IN THE SUPREME COURT OF NIGERIA

Suit No: SC40/1978

Petitioner: Egbe Nkanu
And
Respondent: The State

Date Delivered: 1980-03-14

Judge(s): Atanda Fatayi-Williams, Ayo Gabriel Irikefe, Andrews Otutu Obaseki, Anthony NnaemezieAniagolu, Muhammadu L

Judgment Delivered

The appellant, a middle aged man of 40 years and a native of Igbo Ekureku village in Obubra Local Government Area of Cross River State was in the High Court of Cross River State sitting at Ikom (Effanga, J.) tried and convicted of the murder of Edu Efe Ntomo (f) an old woman of 60 years and sentenced to death on the 9th day of June, 1977. His defence of denial of the killing and of insanity as a result of intoxication was rejected by the learned trial Judge for almost total absence of evidence in proof.

Aggrieved by the conviction, he appealed to the Federal Court of Appeal, his three main grounds being:

(1) That my friend offered me a cigarette in my father-in law\'s compound where we were entertained with drinks, which after I had smoked, it pushed me into wild behaviour.

(2) That under this influence of a supposed cigarette I made my way back to my house where I started to act violently and this resulted in my using a matchet on the deceased including others without my senses, as I was told later.

(3) That the offence was not intentionally committed.

The appeal was summarily dismissed at the hearing following the submission by counsel for the appellant that he had nothing useful to urge in favour of the appellant. The appellant still aggrieved, has now appealed to this Court against the decision of the Federal Court of Appeal.

This is therefore a further appeal and it may be necessary at some future date for this Court to pronounce on the competence of such appeal when the announcement of counsel strictly is a notice of withdrawal of the appeal. Where there is a withdrawal of an appeal, it can safely be said that the resultant position is as if there never was an a p peal filed by the appellant notwithstanding the order of the Federal Court of Appeal affirming the decision of the High Court which tried the appellant.

At the hearing in this Court of this appeal, counsel for the appellant with leave of this Court substituted new grounds for the original grounds. These new grounds read as follows:

(1) That the learned trial Judge erred in law by holding that there was no independent evidence of insanity and that insanity could only be proved by the defence calling witnesses and the Federal Court of Appeal failed to consider the point.

Particulars of Error

(a) The learned trial Judge and the Federal Court of Appeal failed to consider the evidence of P.W.1 and P.W.3 who gave evidence to the affect that the appellant behaved in an abnormal manner at the time the offence was committed:

(b) The evidence of P.W.1 and P.W.3 and the appellant showed evidence of intoxication or abnormality which

remained unrebutted and should have been considered by the learned trial Judge and the Federal Court of Appeal.

(2) The learned trial Judge misdirected himself on the method of killing which could be inferred to be that of an insane man which misdirection the Federal Court of Appeal did not consider.

Particulars of Misdirection

(a) The learned trial Judge observed that since the appellant did not mutilate the body of the deceased then it could not be inferred that his action was the act of a mad man.

(3) The learned trial Judge misdirected himself by failing to consider the fact that there was evidence indicative of insanity, which will make the absence of motive relevant to the point at issue and the Federal Court of Appeal, also failed to consider this point.

(4) The learned trial Judge and the Federal Court of Appeal failed to consider the question of insanity at the time the offence was committed.

Particulars

(a) The learned trial Judge observed that since the appellant made a voluntary statement to the police two days after the offence was committed then he was not insane.

(b) The learned trial Judge also considered the demeanour and attitude of the appellant at the trial and then concluded that he was not insane.

(5) That the decision is altogether unwarranted, unreasonable and cannot be supported having regard to the evidence in the trial court.

My Lords, it is obvious from all the five new grounds that the appellant is seriously pursuing and pinning his hopes on the defence of temporary insanity arising from intoxication. The defence of insanity involves an acceptance of responsibility for the act complained of. It therefore places the legal onus on the appellant to satisfy us that the evidence led before the High Court sufficiently proves insanity.

