V

A Critical Appraisal of the Extent and of Provocation as a Defence to Criminal Liability in Nigeria

A. A. Daibu* &
O. O. Mbanugo**

Abstract
The Nigerian Criminal Procedure System is such that when a defendant is charged with or accused of the commission of a crime, there are certain defences which the said defendant can raise. The effects of these defences vary depending on the nature of the offences charged. This article, out of the numerous defences, considers the defence of provocation only. Its objective being to appraise the extent and limits of the said defence as far as criminal liability is concerned. In the end it is observed that the defence of provocation only ameliorates but never eliminates criminal liability. The method used is text analysis, construction of statutes and application of case laws.

Introduction
Provocation is one of the numerous defences to criminal liability in cases where there are murder charges recognized under the Nigerian law[1].

* LLB , BL, Counsel in the Chambers of R. A. Lawal Rabana & Co. (Rabana House), No. 30 Offa Road G.R.A Ilorin, Nigeria. **LLB., BL, Legal Practitioner and Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka,Nigeria.

[1] See S.222 Penal Code applicable in the North, S.318 Criminal Code applicable in the South. Other defences to criminal liability include: insanity, automatism, accident, self-defence, and intoxication among others. For details see Smith & Hogan: *Criminal Law*, (4th edn.), London: Butterworth's, 1978, pp. 115-210, Okonkwo & Naish, *Criminal Law in Nigeria*, (2nd edn.), Spectrum Publishers, p. 97; K. K. I. Eletu, "A highlight of the general defence to criminal liability under the Nigeria adversary system" in *The Learned*, Vol.3, Law Students'

Jurisprudentially, the defence of provocation is based on the law of compassion for human weakness. From time immemorial, it has been recognized that human beings are prone to losing their control under extreme rage and should they react violently, justice demands that account be taken of their rage in inflicting punishment[2]. This paper shall appraise the salient principles of Law of Provocation, its proof and how courts have interpreted the concept with a view to serving as a guide to legal practitioners, judges, the academia and students alike.

Definitions

Literally, provocation means "an action or event that makes someone angry"[3] that is, the intentional causing of annoyance or anger to another person that makes him to react violently. When provocation is used generally, the above is presumed, but when used technically, then provocation is viewed from the legal perspective which is the focus of this paper.

Black's Law Dictionary[4]defines provocation as "something (such as words or action) that arouses anger or animosity in another, causing that person to respond in the heat of passion". The same but different editions of the dictionary define it thus: "… (1) The act of inciting another to do something especially to commit a crime (2) something (such as word or action) that affects person's reason and self-control, especially, causing the person to commit a crime impulsively"[5].

Sections 318 and 222 of Criminal and Penal Codes respectively define provocation. Section 318 of Criminal Code provides thus:

> When a person who unlawfully kills another in circumstances which but with provision of this section would constitute murder, does act which caused the death in the heat of passion caused by grave and sudden provocation and before there is time for his passion to cool, he is guilty of manslaughter only.

Association.Kwara State College of Arabic and Islamic Legal Studies. (CAILS) Ilorin, 2007, pp. 79-91.

[2] K. S. Chukkol, *Defence of Criminal Liability in Nigeria: a Critical Appraisal,* (2nd edn.), 1983.

[3] *Longman Dictionary of contemporary English* (3rd edn.), Edinburg Gate: Persons Education Ltd.; Harlow Essex CM 20 2JE, England. p. 1138.

[4] B. A. Garner, *Black's Law Dictionary,* (7th edn.), West Crown Publishing Company, 1999

[5]8th Edition at p. 1262.

Also S.222 of Penal Code provides that: "culpable homicide is not punishable with death if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of a person who gave the provocation or causes the death of any other person by mistake or accident".

The Court of Appeal gave a brief but lucid definition and the ingredients of what constitutes provocation in the following words:

> Provocation means an act or series of acts done by the deceased to the accused which would cause in any reasonable person and actually does cause in the accused, a sudden and temporary loss of self control rendering the accused so subject to passion as to make him for a moment not master of his own mind[6].

