GODFREY IMASUEN v. THE STATE

(2014) LPELR-22193(CA)

In The Court of Appeal of Nigeria

On Thursday, the 30th day of January, 2014

CA/B/115C/2007

Before Their Lordships

IBRAHIM MOHAMMED MUSA SAULAWA Justice of The Court of Appeal of Nigeria

AYOBODE OLUJIMI LOKULO-SODIPE Justice of The Court of Appeal of Nigeria

TOM SHAIBU YAKUBU Justice of The Court of Appeal of Nigeria

Between

GODFREY IMASUEN Appellant(s)

AND

THE STATE Respondent(s)

RATIO DECIDENDI

1. EVIDENCE - BURDEN OF PROOF: On whom lies the onus of establishing the defence of drunkness which amounts to insanity and unsoundness of mind

"The law is settled and beyond dispute that the onus of establishing the defence of drunkenness which amounts to insanity and unsoundness of mind, not to know what he did, rests squarely on the accused person. The burden is discharged on a preponderance of evidence led by and for the accused person. John Imo v. The State (1991) 9 NWLR (pt. 213) 13; (1991) 11 SCNJ 137 at 159 - 160. Generally, the law presumes that every human being is sane, until the contrary is proved. Section 27 of the Criminal Code." Per YAKUBU,J.C.A. (P.22,paras.C-F) (...read in context)

2. EVIDENCE - COMPETENT WITNESS: Whether a child is deemed a competent witness in law and under what circumstance will a child's sworn testimony not be needed in criminal trials

"It is no doubt the settled position of the law that a child is a competent witness unless the court considers the child in question to be prevented from understanding the questions put to him by reason of tender years (i.e. his age). See Section 154 of the Evidence Act, Cap. 112 LFN, 1990. With specific reference to criminal proceedings the position of the law is that a child need not give sworn testimony if the child in the opinion of the court does not understand the nature of an oath but possesses sufficient intelligence to justify the receipt of his evidence and understands the duty of speaking the truth. See Section 182(1) and (2) of the Evidence Act (supra). The Supreme Court interpreted the provisions of Sections 154 and 182(1) and (2) of the Evidence Act (supra) in the case of OKON v. STATE (1988) 19 NSCC 156. In DAGAYYA v. THE STATE (2006) All FWLR (Pt.308) 1212 at pages 1232 - 1233 the Supreme Court per Tobi, JSC reiterated or echoed the position in Okon's case thus:- "As correctly pointed out by learned counsel for the respondent this court dealt with the matter in 1988 in the case of Okon v. State (supra) .....This court held that: (1) Once a witness is a child, by the combined effect of Sections 154 and 182(1) and (2) of the Evidence Act, the first duty of the court is to determine first of all whether the child is sufficiently intelligent to understand the questions he may be asked in the course of his testimony and to be able to answer rationally. This is tested by the court putting on (sic) him preliminary questions which may have nothing to do with the matter before the court. (2) If, as a result of these preliminary questions, the court comes to the conclusion that the child is unable to understand the questions or answer them intelligently, then the child is not a competent witness within the meaning of Section

154(1). But if the child passes this preliminary test, then the court must proceed to the next test as to whether, in the opinion of the court, the child is able to understand the nature and implication of an oath. (3) If after passing the first test, he fails this second test, then being a competent witness, he will give evidence which is admissible under section 182(2), though not on oath. If, on the other hand, he passes the second test so that, in the opinion of the court, he understands the nature of an oath, he will give evidence on oath." Per LOKULO-SODIPE,J.C.A. (Pp.36-38,paras.D-A) (...read in context)

3. EVIDENCE - CONFESSIONAL STATEMENT OF AN ACCUSED PERSON: Whether a free and voluntary confessional statement of the accused person will be sufficient enough to sustain a conviction

"The law is no longer recondite, but well settled that a conviction can be grounded and sustained on a free and voluntary confessional statement made by an accused person. This is so, because a confessional statement is the strongest evidence against the maker thereof. Usman Kaza v. The State (2008) 2 SCNJ 375 at 423; Arogundade v. The State (2009) 2 SCNJ 44 at 49 - 50; Ilodigwe v. The State (2012) 18 NWLR (pt. 1331) 1 at 29 - 30. And where an accused person resiles from admitting the making of the confessional statement, it is better and expedient that some bit of evidence as corroboration, outside the confession be found in support of the confessional statement. Golden Dibie & Ors. v. The State (2007) 3SCNJ 1 60 at 183; Demo Oseni v. The State (2012) 2 SCNJ (pt. 1) 215 at 246; Federal Republic of Nigeria v. Faith Iweka (2011) 12 SCNJ 783; Osuagwu v. The State (2013) 1 SCNJ 33 at 57." Per YAKUBU,J.C.A. (P.29,paras.B-F) (...read in context)

4. COURT - COURT DECISIONS: The essence and importance of court decisions

"Courts do not give decisions for the fun of it. Decisions in cases, aside from binding parties thereto as well as their privies, are also to guide other persons who might find themselves in similar circumstances as the parties in any given decided case." Per LOKULO-SODIPE, J.C.A. (P.38,paras.E-F) (...read in context)

5. CRIMINAL LAW AND PROCEDURE - DEFENCE OF INSANITY: The need to critically examine the defence of insanity in our courts

