Page 1:  
CONFIDENTIL waxy  
  
LAW COMMISSION OF INDIA  
  
THIRTY-FIFTH REPORT  
  
VOLUME I  
  
(CAPITAL PUNISHMENT)  
  
SEPTEMBER, 1967  
  
GOVERNMENT OF INDIA ® MINISTRY OF LAW  
  
  
Page 2:  
REPORT ON CAPITAL PUNISHMENT  
EXPLANATION OF ABBREVIATION  
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Capital Punishment (19451953)  
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APPENDIX I  
  
Quesrioniine 1ssueo By THE LAW COMMISSION Om  
Carteat, PUSISMMCENT  
  
1. Are you in favour of retention or abolition of capital  
‘punishment?  
  
‘2 (a) What, in your opinion, is the object of capital  
punishment? Does the existing law suficlently achieve  
that object?  
  
() Jn particular, do you think that the sentence of  
‘death acts Bs a deterrent?  
  
‘3. (a) Would you like to retain the sentence of death  
for all'or any of the offences under the Indian Penal Code  
Svhich ave at pretent punishable with death'?  
  
() Are thero any other offlences undor the Indian Penal  
‘Code of any other law which, In your ePinion, should be  
punishable with death?  
  
4. The relevant provisions in the Indian Penal Code  
‘vest in most cases a disereton in the court to award the  
Sentence "of death or the lesser sentence of imprisonment  
for life. Ie the vesting of such discretion necessary and  
{ve the provisions conferring such diseretion working  
Salisfactorliy? If not, have you any suggestions to make  
in this behalf  
  
5,1f the vesting of such discretion is necessary, what  
should be the consderations which should weigh with the  
court in ewarding the lesser punishment of Imprisonment  
for lite? ‘Ts 1 possible to codify auch considerations?  
  
6. (a) Te it possible to divide murders into different  
ltenng, or The putpce’ of regiating the punisinent  
  
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Page 7:  
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(b) Is it possible to divide murders into two cale-  
  
sgories--  
  
(@) murders punishable with death;  
  
(i) murders not punishable with death.  
1f so, what kinds of murders would you include in cate-  
gory’)? "  
  
7. (a) Are you in favour of the view that the normal  
sentence for murder should be imprisonment for life, but  
fevagarvating “crcunstances the court may ward the  
sentence of death?  
  
(b) Hf s0, what, in your opinion, should be th  
-vating circumstances?  
  
2, Stould there be s provision in the law requiring the  
court to slate {te reason for imposing a sentence of death  
OF the lesser punishment of imprisonment for life?  
  
8, Do you consider that even if the sentence of death  
js retained,» certain classes of persons should not be  
‘punished with death, eg, children below a particular age,  
Sremen, ete? What ‘lasses. of persons should, In’ yout  
‘opinion, be excluded from the sentence of death?  
  
10, At present the Supreme Court has limited jurisdic-  
tion when's High Court has passed, confirmed oF upheld in  
appeal 2 sentence of death (article 124 of the Constitution  
‘and section. 411A, Criminal Procedure Code). Are you  
{in favour of enlarging the rowers of the Supreme Court  
0 that an ‘halle to the Supreme Court as =  
Imatter of right in all cases in which a Sentence of death  
Hse een pated) or confimed. or upheld by the High  
  
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11, () Have you any sopgetions to make with res  
pct i the power ate Peso! ante Governor te  
rant pardon repiove, respite or remission tn repect,  
{he punishment of death oF to suspend, remit or commute  
Sistas oh ee were te Government step,  
i and tbe power st the Government tos  
  
‘emit or commute mich sentence under sections 401-402,  
Slimiel Procedure Cade?  
  
{2 What im your gvinion, shouldbe. the principles  
whieh should guide and’ the procedure which should be  
followed in the exercise of these powers?  
  
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nging. ave You any suggestions to make with respect  
{o'the manncr in whick a sentence ofdeathn \*~carFled  
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APPENDIX I  
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() showing ow the discretion regarding death  
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ry indicating the. suri of situation nd the  
numerous iramilances That have to be cnideted  
‘hile nwerding sentence; and  
  
(i) Socidentaly, showing certain other points  
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Dilip Singh S.C)  
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‘hut Jona Lao)  
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(Covinduwan (Mads).  
Ge Singh (Pana)  
Gonder Singh (Labs). .  
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‘Wom, nance Se)  
  
‘Womemantet by  
  
out  
  
Neamt).  
  
