

Penal Code (Amendment) Bill

Bill No. 33/2012.

Read the first time on 15th October 2012.

A BILL

intituled

An Act to amend the Penal Code (Chapter 224 of the 2008 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Penal Code (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Repeal and re-enactment of section 302

2. Section 302 of the Penal Code is repealed and the following section substituted therefor:

“Punishment for murder

10 **302.**—(1) Whoever commits murder within the meaning of section 300(a) shall be punished with death.

(2) Whoever commits murder within the meaning of section 300(b), (c) or (d) shall be punished with death or imprisonment for life and shall, if he is not punished with death, also be liable to caning.”.

15 Repeal and re-enactment of section 304

3. Section 304 of the Penal Code is repealed and the following section substituted therefor:

“Punishment for culpable homicide not amounting to murder

20 **304.** Whoever commits culpable homicide not amounting to murder shall —

(a) if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, be punished with —

25 (i) imprisonment for life, and shall also be liable to caning; or

(ii) imprisonment for a term which may extend to 20 years, and shall also be liable to fine or to caning; or

30 (b) 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, be

punished with imprisonment for a term which may extend to 10 years, or with fine, or with caning, or with any combination of such punishments.”.

Savings and transitional provisions

4.—(1) Where on or after the appointed day, a person is convicted of murder under section 302 of the Penal Code committed before that day, the person shall — 5

(a) if the person is guilty of murder within the meaning of section 300(a) of the Penal Code, be punished with death; or

(b) if the person is guilty of murder within the meaning of section 300(b), (c) or (d) of the Penal Code, be punished with death or imprisonment for life and shall, if he is not punished with death, also be liable to caning. 10

(2) Where before the appointed day, a person is convicted of murder under section 302 of the Penal Code but is to be sentenced on or after that day, the following provisions shall apply: 15

(a) the person so convicted or the Public Prosecutor may apply to the High Court to hear further arguments or admit further evidence for the purpose only of determining the meaning of murder that the person is guilty of; 20

(b) the High Court —

(i) may, if an application under paragraph (a) is made, hear such further arguments or admit such further evidence, and thereafter restate or clarify the meaning of murder that the person is guilty of; or 25

(ii) shall, if no application is made under paragraph (a), at the time of sentencing, restate or clarify the meaning of murder that the person is guilty of; and

(c) the High Court shall —

(i) if the person is determined to be guilty of murder within the meaning of section 300(a) of the Penal Code, sentence him to death; or 30

- (ii) if the person is determined to be guilty of murder within the meaning of section 300(*b*), (*c*) or (*d*) of the Penal Code, sentence him to death or imprisonment for life and he shall, if he is not sentenced to death, also be liable to caning.

(3) Where before the appointed day, a person is convicted of and sentenced for murder under section 302 of the Penal Code and the time to lodge a notice of appeal as prescribed in Division 1 of Part XX of the Criminal Procedure Code (Cap. 68) is still current on that day, the following provisions shall apply:

(*a*) the person may not lodge an appeal against his conviction until after the High Court has affirmed the sentence of death imposed on him, or re-sentenced him, in accordance with paragraph (*d*);

(*b*) the person so convicted or the Public Prosecutor may apply to the High Court to hear further arguments or admit further evidence for the purpose only of determining the meaning of murder that the person is guilty of;

(*c*) the High Court —

(i) may, if an application under paragraph (*b*) is made, hear such further arguments or admit such further evidence, and thereafter restate or clarify the meaning of murder that the person is guilty of; or

(ii) shall, if no application is made under paragraph (*b*), at the time of the affirmation of the sentence or the re-sentencing, restate or clarify the meaning of murder that the person is guilty of;

(*d*) the High Court shall —

(i) if the person is determined to be guilty of murder within the meaning of section 300(*a*) of the Penal Code, affirm the sentence of death imposed on him; or

(ii) if the person is determined to be guilty of murder within the meaning of section 300(*b*), (*c*) or (*d*) of the Penal Code, re-sentence him to death or imprisonment

for life and he shall, if he is not re-sentenced to death, also be liable to be re-sentenced to caning;

