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Criminal Law--Felony-Murder--Statutory Interpretation

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upon state law enforcement to an extent generally thought to be beyond the authority of federal courts.

T. E. P.

CRIMINAL LAW—FELONY-MURDER—STATUTORY INTERPRETATION.

—*D* and *B* committed an armed robbery upon *X*. As they fled from the scene *X* killed *B*. *Held*, (remanding the case for a new trial), that *D* can be convicted of murder under the felony-murder statute (4-3 decision). *Commonwealth v. Thomas*, 382 Pa. 639, 117 A.2d 204 (1955).

Decisions in the United States on the felony-murder rule are divided into four categories: (1) Some states follow the rule that, if a killing occurs in the commission of a felony it is murder. The states which follow this rule do not require that the felony be one of violence. (2) A homicide committed in the perpetration of certain dangerous felonies is ipso facto declared to be murder. (3) A homicide committed in the commission of a felony is murder only when the act itself is one involving extreme risk to human life, and it is believed that the risk must be known to the actor. (4) Apparently Ohio refuses to recognize the felony-murder doctrine in any form. MORELAND, *LAW OF HOMICIDE* 48-49 (1952).

Pennsylvania would seem to be in the second category. According to the language of PA. STAT. ANN. tit. 18, § 4701 (Purdon 1939) "All *murder* . . . which shall be committed in the perpetration of any . . . robbery . . . shall be murder in the first degree". (Emphasis supplied.)

The principal case presents two problems. First, how far can the courts go in imputing to the defendant the occurrence of death, where such occurrence was not intended and only remotely connected with the defendants scheme? Second, as a matter of statutory interpretation, is it necessary that the occurrence of death be (common law) murder in order to be raised to felony-murder (first degree), or does any killing, short of common law murder, satisfy the statute?

In earlier cases the Pennsylvania judges had specifically charged the juries that, if they believe that the death during commission of a felony resulted from another's act, they should acquit the defendant. *Commonwealth v. Thompson*, 321 Pa. 327, 184 Atl. 97 (1936); *Commonwealth v. Mellor*, 294 Pa. 339, 144 Atl. 534 (1928). Two later cases, *Commonwealth v. Moyer (Byron)*, 357 Pa.

181, 53 A.2d 736 (1947), and *Commonwealth v. Ameida*, 362 Pa. 596, 68 A.2d 595 (1949), departed from this rule and extended the felony-murder doctrine in Pennsylvania. In both these cases the death-causing agency (gun shots) was set in motion by parties not in privity with the defendant, and innocent third parties lost their lives. The defendants were found guilty of felony-murder under the statute. The principal case extends the application of the felony-murder doctrine even more by applying it to the death of a principal to the felony upon which his co-principal's murder is based.

It is difficult to rationalize the instant case on the doctrine of causation. The court considered the death as the natural and foreseeable result of the initial act of robbery. To the extent that every attack on life, liberty or property invites defense or resistance, this is correct. However, even in applying the felony-murder rule it would seem that the *actus reus* of the defendant falls short of the usual minimum required by law. It is admitted that the defendant committed an unlawful act, but even with the felony-murder rule, as expressed by statute, it is only by doing violence to the doctrine of causation that the defendant's act can be stretched to constitute the commission of the crime of murder. The *actus reus* of murder is killing, or an act the natural and foreseeable result of which is the jeopardy of human life. The defendant in this case committed no such act. The felony-murder rule in itself has become a dangerous doctrine.

The common law also requires that there be a *mens rea* operating in conjunction with the *actus reus*. In the case of murder the *mens rea* is an intent to kill in the most generalized form. The felony-murder rule dispenses with a *mens rea* for murder, relying solely on the *mens rea* for the basic felony. This doctrine, in effect, creates a liability without fault. Mueller, *Mens Rea and the Law*, 58 W. VA. L. REV. 43 (1955). "Where the state of mind which prompted the action does not constitute the particular *mens rea* required the courts have repudiated the notion that the intent to commit another crime should be 'transferred'. This is entirely proper; mere fiction should be discarded in favor of a careful analysis of the physical element which may be combined with the *actus reus* in order to constitute the offense charged". Perkins, *A Rationale of Mens Rea*, 52 HARV. L. REV. 928 (1939). The Pennsylvania statute is inconsistent with this reasoning.

CASE COMMENTS

417

In the subsequent case of *Commonwealth v. Bolish*, 381 Pa. 500, 113 A.2d 464 (1955), (reversed on other grounds), the deceased, a partner in crime of the defendant, set the fire which caused his death. The felony-murder rule was held applicable. The case is distinguishable from the principal case however, in that the defendant in this case satisfied at least the minimum act required to impute the death directly to him, since he instigated the felony and induced the deceased to commit the highly life endangering crime of arson. Moreover, no third person's act was responsible directly for the death. Thus, neither as to *actus reus*, nor as to *mens rea*, does *Commonwealth v. Bolish, supra*, present as dangerous a departure from common law standards as does the instant case.

With the mentioned precedents at its command it was not difficult for the Pennsylvania court to render the instant decision. This case seemingly would fall within the unfortunate Pennsylvania felony-murder rule, but for one aspect: the killing in the perpetration of the felony must be murder. How could the court ignore the words of the legislature? Penal statutes must be strictly construed. In construing the word *murder* to mean any loss of life, the court has violated one of the basic canons of statutory construction. See *Stull v. Reber*, 215 Pa. 156, 64 Atl. 419 (1906).

One of the underlying reasons that prompted the majority of the court to decide in favor of applying the felony-murder in this case was "the protection of society". *Commonwealth v. Thomas, supra* at 207. The whole history of the penal law suggests that the court took a step in the wrong direction. Extreme punishments, and imposition of liability without fault—even partial liability without fault—weaken rather than strengthen respect for the law.

G. T. L.

DEEDS OF TRUST—OBLIGATION DUE PRIOR TO 1921—SALE NOT BARRED BY STATUTE OF LIMITATIONS.—A executed a note to B, due and payable on November 1, 1914, and conveyed Blackacre to T, trustee, to secure payment. B died, leaving P as distributee and heir at law. C purchased Blackacre from A, and C and wife executed a note to P, due November 1, 1925, allegedly including the above debt. C died, leaving a widow and D, children and heirs at law. The widow died in 1952, and thereafter P requested T to sell Blackacre,