An examination of the facts is therefore necessary at this juncture. The facts established before and accepted by the learned trial Judge appearing on the record of proceedings are as follows:

The appellant and the deceased lived as good neighbours at Okpha Igbo Ekureku, a village in Obubra. The deceased was a happy grand-mother living with her children amongst whom were Ele Emori, P.W.4 and Mary Emori, P.W.5 and her 4 grand-children Josephine Echi P.W.3; Adia Echi; Godwin Echi and Mabel Echi. In the early hours of the morning of 24th February, 1976 Mary Emori (P.W.5) daughter of the deceased left for her farm leaving her four children including P.W.3 in the care and charge of the deceased. Shortly after her departure, Josephine Echi (P.W.3) went to school and returned before 2.00 p.m. Before her return, the appellant and his wife Maria Ekpe, together with his friend, Augustine Ele, had left for the house of Ewase Egborkor (f), appellant\'s mother-in-law, in answer to the invitation from her to attend and participate in her late mother\'s funeral ceremonies. The appellant took along with him, one half gallon of palm wine and some food. The appellant however did not get to the house of his mother-in-law. What happened was graphically narrated by him in court in the following words:

On our way we branched at my father-in-law\'s house to greet him. As we reached there my wife left us as we were drinking. After drinking, my father-in-law also ordered for another wine. Ele Augustine also ordered cigarettes. I told my father-in-law to reserve the wine until we returned. Igbo Igwenye passed a lighted stick of cigarette to me. I refused it but Augustine told me it belonged to him. I accepted the cigarette and received it because the cigarette was bought by Augustine and then smoked it just once. Immediately the smoke came out of my nose I was choked and I have a dizzy sensation from my head down to my toes. I did not know what was happening to my body. I decided to go home. I took

my bicycle and walked home with it, as I could no longer ride on it. On getting home I started trembling and did not know where I was. My wife returned at 8.00 p.m. I asked her where she had been to and she told me she went on to attend the ceremony, which we were invited to. As I was conversing with her I slept. The next thing I heard was a sound. My eyes were hurting me and I was unable to breathe.\" (This was the effect of the tear gas fired into his room to force him out.)\" I rushed to the door to open it. When I came out I had two matchet cuts on my head. I raised an alarm and went inside my house to collect my matchet to defend myself. When I came out again I had another and a third cut on my head. I waved my own and stumbled and fell at the same time. I was beaten until I fainted and they ran away. It was the following morning that I woke up to see two policemen and the natives who carried me to the police station. At the police station, people were shouting that I should be killed. I asked them what I did to be killed. I was told that I had killed an old woman with whom I had never any trouble.

His statement to the police Exhibit \"C\" followed the same lines and differed only in minor details. If four adult males shared half a gallon of palm wine, each will drink less than a big beer bottle of palm wine. Drinking a beer bottle of palm wine does not, in my view, amount to heavy drinking or such as would deprive a normal adult male human being of his senses.

The events the appellant left untouched in his evidence can be found in the testimony of P.W.3. It is his search for, the capture of, and the decapitation of the deceased with three strokes of his matchet.

There was also no evidence of disposition of the appellant to drunken misbehaviour. Likewise there was no evidence of previous insane delusional attacks on the appellant. The evidence given by the appellant portrays a total blackout or cut out of the mental functioning of himself, the appellant, at the material point in time when the heinous crime was committed i.e. between 7.00 p.m. and 8.00 p.m. The witnesses P.W.1, P.W.2 and P.W.3, P.W.5. and P. W.6 supplied the facts so omitted.

According to P.W.3, the appellant arrived home at about 7.00 p.m. On his arrival home at 7.00 p.m. P.W.3 observed him talking to himself alone inside his house. She went with her small brother Godwin to greet him but he did not answer. She was surprised at this abnormal and unusual behaviour of the appellant. She returned to her grandmother at the backyard where she was with her other brothers and sisters. Not long after, the appellant came to the house; behaved as if searching for someone proceeded to where the deceased was sitting, dragged her to the front of his house, pushed her down, took a matchet he had deverly hidden where firewood pieces were kept, and cut off her head clean with three strokes of the matchet, the head jumping away from the body. P.W.3 cried, raised alarm and ran to safety taking along with her brothers and sisters.