The defence of provocation is not a complete defence that exonerates an accused person completely; rather it only reduces the punishment. Provocation, in the opinion of Glanville Williams, is a legal defence, but not one that exonerates completely, if the jury accepts the defence they will return a verdict of manslaughter.

Nature of Provocation

There are variations as to the meaning of provocation. Despite the variations, the term provocation includes any act or insult of such nature as likely, when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in conjugal, parental, filial or fraternal relation or in the relation of master or servant to deprive him of the power of self control and induce him to assault the person by whom the act or insult is done.

The above suggests that provocation may be by words or by deeds. It is pertinent to note that there can be no uniform yardstick for measuring what constitutes provocation to a person at one time or another. But it depends very much on individual temperaments, custom of that particular area, facts and circumstances of each case as well as the exposure of the offended party. The exact nature of words or conduct to a particular person at anytime remains a

[6]*Ekag v. The State* (2001) 11 NWLR (Pt 723) 1 at pp. 27 – 28 para H-A. See also *Queen v. Afonja* (1955) 15 WACA 26; *Chukwu v. The State* NMLR 274; *Amala v. The State* (2004) 12 NWLR (Pt 888) 520 at 570 para C-D; *Shalla v. The State* (2007) 7-10S.C. 107 at p. 147.

difficult issue even in the courts of law. Consequently, varying discordant and conflicting opinions and positions have since emerged from our various systems of law.

The position of the Common Law is that words alone are not sufficient enough to constitute provocation in order to reduce the charge of murder to manslaughter; it has to be complemented with actions and/or deeds. This rule was modified in *Holmes v. D.P.P*[7]where it was held that words alone could amount to provocation "save in circumstance of a most extreme and exceptional character[8]". This position was approved in *R v. Adekanmi*[9]where the trial judge held that words alone could constitute provocation to reduce the offence of murder to manslaughter. Also in *Ejelofu Edache v. Queen*[10], the Federal Supreme Court held that insulting words may amount to provocation pursuant to **S.222** of the Penal Code. *In Shallah v. The State*[11], the Supreme Court Per Onu JSC stated thus:

> Although it is settled law that words alone can constitute provocation depending on the actual words used and their effect or what they mean to a reasonable person having a similar background with the appellant[12] and in the case in hand where the exact words are neither known or disclosed and moreover not even heard from the mouth of the deceased, it will not be possible to determine whether the defence of provocation is open or available to the appellant…

There is no gainsaying the fact that the definitions in S.318 of the Criminal Code and S.222 of the Penal Code bring our law in conformity with the current position in English Criminal Law.[13]

Thus it is submitted that discovering a wife committing adultery is sufficient provocation to reduce an offence of murder to manslaughter, but a mere

---

[7] (1946) A.C. 588.
[8] *Ibid*., p. 589.
[9] (1944) 17 N.L.R. 99, p. 101.
[10] (1962) 1 ALL NLR 22.
[11] (2007) 7-10SC 107, p. 135.
[12] Emphasis is mine.
[13] See S.3 of the English Homicide Act which provides "…where on the Charge of Murder there is evidence on which the jury can find that a person charged was provoked (whether by things done or things said or both together) to lose his self control the question whether the provocation was enough to make a reasonable man to do as he did shall be left to be determined by the jury…" (emphasis mine)

confession of adultery without more is not enough. In *Holmes v. D.P.P*[14] where a wife jeered at her husband who is an illiterate and primitive peasant, taunted him with being impotent and told him she was having sexual relations with another man, this was held to be sufficient provocation. Also in *R v Adekanmi*[15]**,** it was held that the abusive remarks of a pregnant and nursing mother, referring to her husband as a fool because the latter demanded to know who was responsible for her five-month old pregnancy were sufficient enough to constitute provocation for the act of the husband. But a wife's refusal to prepare food for her husband has been held to be insufficient for this purpose.[16] For a woman to taunt her husband with impotence and then spit in his face may in certain circumstances reduce murder to manslaughter in primitive communities where the subjection of woman is accepted as natural and proper. Also, an arrest which is lawful is not necessarily provocative but may be evidence of provocation to a person who knows it is illegal.

