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# THE LAW OF ROBBERY:

## A COMPARATIVE STUDY OF THE MALAYSIAN, ENGLISH AND ISLAMIC LAW.

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# The Law of Robbery: A Comparative Study of the Malaysian, English and Islamic Law.

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## Introduction.

The general objective of this study is to scrutinize the law of robbery in Malaysia, England and the Islamic law of robbery. The similarities and the differences between these three laws will be shown.

There are very few people who really understand the law of robbery. This is especially true as regards to the Islamic law of robbery or Haraabah.

This study will also rebut the criticism of the non-Muslims as regard to the hudud punishment of robbery that is cutting off the hand and feet on the opposite side. Though the punishment seems to be harsh but it is nearer to justice and to preserve the peace and life of others who are innocent. It is cruel to cut off the hands and feet of a few guilty persons to preserve the life and safety of millions people in our country?

In my discussion I will also touch on the Islamic Law of Pakistan that is the Offences Against Property (Enforcement of Hudood) Ordinance, 1979.

So far, there is no comprehensive comparative study of the law of robbery in Malaysia, England and Islamic law. It is hoped that this study will be a reference or new inspiration for scholars, researches and student who would like to conduct a similar study in future.

# CHAPTER I

## The Malaysian law of robbery.

### Definition of robbery under the Malaysian law.

Robbery under the Malaysian law is defined in section 390 of the Malaysian Penal Code. The section provides:

In all robbery there is either theft or extortion.

Theft is "robbery", if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery", if the offender, at the time of committing the extortion, is in the presence of the person put in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person put in fear then and there to deliver up the thing extorted.

Explanation- The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to

the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z in consequence surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child, who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying- "Your child is in the hands of my gang, and will be put to death unless you send to us one thousand ringgit". This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of instant death of his child.

For that end.

*Bishambhar Nath v Emperor*[1] .

The applicant tried their luck at a dart shooting stall at a carnival. An altercation ensued with the manager. A scuffle broke out and thereafter the applicants removed a cash box and money from a table.

*Ghulam Hasan J:* Can it be said in the present case that in order to the committing of the theft of cash or in committing of the theft of cash, or in carrying away or attempting to carry away property obtained by the theft, the accused for that end, voluntarily caused or attempted to cause hurt? The word "for that end" used in section 390, Penal Code, in my opinion, clearly mean that the hurt caused by the offender must be with the express object of facilitating the committing of the theft, of must be caused while the offender is committing the theft or is carrying away or attempting to carry away the property obtained by the theft. It does not mean that the assault or the hurt must be caused in the same transaction or in the same circumstances. A Bench of the Madras High Court in *Karuppa Gounden*[2] has held that "the

[1] (1941) Oudh 476 (HC, Oudh, India).

[2] (1917) Cri LJ 346.

word 'for that end' in section 390, Penal Code, cannot be read as meaning in those circumstances". It was held by the Lahore High Court in *Karmun*[3] that

"before a person can be convicted of robbery the prosecution must prove that hurt was caused in order to the committing of the theft or in carrying away or attempting to carry away the property obtained by the theft. The hurt contemplated must be a conscious and voluntarily act on the part of the thief for the purpose of overpowering resistance on the part of the victim, quite separate and distinct from the act of theft itself."

In the present case it cannot be contended with any show of reason that whatever injury was caused it was caused when the assault was made upon the stall manager and his servant with the primary object of enabling the accused to the committing of the theft. I am satisfied, therefore, that the assault or the beating had no relation whatever to the commission of the theft, although there is no doubt that the theft was committed at the same time or immediately afterwards. I am of the opinion that the accused are not guilty of an offence under section 394, Penal Code....

[3] (1934) Cri LJ 297.

Revisions partly allowed.

The essence of the robbery is that the offender, for the committing of theft or carrying away of or attempting to carry away of property obtained by theft, commits one or the other of the wrongful acts mention in section 390. Where a thief after abandoning the stolen property uses violence against his pursuers in order to avoid capture, the theft is not converted into robbery.

Cases.

*Nadarajah v Public Prosecutor.*[4]

Young J.: This is an appeal by Nadarajah against his conviction and sentence of 3 years imprisonment under sections 392 and 34 of the Penal Code for robbery. In the trial court below he was jointly charged with two others, but here we are concerned only with his appeal.

It is the prosecution case that the appellant stopped Subramaniam's motor car at the 2nd milestone of the Subang New Village- Klang Road and

[4] (1969) 1 MLJ 108.

obtained a free lift to Klang. It was alleged that when he was inside the car, he attempted to take away the switch key and when Subramaniam resisted, a struggle followed, in which the appellant joint by two others robbed Subramaniam of his wallet containing $300.00. All the three then drove away in the car.