Her alarm no doubt drew a crowd, which gathered round the house of the appellant, the front of which was the scene of crime. A report was made to the police. When, in the meantime, David Nkata (P.W.1), a neighbour of the appellant, arrived at the scene he was warned and advised not to go into his compound because appellant was alleged armed and menacing people about with his matchet. P.W. 1 did not heed the warning and as he was going into his house appellant emerged and attacked him inflicting a matchet cut on his forehead. David Nkata\'s testimony showed that he had known the appellant for over five years before 4th March, 1977 the day he testified, and that during that period he never heard that appellant was afflicted with mental disease. When the murder was reported to the police, Linus Eban (P.W.2) and other policemen proceeded to the scene. They found the decapitated body as well as the head lying 2 metres apart in front of appellant\'s house with appellant barricading and locking himself in his room. In an effort to force him out of his room, P.W.2 threw tear gas into the room. Appellant emerged armed with his matchet Exhibit A, he stumbled over a heap of firewood and fell down. The policemen caught him but when effort was made to disarm him he inflicted matchet cuts on the right foot and jaw of P.W.2 and escaped:

P.W.2 ran for safety and was later taken to hospital for treatment. Continuing his violence to prevent his arrest, he attacked P.W.1 who had known him for 5 years and lived as his neighbour.

Mary Emori, (P.W.5), mother of P.W.3 and daughter of the deceased returned from the farm to meet the house deserted and in darkness and on lighting a lamp discovered the headless body of her mother between her house and appellant\'s house. She wept bitterly and after gathering herself, searched for and found her children safe and sound in the houses

of other friendly neighbours.

P.W.5 on being cross-examined answered that the accused had never been insane. P.W.3 also had never known him to be hostile, or quarrelsome. She testified that when the appellant came out of his house to their house he saw her but said nothing to her and behaved as if he was looking for something or someone else; he did not see her grand-mother in the house and continuing his search, saw her at the backyard with her small brothers and sisters.

As if the old woman was the object of his search, he grabbed her, dragged her to the front of his house, collecting his matchet from where he hid it, he used it to decapitate her. After doing the sordid deed, he entered his house and locked himself up in his room turning back anyone he suspected was approaching to arrest him with calculated violence.

That is the picture provided by the evidence adduced before the learned trial Judge.

What were the findings of the learned trial Judge on the above evidence adduced by all the witnesses who testified at the trial'

The learned trial Judge after reviewing the evidence in detail, commented and found as follows:

There was no attempt by the defence to adduce any evidence from which I could infer that the cigarette was \"narcotics\" or \"drugs\" under section 29(5) of the Criminal Code. . . It was not even suggested by the accused that someone did something to the cigarette and that such action was \'without his consent and by the malicious or negligent act of another person\'. In any event what followed after the accused had inhaled the cigarette could not be described as the actions of a person who was \'insane, temporarily or otherwise\' in that the accused collected his bicycle and decided to go home, a distance of about one mile.

He made his statement Exhibit \'C\' in the hospital on 26th February, 1976, about two days after the incident. That voluntary statement is not the statement of an \'insane man\'. It is my view that the killing by the accused was premeditated. That was why the accused returned to the house, when all others were away, to carry out his barbaric act. That was why he did not attack P .W.3 Josephine Echi or any other child but searched for and found the deceased whom he dragged out of the backyard and decapitated. His actions were voluntary in the sense that they were not induced by intoxication of any kind. There is nothing in the evidence to show that the accused was so intoxicated that he was incapable of forming the intent to kill Edu Ele Ntomo. He could control his actions but gave just enough blows with his matchet Exhibit \'A\' (two or three) on the neck to sever the head from the body. He did not go on to mutilate the body to warrant any inference that such could be the act of a maniac. It is my opinion that the accused was not \'intoxicated\' on the day in question. In any case, the defence of intoxication is not established merely by saying \'I did not: know myself anymore. \'I do not believe that he did not know himself anymore after inhaling the cigarette. The defence of \'intoxication \'is not available to the accused. (Emphasis mine)

These findings are, in my view, justified by the evidence. It is difficult to improve 9n them as they flow directly from the evidence viewed in their proper perspective.

