

THE PENAL CODE (AMENDMENT) ACT, 1947.

[BURMA ACT NO. XXXIII OF 1947.]

[1st August 1947.]

WHEREAS it is expedient to amend the Penal Code and the Code of Criminal Procedure in certain respects :—

AND WHEREAS by Proclamation, dated the tenth day of December, 1942, the Governor of Burma has assumed to himself all powers vested by or under the Government of Burma Act, 1935, in the Legislature or in either Chamber thereof ;

NOW, THEREFORE, in exercise of the said powers, it is hereby enacted by the Governor of Burma as follows :—

1. (1) This Act may be called the Penal Code (Amendment) Act, 1947.

(2) It shall come into force on the first day of August, 1947.

2. For section 299 of the Penal Code, hereinafter referred to as the said Code, the following section shall be substituted :—

“ 299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of culpable homicide not amounting to murder in any of the following cases :—

(A) If he, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident :

Provided—

*First*—that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person ;

*Secondly*—that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant ; and

*Thirdly*—that the provocation is not given by anything done in the lawful exercise of the right of private defence.

*Explanation* : Whether the provocation was grave and sudden enough to deprive the offender of the power of self-control is a question of fact.

(B) If he, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

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(C) If he, being a public servant or aiding a public servant for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of the duty of such public servant and without ill-will towards the person whose death is caused.

(D) If he acts without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel or unusual manner.

*Explanation* : It is immaterial in such cases which party offers the provocation or commits the first assault.

(E) If he causes the death of a person who is above the age of eighteen years and who suffers death or takes the risk of death with his own consent."

3. For section 300 of the said Code, the following section shall be substituted :—

" 300. Whoever, in the absence of any circumstance which makes the act one of culpable homicide not amounting to murder, causes death by doing an act with the intention of causing death, or with the intention of causing bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of murder."

4. After section 300 of the said Code, the following section shall be inserted :—

" 300A. In sections 299 and 300 :—

- (a) a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.
- (b) where death is caused by bodily injury, the offender's knowledge of the weakness or infirmity of the person on whom the bodily injury is inflicted is a relevant factor in proving the nature of his intention.
- (c) the offender's knowledge that an act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, is a relevant factor in proving the nature of his intention.
- (d) where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death although by resorting to proper remedies and skilful treatment the death might have been prevented.
- (e) the causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born."

5. For sections 302 and 303 of the said Code, the following section shall be substituted :—

“ 302. (1) Whoever commits murder—

- (a) being under sentence of transportation for life, or
- (b) with premeditation, or
- (c) in the course of committing any offence punishable under this Code with imprisonment for a term which may extend to seven years—

shall be punished with death, and shall also be liable to fine.

- (2) Whoever commits murder in any other case shall be punished with transportation for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

*Explanation* : Whether an act is premeditated is a question of fact.”

6. For section 304 of the said Code, the following section shall be substituted :—

“ 304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

7. For section 304A of the said Code, the following section shall be substituted :—

“ 304A. Whoever causes the death of any person by doing any rash or negligent act not punishable as culpable homicide or murder shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ; provided that, if the act is done with the knowledge that it is likely to cause death, the term of imprisonment may extend to ten years.”

8. For section 301 of the said Code, the following section shall be substituted :—

“ 301. If a person by doing any thing which he intends or knows to be likely to cause death commits an offence by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the offence committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

*Explanation* : In this section the word ‘Offence’ means an offence described in section 299 or section 300 or section 304A of the Penal Code.”

9. In sections 307 and 308 of the said Code, the words “ or knowledge ” shall be omitted.

10. For section 316 of the said Code, the following section shall be substituted :—

“ 316. Whoever without lawful excuse does any act knowing that he is likely to cause death to a pregnant woman,

and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

11. *For* sub-section (5) of section 367 of the Code of Criminal Procedure, the following sub-section *shall be substituted* :—

"(5) In trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury."