

The Importance of “Corpus Delicti” in Proving “Causation” in Homicide Cases.

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Abstract. In homicide cases, it may be difficult to prove the cause of death if the body of the victim of an alleged murderous attack is not made available for medical examination. It is therefore obvious that there are instances and circumstances where persons accused of committing the offence of culpable homicide punishable with death take steps to destroy the body of their victims in order to avoid prosecution or conviction and punishment if prosecuted. It would seem that the legal perception and meaning of the body of the deceased in homicide cases otherwise called “corpus delicti” is largely misconstrued by lawyers and laymen alike. This paper examined this identified problem and attempted to correct same and also considered the importance of “corpus delicti” in criminal trials generally and in homicide cases in particular. It also considered the importance and relevance of the legal presumption of death which is of evidential value in both civil and criminal proceedings in bridging the gap that may be created by the absence of corpus delicti. The views of the courts in some decided cases to the effect that it is not in all homicide cases that the prosecution case may fail simply because the body of the deceased was not produced or medically examined, was challenged and it was argued that conviction in homicide cases in the absence of the corpus delicti can only be sustained where evidence of its destruction by the accused is established and this may also require the production of some parts or pieces of what was destroyed.

It was observed that corpus delicti and causation are twin legal concepts in criminal law constituting the physical element (*actus reus*) of result offences, such as culpable homicide punishable with death, with the result that one cannot exist in isolation from the other without a resultant miscarriage of justice. The courts were urged to sparingly and cautiously convict persons alleged to have committed culpable homicide punishable with death in the absence of the corpus delicti upon which medical examination may be carried to determine the actual cause of death.

1. Introduction

The traditional way of analyzing criminal offences is to divide a crime into the conduct of the accused (known as the *actus reus* or conduct element) and the state of mind of the accused (the *mens rea* or mental element). For some crimes, it is necessary to show not only that the accused performed an act, but that that act caused a particular consequence. For example, in murder cases, it must be proved that the accused caused the death of the victim. In many cases, causation will be straightforward. If the accused chops off the victim’s head and the victim dies, it will be hard to deny that the accused caused the victim’s death. It is only where there is a rather unusual set of facts that disputes over causation may arise. The most difficult cases are those where it is not clear which of two or more acts caused the forbidden result. You may imagine a scenario such as where:

Okon, who was abused by his father as a child, has recently been made redundant by his employer and turned to drinking. After a heavy drinking session, Bassey hurls a tribal insult at Okon who flies into a rage and stabs Bassey. A passer-by phones for ambulance, which takes a long time to arrive because of traffic jams and bad weather. When Bassey arrives at the Hospital, there is a long delay before he is seen by a doctor because of staff shortage in the Hospital. Bassey died before he could be treated.

Who or what caused Bassey's death? It would be possible to blame Okon, Okon's father, Okon's employer, the brewery which produced the alcohol which he drank or the pub which sold it to him, Bassey for the tribal insult, the government for failing to prevent traffic congestion or fund the Hospital adequately or even God for the bad weather. Indeed, it would not be surprising if a doctor, a sociologist, a lawyer, a politician, a theologian, even a member of the public answer questions relating to the cause of Bassey's death in different ways. Nonetheless and importantly, the point is that there is no magic formula for answering the question correctly, rather, the law must decide which of the many possible answers or approaches to take or follow in tackling the problem of causation herein created by this scenario is appropriate.

The courts have consistently stated that causation is simply a matter of common sense and not a question of philosophical analysis. Shutes, had explained that:

The law tends to regard causation in terms of broad generalizations based on common sense principles, rather than attempting to mimic the more obscure approach to causation often taken by philosophers or scientists.

Therefore, the courts tend to see causation as a question of fact, though it is not always that straight forward and the courts have also realized that sometimes it is necessary for the judge to apply special legal rules and not to leave the *causal question* to common sense and logic. Although the issue of causation is a legal one, the judiciary appears to apply the rules flexibly. A strict application of the causation rules may occasion a miscarriage of justice.

2. Research Methodology

The study adopted the conceptual and doctrinal approach whereby various legal doctrines, concepts, scholarly opinions, textbooks and precedents were gathered, examined and analyzed with a view to discussing the topic extensively and highlighting the problem areas. Observations, conclusions and recommendations were made for possible reforms.

3. Meaning and Scope of Subject Matter Of Discourse

Causation, in some sense, is a difficult area of the law and there is no more intractable problems in the law than causation. Questions of causation arise in many different legal contexts and no single theory of causation will provide a ready made answer to the question whether the accused's conduct is to be treated as the cause or a cause of some ensuing event. Suffice it to say that "to cause" is to bring about a desirable, abhorable or forbidden result or consequence.

