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THE ONE YEAR AND ONE DAY RULE IN THE LAW OF MURDER REVISITED

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Introduction

Murder is one of the most serious offences against person. The deliberate killing of a human being by another is an act not condoned in any society as reflected in the various customary law. Murder is morally condemned, legally wrong, biblically intolerable, religiously frowned at and severely punished. It is not in every case that the killing of a human being by another amounts to murder. Killing may be justified as in cases of self-defence¹, excused as in the defence of mistake² authorised as in the case of the hangman in the performance of lawful duty³. There are legally stated requirements that must be proved before a person can be convicted of murder. One of such is the one year and one day rule⁴. This implies that the victim must have died within one year and one day of the unlawful act which caused his death. This rule dates back to mediaeval times when modern medical facilities were not easily available. With modern technology and forensic laboratories, there is the need to revisit this rule to prevent injustice to the defendant, the victim or the members of his family. The injustice is apparent where the chain of causation between the act of the accused and the cause of death of the victim is not broken but the victim dies after one year and one day of the act.

This article considers the requirements necessary for the offence of murder and the historical and modern perspectives of the one year and one day rule. The problems of the principle of causation under the rule are discussed and probable solution for improvement are proposed.

¹ Section 286 Criminal Code cap 77, 1990 Laws of the Federation of Nigeria.

² Section 25 Criminal Code

³ Section 254 Criminal Code

⁴ Section 314 Criminal Code

Requirements for Murder

Murder is unlawful homicide. Homicide is the killing of a human being by another. According to Coke, murder is when a man of sound memory, age, and discretion unlawfully killeth within the country of the realm, any reasonable creature in Rerem Natura under the kings peace with malice aforethought either expressed by the party or implied by law, so that the party wounded or hurt dies of the wound or hurt within one year and a day after the same⁵. This definition under English common law was derived from the medieval period. A reasonable creature signified a human being as oppose to a monster or animal and non-enemy of war. In present times, murder is now a statutory offence under the English law⁶ and in many other nations legal system.

Most legal systems of the world have in varying degrees been influenced by others. This confirms the universality of certain basic concepts. Nigeria may be classified under the common law system. Due largely to the colonial influence during the formative years and imposition of English law, the Nigerian legal system acquired a dual system comprising customary and English law⁷. In Nigeria, all crimes are statutory and are contained in the Criminal Code⁸ or the Penal Code⁹. The requirements necessary to be discussed below.

- i. The victim must be a human being. For purposes of clarity, it is important to consider who a human being is for legal purposes. It has been expressed that a monster is not protected by Law,¹⁰ but it appears probable that the courts would regard any offspring of a human mother as itself human. In the 1991 case of Rance v Mid-Downs Health Authority¹¹ the English court took the view obiter that an anencephalic child was protected. For clarity purposes, imbeciles and morons are recognised under the Criminal law as persons capable of being victims of criminal act. Therefore, they are considered as human beings for homicide purposes.

⁵ 3 Inst 47

⁶ Homicide Act 1957

⁷ Folarin v Durojaye 1988 1 N.W.L.R. Pt. 358 p.1

⁸ Supra

⁹ Cap 345, 1990 Laws of the Federation of Nigeria

¹⁰ Braham 1988, 138 NLJ 91

¹¹ (1991) 1 All E.R. 801 at 817

- ii. The victim of murder must be alive at the time the act which led to the death was committed. A victim that was already dead before the commission of the act that was supposed to have caused death does not come under this requirement. A problem could arise as to the moment at which life ends. It appears that in practice this issue does not pose a problem for the courts¹². The test of brain death in medical circles becomes important for consideration. If a man's heart has stopped and the doctor is seeking to resuscitate him, or there is confidence that the heart will start beating again, can the accused be convicted of murder if he does any act at that time likely to cause death? This same question can be asked if the victim is in a hopeless condition and kept alive by a life support machine.

The current view is that in medical science, the brain death set is used¹³. The law has not yet evolved a definition of its own and in England, the Criminal Law Revision Commission declined to propose one both because of the fluid state of medical science and the repercussions that such a definition might have on other branches of the law. In the above case of R vs Malcherek (1981) the Court of Appeal did not find it necessary to decide that constituted the legal definition of death. The present stand of the court is that is a person's brain dead at the time of the action of the accused, even though kept alive by mechanical means, such a person is dead and cannot be a victim of murder¹⁴. Where the whole body of a baby has not emerged into the world and the baby does not have existence independent of its mother, it is not murder to destroy such a baby yet to be born as it is not considered as being alive. Judicial authorities have shown the destruction of such a baby is not murder but the death of a child born alive because of antenatal injuries which were inflicted would be murder against the person who inflicted the injuries where such had the intention to do any of the elements that constitute murder¹⁵.