It is clear and I respectfully agree with the learned trial Judge that all the actions of the appellant were premeditated, calculated and deliberate acts of a sane man for the following reasons:

1. He knew he did not drink palm wine heavily and deliberately abandoned the original purpose of his journey;

2. He knew he smoked a stick of cigarette drawing the smoke only once;

3. He was aware of the upset it caused to his systems or senses which was not in the nature of intoxication;

4. He knew he cancelled his trip and decided to return home and he knew he did set out for home at 2.00 p.m.;

5. He knew he had a bicycle, that he took it and walked rolling it home;

6. He knew he could not and did not ride the bicycle but rolled it along home;

7. He knew he arrived at his house and entered his house;

8. He knew he was trembling on getting home;

9. He knew his wife returned at 8.00 p.m. from her mother\'s place;

10. He knew that he conversed with his wife and knew what he asked his wife and the reply the wife gave;

11. He knew he heard a sound apparently that of the tear gas that was thrown into his room exploding;

12. He knew that after hearing the sound his eyes started hurting him and that he could not breathe;

13. He knew he rushed to the door, opened it and when he rushed out he received matchet cuts on his forehead and retreated, armed himself with his matchet and charged back into his assailants. He knew he stumbled and fell and was given a good beating by people who ran away;

14. He knew he woke up in the police station the following morning with two policemen standing guard over him;

15. He knew he held a matchet and identified the matchet Exhibit \'A\' as, according to him, \'my matchet and the one I used that day to repel my attackers after I was cut three times on my head with matchet\'.

16. He remembered he saw P.W.1 on his way home and that he (P.W.1) greeted him (appellant). He also remembered meeting many people;

17. He denied hearing a voice urging him to look for the lady Edu Efe Ntomo the deceased and to kill her;

18. He cleverly and conveniently forgot inflicting matchet cuts on P.W.2 and expressed surprise at the testimony of P.W. 1 that he inflicted matchet cuts on him (P.W. 1) despite his testimony that he armed himself with the matchet to repel attacks;

19. He remembered seeing his wife return. At this time the corpse of Edu Efe Ntomo was right in front of his house visibly exposed to all naked eyes.

My Lords, it is my respectful opinion that the failure of the defence to adduce evidence from which intoxication can be inferred deprived the appellant of that defence. Intoxication is a question of fact to be established by evidence. It is not proved by the mere mention of the word. Similarly, insanity is not proved by the mere mention of the word. Certainly, there is no proof of either intoxication or insanity from the evidence of the prosecution witnesses. These defences are also not proved by mere denial of knowledge when or that the act was comnitted. The burden of proof of intoxication as a defence rests on the person charged. Likewise the burden of proof of insanity rests on the person charged for there is presumption of sanity in every person charged under our Law.

See Section 140(1) Evidence Law Cap. 49 L./E.N. 1963 R. v. Hansen Qwarey 5W.A.C.A. 66
See Section 27 Criminal Code Cap. 30 L./E.N. 1963.

The question that keeps on running through my mind is this: \"why did the appellant decide to return home when apart from the old woman everyone of his adult neighbours was a way from home after expressing within himself a wish not to die from the smoking' There could be no rational answer other than to execute his plan as found by the learned trial Judge. If he remembered he saw his wife return by 8.00 p.m. not long after the incident which according to P.W.3 took place between 7.00 p.m. and 8.00 p.m., he should have remembered seeing the body and head of the deceased lying in front of his house a metre apart from each other if he were not running away from disclosing with his own mouth the

sordid deed by his hand which he knew was wrong.