But the term or phrase, "*Corpus Delicti*" as a legal concept or doctrine has been misconceived or misunderstood and instead of being generalized, has been tied to culpable homicide cases as meaning "the body of the deceased" or "corpse" as generally used. But the law and its practitioners and indeed, eminent jurists seem to have put the term or concept in its proper meaning and scope. According to Henry Campbell Black, "*Corpus Delicti*" is:

The body of a crime. The body (material substance) upon which a crime has been committed, e.g. the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the objective proof or substantial fact that a crime has been committed. The "corpus delicti" of a crime is the body, foundation or substance of the crime, which ordinarily includes two elements: the act and the criminal agency of the act.

The American Legal Writers, agree with the above position on the meaning and scope of the concept. They are accordingly of the view that "*corpus delicti*" means the body or substance of the alleged crime and therefore not synonymous

with the body or corpse of the victim of crime. The Indian legal writers, are more pungent and emphatic on the matter thereby making the term clearer and free from any form of ambiguity. According to them:

“Corpus delicti” has no reference to corpses. It means that before seeking to prove that the accused is the author of the crime it must be established that the crime charged has been committed. In theft that the property has been stolen, in murder that somebody has been killed. The strongest proof of corpus delicti in murder is the body of the victim or a vital part of the body by which he could be identified. In the absence of any such evidence, direct evidence may also come from a person who saw the killing, or the murderer may confess to the crime.

Though the term or phrase “*Corpus Delicti*” is mostly applied to cases of culpable homicide, it means anything or substance that could be used by the prosecution to satisfy the courts that an alleged offence was actually committed. Its scope is therefore wider than its meaning and application to homicide cases.

4. Corpus Delicti Rule in Homicide Cases in Nigeria

Our case-law is replete with principles relating to the “*corpus delicti*” rule, concept or doctrine. But His Lordship, Niki Tobi JSC (as he then was) stated the rule with pungency and clarity when he held that:

It is not in all cases where the corpus delicti is produced to secure conviction of an accused person. It is not the law that an accused person must be discharged and acquitted if the body is not produced for medical examination. The law knows that there are instances and circumstances where an accused person takes measures to destroy the body in order to avoid prosecution or conviction if prosecuted.

Accordingly, where there is evidence that a human being was killed, by another human being; the latter can be convicted when the body of the former is not found. The important consideration is whether there is a nexus between the accused and the killing of the victim

to the extent that the law comes to the conclusion that it is the accused person who killed the deceased.

The *corpus delicti* rule has some inherent problems, just like any other principle or doctrine founded on presumptions and circumstantial evidence wherein the law steps into fill the gap created by unavailability of positively direct evidence. But direct evidence to the effect that a human being has died and the cause of his death are issues of substantive law which cannot be established by presumption and circumstantial evidence. Statutory provisions, have with the aid of case-law, clearly stated the ingredients of the offence of murder or culpable homicide punishable with death which are as follows: (a) that the deceased, a human being had died, (b) that the death of the deceased was caused by the accused and (c) that the act or omission of the accused which caused the death of the deceased was intentional with the knowledge that death or grievous bodily harm was its probable consequence.

Again, it is very difficult to establish that the accused took steps to destroy the body of the deceased without producing the body itself or any part thereof. In the same vein, establishing a nexus between the act of the accused and the death of the deceased may not be achieved without the body of the deceased. It is therefore not proper for the law to step in to fill the gap in these difficult areas and that is why other common law jurisdictions apply the rule with caution and flexibility. Accordingly, Sir Mathew Hale was quoted as saying:

I would never convict a person of murder or manslaughter unless the facts were proved to be done or at least the body found dead.

Nonetheless, cases old and recent, have established that circumstances may be sufficiently strong to prove *corpus delicti* in murder cases though the body has not been found. Hale’s statement must therefore be interpreted as requiring either the body or satisfactory proof of death in its absence and such proof includes circumstantial evidence. Absolute certainty is seldom reached in human affairs. The fact of death should be proved by such circumstances as render the commission of

the crime certain and leave no ground for reasonable doubt.