In his defence the appellant denied robbery and alleged that he had called at Subramaniam's shop in Subang New Village. There, Subramaniam agreed to convey him in his private-taxi car to Port Sweetenham at a fare of $8. He alleged that when nearing the 2nd milestone, Subramaniam told him that the fare of $8 was only for the journey to Klang and that to Port Swettenham it would be $12. When appellant refused to agree Subramaniam stopped his car and requested him to pay $3 for the journey up to that point. The appellant alighted from the car without paying the $3. Subramaniam pulled him by the shirt and a fight ensued, in which Subramaniam who got the worse of the exchanges ran away.

The car without the switch key was later found by the police near the place of the alleged robbery.

The appellant has submitted a number of grounds of appeal, the important gist of which as outlined by his counsel was that the learned president in convicting the appellant had erred in law in requiring the appellant,

(a) to convince him of the truth of his defence

(b) and to proof his allegations.

The learned president in his grounds of judgment said that the defence given by the appellant was unconvincing and that his allegations of hiring the car at $8 and of having a fight over the fare were not proved, and that under the circumstances he was inclined to believe the case for the prosecution and he accordingly found the appellant guilty of the charge.

The learned deputy public prosecutor urged me with great persuasion to hold that, on the evidence the conviction against the appellant was correct and that the learned president had erred only in the wrong choice of words to support his judgment. I agree that accidental use or omission of a word or words may or may not amount to a misdirection depending on the

circumstances of the case. But where the trial court was clearly using the words to express its intention such use could not have been accidental.

The legal question which this court has now to decide is whether such words as used by the learned president amounted to a misdirection on the quantum of proof required of an accused person to rebut a prosecution case.

In *R. v. Schama & Abramovitch*[5] the court of Criminal Appeal, comprising such eminent judges as Lord Reading C.J., Bray J., Avory J., Lush J., and Atkin J. re-stated certain principles of the criminal law as follow:-

"Where the prisoner is charged with receiving recently stolen property and the prosecution has proved the possession by the prisoner, the jury should be told that they may, not that they must, in the absence of any reasonable explanation, find the prisoner guilty. But if an explanation is given which may be true, it is for the jury to say on the whole evidence whether the accused is guilty or not; that is to say, if the jury think that the explanation may reasonably be true, the prisoner is entitled to an acquittal,

[5] (1914) 11 Cr.App.Rep. 45,49.

because the prosecution has not discharge the onus of proof imposed upon it of satisfying the jury beyond reasonable doubt of the prisoner guilt. That onus never changes, it always rests on the prosecution. That is the law; The court is not pronouncing new law but is merely re-starting it, and it is hoped that this re-statement may be of assistant to those who preside at the trial of such cases."

These principles were followed and applied by Sir Samuel Thomas C.J. in a customs case of *Loh Chak Wan v. Public Prosecutor*[6], and by Horne J. in theft case of *Murugiah v. Public Prosecutor*[7] where he stated that:-

"It is not necessary for him (accused) to convince the magistrate of the truth of his explanation; it is sufficient if the explanation may reasonably be truth even if the magistrate is not convinced of its truth."

Then again in *Osman Khan v. Public Prosecutor*[8] where Russell J. said:-

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[6] (1939) MLJ 84.

[7] (1941) MLJ 17.

[8] (1948) MLJ 56.

"He (the district judge) seem to have been of the opinion that the same degree of proof rests upon the accused to proof his story and rested upon the prosecution, whereas when an explanation is given by an accused which is consistent with innocence, the court must consider whether it might reasonably be true although not convinced of its truth."

These principles, followed by the Malayan Courts for more than a quarter of a century were again re-affirmed in 1949 by the Court of Criminal Appeal comprising such experience judges as Murray-Aynsley C.J., Evens J. and Brown J. in a theft case in *Rajoo v. R.*[9] as follow:-

"We say that this direction (of the trial judge) was inadequate because it failed to explain to the jury that if they though that the appellant has given an explanation which might reasonable be true, even though they were not convinced of its truth, that would mean that the prosecution had, upon the whole of the case, left them in the state of doubt, and so had to failed to discharge their burden of proving the accused`s guilt."

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[9] (1949) MLJ 250.

In the instant case the learned president after holding that the appellant had not convinced him of the truth of his explanation, had failed to further consider whether it might reasonably be truth and probable, although not convinced of its truth. It is impossible to say with certainty that he would have convicted the appellant if he had not misdirected himself on the quantum of proof required on an accused person to rebut a prosecution case.

Under the circumstances the appeal is allowed and the conviction and sentence quashed.

Appeal allowed

*Girdari Lall and others v Public Prosecutor*[10]

McElwaine, C.J., S.S.-The appellant were convicted under section 392 of the Penal Code of robbing Chan Hock Seng of $80 in cash, and sentenced to eighteen months R.I.