In his attempt to escape justice, he calls in aid the defence of intoxication provided by section 29 of the Criminal Code Laws.

It is section 29(2) of the Criminal Code Law Cap. 30 Laws of Eastern Nigeria 1963 that makes the defence of intoxication available to an accused. Section 29(1), (2), (3), (4) and (5) of the Criminal Code reads as follows:

(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

b) the person charged was by reason of intoxication, insane temporary or otherwise, at the time of such act or omission

(3) Where the defence under the preceding subsection is established, then in a case of falling under paragraph (a) thereof the accused person shall be discharged, and in a case failing under paragraph (b) sections 229 and 230 of the Criminal Procedure Law shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section intoxication shall be deemed to include a state produced by narcotics or drugs.

Cases where the defence under this section has been invoked in this country (Nigeria) are scanty. However, it is clear that the provisions of this section 29 enshrined the provisions of English Law on the subject of drunkenness. See Articles 42 and 43 Archbold 38th Edition pp.21 and 22. On drunkenness resulting in insanity, the learned authors of Archbold (supra) have this to say:

42 Where insanity has been caused by drunkenness, the supervening insanity, even though it be but temporary is just as much a defence as insanity produced by other causes, D. P. P. v. Beard (1920) A.C. 479 per Lord Birkenhead, L.C. at p.500. 14Cr. App. R. 159. The same principle applies to delirium tremens caused by drinking if it produces insanity although only temporarily R. v. Davis 14 Cox 563\'. . .\'. The doctrine of criminal responsibility in case of drunkenness due to alcohol is equally applicable to mental or bodily conditions caused by the drinking of narcotics or non-alcoholic stimulants, or exciting drugs or their hypodermic injection. 1 Hale 32, R. v. Lipman (1970) 1Q.B. 152, Cr. App. R. 600 and See Bolton v. Crawley (1972) Can. L.R. 222.

On the question of drunkenness and intent, the learned authors in Article 43 of Archbold (supra) have this to say:

43. There is a distinction between the defence of insanity in the true sense produced by excessive drinking and the defence of drunkenness which produces a condition such that the drunken man\'s mind becomes incapable of forming specific intention and the test of criminal responsibility which is applied to the former should not be applied to the latter defence D. P. P. v. Beard (1920) A.C. 479. . . Evidence of drunkenness which renders the accused person incapable of forming the specific intent essential to constitute the crime charged must be taken into consideration with the other facts p roved in order to determine whether or not he had such intent . . . It is not for the defendant to prove incapacity affecting the intent and if there is material suggesting intoxication, the jury should be directed to take it into account and to determine whether it is weighty enough to leave them with a reasonable doubt about the defendant\'s guilty intent. Broadhurst v. R. (1964) A.C. 441 at p.463 P.C. If a man, whilst sane and sober forms an intention to kill and makes preparation for it, knowing it is a wrong thing to do, and then gets himself drunk so as to give himself dutch courage to do the killing, and whilst drunk carries out his intention, he cannot rely on this self-induced drunkenness, as a defence to

the charge of murder, nor even as reducing it to manslaughter. He cannot say that he got himself into such a state that he was incapable of intent to kill.\"

Whether the appellant was insane in the legal sense at the time he decapitated the old woman Edu Efe Ntomo is a question of fact to be determined by the jury and not by medical men however eminent,

1. R. v. Rivea 34 Cr. App. R.
2. Salako v. Attorney-General, Western Nigeria (1965) N.M.L.R. 107.
3. Rex v. Hanson Qwarey5w.A.C.A. 66.
4. R. v. Omoni 12 W.A.C.A. 512

and is dependent upon the previous and contemporaneous acts of the party.

Mere absence of any evidence of motive for a crime is not a sufficient ground upon which to infer mania-R. v. Haves 1 F. & F. 666. R. V. Dixon 11 Cox 341. Salako v. Attorney-General, Western Nigeria (1965) N.M.L.R. 107. Insanity being a matter of defence the onus of establishing it lies upon the defendant.

