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Criminal Law—Misdemeanor-Manslaughter

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under section 722.⁵³ Hence, the whim of the prosecutor controls whether the greater or lesser crime will be charged.

A unanimous Court emphasized that section 720 requires that defendant's conduct must annoy a specific "person," while section 722, subdivision 2, requires that "others" be offended. The illogicality of punishing the former as a misdemeanor and the latter as a mere offense was recognized, but so was the fact that this is a legislative rather than a judicial problem. Defendant's contention that the same act can, at the prosecutor's discretion, be prosecuted as a misdemeanor or as an offense is in practice true, but so long as a legal distinction, no matter how illogical or tenuous, separates them, no violation of due process can successfully be claimed.

Misdemeanor-Manslaughter

The misdemeanor-manslaughter rule applies in cases where the independent misdemeanor itself was committed with a criminal intent.⁵⁴ This is analogous to the felony murder situation.⁵⁵ However, difficulties arise in the application of the rule in those cases where the initial offense is merely *malum prohibitum* and does not require criminal intent for conviction. In *People v. Nelson*⁵⁶ the Court extended the misdemeanor-manslaughter rule to its very limit in sustaining a conviction thereunder while specifically excluding from consideration the question of criminal intent in the commission of the misdemeanor. They held that a landlord, the condition of whose property violated the Multiple Dwelling Law in that it did not contain sufficient means of egress and other fire precautions⁵⁷ (these violations being misdemeanors),⁵⁸ could be held liable for manslaughter, First Degree,⁵⁹ when some tenants were killed during a fire because of the inadequate means of egress. The conviction was sustained merely on the basis of the landlord's knowledge of the physical condition of the premises, disregarding any question of criminal intent in the maintenance of such condition.⁶⁰

A vigorous and justified dissent maintained that the majority was carrying the definition of manslaughter beyond its bounds in permitting conviction without

53. "Any person who . . . (2) Acts in such a manner as to annoy . . . others . . ." shall "be deemed to have committed the offense of disorderly conduct."

54. 40 C. J. S., *Homicide* §57, 920-921 (b).

55. *People v. Grieco*, 266 N. Y. 48, 193 N. E. 634 (1934).

56. 309 N. Y. 231, 128 N. E. 2d 391 (1955).

57. N. Y. MULTIPLE DWELLING LAW §§187-189.

58. *Id.*, §304.

59. N. Y. PENAL LAW §1050 (1); ". . . homicide . . . committed without a design to effect death: (1) By a person . . . committing . . . a misdemeanor, affecting the person or property, either of the person killed, or of another . . ."

60. *People v. Alexander*, 293 N. Y. 870, 59 N. E. 2d 451 (1943), *affirming* 267 App. Div. 762, 45 N. Y. S. 2d 940 (1st Dep't 1944).

proof of wrongful intent.⁶¹ An awareness of the misdemeanor was claimed to be a prerequisite to conviction for misdemeanor-manslaughter, and the unlawful act unaccompanied by culpable negligence (which is a question of fact involving notice and intent) would not support a conviction.⁶² The dissent seems to take the more realistic view of the problem, since the implications which the majority raise open possibilities for wholesale manslaughter convictions.

Husband and Wife Larceny

The novel question of whether a husband could be guilty of larceny for appropriating the separate property of his wife was presented in *People v. Morton*.⁶³ The Court held that the various Married Women acts⁶⁴ have so changed the legal status of a wife that her husband can be adjudged guilty of larceny, without any corresponding change in the Penal Law. The court stressed the statutes which have enfranchised married women and have abrogated the common law concept of unity of marriage. To make the protection complete, the wife should be allowed to prosecute her husband when he steals her property. The defendant's argument that legislative action is required to bring about such a drastic change was dismissed; the larceny laws could not apply to this situation before the Married Women acts, since the wife's property was not considered the property of "another."⁶⁵

The erasure of the last vestige of the fiction of the unity of marriage logically follows the Women's Emancipation statutes.⁶⁶ The only criticism of this decision might be that *this* defendant was not forewarned. This is of little force, as the husband's taking must have been larcenous ab initio or no conviction could have been had. Therefore his protestations of moral blamelessness should be of little weight.

61. See *People v. Huter*, 184 N. Y. 237, 243, 77 N. E. 6, 8 (1906).

62. N. Y. PENAL LAW §1052 (3): "Such homicide is manslaughter in the second degree, when committed without a design to effect death: . . . 3) By any . . . culpable negligence . . . which . . . does not constitute . . . manslaughter in the first degree . . ."

63. 308 N. Y. 96, 123 N. E. 2d 790 (1954).

64. N. Y. DOM. REL. LAW §50 ("Property . . . owned by a married woman . . . shall continue to be her sole and separate property as if she were unmarried, and shall not be subject to her husband's control . . ."); §51 ("A married woman has all the rights in respect to property . . . as if she were unmarried . . ."); §57 ("A married woman has a right of action for an injury to her . . . property . . . as if unmarried.")

65. N. Y. PENAL LAW §1290.

66. DICKENS, *OLIVER TWIST*, ch. 51 (with reference to the presumed unity of husband and wife); "If the law supposes that," said Mr. Bumble, "the law is an ass."