There is a great deal in the case which is unsatisfactory. The robbery is alleged to have taken place at about 10 p.m. on 14th December. Chan

[10] (1946) 12 MLJ 87.

Hock Seng made no report until he was interviewed by a detective on the 19th. The detective got his information from one Haroun who professed to be an eye-witness but who did not attempt to render assistance to Chan.

The defence was that the complainant, the accused and others were gambling near a rubber estate, that Haroun kept watch for the police and that the complainant loss heavily. The informer Haroun was the moving spirit in the prosecution. He professed to be a reformed gambler with two or three convictions to his credit. After the alleged robbery he went into the second accused's barber shop where the first, second and third accused were present and a fourth man were acquitted. He had never been in that shop before, and was not in speaking term with the accused. Here Haroun professed to see the first accused order and pay for drinks, taking money from a square bag which was a dhoby receipt, and the second accused take out a roundbag from which dropped a pawn ticket which he had seen the complainant purchase earlier that evening, he said that though he had never spoken to the second accused the latter pressed a drink on him and told hi not to disclose the secret. Haroun was wrong in the amount on the pawn ticket and in the colour of the writing on the dhoby chit.

The complainant, another gambler with a conviction, knew the first accused. He picked out his photo from the police album, but at an identification parade did he not picked him out as one of the alleged robbers but categorically stated that he was not one of the robbers.

In the report which he was more or less compelled to make to make to the Police he said that apart from a Punjabi he did not know the nationality of his assailants, yet he identified the second accused. there were several other contradictions in his statement and his evidence and the amount he paid for the pawn ticket. His explanation of the discrepancy was contradicted by a Crown witness.

Two independent witness, Hendrick and Rodrigo, who live near where the defence said the gambling had taken place, saw three people running away, and also saw the complainant who told them that $80.00 had been taken by those people. Rodrigo said that complainant had been hammered and robbed of $70.00 and that he and Hendrick advised complainant (who said he did not want assistant) to report to the police but that he replied that

he did not like to go and make a report. On the other hand, however, the complainant then speaking to Tan Hock Hee merely mentioned that he "had lost his money."

Two boys who were called as Crown witnesses went back on their depositions swearing that Haroun had told them what to say. One of these boys said that he saw the accused and complainant gambling.

We entertain grave doubts whether the defence story is substantially true. The learned Judge thought that unquestionably there had been a robbery, but we cannot accept the view of the facts. It is also unfortunate that the police photograph of the first accused was produced and put in evidence. Although we were informed that the first accused had never been convicted, the photograph was bound to give a bad impression. It was mounted on a card with several other photos of Indian. It bore a police number and was a combined profile and full face photo. It was obviously a police record and putting it in evidence tantamount to saying that this man was of bad character. In *Lai Ah Kam v Regina*[11] the Colony Court of

[11] (1939) SSLR 216; 8 MLJ 306.

Criminal Appeal, following *R v Dwyer*[12] quashed a conviction because such a photograph as the present was shown to the jury. We see no objection to the utilization of such a photo by the police before the rest to assist them in ascertaining whom they should arrest, but the photograph should not be tendered in evidence by the prosecution. Of course, the police, in showing photographs, must do nothing to suggest that a particular photograph may be that of a wanted man.

The production of photograph in the present case would be apt to prejudice a jury and to embarrass a Judge, and where evidence pro and con of robbery is fairly evenly balanced, may easily have the effect of tipping the scale.

There probably was some scuffle over gaming in which the complainant lost his money, but it is very questionable whether the complainant ever regarded himself as having been robbed. He was forced to make a complaint to the police and there has been dragged reluctantly into the prosecution.

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[12] (1925) 2 KB 799.

Under all the circumstances we consider that it was unsafe to convict, and we quash the conviction.

Conviction quashed.

# CHAPTER II

## The English law of robbery.

### Definition of robbery under the English law.

Robbery under the English Law is defined in section 8(1) of the Theft Act;

"A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force."

Ingredients of robbery.

(a) "Steals".

A person is guilty of robbery only if he steals (or of an assault with intent to rob only if he intends to steal). So where D uses force or the threat of force in order to get from P property that he believes he is entitled to, he does not steal the property he obtains and the force or threat is not used in order to steal. It is therefore a misdirection to instruct a jury on a charge of robbery that D can rely on a belief that he was entitled to deprive P of the property only if he also believed that he was entitled to get the property in the way he did.[13]

Where D has used force on P in order to steal from him but has failed to make himself master of P's property, it may be a nice question whether D has committed a robbery or only an assault with intent to rob. This depends on whether D's acts have amounted to an appropriation. It was seen that the courts are not slow to find a complete appropriation. But in any case in

[13] G. Edward, *The Theft Acts 1968 and 1978*, London: Sweet & Maxwell Ltd. at page 79 (5th ed. 1986).