‘Crare Do (ee Pandy.  
Nirmal fbn (Cat)  
  
‘Su Delay  
  
Kacan Charan  
  
iene Tearancsee-Coshin)  
Maabi Singh (Ct)  
Kum (Sian  
  
= Kanae Singh (8.6)  
  
‘Mts Aug angen)  
  
+ Bose Ta (ea)  
  
Data Chindre (Ca)  
Js Ram om  
‘aca Sing (Pit)  
‘Ramat Singh (Pema).  
  
SSO).  
Tees trea  
  
‘Talon Lad Soe  
‘Asie Begum (Lah)  
  
Daa (Later).  
  
Josh Bom)  
Daan Later)  
  
Kura (SC)  
  
+ Sewage  
  
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Page 22:  
ase No. 1.  
Hache Singh ¥, State of Modinya Pradesh  
‘ALR, 1962 Supreme Court 159-—  
952 SCR, 528  
(Poa Avi, BLK, Mukherjea and Bose J.)  
  
(udgment by Bose 3)  
‘Tae gppeltant as convicted of the murdey of a small  
boy of Siyears and sentenced to death, On the facts, the  
Bek cehne Court alowed the appeal fled with special leave,  
Sub'Scguitted him of the charge of marder ana kidnap:  
fing. He was, however. convleted. of an offence, under  
POE a 201 following Bega w The King Emperor’, The  
EER pointed outs ihat where the murder commited is  
Serucufarly e cruel ond revolting one, itis necessary £2  
Perms de evidence with more than ordinary cart, lest  
fhe shocking ature. of the crime might prevent a dis-  
Dossionate judicial scrutiny of the tacts and law.  
  
Case No.2  
  
Kelowati v, State of Himachet Pro  
1989, SCR. HO ALR, 1953,  
  
SC. 151, 185  
(Petanjeli Sasi, C.J. Mukerjea, Chandrasekhara Alyer,  
Bove and Ghulam Hason 33.)  
‘uvdgment by Chandrasekhara Aiyar J).  
  
Sentence of desth was, im this case, replaced by the  
sentence of transportation of Life, having regard to. the  
Time that had elopsed since the offence. and to the fact  
{hot the probable motive was one of prevention of cruelty  
To's helpless women-to@ wile who. was ili-treated  
hhee husband. (m-this case. the fustant  
De the accused. The husband used to il-treat hie wife  
"he Sed murdered the hind fr protecting hee  
  
com thie eruelly  
  
3122 Law.  
  
  
Page 23:  
ase No. 5.  
Dolip Singh v. State of Punjab  
ALR. 1958 S.C. 264, 967, 368,  
1954 SCR 145  
(Mahajon, Bose, and Jagannadhadas 3.)  
(Gudgment by Bose J.)  
  
Desth Sentence should ordinarily be imposed for  
smirder” (Sceion 361°), Criminal Procedure’ Cede ag  
fot relerred to) But when the trial Judge has  
  
ihe leer up for sens whi oe such aes  
sical mind could properly” act cn them, the appellate  
our should noe interfere with the discretion.  
  
In the instant case, the Sessions Judge convicted the  
appellants under section 902, Indian Penal. Code and sea  
fenced them  
  
‘nd who took 2 lesser part. The ease was one In Which  
"a9, one has been convicted for his own act but is being  
held’ olcanously yesponsibte” The’ Punjab High Court  
enhanced the sentence to death. "The Supreme. Court  
held that the Sessions Judge had a discretion which had  
been judicially exercised. The discretion was hi, and ot  
the High Court’.  
  
Sentence reduced to transportation for life  
  
ase No,  
Nisa Stree v, State of Orissa  
ALR. 1954 S.C. 279, (Not in SCR)  
(Mahajan, SR, Des and Bhagwati JJ.)  
Gudgment by 8. R. Das J.)  
  
