

Principles of criminal liability

[Law](#), [Crime](#)



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Criminal activities are very common in our society. With the intention to hamper the property of other people or causing ill effect to others, criminal activities are occurred usually. Sometimes people involve themselves with some activities to injure others due to personal clash or from ill temperament. Some activities which may be done to cause simple injury may bring the liability of a murderer or manslaughter. To understand the situation laws regarding criminal liability of murderer or manslaughter are required reviewing. This case study has been designed to discuss these issues. In the stated case it has been shown that the simple intention to injure other one caused death to a third party. Here, the accused tampered the brakes of another person's so that person would have an accident and injure himself. But due to this tampering another person got accident and who eventually died. Considering the situation this study will discuss whether the person who committed this activity is liable for murder or manslaughter or any other criminal liabilities. Nadeem and Abid are next-door neighbors who are having their own car. One day they argued regarding card parking in the road that is outside of their houses. Due to this argument Abid got some ill intention to injure Nadeem. Abid decided to tamper the brakes of the car of Nadeem so that he would have an accident and thus got injured. But Mushtaq who is the son of Nadeem, borrowed Nadeem's car with proper consent. As brakes are tampered Muhstaq got an accident while he was driving the car. Muhstaq was taken to hospital and given four times normal dose of painkillers. Due to this he was transferred to coma and provided support machine. Few days later Muhstaq died. In this situation it is

necessary to evaluate the criminal liability of Abid. This study will evaluate whether Abid has liability as murderer or manslaughter or he has no liability. To understand the situation in the study laws and case related to liability of murder or manslaughter from intention to injury will be discussed here. Regarding laws related to Actual Bodily Harm (ABH) and Grievous Bodily Harm (GBH) of Offences Against Person Act 1861 and lastly some parts of the Theft Act 1968 and 1978. Liability for Murder From the discussion it is known that due to argument Abid got some ill intention to injure Nadeem and decided to tamper the brakes of the car of Nadeem so that he would have an accident and thus got injured. But Mushtaq who is the son of Nadeem was insured to drive this car. Few days later Muhstaq died. To establish an offence of crime we are required to establish primary things which are Actus Reus and the mens rea. Actus Reus indicates committing wrong and this should be act, held by the Supreme Court of US in the case of Robinson v. California this act must be related to physical move not considering voluntary or involuntary movement. This is different considering the pattern of the crime, It s necessary to understand we should charge Abid, Mens rea indicates that when a person commits a crime then his minds also support the intention to commit that crime. So, considering these two if one charges Abid for damaging the breaks of the car then it is required to shown that the intention of Abid was same stated in Wai Yu-tsang v R, Steane. Two more limbs are related to men era and these are negligence and reckless. The alleged must be reckless and in nature and negligent enough to occur a crime. In the above stated case Abid was both negligent and reckless. We are also required to assess the two limbs of intention which

are direct intention and oblique intention. Here Abid has direct intention to cause harm to Nadeem due to ill temperament. Moreover, in between the two limbs of intention that is direct intention and oblique intention, it may easily be said here that Abid had a direct intention to harm Nadeem because of the heated argument between them. In the case *Douglas and Hayes V The People (DPP)* the court Criminal Appeal gave idea about the meaning of intention and related this intention to murder. Considering the case of *Douglas and Hayes V The People* following propositions should be evaluated while considering the intention to relate with murder. If someone has been killed with the intention to injure, then the appellants would be considered as a guilty or murder or guilty of an intent to murder. The intention of murder would be established if it has been known by the appellants that his activity may cause death or serious injury to other which will eventually cause death. the consequences of an activity likely to be death then it can be considered as intention to kill. Death is not required to be the desired outcome. Stated by the case of *Moloney* two things are necessary to establish and these are whether the murder was natural consequences of the act of Abid and Abid foresaw this consequence. Held by *Hancock and Shankland*, when there is greater possibility of an act occurring and greater possibility foreseen then greater possibility of intention arises. According to the case of *Nedrick* it is necessary to evaluate the probability of the outcome resulted from the act of Abid. If Abid can prove that that he did not foresaw the death consequence then mens rea requirement will not satisfied here. Mens rea for murder can be viewed as ‘malice aforethought’ which indicates the intention to cause Grievous Bodily Harm or kill. Section 4 of Criminal Justice Act 1964 discusses