"Furthermore his Lordship, Aniagolu JSC succinctly re-echored the law that, "It is essential, from social and public stand point, to closely examine a defence of insanity. It is necessary to recognize that there

could be serious evil consequences 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 recognized even in an assault case. (See D.P.P. v. Mojewski (1975) 3 W.L.R. 404 Per Lawton, L.J. and the judgment of Lord Elwyn-Jones, L.C., on appeal to the House of Lords in the case in (1976) 2 All E.R at P.145 let alone in cases involving the taking of lives." at page 29 of the report." Per YAKUBU,J.C.A. (Pp.21-22,paras.G-C) (...read in context)

6. EVIDENCE - DEFENCE OF INTOXICATION: The three major effect of intoxication/drunkness

"The locus classicus on the defence of drunkenness or intoxication seems to be Egbe Nkanu v. The State (1980) 3 -4 SC 1 where at page 18, my Lord Obaseki, JSC expounded the law thus: "What is "intoxication" in the legal sense? It is best described by its effects on the human sense of reasoning. It is "Defect of reason arising from Drunkenness" and three different effects are categorized. (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, the law does not allow him to set up 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 (1919) 1.K.B. 895. D.P.P. v. Beard (1920) A.C. 479, Attorney-General for Northern Ireland v. Gallagher (1963) A.C 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 realize 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.".Per YAKUBU,J.C.A. (Pp.20-21,paras.E-G) (...read in context)

7. EVIDENCE - DEFENCE OF INTOXICATION/INSANE DELUSION: At what instance will the defence of intoxication or insane delusion avail an accused person

"Therefore, for a defence of intoxication or insane delusion to avail an accused person such as the appellant herein, his reaction to the state of things as believed by him must be such that it could be

regarded as legitimate and natural reaction to such state of things. Egbe Nkanu v. The State (1980) 3 - 4 SC 1; Effiong Udofia v. The State (1981) 11 - 12 SC 49; M.A. Sanusi v. The State (1984) 10 SC 166; Ejinima v. The State (1991) 7 SCNJ (pt. II) 318)." Per YAKUBU,J.C.A. (P.28,paras.A-C) (...read in context)

8. COURT - DUTY OF COURT: Whether the court is duty bound to test the truth of an accused person's confessional statement and examine it with respect to other evidence led before it

"Therefore, a trial court faced with a situation such as was thrown up in the present case, has the duty of testing the truth of the confessional statement by examining it with respect to other credible evidence led before it and determine whether: (i) There is anything (evidence) outside the confession to show that it is true; (ii) It is corroborated; (iii) The facts in it are true as far as can be tested; (iv) The accused person had the opportunity of committing the crime; (v) The accused person's confession is possible; (vi) The confession is consistent with other facts ascertained and established. Jimoh Yusuf v. The State (1976) 6 SC 167; Alarape v. The State (2001) FWLR (pt. 41) 1872; (2001) 5 NWLR (pt. 705) 79; Akpa v. The State (2007) 2 NWLR (pt.1019) 500. The six point tests above listed are the ones stipulated in R. v. Sykes (supra) and in Nsofor v. The State (supra), his Lordship, Oguntade JSC., said that: "If the confessional statement passes these tests satisfactorily, a conviction founded on it is invariably upheld unless other grounds of objection exists. If the confessional statement fails to pass the tests, no conviction can properly be founded on it and if any is founded on it, on appeal, it will be hard to sustain." Per YAKUBU,J.C.A. (Pp.29-30,paras.G-F) (...read in context)

9. APPEAL - INTERFERENCE WITH THE EVALUATION OF EVIDENCE OF A LOWER COURT: Under circumstances will an appellate court interfere with the evaluation of evidence of a lower court

"The law is that when there is a complaint that the trial court did not evaluate evidence properly and make findings based on the evidence placed before him, the appellate court, is in as good a position as the trial court to do its own evaluation of the evidence laid before the court. And if the appellate court finds that there are inadequacies on the part of the trial court in the evaluation of evidence before it, the former has a duty to examine the conclusions and inferences drawn by the latter and then do its own re-evaluation of the evidence in order to come to its judgment, to see that justice is done. Atolagbe v. Shorun (1985) 1 NWLR (pt. 2) 360; Narumai & Sons Nig Ltd. v. Niger Benue Transport Co. Ltd (1989) 2 NWLR (pt.106) 730; Durugo v. The State (1992) 7 NWLR (pt. 255) 525 at 535; Adegboyega Ibikunle v. The

State (2007) 1 SCNJ 207; Yakubu v. UBA, Plc (2012) 25 WRN 113 at 153." Per YAKUBU,J.C.A. (Pp.24-25,paras.E-A) (...read in context)

10. EVIDENCE - PRESUMPTION: The test to be applied where there is a legal presumption that accused person intended the natural and probable consequences of his action

"..So, the legal presumption is loudly to the effect that the appellant intended the natural and probable consequence of his actions on 5/4/2003. The test to be applied in such circumstances, is the objective one, to wit: the test of what a reasonable man would contemplate as the reasonable result of his actions. Arabamen v. The State (1992) 4 SC 35; Eric Uyo v. The Attorney-Gen. Bendel State (1986) 1 All NLR 106 at 112; Garba v. The State (2000) FWLR (pt. 24) 1448 at 1460. In Adegboyega Ibikunle v. The State (2007) 1 SCNJ 207; my Lord, Onu, JSC., succinctly stated: "If from the intentional act of injury committed, the probability of death resulting is high, the finding should be that the accused intended to cause death or injury sufficient in the ordinary cause of nature to cause death." Per YAKUBU,J.C.A. (Pp.34-35,paras.D-A) (...read in context)