1. R. v. Oliver Smith 6Cr. App. R. 19
2. Upitire v. Attorney-General, Western Nigeria (1964)1 All N.L.R. 204.

There is no evidence whatsoever of the effect the palm wine and the cigarette had on the other 3 persons who drank and smoked on that occasion. Such evidence may have been able to establish the potency of the palm wine, and the cigarette. From all indications, the other 3 persons were unaffected.

What is \'intoxication\' in the legal sense' It is best described by its effect on the human sense of reasoning. It is \"Defect of reason arising from Drunkenness\" and three different effects are categorised:

(1) Drunkenness may impair a man\'s power of perception so that he may not be able to foresee or measure the consequences of his actions as he would if he were sober.

Nevertheless, our law does not allow him to set up his self-induced want of perception as a defence. See section 29(2)(a) of the Criminal Code. Even if as the appellant alleged, he did not appreciate that what he was doing was dangerous, nevertheless, if a reasonable man in his place who was not befuddled with drink would have appreciated it he is guilty.

R. v. Meade (1909)1 K.B. 895
D.P.P. v. Beard (1920) AC. 479
Attorney-General for Northern Ireland V. Gallagher (1963) AC 349)(per Lord Denning).

(2) It may impair a man\'s power to Judge between right and wrong so that he may do a thing when drunk which he would not dream of doing when sober.\"

Though he does not realise that he is doing wrong, nevertheless, he is not allowed by section 29(2)(a) of the Criminal Code to set up his self induced want of moral sense as a defence. See also D. P. P. v. Beard (1920) A.C. at p.506

(3) It may impair a man\'s power of self control so that he may more readily give way to provocation, than if he were sober.

Our law section 29(2)(a) Criminal Code does not afford his self-induced want of control as a defence. In any case, there is a total absence of evidence of provocation offered. Furthermore, the appellant did not set up any defence of provocation at the trial and so the question of appellant\'s ability to control his actions in a drunken state did not arise. See Chutuwa v. The Queen (1954) 14 W.A.C.A. 590. Section 20 of the Criminal Code Cap. 30 Laws of Eastern Nigeria 1963, in my view, did not and cannot, and in the circumstances of this case does not afford a good defence to the

appellant. Unless an accused\'s state of intoxication was induced by the malicious or negligent act of another as provided by sub-section 2(a) of the section, the defence is not available. I may add that unless there is intoxication giving rise to temporary insanity, the defence under section 29(2)(b) of the Criminal Code is not available.

My Lords, the appellant did not adduce evidence to establish that he was either intoxicated and that his intoxication was caused without his consent by the malicious or negligent act of another person. On the contrary, the evidence shows that he was conscious of everything before and after the act, and that the taking of palm wine, his own palm wine, was his own deliberate decision unsolicited by anyone. From his own evidence, the decision to smoke the cigarette, which his friends also smoked, was his deliberate decision. The smoking of the cigarette did not make the appellant lose his senses. The appellant has not said that he did not know that killing the old woman was wrong. The evidence of the appellant therefore did not satisfy the conditions laid own in the provisions of section 29(2)(a) to entitle him to a defence of intoxication and in my view, the defence was justifiably rejected by the learned trial judge.

The defence under section 29(2)(b) is also not available, as the evidence did not establish intoxication let alone as a result of intoxication. All the elements of insanity required to be proved\' by section 28 of the Criminal Code are absent from the proceedings in this charge. Neither the prosecution nor the defence produced any evidence of insanity at the time the killing was carried out. Trial Judges do not manufacture evidence or extract them from the air in the courtroom. It is the duty of the parties to adduce the evidence from which the findings establishing the defence can be made. The defence has failed to discharge that duty in this case and in my opinion, the defence of insanity raised by counsel is mere speculation.

For the above reasons, I found no merit in this appeal and dismissed it on the 31st day of January, 1980.

Judgment delivered by
Fatai-Williams. C.J.N.