- (e) the decision of the High Court in re-sentencing the person shall be deemed to be made in its original jurisdiction and an appeal may lie from such decision; 5
 - (f) the provisions of Division 1 of Part XX of the Criminal Procedure Code relating to appeals shall apply to any appeal against the judgment, sentence or order of the High Court for the offence of murder with the modification that any appeal must be lodged by the appellant with the Registrar of the Supreme Court within 14 days after the date of the affirmation of the sentence or the re-sentencing by the High Court; 10
 - (g) if the High Court affirms the sentence of death imposed on the person or re-sentences the person to death, the execution of the sentence of death must not be carried out until after the sentence is confirmed by the Court of Appeal pursuant to an appeal by the person or a petition for confirmation lodged by the Public Prosecutor; and 15
 - (h) section 313 of the Criminal Procedure Code shall apply in relation to any affirmation of the sentence of death or re-sentencing of a person to death as if the affirmation or re-sentencing were a sentence pronounced by the trial Judge. 20
- (4) Where on the appointed day, a person has been convicted of and sentenced for murder under section 302 of the Penal Code and the appeal which has been lodged in relation to that conviction is not yet heard, or has been heard but is not yet determined, the following provisions shall apply: 25
- (a) the appeal by the person against his conviction shall be deemed to be withdrawn;
 - (b) the person so convicted or the Public Prosecutor may apply to the High Court to hear further arguments or admit further evidence for the purpose only of determining the meaning of murder that the person is guilty of; 30

(c) the High Court —

(i) may, if an application under paragraph (b) is made, hear such further arguments or admit such further evidence, and thereafter restate or clarify the meaning of murder that the person is guilty of; or

(ii) shall, if no application is made under paragraph (b), at the time of the affirmation of the sentence or the re-sentencing, restate or clarify the meaning of murder that the person is guilty of;

(d) the High Court shall —

(i) if the person is determined to be guilty of murder within the meaning of section 300(a) of the Penal Code, affirm the sentence of death imposed on him; or

(ii) if the person is determined to be guilty of murder within the meaning of section 300(b), (c) or (d) of the Penal Code, re-sentence him to death or imprisonment for life and he shall, if he is not re-sentenced to death, also be liable to be re-sentenced to caning;

(e) the decision of the High Court in re-sentencing the person shall be deemed to be made in its original jurisdiction and an appeal may lie from such decision;

(f) the provisions of Division 1 of Part XX of the Criminal Procedure Code relating to appeals shall apply to any appeal against the judgment, sentence or order of the High Court for the offence of murder with the modification that any appeal must be lodged by the appellant with the Registrar of the Supreme Court within 14 days after the date of the affirmation of the sentence or the re-sentencing by the High Court;

(g) if the High Court affirms the sentence of death imposed on the person or re-sentences the person to death, the execution of the sentence of death must not be carried out until after the sentence is confirmed by the Court of Appeal pursuant to an appeal by the person or a petition for confirmation lodged by the Public Prosecutor; and

- (*h*) section 313 of the Criminal Procedure Code shall apply in relation to any affirmation of the sentence of death or re-sentencing of a person to death as if the affirmation or re-sentencing were a sentence pronounced by the trial Judge.
- (5) Where on the appointed day, the Court of Appeal has dismissed an appeal brought by a person for an offence of murder under section 302 of the Penal Code, the following provisions shall apply: 5
- (*a*) either the Public Prosecutor or the person may file a motion for re-sentencing with the Court of Appeal;
- (*b*) when a motion for re-sentencing has been filed, the person or the Public Prosecutor may also apply to the Court of Appeal to hear further arguments or admit further evidence for the purpose only of determining the meaning of murder that the person is guilty of; 10
- (*c*) if an application is made under paragraph (*b*), the Court of Appeal shall before dealing with the motion for re-sentencing — 15
- (*i*) either dismiss the application, or give directions for the hearing of further arguments or the admission of further evidence for the purpose only of determining the meaning of murder that the person is guilty of, including directions for the High Court to hear such further evidence and to transmit its findings to the Court of Appeal; and 20
- (*ii*) after dismissing the application or after its directions for hearing further arguments or the admission of further evidence have been complied with, clarify the meaning of murder that the person is guilty of; 25
- (*d*) if no application is made under paragraph (*b*), the Court of Appeal shall clarify the meaning of murder that the person is guilty of; 30
- (*e*) if the Court of Appeal clarifies under paragraph (*c*)(*ii*) or (*d*) that the person is guilty of murder within the meaning of section 300(*a*) of the Penal Code, it shall affirm the sentence of death imposed on the person; 35