The dicta in certain cases tend to suggest that the defence of provocation will not be available when actual intent to kill or inflict grievous bodily harm exists. This view has been discredited and described as archaic and anachronistic[17]. The Privy Council stated that the defence of provocation may arise where a person does intend to kill or inflict grievous bodily harm but his intention to do so arose from sudden passion involving loss of self-control by reason of provocation"[18].

Delving further, L. J[19] affirmed the law as stated above by Lord Goddard, C. J, and pointed out that "if it was the law that whenever provocation excites any sort of intention to kill or cause grievous bodily harm the offence is murder, then provocation would be eliminated as a plea open to the defence". However, in *Yaro v. The State*[20]*,* the appellant and five accused persons charged along with him had heard from some sources that the deceased had somewhere in their village made some statements or comments considered insulting to prophet Muhammed (S.A.W.). The exact comments said to have been made by the deceased were not stated or given in evidence. The appellant

[14] *Supra.*
[15] *Supra.*
[16] See Oladiran v The State (1986)1 NWLR (pt. 14)75.
[17] Lord Goddard C.J in A G of Ceylon v Perera (1953) A.C 200 p. 206.
[18] *Ibid.*
[19]In Lee Chun Chuen v R (1963) AER 73 or (1962)3 WLR 1461.
[20](2007) 7-10SC 77 see also Shalla v. the State (2007) 7-10 S.C. 107.

and the other accused persons thus accepted that they had the duty to put the deceased to death in effectuating what according to them was written in the Holy Qur'an. They accordingly slaughtered the deceased by slicing his throat. They were charged and found guilty of the offence of culpable homicide punishable with death under section 221(a) of Penal Code and accordingly sentenced to death by the trial judge which decision was affirmed by the Court of Appeal. On a final appeal to the Supreme Court, the submission of the appellant counsel that the appellant is entitled to a consideration of defences of justification by law as provided for in section 45 of the Penal Code, as well as the defence of provocation as provided for in section 222 of Penal Code and that the trial court had duty and ought to have considered all the defences open to the accused person was rejected on the ground that the appellant did not place before the trial court the alleged insulting words, that would have led to the alleged provocation to warrant the court's consideration of the defences of justification and provocation. The appeal was consequently dismissed.

Oguntade J.S.C., who delivered the leading judgment, stated thus:

> …the above extract of the judgment of the court below clearly demonstrates that it was the view of the court below that the evidence before the trial court did not necessitate a consideration of the defences of provocation and justification. I am of the firm view that the court below was right in its views.
>
> *There was plainly no material before the trial court to enable it proceed to consider the defences of provocation or justification. The appellant never called any evidence to show the exact words or acts which the deceased had uttered or done to provoke the appellant and other accused persons to kill him*[21]. Whether or not the appellant and other accused persons were provoked into the act of taking the life of the deceased was a matter to be determined by a consideration of the nature of the annoyance given to the appellant and others. This however could not be done without knowledge of what the deceased had said or done …[22]

[21] Emphasis is mine.

[22] *Yaro v. The State* (2007) 7-10sc 77 p. 99. See also *Shallah v. The State* (2007) 7-10sc 107, pp. 121-122, pp. 134-135 and pp. 147-148 Per Oguntade, Per Onu and Per Muhammed JJSC respectively.

Elements of Provocation

There are certain elements which an accused person must prove in other to succeed in the plea of provocation. That is, an accused person will only be entitled to the defence of provocation if it is shown that: (1) The act of provocation is grave and sudden; (2) The accused must have lost self control actual and reasonable; (3) The mode of resentment must bear a reasonable relationship to the provocation.[23] It is instructive to note that, the above ingredients must co-exist before the defence can succeed.[24] The ingredients are taken conjunctively and never disjunctively.