‘The accused, a woman of 20 years, was convicted of  
surder ‘on circumstantial evidence. On 'the date of ‘the  
‘eeurrence, about an hour before sunset, she was seen  
Proceeding with the deceased in the direction of the scene  
ff orcurrence. She came home Without the deceased in  
the ‘evening, in hurried steps, with her cloth lifted up.  
‘The cloth was found to be stained with human blood, and  
two ornaments of the deceased seen on the person of the  
<cceased when she Was going towards the scene of murder,  
‘were discovered at her instance from the thatch of her  
hhut “She was convicted of murder (and also under se  
  
1 Bor oe cases sesing dat tenemos i. maser of disaton, we  
  
BER tog Sas) HS SCR aah and Bed” al  
  
  
  
Page 24:  
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sion 979) and sentenced to death. The sentence was con-  
Bnwsed by the High Court, which, however, gave certificate  
for appeal! ander article 134 (1) (6).  
  
‘The Supreme Court held, that the circumstantial evl-  
dence in the cave was only” consistent. with guilt of the  
secused.  
  
‘The murder wes coldblooded snd cut of pure greed.  
onsen eked (Question of sentence ot pelicaly  
jealt th)  
  
() Mina = Boo, ALR. 198 Neg. 3 (030 39 Cob. og  
  
{Glee Baby fp ooh Sint Ser hed  
Re MAL Somtied murder gee dof er hha  
Bolsentens ‘corns  
  
Bag Mot 1900) LGR 31, AL, 0 g93. 498 Death  
0 ete Nova oe rr a ete Ses Tr names  
  
‘Shiveed BP Raha a" alse 75  
(li) fy rT ALR. 94% Mok 27 Buen and Mosk  
fifties FlasDesnmed Se  
foun te et  
  
Sas Sa er peeray act tine of ure,” a  
RE Seach Seiad 6 oS Des ater  
[BPRS Goverment to eosides  
  
‘Rae ha ha vet dented  
See Sit SE a ge Stes  
Shee ees  
  
aa ar ete ie orcas ote  
  
Sort bal ete eanaproton, Oe ate  
DhhneZlowst archive in he ecmstanes 0 he ce  
  
(> State V5 (woman pasoning husond setenced «0 dexth  
Mae TTR. La toad Rane  
  
(09 Bop = Jay LR. 39 A 16 Ras CF & SC Rr  
  
i) En Mf Har Par LTR, 1536 A 8.737. oman evel  
Eiminidlid! ie Wishing cate Seams  
  
  
Page 25:  
Case No. 5.  
Kutuhal v. State of Biker  
ALR. 1954, $C. 120 (Not reported in SCR)  
(SR. Das and Bhogwat JJ)  
(Gudgment by Bhagwat J.)  
  
‘The appellant was convicted of the murder of an old  
woman of 70 years. ‘The woman hed died as a result of  
hock caused By injuries on her chest, The circumstarices  
‘Were sich that the only reasonable inference was that the  
Injuries were caused by the appellant. ‘The appellant hed  
fn opportunity for the sme iad also strong motive to do  
way ‘with the old woman, "He wag in great hurry to  
Sremate the corpse and to dispose of the dead body.  
  
He was convicted under section $2, Indian Pensl Code  
and gentenced to death by the Seratons Judge. ‘The High  
Court dismissed his appeal and confirmed the sentence.  
Hlaving tegard to theer eixcumstances and to the fect thet  
{he appellent did ‘not eare to inform the relations of the  
Send woman, the Supremes Court upheld the convietion.  
(Sentence was iso upheld).  
  
‘Case No. 6  
  
Pran Das v. State  
ALR. 1954 S.C. 36 (Not in SCR)  
(Kania C. J, Fazl Ali, Patanjali Sastei, Mahajan, BK.  
Mulherjee and S. R. Das 3)  
(Gudgment by Fact Ali J)  
  
Tn thls cate which was beard by special eave om  
‘appeal. from the decision of the High Court at. Nogpur,  
the Supreme Court altered a conviction tinder section 802,  
Indian Panel Code into one under section 308, ‘This wag @  
fase of sudden. quarrel hetwoen the secused and the de-  
teased, which ensued in free fight between the two parties  
Sn which eoch party amsaulted the other with sticks  
fateused deeit’ dnl one blow on the deceased, which Te-  
fulted in his death..'The Sessions judge acquitted the  
SSccused," white the’ High Court on appeal convicted him  
‘under section 322, Indian Penal Code and sentenced him  
Wo" transportation for life  
  