- iii. The victim must have died¹⁶. This requirement summarizes what murder is. Without loss of life there cannot be a murder. When is a person deemed to have died? Medical science seems to have created a

¹² Smith J. C and Hogan B. 1908 "Criminal Law" Butterworths. London, Edinburg p. 311

¹³ British Medical Journal and The Lancet, 31 February 1979; see also Malcherek v Steel 1981 2 A. E Report 422, 1981 1 W.L.R. 690.

¹⁴ Kennedy "Switching off life support machine" 1977 C.L.R. 433. See also Williams 1977 CLR 635.

¹⁵ R v Senior 1832 1 Mood CC 346; see also Attorney-General Reference (No. 3 or 1994) C.L.R. Nov. 1997 p. 829.

¹⁶ Gira v State 1994. 4 NWLR pt. 443 p. 375; Nwaeze v State 1996 2 NWLR 428 p. 91

problem. It may be argued that it is when a person has stopped breathing, yet experts might still feel there is life. The situation is more complex by the capabilities of surgeons to create respiration for human beings when the ordinary observer might have declared the victim dead.

- iv. The direct result of the act or omission of the accused caused the death of the victim: Under the Nigerian Laws it must be to the exclusion of all other causes¹⁷. This means that death resulted because the accused did an act he was in law not supposed to do or omitted to do an act which in law he was to do and such resulted in the death of the victim¹⁸ and it was the voluntary act of the accused¹⁹. Under the English law the accused would not be liable if the wound inflicted is not the cause of the victim's death. In *R v Jordan*²⁰, the conviction of the accused did not die of the wound but caused by broncho pneumonia and death resulted from improper treatment. If at the time of death, the original wound is an operating cause and substantive cause, then the death can properly be said to be the result of the wound. It is irrelevant to show that the death of the deceased might have been prevented by proper case of treatment.²¹
- v. Another requirement which is the crux of this paper and fully discussed later is that death must have occurred within one year and one day after the act that caused the victim's death.²²

In addition to the requirements discussed above, there are other requirements stated in section 316 sub-sections (1)-(6) of the Criminal Code.²³ The provisions stated in any of the sub-sections, coupled with the general requirements discussed earlier are necessary for the accused person to be liable for the offence of murder.

¹⁷ *Onyegbu v State* 1994 1 NWLR pt. 30 p. 328; *Umoru v State* 1996 2 NWLR 428 p. 91

¹⁸ *Nwaeze v State* 1996 2 NWLR pt. 428 p. 91

¹⁹ *Ogunnaze v State* 1997 8 NWLR pt. 518 p. 366 and *Emoga v State* 1997 1 NWLR p. 483 p. 617

²⁰ 1956, 40 C.A.R. p. 152

²¹ Section 312 Criminal Code; *R v Holland* 1957 C.L.R. 707, *Blawe v R*, 1975 3 AER 446

²² Section 314 Criminal Code

²³ See also Section

The provisions of the sub-sections are discussed below:

Section 316(1) of the Criminal Code states that it is murder where there is intention to cause the death of the person killed or any other person.²⁴ This issue of intention is a modern phenomenon. Under customary Criminal Law amongst the Yorubas of Southern Nigeria, the issue of mens rea is not considered in cases of homicide²⁵.

Sub-section 2 covers situations where the intention of the accused is to cause grievous harm to the person killed or to another person. The term grievous harm is defined in Section 1 of the Code²⁶. In *Aga v State*,²⁷ the kicking of a five month old pregnant woman in the stomach was held to be an intentional act to cause grievous harm.

Sub-section 3 provides for situations where the act that caused death was done in the prosecution of an unlawful purpose and the act is such that will endanger human life. The act and the unlawful purpose must be different and the act must be such that will endanger human life²⁸.

Sub-section 4 covers situations where murder is caused because the accused in order to facilitate the commission of an offence or flight does any act with the intention to cause grievous harm. This presupposes that the accused has committed or is about to commit an act recognised by law and in the process a person dies²⁹.

