



## PUNISHMENT FOR THE OFFENCE OF CULPABLE HOMICIDE PUNISHABLE WITH DEATH UNDER THE NIGERIAN PENAL CODE

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### Abstract

*The end result of every criminal offence is punishment of offender, but judges are given the absolute powers and privilege to exercise their discretion in the process of conviction and sentencing of offenders. The fundamental issue which this paper aims at determining is to critically observed in the light of the provision of the criminal procedure code and the penal code whether it is allow for the judge to exercise his discretionary powers in capital offence like homicide for the purpose of mitigation of the offence. It is a trite law in Nigeria that culpable homicide punishable with death attract death penalty of sentencing either by hanging or by firing of the convict.*

**Keywords:** Punishment, Culpable Homicide, Penal Code, Nigeria.



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### INTRODUCTION

The statutory punishment for the offence of intentional killing under the penal code of Northern Nigeria is death penalty. The method of executing the punishment is by hanging. Section 221 “ except in the circumstances mention in section 222 culpable homicide shall be punished with death.....”<sup>1</sup>“Death penalty is the prescribed punishment for persons convicted of capital offences. Offences such as murder, culpable homicide punishable with death, treason and armed robbery are punishable with the death sentence.”<sup>2</sup>

In the supreme court of Nigeria in “ Kalu V State has decided that the death penalty is lawful in Nigeria and cannot be regarded as a degrading or an inhuman treatment. The sentence is mandatory; therefore the court does not have the discretion to impose any other penalty upon conviction. Also because the death penalty is mandatory, the plea of allocutus is of no effect once a person is convicted for an offence punishable with death penalty.”

Both section 367 of the criminal procedure act (CPA) and section 273 of the criminal procedure code (CPC) provide that the death sentence shall be by hanging. However in cases

<sup>1</sup> Penal code cap 345 law of federation of Nigeria

<sup>2</sup> Bob osamor fundamental of criminal procedure law in Nigeria

of armed robbery convict, the death sentence shall be by firing squad. That is the provision of section 1 (2) (b) of the Robbery and fire Arms (Special provisions) Act 1984.

“When pronouncing a sentence of death, the judge is robed in red gown and black cap. This is symbolic of the gravity of the penalty, rather than a provision of law.<sup>3</sup> Section 367 (2) of the CPA further provides the form of pronouncement of the death sentence as follows “the sentence of the court upon you is that you be hanged by the neck until you be death and may the lord have mercy on your soul.”<sup>4</sup>

Although there is no such specific provision as to the form of pronouncement of a sentence of death under the CPC, the same format is followed. “When a court pronounces a sentence of death in a manner other than the prescribed form, it does not affect the validity of the courtsjudgement.”<sup>5</sup> In *Gano V Sate* “the appellant was tried in the High court and found guilty of homicide punishable with death contrary to section 221 of the penal code. He was sentence to death. The notes of the learned trial judge read “sentence of death passed”. Section 273 of the criminal procedure code reads “when a person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is death.” On appeal, the supreme court was called upon to decide whether the sentence so passed by the trial judge without compliance with the statutory direction in section 273 of the criminal procedure was valid, the supreme court held that;

- i. It is the duty of the judge under the law, when pronouncing a death sentence to pronounce the matter in which the sentence was to be carried out, and failure to do so might raised an apprehension that the execution could be carried out by any other means as for example by poisoning, drowning or any other means;
- ii. However, as it is clear that the only mode of execution known to Nigerian law is hanging by neck till the convict is dead, the Supreme Court is unable to accept the suggestion that the judge contemplated any other mode of execution.
- iii. Section 26 (3) of the supreme court act gives the supreme court very wide powers which could be invoked to supply that part of the sentence, which the learned judge inadvertently left out; and
- iv. But it appears that the error is one within the competence of the judge himself, whose judgement could properly be said to suffer from an accidental slip or

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<sup>3</sup> *Ibid* pg 381

<sup>4</sup> *Ibid* 381

<sup>5</sup> *Ibid*

omission, to correct. In other words, it is a clerical error, which the judge himself can put right. The appeal was dismissed and the case was send back to the trial judge for correction of the clerical error.”<sup>6</sup>

However by way of exceptions the death sentence shall not be passed on the following persons upon conviction of a capital offence.