that an intention to cause serious injury to others may result in murder conviction. This is applicable even though the accused may not have the intention to kill. In Criminal Justice Act 1964 the term "serious injury" has not been defined and this is based on subjective judgment. English court interpreted the term "Grievous bodily harm" to mean really serious bodily harm. But the word really needs not to be evaluated always. The idea about intention to cause injury which can ground a murder conviction is criticized. In the case *Hyam v DPP* this intention has been explained. In the case *Hyam v DPP* majority of the House of Lords examined the intention to cause bodily harm in the context of real intention of the accused. Here majority of the House of Lords explained that an accused should be convicted as murderer if the accused knew that his activities may bring heavy bodily harm to another person and thus death. Intention of the accused to kill the person is not considerable here. This rule regarding intention to injure seriously that may convict as murderer has been confirmed in House of Lords in the case *R v Cunningham*. In many cases the intention to cause serious injury has been considered as murder if thus activities lead to death. But in the case *R v Powell* Lord Steyn considered the implied malice critically and stated that the fault elements necessarily not correspond to conduct leading to the charge for example causing death. He also stated that a person could be liable for more serious crime that he fore sawed or contemplated. The actus reus has been divided in various parts and these are unlawful killing. Killing must be unlawful and here it can be stated that the killing of Mushtaq is unlawful. Secondly human being should be object of the case and this should remain under Queen's peace. This indicates person who is died in hostile movement

by the Crown won't amount to murder as described in Page and according to Dyson death must occur within one year and a day from that of occurrence. The actus reus of murder is divided into various parts and they are unlawful killing, that is the killing must be unlawful and here it may be said that the killing of Mushtaq was unlawful. Considering mens rea it will be very difficult to prove that Abid had intention to kill because he may say that he had only intention to injure Nadeem. Abid may also state that his intention was to cause GBH as he was angry. In this situation is necessary to evaluate whether a person can kill another being anger. To answer this situation we are required to evaluate the causation between act of Abid and causation. Causation indicates the consequences occurred due to act of alleged and two types of causation are factual causation and legal causation. Abid may try to establish that Mushtaq died due to removing support machine by the doctor but it can also be well said that if Abid did not lose breaks of the car then this situation would not occur as held in Adams. The factual causation's test must show that due to act of Abid Mushtaq died and if Abid did not do so then he would not die as held in White. Considering the legal causation it is required to show that the consequence is legally attributable. In the stated situation Abid may say that his act was not sole liable for the death of Mushtaq but according to the case of Hennigan it should be shown the act of Abid is more than minimal to cause death of Mustaq. So, the intention to cause serious injury has been consider as murder in laws and such was established in various cases over the time. In the stated case Abid was intended to cause injury to Nadeem. Here activities of Abid are enough to consider this intention as intention to cause serious injury. The risk

associated with this intention is death. When brakes of a car fail then it may bring serious accident and thus death. In the stated case it has been shown that ill intention of Abid ultimately brought death to Mushtaq who is son of Nadeem. As the act of Abid had a reasonably foreseeable consequence of Mushtaq's death it is enough to hold Abid as liable for the death of Nadeem held in Pagett. Liability for Manslaughter Abid may try to establish that he did not want to inflict GBH or kill to Nadeem but he wanted to injure him due to argument that took place between them considering the parking of the car, the offence of murder can be proved here against Abid. Two alternative solutions to this case: one is life imprisonment and another can be charging offence of manslaughter against Abid. Two types of manslaughter are stated in Criminal Law which are voluntary manslaughter and involuntary manslaughter. Manslaughter indicates the situation in which accused committed the mens rea and actus reus but got defense of loss of self control, suicide pact and diminished responsibility. Voluntary manslaughter indicates the situation in which accused has requisite intention of killing and involuntary manslaughter indicates that accused has been charged for murder but he did not have requisite mens rea. Here involuntary manslaughter is applicable which is categorized into three: constructive, gross negligence and Cunningham reckless manslaughter. Constructive manslaughter indicates having both mens rea and actus reus for murder but here Abid is not liable for this type of manslaughter. As Abid did the act negligently not having intention to kill held in *Andrews's v DPP* it is required to consider whether the act of Abid is considered as unlawful or lawful. So, the act could be considered as Gross Negligence Manslaughter also. In the