In the *Moses Jua Case*, a motor cycle was stolen. Appellant was suspected of having stolen same. Police constable, Rotimi Jeremiah took the appellant to IpeeTown to produce the particulars of the motor cycle. That was the last time Rotimi Jeremiah was seen alive. In the course of the investigation, the appellant made both oral and written confession and statements that he, together with the other accused persons, killed the deceased. Appellant was arrested and led to the scene of the crime by the police. The clothes last worn by the deceased, four (4) teeth and some strands were not recovered at the scene but the deceased nor was his body (corpse) found or recovered. The court convicted the accused for the murder of the deceased even though the corpse or body was not found. It may be argued and so we do that, the *corpus delicti* rule was wrongly applied in this case as the clothes last worn by the deceased, his four(4) teeth and the strands constitutes the “*corpus delicti*” upon which medical examination could be carried to determine the cause of death.

5. A Look at Other Supreme Court of Nigeria Decisions in This Area of the Law.

The facts in *Idemudia v. The State* appears gruesome and ostensibly constitute a display of premeditated wickedness on the part of the accused. The prosecution’s case is that on the 19th day of November, 1985, the appellant and four other police officers were on duty at a police check point at Onu Imo along Etitu-Umuahia Road, in Imo state. At about 9am, PW1 drove up in a Hiace Bus. He was carrying his church members to a graduation ceremony and the group was singing and praising God. The appellant stopped the vehicle and questioned PW1 as to their destination and PW1 told him their destination, upon which appellant asked PW1 to alight from the vehicle and he did. Appellant then demanded for some gratification in reaction to which PW1 told him that the persons he was carrying were not fare-paying passengers. The appellant began to delay the vehicle unnecessarily only to release it on the

intervention of PW5, the Inspector in charge of the check point. On their way back, PW1 met the same officers at the check point and the appellant waved them down and as the PW1 was ascending the Umungwa village Hill, the appellant overtook them with a 504 taxi cab and block the road compelling PW1 to stop. Appellant then broke the front windscreen of the Bus with the butt of his gun and put the nozzle of his gun (Exhibit ‘D’) inside the Bus and opened fire instantly, killing the deceased (Ngozi Okpara) and injuring others, though PW1 managed to escape and reported the incident to Umuopara Police Station. Appellant was arrested and charged with the murder of the deceased before a High Court in Imo State.

Appellant’s defence was that he was on a road block with PW5 and PW7 when the Bus driven by PW1 approached the checkpoint and his colleague, P.C. Alphonsus waved the Bus to stop but it did not and Alphonsus pursued it and when he could not come back, PW5 ordered appellant to go and find out what happened. On arrival at the scene, he saw people beating up PW7 (Alphonsus) and he tried to stop the fight but the people turned on him, beat him up and tried to snatch his gun from him and while they were struggling for the rifle, it accidentally went off. The court convicted the appellant of murder as charged and sentenced him to death. Appellant appealed to the court of Appeal which confirmed his conviction and further appealed to the Supreme Court. The counsel to the appellant framed three (3) issues for determination, by the apex court, issue (ii) is most relevant to the subject matter of this discourse and runs thus:

Whether the prosecution proved beyond reasonable doubt the identity of the body of the deceased notwithstanding its failure to call as witness the person who identified the body of the deceased to the doctor who performed the autopsy not fatal to the case of the prosecution.

Though, Dr. Nwosu (PW4) who performed the post-mortem examination on the body of the deceased testified, Mr. John Egwim who identified the body of the deceased to PW4 was not called to testify as a witness and this created a lacuna in the evidence of the prosecution as to whether the body on which PW4 carried out his

medical examination was actually the body (*corpus delicti*) of the victim (Ngozi Okpara). Learned counsel to the appellant had argued that in a trial where the prosecution intends to establish the cause of death by relying on a medical report, it is necessary to call evidence which will establish that the body examined by the medical officer concerned, was definitely and exactly that of the deceased.

6. Lead Judgment (Katsina-Alu JSC)

In answer to the issue for determination, His Lordship had this to say:

This was a criminal trial and in all criminal trials, the onus is on the prosecution to establish its case beyond reasonable doubt. In a murder trial, the prosecution must show conclusively that death was caused by the act of the accused. In other words, there must be a nexus between the act of the accused and the death of the victim. It is now settled that medical evidence though desirable in establishing the cause of death in a case of murder, is not always essential. Where the victim dies in circumstances in which there is abundant evidence of the manner of death, medical evidence can be dispensed with. That is the situation in the instant appeal. There is abundant evidence from eye-witnesses that the appellant shot and killed Ngozi Okpara instantly. Medical evidence on the circumstances of her death was clearly not essential. In the light of what I have said, I am unable to accept the submission that the person that identifies the body of a deceased to a doctor must be called as a witness. The desirability to call a person is only in circumstances where the identity of the body examined by the doctor is shrouded in doubt. Where the identity of the deceased can be inferred from the circumstances of the case, then such direct evidence is not essential