11. EVIDENCE - PROOF OF INSANITY: Different ways of establishing insanity by the courts

"...And the surest way of establishing insanity is by medical evidence or by compelling evidence of eyewitnesses, particularly of the relatives of the appellant, relating to his general conduct and behavior prior to, during and after the incident in question. Anthony Ejinma v. The State (1991) 7 SCNJ (pt. 1) 318 at 328. In M.A. Sanusi v. The State (1984) 10 SC 166 at 177 - 178, his Lordship, Anagiolu, JSC., emphatically stated what is expected in pieces of evidence aimed at establishing and proving insanity, as: "Positive act of the accused, before and after the deed complained of; evidence by a doctor who examined and watched the accused over a period of time as to his mental state; evidence of relatives who know the accused person intimately relating to his behavior and the change which had come upon him; the medical history of the family which could indicate hereditary mental affliction or abnormality, and such other facts and circumstances which will help the trial judge come to the conclusion that the burden of insanity placed on the accused, has been simply discharged." The salient facts required in proving insanity were clearly projected and crystalised by the apex court again, in Onyejekwe v. The State (1988) 1 NWLR (pt.72) 565 at 579 - per my Lord, Oputa, JSC., to include: "(1) Evidence as to the past history of the accused; (2) Evidence as to his conduct immediately preceding the killing of the

deceased; (3) Evidence from prison warders who had custody of the accused and looked after him during his trial; (4) Evidence of medical officers and/or Psychiatrics who examined the accused; (5) Evidence of relatives about the general behavior of the accused and the reputation he enjoyed for sanity and insanity in the neighbourhood; (6) Evidence showing that insanity appears in the family history of the accused." Further see Kure v. The State (1988) 1 NWLR (pt. 72) 404; R v. Inyang (1946) 12 WACA 5; Onakpiya v. Queen (1959) 5 FSC 150; Karimu v. The State (1989) 1 NWLR (pt. 96) 124; Ogbu v. The State (1992) 10 SCNJ 88 at 99; Okon Edoho v. The State (2010) 4 SCNJ 100, all to the effect that this burden on the defence is generally discharged on a preponderance of evidence or a balance of probability." Per YAKUBU,J.C.A. (Pp.22-24,paras.F-C) (...read in context)

12. INTERPRETATION OF STATUTE - SECTION 29 OF THE CRIMINAL CODE,VOL.II,LAWS OF THE DEFUNCT BENDEL STATE,1976: Interpretation of Section 29 of the Criminal Code,Laws of the Defunct Bendel State,1976 as it relates to whether intoxication will constitute a defence

"Section 29 of the Criminal Code, Cap. 48, Vol. II Laws of defunct Bendel State, 1976 now applicable in Edo State, provides inter alia: "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. (3) Where the defence under the preceding subsection is established, then in a case falling under paragraph (a) thereof the accused person shall be discharged, and in a case falling under paragraph (b) of Sections 229 and 230 of the Criminal Procedure Law shall apply. (4) Intoxication shall be taken into account for the purpose of determination 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." Per YAKUBU,J.C.A. (Pp.19-20,paras.E-E) (...read in context)

TOM SHAIBU YAKUBU, J.C.A. (Delivering the Leading Judgment): The appellant was convicted on a charge of the murder of a nine year old girl, Favour Ihoeghilan, under Section 319(1) of the Criminal

Code Laws of Bendel State of Nigeria, 1976, applicable in Edo State. He was consequently sentenced to death by hanging. This was at the High Court of Edo State, holden at Benin City on 26th January, 2005.

This appeal is against the said conviction and sentence. The appellant filed his notice of appeal within time. It contained two grounds of appeal, on 9th February, 2005.

This court granted leave to the appellant, on his application by which he filed an amended notice of appeal dated 9th March, 2010 on 16th March, 2010. The same was deemed as properly filed on 14th March, 2011.

The amended notice of appeal contains five (5) grounds which shorn of their particulars, each say:

"GROUND ONE

The trial judge erred in law in convicting the Appellant of murder when there was no direct and independent credible evidence before the court, that the Appellant was responsible for the death of the deceased.

GROUND TWO

The learned trial judge erred in law, when he convicted the Appellant and sentenced him to death despite the evidence of diminished capacity of the Appellant as a result of his temporary insanity arising from narcotic intoxication.

GROUND THREE

The learned trial judge erred in law when he did not draw attention to the need for medical examination of the Appellant to ascertain his mental capacity as a result of his raising the defence of insanity.

GROUND FOUR

The learned trial judge erred in law when he held that the inconsistency rule would not apply in the case so as to require him to seek other evidence outside the retracted confession in order to support the prosecution's case against the Appellant.

GROUND FIVE

The learned trial judge erred in law in convicting the Appellant of murder when the prosecution did not prove any mens rea or mental element of the offence."

The appellant in pursuit of the prosecution of the appeal, armed with his brief of argument dated 11th November, 2009, filed the same on 18th November, 2009. The said brief of argument was settled by Chino Edmund Obiagwu, Esq. Two issues were distilled for determination, to wit:

"1. Whether the failure of the learned trial judge to make detailed findings on Appellant's defence of involuntary intoxication and his lack of mental capacity to commit the offence charged by the trial court was not a miscarriage of justice?

2. Whether the conviction and sentence of the Appellant for murder can be sustained by the credible or legally admissible evidence on this case?