Sub-sections 5 and 6 cover situations where death is caused by administering any overpowering thing or where the accused wilfully stops the breath of the person killed. Any of these requirements is necessary for a conviction of murder.

THE HISTORICAL AND MODERN PERSPECTIVE OF THE ONE YEAR AND ONE DAY RULE

Before the colonial period, customarily in many African societies, the cause of death of any person, who is not aged is linked to a supernatural

²⁴ *Abogede v State* 1996 5 NWLR pt 448 p. 275, *Makere v State* 3 NWLR pt. 330 p. 55

²⁵ Ajisafe A. K. Laws and Customs of the Yoruba people p. 20

²⁶ See also section penal code

²⁷ (1976) 7 S.C. p. 173

²⁸ *D.P.D. v Beard* 1920 A.C. p. 479 and *R v Nameri* 1951 20 N.L.R. p. 56

²⁹ *R v Atanyi* 1955 15 W.A.C.A. p. 84

circumstance which is usually investigated. The common law origin of murder is that there must be an action of violence resulting in death or the felony.

The ancient rule relating to death within one year and one day in the offence of murder could be traced to the felony – murder rule that there must be some kind of violence from the accused which caused the victim's death or his act must be coupled with any other act that is a felony. It had its origin in the procedure of the ancient appeal of felony, a private prosecution and imposed a limit on the time in which the action must be taken. During that period, action must be taken within one year and one day after the death of the victim but presently the nature of the rule is to be changed. It has been in existence since the time of Coke who wrote that for if he died after that time, it cannot be discerned as the law presumes whether he died of stroke or poison or a natural death³⁰. The rule is not restricted to a particular jurisdiction.

In the United States of America, this rule has been in existence since the 16th century. In 1984, the U.S. Law Makers adopted the rule as part of her law. In the States of Maryland and Missouri, the rule exists. In Georgia, it was in existence until 1968 when the Georgian legislature rewrote the entire Criminal Code and did not include the provision in it. A charge of murder cannot be brought in the State unless the victim dies within a year and one day after being wounded. The origin of the rule is traced to the English Common Law in the year 1278 and was adopted by the Georgian Law-makers in 1784.

Under the English law, the rule originated from the English Common Law in the year 1278. At that time, it was originally designed to ensure that a person would not have a potential murder charge hanging over his head indefinitely. This was a legacy of the period when in England medical science was at its cradle that if there was substantial lapse of time between injury and death it would be unsafe to pronounce on whether the conduct of the accused or some other events caused death. The case of Dyson is an English classical illustration of the rule³¹. In the case, the accused inflicted injuries on a child in November 1906 and again in December 1907 and the child died on March 5 1908. The trial judge directed the jury that they could find the accused guilty if they considered death to have been caused by the injuries inflicted in November 1906. The Jury should have been asked whether the death had been accelerated by the injuries in 1907 in which case they could have properly convicted the accused. The court further said that it is still the law of the land that no person can be convicted of manslaughter when death does not occur within one year

³⁰ 3 Co inst 52

³¹ 1908 2 K.B, 454

and a day after the injury was inflicted because in that event the death may be attributed to another cause.

In Nigeria, the rule was one of the laws inherited in colonial times and codified in the penal laws. Unlike in England where the rule has been reviewed, it retains its old form in the Nigerian laws; therefore for an accused to be liable, the victim must have died within one year and one day of the act.

Modern Perspective

In some countries, the rule has been revisited. Generally, the present position is that under the rule, time now runs from the day on which the injury which caused death was inflicted and the rule does not take note of a part of a day. This timing is in accordance with the causation rationale of the rule. The rule has become part of the substantive law of homicide and an arbitrary rule restricting the conviction of an accused person where death occurs after a year and one day.