With due respect to His Lordship, PW4, the medical doctor who carried out the post-mortem examination of the body of the deceased (*corpus delicti*) was not present at the scene of crime and there is no evidence that the body or corpse was medically examined at the scene of crime. The practical implication or factual situation here, is

that there must have been lapse of time between the alleged killing and the post-mortem examination. Again, there may have been movement of the corpse from the scene of crime to wherever the post-mortem examination was carried out by PW4 and in order to avoid a mix-up, someone who monitored the movement of the corpse from the scene of crime to the place of medical examination must have identified the corpse to PW4 and that was John Egwim. His absence in court to bridge the gap between the time of the alleged killing and the conduct of medical examination by identifying the body of the deceased to the medical examiner created some doubt in favour of the appellant capable of entitling him to acquittal. A better way for the court to riggle out of this obvious situation is to hold that medical examination was not necessary to determine the cause of death in the instant case, but having allowed medical report on the cause of death to be tendered and relied upon, there is the need for the court to ensure that the examination was carried out on the actual or exact body of the deceased.

Finally, much as the court can infer the cause of death from the prevailing circumstances, it would amount to absurdity to establish the *corpus delicti* on mere inferences, presumptions and circumstantial evidence. The reason being that the cause of death (causation) may be abstract and non-tangible while *corpus delicti* is tangible, substantive and materialistic.

His Lordship went further (with due respect) to blow hot and cold when he held that:

Ngozi, Okpara was the only person that died on the spot. Surely, there is direct and positive evidence of the killing of young Ngozi Okpara. She met a violent death at the hands of the appellant. As I have said earlier, in the circumstances of her death, medical evidence was clearly unnecessary. That notwithstanding, the medical evidence presented by the prosecution unequivocally established the cause of death and also provided the necessary nexus between the death of the victim and the act of the appellant. The doctor, PW4, Dr. Nwosu testified and said the cause of death was haemorrhage from multiple gun shot wounds. He also said the deceased was shot at least three times. I have no

doubt whatsoever in my mind that the evidence presented by the prosecution shows plainly that the body on which PW4 performed the autopsy was the body of the deceased-Ngozi Okpara.

With due respect to His Lordship, it is only John Egwim who identified the body of the deceased to PW4 that can confidently and credibly inform the court in his oral testimony that the body on which PW4 carried out the post-mortem examination is that of the deceased and it does not lie in the mouth of the court which has no power or right to give evidence. Again, once medical evidence as to the cause of death is unnecessary, the contents or effect of the relevant medical report also becomes unnecessary. The failure of the person who identified the body of the deceased to the medical examiner to lead evidence as to the exact body of the deceased for the purposes of such medical examination, to our mind, breaks the nexus or chain of causation between the act of the accused and the death of his alleged victim. These are serious complications capable of tilting the pendulum of doubt in favour of the accused and that is our position. In *Oregon v. Watts* the court held that:

No universal and invariable rule can be laid down in regard to the proof of the corpus delicti. Each case depends upon its own peculiar circumstances. The body of the crime may be proved by the best evidence which is capable of being adduced, if it is sufficient for the purpose. Such an account of accompanying or relative facts, whether direct or circumstantial, must be produced as establishing the facts beyond a moral certainty, and to the exclusion of every other reasonable hypothesis.

7. The Concurring Judgments (Ogwuegbu JSC & Mohammed JSC)

Their Lordships, Karibi-Whyte JSC and Ejiwunmi JSC did not address issues relating to the *corpus delicti*, but their Lordships, Ogwuegbu and Mohammed played safe and tactically refused to entangle themselves with the controversy created by the absence of John Egwim's testimony on the identity of the body examined by PW4 and we commend them for

taking a neater and more legal route out. According to Ogwuegbu JSC:

On a charge of murder, proof that the deceased died and that it was in respect of his body that an autopsy was performed is a legal requirement. Where the identification of the body is in issue, absence of evidence direct or circumstantial of the identification of the corpse examined is fatal where medical evidence of cause of death is vital. There is no doubt that absence of evidence of identification of the body is in issue in this appeal but there is overwhelming evidence of eye-witnesses to the effect that the deceased met her brutal death at the lands of the appellant and their evidence was believed by the learned trial judge to be true. It is settled law that medical evidence is not always essential to prove the cause of death where the victim died on the spot as in this case. There is abundant evidence of the manner of her death.

Suffice it that the deceased died on the spot thereby dispensing with medical proof of cause of death and not that proper identification of the body upon which autopsy is conducted is not necessary to create a nexus between the act of the accused and the cause of death of the victim of murder.