IN THE ALTERNATIVE:

Whether the conviction of the Appellant based on Exhibits A and D, his confessional statements to the police was justified?"

Respondent's brief of argument dated 22nd April, 2013 was filed on 23rd April, 2013 and deemed as properly filed on 24th April, 2013.

Mrs. C. A. Ebosele, Chief State Counsel, Ministry of Justice, Edo State, who settled the respondent's brief of argument, nominated two issues for determination as follows:

"(1) Whether the ingredients of the offence of murder as required by law was proved by the prosecution beyond reasonable doubt to justify his conviction.

(2) Whether defence of intoxication raised at the trial avails the Accused/Appellant."

I have considered the issues distilled for determination by both counsel herein. I have crystalised them into two, namely:

1. Whether the defence of intoxication was made out and available to the appellant.

2. Whether the conviction of the Appellant can be sustained on his confessional statements in Exhibits A and D.

Issue 1: Appellant's learned counsel contended that the learned trial judge did not consider, evaluate and make a clear finding on the appellant's defence at the trial that he was involuntarily intoxicated by inhaling the smoke of Indian hemp. And that it was caused by a group of boys at a canteen in Urora village on 5/4/03. Furthermore, that he consequently became confused and did not know what happened to him, until he found himself at the police station on the next day. Appellant's learned counsel referred to the conclusion of the learned trial judge at page 169 of the record of appeal, inter alia:

"It is my opinion and I so hold that the Accused person was not intoxicated on the question pursuant to Section 29(2) of the Criminal Code. I further hold that the accused person on 5/4/03 was self-induced."

Learned counsel, nevertheless insisted that the learned trial judge did not properly evaluate the evidence before him and make findings therefrom, hence the conviction of the appellant must not be allowed to stand. He referred to Karibo v. Grend (1992) 3 NWLR (pt. 230) 426 at 643: Morenkeji v. Adegbosin (2003) 8 NWLR (pt. 823) 612 at 643: Kalio v. Woluchem (1985) 1 NWLR (pt. 4) 610 at 622; Obiaso & Ors. v. Okoye & Ors. (1989) 5 NWLR (pt. 119) 80; Section 29(1)(2)(3)(4) & (5) of the Criminal Code.

Respondent's learned counsel, on this issue, submitted that the onus was on the appellant to discharge to the effect that he was insane. She relied on R. v. Oliver Smith 6 CAR 19; Upetire v. Attorney General, Western Nigeria (1964) 1 All NLR 204. Furthermore, she contended that the mere absence of any evidence of motive for a crime is not enough ground to infer insanity. Reliance was placed on Egbe Nkanu v. The State (1980) 3 - 4 SCL (?) at 17; Rafiu Salako v. Attorney General, Western Nigeria (1965) NMLR 10.

The learned Chief State Counsel for the respondent contended furthermore, that the appellant did not establish the defence of insanity under Section 29 of the Criminal Code. She referred to Imo v. The State (1991) 9 NWLR (pt. 213) 13 or (1991) 11 SCNJ 137 at 160. And that the law presumed the appellant to be sane. She relied on Mallam Zakari Ahmed v. The State (2001) 2 ACLR 131 at 169; Section 27 of the Criminal Code.

Learned respondent's counsel insisted that the contents of the appellant's extra-judicial statements in Exhibits A and D show that the alleged intoxication was self-induced and so the defence was not available to him.

Resolution of Issue 1.

The appellant in his extra- judicial statements obtained by the police shortly after the commission of the murder in question, in Exhibits A and D narrated how he purchased Indian hemp which he smoked and some bottles of stout which he drank at the 2nd East Circular Road, Benin City before he proceeded from there to Aduwawa Area Benin City from where he lured the deceased, Favour Ihoeghilan into a bush behind the cattle market, and raped her. However, in his evidence at the trial, he told the story that it was some boys at an Urora canteen who caused him to inhale Indian hemp which made him to be confused, such that he did not know what happened to him again, until he found himself at the Police Station, on the next day. Herein lies the defence of involuntary intoxication.

Section 29 of the Criminal Code, Cap. 48, Vol. II Laws of defunct Bendel State, 1976 now applicable in Edo State, provides inter alia:

"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.

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

(4) Intoxication shall be taken into account for the purpose of determination 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 locus classicus on the defence of drunkenness or intoxication seems to be Egbe Nkanu v. The State (1980) 3 -4 SC 1 where at page 18, my Lord Obaseki, JSC expounded the law thus:

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

(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, the law does not allow him to set up 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 (1919) 1.K.B. 895. D.P.P. v. Beard (1920) A.C. 479, Attorney-General for Northern Ireland v. Gallagher (1963) A.C 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 realize 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."

Furthermore his Lordship, Aniagolu JSC succinctly re-echored the law that,

"It is essential, from social and public stand point, to closely examine a defence of insanity. It is necessary to recognize that there could be serious evil consequences 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 recognized even in an assault case. (See D.P.P. v. Mojewski (1975) 3 W.L.R. 404 Per Lawton, L.J. and the judgment of Lord Elwyn-Jones, L.C., on appeal to the House of Lords in the case in (1976) 2 All E.R at P.145 let alone in cases involving the taking of lives." at page 29 of the report.

The law is settled and beyond dispute that the onus of establishing the defence of drunkenness which amounts to insanity and unsoundness of mind, not to know what he did, rests squarely on the accused person. The burden is discharged on a preponderance of evidence led by and for the accused person. John Imo v. The State (1991) 9 NWLR (pt. 213) 13; (1991) 11 SCNJ 137 at 159 - 160. Generally, the law presumes that every human being is sane, until the contrary is proved. Section 27 of the Criminal Code.