In the American Bar Journal, Currida reported that a Georgian, Supreme Court in a 5-2 decision invalidated the one year and a day rule and ordered an Atlanta man accused of the beating to death of his infant daughter to stand trial for murder charge³². The Court held that the rule was eliminated in 1968 when the Georgia Legislature rewrote the entire Criminal Code and did not include the provision. In *State v Cross*³³, the dissent acknowledged that the rule was unfair and that its omission in the Criminal Code was a speculation that the legislation intended to eliminate it. The rule was described by Justice Robert Betham as archaic and there was a call that it should be abolished in view of advances in the medical field since the rule was first recognised. The accused in this case, David Cross was accused of shaking his four month old daughter Sala so violently that she suffered severe brain damage and lapsed into coma. With the help of a support system, the daughter remained in a vegetative state for 18 months and Cross used his parental rights to fight attempts by his daughter's mother and doctors to remove the life support allow the child to die. In December, 1988, a Fulton County, Ga, superior court ruled that keeping the child alive was cruel and ordered the life support removed³⁴. The daughter Sala died the next month. According to Tom Chamon, the District Attorney who planned to prosecute the case after the ruling of the court would keep away

³² Currida, M "A Year-And-A-Day Case" in ABA Journal - The Lawyers Magazine June 1991 p. 31.

³³ Ibid.

³⁴ See "Avoiding Prosecution" October 1990 ABA Journal p. 18

criminals from using medical technology to keep victims alive to avoid being charged with murder.

In the states of Maryland and Missouri, the ancient rule is being retained. In California and Washington the rule is being extended to prevent murder charges when the victim dies more than three years and a day after the assault. The approach of the rule in Pennsylvania is that the rule is no more than a rule of evidence or procedure and can be displaced by adequate proof of causation. In England, a year and a day rule in homicide cases have been abolished by the Law Reform (A Year and A Day Rule) Act 1996³⁵. Where the act or omission causing death occurs after 17th June 1996, there is no restriction in the substantive law upon conviction for a homicide offences some years after those original events. This Act contains a procedural restriction as the consent of the Attorney-General is required before prosecution is brought if the injury alleged to have caused such death was sustained more than three years before the death occurred or the person to be prosecuted for the capital offences has already been convicted of an offence committed in circumstances alleged to be connected with the death.

An interesting case relating to the rule was reported in The Recorder in England.³⁶ Jean Christmas and Philbert Elie were stabbed by the accused Mark Corbin on 5th August 1994. Philbert Elie died during the attack and Jean Christmas spent several weeks in hospital. The accused was sentenced for the murder of Philbert Elie and attempted murder of Jean Christmas. In May 1997, more than two years after, Jean Christmas died and the postmortem report revealed that the internal injuries that led to her death was as a result of stab wounds she received in 1994. The police were prevented from charging the accused with her murder because the ancient rule was changed in June 1996 and the attack on Mrs. Christmas happened when the rule was still in place.

The rule is codified in Section 314 of the Nigerian Criminal Code³⁷. The period is reckoned inclusive of the day on which the last unlawful act which contributed to the cause of death was done. Where the cause of death is an omission, the period is reckoned inclusive of the day in which the last unlawful act was done or the day in which the omission ceased whichever is the latter. There has been no known controversial court decision on this section of the law in Nigeria.

³⁵ The Criminal Law Review August 1996 p. 553

³⁶ Thursday June 12, 1997.

³⁷ There is no corresponding section in the Penal Code.

The Problem of Causation Under the Rule

One year and a day is a convenient starting point for the whole question of causation. The act which caused the death must be the factor instrumental to such death. Causation is generally a question of fact wherein legal principles are applied³⁸. Under the principle, for an accused to be liable for murder, the act of the accused must have been the cause of death of the victim³⁹. There may be a conflict in the application of the principles of causation and the rule. It is unfortunate that the rule should allow a person to escape liability for a homicide which he is scientifically shown to have caused or that a person who severely injures another should escape liability for homicide if his victim is kept alive for more than a year and a day before dying as a result of his injuries. There are two issues involved and these are factual and legal causation. Factual causation in homicide is the fact that is established that death would not have resulted but for the conduct of the accused. It is not enough on its own except there is a legal causation or as put by Glanville Williams imputable causation, which is the guilty act of the accused that caused death. The act of the accused must be more than a minimal cause which brought about the acceleration of death⁴⁰. Under the Draft Criminal Code of England the test of the rule of causation which hitherto was unclear were stated as follows.

