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Confessions--Felony Murder

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tion. It would seem that it is as necessary for a man to bestow gifts upon his fiancee to hold her favor as to win her favor.

We think that the latest word on the proposition, namely, the principal case, *Beck* v. *Cohen*,[15] is good law. It seems to be a good solution of the problem. The defendant is allowed to set up as an affirmative defense and counterclaim that the plaintiff misled her by falsely representing to her that he was a man of considerable means, in possession of sufficient moneys with which to support her in the event of their marriage and to provide and furnish an apartment for their prospective home, and also that he was engaged in a business in which he had invested considerable money so that he would be able, from the returns of that business to support the defendant in the event of their marriage; that these representations upon which she relied in promising to marry him were discovered to be false after she had in reliance upon them proceeded to make the necessary preparations for her marriage and expended in that connection a sum in excess of the value of the ring; and upon discovering their falsity she repudiated the agreement, and declined to wed the plaintiff. The defendant had a right to repudiate upon discovery of the plaintiff's fraudulent purpose, and he should not be permitted to reclaim his gift, for he is the one whose conduct prevented the marriage, and her refusal to perform is justified. The gift being conditional, the donor would by his conduct have rendered it impossible for the condition to be performed and therefore not be entitled to recover the ring.

The trend of judicial opinion seems to be leaning towards abandonment of the policy of the law to consider marital contracts as one of special caste. Here we have a marriage contract treated in exactly the same manner as one of commercial character, with its defenses and counterclaims of fraud. It seems that the philosophy of the courts today is that woman is taking her place with man today, economically, politically and socially and therefore she should take it judicially. She no longer needs greater protection of the law. The recent *Shonfeld* case [16] in which a man was allowed an annulment of his marriage on the ground of the defendant's fraudulent misrepresentations as to her financial status, and the recent agitation for legislation concerning the alimony laws are indicative of the present attitude of the legislature and the courts towards marital contracts.

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CONFESSIONS—FELONY MURDER.

The courts of New York in the administration of criminal justice are bound by legislative enactment and judicial interpretation to extend to an accused all possible safeguards for his protec-

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[15] N. Y. L. J., March 15, 1933, at 1507.
[16] 260 N. Y. 477, 184 N. E. 60 (1933).

tion. Every doubt is to be resolved in his favor on trial,[1] his innocence is to be presumed until he is conclusively proven guilty,[2] and his right to have the state bear the burden of proving his guilt remains at all times.[3] In keeping with this philosophy of protection even a voluntary confession of a defendant in a criminal prosecution in and of itself is insufficient evidence upon which to sustain a conviction; the crime must be corroborated before the confession acquires probative force.[4] These principles are now too well established to question; however, in determining the extent of the corroboration necessary, the Court of Appeals in the case of *People* v. *Lytton*,[5] seems to have disregarded the reason for the statute, and by a very narrow and unjustified interpretation, limited its effectiveness.

In that case, the defendant was tried for the commission of a felony murder. A confession of the defendant was introduced and as corroboration therefor, the fact of the homicide was proven. The defendant maintained that in order to convict him on his confession, it was necessary to establish not only the fact of the homicide, but independent proof of the felony as well. This the trial court refused to charge and the defendant was found guilty of the felony murder. The Court of Appeals affirmed the conviction, rejecting the theory which had been advanced in the prior case of *People* v. *Joyce*,[6] that corroboration of both the homicide and the felony was necessary. Judge Crane in a short memorandum emphasized the fact that his personal view still remained the same as in the *Joyce* case, but resignedly concurred with the prevailing opinion.[7] Thus the tendency of the law as indicated by the strong dicta in the *Lytton* case seems to require corroboration of the homicide alone in order to convict a defendant of a felony murder on his confession. With this condition, the reviewer cannot agree.

The Code of Criminal Procedure makes a confession in itself ineffectual without additional proof of the "crime charged." That is "there must be some evidence of the existence of the *criminal fact* to which the confession relates" to establish the statement of the defendant as binding.[8] A conviction cannot be upheld on the extra judicial confession of the accused alone,[9] which is merely a waiver by him of his right to have the crime charged proved by

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[1] N. Y. CODE CRIM. PROC. §389.

[2] *Ibid.*

[3] People v. Downs, 123 N. Y. 558, 25 N. E. 988 (1890).

