

Wilful Omission to Provide Medical Care for a Sick Person – Effect Thereof

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 7th Day of July, 2023

Before Their Lordships

Kudirat Motonmori Olatokunbo Kekere-Ekun
Uwani Musa Abba Aji
Helen Moronkeji Ogunwumiju
Tijjani Abubakar
Emmanuel Akomaye Agim
Justices, Supreme Court

SC/CR/276/2020

Between

ABUBAKAR ABDULLAH ... APPELLANT

And

THE STATE RESPONDENT

(Lead judgement delivered by Honourable Emmanuel Akomaye Agim, JSC)

Facts

The Appellant impregnated PW1 who gave birth to a child named Abdullahi (deceased), out of wedlock. The Appellant agreed to pay ₦5000 (Five thousand naira) monthly for the maintenance of the child but defaulted to pay for two months. On 13th June 2017, PW1 called the Appellant to inform him that their son had fallen sick and requested him to come and see her. When the Appellant met with PW1, an argument ensued between the Appellant and the brother of PW1 (PW2), who expressed his dissatisfaction with the Appellant's lack of care for his child. Thereafter, PW2 ordered PW1 to handover the child to the Appellant to take over full custody and care of his child, which she did. The Appellant collected the child and left.

However, PW1 who was concerned with the decision to handover the child to the Appellant, informed her mother in the house. The mother (PW3), in company

of a neighbour (PW4), chased after the Appellant all the way to his house to regain custody of the child. On getting to the Appellant's house, he was not around but after an hour, the women saw the Appellant walking down with the child wrapped to his chest. Immediately he arrived, he walked straight to his room and locked himself in the room. The Appellant's aunt, who was at home when PW3 and PW4 arrived, expressed her ignorance about the Appellant fathering a child. After hours of pleading, the Appellant opened the room and the women rushed inside to meet the lifeless body of the child with the mouth opened and his eyes closed.

Further to the above, the Appellant was arraigned before the trial court on a one-count charge of Culpable Homicide punishable with death under Section 221(b) of the Penal Code Law, Cap. 102, Laws of Borno State, 1994 for causing the death of his 10-month-old baby. The Prosecution called a total of seven (7) witnesses and tendered two Exhibits ST1 and ST2, while the Appellant testified for himself and did not call any witness or tender any exhibit. At the close of the trial, the trial court relied on the circumstantial evidence and the doctrine of last seen (because the Appellant was the last person to be seen with the deceased before his death), in convicting the Appellant. He was sentenced to death by hanging.

Dissatisfied, the Appellant appealed to the Court of Appeal. The appellate court affirmed the decision of the trial court, and dismissed the appeal. The Appellant has further appealed to the Supreme Court on two grounds.

Issue for Determination

The Supreme Court adopted the sole issue for determination raised by the parties, in determining the appeal, thus:

Whether having regard to the evidence led at the trial, the Court of Appeal was right in affirming the decision of the trial court that the charge of culpable homicide punishable with death was proved against the Appellant?

Arguments

Arguing the appeal, counsel for the Appellant contended that the Court of Appeal and the trial court were in error to have held that the state proved its case of culpable homicide punishable with death against Appellant and he was rightly convicted by the trial court. Counsel argued that to ground the offence of culpable homicide, the Respondent must prove the following ingredients beyond

reasonable doubt: (i) The death of a human being; (ii) That the death was caused by an act of the Defendant; (iii) That the act of the Defendant which resulted in the death of the human being was done with the intention of causing death or grievous bodily harm; or the Defendant knew that death would be a probable but not just a likely consequence of his action. Counsel contended that the Respondent ought to have proved that the specific act of the Appellant which caused the death of the deceased was strangulation as alleged in the charge. Counsel also argued that the prosecution did not establish any fact or sufficient evidence to establish beyond reasonable doubt that the Appellant caused the death of the deceased. Counsel submitted that the finding of the court below is rooted on speculation and hence, perverse.

Regarding the finding on the doctrine of last seen, counsel argued on behalf of the Appellant that for the presumption of last seen to apply, the prosecution must lead evidence to eliminate the possibility of the death being of natural causes, accidents, or underlying sickness and that the Respondent has failed to prove that the cause of death in this instance, was strangulation. Counsel relied on the case of **GALADIMA v STATE (2018) 13 NWLR (Pt. 1636) Pg. 357 at 374** to argue that if the death of the deceased is not proved to be homicide, the doctrine of last seen cannot apply. He urged the Supreme Court to interfere with the concurrent findings of the lower courts and set aside the conviction and sentence passed against the Appellant.