‘On appeal. the Supreme Court held that this, was a  
case falling under the Fourth Exeeption to eection 200 and  
‘therefore, came within the Second Part of section 904 The  
Sceused had dealt only "one blow, and the High Courts  
fbeervation that i could not be sald that he hat not taken  
Under advantage of acted In a cruel manner was not Sip  
ported by the evidence.  
  
{Gentence altered to rigorous impronment for five  
years)  
  
  
  
Page 26:  
a  
  
Case No.3.  
Nevwab Singh v. State of UP.  
ALR. 1884, SC. 278 (Not im SCR)  
(@lahajas, B. K, Mukerjee and Jagannadhadas 33)  
Gadgment by Mukherjee 3.)  
  
‘Tis was a ease of eruel and premeditated murder for  
wich the appellant. ad bcen. sentenced to. death under  
ect 302." The Supeeme Court dissed. the appeal  
Be Noh apc eve“ repos the argument a te  
Appellant that good deal of tne. had lapsed since  
Gath sentence’ was imposed ehd-that it should be come  
nstea to one for transportation for life” the Supreme  
Gourt observed that Ht was true that in proper cases'an The  
Ordwate delay in the execution of the death sentence may  
be regarded as 4 ground for commuting it, but “we deste  
to point aut that this lo ne rule of law and ts a matter  
  
Primarily for consideration of the loeal Government. Tf  
The Court has to exercise "a dlscetion in such matters,  
the other facts of each case would have to be taken ints  
‘Consideration =  
  
{ln the case before the court, there wes no extenuating  
circimatances andthe murder’ wos regarded a0 rue  
4nd delderate one, and therefore the court aid not order  
ommutation)  
  
Case No.  
Sunder Lal v. State of Madhya Pradesh  
‘ALR, 1984 S. C28 (Not in SCR)  
(Mahajan ond Bhagawati J.)  
‘Gisdemens by" later).  
  
There was circumstantial evidence tothe effect that  
the arcs an ie ceed ere aen together aba prs  
ular time and that immediately after the murder  
Secu we oe B th oly and th sox ‘norms  
ing to. goldsmith with silver. ‘The silver was  
{atined as. habitually “worn by the\_ deceased. The  
Sessions Judge seguitied him of the offence under sec:  
tien 802, Indian Penal Code but convicted him under sec-  
ens 84 and 3 "Accused speed Goverment  
  
‘geinst tho sequital im respect of section 00,  
1nEsin Penal Cade” he High Court crtimed ihe eonvic:  
fica under section 394 and also convicted him under See-  
{4 308 tin ple of ection 343)" sentenced him "To  
  
to the Supreme Court, the conviction was  
wll’ var dismissed." (No' discussion as 2  
  
Case No. 9.  
Rishi Deo Pande v. State of UP,  
ALR 1055 S.C. 231. 335, paragraph 4 (Not in SCR)  
(SR. Das, Bhagwati and Imam J.)  
  
  
Page 27:  
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gy D1  
ra rt ne a yt  
mae Re ete ee i  
Slt eatie sane  
High Court e the conviction and sentenced  
sofia Maat Sona cra  
siete Sone ae  
Breeden paeceria a aa  
conan  
in boa  
odin dm tecatenoes  
eeepc: tern rest aer &  
irae th ares ieee fe  
ce te ale Mea at  
ee en nn oe  
  
ai AF ge  
  
Mera di ‘ed “pte ccoee  
So Sc eye  
> Sobers ie oe ey et ra  
SSS eters  
  
cpa be Mae rem eee  
2 See ase a  
  
  
  
Page 28:  
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Case No. UL.  
Sunder Singh ¥. State of UP.  
  
AIR. 1956 SC. 411 (Not in SCR)  
(Bhagwats, Venkatarame Ayer, Sinha JS.)  
‘(Gudgment by Sinha J.)  
  