[4] *Supra* note 1, §395, provides as follows: "A confession of a defendant, whether in the course of judicial proceedings or to a private person can be given in evidence against him * * * but is not sufficient to warrant his conviction without additional proof that the crime charged has been committed."

[5] 257 N. Y. 310, 178 N. E. 290 (1931).

[6] Concurring opinion by Crane, J., 233 N. Y. 61, 134 N. E. 836 (1922).

[7] *Supra* note 5, at 316, N. E. at 292.

[8] People v. Deacons, 109 N. Y. 374, 378, 16 N. E. 676, 678 (1888); People v. Brasch, 193 N. Y. 46, 62, 85 N. E. 809, 825 (1908).

[9] People v. Badgley, 16 Wend. 53 (N. Y. 1836).

the usual technical methods.[10] There must be evidence of "the body or substance of the offense, the *corpus delicti*."[11] This statute is a creature of necessity brought forth by a realization of the defects of human nature. It has been found that innocent men devoid of any criminal instinct have confessed to atrocious crimes which not only did they not commit, but which were actually not committed.[12] Depressed and morbid minds sometimes led on by the perversity of their own imagination have caused confessions to crimes by individuals of which they were innocent.[13] Sometimes weakminded and fearsome individuals under the motivating influence of some imaginary danger, have confessed to the commission of supposed crimes,[14] and incomprehensible pride and desire for a reputation as an outstanding criminal has also been known to induce an unfounded confession.[15] The judicial mind has recognized this to exist and the legislature has established Section 395, Code of Criminal Procedure, in order to make the corroboration a reasonable basis for belief of the confessions, and to prevent innocent men from being punished for crime on false confessions. Otherwise, conviction on a confession alone would create such an uncertainty of mind which would tend to destroy the fundamental concepts of criminal law.

In the *Lytton* case,[16] in order to have a conviction on the confession set forth, the criminal fact, that is the felony murder, had to be proven independently of the confession.[17] A felony murder, which is the taking of life while in the commission or perpetration of a felony,[18] consists of two distinct crimes, the felony and the homicide.[19] The elements constituting the felony must not be a part of the homicide, but distinct and separate elements of an independent crime punishable by itself.[20] This was succinctly stated in the leading case of *People* v. *Huter*,[21] by Haight, *J.*:

> "In order, therefore, to constitute murder in the first degree by the unintentional killing of another while engaged in the commission of a felony, we think that, while the violence may constitute a part of the homicide, yet the other elements constituting the felony in which he is engaged must be so

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[10] WHARTON, LAW OF EVIDENCE IN CRIMINAL ISSUES (8th ed. 1880) 503.
[11] *Supra* note 8; People v. Palmer, 109 N. Y. 110, 113, 16 N. E. 529, 531 (1888).
[12] People v. Buffom, 214 N. Y. 53, 108 N. E. 184 (1915).
[13] Choate v. Oklahoma, 12 Okla. Cr. 560, 160 Pac. 34 (1916).
[14] Bergen v. People, 17 Ill. 425.
[15] *Supra* note 10, §627n.
[16] *Supra* note 5.
[17] *Supra* notes 4 and 8.
[18] N. Y. PENAL LAW §1044, subd. 2.
[19] People v. Wagner, 245 N. Y. 143, 156 N. E. 644 (1927); State v. Cooper, 13 N. J. L. 361 (1830).
[20] WHARTON, HOMICIDE (3d ed. 1907) 182.
[21] People v. Huter, 184 N. Y. 237, 77 N. E. 6 (1906); People v. Spohr, 206 N. Y. 516, 100 N. E. 444 (1912); People v. Patini, 208 N. Y. 176, 101 N. E. 694 (1913).

> distinct from that of the homicide as not to be an ingredient of the homicide, indictable therewith or convictable thereunder."

It is the intent to commit a felony or other criminal act, which, transferred from that substantive crime to the homicide by implication of law, makes the killing murder in the first degree, even though the actual killing is casual and unintentional.[22] The frame of mind with which the life was taken is immaterial, it is the condition of mind with which the felony was committed, which is determinative of the degree of the crime. For, if no intent is proven, no felony can exist, and there can be no felony murder, though the crime of manslaughter might exist.[23] Thus, the important, the essential, the fundamental part of the crime is the felony, and its establishment is a condition precedent to a conviction for the crime of felony murder. It differs from the intentional and premeditated crime of murder in the first degree in that in the homicide established there, the frame of mind need but be proven to establish a degree.[24] The intent and premeditation are not independent parts of the crime; they are a condition of the mind with which it was committed.