*"a person causes a result which is an element of an offence when he does an act which makes a more than negligible contribution to the occurrence or he omits to do an act which might prevent its occurrence and which is under a duty to do according to the law relating to the offence"*⁴¹

Under the principles of causation, an intervening event which causes death will only prevent the legal attribution of the death to the accused if its occurrence was not likely or reasonably foreseeable. An accused person would be liable for the death of his victim, if he injured the victim and left him and he later died of exposure. However, the accused would not be liable if the victim subsequently was killed by an earthquake. Where the act of the accused is aggravated by the act of a third party and the cumulative effect caused death, both the accused and the third party will be liable. Where the issue relates to

³⁸ R v Pagett 1983 76 C.A.R. 279

³⁹ William "Causation in Homicide" 1957 CIR 510

⁴⁰ R v Smith 1959 2 QB 35; R v Malcherek 1981 2 All E. R. 422; R v Hennigan 1971 3 All ER 133; R

Pagett 1983 76 CR App Rep. 288.

⁴¹ Law Commission on 177 H.M.S.O. 1989

intervening medical treatment, the fact that the victim subsequently receives medical treatment which caused death, will not excuse the person who injured him. The attitude of the court is that once the conduct of the accused is a significant contribution to the death, there is in law a causal link between the conduct of the accused and the death even if negligent treatment is the immediate cause of death⁴².

From the above discussion, it is necessary to consider which one of the two acts is the original or intervening acts would be used under the rule. It is opined that the last act should be used in calculating as it is the latter in time. However, if the intervening event is so overwhelming as to make the original act merely part of history, then, death should not be linked with it.⁴³

The Rule Revisited

It is unfortunate that under the Nigerian Penal Laws, a homicide conviction is not possible where other requirements for murder are established and only the one year and one day rule stands in the way. At the same time, it is not suggested that a defendant should be left in peril of a homicide trial indefinitely. The historical background of this rule show that it is a legacy of times when medical science was so rudimentary and if there was a substantial lapse of time between injury and death, it may be difficult to know the cause. Events have changed in modern times that this archaic view cannot stand. Medical science is generally able to determine whether the act caused death or not. The introduction of innovations such as life support machine where life can now be prolonged for months or years introduces a new dimension which requires revisiting the one year and one day rule. The facts of some cases, recent trend in medical science and certain principles of law tend to show a tilt in the scale of justice more to the side of the defendant.

This paper now considers if there is any justification for retaining this rule in its archaic form with modern inventions around the world and the reviews, modifications and abolition of the rules in other jurisdictions. An underlying principle of Criminal Law is that for a conviction to be secured, the prosecution must prove the case beyond reasonable doubt. In addition if the principle of causation is established, that the act of the accused caused the death, it is opined that the fact that the death occurred one year and a day after the act should not be a barrier in convicting the accused for homicide.

⁴² R v Cheshire 1991 3 A.E.R. 670 at 674

⁴³ See R v Dyson 1908 2 K.B. 454

One of the reasons given for the rule is that prosecution should not hang indefinitely over the head of the accused. Notwithstanding this reason, the position of the victim should also be taken into consideration. The penal system in Nigeria appears to place too much emphasis on the defendant and the State. Globally, this is no longer the trend. Penal systems are shifting and taking cognisance of the position of the victim. In primitive cultures, the victims of crime or their relatives punished the offender through personal retaliation or revenge. In addition, damages is awarded to the victim in different forms as compensation or reparation for the commission of crime⁴⁴. With societal development, this unregulated revenge was replaced by a system of negotiation between the offender and the victim or members of the family. This was through the payment of goods, money or exchange of a person for the loss of life. This system had the objective of preserving and enhancing social harmony and social equilibrium without bitterness⁴⁵. It is therefore important that consideration should be given to both parties in the offence of murder especially where it is so evident that the defendant caused the death of the deceased and a legal provision should not be a hinderance to justice.

Law is not static. The archaic rule was inherited under a colonial administration which fortunately have reviewed and modified it to correspond with modern trends. A lingering death is forseen for the rule under the Nigerian Law.

Conclusion

There is no doubt that the days of the rule remaining in the penal laws in Nigeria in its present nature are numbered. There is the need for the legislature to revisit and review it. The following suggestions are made.

- i. The extention of time under the rule with modern medical science the limitation as to time of death under the rule should be extended to three years as it is the practice in England and some States in America to encompass many of the cases involving victims in a persistent vegetative state and yet ensure that defendants do not remain indefinitely at the risk of prosecution.

⁴⁴ The Journal of Criminal Law, Criminology and Police Science 1970 Vol. 61 No. 9, North Western University School of Law p. 154.

⁴⁵ Primitive Law 9 Encyclopaedia of Social Science p. 293 (1933). Culled from compensation and remedies for victims of crime in Nigeria 1990. Published by Federal Ministry of Justice.