And the surest way of establishing insanity is by medical evidence or by compelling evidence of eyewitnesses, particularly of the relatives of the appellant, relating to his general conduct and behavior prior to, during and after the incident in question. Anthony Ejinma v. The State (1991) 7 SCNJ (pt. 1) 318 at 328.

In M.A. Sanusi v. The State (1984) 10 SC 166 at 177 - 178, his Lordship, Anagiolu, JSC., emphatically stated what is expected in pieces of evidence aimed at establishing and proving insanity, as:

"Positive act of the accused, before and after the deed complained of; evidence by a doctor who examined and watched the accused over a period of time as to his mental state; evidence of relatives who know the accused person intimately relating to his behavior and the change which had come upon him; the medical history of the family which could indicate hereditary mental affliction or abnormality, and such other facts and circumstances which will help the trial judge come to the conclusion that the burden of insanity placed on the accused, has been simply discharged."

The salient facts required in proving insanity were clearly projected and crystalised by the apex court again, in Onyejekwe v. The State (1988) 1 NWLR (pt.72) 565 at 579 - per my Lord, Oputa, JSC., to include:

"(1) Evidence as to the past history of the accused;

(2) Evidence as to his conduct immediately preceding the killing of the deceased;

(3) Evidence from prison warders who had custody of the accused and looked after him during his trial;

(4) Evidence of medical officers and/or Psychiatrics who examined the accused;

(5) Evidence of relatives about the general behavior of the accused and the reputation he enjoyed for sanity and insanity in the neighbourhood;
(6) Evidence showing that insanity appears in the family history of the accused."
Further see Kure v. The State (1988) 1 NWLR (pt. 72) 404; R v. Inyang (1946) 12 WACA 5; Onakpiya v. Queen (1959) 5 FSC 150; Karimu v. The State (1989) 1 NWLR (pt. 96) 124; Ogbu v. The State (1992) 10 SCNJ 88 at 99; Okon Edoho v. The State (2010) 4 SCNJ 100, all to the effect that this burden on the defence is generally discharged on a preponderance of evidence or a balance of probability. Therefore, the prosecution has no duty or business in proving sanity or insanity of an accused person.
The complaint of the appellant against his conviction is that the learned trial judge did not properly evaluate his evidence with respect to his involuntary intoxication and make specific findings on it. The law is that when there is a complaint that the trial court did not evaluate evidence properly and make findings based on the evidence placed before him, the appellate court, is in as good a position as the trial court to do its own evaluation of the evidence laid before the court. And if the appellate court finds that there are inadequacies on the part of the trial court in the evaluation of evidence before it, the former has a duty to examine the conclusions and inferences drawn by the latter and then do its own re-evaluation of the evidence in order to come to its judgment, to see that justice is done. Atolagbe v. Shorun (1985) 1 NWLR (pt. 2) 360; Narumai & Sons Nig Ltd. v. Niger Benue Transport Co. Ltd (1989) 2 NWLR (pt.106) 730; Durugo v. The State (1992) 7 NWLR (pt. 255) 525 at 535; Adegboyega Ibikunle v. The State (2007) 1 SCNJ 207; Yakubu v. UBA, Plc (2012) 25 WRN 113 at 153.
I have perused painstakingly, the evaluation of the pieces of evidence placed at the disposal of the learned trial judge and at pages 166 - 169 of the record of appeal where he found, to the effect that:
- From Exhibits 'A' and 'D' - the confessional statements of the appellant, he was conscious of everything before and after the act;
- His drinking of four bottles of small Guinness stout and the purchase of a bottle of stout for the girl he had sexual intercourse with in the hotel and also gave her N150,00 as well as the purchase of a bottle of stout for the bar man at the 2nd East Circular Road, were his own deliberate decisions, unsolicited by anyone;
- It is clear from Exhibits A and D that the appellant's decision to buy Indian Hemp at Sapele Road, Benin City for the sum of N500.00 which he smoked on 5/4/03, part of which he gave to some boys around there was his own deliberate decisions;

- The acts of smoking Indian hemp at Sapele Road and the drinking of four bottles of small Guinness stout at 2nd East Circular Road, Benin City could not be attributed to the malicious or negligent acts of some other boys as testified by the appellant at the trial.
- There is no evidence of the disposition of the accused/appellant to drunken behaviours;
- There is no evidence of previous insane delusional attacks by the appellant.

It is in view of the above findings that the learned trial judge drew inferences and came to the conclusion at page 169 of the record of appeal, that:

"It is my opinion and I so hold that the Accused person was not intoxicated on the question pursuant to Section 29(2) of the Criminal Code."

I must say that I am unable to fault the evaluation of the evidence placed before the learned trial judge and the findings he made from them nor am I able to fault the inferences and conclusions, that his Lordship ably and rightly arrived at with respect to the appellant's defence of intoxication.