It is conceded that if the crime charged had been that type of murder in the first degree, the deceased's body would have been sufficient corroboration of a confession.[25] This is so because the intent is not an independent part of the crime. If the prosecution were to attempt to convict an accused of such a crime without a confession, the conditions of the killing, the circumstances surrounding it, and the method used might be sufficient for the jury to find that intent and premeditation existed. They would not have to be proven as independent crimes, nor would these elements standing alone be a crime. They exist merely as an ingredient of a crime. Thus the method of proof is not changed by a confession here, it is merely the *quantum* of proof which is changed.

In a felony murder, if the state were to proceed without a confession, it would have to prove the felony and the intent with which it was committed and then the homicide; the intent in the felony, being carried over to the homicide.[26] How can it be transferred to the homicide where a confession exists, if the felony is not estab-

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[22] Buel v. People, 78 N. Y. 492 (1879); Cox v. People, 80 N. Y. 500 (1880); People v. Cole, 2 N. Y. Crim. Rep. 108 (1883); People v. Olsen, 80 Cal. 122, 22 Pac. 125 (1889); State v. Morgan, 22 Utah 162, 61 Pac. 527 (1900); Rhea v. State, 63 Neb. 461, 88 N. W. 789 (1902); State v. Greenleaf, 71 N. H. 606, 54 Atl. 38 (1902); People v. Milton, 145 Cal. 169, 78 Pac. 549 (1904); Andrews v. People, 33 Colo. 193, 79 Pac. 1031 (1905).

[23] N. Y. PENAL LAW §1059, subd. 1.

[24] People v. Kennedy, 159 N. Y. 346, 54 N. E. 51 (1899); People v. Sanducci, 195 N. Y. 361, 88 N. E. 385 (1909).

[25] People v. Deacons, 109 N. Y. 374, 16 N. E. 676 (1888); People v. Brasch, 193 N. Y. 46, 85 N. E. 809 (1908).

[26] *Supra* note 22.

lished? The proof of the killing doesn't establish the felony, it merely indicates the commission of the homicide.[27] It would not be suggested that a confession of a felony in and of itself is sufficient for conviction on that charge.[28] The same norm of corroboration is necessary for a conviction there under a confession as in murder. Thus, if the court holds that the felony need not be corroborated, it is changing the type of proof necessary not the *quantum*. For it is in substance saying that we will presume the intent in the felony without establishing it, if the homicide is shown. This is destructive of the purpose of Section 395 of the Code of Criminal Procedure, which is for the protection of the accused not for the aid of the state. There is no reasonable basis for believing that the felony was committed merely because the homicide is corroborated. The *corpus delicti* is shown in order to establish the commission of the crime *aliunde* the confession.[29] There is no proof of the felony besides the confession in the *Lytton* case; it stands as charged, but not proven.

The legislature should remedy the situation which has arisen as a result of the dicta in the *Lytton* case. Especially should it now act when judicial cognizance has been taken of the existence of confessions brutally drawn out of accused men.[30] Depriving a man of his life for the commission of a crime has been recognized as the greatest punishment known to modern times.[31] It should not be exercised in instances where the proof offered of the crime is deficient and lacking as in the *Lytton* case, but should require proof of each independent element of the crime, by sufficient evidence, or by confession properly corroborated. The theory of the law is that it is better that many guilty persons should escape rather than one innocent man should suffer.[32] Was the decision in the *Lytton* case intended as a curtailment of this principle?

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[27] *Supra* note 25.

[28] *Supra* note 4; People v. McGloin, 91 N. Y. 241 (1883); People v. Meyer, 162 N. Y. 357, 56 N. E. 758 (1900); People v. Guisto, 206 N. Y. 67, 99 N. E. 189 (1912).

[29] *Supra* note 9.

[30] People v. Weiner, 248 N. Y. 118, 161 N. E. 441 (1928); People v. Barbato, 254 N. Y. 170, 172 N. E. 458 (1930); People v. Mummiani, 258 N. Y. 394, 180 N. E. 94 (1932).

[31] People v. Frost, 133 App. Div. 179, 117 N. Y. Supp. 524 (2d Dept. 1909).

[32] People v. Bennett, 49 N. Y. 137 (1872).