Firstly, provocation must be such that causes a reasonable man to lose his self-control. The test is that of a reasonable man and not necessarily the accused person. A question that readily comes to one's mind is who is that reasonable man to be so reasonably provoked? Various definitions of a reasonable man often times confuse reasonable men the more.[25] We are of the opinion that a reasonable man in this context is a reasonable man in the accused person's state in life and standard of civilization.[26] The court usually is of the view that an illiterate and primitive person is more easily provoked than an educated and enlightened person. Francis J. in *R v. Adekanmi*[27] was of the view that reasonable men are men of education and civilization, who have the attributes of sobriety, are not hot-tempered and cannot be easily provoked. He attributed aggression and high passion to illiterates and primitive people. This view has been criticized by criminologists, scholars/writers as baseless, imaginary, and speculative because there is no scientific and empirical proof for that assertion. In a counter reaction, Okonkwo and Naish see it as debatable and fallacious because clearly whether a person is peevish or not has nothing to do with his standard of education or civilization. These writers are of the humble opinion that the question of a reasonable man is subjective and confined to the discretion of the court, bearing in mind the facts and circumstance of each case

[23] See the cases of *Shallah v The State* (2007), 12 MJSC 1 at 47 A-C or (2007) (7-10) SC 107 p. 134; Amala v The State (2004) 12 NWLR (Pt 888) 520, p. 570, paragraphs F-H; *Ihuebeka v. The State* (2000) 4 Sc (Pt1) 203.

[24] *Shande v. The State* (2005) 22 NSCQR (pt ii) 756, p. 772; *Ekang v. The State* (2001) 11 NWLR (Pt 723)1 at pp. 27-28. See also *Onyia v. The State* (2006) 11 NWLR (pt 991) 267, pp. 297-298.

[25] See M. A. Adesola, "Provocation: A Ruck in the Texture of Justice" in *The Jurist,* vo l.3, 1997, Law Students' Society University of Ilorin, p. 56.

[26] Rasheed Ijaodola; Lecture notes on Criminal Law, 1998 session. University of Ilorin.

[27] Supra.

as well as the status of the accused in life. We base our submission on the authority of *Oladiran v The State*[28] .

Another important element is that the act which causes the sudden provocation resulting in the death must be done in the heat of passion. If there is any "cooling time" between the provocation and the retaliation, then the defence of provocation will fail. In *R v. Green*[29] the period of waiting (about four hours) destroyed the defence of sudden provocation because the accused, in the opinion of the court had more than enough time for reflection. The fact of the case was that the accused wife abandoned him and went to her mother's house. The husband tried in vain to win her back. One day around 9p.m the husband went to see his wife in his mother-in-law's house and found his wife and another man having sexual intercourse, the husband returned home immediately, he came back at about 1a.m in the midnight with a machete to see if the man is still there. He found his mother-in-law snoring and heard the voice of his wife and the man talking in a dark room. He slew the wife and her mother. His plea of provocation was rejected on the ground that between the provocation and the killing, there was enough time for his passion to cool. Clearly, if he had killed the duo at 9p.m when he first saw them the plea would have been good.[30]

It is gratifying to note that provocation by one person is no excuse for killing another person who does not offer any provocation to the accused. In the case *R v. Ebor*[31] the accused met four women, one of whom was his ex-wife on a farm; she had since married another man. He demanded the cloth she was wearing and as she was untying it in the presence of another woman he stabbed that other woman too. It was held that even if he (the accused) lost his self-control as a result of the provocation given by his ex-wife, he was nevertheless guilty of murder because the second woman did not provoke him in anyway. However, provocation given by a group of persons acting in concert or unison may be successfully pleaded where the person so provoked kills a member of such group.

---

[28] *Oladiran v.. The State* (1986) 1 NWLR (Pt. 14) 75 at 83 C – F.
[29](1955) 15 WACA 73. See also the recent decision in *Onyia v. The State* (2006) 11 NWLR (Pt 991) 1 at 298.
[30]But see Phillip the Queen(1969) 2 AC 130.
[31](1950) 19 NLR 84.