It seems to me that the voluntary consumption of both Indian hemp and Guinness stout on 5/4/2003 instead of being an impediment to his mental soundness, actually provided a booster which galvanized his sexual appetite on the fateful day. And that was why he, after having had a sexual affair with a girl for whom he bought a small bottle of stout in the hotel at the 2nd East circular Road, Benin City; his sexual appetite still goaded him and turned him, to a pedophile, by luring a nine year old girl into a bush and got her sexually assaulted on the same date. The sexual exploits of the appellant on 5/4/03 smacks of him as a sex maniac. The learned trial judge at page 186 of the record of appeal was rightly on target when he found that:

"The Accused person carves for himself an impression of a sex maniac who has an insatiable appetite for sex for, from his statements, Exhibits 'A' and 'D', after he had smoked Indian hemp which he bought with P.W.3's money along with some other boys at Sapele Road he proceeded to 2nd East Circular Road in Benin City where he bought and drank four small bottles of Guinness Stout, bought one small bottle of small Guinness stout for a girl with whom he had sex and on the same day he proceeded to the house of P.W. 3, lured the deceased out of the house in the presence of P.W.1 and then defiled her and then caused her injuries resulting in her death."

I am of the considered and firm opinion that the appellant did not establish on a preponderance of evidence that he was "out of his mind", after the consumption of Indian hemp and Guinness stout on 5/4/03 when he lured the nine year old daughter of his employer, sort of biting the finger that was feeding him, into the bush and raped her. And thereafter set her ablaze. I could have thought otherwise, that is, that the appellant was insane, if instead of going to the home of his employer to lure the

daughter into the bush in order to rape and kill her, he had proceeded to his own family compound and did the same thing to a nine year old girl, say: any of his own siblings or nieces/cousins. It is then that his insanity could have become undeniably and irrefutably manifest!

My Lords, it must be remembered that insane delusion is a product of a disordered mind which conjures up some facts which it thinks do exists. It adheres to such impaired facts against all reasonable evidence to the contrary. Therefore, for a defence of intoxication or insane delusion to avail an accused person such as the appellant herein, his reaction to the state of things as believed by him must be such that it could be regarded as legitimate and natural reaction to such state of things. Egbe Nkanu v. The State (1980) 3 - 4 SC 1; Effiong Udofia v. The State (1981) 11 - 12 SC 49; M.A. Sanusi v. The State (1984) 10 SC 166; Ejinima v. The State (1991) 7 SCNJ (pt. II) 318).

I am in agreement with the learned trial judge that the defence of intoxication or insanity as a result of intoxication is not available to the appellant.

I resolve issue 1 against the appellant.

Issue 2

It is the contention of the appellant's learned counsel that with the retraction of the confessional statements in Exhibits A and D by the appellant at the trial, the conditions stipulated in R. v. Sykes (1913) 8 CAR 223 were not fulfilled before the learned trial judge convicted the appellant on those retracted confessional statements. He relied on Nsofor v. The State (2004) 18 NWLR (pt. 905) 292; Dawa v. The State (1980) 8 - 11 SC 236 at 267 - 268; The Queen v. Obiasa (1962) 2 SCNLR 402; (1962) 1 All NLR 651; Edet Obosi v. The State (1965) NMLR 307; Ebhomien v. Queen (?) 2 SCNLR 332; (1963) 1 All NLR 365; Paul Onochie & Ors v. The Republic (?) 1 SCNLR 204; Obue v. The State (1976) 6 SC 167.

Learned appellant's counsel commented on each of the six conditions laid down in R. v. Sykes (supra) and submitted that none of them was fulfilled before the appellant was convicted on his retracted confessional statements.

Resolution of Issue 2.

The law is no longer recondite, but well settled that a conviction can be grounded and sustained on a free and voluntary confessional statement made by an accused person. This is so, because a confessional statement is the strongest evidence against the maker thereof. Usman Kaza v. The State (2008) 2 SCNJ 375 at 423; Arogundade v. The State (2009) 2 SCNJ 44 at 49 - 50; Ilodigwe v. The State (2012) 18 NWLR (pt. 1331) 1 at 29 - 30. And where an accused person resiles from admitting the making of the confessional statement, it is better and expedient that some bit of evidence as corroboration,outside the confession be found in support of the confessional statement. Golden Dibie &

Ors. v. The State (2007) 3SCNJ 1 60 at 183; Demo Oseni v. The State (2012) 2 SCNJ (pt. 1) 215 at 246; Federal Republic of Nigeria v. Faith Iweka (2011) 12 SCNJ 783; Osuagwu v. The State (2013) 1 SCNJ 33 at 57.

Therefore, a trial court faced with a situation such as was thrown up in the present case, has the duty of testing the truth of the confessional statement by examining it with respect to other credible evidence led before it and determine whether:

(i) There is anything (evidence) outside the confession to show that it is true;

(ii) It is corroborated;

(iii) The facts in it are true as far as can be tested;

(iv) The accused person had the opportunity of committing the crime;

(v) The accused person's confession is possible;

(vi) The confession is consistent with other facts ascertained and established.

Jimoh Yusuf v. The State (1976) 6 SC 167; Alarape v. The State (2001) FWLR (pt. 41) 1872; (2001) 5 NWLR (pt. 705) 79; Akpa v. The State (2007) 2 NWLR (pt.1019) 500.

The six point tests above listed are the ones stipulated in R. v. Sykes (supra) and in Nsofor v. The State (supra), his Lordship, Oguntade JSC., said that:

"If the confessional statement passes these tests satisfactorily, a conviction founded on it is invariably upheld unless other grounds of objection exists. If the confessional statement fails to pass the tests, no conviction can properly be founded on it and if any is founded on it, on appeal, it will be hard to sustain."

The learned trial judge found that the pieces of evidence proferred by PW1, PW2, PW4 and PW5 were pieces of evidence outside the confessional statement which went to show that the confessions were true and probable.

