



DEFENCE OF INSANITY UNDER THE NIGERIAN CRIMINAL JURISPRUDENCE: EVALUATION OF THE DEFENCE OF INSANITY UNDER THE NIGERIAN CRIMINAL JURISPRUDENCE

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ABSTRACT

All legal systems have to some degree or other incorporated the simple moral idea that no one should be convicted of a crime unless some measure of subjective fault can be attributed to him. Nigerian law is not an exception as defences have been provided for those who cannot be said to be at fault such as the insane, for young people yet to attain the age of criminal liability, for those who acted in a state of unconsciousness or under compulsion, and so on. This paper discussed the concept of criminal responsibility, the burden of proof and the defence of insanity under Nigerian Criminal Law. The paper used the doctrinal methodology of legal research by using decided cases, law textbooks, journals and some seminar papers on the issue to discuss the defence of insanity. The paper finds that everyone is presumed sane until the contrary is proved and that the defence of insanity is one which requires the accused to show that he or she was suffering from a defect of reason at the time of commission of the offence.

KEYWORDS: *Insanity, offence, liability, defence, proof, law.*

INTRODUCTION

The doctrine of *mens rea* under English law has been applied in some cases in Nigeria¹, however such application of this doctrine is merely an importation²; but it has not yet been suggested that such importation is improper. Additionally, in the course of a criminal trial, an accused person may claim that a certain fact or set of facts in the case serve to exonerate him from liability. The

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¹E.g. the West African Court of Appeal in *Clegg v. C.O.P.* (1949) 12 W.A.C.A. 479; the Federal Supreme Court in *Mandilas & Karaberis Ltd. V. I.G.P.* (1958) 3 F.S.C. 20.

² See Radzinowicz, *A History of English Criminal Law*, Vol. 1, Appendix 4.



historical development of criminal law has been such that, rather than rely on any one single principle of no liability without fault, the courts have devised some principles to deal with the issues of insanity, infancy, corporate liability, liability of wives and so on, as they have arisen from time to time..

The Criminal Code contains a heterogeneous collection of sections dealing with some peculiar circumstances and the language used by the Code to negate liability might cover the facts of one case but not another. For example the defence of “*truth for public benefit*” against a charge of defamation³ or of provocation against a charge of assault⁴ apply to only one offence or a very limited number of offences and may be called specific defences. However, certain defences apply generally to all offences or certain categories of offences and they are called general defences.

Furthermore, in laying the foundation for the discussion on criminal responsibility, burden of proof and general defences particularly the defence of insanity, it is important to quickly mention here that since a defence completely absolves from criminal responsibility, a factor which merely mitigates punishment, such as provocation in murder, is usually incorrectly described as a defence. Consequently, this paper discusses the concept of criminal responsibility, the concept of burden of proof and then the defence of insanity. Although burden of proof is primarily a topic in the law of evidence, it is also intimately connected with the substantive law, especially with the law relating to defences.

³ Criminal Code s.377

⁴ Criminal Code s.284



CONCEPTUAL CLARIFICATION

Criminal Responsibility

Criminal responsibility is defined enigmatically in the criminal code as “*liability to punishment as for an offence*”⁵. This definition suggests; in respect of those sections of the Code where it is stated that someone is “not criminally responsible”; that- although the person in question is not liable to punishment, an offence has been committed if all the other elements are present. For instance, where a child aged six years old takes some canned food off a supermarket stall or shelf, and brings it home to his parents who eat it, knowing fully well what the child has done, then the offence of stealing has been committed even though the child is absolved of criminal responsibility for it by section 30 of the Criminal code and therefore the parents can be convicted of knowingly receiving goods obtained by a felony under section 427 of the Criminal code. Furthermore, in respect of criminal responsibility, the code deals generally with cases where anyone procures the commission of an offence by a person who is not criminally responsible- he is deemed guilty as if he had committed it himself.⁶

Burden Of Proof

At the outset of any criminal proceedings, the accused person is presumed innocent⁷ and the burden of proof rests upon the prosecution to prove its case- such is the nature of our adversarial system of justice in Nigeria and the onus lies on the prosecution to prove all the elements of the

⁵ S.1 criminal code.

⁶ C.c s.7.

