ajelofu is killing me" or something to that effect. The accused was seen to come from the room and run away by two witnesses who gave evidence and said he had killed his wife, and the accused made similar statement to the Police Constable who had arrested him. The appellant in his evidence in the Court below said:-

That day I told deceased's father that if he did not give me back my wife he should give me my money back. He said when I give him £6 he would take it to Chief and make way. The father abused me and I was annoyed, Deceased told me to go away. She said I was a slave. I said 'I married you and I have come to demand you from your father and you abuse me as a slave'. Then I stabbed her. I wanted to kill her

because she abused me and her father would not give her back to me.

The learned trial judge found the appellant guilty of culpable homicide punishable with death and in dealing with the alleged abusive words said:-

The accused alleged in his evidence that the deceased provoked him by insulting him. Provocation by words alone had never been held sufficient to reduce the gravity of an offence even in the case of an individual of the most primitive cultural background who might have less control over his emotions than another. In this case I find that the provocation which accused alleges was offered to him by the deceased is not such as would reduce culpable homicide punishable with death to culpable homicide not punishable with death.

The Supreme Court of Nigeria in disagreeing with the learned trial judge held inter-alia that:

The trial Judge here misdirected himself, as provocation by words can be sufficient to reduce the offence to one which is not punishable with death. This was the position under the Criminal Code formerly applicable in Northern Nigeria in accordance with the decision in the *The Queen v. Akpakpan* (1 F.S.C., page 1). Insulting words may also amount to provocation under section 222 of the Penal Code of Northern Nigeria, provided that the provocation otherwise comes within the provisions of that section. There can be no doubt that the trial Judge erred in law and the only issue that arises is whether we should nevertheless apply the proviso to section 26(1) of the Federal Supreme Court Act and dismiss the appeal on the ground that there has been no substantial miscarriage of justice. The Solicitor-General, in a very helpful submission, reviewed the facts with a view to drawing our attention to circumstances which might lead us to the conclusion that the case was one in which the proviso might properly be applied. He drew attention to the fact that the alleged provocative words were first mentioned by the appellant in his evidence in the Court below, and that none of the prosecution witnesses had been examined to suggest that these words had been used. He also submitted that the words used could not amount to grave provocation. There was no evidence to show that the appellant came from a primitive community in which the words might be regarded as grave. We felt the case is not one in which we should apply to proviso so as to uphold the conviction. At the same time, there is substance in the submission of the Solicitor-General that the alleged provoking words were first mentioned by the appellant in his evidence in the Court below, and that none of the prosecution witnesses have been examined to suggest that these words had been used. It appears probable that both the prosecution and the defence would have called further evidence if the issue of provocation had been properly raised in the High Court. In the circumstances of this case we think the proper order is an order for retrial. We would accordingly allow the appeal, quash the conviction and order the appellant to be retried by another Judge of the High Court of the Northern Region.

Provocative Act: Insult that Would Amount to Provocation Would Depend on the Society of the Accused Person

In *Rex v Okriyi Igiri* [16]. Here the appellant's wife taunted him with impotency and then spat in his face. The appellant immediately shot her. The trial judge convicted the appellant of murder. It was held on appeal that:

That the trial judge should have considered the question of provocation (which, from his judgment, it appeared he did not do) for words of provocation coupled with such act as spitting upon the person to whom the words are addressed may (though it need not necessarily) have the effect of reducing the crime from murder to manslaughter...In primitive communities where the subjection of women is accepted as natural and proper, such an insult from a wife arouses more passion than in more sophisticated societies. The appellant's action in addressing the people in Court when the sentence was passed indicated that he felt confident that his neighbours shared his sentiments in this respect, but although the learned judge recorded that the appellant "clearly protests that such an insult was so provoking that any man would be likely to lose his self-control", it did not apparently occur to him that there might be something in the appellant's plea.

In the same vein as the immediately preceding principle, it has been held that the provocation must be judged by the effect not just on a "reasonable man" but a reasonable man of the accused status in life. In *Rex v James Adekanmi* [17], the wife of the accused jeered at him and taunted him with being impotent and told him that she was having sexual connection with other men. The accused, who was an illiterate and primitive peasant, was so infuriated that in the heat of passion he picked up the first weapon to hand, which was a cutlass, and killed his wife. He was committed for trial on a charge of murder. In considering the degree of provocation required to reduce to manslaughter what would otherwise be murder and the relevant principles of English Law, in particular the principle that the provocation suffered must be judged by the effect it would be expected to have on a "reasonable man" and not by the effect it did actually have on the particular person charged, the trial Judge directed himself that the words "reasonable man" must be taken to mean "a reasonable man of the accused's standing in life".

Francis, J. opined inter-alia that:

It is, I think, clear from the evidence that when he killed his wife the accused did not actually find her in adultery, and the established principle is that when a person comes on his or her spouse in the act of adultery and kills either or both of the adulterers the provocation is sufficient to justify a reduction of the crime to manslaughter. It was however said in the two English cases of *R. v Rothwell* (12 Cox. 145) and *Rex v. Jones* (72 J.P. 215) that even though a man did not actually catch his wife in adultery if he suddenly heard for the first time from her that she had committed the act and thereupon killed her it might be manslaughter...Now holding, as I do, that the accused was jeered at by his wife with impotency and at the same time was told by her that she had had connection with other men, I think it is

reasonable to assume that the accumulated effect of the insult and sudden knowledge of her adultery so infuriated him that the accused in the heat of his passion picked up the first weapon to hand, a cutlass, and killed his wife. And it seems to me that this is just what might be expected from an ordinary simple and primitive person of the accused's status in life whose passions would less easily be restrained than those of a more civilized person...That being so, it is my view that the accused killed his wife, Emilia Oyinade, while suffering under such degree of provocation as to justify reduction of the crime to manslaughter of which I accordingly convict him under section 325 of the Criminal Code.

Provocative Act Must be Sufficient Enough to Reduce Murder to Manslaughter

In *Adebowale Alonge v The A-G, Western Nigeria* [18]. The appellant was convicted of the murder of a woman named Jose Akintade, who was the wife of Akintade Omoye. It would appear that the appellant was in love with Jose and that Jose's husband had discovered that the two had been committing adultery. The appellant was taxed with this and there was a threat of an action in court. According to the appellant, he was made to swear an oath that he had not committed adultery with Jose and after swearing it he became ill.

On the evening of the 8th April, 1963, Jose and three other women were returning to Akure from their farm. They were walking in single file and Jose was at the back. They met the appellant who was coming from the direction of Akure and he greeted the women in front. Soon after this they heard shouts and on looking back saw the appellant attacking Jose with a machet. Her body was found later lying on the ground and the cause of death was a deep laceration on the back of the neck which nearly separated the head from the neck.

The appellant made a statement under caution in which he said that it had been certain that he himself would die and that he was determined to kill Jose before he died; that he followed her and killed her with a machet. In his evidence at the trial he said that he met Jose on the road on the day she died, that he said nothing to her but she said to him "You've had it", by which he knew she was referring to his illness. He was annoyed and so attacked her with his machet. It was submitted in the court of trial that these words constituted sufficient provocation to reduce the crime from murder to manslaughter. The Judge rejected this submission and quoted from the judgment of Ridley, J. in *R v Mason* 8 Cr. App. R. 121, where it was said that "mere words of provocation or abuse could not...have the effect of reducing the crime from murder to manslaughter". The Supreme Court opined here that 'it is now settled that this statement does not represent the law under section 220 of the Criminal Code of Western Nigeria (section 283 in the Federal Code) which expressly defines provocation as including any wrongful act or insult; but we agree with the learned trial Judge that the words used in this case were not such as to constitute sufficient provocation to reduce the crime from murder to manslaughter.' In these circumstances, the appeal was dismissed.

Provocation caused by adultery: passion must not have cooled down to the extent that the accused can be said to still be in control of his mind and actions

The onus is on the accused to prove that that the passion inflamed by the provocative act made him lose control of his mind. In *Kwabena Atta v The Queen* [19], the appellant caught his wife in sexual intercourse with his brother. He and she had words and she said that in his absence from home she had the right to marry his brother; he became annoyed and took his cutlass and told his wife to lead him to the latrine, which she did; there they had more words and he killed her with the cutlass. He then returned to his room and taking his gun went to his brother's store and asked him to come out; the brother did and after a short discussion, he shot his brother. He was charged with murdering his brother and found guilty.

In the appeal the complaint was that the judge erred in telling the jury that the statement of the appellant "appeared to eliminate matters of extenuation" thereby creating the impression that the killing was not done in the heat of passion.

The Court held that there was evidence to justify the jury in coming to the conclusion that at the time the appellant killed his brother he was not in such a state of passion as to make him no longer master of his mind; the appellant on whom the onus lay under section 233(1) of the Criminal Code, did not show that he was in such a state at the time.

The principle of law that the accused must have lost his self-control due to the provocative act offered by the deceased woman was restated in *R v Ebok* [20]. Here the accused came across some women on a farm, one of them his "ex-wife", who "married" another man. Accused demanded the cloth his "ex-wife" was wearing and she was untying it at the behest of the other women when he stabbed her. The other women ran away but he overtook one and killed her. He was first tried for killing his "ex-wife" and convicted of manslaughter on the ground of provocation. He was later charged with murdering the other woman – she had given no provocation – and this report relates to the second case. His defence was that another man killed her, but the Court found it was he and convicted him of murder.

It was held per Protheroe, Ag. J. that 'though he did lose his self-control and the provocation given by his ex-wife might have reduced his killing her to manslaughter; it could not alleviate his offence in killing the other woman who had given him no provocation.'

Provocation caused by suspected adultery

In *Rex v Yaw Tekyi* [21]. The appellant in this case killed his wife upon finding her in circumstances which according to his case pointed very strongly to her having committed adultery. Counsel for the accused urged the court on appeal to in view of the provocation caused by the accused's suspicion of his wife's infidelity to reduce the crime from murder to manslaughter. However, the appeal was dismissed and the appellant's conviction for murder was affirmed.

Provocation: where it would not avail the accused person.

In *Oladiran v State* [22], the appellant was charged with the murder of his wife, one Modupe Ajuah Oladiran, under section 254 of the Criminal Code, Cap. 28 of the Laws of Western Nigeria (applicable in Oyo State), and was convicted by Ogundere J. at the High Court of Justice, Ibadan on 25th August, 1983. He was sentenced to death.

The facts leading to the conviction are straight-forward. Apparently, since the marriage of the appellant and his wife – the deceased – in 1980, the situation in their matrimonial home had not been quite peaceful. There had been allegations of infidelity and bickering by both parties which had been taken to their parents-in-laws for settlement. Particularly, the deceased had always accused the appellant of showing immoral interest in their maid, a girl of about 13 or 14 years of age; and that he was bringing other women to the matrimonial home in her absence. On the other hand, the appellant had also accused the deceased of smoking cigarettes which he disliked; and of going to places without his permission. These accusations got to a head on the 21st September, 1982 when the appellant again reported the deceased to her parents; and the matter was again settled for them at about 10 p.m that night. Nevertheless, the appellant refused to take his wife home; and after he left, the deceased's father with another friend took her to the appellant's house. On reaching there, they found that the appellant had locked the door of the flat. However, after some persuasion by his landlord, the appellant opened the door for them. The matter was again discussed by those present including the appellant's landlord; and it was apparently settled once more. The deceased's father then left for his own house. Shortly thereafter, an alarm was raised and the deceased was found by the appellant's landlord sprawling on the concrete floor of their flat with bruises on her head. She was then rushed to a private hospital, but she died on the way. There were no eye-witness as to what happened before the deceased was found by their landlord with bruises on her head.

However, in a statement made to the police by the appellant, Exhibit P3, he had these to say:-

"At this point I got fed up with everything in life and wanted to end my life that night. In fact I could not control myself. I did not know what I was doing. About ten minutes when the father left, I went to the yard to find what I could use. I found a club and it was then that I remembered that I had a knife which I bought on Sunday, September 19th...then I decided to eat my last food on earth. So I requested for tea. To God who made me, I did not have the intention of killing her but she wanted to know why I was going to commit suicide, so I stabbed her once or so and she ran out. I started stabbing myself and hitting myself with the club so that my head would be fractured. When I saw my intestine coming out and blood rushing from my head, I thought death would come in time. In order that I would die in time, I took the car key and started driving subconsciously I think to Ring Road where I with intent and with a high speed hit the roundabout; and that when I die and she is alive, she would realize the damage she had done to my life."

Moreover, early in the morning of September 22nd 1982, the wreckage of the appellant's Passat car was found by the police around Ring Road in Ibadan. The appellant was also found at the spot with several injuries and a punctured stomach. He was subsequently rushed to Adeoye Hospital, Ibadan.

During the investigation of the case, the police, on searching the appellant's premises, found therein a blood-stained dagger or knife, and a cudgel which were tendered as Exhibits P1 and P2. Another knife, tendered and marked as Exhibit P6 was also found by the police in the appellant's car.

The Supreme Court held at page 68 of the report that:

Thus it is now settled law that in order to avail himself of a defence of provocation under section 318 of the Criminal Code, so as to reduce the offence of murder to one of manslaughter, the degree of retaliation used by the appellant by stabbing the deceased must be proportionate to the provocation offered by his deceased wife. It was found by the trial court as well as the Court of Appeal that the retaliation of the appellant by stabbing the deceased was not proportionate to the provocation offered.

Evidence: Circumstantial evidence/interpretation of the constitution.

In *Rabiu v State* [23], the appellant was charged with the murder of his wife. In the trial Court, there was insufficient evidence as to the cause of the deceased's death, as the evidence of the medical officer was unsatisfactory. The appellant was thus acquitted and discharged.

Dissatisfied with the decision, the prosecution appealed to the Federal Court of Appeal. After due hearing, the appeal was allowed, the order of acquittal was set aside and the appellant was convicted of the offence of culpable homicide not punishable with death, contrary to S.222(4) of the Penal Code. He was sentenced to 4 years imprisonment.

The appellant appealed against that decision, contending that the Federal Court of Appeal did not have jurisdiction to entertain an appeal against an acquittal order by the prosecution, that the prosecution has no right of appeal, and even if it does, it must be on law only, and not mixed facts and law.

The Supreme Court held that the Federal Court of Appeal has jurisdiction to entertain an appeal by the state against a verdict of not guilty and an order of acquittal. The totality of evidence adduced before the High Court, Kano, established the guilt of the appellant for the offence of culpable homicide beyond reasonable doubt. The Court went on to posit that where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.

Circumstantial Evidence and the Issue of Motive

In *Nweke v The State* [24], the Appellant stood trial in the Ogun State High Court in the Ijebu-Igbo Judicial Division for the murder of his wife, Josephine Pius Nweke. The Appellant and the deceased according to prosecution, were husband and wife. They both lived together at Oribe Village, Via Ago-Iwoye, Ogun State. On November 11, 1992, the Appellant who suspected that his wife was carrying a pregnancy that did not belong to him murdered her while both were in their Kolanut Farm.

The Supreme Court held that:

To secure a conviction in a criminal trial, circumstantial pieces of evidence must be cogent, complete and unequivocal. Such evidence too, must be compelling and must lead to the irresistible conclusion that the accused and no one else must have committed the crime. Indeed, the facts must be incompatible with innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of his guilt.

Also S.U.Onu JSC (as he then was) on page 374 of the report opined on whether evidence of motive is an essential ingredient in a case of murder that:

It remains for me in this brief comment of mine to observe how some elements of motive was imputed in the case. In law, evidence of motive is not an essential ingredient in the case of murder. If there was indeed a motive for the Appellant's killing of his eight-month pregnant wife, he was shown to nurse a grudge against her that the pregnancy was not his and that eo ipso strengthened the case of the prosecution and became part of it. On the other hand, absence of motive is no justification or excuse for murder.

Circumstantial Evidence

In *Maigari v State* [25]. The case of the prosecution as disclosed by the prosecution's witnesses was that one Sa'adatu Torankawa was the wife of the appellant, who for months prevented her relations from seeing her. PW3 – Umaru S. Fawa Torankawa, the appellant, the appellant's father-in-law came to Yabo in company of one Mamman Maisule. They met the appellant who upon enquiry as to the whereabouts of Sa'adatu, told them that she escorted her mate to Sokoto. When they returned the next day, the appellant informed them that Sa'adatu, his wife was sick and he had taken her to Galmi Hospital, which is an unknown Hospital to them. Eventually, with the intervention/involvement of the Divisional Police Officer who provided a vehicle, they ended up at a certain police station/headquarters at Sokoto, where the appellant for the first time, stated that Sa'adatu his wife was dead. Appellant volunteered two written statements under caution to the police. Both were tendered admitted and marked as exhibits C and C1 respectively. Appellant changed and had a somewhat different versions of what actually happened to his wife and which led to her death in each of the statements written under caution.

The Investigating Police Officers all testified with regards to sequences of events which unfolded and roles which they played after receipt of reports on 11 January 1999 and being detailed to investigate the same. Their investigation led to the discovery of the corpse of an unknown female under a

culvert at Janzomo Junction, along Shagari – Kajiji highway. PW5 filled the necessary coroner form, invited the doctor who conducted post-mortem examination on the corpse of the unknown female at the spot/scene of its discovery because of the decomposed state of the corpse, which was eventually buried under the culvert where it was found. Exhibit B, the medical report, stated the cause of death of the unknown female corpse, in a decayed/decomposed state, which was found under the culvert, half-naked, with maggots over the body and without eyeballs, to be strangulation.

The appellant in both exhibits C and C1 made on 24 March 1999 and 29 March 1999 respectively, and in his oral testimony in defence before the trial court, admitted that one Sa'adatu Torankawa who "died seven months ago here in Sokoto" was his wife. That they got married in July, 1997. He claimed that one night, while conveying her to the hospital and riding pillion on his motorcycle, she fell off and died. Thereafter, he ended up dumping her corpse under a culvert by the side of the main road, along Shagari-Kajiji Road. Appellant added that he concealed her death from her family members, relations and his first wife who was not around when the incident which led to the death of Sa'adatu occurred. He also denied having anything to do with her death. He sought and put up the defences of accident and self-defence from fear of reprisal attack from her family members.

Oredola J.C.A at pages 433-435 of the report opined thus:

In the instant case, the facts accepted by the trial court called for reasonable, justifiable explanation by the appellant and none was forthcoming. Thus, the circumstantial evidence adduced by the respondent was sufficient proof beyond reasonable doubt of the guilt of the appellant in the given circumstances of this case. The circumstantial evidence adduced by the prosecution is overwhelming and proved beyond reasonable doubt that it was the appellant and no one else who killed his deceased wife. In my considered view, the facts of this case disclosed just that and I am left in no doubt whatsoever regarding the culpability of the appellant herein in the gruesome manner in which his wife met her untimely death, coupled with the degrading manner and treatment to which her corpse was subjected.

Circumstantial Evidence

In *Abdu v State* [26], the appellant was the husband of the deceased. He allegedly caused her death by matcheting her to death during an argument between them. The appellant was therefore arraigned in the High Court of Jigawa State on a count of culpable homicide punishable with death contrary to section 221 of the Penal Code. The prosecution tendered in evidence a confessional statement made by the appellant. The appellant did not give any evidence or call any witness but rather rested his case on that of the prosecution. The trial court found him guilty and sentenced him to death. Dissatisfied, the appellant appealed to the Court of Appeal and following an affirmation of his sentence, he appealed further to the Supreme Court contending that the lower court erred in dismissing his appeal when his conviction was not supported by evidence.

The Supreme Court opined on the nature of circumstantial evidence sufficient to ground a conviction thus:

In the case of proof by circumstantial evidence, the circumstantial evidence to be relied upon by the prosecution must be credible, cogent and must irresistibly point to the guilt of the accused and to no other person. It is often regarded as a reliable and acceptable mode of proof of a case and the court can accept and act on it provided it is cogent and admissible.

Insanity

In *Daniel Madjemu v The State* [27], the appellant, Daniel Madjemu was arraigned before the High Court of the defunct Bendel State sitting in Warri Judicial Division, charged with the murder of his wife, Pancake Daniel contrary to section 319 of the Criminal Code. He pleaded not guilty to the charge. The case of the prosecution was that between the hours of 4.00a.m – 5.00a.m., the appellant took a cutlass with which he gave his wife fatal cuts including the one on the neck that almost severed the head from the rest of the body. She died from the fatal wounds. He was thereafter arrested and made confessional statement to the police.

The Supreme Court in dismissing the appeal held per Ejiwunmi JSC(as he then was) at page 415 of the report that:

I think it may be restated that for the defence to operate in favour of the appellant, there must be evidence to show that at the time relative to the commission of the offence the appellant was suffering from such mental or natural mental infirmity that as a result he was deprived of capacity- (a) to understand what he was doing; or (b) to control his actions; or (c) to know that he ought not to do the act or make the omission.

Iguh JSC (as he then was) on his part at page 413 of the report posited on whether motive is relevant to establish insanity that:

In the same vein, the mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity although if there is other evidence of insanity, such a fact may become a relevant factor to prove insanity.

