IN THE SUPREME COURT OF NIGERIA

Suit No: SC83/2005

Petitioner: Pius Edem Udo
And
Respondent: The State

Date Delivered: 2006-07-14

Judge(s): Sylvester Umaru Onu , Umaru Atu Kalgo , Ignatius Chukwudi Pats Acholonu , Aloma Mariam Mukhtar , Francis F

Judgment Delivered

The offence for which the appellant was charged and convicted was the murder of one Sunday Okon Udoette, on 21st of February, 1995 at Odukpani in Calabar Judicial Division, contrary to Section 319 (1) of the Criminal Code. The charge was read and interpreted to the appellant in Efik language. The prosecution called seven witnesses to prove its case and the appellant gave evidence in his defence. The prosecution\'s case was that the appellant having suspected that a servant of the deceased stole his cassava and farm tools, went to the deceased\'s house to complain and to ask for his hoe and axe, and in the process threatened to use matchet on him. The deceased retorted that the matter did not concern him, so he should report his servant to the police. The deceased left for the bush, but never came back alive. The appellant was later seen by the witnesses who were present during the threat, coming from the direction of the path the deceased took wielding a matchet whilst he searched the deceased\'s house. The appellant reported himself to the police who in turn accompanied him to scene of crime where they saw the corpse of the deceased. The appellant in his statements to the police, Exhibits \'A\' and \'D\' confessed that he killed the deceased with a matchet.

The defence of the appellant was that somebody shot him, resulting in a serious wound. He disarmed the person of his gun and cut him with a matchet. The learned trial judge evaluated the evidence, considered the appellant\'s defence, (which he did not believe or accept), and at the end of the day found the appellant guilty as charged and convicted him. Aggrieved by the conviction the accused/appellant appealed to the Court of Appeal on five grounds of appeal. The Court of Appeal affirmed the conviction of the trial court and dismissed the appeal for lack of merit. Again, dissatisfied with the decision of the court below, the appellant appealed to this court on two grounds of appeal. Learned counsel for both sides exchanged briefs of argument, which were adopted at the hearing of the appeal. Two issues for determination were raised in the appellant\'s brief of argument, and these issues were adopted by the respondent in its brief of argument. The issues are :-

\"1. Whether the learned Justices of the Court of Appeal are right in finding that the arraignment of the appellant at the trial court met the mandatory requirement as envisaged by Section 215 of the Criminal Procedure Law of Cross River State and Section 36 (6) (A) and (E) of the 1979 Constitution.

2. Whether the Court of Appeal was right in finding the defence of self defence was clearly suspect.\"

But then after adopting the appellant\'s issues, learned counsel for the respondent went on to formulate the following issues in their brief of argument:-

\"1. Whether the Court of Appeal was wrong to have held that the arraignment of the appellant complied with the provisions of Section 215 of the Criminal Procedure Law of Cross River State and Section 33 (6) and (e) of the 1979 Constitution of the Federal Republic of Nigeria, and if so, whether the trial was a nullity.

2. Whether the prosecution by the evidence led before the trial court proved the case against the appellant beyond reasonable doubt to warrant his conviction and sentence.\"

In proffering argument under issue (1) supra, learned Counsel for the appellant has submitted that the mandatory requirements of the laws mentioned above were not complied with, and reproduced the provisions of the law in his brief of argument. I will reproduce them hereunder, for the purpose of properly grasping the issue and the argument canvassed thereunder by both learned counsel, starting with Section 215 of the criminal procedure law which provides thus :-

\"The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to so order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the Registrar or other officers of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not been duly served therewith.\"

Then Section 33 (6) of the 1979 Constitution of the Federal Republic of Nigeria makes the following provisions :-

\"Every person who is charged with a criminal offence shall be entitled-

(a) to be informed promptly in the language that he understands and in detail of the nature of the offence.