Lastly, the mode of resentment or retaliation must be commensurate and reasonably proportionate to the provocation offered.[32] This is known as the principle of proportionality. Provocation which may cause a reasonable man to retaliate a slap on the face may not reduce murder to manslaughter where the accused savagely battered the offender to death with deadly weapon. For example if a man who is provoked retaliates a blow with his fist on another grown man, a jury may well consider probably that there was nothing excessive in the retaliation even though the blow might cause the man to fall and fracture his skull, for the provocation may well merit a blow with fist. It would be quite another thing if the person provoked struck the man and continue to rain blows upon him or hit his head against the ground. In *R v Adelodun*[33], A was provoked by abusive songs against his family. He lost his self-control and killed one of the singers with a machete. The plea of provocation failed because the injury inflicted on the deceased was so severe and the weapon (machete) used was held not to be proportional to what the deceased said or did to him. The court has been inconsistent in addressing this important element. We say this because, in *The State v Mohammed*[34] for instance, the court took into account the fact that the dagger used by the accused, who is a Kanuri man, is usually worn by his tribe as ornament. With due respect to the court, one wonders if this consideration is relevant to dispensation of justice? So a Kanuri man can use a dagger to retaliate a mere abusive word simply because he has a dagger which he wears as ornaments? Should this form part of the consideration at all? This remains a question in dire need of urgent answer.

Also in *R v. Philip*[35] where the accused used a deadly weapon on the deceased, we find it difficult to justify the use of deadly weapon to retaliate abusive words on his mother (the deceased), yet the plea of provocation succeeded to mitigate his punishment. It is sufficient to note however, that where the accused himself seeks to be provoked so as to create an excuse for exhibiting violence, the defence will not avail him.

[32]*Onyia v. The State* (supra); Uraka v The State (1976) 6SC 195; *Nwede v. The State* (1985) 3 NWLR (Pt 313) 144. See also footnote No. 6 infra.
[33](1959) NN L R 144; See also *R v. Bassey* (1963) 1 ALL NLR 280.
[34](1969) 1 WNLR 296.
[35] (1969) AC 130.

The Defence of Provocation under Shariah/Islamic Law

Islamic Law, otherwise and generally referred to as Shariah as opposed to Common Law, makes no provision for the defence of provocation. A sane and adult Muslim stands responsible and answerable for all his deeds or misdeeds[36]. Islam cherishes and adores human life. It is therefore forbidden and unlawful, any killing in whatever guise, of any person, thereby making provocation alien and unknown to Shariah.

Shariah guarantees and values the sanctity and dignity of human life. That is why it outlaws unlawful taking of human life. The Qur'an has several verses in various chapters where it outlaws the heinous and unpardonable acts of unlawful killing of human beings by one another. For instance, it is provided in Surat al-An'Am verse 151 as follows: "Take not life which Allah hath made sacred, except by way of Justice and Law…"[37] The prophet (SAW) is also reported to have said that the first action to be judged on the Day of Judgment is the spilling of blood[38]. In another Hadith, He is reported to have said that three things have been made illegal for a Muslim: (i) to spill the blood of another or deprive him of his life; (ii) to deprive him of his property and; (iii) to deprive him of his honour or integrity.[39]

Burden of Proof for Plea of Defence of Provocation in Murder Charges

The legal burden of proof in criminal cases is generally on the prosecution[40].This is because S.36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is to the effect that every person charged with a criminal offence shall be presumed to be innocent until and unless the contrary is proved. This burden can only be discharged by proving the guilt of the accused beyond reasonable doubt, as provided in S.135 (1) of the Evidence Act 2011. However, in some cases the burden of proving certain facts is thrown upon the accused. This is recognized by the Constitution when it provides as follows:

---

[36] J. Al-Ilkhil, S. Mukhtasar Al-Khalil Vol. 8, p. 70; Hashiyatul Adawi, Vol. 2, p. 290; Shalla v. The State (2007) 7-10 Sc 107, p. 168.
[37] *Qur'an* 6:151.
[38] Asqalani, *Bulugh Al-Maram Min Adillatil Ahkam*, p. 244.
[39] See Forty Traditions of Imam An-Nanawi.
[40]T. A. Aguda, *The law of Evidence*, (4th edn.), Ibadan: Spectrum Books Ltd, 2004, p. 225; See also S.135(2) and 139(1) of Evidence Act 2011; Basil *Akalezi v. The State* (1993) 2NWLR, p. 13.

> Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty, provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.[41]

By virtue of Ss.136 and 140 of Evidence Act 2011, the burden of proving the defence of provocation or insanity, alibi and the facts within the knowledge of the accused are all on the accused.[42] The burden of proof as to any particular fact lies on that person who wishes the court believe in the existence of the said facts.[43]

It is submitted that the onus lies on the accused to prove provocation to the satisfaction of the court. In order words, for an accused person relying on the defence of provocation to succeed, he is expected to convince the court that the deceased actually provoked him in the heat of passion making him to react out of loss of the self-control[44].

Effect of a Successful Plea of Provocation

The law is settled that it is not all provocation that will reduce the charge of murder to manslaughter. For provocation to have that result it must be such as temporarily deprives the person provoked of the power of self control as a result of which he commits the unlawful act which caused death. The test to be applied is that of the effect of provocation on a reasonable man, as was laid down by the Court of Criminal Appeal.[45] In applying the test, it is of particular importance to take into account the instrument with which the homicide was effected. This is so because to retort in the heat of passion induced by provocation by a simple blow is a very different thing from making use of a deadly instrument like a concealed dagger.

---

[41]S.36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

[42]See *Patrick Oghome v. the State* (1982) 10SC 36 for intoxication and insanity, *Patrick Njovens & Ors v. The State* (1973) NWLR 76 for Alibi, *Christopher Otti v. Inspector General of Police* (1956) NRWLR 1 for fact within the knowledge of the accused. See also Aguda, *op. cit*., p. 227.

[43] See sections 136 and 140 of the Evidence Act 2011 on burden of proof as to particular fact and proof of facts especially within the knowledge of any person respectively.

[44] *Onyia v. The State* (Supra); see also *Ihuebaka v. The State* (2000) 4SC (Pt. 1) 203; *Mancini v. The Director of Public Prosecutions,* 26 CAR 74; *Wonaka v. Sokoto* N.A. (1956) NSCC 28; *Kumu v. The State* (1967) NSCC Vol. 5, p. 286; *Shalla v. The State* (2007) 7 10SC 107, p. 160.

[45] In Lesbini 11 CAR 7.

In short, the mode of resentment must bear a reasonable relationship to the provocation if the murder charge is to be reduced to manslaughter[46]. It is trite law that the defence of provocation, if successfully pleaded, can only have the effect of reducing the punishment, which is that of murder to manslaughter punishable with life imprisonment. Provocation is a recognized defence which has the effect of whittling down the punishment stipulated for the offence committed, as in the case of murder, if satisfactorily established[47].

Thus, when a person who unlawfully kills another in circumstances which by the provisions of S.318 of the Criminal Code would constitute murder, does the act which causes death in the heat of passion, caused by grave and sudden provocation and before there is time for his passion to cool down, that person shall be guilty of manslaughter.[48] Therefore, provocation is not a complete defence nor does it completely exculpate the accused from criminal liability. The most it can do is to mitigate the punishment, because no amount of provocation can justify unlawful killing.

Can an Accused Person Rely on the Defences of Provocation, Self-defence and Accident on the Same Facts?

It is not unusual for the defence counsel in murder cases to rely on defences of accident, provocation and self-defence at the same time. The defences of provocation, self-defence and accident are mutually exclusive.[49] Provocation and self-defence admit the intentional doing of the act resulting in injury or death. On the other hand, accident negates intention and whereas the defences of provocation and self-defence may be raised on the same facts, it is not possible on the same facts to also rely on the defence of accident.

An accused person who relies on provocation as a defence to a charge of murder, is indirectly saying that he killed the deceased but due to provocation. Similarly, an accused who relies on self-defence in a charge of murder is also saying that he killed the deceased intentionally while defending himself from imminent danger to his life. But in accident, an accused person is saying, he

[46] Lord Chancellor, Viscount Simon, in *Mancini v. The Director of Public Prosecutions,* 26 CAR 74; See also the cases of *Wonaka v. Sokoto* N.A. (1956) NSCC 28; *Kumu v. The State* (1967) NSCC Vol. 5, p. 286; *Shalla v. The State* (2007) 7-10 S.C. 107, pp. 160-161.
[47] *Onyia v. The State.*
[48] *Ibid*.
[49] *Ibid*.

did not intentionally kill the deceased; that the event occurred unexpected, i.e. death resulted from an unwilled act.