Adebanjo Ogunbanjo v The State [28] is another case in which the accused/appellant's defence of insanity against a charge of murdering his wife did not avail him. Here the appellant was charged with the murder of his wife and was convicted by the trial Judge at the close of the case. The evidence against the appellant was that he wanted to send his wife and her little son home from Port Harcourt and led her to the motor park for the purpose, but she decided to return to the house and when the appellant saw her he took his bayonet and stabbed her and the child to death. On being taken to the police station, the appellant made a statement confessing that he killed both his wife and son. He was taken before a superior police officer before whom he confirmed the statement, but at his trial he retracted the confession and gave evidence of his mental illness as a result of which he went to his home at Ikorodu where he was given treatment. He called a fellow-soldier and a superior officer to confirm his story. The trial judge rejected his plea

of insanity and convicted him, relying on his confessions to the police and other evidence. He then appealed to the Supreme Court. The appellate court held *inter-alia* that: ‘The appellant was a most inconsistent witness, and it was inconceivable that if he was indeed insane he should be the person to give evidence of and describe the details of such insanity. The fact that he did that could be proof that the evidence was manufactured to save himself and the trial Judge was right in rejecting his story.

Identification of the Accused

In *Archibong v State* [29], the case of the prosecution as narrated by the witnesses was that on the 5th day of July, 1988, Bernadette Edem Essien (the deceased) and the appellant went to Babara Inn about 3.00 p.m. After ordering and taking some drinks, the appellant booked for a room at the inn. The rate they charged was N2.00 per hour. The appellant and the deceased were checked into the room by one of the waiters or attendants called Peter Paulinus (P.W.3), the appellant and the deceased moved into the room and locked themselves by about 6.00 p.m. At about 7.00 p.m., P.W.3 knocked at the door of the chalet to ask for the money due for the hiring of the chalet and for the drinks taken by the deceased and the appellant. The appellant responded and stated that he would pay when he came out. He asked for a little extra time. At about 8.00 pm., P.W.3 knocked at the door of the chalet again and there was no response, he opened the door, switched on the light and noticed that the appellant was no longer in the room, he had somehow mysteriously disappeared. He observed the woman lying naked, motionless and dead on the floor and observed foams from her mouth and nose. The clothes the woman wore were thrown on a table in the room. P.W.3 drew the attention of P.W. 2 Margaret Out Udo, who was a waitress or attendant at the Babara Inn. Early the following morning, the 6th of July 1988, the proprietor of Babara Inn, Paulinus Basse Etim (P.W.1) was alerted about what had happened in his Inn. He promptly went into the chalet and after observing the deceased still lying naked on the floor with her clothes on the table, he asked P.W. 1 and P.W. 2 to lodge a complaint with the police. P.W.1 and P.W.2 were detained by the police until the appellant was arrested. Both P.W. 1 and P.W. 2 knew the appellant as a customer at the Inn. That occasion of the 5/7/1988 was not the first time the appellant came and hired a room with the deceased. The appellant and the deceased were regular customers, coming to the Inn and renting chalets.

In fact, P.W.3 thought the deceased was the wife of the appellant. It was apparently based on the description of the appellant made by P.W.2 and P.W.3 that the police were able to arrest the appellant. And in the midst of policemen in uniform and others, P.W. 1 and P.W.2 picked out the appellant in an identification parade. Subsequent medical examination of the deceased by P.W.4, Dr. Udeme Daniel Akpan, revealed that the deceased died due to suffocation either by strangulation or by some other means and that the bruises on her body and the act of strangulation could not be self-inflicted. In both his statement to the police, Exhibit A and in his evidence before the trial court, the appellant admitted knowing the deceased to be the wife of his half-brother or sometimes wife of his cousin and therefore well known to him. He however denied having anything to do

with her death. He, however admitted that he saw her in the vicinity of the Inn at one time. He sought to put up a defence of alibi, but that only explained his whereabouts from morning up to about 3.00 p.m on that fateful day.