(e) To have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence.\"

Learned counsel reproduced extensively from the judgment of Iguh, JSC in Kalu v. State 1978 13 NWLR part 583 page 531, the requirements of a valid arraignment. He also referred to the cases of Ewe v. State 1992 6 NWLR part 246, page 147, Erekaure v. The State 1993 5 NWLR part 294 page 385, and Sunday Kajubo v. The State 1998 1 NWLR part 73 page 721.

Learned counsel for the respondent on the other hand, cited the cases of Adeniyi v. State 2001 FWLR part 57 page 809, Idemudia v. State 1977 7 NWLR part 610 page 202, and Kajubo and Kalu\'s case supra, on the strict observance and compliance with the constitution and procedural provisions of arraignment. Learned counsel submitted that there was a valid and proper arraignment in the instant appeal.

Now, I will look at what transpired on the day the appellant was arraigned. See page (29) of the record of proceedings for what was recorded by the learned trial judge. The material portion of page (29) reads :-

\"Accused person in court. Ekanem B. Asuquo, Esq for the State. Chief Amba Wills Obong for the Accused says he has an application for bail of accused.

Court: The accused is to be charged first. Charge read over to the accused person in English Language and interpreted to him in Efik language and he appears perfectly to understand same and plead not guilty to the charge.\"

The requirements of a valid mandatory arraignment as enunciated by Iguh, JSC in the Kalu case supra are :-

1. That the accused person must be placed before the court unfettered.

2. The charge or information shall be read over and explained to the accused to the satisfaction of the court by the Registrar or other officer of the court.

3. The accused shall then be called upon to plead instantly to the charge, unless there is valid reason not to do so.

A careful perusal of the excerpt of the judgment which I have reproduced above show that the above requirements have been met. The fact that the learned trial judge did not record every little detail, as who read or interpreted the charge to the appellant, or that it was explained to him does not make the arraignment invalid. The fact that the learned trial judge used the word \'appears\' does not signify that he was not actually satisfied that the appellant understood the charge, as

learned counsel would want this court to believe. Learned counsel has made heavy weather of the use of the word \'appears\' as used by the learned trial judge in the record of proceedings, professing that its use portrays uncertainty in the mind of the learned judge. I do not think so, for if he had used the words, \'I am satisfied\', or \"I am certain\", they will still convey the same meaning of understanding, as portrayed in the excerpt of the record of proceedings reproduced above. Moreover one must not loose sight of the fact that the learned trial judge added the word \'perfectly\' after the word \'appears\', to further reinforce his satisfaction of the appellant\'s understanding of the charge. At any rate, the appellant\'s counsel, a Wills Obong Esq. was in court, during the arraignment, and I believe if he entertained any misgiving he would have raised an objection, which he did not, but merely said, 'I need time to contact my client sufficiently, I need a short date'. That is after the prosecuting counsel had announced that their witnesses were in court. Again, to go back to the appellant\'s response after the charge had been read to the appellant, his plea was that of \'not guilty\'. To my mind, this plea did not jeopardize the position or chances of the appellant, so I cannot see that all the minor complains learned counsel is making a mountain out of a mole hill of imparted negatively on the appellant either at that stage of the proceedings or later.

A judge is not enjoined to record every little detail of what transpires in a proceedings, whether criminal or civil. The important thing is to record all those salient and relevant proceedings that are necessary to lead to a just determination of a case. The crucial requirement is substantial justice in the real sense of it, so much so that no miscarriage of justice is occasioned. I agree that in a criminal case such as this, where the life of a human being is in jeopardy and at stake, a judge cannot be too careful in his adjudication or compliance with the provisions of the law, but wasting time on procedure that does not lead to miscarriage of justice is not advocated. The case of Uwaekwechinya v. State 2005 FWLR part 259 page 1911 cited by learned counsel for respondent on the position of an interpreter is apposite. See also the case of Adeniji v. State (2001) 13 NWLR part 730 page 375 where Katsina-Alu J.S.C. further clarified the requirements and what is expected of a trial judge thus: -