⁷ Constitution of the Federal Republic of Nigeria, (as amended)1999, s. 33 (5).



offence. As such, it is not enough that the prosecution proves that the accused probably committed the offence. It (the prosecution) must prove beyond reasonable doubt that he committed the offence.⁸ This common law rule was confirmed for Nigeria by the Privy Council in *R v. Lawrence*⁹, and was put on a statutory basis in the 1945 Evidence Act.¹⁰

The *locus classicus* which laid down the principle of burden of proof and which is usually cited in Nigerian courts is *Woolmington v. D.P.P.*¹¹ and as such, the underlying philosophy of the rule, which places a stringent and necessary onus on the prosecution, is that it is better that ten guilty men should escape than to allow one innocent man suffer.¹² Towards this end, an example of its working is to be found in the case of *R. v. Amadu Adamu*¹³ where the deceased had gone out, armed, to hunt the accused whom he suspected of theft. There was no doubt that the accused, who was a thief, had killed him, now it was however not clear in this case from the evidence how the clash between them had occurred. The killing might well have been in self-defence, therefore the accused's conviction was quashed by the Court of Appeal.

Insanity

A test for determining the degree of mental disorder requisite for relieving of criminal responsibility was first seriously propounded in England in the famous and so-called M'Naghten Rules, formulated in 1843 by the Judges as advice given to the House of Lords after

⁸*Ezekwe v. Otomewo* (1957) W.R.N.L.R 130; *See Ikoku v. Okoli* (1962) 1 All N.L.R. 194; *Nwankere v. Adewumi* (1967) N.M.L.R. 45.

⁹ (1933) 11 N.L.R. 6; [1933] A.C. 699 (P.C.).

¹⁰ See s.137 (1) and (2) of CAP 62, 1958 Laws.

¹¹ [1935] A.C. 462; 25 Cr. App. R. 95 (H.L.).

¹² Glanville Williams, p. 871. The presumption of the accused's innocence is not to be prejudiced by any presumption of other people's innocence – see *R. v. Aliyu Zaria* [1959] N.R.N.L.R.67.

¹³ (1944) 10 W.A.C.A 161 .



M’Naghten’s case. These rules were- (a) That everyone is presumed sane until the contrary is proved;

(b) That it is a defence for the accused to show that he was laboring under such a defect of reason, due to disease of the mind as either: (i) not to know the nature and quality of his act, or; (ii) if he did know this, not to know that he was doing wrong; and (c) That if a man commits a criminal act under an insane delusion, he is under the same degree or responsibility as he would have been on the facts as he imagined them to be.

CRIMINAL LEGISLATION RELATING TO THE DEFENCE OF INSANITY

(a) The Criminal Code Act:

Section 24 of the Criminal Code Act is a foundation, generally, for criminal responsibility, although not necessarily meant to be a defence to insanity. It states as follows:-

“Subject to the express provisions of this code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will, or for an event which occurs by accident. Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission, is immaterial. Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or form an intention, is immaterial so far as regards criminal responsibility.”

Section 27 of the act states the obvious, and is meant to be a prelude to the topic on hand. It states:-



“every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.”

This is inevitably followed by section 28 which deals with insanity, insane delusions and irresistible impulse. It provides as follows:-

“a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission. A person whose mind, at the time of his doing or omitting to do an act, is affected by delusion on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act of omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.”

Insanity as a defence may also be raised under section 29 of the Criminal Code Act which provides 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 therefore 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 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) sections 229 and 230 of the Criminal Procedure Act 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.”

Thus, unlike the position taken in the early development of criminal jurisprudence, when drunkenness was an aggravating factor in liability, it is now an alleviating or excusing factor, and a form of *dementia affectata*.

(b) The Penal Code

In the Northern State of Nigeria, the Penal Code takes the place of the Criminal Code Act. The Code makes the following provides with regard to our subject:-

“Section 51 – Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or he is doing what is either wrong or contrary to law”



Section 51 of the Penal Code is for all times intents and purposes interpreted *similimodo* as section 27 and 28 of the Criminal Code Act. However, with respect to sections 44 and 52 of the Penal Code, which deal with intoxication, it is important to state the differences here. Section 44 of the Penal Code does not have an equivalent in the Criminal Code Act. It states as follows:-

“A person who does an act in a state of intoxication, is presumed to have the same knowledge as he would have had if he had not been intoxicated.”

In *Tonora Baruri v. The State*¹⁴ the Supreme Court upheld the above provision, although it was treated as if it was a case under section 24 of the Criminal Code Act.

In the case of section 52 of the Penal Code, the provision is as follows:-

“Nothing is an offence which is done by person who, at the time of doing it, is, by reason of intoxication caused by something administered to him without his knowledge or against his will, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law.”

Here, unlike the Criminal Code Act, the Penal Code recognizes involuntary intoxication as a valid defence. Whether a person is drunk voluntarily or involuntarily is left as a question of fact to be determined by the court; while voluntary intoxication however remains an invalid defence under the Penal Code. *Yakubu Kure v. The state*¹⁵ is a case in which the appellant was found one morning, armed with a big sick. He hit his daughter with the sick and she became paralysed in

¹⁴ (1965) N.M.I.R. 163; See also *Chutuwa v. The Queen* (1954) 14 W.A.C.A 590, where the appellant had been drinking for over 24 hours before he murdered his wife by stabbing, but this was held not to be evidence that the excessive drinking made him insane.

¹⁵ (1988) I. N.W.L.R. Pt. 71, 404.



the right arm. He hit another girl on the hand and she died. No-one ever saw the appellant behave in this violent manner. He was arrested and taken to the psychiatric hospital, Lokoja. Following the psychiatric report, the Magistrate discharged the appellant. After months of treatment, the appellant was discharged from the hospital. Thereafter, he was charged with the offence of murder and convicted as he was not known to have suffered any mental abnormality previously. At the Supreme Court, the issue of his treatment and discharge by the Magistrate earlier, was shown to be evidence by the prosecution of the state of mind of the appellant, although the defence did not make the report available at the trial. According to Obaseki, J.S.C. (as he then was):

“The defence is entitled to make use of evidence of insanity of the accused tendered by the prosecution even if the defence tendered no evidence. See section 140(2) of the Evidence Act, Cap. 62, Vol. 2, Laws of the Federation 1958. The learned Justice of the court of appeal also considered this defence of insanity. He too failed to give due weight to the evidence tendered by the prosecution.”¹⁶

(c) Administration of Criminal Justice Act, (ACJA) 2015

Pursuant to Section 284 ACJA, where the defendant appears to be of unsound mind at the time of any remand or similar pretrial proceedings before a court, and the issue of the state of soundness of mind of the defendant is in question, with regards to a defence to the main offence for which he is arrested relating to insanity or intoxication, the court shall proceed to deal with the defendant in accordance with sections 278 to 291 of the Act and shall not make any finding of fact in relation to such defence that the defendant is open to plead at his trial for the offence.

¹⁶ (n13)



CHALLENGES OF THE DEFENCE OF INSANITY IN NIGERIA

The insanity defence, also known as “*Not Guilty By Reason of Insanity*”, is a legal defence that helps protect people who are morally blameless from convictions. It’s based on the idea that the defendant was suffering from a severe mental illness at the time of the crime, making them unable to understand the nature of the crime or differentiate between right and wrong. This defence is important because it helps ensure the fairness of the legal system and protects the mentally ill from being forced into a prison system where they will not receive proper treatment.

The defense is based on the concept of fairness and justice, which holds that a person whose mind is clouded by mental illness at the times of an offense cannot be said to have the criminal intent required for legal guilt. For example, the defense can prevent the insane from committing further crimes through mental health restraints. The insanity defense is controversial because it raises moral issues about punishing someone who was extremely crazy at the time of the offense. The defense is based on moral principles in both criminal law and ordinary human interaction. Opponents to the insanity defense claim there is no real way to measure one’s “*sanity*” and therefore, the defense is confusing and should not be permitted.

Other problems with the insanity defense include:

High-Profile Cases: The high-profile nature of these cases, and the overwhelming scorn towards these individuals give the public a negative view of the insanity defense.

Hard to Prove: The bar for this defense is very difficult to meet, as many conditions must be met to put on a successful insanity defense. The defense has the burden of proving insanity.



Lack of Control on Type of Mental Disorders: There is a lack of control on the type of mental disorders that qualify for insanity defense. Judges may fall into the trap of treating genuinely insane criminals as having any real idea what they did was wrong people can't comprehend what having mental illness is actually like without having it themselves.

Judges and Society: judges and society are not easily swayed by the defense.

Legal Scholars and Jurists: Legal scholars and jurists have limited knowledge of the psychology behind abnormality and the behavioral attitudes that could pass the definition of insanity.

CONCLUSION

The defence of insanity is a crucial concept in legal proceedings, as it directly affects the way a person charged with a crime is held accountable for their actions. From the foregoing discussion, insanity is a defence which may avail an accused person from criminal responsibility; provided that the accused proves his case beyond the balance of probabilities as required by law.

RECOMMENDATIONS

Navigating the legal landscape of the defence of insanity in Nigeria requires a careful examination of historical roots, existing legal provisions, and the challenges inherent in its application and in view of this the following recommendations are hereby proposed.

1. As the country grapples with the complexities of mental health within the criminal justice system, there is a pressing need for legal and societal reforms that prioritize the fair and



humane treatment of individuals suffering from mental disorders. By addressing these challenges, Nigeria can strengthen its legal framework and contribute to a more just and compassionate criminal justice system.

2. The courts ought to take proactive steps to ensure that expert opinion on the insanity of an accused person is taken seriously.