‘The appellant waa in intimacy with the wife of the de-  
‘ceased and this was the mative for the crime, On the night of  
the goeurrence, the appellant and the deceased went out  
together, and snl. the appellant returned. Blood stained  
Imarks sere seen on appellant's soos during the invest  
ation, and he was vested. ‘Thereafter blood-stained  
‘lothes Were also discovered with him. A sword was re  
covered at the scene of offence at his instance, and there  
Sos other evidence also. He was convicted and sentenced  
to denth ‘The conietion was upheld by the Allahabad  
High Couct, whieh confirmed the sentence also,  
  
While discussing the appeal fled on certifleste granted  
by the High Court under article 134(1) (c), the Supreme  
  
bart vey wrongly eine the High Cort for grentng  
the certfeate. The High Court's order was described a5  
‘erroneous. There wos no substantial question of Taw oF  
principle involved ‘and ‘the High Court would not be  
Justine in granting, covieate, AVtetion of th, High  
Gourt'wos dawn i3 Ker Singh. State" and ‘Beladin  
  
Case No. 12.  
  
Bordev v. State of Peps  
ALR, 158 SC. 488 (958) SCR. 863.  
Ghagwats and Chandeasekhara Aiyas, 33)  
(Guudement by Chandrasekhara Aiyar 3.)  
  
‘The appellant, relied military Jamaadar was char  
seit iparder oe 'yone ty aged about 1 years.  
Rong. with othors want to attend 0 marriage in another  
‘ind ‘rent to the house of the brie to take the  
‘meal. Some persons hot settled down in. thele  
Toots Unde bad ot.” The appellant who” Was wory  
drank and intrested akod, the boy to stcp aside ttle  
So that he may occupy 1 convenient sea, bat the boy did  
hot move and the appellant whipped out a pistol and shot  
the Sainte abn he oy dag Bas Mound  
tioagh the appellant was undet the infuence of dink,  
hho ean nt eo much tinder the nonce that his mind was  
40 cbscured that there was incapacity in him to form the  
Sequied intention  
His drunkenness and absence of pre-meditation were  
taken by the Sassons into account regarding the sentence  
  
S480 ar—igss SCR ah  
Se Naini,  
  
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Page 29:  
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os ert sm of der ander can 9,  
  
‘apg ie FEU fe Cou wt pen  
ta, tne Sapte Court granted spcal eave, edo  
Sy Res eh att et a  
ECs Sere  
  
The Smet Gosh at we wag at  
Siete at en a cee  
2 hchchat oa ya eis cae he tee  
Surtees Wiehe aes Ae ane  
Spina noon ta ete oe  
RES ue tae Gee Sete hae  
BL te Si, Sn  
‘sentence are right.”  
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Pete cu Se  
rarer acral ee  
ARATE ee me  
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PtSi atti ptt ea  
guns ag mace cee Ey  
Bees mde ate a ae a  
  
he teal nhl he Sal Ce  
  
BCT ere teas ware  
Revo fie Ty Sil” Canal Bh” de  
rice ree toe  
Soaks Wad ee ace “SN  
SOU RS wetted Ps ty Op antler  
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‘7 Sufrne Cot aad she cision, and nl  
or Sea Sas Bol amt  
ganic" A Shee Pa ERR ce  
Licences celal he Samed pre ok  
fete tang wt nl easel Sap  
  
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Page 30:  
Ey  
  
(On the question of sentence the Supreme Court made  
the following observations while redueing it (0 teanspor  
tation of ite —  
  
We feel the lesser sentence is called for, because the  
slap on the face eviderily made the appellant who appears  
te'be a hot-blooded man tore. conirol of himself. Thet  
‘wo ‘nor affeed jostieation for kilteg an innocent By~  
Sanger who intervened with 3rd “admonition 10 the  
Sppellant's adversary to stop fighting. Dut we feel that  
enthe question of sentence thsis nat the type Of case in  
Sthich the death sentence le called for. ‘There was no pre~  
TReditetion and the knife was not ready in the hond "Wut  
“ras “drawn frem the waist after the appellant had. been  
slapped and the ‘gurrel between the Gowin-law) and  
fim bad Started”  
  
Case No. 14  
R. Venkaly v. State of Hyderabed  
AIR 1956 SC. 171  
(Bose, Jagenedhandas & Sinha J3.)  
(@udgment by Sinha 3.)  
  
