

# THE CRIME OF MURDER

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## What is Homicide?

Homicide/murder means the killing of a person in a manner not justified by the law. In the olden days, a man was penalised for murder regardless of whether or not the death that resulted from his action or omission was intentional or not. The offence of homicide is unique due to the fact that it deals with the violation of the sanctity of human life.

This is more so as the law pursuant to **S.319** of the **Criminal Code** prescribes the death penalty as punishment for homicide. This is based on the principle of fair deserts as a theory of punishment.

To determine unlawful killing, **S.306 of the Criminal Code** provides that a killing is unlawful if it is not authorised, justified or excused by law. By implication, this means that there are some killings that can be regarded as lawful. Thus, in a situation in which a hangman hangs a condemned person or a police man shoots a fleeing robber suspect, the killing is lawful.

Murder can also be regarded as the killing of a person with malice afterthought. By the provision of **S.308 CC**, anyone who causes the death of another, whether directly or indirectly, is deemed to have killed such person.

Similarly, anyone who has a person under his care by virtue of the person's age, sickness, unsound mind, detention or any other cause and he doesn't take care of the person to the extent that the omission leads to the death of the dependant or endangers his health, by the provision of **S.300 of the CC** such person would be guilty of the offence.

Once there is an unjustified killing of a human being, it constitutes the actus reus of homicide. The pertinent question then is "who constitutes a human being capable of being murdered?". Can an unborn child killed through abortion be regarded as a human being?

The Criminal Code in **S.307** puts this to rest. It provides:

"A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not"

Thus, from the above, in the case of aborting an unborn child, the accused cannot be convicted of murder. See: *R vs Poulton*.

In the case of *R vs West (1848) vol 2 C & K ER*, while an abortion was being carried out, the baby was delivered prematurely and it was alive. However, due to external circumstances, the baby died. It was held that inasmuch as the baby proceeded alive from its mother's womb, it was a human being capable of being murdered. Thus, the accused was convicted for murder.

It should be noted that where it cannot be proved that the child was born alive, the conviction for murder cannot be secured. See: *State vs Linus Akpan (1972) UILR*.

## Requirements For Proving Murder

By the provision of **S.316 of the Criminal Code**, there are six circumstances under which a person would be held liable for murder:

- (1) if the offender intends to cause the death of the person killed, or that of some other person;
  - (2) if the offender intends to do to the person killed or to some other person some grievous harm;
  - (3) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
  - (4) if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant, or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
  - (5) if death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid;
  - (6) if death is caused by wilfully stopping the breath of any person for either of such purposes;
- is guilty of murder.

In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed.

In the third case it is immaterial that the offender did not intend to hurt any person.

In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

For a prosecution to succeed in a case of murder, it has to be established that the consequences were presumed or premeditated by the accused. Any of the following need to be established before *mens rea* can be proved in a murder case:

1. An intention to cause death
2. Intention to inflict grievous bodily harm.
3. Recklessness as to the cause of death.

4. Recklessness as to the infliction of grievous bodily harm.
5. State of mind which may suffice to constitute murder under certain technical rules.

There has been heated debate amongst scholars as to whether or not intention to inflict grievous bodily harm should be taken as an intention to kill. Those who support the proposition are of the view that if both terms are not equated, it would aid dangerous criminals who inflict grievous bodily harm to claim that the infliction of the bodily harm was for another purpose other than to kill.

In the case of *Hyam vs DPP(Supra)*, the learned Justice stated:

“If a man in full knowledge of the danger involved and without lawful excuse deliberately does that which exposes a victim to the risk of probable grievous bodily harm or death, and the victim dies, the perpetrator of the crime is guilty of murder and not manslaughter to the same extent as if he had actually intended the consequences that flowed. Irrespective of whether he wishes it or not”

Those in opposition to this proposition are of the view that in a situation in which the accused doesn't know that the bodily harm inflicted is one likely to cause death, the two should not be equated. Thus, they are of the view that if there is practical difficulty in determining if the harm is likely to cause death and if the accused knows it is likely to cause death, then infliction of grievous bodily harm should not be taken as an alternative to intent to kill.

It should be noted that by the provision of **S.221(b) of the PC**, the words “likely” and “probable” are used. It would be best if the distinction between these two terms is stressed. The ambiguity between these two words is explained by **S.19 of the Penal Code**. It provides that an act is said to be likely to lead to a consequence if the consequence resulting from the act is something that would not surprise a reasonable man. An event is regarded as having a probable consequence if the consequence would be considered by a reasonable man as the normal or natural result of the act.

In the case of *Maijamaa vs State (1964) vol 1 ANLR*, the accused and some other people attacked the deceased with sticks and he was beaten to death. The court convicted them for murder under **S.221(b)** and **S.79** of the Penal Code. The reasoning of the court was that the act of a group of people attacking a person with sticks has a probable consequence of causing death. On appeal, the Supreme Court dismissed the appeal and upheld the conviction.

It should be noted that to establish the guilt of the accused person, the prosecution must adduce a link between the act or omission of the accused and the death of the deceased. See: *Mbang vs The State (2010) Vol 7 NWLR pt 1194*, *Akinfe vs The State (1988) vol 3 NWLR pt 85*, *Inulukwe vs The State (2003) vol 14 NWLR pt 840*, *Okoro vs The State (1988) vol 5 NWLR pt 94*, *State vs Babawuro Usman (2005) Vol 1 NWLR pt 906*.

In addition the prosecution has to prove the guilt of the accused beyond reasonable doubt. Not beyond all iota of doubt; *Teggivonor vs State (2008) Vol 1 NWLR pt 1069*.

It should also be noted that the person last seen with the deceased bears full responsibility. In a situation in which the accused was last seen with the deceased and the circumstantial evidence is overwhelming and leads to no other conclusion than that the accused killed the deceased, it leaves no room for acquittal. See: *Mbang vs The State (Supra)*, *Idiok vs The State (Supra)*.

By virtue of the provision of **S.314** of the **Criminal Code**, a person would not be held to have murdered the deceased if the death occurs a year and a day after the injury is inflicted. The day of the injury is also reckoned with in this calculation.

In the case of *R vs Dyson (1908) vol 24 KB*, the accused on 13th November 1906, beat his 3 months old child to unconsciousness and fractured its skull. On 29 December 1907, he beat the child again severely on the head and face. On 17th February 1908, after the wounds earlier sustained were healed, the child was admitted to the hospital, held to be suffering from meningitis. On March 1908, the child died.

Due to the fact that from the day of the infliction of the initial injury, 13th November 1906, to the date of death, March 1908, a period of more than a year and a day had elapsed, the accused wasn't held to be guilty of murder. He was however convicted of manslaughter.

## SOURCES

1. Lecture delivered by Dr Mrs. M.A. Abdulraheem Mustapha, Faculty of Law, University of Ilorin.
2. Okonkwo and Naish: Criminal Law in Nigeria
3. The Nigerian criminal Code
4. The Nigerian Penal Code