A reliance on all the aforementioned defences on the same fact and or evidence shows a misconception of the nature of the defences and thus contradiction in the terms.[50] In raking up defences, care should be taken to ensure that an accused is not regarded as an unserious person who is merely trying to exculpate himself unjustly.[51] Raising the three defences together may not also be in the overall interest of an accused person.[52] They have the potentials of subtly indicating to the trial court that the accused person has no genuine defence.[53] An accused that relies on all the three defences at the same time on the charge of murder may be likened to a drowning man who clings even to a straw.

Conclusion

It is well-settled that the defence of provocation is not a complete defence but a tenable plea which, if successfully pleaded, can only have the effect of reducing the punishment, which is that of murder, punishable with death, to manslaughter, punishable with life imprisonment. This is so because, if the deceased, that is the victim of the offence, is entitled to life, the murderer must be accountable for his act.[54]

We respectfully submit that the court should, in determining whether there has been enough cooling time, take into account the degree of provocation offered. The more serious the provocation, the longer the time required for passion to cool. It is also suggested that the court should, in applying the reasonable man's test, take into account everything including physical peculiarities of the accused, such as his status in life, age, sex, physical and mental disabilities as well as emotional condition. The court should also note that the "reasonable man" is a person having the power of self-control expected of an ordinary person of the same sex, age and status of the accused person.

---

[50]*Ibid.,* See also R. Ijaodola, "The Problem of Accident under Nigeria Criminal Law" in *The Jurist,* vol. 3, 1997 Law Students' Society University of Ilorin, p. 43.
[51] *Onyia v. The State* (Supra).
[52] R. Ijaodola *op. cit*., p. 43.
[53] *Ibid*.
[54]See Per Belgore J.S.C (as he then was) in *Kalu Onuoha v. The State* (1998) 13 NWLR (pt. 583). 531, p. 606 paragraphs A-B.

It is our humble submission that as long as there is no recognized standard for measuring an act or words that could cause a reasonable man to lose his control, as long as there is no accurate definition of a reasonable man, and as long as there is an absence of acceptable yardstick for measuring proportion of provocation to retaliation, there would be want of justice in dispensing matters involving the plea of provocation in Nigeria.

REFERENCES

Smith & Hogan (1978), *Criminal Law*. (4th ed.), London: Butterworth's.
Okonkwo, C. O. & Naish (1980) *Criminal Law in Nigeria,* (2nd ed.) Ibadan, Spectrum Publishers.
Ibrahim Eletu, K. K. (2007) *A highlight of the general defence to criminal liability under the criminal adversary system,* "The Learned" (Vol.3) Law Students Association. Kwara State College of Arabic and Islamic Studies (CAILS) Ilorin.
Chukkol, K. S., *Defence of Criminal Liability in Nigeria: A Criminal Appraisal (*1983) (2nd ed.) Edinburg Gate: Persons Education Ltd.
Garner, B. A. (1999) *Black's Law Dictionary*, (7th ed.) USA: West Crown Publishing Company .
Garner, B. A. (2004) *Black's Law Dictionary*, (8th ed.) U. S. A.: Thompsom West Publishers.
Aguda, T. A., *The Law of Evidence* (2004), (4th ed.) Ibadan, Spectrum Books Ltd.
Blake, S. (2009) *A Practical Approach to Effective Litigation* (7th ed.), Oxford: Oxford University Press.
Agaba, J. A. (2011) *A Practical Approach to Criminal Litigation in Nigeria* Abuja: Law Lord Publications.
Okafor, L. O. (2005*), Law of Evidence in Nigeria,* Onitsha: Varsity Industries Press Ltd.
Evidence Act Cap E14 LFN 2004.
The English Homicide Act.
The Penal Code.
The Criminal Code.