‘The accused tet ne tothe cottage in which the \_do-  
gavel wer sleeing. "They alan took care tole the dor  
Frm tid ht avant sen ote at  
re bi, ant prevent illages fre bringing help to  
She" penton who wr being borat aves ene MP  
  
(There was a longstanding dispute about Tana).  
wore convicted under section 302, Indian Penal Code snd  
sentenced to death. The High Court confitmed the sen-  
lence.” On appeal "(by special Teave) to. the Supreme  
Court, the Supreme Court confirmed the conviction, and  
bserved as fellows:—  
  
“The, citcumslances disclosed inthe evidence  
bait tt cola tha the slnce woo conmied  
fer a pre-concerted plan 19 aet fre to. the colt  
‘after the man’ hod at usua} occupied the Hoot ahd  
fone to sleep. There is no dovbt.-. the charge of  
frurder has been brought home... ~~~ and thats in  
the’ circumstances there 4s no question bat that they  
Aeserve the extreme penalty of te Tew"  
  
  
  
Page 31:  
ase No. 15  
Wazir Singh v. State of Punjab  
ALR, 1956 SC. 154 (Not in SCR)  
(Bhagwati & Ayyar J)  
(Gudgment by Bhagwati J.)  
  
X and ¥ were charged under section 902 and 24 Indian  
Penal Code "with the murder of S. Both Were armed With  
Fifles and fad the common intention of killing #, but “the  
Shot fred by them st B resulted tn the death of S. Some of  
the injuries received by S were sufficient in the ordinary  
course of nature to cause death, but It was not established.  
Stich ‘ot the two sccused was responsible for those fatal  
  
Juries. The Sessions Judge convicted both "and. passed  
  
‘sentence of death, The High Court in the confirma:  
tion "proceedings confirmed the sentence of death on 3  
but’ reduced the sentence on ¥ to transportation for life.  
  
X appealed by special leave to the Supreme Court, the  
appeal Winged tothe qurtin of salons aig coe  
{ation of wat, that the common intention to kil) B  
{pul not, by section 301, be transfered to the murder by  
Bors) becaube there was at no tine any common inet  
tion to murder S.” Held, on the evidence on record. there  
Was “hothing which couid noctsarly led to the “conte  
sion that it's the appellant X who twas responsible for  
Inficing the fetal injurer om the deceased. It it wea  
<oubitul as to who out of the two responsible, there was  
fothing. to chonse between X and Y."It Y was ewarded  
the’ leer Senalty, there” wes. equally. good reason in  
favour of X also Further the set of the Appellant 3  
wot “cera fll wit ctl $20 Involing trae  
Portation for lie, "Under these crcumstances, there, wos  
Fo" justifeation for confirming the death sentence award:  
Gi te'X The High Court should not "ave distingushed  
the case of X. Conviction under section 202 read itt 3,  
confemed, but sentenae reduced to transportation for hie  
  
Case No, 158,  
  
Ram Chandra v. State of UP,  
ALR, 1067 S.C. 381,387, paragraph 6  
(Gagunnadhades, Imam and Govinda Menon 34.)  
(Gudgment by Jageonadhadae J.)  
  
In this case, there was no tangible evidence (rect or  
circumstantial) of the murder. The Supreme Gout Sager.  
“ies tr ha Ho conviction fora cence does  
  
atarly depend” upon the. corpus dele be  
found” “But, "on the evidence, the Supreme Court. gave  
the” beneBt of doubt fo the appellnte ss" rewards “the  
  
  
  
Page 32:  
citence of minder, an st aside the eouviton fo murder  
Sees, cet ath “contre by the High Court of  
‘taba  
  
‘The case was one of conspiracy fo extort Rs. 10000  
trom ene © by kidnapping and musdering bls son aged  
iSoue Ty years On the facts, the Supreme Court rexarded  
eae proved that the appellants bad iidnapped the boy.  
Findifge of the lower courts an offences under section.  
iddsapping) and section 306 (extortion), Indian Penal  
Sea ere mainteined and sentences on those counts con-  
Iemea.  
  