According to the appellant's counsel, it is only the PW1's evidence which established an independent circumstantial evidence linking the deceased with the appellant on the fateful day. He contended that the unsworn evidence of the PW1 was of no value because according to him, the learned trial judge did not conduct any test to determine the competence of the said PW1 before he was allowed to give evidence.

The evidence of PW1 is at pages 64 - 67 of the record of appeal. The record at page 64 is that, to wit:

"P.W.1 - A child of 12 years old. I have put tests to this child and I am satisfied that he understands the nature of an oath and the duty to tell the truth in this court. He will therefore give a sworn evidence.

Sworn on Holy Bible and states in English Language as follows ..."

This was on 20th January, 2004. At p. 65 and on 4/2/2004 when PW1 actually gave evidence, he was reminded of his previous oath, before he proceeded to give his evidence.

It is glaring to me that PW1 gave sworn evidence and not an unsworn evidence as contended by appellant's counsel. Records, it is said speak for itself. I do not understand the appellant's counsel as challenging the correctness of the record which indicates that the PW1 was tested with respect to his understanding of the nature of an oath and a duty to tell the truth, which was certified by the learned trial judge, before PW1 gave his evidence on oath. Hence there is a presumption of the correctness of the record as to the conduct of the test by the learned trial judge on the PW1 as to his understanding of the nature of an oath and of his duty to tell the truth before PW1 gave his evidence on oath.

Therefore, the evidence by the PW1 had probative value because PW1 was a competent witness. He indeed was aware of the fact that it was the appellant who informed his deceased younger sister - Favour that her mother needed her in the market and left with her on 5/4/2003. But Favour never returned home since then.

I wonder why the learned appellant's counsel submitted that PW2 was not an independent witness. PW2 was the medical pathologist who performed the post mortem examination on the corpse of the deceased Favour Ihoeghilan. He found multiple injuries on different parts of the body. There was a bruise on the right side of the face near the right eye measuring about 3cm on diameter ..... There were also multiple small abrasions and bruises below the right eye; etc, etc. PW2 found that "the injuries to the face could have been caused by the application of a blunt object have (sic) (like) a fist a place of wound as a result of forcefully pushing a blunt object repeatedly into the vagina, such as a male organ, the penis or any other object that is so shaped." He also found that there was a first degree burns on the corpse of the deceased young girl.

Both in Exhibits A and D, the appellant stated that he had to fall the young girl down and started forcing his male organ into her vagina and also beat her into submission and at the end set her ablaze. I am satisfied that the features or injuries found on the corpse of the deceased are all consistent with the contents of Exhibits A and D, with respect to the scene of the crime and what transpired between the appellant and the deceased on 5/4/2003.

With respect to the PW4, he said he was on duty on 5/4/03 when the appellant came to the Ikpoba Hill Police Station and reported that he took a small girl into the bush and had sexual intercourse with her. PW4 led a team of Policemen into the bush and found the girl who was rushed to the hospital but died

some hours later. He recorded Exhibit A. He also recovered a box of matches Exhibit C, from the pocket of the appellant.

The pieces of evidence proferred by PW4 are what the appellants stated in Exhibit A.

The evidence of PW5 was no more than the recording of Exhibit D, which was a recapitulation of Exhibit A.

The learned trial judge having appreciated the need to pass Exhibits A and D through the acid tests laid down in R. v. Sykes (supra) carried out the exercise extensively from pages 180 - 187, of the record of appeal.

Therefore, I am satisfied that there were pieces of evidence by PW1, PW2 and PW4 outside the confessional statements in Exhibits A and D. Those pieces of evidence all go to show that the confessions are true, corroborated and the accused had the opportunity of committing the crime in question and the confession was clearly possible. Furthermore, the confessions in Exhibits A and D are consistent with other facts which were ascertained and established such as the bruises, burns and injuries found on the corpse of the deceased young girl.

In all, with the attack on the deceased by the appellant, by physically beating her black and blue to submission; sexually assaulting her and setting her ablaze, it is reasonable to infer that the injuries and burns inflicted on her by the appellant, caused her death. Silas Sule v. The State (2009) 6 SCNJ 65.

In the circumstances of this case, there is hardly any doubt that the appellant, by setting the deceased young girl ablaze, intended to cause her death or inflict on her, grievous bodily harm. So, the legal presumption is loudly to the effect that the appellant intended the natural and probable consequence of his actions on 5/4/2003. The test to be applied in such circumstances, is the objective one, to wit: the test of what a reasonable man would contemplate as the reasonable result of his actions. Arabamen v. The State (1992) 4 SC 35; Eric Uyo v. The Attorney-Gen. Bendel State (1986) 1 All NLR 106 at 112; Garba v. The State (2000) FWLR (pt. 24) 1448 at 1460.

In Adegboyega Ibikunle v. The State (2007) 1 SCNJ 207; my Lord, Onu, JSC., succinctly stated:

"If from the intentional act of injury committed, the probability of death resulting is high, the finding should be that the accused intended to cause death or injury sufficient in the ordinary cause of nature to cause death."

I have no difficulty at all in agreeing with the learned trial judge when he concluded at page 188 of the record of appeal, to wit:

"I find as a fact that the Accused person deliberately attacked the deceased, beat her blue and black, defiled, stripped her of her dresses and then set her ablaze, which led to her state of unconsciousness and eventual death from multiple injuries."