His Lordship, Mohammed JSC, agreed with our contention that the body of the deceased was not properly identified but held that the issue of proper or improper identification of the *corpus delicti* was of no legal consequence in the instant case. According to him:

Even if Ngozi Okpara had not been identified properly before the doctor who performed autopsy on her body, the conviction against the appellant would still stand because Ngozi Okpara died on the spot from the bullets of the appellant's gun. In this case, it is not necessary to produce medical evidence since the evidence is overwhelming that the appellant, a police officer used his official gun to shoot in a crowd in a bus during which Ngozi Okpara died on the spot

Yet other factors could operate to cause the death of the deceased in addition to the gun-shot wounds and this calls for medical evidence in proof of the actual cause of death or the degree of impact or contribution made by the act of the

accused. This cannot be determined without a proper identification of the corpus delicti upon which such determination could be arrived at.

8. Corpus Delicti and Causation

These are two, out of the three ingredients of the offence of culpable homicide and they constitute the *actus reus* of the offence. In murder trials, the prosecution must prove that, the deceased, a human being died (*corpus delicti*) and that the cause of his death is traceable to the act of the accused (causation). It then follows that it would be difficult and sometimes, impossible to determine the cause of death or link the act of the accused with the death of the deceased without the *corpus delicti*. According to Ogwuegbu JSC:

On a charge of murder, proof that the deceased died and that it was in respect of his body that an autopsy was performed is a legal requirement. Where the identification of the body is in issue, absence of evidence (direct or circumstantial) of the identification of the corpse examined is fatal where medical evidence of cause of death is vital.

This is the importance of the *corpus delicti* in establishing causation in homicide cases. In *Omonga v. The State*, the Court of Appeal held that:

In a murder trial, medical evidence, although desirable, is not essential in all cases where the cause of death can be inferred from the circumstances of the case. However, in the instant case, where it was alleged that the appellant poisoned the deceased, it was necessary and obligatory for the prosecution to produce evidence that the deceased died of the poison and that can only be done by a medical report from the doctor who performed the autopsy or by the report of the pathologist.

Since homicide is the unlawful killing of a living human being, the prosecution has the burden to show that the victim was alive at the time of the unlawful act. Though body of the deceased is available in most criminal homicide cases, if doctors are not able to testify specifically that the cause of death was due to an unlawful act, *corpus delicti* has not been proved. Unexplained

deaths are not unusual but not rare in medical history. The mere fact that the deceased died instantly upon pain of gun shots inflicted on him by the accused does not eliminate completely the possibility of other factors contributing substantially to the cause of death and this makes it mandatory to medically examine the *corpus delicti* which must be produced for that purpose.

9. Corpus Delicti and The Evidential Presumption of Death

There is a statutory provision to the effect that a person who has not been heard of for seven years by those who, if he had been alive, would be likely to have heard of him is presumed to be dead. But the courts seem to ignore, refuse or fail to apply this presumption in favour of persons accused of murder by presuming in the absence of the *corpus delicti* that the victim of an alleged murderous attack or person last seen with the accused without waiting for the expiration of seven years. The principle is to the effect that once a state of things is shown to exist, there is in law a presumption of its continuance for a period for which such state of things ordinarily lasts. In homicide cases, this presumption imposes a burden on the prosecution to prove that the victim of an alleged murderous attack is dead within a period of seven years from the date of such attack and this is difficult to do without the *corpus delicti*. The presumption also imposes a *reverse burden* on the party claiming that the person is still alive after the expiration of seven years to so prove, though this does not require proof of the *corpus delicti*. But the courts, in their quest to bring criminal trials to an end have ignored this evidential presumption to the detriment of persons accused of the offence of murder and this is not supposed to be so. We are humbly of the view that fair trial or hearing demands that sufficient time be allowed for the manifestation of all facts relevant to the complete and just determination of all issues in controversy.

10. Concluding Remarks

Corpus delicti and causation are twin legal concepts in criminal law which metamorphose

into the physical element (*actus reus*) of result offences, such as culpable homicide. Without *corpus delicti*, there will be no substance upon which causation could operate or be determined and dispensing with proof of *corpus delicti* means dispensing with proof of causation. By holding that proof of *corpus delicti* is not necessary in certain factual situations in homicide cases, the courts create doubts as to the proof of causation though this doubt is unfortunately not resolved in favour of the accused. Nonetheless, much as causation may be inferred in deserving circumstances, *corpus delicti* being a tangible object of proof cannot safely be inferred or presumed. This practice of rushing justice in homicide cases at the expense of the statutory and evidential presumption of death needs much to be desired.

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