1. Pregnant woman: death sentence cannot be executed on a pregnant woman, instead a sentence of life imprisonment shall be imposed. “Section 300 criminal procedure code prohibits the imposition of the sentence of death on a pregnant woman.”<sup>7</sup>
2. Young person: a young person in Nigerian law is any person who has attained the age of 14 years and is under the age of 18 years. “ the children and young person Act 1994 defines a young person as a person who has attained the age of 14 years and is under the age of 14 years and is under the age of 18” “ in determining of age the court may form the opinion that the convicted person has not attained the age of 17 years from:
  - i. The record of the proceeding; or
  - ii. The court may call evidence as to age, or
  - iii. The court may order medical examination where the court calls evidence as to age; the prosecution and the defense may call witnesses. Such witnesses shall be examined, cross examined and re- examined by either side.”<sup>8</sup>

These are the exceptional circumstances the heirs of the victim in intentional murder can pardon the punishment of qisas of the convict either against diyah or without anything.

### **PLEA TO MITIGATE SENTENCE ON CONVICTION OF THE OFFENDER OF CULPABLE HOMICIDE PUNISHABLE WITH DEATH.**

As far as the Northern Nigerian penal code is concern the plea of allocutus (plea to mitigate sentence on conviction) is of no effect in capital offences generally. “The sentence of death is mandatory; therefore the court does not have the discretion to impose any other penalty upon convict. Also because death penalty is mandatory the plea of allocutus is of no effect once a

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<sup>6</sup> (1969) N.M.LR 316

<sup>7</sup> Bob osamor, fundermental of criminal procedure in Nigeria ibid 381

<sup>8</sup> ibid pg 385

person is convicted for an offence punishable with death penalty.”<sup>9</sup> Plea of allocutus is a plea “made by an accused person after conviction. It is a courts inquiry of an accused person as to whether he has any legal cause to show why judgement should not be pronounced against him on a verdict of guilty, or whether he would like to make a statement on his behalf and present any information in mitigation of sentence.”<sup>10</sup>

Section 197 (1) of the criminal procedure code (CPC) of Northern Nigeria in addition to other procedure, also provide for a convicted person to make any statement in mitigation of punishment.

“The effect of an allocutus is to mitigate the sentence of the court; it does not absolve the defender of all the punishment. Therefore, upon allocutus the sentence may be reduced but never cancelled entirely.”<sup>11</sup>

“However, where the laws, which prescribe an offence, provide for a minimum penalty or a mandatory penalty allocutus has no effect. The convicted person must be sentence to the minimum or mandatory penalty as the case may be. Therefore allocutus has no effect on a death penalty.”<sup>12</sup>

Offence of murder or intentional killing is punishable or is sentence under mandatory penalty. The court cannot impose less than the prescribe punishment. “Death penalty is the mandatory penalty for murder, culpable homicide punishable with death, treason, armed robbery.”<sup>13</sup>

“The death penalty is not permissive but mandatory for capital offences; therefore a court does not have the discretion to impose any penalty other than the death penalty upon conviction for a capital offence. The court discretion is limited absolutely.”<sup>14</sup>

## CONCLUSION

Human life is considered to be scared and valuable. These project have basically analyses all the issue relating to intentional killing right from the definition of intentional killing under Islamic law and penal code, punishment of intentional killing and the method of mitigation of punishment on conviction.

In view of the above the society is seriously caution to avoid any act that may result to the killing of any human being. The beginning of problems in the society is when an innocence

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<sup>9</sup> Bob osamor, fundamental of criminal procedure law in Nigeria 2004 pg 381

<sup>10</sup> Black law Dictionary sixt edition pg 76

<sup>11</sup> Bob osamor fundamental of criminal law in Nigeria ibid 375

<sup>12</sup> Ibid 375

<sup>13</sup> Ibid 378

<sup>14</sup> Ibid 378

life is killed without any justification. The shading of blood in the society is the root of all evil, and such act if it has not been resolve legally may likely escalate to a very serious societal confrontation either between the families of the decease and the accused or between tribes. But with the existence of authorities and the law enforcement agencies action of law is taken against any violator of law irrespective of his affiliation or position in the society.

Therefore in other to have a peaceful society where law and order exist, violators of law shall be punished irrespective of who they are or their status in the society. That will greatly help in having a decent and moral society where the rule of law is the order of the day.

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