It was held by Musdapher, JSC (as he then was) on page 8 of the report that:

It is not in every case that an identification parade becomes necessary. See *Adeyemi v The State (supra)*. In the present case; rather than be a case of mistaken identity, it was one of recognition and knowledge of the appellant who was already known to the witnesses prior to the date of the incident in question. The appellant who by his statement to the police and his evidence admitted the knowledge of him by both P.W.2 and P.W.3 can hardly complain of any mistaken identity. In my view, the identification of the appellant as the person who went into that room with the deceased on that fateful day by P.W.2 and P.W.3 was a concurrent and consistent finding of fact both by the trial court and Court of Appeal, I have myself examined the evidence and I am also of the view that the finding is supported by the evidence led. Nothing has been shown to convince me that the finding is perverse or that it has occasioned any miscarriage of justice.

Admissibility of a confessional statement made in a language other than the language of the court

In *Eyop v State* [30], the appellant was arraigned and charged before the High Court of Cross-River State, Akampa Division, for murder, contrary to section 319, Laws of Cross-River State of Nigeria, 2004. He was alleged to have confessed to the killing of his missing wife, whose corpse was found on her farm with her head almost severed from her body. He was found guilty at the close of trial. He was duly convicted and sentenced to death. Aggrieved, the appellant appealed to the Court of Appeal, which court upheld the trial court’s judgment. Aggrieved still, he appealed to the Supreme Court, where he challenged the propriety of the lower court admitting and relying on his confessional statement which was made in Efik Language but translated into English Language in convicting him.

On factors determining admissibility of a confessional statement from which an accused resiled on grounds of its being made in a language other than language of court, the Supreme Court of Nigeria per Peter-Odili JSC on page 1715 of the report stated thus:

Getting back to the confessional statement, exhibit ‘1’ which the appellant is resiling from, on the ground that he made the statement in Efik and what is tendered is in English and so the conditions on which the statement in English would be admitted are absent. Indeed, it is desirable that an accused person’s statement should be taken down in the exact words of the accused and if in a language from which an interpreter has interpreted to English without complaint, the statement is still admissible so long as it came out freely and voluntarily... However, where the statement was made in Efik Language by another person, the law is firm on the point that the interpreter must be called as witness in order for the statement in English Language to be admissible in evidence. Where that interpreter is not called, the English statement is regarded as hearsay evidence and therefore

inadmissible...The situation on ground belies the scenario stated above, as it was PW4 who heard the statement as told by the appellant in the presence of a senior police officer, though appellant spoke in Efik, PW 4 recorded in English and the appellant signed after it was read over to him and he offered no protest. Again, there is a statement appellant made as complainant before his wife's corpse was discovered and it was recorded in English and admitted as exhibit 5. Then the clincher is the fact that appellant in testifying as DW 1 in his defence, did so in English Language. All these lead to the conclusion that the appellant can speak and read in English and the confessional statement freely given and the issue of having the statement, exhibit '1' jettisoned for reason of having been obtained in Efik and it is the translated version in English Language that is tendered is not worthy of being taken seriously, as clearly, it is an afterthought.

3. Conclusion

'To fear love is to fear life, and those who fear life are already three parts dead.' [31] This paper reviews the decisions of the Supreme Court of Nigeria and other courts of Nigeria dating back to the pre-independence era of the country on Uxroicide cases. It reviews the reasoning of these courts on issues of provocation, circumstantial evidence, identification of the accused, motive, insanity, admissibility of confessional statements among others as they relate specifically to Uxroicide cases. It is the writer's belief that the paper would serve as a working material for researchers interested in the position of the law in this area of Nigerian jurisprudence.

On the crime of Uxroicide, the writer recommends the position of Islamic *Mu'amalat* (Human Transactions) on divorce to the effect that 'divorce is the most hateful but lawful thing in the sight of the Almighty Allah [32] 'If the relationship between husband and wife becomes so bad that it can produce only misery within the family, they are not forced to stay together until death. At that stage the marriage can be dissolved and each partner released in the hope of finding peace and happiness in another marriage if possible.' [33]

In the end as the Latin maxim goes: *Omnia vin cit amor* – Love conquers all.

References

- [1] *Dictionary of Quotations* (Geddes & Grosset 2001) 68.
- [2] Hadith of the Holy Prophet (P.B.U.H) narrated by Abu Dawud and Ibn Majah.
- [3] *The New International Webster Comprehensive Dictionary of English Language* (Standard International Media Holdings 2013) 1384.
- [4] David Adenuga, 'Man kills pregnant lover, buries corpse in sewage' *The Nation Newspaper* (Lagos, Saturday May 15, 2021) 28 reports that : – "The police in Bauchi State have arrested a middle-aged man, Lamido Gunduma, for allegedly killing and burying the corpse of his supposed lover, Jamila Saidu, in a sewage system. The Nation gathered that Gunduma committed the act in his compound while trying to

abort the 35-year old woman's pregnancy. The State Police Public Relations Officer, SP Ahmed Wakil made the discovery of Saidu's corpse known in a statement made available to newsmen in Bauchi, the state capital yesterday. According to him, her corpse was discovered on April 8 after her father, Saidu Iiyasu of Zubuki village in Jamaare Local Government Area, declared her missing on April 7, 2021 at the Jamaare Divisional Headquarters. SP Wakil said the suspect deposited the corpse in a sewage system within his compound and fled to Kwadon in Gombe State where he was tracked and arrested, adding that he had been charged to court for prosecution accordingly...On Thursday April 8, at about 1030 hrs, her decomposing body was discovered with a new born child in a sewer at her boyfriend's house identified as Lamido Gunduma at Unguwar Yari-Mari Jamaare. During preliminary investigation, it was discovered that the suspect criminally conspired with one Ishaq Abdullahi, aged 34 yrs of the same address and fixed a canola into the arm of Jamila Saidu and administered her with dextrose water, Quinine and Ostagen in order to abort her pregnancy, which culminated in induced labour that resulted in the death of the victim and newborn baby," the PPRO said. Uja Emmanuel, 'How we killed our wives, four others, buried them in shallow graves-suspected kidnappers.' *The Nation Newspaper* (Lagos, Saturday May 15, 2021) 28 is another recent newspaper report on the crime of Uxroicide.

- [5] *Dictionary of Quotationssupra*. 66.
- [6] 1 Selected Matrimonial Cases 1 at 13 per R.A. Rowland, J.C.A. (as he then was).
- [7] Joke Kujenya, 'Women rally against domestic violence' *The Nation Newspaper* (Lagos Sunday November 2, 2014) 54
- [8] Oziegbe Okoeki 'Lagos Deputy Governor decries increase in domestic violence, child abuse' *The Nation Newspaper* (Lagos Sunday July 8, 2012) 7.
- [9] (1961) NSCC 280 at 281-282.
- [10] (1982) 1-2 S.C. 126 at 127 - 129.
- [11] *Olugbo Tubode, supra* at p.127
- [12] (1960) NSCC 37
- [13] (1960) NSCC 70 at 71-73
- [14] (1967) NSCC 286 at 288-289.
- [15] (1962) 2 NSCC 13; (1962) All NLR (pt.1) 22 at 23-25
- [16] 12 W.A.C.A 377.
- [17] 17 N.L.R 99 at 100, 101 and 102
- [18] (1964) All N.L.R 108 at 109
- [19] 14 W.A.C.A 323. This case revolves around the interpretation of S.233 (1) of the Criminal Code applicable at the time of the decision. The Section that: "A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder or attempt to murder, if any of the following matters of extenuation are proved on his behalf, namely: -(1) That he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in the next succeeding section. Section 234(3) provides that: -The following matters may amount to extreme provocation to one person to cause the death of another person, namely: -(3) An act of

adultery committed in the view of the accused person with or by his wife or her husband, or the crime of unnatural carnal knowledge committed in his or her view upon his or her wife, husband, or child.”

- [20] 19 N.L.R 84 at 86.
- [21] 7 W.A.C.A 122
- [22] [1986] 1 N.S.C.C 62 at 64
- [23] (1980) 12 N.S.C.C 291
- [24] (2001) 5 NSCQR 361 at 372 and 374.
- [25] (2010) All FWLR (pt. 546) 405 at 421.
- [26] (2019) All FWLR (pt. 973) 531 at 545.
- [27] (2001) 6 NSCQR 394 at 415.
- [28] (1973) N.M.L.R 257 at 259.
- [29] (2006) 5 S.C. (pt. III) 1 at 8.
- [30] (2018) All FWLR (pt. 962) 1698
- [31] *Dictionary of Quotationssupra.70*
- [32] Hadith of the Holy Prophet (P.B.U.H) narrated by Abu Dawud and Ibn Majah *supra*
- [33] B. Aisha Lemu, *Islamic Studies for Senior Secondary Schools, Book Two* (Islamic Education Trust (Publications Division) 1990) 190.