I have had the opportunity of reading in draft the reasons for judgment just delivered by my learned brother Justice Andrews Obaseki. I have nothing to add except to say that I entirely agree with all the reasons given by him for dismissing the appeal.

Judgment delivered by
Irikefe. J.S.C.

At the conclusion of submissions in this appeal, we dismissed it and indicated that our reasons for doing so would be given at a later date. My lords, the following are my reasons. The only point of law of any significance raised in the appeal is under what circumstances can an accused person rely upon intoxication as an answer to a charge of murder.

Section 29 of the Criminal Code (Cap. 30) Laws of Eastern Nigeria (1963) applicable to these proceedings makes provision for this defence. It reads thus:

29(1) - Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) - Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and-

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(4) - Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) - For the purposes of this section \'intoxication\' shall be deemed to include a state produced by narcotics or drugs.

The findings of fact so meticulously recorded by the court of trial and set out with equal clarity in the leading judgment of my Lord, Obaseki (J.S.C.) which has just been read, preclude the defence of intoxication under our laws to the appellant. A legal defence is surely not made by merely shouting it; there must be evidence to support such a defence and in the instant case, the onus of producing such evidence rests, not on the prosecution, but on the appellant.

On the record, the two acts relied upon by the defence, namely the consumption of palm wine (alcohol) and the smoking of a cigarette were voluntary acts of the appellant which are clearly outside the intendment of section 29(a) as set out above.

The learned trial Judge, on the facts before him, was right in holding that the appellant was in full control of his faculties and that the killing of the old woman was a carefully pre-meditated act.

In R. v. Hansey Qwarey - 5 W.A.C.A. p.66 the accused, a native of the Gold Coast, was charged with the murder of a fellow clerk who like himself was employed at a mining camp in the Sokoto Province by shooting him with a shotgun. The evidence showed that the accused and the deceased were called to the manager\'s office on a Sunday afternoon to draft and type a reply to a letter from a neighbouring manager, to which an inadequate reply had already been dispatched in the absence of the manager in the morning. An altercation then arose and the accused struck the deceased over the face with a piece of paper -Exhibit \"D\" - on which was his draft, which he had attempted to redraft. Odonkor, a younger and stronger man whom the accused described as his nephew then rose and pushed him and the accused fell over backwards. In rising, the accused picked up a heavy hammer and attempted to strike the deceased with it, but was prevented from doing so. The manager then separated them and the accused departed saying- \"I will go home and rest.\"

Shortly afterwards, Qwarey returned with a shotgun loaded in both barrels and three spare cartridges in his pocket, aimed the gun at the manager, then went in search of someone, clearly the deceased, found him in the office and shot him at a distance of a few yards in the stomach. He had remarked before shooting-\"Where is he'\" and \"Someone will die today.\" The West African Court of Appeal in the above case had this to say-

Counsel for the Crown in his learned argument directed the attention of the Court to the Director of Public Prosecutions v. Beard- 1920 Appeal Cases -479- not as presenting similar facts for in that case a crime of violence was interposed which was the cause of the death but as setting forth in the comprehensive judgment of Lord Birkenhead, L.C. the principle on which the defence of drunkenness must be approached. The conclusions to be drawn from the cases were summed up under three heads at page 500:

(i) Insanity whether produced by drunkenness or otherwise is a defence to the crime charged. The distinction between the defence of insanity in the true sense caused by excessive drinking and the defence of drunkenness which produces a condition such that the drunken man\'s mind becomes incapable of forming a specific intention has been preserved throughout the cases.

(ii) Evidence of drunkenness, which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with other facts, proved in order to determine whether or not he had this intent.

(iii) Evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his acts.\"

In the above case, the finding by the Court of trial that evidence of consumption of excessive liquor notwithstanding, there had been enough time for passions to subside and for reason to resume its seat from the point when the appellant announced - \"I will go home and rest.\" - and that when he re-emerged armed with a loaded shotgun and extra cartridges, was upheld by the Court of Appeal and the appeal was dismissed.