Therefore, I resolve this issue against the appellant.

In sum, the appeal is devoid of merits. I dismiss it, accordingly.

The well considered judgment of M.I. Edokpayi, J., on charge No. B/53C/2003 of 26th January, 2005 is hereby affirmed.

I cannot intervene or interfere with appellant's date with the hangman. He deserves to face him for callously and savagely causing the death of the young girl - Favour Ihoeghilan.

IBRAHIM MOHAMMED MUSA SAULAWA, J.C.A.: I concur with the reasoning and conclusion reached in the judgment just delivered by my learned brother, the Hon. Justice T.S. Yakubu, JCA to the conclusive effect that the present appeal is devoid of merits. Having adopted the said reasoning and conclusion as mine, I hereby dismiss the appeal. Accordingly, the Judgment of the High Court of Edo State, Benin Judicial Division delivered on 26/01/05 in Charge No. B/53C/2003 by M.I. Edokpaiyi, J; is hereby affirmed by me.

AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A.: I have read in draft the lead judgment prepared by my learned brother, TOM SHAIBU YAKUBU, and I cannot but agree that the appeal be dismissed in the light of the painstaking consideration of the issues arising for determination in the appeal and the manner in which they have been resolved. However, I wish to add a few words regarding the contention of learned counsel for the Appellant that the unsworn evidence of PW1 was of no value because the lower court did not conduct any test to determine the competence of the said PW1 as a witness before he was allowed to give evidence.

It is no doubt the settled position of the law that a child is a competent witness unless the court considers the child in question to be prevented from understanding the questions put to him by reason of tender years (i.e. his age). See Section 154 of the Evidence Act, Cap. 112 LFN, 1990. With specific reference to criminal proceedings the position of the law is that a child need not give sworn testimony if the child in the opinion of the court does not understand the nature of an oath but possesses sufficient

intelligence to justify the receipt of his evidence and understands the duty of speaking the truth. See Section 182(1) and (2) of the Evidence Act (supra). The Supreme Court interpreted the provisions of Sections 154 and 182(1) and (2) of the Evidence Act (supra) in the case of OKON v. STATE (1988) 19 NSCC 156. In DAGAYYA v. THE STATE (2006) All FWLR (Pt.308) 1212 at pages 1232 - 1233 the Supreme Court per Tobi, JSC reiterated or echoed the position in Okon's case thus:-

"As correctly pointed out by learned counsel for the respondent this court dealt with the matter in 1988 in the case of Okon v. State (supra) .....This court held that:

(1) Once a witness is a child, by the combined effect of Sections 154 and 182(1) and (2) of the Evidence Act, the first duty of the court is to determine first of all whether the child is sufficiently intelligent to understand the questions he may be asked in the course of his testimony and to be able to answer rationally. This is tested by the court putting on (sic) him preliminary questions which may have nothing to do with the matter before the court.

(2) If, as a result of these preliminary questions, the court comes to the conclusion that the child is unable to understand the questions or answer them intelligently, then the child is not a competent witness within the meaning of Section 154(1). But if the child passes this preliminary test, then the court must proceed to the next test as to whether, in the opinion of the court, the child is able to understand the nature and implication of an oath.

(3) If after passing the first test, he fails this second test, then being a competent witness, he will give evidence which is admissible under Section 182(2), though not on oath. If, on the other hand, he passes the second test so that, in the opinion of the court, he understands the nature of an oath, he will give evidence on oath.

In Mbele v. State, supra, this court followed the above decision in Okon. This court went further and held that once there are clear indications in the record of proceedings that a trial court carried out the preliminary investigation envisaged by Sections 154 and 182 of the Evidence Act before taking the evidence of a child or infant, that would mean at least prima facie, that the said inquiry was carried out even though the actual questions and answers in the course of the investigation are not recorded. It will then be opened to a party contending that the requisite investigation was not carried out to rebut his prima facie opinion by showing either that there was no investigation at all or what the trial Judge called an investigation under Sections 154 and 182 was a parody or travesty of the investigation envisaged."

Courts do not give decisions for the fun of it. Decisions in cases, aside from binding parties thereto as well as their privies, are also to guide other persons who might find themselves in similar circumstances as the parties in any given decided case. The Appellant in my considered view ought to have been

guided by the decision in the case under reference as well as the other decisions cited therein, in relation to the complaint he has on the evidence of PW1. In the instant appeal, the Appellant glaringly did not take a cue from decided cases dealing with evidence of a child. This is particularly so as the Appellant did not even appreciate the fact that PW1 gave evidence on oath and not unsworn evidence. In any event even if PW1 gave unsworn evidence, such evidence cannot be said to be of no value and can properly be acted upon by the lower court once it is corroborated by other material evidence implicating the Appellant. And it is indisputable that evidence of PW1 that it was the Appellant that left with the deceased on 5/4/2003 on the pretext that the deceased's mother needed her in the market, it corroborated by the evidence of PW4 as to how the Appellant not only came to the Police Station to report that he took a small girl into the bush and raped her, but also the facts that the said small girl rescued from the bush to which the Appellant led to Police later died and was identified to be the same small girl that the Appellant lured away on the pretext that her mother needed her in the market.

For the foregoing and more so the detailed reasons advanced in the lead judgment of my learned brother, I too find the instant appeal to be devoid of merit and dismiss the same. The well considered judgment of the lower court delivered in Charge No. B/53C/2003 on 26/1/2005 is affirmed.

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Appearances

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AND

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