

## AN APPRAISAL OF THE CONSTITUTES OF THE OFFENCE OF INTENTIONAL KILLING UNDER NIGERIAN PENAL CODE

Abubakar A Shehu<sup>1</sup> & Ibrahim A Shehu<sup>2</sup>

<sup>1</sup>V G U School of Law Vivekananda Global University Jaipur,

[Abubakarashehu111@gmail.com](mailto:Abubakarashehu111@gmail.com)

<sup>2</sup>Yobe State University Damaturu, Nigeria. [brmjmadaki@gmail.com](mailto:brmjmadaki@gmail.com)

### Abstract

Nigeria as a body of law has two different criminal code applicable in the southern part of Nigeria and the northern part of Nigeria. The offence of intentional killing is called murder in the criminal code applicable in the southern part of Nigeria whereas in the Northern part of Nigeria intentional killing is term as culpable homicide punishable with death. It fundamentally clear from the two code that the essential elements to be prove under the evidence act is mensrea and actusurus at the time of committing the offence. By the requirement of the law the constituent elements must be proving beyond reasonable doubt before the offender will be convicted under the criminal justice system of Nigeria.

**Keyword:** Offence, Intentional, Killing, Penal Code, Nigeria.



*Scholarly Research Journal's* is licensed Based on a work at [www.srjis.com](http://www.srjis.com)

### Introduction:

For the purpose of this chapter it is very fundamental to define the mental elements that lead to guilty act of murder or intentional killing in law. The standard common law test of criminal liability is usually express in the Latin maxim as "actus Reus no facitrem nisi mensitrea" which means that the act is not capable unless the mind is guilty. In order to establish the offence of murder under the common law generally mensrea and actus Reus must be establish respectively and concurrently.

Mensrea and actus Reus are the basic and fundamental elements of a crime generally. A person cannot usually be found guilty of a criminal offence unless two elements of an actus Reus Latin for guilty act and mensrea Latin for guilty mind existed.

### Actusreus as a constituent element under the common law

An actus Reus as the Latin maxim of guilty act does not only consist of the physical act that existed in the commission of the crime but it also comprises all of the crime other than the state of mind of the accused person. This may include the prevailing circumstances in which the crime was committed. In order for an actusreus to be established the conduct of the

accused person must be voluntarily done not involuntary at the time of committing the crime. “If the accused is to be found guilty of a crime, his or her behavior in committing the actus reus must have been voluntary<sup>1</sup>”.

“On the contrary if the behavior of the accused person is involuntary in nature as at the time of the act of the crime such does not give rise to criminal liability. Behavior will usually only be considered involuntary where the accused was not in control of or her own body ( where the defense of insanity or automatism may be available) or where there is extremely strong pressure from someone else , such as a threat that the accused will be killed if he or she does not commit a particular offence ( when the defense of duress may be available) some accident may be viewed by the court as amounting to involuntary conduct that does not give rise to criminal liability.”<sup>2</sup>

“In establishing the act of actus reus the prosecution must establish the following factors:-

A) Causation: - the prosecution must establish beyond any reasonable doubt that it was the violent act of the accused person that caused the death of the deceased. “Dependants can only be hold responsible for a death where their acts are both a factual and legal causation of the victim’s death in order to prove causation the prosecution must established both factual and legal causation.

1. Factual causation:- the prosecution is required to established that it was the action or conduct of the accused person that cause the death of the deceased. The prosecution must also establish that the death resulted from the injury arising from the conduct of the accused person.
2. Legal causation:- even if the prosecution establish factual causation he must also established legal causation. It must be established that the act amount in law to a cause of the victim death.”<sup>3</sup>
3. Act or omission :-“ crime generally occurs as a result of an act or omission it was on that basis crime is defined as an act or omission which render the person doing the act or making the omission is liable of a crime in law. Act and omission must be established by the prosecution in order to secure conviction against the accused person.”<sup>4</sup>

---

<sup>1</sup> Catherine Elliott and Frances Quinn, Criminal law, Eight Edition, Pearson Education, 2011 p 10

<sup>2</sup> Ibid p 11

<sup>3</sup> Ibid 10-11

<sup>4</sup> Ibid 10-11

In the case of **R V Gibbins and Proctor** in that case, a man and a woman were living together with the man's daughter. They failed to give the child food and she died. The judge directed that they were guilty of murder if they withhold food with the intention to cause her grievous bodily harm, as a result of which she died. Their conviction was upheld by the court of appeal."<sup>5</sup>

### **Mensrea as a constituent element under the common law**

Mensrea is the Latin maxim for guilty mind and it traditionally refers to the state of mind of the person committing the crime. In establishing mensrea two fundamental factors must be put into consideration that is intention and recklessness.