In the later case of Kofi Mensah v. The Queen - 14 W.A.C.A. p.174, although there was evidence of excessive consumption of alcohol, the court for reasons which did not appear on the record stated that it would not consider the defence of drunkenness, and convicted for murder. The Court of Appeal took the view that such a defence should have been considered and went on further to say that as it was impossible at the stage to speculate on what effect its consideration would have had on the lower court\'s verdict, allowed the appeal and substituted a verdict for manslaughter.

In Chutuwas v. The Queen - 4 W.A.C.A. p.590 where the defence of drunkenness was expressly raised in evidence, the Court of Appeal held that it is only where a person is so drunk as to be incapable of forming the intent essential to the crime charged that section 29(4) of the Code may be relied upon; if short of that, drunkenness which may lead a person to attack another in a manner in which no reasonable man would do, cannot assist to reduce murder to manslaughter under section 318 of the Code. The facts in that case did not bring it within section 29(4) or within section 318 of the Code - and the conviction for murder was u p held. I may add that section 29 of the Code being considered by the Appeal Court at that time is the same as section 29 of the Code (Cap. 30) Laws of Eastern Nigeria (1963) with which this case is concerned.

My lords, it seems to me plain beyond argument that, where, under our criminal laws, an accused person is entitled to a special defence as in this case, the onus of establishing such a defence by evidence, as I had indicated earlier, lies on him. The standard of proof required is not one beyond reasonable doubt but that based on a preponderance of probabilities.

I am in no doubt that on the facts before it the court of trial was right in convicting the appellant of murder as charged and that his appeal against the said conviction to the Court of Appeal was rightly dismissed.

Judgment delivered by
Aniagolu. J.S.C.

We dismissed the above appeal on 31st January, 1980 and adjourned the reasons for the judgment for delivery today.

I have been opportuned to read in draft the reasons for the judgment of my learned brother, My Lord, Obaseki, J.S.C. and I agree with his reasoned conclusion.

The facts of the case have been clearly set out in the said judgment. One might wish to emphasise the fact that throughout the evidence it was never suggested that the deceased offered any provocation to the appellant or, in any way, came in contact with him before the appellant sought her out from the back of the house and decapitated her. The appellant swore that immediately he smoked the cigarette he was \"choked\" and had a \"dizzy sensation\" right from his head down to his toes. He did not know what was happening to his body. By reason of this total blankness he did not know that he later killed an old lady. He said:

\"I was told that I had killed an old woman with whom I had never had any trouble.\"

The learned trial Judge rejected, and rightly in my view, the appellant\'s plea of insanity induced by drunkenness. The appellant did not specifically plead insanity induced by drugs, although from the totality of his evidence the defence, in law, that could be gathered from that evidence could remotely include insanity induced by drugs.

We have had occasion lately to draw attention to the defence of insanity in murder cases in Ngene Arum v. The State (1979)11 S.C. 91 and therein reviewed the decisions in a number of earlier cases. It is essential, from social and public standpoint, to closely examine a defence of insanity. It is necessary to recognise that there could be serious evil consequences to society if men should act on self-induced intoxication and seek to avoid to take the legal consequences of their act, upon a claim that they are insane. This need to protect society is recognised even in an assault case (see D. P. P. v. Malewski (1975)3 W.L.R. 404 per Lawton, L.J. and the judgment of Lord Elwyn-Jones, L.C. on appeal to the House in the case in (1976)2 All E.R. at p.145) let alone in cases involving the taking of lives.

Judgment delivered by
Uwais. J.S.C.

When this appeal came before us on the 31st of January, 1980 we dismissed it and reserved our reasons for doing so to today. I have had the privilege of reading in draft the judgment prepared by my learned brother Obaseki, J.S.C. My own views upon all the points argued agree so closely with those which he has expressed that I do not deem it necessary to add anything.

The decision of the Federal Court of Appeal confirming the conviction and sentence of death imposed by the High Court is hereby affirmed.