Responding to the submissions, counsel argued that the Respondent in its charge did not specifically state that the deceased died as a result of strangulation but rather used the words “strangulation and or suffocation” which are subject to interpretation and can be refuted by the Appellant. Counsel submitted that PW1-4 had given evidence to show that: (i) they saw the Appellant come back home hours later carrying the baby hugged to his chest and went straight to his room; (ii) the Appellant had a long walk from the house of PW1 to his house; and (iii) the Appellant held the child tight to his body. These evidence were never discredited nor challenged by the Appellant even under cross-examination. Counsel posited further that failure of the Appellant to satisfactorily explain what caused the death of the deceased shortly after he took him away from PW1 to an unknown destination was the reason for his conviction, sentence and the

upholding of same by the Court of Appeal. Counsel submitted that failure of the Appellant to give satisfactory explanation on how the deceased died renders him fully responsible for the death of the deceased. Regarding the argument on tendering of medical report about the death, counsel submitted that non-tendering of medical report to prove the cause of death by the Respondent at the trial court cannot be fatal to the case of the prosecution. Given the circumstances of the deceased's death which was instantaneous and without any intervening factor, medical report had ceased to be of any practical necessity - **UKPONG v STATE (2019) LPELR - 46427 (SC)**. Counsel concluded that there was no basis for the Supreme Court to interfere with the concurrent findings of the lower courts.

Court's Judgement and Rationale

Prefatorily, the apex court, *per* Emmanuel Akomaye Agim, JSC expressed dissatisfaction with the Appellant's Grounds of Appeal, which His Lordship found to general and vague as they do not complain against any particular/specific finding of fact or any other part of the decision of the Court of Appeal. The main body of each ground disclose no arguable complain, other than the conclusions of the Court of Appeal derived from its findings of fact. His Lordship opined that in the absence of any complaint against the reasons or findings of facts from which the conclusions that the prosecution proves its case and that the appeal lacks merit are derived, the appeal is empty and baseless or groundless. Without appealing against the findings of facts or reasons from which a conclusion was made, an appeal against only the conclusion is not arguable and is incompetent. This is because by not appealing against the specific findings of facts, the appellant accepts them as correct, conclusive, and binding upon it - **IYOHU v EFFIONG (2007) 7 SC (Pt. III) 90**

Deciding on the issue raised by the Appellant, the apex court reiterated the established ways of proving the guilt of an accused person, which are - (i) by direct evidence; (ii) by confession of the accused person/Defendant; or (iii) by circumstantial evidence. In this case, since there is no direct eye-witness to the murder of the deceased, the court relied on circumstantial pieces of evidence. Extolling the place of circumstantial evidence in criminal law, the Supreme Court relied on its earlier decision in the case of **PAUL v STATE (2019) LPELR-**

47386(SC) Pp. 27-28, where it held that *circumstantial evidence is very often the best evidence. It is said to be evidence of surrounding circumstances, which by undesigned coincidence, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say it is circumstantial. But the circumstantial evidence sufficient to support a conviction must be cogent, complete and unequivocal...*". For circumstantial evidence to sustain a conviction it must point positively and unequivocally to the conclusion that the accused person and none other committed the offence. In this case, the deceased was in the custody of the Appellant from the time the Appellant took him from his mother that same evening to the time he was found lifeless in his custody. More so, there was no reasonable or tenable explanation by the Appellant as to the cause of the son's death.

While PW1 insisted that she gave the deceased to the Appellant whole and hearty, the Appellant stated that the child was sick when he visited PW1 and took custody of the child. The Appellant, however, did not give evidence of taking the child to the hospital to receive medical attention. On this point, the Supreme Court affirmed the findings of fact by the lower courts that the Appellant, by his omission to provide medical attention for his child, intended to cause his death. The apex court relied on the case of **R v STONE & DOBINSON (1977) 2 ALL ER 341**, **R v MACDONALD (1904) ST. R.Q.D. ISI** and **R. v SENIOR (1899) I.Q.B. 283** to show that *wilful omission to provide medical care for a sick child or other person in the custody or charge of a person in disregard of the fact, risk that the death of the sick child or person is the probable or likely consequence of such omission.*

In determining the argument on the applicability of the "Doctrine of Last Seen" to the facts of this case, the apex court agreed with the holding of the Court of Appeal that the doctrine of last seen readily comes to play in this case. *If a person who was last seen alive in company of another is found dead, that other in whose company the person was last seen alive, in law, is presumed to bear full responsibility for the death of the deceased. He certainly has some explanation to give on what caused it if he says he did not kill the deceased.* The doctrine of last seen is one of the limited circumstances in criminal prosecution in which an accused person is required to give an explanation as to the cause of death of the

deceased. In this instance, it was the Appellant that was last seen with the deceased; no one else came into contact with the deceased. The defence of the Appellant is therefore unacceptable in the circumstance.

Having resolved the sole issue in the appeal against the Appellant, Their Lordships unanimously dismissed the appeal and affirmed the conviction and sentence of the Appellant.

Appeal dismissed.

Representation

Edwin Inegedu, Esq. for the Appellant.

K.S. Lawal, Esq. for the Respondent with *fiat* of the A-G, Borno State.

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