\"It must however be said that each case must be treated on its peculiar facts. The mode of compliance will differ from case to case. Let me explain. It is not every requirement that must appear on record. For example the requirement that the judge should be satisfied that the charge has been read and explained to the accused need not appear on the record. It is however a good practice to so indicate. There is nothing in Section 215 of the CPL which says that the trial judge must put on record his satisfaction. No. It is a matter of commonsense really. For once the record of the court shows that the charge has been read over and explained to the accused and the accused pleaded to it before the case proceeded to trial, it is to be presumed that everything was regularly done, that the judge was satisfied\".

Indeed, the learned justice of the Court of Appeal did not err in his lead judgment when he held as follows :-

\"The implication of my reasoning on this particular facts of this case is that the proper procedure on arraignment was followed hence there was no objections by his counsel at the arraignment which is substantially regular. These challenges are being taken on appeal and are unsustainable.\"

In the light of the above reasoning my answer to issue (1) supra is in the negative, and ground (1) of appeal to which it is married fails.

Issue (2) is on the treatment of the defence of self defence raised by the appellant by the lower courts. According to learned counsel for the appellant the evidence given by the appellant on self defence was uncontroverted, yet the learned trial judge rejected it and relied on hearsay evidence. Learned counsel cited the case of Udoh v. State (1994) 2 NWLR part 329 page 626 which held that it is against the tenets of justice for a learned trial judge to make use of evidence favourable to the prosecution and reject that favourable to the defence. Learned counsel for the appellant submitted that in the instant case where there was no eye witness account, it was very necessary to call cogent evidence to disprove the defence of the appellant. According to him the non-calling of Dr. Akpabio who treated the appellant to give evidence has created doubt in the prosecution\'s case. He placed reliance in the case of State v. Ajie 2000 11 NWLR part 678 page 434, Egbeyom v. State 2000 4 NWLR part 654 page 559, Kwaghir v. State (1995) 3 NWLR part 386 page 651, and Emiowe v. The State (2000) 1 NWLR part 641 part 408.

Learned counsel for the respondent replied that the sacred burden of the prosecution to prove its case against the

appellant beyond reasonable doubt was discharged by it by adducing credible circumstantial evidence which was capable and sufficient to support the conviction of the appellant for murder. He further argued that the evidence adduced by the prosecution in this appeal was cogent, complete, unequivocal, compelling and led to irresistible conclusion that the appellant and no one else was the murderer of Sunday Okon Udoette, and the defence of self defence does not avail the appellant. He placed reliance on the cases of Lori v. State 1990 8-11 SC. and State v. Ogbubun (2001) 2 NWLR part 608 part 576.

The prosecution adduced circumstantial evidence, and especially the evidence of P.W. 5, who was the investigating officer. A crucial part of his evidence reads as follows :-

\"On 12/3/95 I re-arrested the accused person, cautioned and charged him in English language and he signed the cautioning words after reading it over to him and he volunteered a statement. He admitted killing the deceased with a matchet. I read over the statement to him and he signed while I counter signed as the IPO.\"

The statement was admitted in evidence as Exhibit \'A\', even though not without an objection from the appellant\'s counsel. In this Exhibit \'A\', the appellant made the following confession, which is contained therein :-

\"Yes, I killed Mr. Sunday Okon the \'deceased\'. I used matchet in killing him after giving him severe matchet cuts all over his body and he died. I reported myself to the police at Odukpani together with the matchet I used in killing him ..... I left where I was hiding myself through another bush, which leads to my farm as I was going suddenly Mr Sunday Okon, the deceased came out pointed gun at me. I told him not to shoot me but he refused and he shot me, and fell down. I struggled and got up and started using the matchet on him, giving him severe matchet cuts till he finally died, I collected the gun from him and hid it inside the bush\".