stated case it has been stated that Abid who is accused decided to tamper the brakes of the car of Nadeem so that he would have an accident and thus got injured. But due to this tampering another person got accident and who eventually died. It is necessary to evaluate whether the activities of Abid are enough too liable him as Manslaughter. When prosecution establishes all the elements of murder and jury is satisfied that accused has been acting under the provocation when the deceased was killed. If all elements for murder have been established by the prosecution but the death is inflicted by excessive force in self —defense. In the case *The People (AG) v Dwyer* it was held that an accused would be liable for murder when defendant honestly believes that it was unnecessary force. The case of *(DPP) v Nally* shows that the defendant was convicted of manslaughter and for this reason he was punished with 6 years imprisonment for using excessive force in defense of his property. Section 6 of Criminal Law Act 2006 indicates that if accused successfully plead diminish responsibly then conviction for manslaughter will be recorded. The case of *The People (AG) v Crosbie and Meehan* shows that the victim died due to knife wound inflicted while he was fighting at docks. Here though accused was acquitted as murder but convicted as manslaughter. The case of *The People (DPP) v O'Donoghue* can be another good example of manslaughter. Here a deceased boy was caught by the accused in a headlock and he forcible grasped his neck. From the discussion it can easily be said that the act of Abid caused death to Mushtaq and link between his gross act and death of Mushtaq can be established. If Abid plead the defense of controlling power which ultimately caused the death he must satisfy the court that the Act of Nadeem was too much irritating to do so. If

breaks of go out of control and then this may bring serious accident. For this reason Abid could be held liable for reckless manslaughter because he must foresee the risk of serious injury held in Lidar. Fate of Abid can be decided by the Court as both gross negligence manslaughter and reckless manslaughter can easily be proved against Abid. Because of mens rea element Abid may claim that he was not intended to kill Nadeem and eventually Mushtaq. But the act done by him was so gross that consequences of his activity can be easily contemplated by a reasonable man. For this reason it is more likely that, Abid to get sentenced for gross negligence manslaughter by the court.

Bibliography * A Ashworth, 2009, Principles of Criminal Law (6th ed); Oxford * Clarkson & Keating; Sweet & Maxwell, 2006, Criminal Law: Text and Materials (6th ed); * Criminal Justice Act 1964 * Criminal Law Act 2006 * David Ormerod, 2008, Smith and Hogan Criminal Law (12th ed), Oxford. * Dine, Gobert and Wilson, 2010, Cases and Materials on Criminal Law, (6th ed), Oxford. * Michael Allen , 2011, Criminal Law, (11th ed), Oxford

----- [2]. Robinson v. California (1962) 370 U. S. 660 [3]. Wai Yu-tsang v R [1992] 1 AC 269 [4]. Douglas and Hayes V The People [1985] ILRM 25 [5]. Moloney [1985] AC 905 HL [6]. Hancock and Shankland [1986] AC 455 HL [7]. Nedrick [1986] 3 All ER 1 CA [8]. Hyam v DPP [1975] AC 55 HL [9]. R v Cunningham [1981] 2 All ER 863 [10]. R v Powell Lord Steyn Ibid at 551-552 [11]. Page [1954] 1 QB 170 [12]. Hennigan [1971] 3 All ER 133 [13]. Pagett [1983] 76 Cr App Rep 279 CA [14]. Andrews v DPP [1937] AC 576 HL [15]. The People (AG) v Dwyer [1972] IR 416 [16]. (DPP) v Nally [2006] IECCA 134 [17]. The People (DPP) v O'Donoghue [2006] IECCA 134 [18]. Lidar [2000] 4 Archbold News 3 CA