

THE CRIMINAL LAW (SECOND AMENDMENT) ACT, 1957. \*

[ACT No. LVI OF 1957.]

(The 21<sup>st</sup> October 1957)

It is hereby enacted as follows:—

1. This Act may be called the Criminal Law (Second Amendment) Act, 1957.

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

“299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such *Culpable homicide* bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

**Illustrations**

- (a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.
- (b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence ; but A has committed the offence of culpable homicide.
- (c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not

\* မြန်မာနိုင်ငံပြန်တမ်း၊ အပိုင်း - ၁၊ ၁၉၅၇ခုနှစ်၊ နိုဝင်ဘာလ (၉)ရက်၊ စာမျက်နှာ- ၃၀၈၉။

guilty of culpable homicide, as he did not intend to kill **B** or cause death by doing an act that he knew was likely to cause death.

*Explanation 1.-* 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.

*Explanation 2.-* 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.

*Explanation 3.-* 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."

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

"300. Except in the cases hereinafter excepted, culpable homicide  
*Murder.* is murder, if the act by which the death is caused is done with the intention of causing death, or -

*Secondly.-* if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -

*Thirdly -* if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

*Fourthly -* if the person committing the act knows that it is so imminently dangerous that it must in all probability cause

death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

#### Illustrations.

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.
- (c) A intentionally gives Z a sword-cut club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder although he may not have intended to cause Z's death.
- (d) A without any excuse fires a Loaded cannon into a crowd of persons and kills one of them. A is guilty of murder although he may not have had a premeditated design to kill any particular individual.

*Exception. 1-* Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the

*When culpable homicide is not murder*

person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

*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.

*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 prevent the offence from amounting to murder is a question of fact.

#### ***Illustrations.***

- (a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.
- (b) Y, gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.
- (c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

- (d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.
- (e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.
- (f) Z strikes B, B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

*Exception 2.*- Culpable homicide is not murder if the offender, 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.

***Illustration.***

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horse whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

*Exception 3.* - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting 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 his duty as such public servant and without ill-will towards the person whose death is caused.

*Exception 4* - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taking 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.

*Exception 5.* - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

***Illustration.***

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder."

4. Section 300A of the said Code *shall be deleted.*
5. For Section 301 of the said Code, the following section *shall be substituted* namely:—

“301. if a person, by doing anything which he intends or knows  
*Culpable homicide* to be likely to cause death, commits culpable homicide  
*by causing death of* by causing the death of any person whose death he  
*person other than* neither intends nor knows himself to be likely to cause,  
*person whose death* the culpable homicide committed by the offender  
*was intended.* 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.”

6. For Section 302 of the said Code. the following section *shall be substituted*, namely : —

“302. Whoever is guilty of murder shall be punished with death.”  
*Punishment for*  
*murder.*

7. For Section 304 of the said Code. the following *shall be substituted*, namely:—

“304. Whoever commits culpable homicide not amounting to  
*Punishment for cul-* murder shall be punished with transportation for life,  
*pable homicide of* or imprisonment of either description for a term  
*amounting to mur-* which may extend to ten years, and shall also be  
*der.* liable to fine, if the act by which the death is caused is done  
 with the intention of causing death, or of causing such bodily  
 injury as is likely to cause death;  
 or with imprisonment of either description for a term which may  
 extend to ten years, or with fine, or with both, if the act is  
 done with the knowledge that it is likely to cause death, but  
 without any intention to cause death or to cause such bodily  
 injury as is likely to cause death.”

8. In Sections 307 and 308 of the said Code, for the words “such intention”  
 the words “such intention or knowledge” *shall be substituted*.

9. For sub-section (2) of Section 167 of the Code of Criminal Procedure the following *shall be substituted*, namely :—

“(2) The Magistrate to whom the accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit. But the detention of such person shall not exceed in the whole 30 days where a person is accused of an offence punishable with rigorous imprisonment for a term of not less than seven years, and where a person is accused of an offence punishable with rigorous imprisonment for a term of less than seven years, the detention of such person shall not exceed 15 days in the whole. If such Magistrate has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, shall authorize detention in the custody of the police.”

10. For Section 252 of the Code of Criminal Procedure, the following *shall be substituted*, namely:—

“252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution, and the accused shall have the right to cross-examine the complainant (if any) and the witnesses produced in support of the prosecution:

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by the Court.



(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary, and the accused shall have the right to cross-examine such person summoned to give evidence for the prosecution.”

11. The Second Schedule to the Code of Criminal Procedure shall be amended wherever necessary in respect of Sections 384, 385, 386, 387, 388 and 389 of the said Code, contained therein, so as to conform to the entries specified in the following table:—

Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Penal Code.	By what Court triable.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
384	Extortion ... ..	May arrest without warrant.	Of Extortion. Warrant	Bailable	Not compoundable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session or Magistrate of the first or second class
385	Putting or attempting to put in fear of injury, in order to commit extortion	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 10 years, and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years, and fine.	Ditto
388.	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto	Ditto	Bailable	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto
	If the offence threatened be an unnatural offence.	Ditto	Ditto	Ditto	Ditto	Transportation for life ...	Ditto
389.	Putting a person in fear of accusation of offence punishable with death, transportation for life, or imprisonment for 10 years, in order to commit extortion.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, and fine.	Ditto
	If the offence be an unnatural offence.	Ditto	Ditto	Ditto	Ditto	Transportation for life ... ..	Ditto

၁၅၄

၁၉၅၇ ခုနှစ် အက်ဇူပေးများ

Signed by me in pursuance of the Constitution.

U WIN MAUNG,  
*President of the Union of Myanmar.*

Yangon, *the twenty-first day of October 1957.*

By order,  
PA SEIN.  
*President's Secretary.*