P.W. 5 further testified as follows:-

\"On 23/3/95 I took the accused person to the University of Calabar Teaching Hospital to confirm the statement he made that he was shot. On getting to the Casualty Department where I saw the Doctor in charge, Dr. Akpabio who attended to him. I was in the company of the accused person. Dr. Akpabio said that the accused had a self-inflicted injury not gun shot wounds, etc ..... He took us to the direction he met the deceased. He pointed to the spot where he said the deceased stood and fired at him I noted that it was at close range with where the accused said he stood. If the gun had been fired at that range the accused would never have survived the shot. The range was about 12 feet. He then said he started pursuing the deceased inside the forest to a point where the deceased could no longer run and fell into a mud. Then when he met him there, he started using the matchet to cut him until the deceased died.\"

In another statement to the police some days later he stated the following in Exhibit. \'D\' which he made to P.W. 6:

\"As I was running in the bush somebody emerge in front and pointed gun on me I pleaded that he should not shoot me. He Sunday Okon shot, but fail to get me. He reloaded the gun and shot the second time and gots (sic) me. I was injured on the right side of my face by the bullet which he discharge. I then pursued him and got hold of him and matcheted him to death. I killed him with matchet, because he Sunday Okon shoot me with gun that is the reason I killed him. I also collected his gun after killing him and left his corpse there in the bush. Sunday Okon was not my enemy before, I was surprise to see him shooting me with gun. I ran to hospital at Calabar and treated myself ...'

Nothing contrary to the above pieces of evidence was elicited in the course of cross-examination of the witness. The only thing new was the issue of the collection of medical report. In this wise, the evidence of the prosecution were cogent, complete and unequivocal on the proof of the guilt of the appellant. The fact that the prosecution did not call Dr. Akpabio to give evidence did not leave any vacum or gap in the prosecution case and so it proved its case beyond reasonable doubt. At any rate the prosecution is not bound to call every witness to testify. See Oduneye v. State(2001) 2 NWLR part 697 page 311. All that it requires are the testimonies of witnesses who are necessary to prove its case, beyond reasonable doubt. See Qkpulor v. State (1990) 7 NWLR part 164 page 581.

I will add here, that proof beyond reasonable doubt as expounded by Denning J. in the case of Miller v. Minister of

Pensions (1947) 2 All E. R. page 372 page 372, is that proof beyond reasonable doubt does not mean proof beyond the shadow of doubt.

Now, to the defence of self defence. It is on record that the appellant gave the following oral evidence in court.

\"While hiding there I saw some one with a gun and pointed at me so I begged him not to shoot me but he fired but the gun did not fire. The man then removed the cartridge and put in another one and fire at me. The shot lifted me from where I was hiding and threw me quite a distance. While pleading I tried to free myself from him but he always emerged in front of me . I attacked him with my matchet while he was trying to reload. I struggled with him and took the gun from him. The shot got me by right jaw. I then ran out of the scene of the fight. I had a serious wound on my jaw. The man who shot me was Sunday Okon Udo Uto. He is also known as Sunday Okon the - deceased. I then hid the gun in the bush and an Ibo trader who came saw me that night rushed me to the Hospital - Calabar Teaching Hospital.\"

This defence is not feasible, for it is inconceivable that a person who had just been shot at such a close range, and in the process was wounded on the jaw, would be able to seize the gun from the assailant and attack him with a matchet to the point of killing him. The appellant did not call a witness or tender evidence to buttress his defence of self defence, even though in his evidence he said his children accompanied him to the farm on that day, a man accompanied him to the hospital on that day, and he was given certain papers in the hospital. That is why I am in full agreement with the finding of the court below which reads :-

\"In other words, the trial court has disbelieved the accused's story on this particular. More significantly and as testified by PW5 unchallenged - a gun shot within a distance of 12 feet apart i.e between the accused and the deceased would have shattered the accused\'s head. These facts have served to dispose of the basis upon which the said defence could be founded. The defence even though a non-starter has rightly been considered by the trial in its judgment and has rightly been rejected\".

If one considers most carefully the evidence of the appellant in court and his caution statement to the police, Exhibit \'A\' one will observe certain inconsistencies in the narration of what actually happened at the scene of the killing, as regards the point the appellant struck the deceased with his matchet. In Exhibit \'A\' the appellant stated \"I struggled and put up and started pursuing Mr. Sunday Okon the deceased and I got up and started using the matchet on him giving him severe matchet cuts till he finally died'..', while in court he testified that he attacked the deceased with his matchet while he was trying to load his gun. This inconsistency even if minor weakened the defence of the appellant, most especially as the learned trial judge ascribed probative value to the content of Exhibit \'A\', which corroborated the evidence of the prosecution witnesses and strengthened the circumstantial evidence that were cogent, complete and unequivocal, on what transpired between the deceased and the appellant earlier on, on the day of the incident. The fact that the appellant had gone to the house to threaten him with death, and the fact that he later came back to the house brandishing his cutlass and searching the house are strong enough evidence to draw the inference that the killing was premeditated and carried out with no provocation, that may hesitate the act of the appellant killing the deceased in an act of self defence. See Udedibia v. State (1976) 11 SC 133, and Ijioffor v. State (2001) 9 NWLR part 718 page 371.

There was no way therefore that the appellant\'s defence of self defence could avail the appellant, or that it could be sustained. The cases cited by learned counsel for the appellant are not apposite to the instant case.

I therefore resolve issue (2) supra in favour of the respondent, and dismiss ground of appeal No. (2) to which it is related.

The end result is that the appeal lacks merit and substance, and is dismissed. I affirm the decision of the court below, affirming conviction and sentence of the trial court.

Judgement delivered by
Sylvester Umaru Onu, J.S.C

Having been privileged to read in draft the judgment of my learned brother Aloma Muktar, JSC just read, I am in complete agreement therewith that the appeal lacks merit. It must perforce fail and it is accordingly dismissed by me.

Judgement delivered by
Umaru Atu Kalgo, J.S.C

I have had the privilege of reading in advance the judgment just delivered by my Lord Mukhtar JSC in this appeal. I entirely agree with the reasoning and conclusions reached therein which I adopt as mine. I also find no merit in the appeal. I dismiss it and affirm the decision of the Court of Appeal

Ignatius Chukwudi Pats Acholonu. J.S.C.

died before this judgment was delivered.

Judgement delivered by
Francis Fedode Tabai, J.S.C

I had the privilege of reading, before today, the judgment just delivered by my learned brother Mukhtar JSC and I agree entirely with the reasoning and conclusion that the appeal lacks merit. And I have nothing more to add.

The Appellant admitted killing the deceased. He however put forth the defence of self defence which if substantiated entitles him to be acquitted and discharged. The court has a duty to look at it properly no matter how patently untenable it may be.

At pages 73-74 of the record of appeal the learned trial Judge examined the defence. Part of his reasoning and conclusion runs as follows:-

\"From the testimony of the accused and his statements one would have expected to hear from at least a witness from the defence other than the accused as to the events of that day. Both at the village and later in the bush particularly as the accused person said that he went to farm that day with his children and some hired labourer. The accused person did not call any one of them neither did he identify them to the police who would have obtained statements from them. Under the circumstances and in view of my earlier findings this Court hereby finds and hold that the accused person has not made out a defence of self defence in this case.\"

Earlier the learned trial Judge had given reasons and found as a fact that the gun alleged by the Appellant to have been used to shoot him did not infact belong to the deceased. These findings are supported by the evidence before the court. The learned trial judge did not believe the defence. I do not think I have reason to disturb the finding of the trial court and endorsed by the court below.

In conclusion I do not see any substance in the appeal. For the above and the fuller reasons in the judgment of my learned brother Mukhtar JSC. I also dismiss the appeal.