However on the side of the prosecution the most fundamental element for him to establish is the state of mind of the accused person during the act of the crime. Even the devil find it difficult to know the intent of a human being but what actual reveals the criminal intent of the accused person is the surrounding circumstances of the accused person action during the commission of the crime. The court of law gives a lot of emphasis on the weapon used by the accused as well as the part of the body hit by the accused person that subsequently resulted in to the death of the deceased. In establishing intent the court mostly finds it very simple to arrive at a judicial decision that intention of criminal nature is very clear without any element of ambiguity, taking in to consideration the force used and the part of the body injured.

### **Constituent elements under the penal code**

The Penal code provides:

“Whoever causes death (a) by doing an act with the intention of causing death or such bodily injury as likely to cause death or (b) by doing an act with the knowledge that he is likely by such act to cause death or (c) by doing a rash or negligent act, commits the offence of culpable homicide.”<sup>6</sup>

Furthermore following the provision of the penal code three elements are vital for the purpose of culpable homicides which are:-

- A) “Intention: - is the mental element that must be established by the prosecution in the case of unlawful killing before it will be considered as culpable homicide punishable with death. Intention does not imply that it must necessarily be proved that the accused had some

---

<sup>5</sup> 1918 KB P 122

<sup>6</sup> Section 220 Penal code opp cited

forethought to kill the deceased. The presumption of the law is that a person intends the natural and foreseeable consequences of his act.

B) Knowledge:- paragraph (b) of section 220 of the penal code deals with the case where an accused have an intention by reason of his knowledge of the likely result of his act. The prosecution is under a duty to establish before the court that the accused is having the knowledge of the immediate consequences of his intention and the likely occurrence of the act that he foresight.

C) Negligence or rash: - under paragraph c of section 220 of penal code the accused person caused the death under an act of negligence without malice aforethought or intention as the case may be. On conviction he can be convicted of manslaughter not murder.”<sup>7</sup>

In considering whether an offence of unlawful killing is intentional or not the court must carefully take into consideration all the provisions of section 220 paragraph A.B.C of the penal code. In the case of **“AbdulbakiIyawatawa VS Katsina Native Authority”** the Northern High court held on appeal that death was not the probable consequence of a heavy throw to the ground in the cause of a fight and that the appellant had no intention to kill the deceased. The offence was nevertheless culpable homicide because the appellant had acted rashly and negligently.”<sup>8</sup>

So also in the case of **“The State VS Ibrahim SabonGari”**, before the High court Kaduna , Wheeler CJ held that the degree of negligence under section 220 (c) to establish the offence of culpable homicide by causing death by a negligent act is the same as that required to establish a charge of manslaughter at common law , that is to say a very high degree of negligence must be proved. In this case a police officer is charged under section 221 but the High court found that although the officer might have committed an error of judgment in drawing his pistol as soon as he did, it could not be said that he acted recklessly or with criminal negligence in the circumstances<sup>9</sup>”

The provision of the penal code above has similarity with section 246 of the Sudan penal code and section 299 of Pakistan penal code. It should be noted that in every prosecution the burden of prove required by the law in criminal cases generally is to prove beyond reasonable doubt. In line with the requirement of the law it is the prosecution that is saddled with the responsibility of proving the case but in some circumstances the burden of prove will shift to

---

<sup>7</sup> KharisuSufiyanChukkol The Law of Crimes in Nigeria Opp Cited P 296-306

<sup>8</sup> 1961 NNCN 12

<sup>9</sup> 1977 NNLR 235

the accused person especially in a situation where the accused person rises the defense of provocation insanity etc. in a real court practice of prove the prosecution must establish the following

1. "That the death of a human being has actually taken place.
2. That such death has been caused by the accused. Where the prosecution fails in providing evidence to support his case beyond reasonable doubt his case will fail and he cannot secure conviction of the accused person.
3. That the act of the accused person is done with criminal intention to caused death or was done with the intention to cause bodily injury as
  - a) The accused knew or had reason to know that death would be the probable and not only the likely consequence of his act or
  - b) That the accused knows or had reason to know that death would be the probable and not the likely consequence of any injury which the act was intended to cause.
4. The mere fact that the bodily injury cause resulted in death in the ordinary course of nature does not necessary mean that the accused intended to cause such bodily injury. There must be a sufficient evidence to prove beyond reasonable doubt that the act that caused the death of the victim or the bodily injury inflicted on the deceased that subsequently caused his death was done by the accused with the intention to cause the death of the deceased. Prove by the prosecution that the act of the accused person was likely to cause death is not sufficient to convict the accused person to the offence of culpable homicide punishable with death. The intention or knowledge of the accused person canbe inferred by the court of law based on the surrounding circumstances of the act that resulted to the death of the accused person."<sup>10</sup>

## REFERENCES

*Professor KharisuChukol, The Law of Crimes in Nigeria first edition 1988.*

*Penal Code of Nigeria 1959*

*Cyprian OkechukwuOkonko, Michael E. Naish Publishers London: Sweet & Maxwell, 1980*

---

<sup>10</sup>KharisuSufiyanChukkulopp cited P 296-306