

*Murder: Self Defence under Section 286 Criminal Code
When will avail an accused of culpability*

IN SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY THE 1st DAY OF FEBRUARY 2013

BEFORE THEIR LORDSHIPS

WALTER SAMUEL NKANU ONNOGHEN
CHRISTOPHER MITCHELL CHUKWUMA-ENEH
SULEIMAN GALADIMA
MUSA DATTIJO MUHAMMAD
CLARA BATA OGUNBIYI: LEAD JUDGMENT

RE: APPEAL NO. SC. 305/2010

BETWEEN

OJO ADEYEYE APPELLANT

AND

THE STATE RESPONDENT

“The guiding principles of self defence are necessity and proportion. The two questions which ought to be posed and therefore answered by the trial court were: (1) On the evidence, was the defence of self defence necessary? (2) Was the injury inflicted proportionate to the threat offered, or was it excessive? If however the threat offered is disproportionate with the force used in repelling it, and the necessity of the occasion did not demand such a self defence, then the defence cannot avail the accused.”

The above was the holding of the Supreme Court, per Ogunbiyi JSC in the judgment delivered on 1st February, 2013.

The Appellant and a particular Babalola Ezekiel (deceased) shared a common boundary demarcating their farmland. On or about the 5th day of February 1997, they had a disagreement on the Appellant's farmland, in the course of which according to the Appellant, the deceased pointed a dane gun at him threatening to kill him. During the scuffle, the Appellant struck the deceased on the neck with his cutlass and he died instantly. The Appellant thereafter dug a shallow grave and buried the deceased without informing anyone. The Appellant was later charged before the High Court of Osun State on a one-count charge of murder contrary to Section 319 of the Criminal Code Cap 30, Vol. II, Laws of Oyo State, 1978 as applicable to Osun State.

The Appellant in his statements made Exhibits "B" and "E", soon after his arrest and caution by the police, he admitted killing and burying the deceased. He stated that he knocked off the dane gun from the hand of the deceased and that when the struggle between them continued, he picked up his cutlass and cut the deceased's head off. He added that he killed the deceased because of the farmland dispute between the two of them. However, in his testimony before the trial court, the Appellant stated that after he had disarmed the deceased, the deceased retrieved his gun and that he killed the deceased in self defence when he attempted to shoot the Appellant with the gun. In its judgment, the Trial Court rejected the Appellant's plea of self defence. He was consequently convicted for the offence of murder and sentenced to death.

Dissatisfied with the decision of the trial court, the Appellant appealed to the Court of Appeal which dismissed his appeal and affirmed his conviction and sentence by the trial court. The Appellant further appealed to the Supreme Court. The lone issue formulated for determination was: *"Whether the Court of Appeal was right in affirming the judgment of the trial court to the effect that the defence of self defence was not available to the Appellant in the circumstances of the case"*.

The Appellant's counsel argued that the learned Justices of the Court of Appeal were wrong in affirming the judgment of the trial court wherein it held that the Appellant could not rely on the defence of self defence. He further stated that the defence put forward by the Appellant was neither rebutted nor was his testimony discredited by the prosecution; that the Appellant had established the ingredients of the defence of self defence as provided by the law and that the appellant wanted to save his life which was

in danger; hence, his striking the deceased only once. He contended that the onus did not lie on the Appellant to prove the defence of self defence raised by him but on the prosecution to disprove same. On the question of discrepancies in the extra judicial statements by the Appellant and his testimony in court, the Appellant's counsel argued that such discrepancies, if any, were not of a nature to render his plea of self defence unacceptable.

The Respondent's counsel in response submitted that the Appellant was not entitled to the defence he advanced, taking into account the fact of the Appellant's admission of the murder of the deceased, the severity of the injury inflicted on the deceased as well as the reason for the Appellant's action.

In its judgment, the Supreme Court held that for the defence of self defence under Section 286 of the Criminal Code to avail an accused person, the nature of the assault on him must be such as to cause reasonable apprehension of death or grievous harm. The extent of force which is acceptable as a defence must be from the belief on reasonable grounds that death or grievous harm was the only resort that must be used as a defence. The Supreme Court stated that the guiding principles of self defence are necessity and proportion and if the accused can show necessity for his conduct on the facts as he reasonably believed them to be a valid defence sufficient, his acquittal can be made. If however the threat offered is disproportionate with the force used in repelling it, then the defence cannot avail the accused. The following cases were referred to: *R V. NWIBO (1950) 19 NLR 124*; *R V. ONYEAMAIZU (1958) NRNLR 93*.

The Supreme Court also observed that the Appellant in his extra judicial statements stated that he killed the deceased because of the land dispute between them. He however changed his story in his evidence while testifying before the trial court, wherein he stated for the first time that the deceased succeeded in retrieving his gun which he tried to use to kill the appellant, and he consequently killed the deceased in self defence. On this point, the Supreme Court relying on *OMOREGIE V. THE STATE (2008) 12 SCM (PT. 2) 599 AT 622* stated that the trial court rightly rejected the testimony for being an afterthought as it was not stated in the appellant's extra judicial statement which he made when the matter was still fresh in his memory.

In the instant case, there was no credible evidence that the life of the appellant was either in danger or that he struck the deceased with his cutlass in order to save himself,

on a reasonable belief, from imminent death or danger. From all indications, the Appellant had conceived the intention to kill and therefore snared the deceased; thus, the defence of self defence put forward by the Appellant in his testimony before the trial court was an afterthought. The defence was therefore rightly rejected by the trial court which decision was rightly affirmed by the Court of Appeal.

Appeal dismissed.

Counsel:

Ikenna Okoli Esq. with Jideofor Nwosu and N. Offodile (Miss) for the Appellant.

Mrs. Abiola Adeweniro (Solicitor-General, Osun State) with Biodun Badiora (ACSE) and Aarinade Idowu (PSC) for the Respondent.