(*f*) if the Court of Appeal clarifies under paragraph (*c*)(ii) or (*d*) that the person is guilty of murder within the meaning of section 300(*b*), (*c*) or (*d*) of the Penal Code, it shall remit the case back to the High Court for the person to be re-sentenced;

5 (*g*) when the case is remitted back to the High Court under paragraph (*f*), the High Court shall re-sentence the person to death or imprisonment for life and the person shall, if he is not re-sentenced to death, also be liable to be re-sentenced to caning;

10 (*h*) the provisions of Division 1 of Part XX of the Criminal Procedure Code relating to appeals shall apply to any appeal against the decision of the High Court under paragraph (*g*) with the modification that any appeal must be lodged by the appellant with the Registrar of the Supreme Court within
15 14 days after the date of the re-sentencing by the High Court;

(*i*) if the High Court re-sentences the person to death, the execution of the sentence of death must not be carried out until after the sentence is confirmed by the Court of Appeal pursuant to an appeal by the person or a petition for confirmation lodged by the Public Prosecutor; and
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(*j*) section 313(*e*) to (*p*) of the Criminal Procedure Code shall apply in relation to any affirmation of the sentence of death or confirmation of the sentence of death by the Court of Appeal.

(6) If —

25 (*a*) any Judge of the High Court, having heard the trial relating to an offence of murder, is unable for any reason to sentence, affirm the sentence or re-sentence a person under this section; or

30 (*b*) any Judge of Appeal, having heard an appeal relating to an offence of murder, is unable for any reason to affirm the sentence or remit the case back to the High Court under subsection (5),

any other Judge of the High Court or any other Judge of Appeal, respectively, may do so.

(7) In this section, any reference to section 302 of the Penal Code shall be read as a reference to section 302 of the Penal Code as in force immediately before the appointed day.

(8) For a period of 2 years after the appointed day, the Minister may, by regulations, prescribe such additional provisions of a savings or transitional nature consequent on the enactment of this Act as he may consider necessary or expedient.

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(9) In this section, “appointed day” means the date of commencement of the Penal Code (Amendment) Act 2012.

EXPLANATORY STATEMENT

This Bill seeks to amend the Penal Code (Cap. 224) to provide for either death or life imprisonment to be imposed (instead of the mandatory death penalty) if a person commits murder within the meaning of section 300(*b*), (*c*) or (*d*). The mandatory death penalty still applies to an offence of murder within the meaning of section 300(*a*).

Clause 1 relates to the short title and commencement.

Clause 2 repeals and re-enacts section 302 to provide for the punishment for murder. A person who commits murder within the meaning of section 300(*a*) will be punished with death. A person who commits murder within the meaning of section 300(*b*), (*c*) or (*d*) will be punished with death or imprisonment for life and, if he is not punished with death, will also be liable to caning.

Clause 3 repeals and re-enacts section 304 to provide for the punishment for culpable homicide not amounting to murder. Depending on the nature of the offence, different punishments apply.

Clause 4 relates to the savings and transitional provisions. A person who had already been convicted of murder under section 302 before the date of commencement of the Penal Code (Amendment) Act 2012, regardless of whether he had appealed against his conviction, or whether the Court of Appeal had heard the appeal, may apply to the High Court to hear further arguments or admit further evidence for the purpose only of determining the meaning of murder that he is guilty of. The High Court will, after hearing further arguments or admitting further evidence, or at the time of the sentencing of the person, restate or clarify the meaning of murder that the person is guilty of. In a case where the Court of Appeal had dismissed an appeal brought by a person for an offence of murder under section 302, either the Public Prosecutor or the person may file a motion for

re-sentencing with the Court of Appeal. The person may also apply to the Court of Appeal to hear further arguments or admit further evidence. The Court of Appeal must determine the application before dealing with the motion for re-sentencing. In determining the application, the Court of Appeal may either dismiss it or give directions for the hearing of the further arguments or the admission of further evidence, including directions for the High Court to hear such further evidence and to transmit its findings to the Court of Appeal.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
