The Insanity Defense Under Nigerian Law

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In Nigeria the defense of insanity is provided for in the Criminal and Penal Codes operating in the Southern and Northern States respectively.

Section 28 of the Criminal Code provides that:

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.

Section 51 of the Penal Code reads thus:

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 that he is doing what is either wrong or contrary to law.

The object of this chapter is not to examine what interpretations the courts in Nigeria have given to the wordings of the Codes or to determine whether the provisions are adequate to cover all aspects of mental deficiencies known to modern psychiatric science. Our aim is to justify the retention or make a case for the abolition of the insanity defense in the Nigerian law, having regard to the issue of determination of insanity at the trial of criminal cases and the consequences of a successful plea of insanity to the accused person and to the administration of justice in Nigeria.

Before we proceed on our study, a few preliminary points should be made. It should be noted that the insanity defense is raised at the trial of very serious offenses, mostly murder and rarely manslaughter, and has been upheld in very few of such cases. Under Nigerian law there exists the rule that every adult is presumed to be sane and to possess a sufficient degree of reason to be responsible for his acts [1]. Section 140 [3] (c) of the Evidence Act [2] also provides that the burden of proof of a defense of intoxication or insanity be on the accused.

From this presumption of sanity it follows that the onus is on the accused to prove that he was insane at the time he committed the offense [3]. However, the onus of proof on the defense in this regard is not the same as the onus on the prosecution in all criminal cases to prove its case beyond reasonable doubt [4].

From the foregoing it is clear that the burden of proof is discharged if it is established on balance of probability that the accused was insane when he committed the offense for which he is facing trial. Thus in an appeal from Nigeria the West African Court of Appeal in R. v. Echem [5] held “that the burden of proof which rests upon the person to establish the defence of insanity is not as heavy as that which rests upon the prosecution when proving its case against an accused person. It may be stated as not being higher than the burden which rests on a plaintiff or defendant in civil proceedings.” [6] The Supreme Court recently restated this position in State v. Inyang, [7] when it held that the burden of proof on the defense is discharged if it
is established on balance of probability that the accused was insane when he committed the offense.

We now come to the important question in this chapter. How is the issue of insanity determined by the courts? If the issue “unfitness to stand trial by reason of insanity” arises, it must be investigated, and it may arise at any stage of the trial, either before the accused pleads to the charge or after, and even after evidence has begun to be heard. As soon as the question is raised it must be investigated before the trial begins or continues. At this stage the judge will order that the person pleading insanity be sent to an asylum or psychiatric hospital for observation. The medical officer may detain him for such a period (not exceeding 1 month) as may be necessary to enable him to form an opinion as to the state of mind of the accused, and must forward a copy of his opinion in writing to the court. However, the issue of the unsoundness of mind of the accused must be resolved on evidence, for which purpose the certificate of the medical officer is admissible [8]. It is for the court to decide the question on the basis of its observation of the accused, whatever the opinion of the medical officer [9].

Where a trial is postponed under sections 223 and 224, the court may at any time begin the trial de novo and require the accused to appear or be brought to court as soon as he is fit to face trial. At the resumed trial the issue whether a person is insane or not for the purpose of criminal liability for the alleged offense is a question for the court to determine [10]. At the trial, expert evidence is taken from the medical officer who observed the accused, to determine the soundness of mind of the accused at the time of the alleged act constituting the charge. However, the court is not bound to accept the evidence of the expert and act on it in establishing the defense, no matter how eminent the expert may be in the field of psychiatry [11]. Thus it was held in R. v. Madugba [12] that it is for the judge to decide the question, for which purpose he may make use of his own observation of the accused, and he is not bound by the certificate of the medical officer, though great store ought to be attached to the medical opinion. The West African Court of Appeal held in R. v. Inyang [10] that medical evidence by an expert, though desirable, is not a necessity. The court rejected the medical evidence to the effect that the acquitted was sane [13].

In the recent case of State v. Joshua Agboola [14] the Oyo State High Court adopted the same position. The medical report was to the effect that the accused, who was charged with murder, was of sound mind. The court rejected this opinion and on the basis of the evidence adduced came to the conclusion that the accused was insane, and entered a verdict of guilty but insane [15].

The above raises some important questions. What is responsible for the judicial attitude, and how do the courts arrive at the conclusion that an accused is insane, having rejected the contrary opinion of the expert witness? It should be borne in mind that courts in Nigeria, like their counterparts all over the world, base their decisions on the evidence before them both in civil and criminal proceedings. This attitude cannot be different where the issue concerns the insanity defense. The fact that the relevant time for determination of insanity is the time of the commission of the alleged offense, coupled with the fact that an insane person does have moments of sanity (the lucid interval), makes the position of the psychiatrist an unenviable one. The psychiatrist is called upon to examine the accused person after the offense has been committed [16], and it may happen that at this time the accused is in his