Case No. 16.  
Brij Bhuthan v. State of UP.  
ALR, 1957 SC. 474 (Not in SCR)  
  
(Gagannsdhadas, B. P, Sinha and Imem J3.)  
Gdaimeat by fan)  
  
“The Hh Cont mle upholding the canst, f the  
appellants under section 202 read with section 149,  
GhEcd'the sentence of death on soine of the “accused te  
traspartin for fle ut not reduce the sentence of  
Youu passed on appellant. P- Held, merely because  
fekendy was shown to some “appellants Was no growd  
Jor'redlctng the sentence "on Pshowe to be responsible  
for the killing.  
  
Case Ne. 11,  
Vedivelue Thevar v. State of Madras,  
ALR, 1057 SC. 6148 619, (Note in SCR)  
Jegannadhadas, Sinha and Gajendragsdkar, JJ.  
@udgment by Sinba J)  
  
‘This was a case of cold-blooded murder, for which  
  
‘the aceused had been sentenced to death by’ the sessions  
  
Court, Bast Tanjore, under section S02, Indian Penal Code  
  
Sind the sentence had becn confirmed by the High Court  
  
of Mais "he eceusedappeated othe Supreme Court  
special leave  
  
IK was the owner of a tea shop and at about 11-80 pm.  
white he was busy preparing tea for a customer, the two  
appellants rushed into the premises, They attacked KC  
ibd dragged hitn oUt of his shop to the road, and the frst  
‘appellant. gave him several blows In the front part of the  
chest with am “aruval” (cutting instrument about 2. feet  
Yong, Including the handle), KC fell down on his back and  
cried out for help. His wife tried to rescue him apd put  
hie besd into hee lap. Soon afterwards realising that K  
hhed died, both the appellants returned, Ks wile placed  
Ihie heed on the ground and went and sted on the stepg of  
  
  
  
Page 33:  
28  
  
the tea stall. The first, appellant made the body of K lie  
With ‘his face downwards and gave a number of cuts IR  
the head, the neck and the back” "These injuries were such  
‘10 catise sstantameous death,  
  
‘The Supreme Court, while dism’seng che appeal, after  
‘pontions of importance. First, it wae argued that the pro  
Poations of importance: Firs, it was argued that the pro-  
Secuton ease war based entirely on the evidence of one  
witness the wife of tne deceased, (the other witnesses  
being not reliable) end that conviction in a capital ‘case  
‘ould not be based on # single witness, "The court rejected  
this argument as totally untenable. It drew attention to  
Section Tat of the Bvidence Act, under which no particular  
fRomber of witnesses was requiged Jor proving any fact,  
‘As far back as 1872, 1 sad, the legislature, having con:  
‘dered the pros and cons, bad decided that it should not  
be" necessary for the proof or disproot of a fact to call  
particular number of witnesses,  
  
if the Legislature were to insist upon plurality of wite  
nests efits where the estimony offs tingle witness only  
‘ould be availabe in proof of tbe crime, would go tne  
Burned" the etimony of engl whoa found  
  
Tntirely Fehable, there is no legel impediment to. the  
conviction on such proof, Moreover, if coarts were, ines:  
ecto af the quality of the evidence of a single witaeo, to  
ist on plurality of witnesses, they would be indirectly  
touraging sabordination of witnesses im aituations where  
nig” one witness is available” ‘There might be exceptions  
to this cule for example, Jo cases of sexual offences ot of  
the “fesimony’ of an approver, But where there sre” m0  
Such Ckceptional reasons operating, becomes the dl  
ff the court to convict, If eis sxtshed that the testimony  
SF S single witaces is enzey reliable. ‘The court Rady  
this case, ne reason for not accepting the tertimany of the  
wete “ihe ie the only reliable evidence th apport  
the presceutiont  
  
On this point, ae sleo—  
  
41) Mohamed Supet v. The King.  
ALR 1046 PC. 3.  
  
(Appeal trom Somaliland, to which the Indian Evidence  
‘Actand the indian Onthe Act had been mate applicable.  
{thn cae, the conviction and-sestence of death fr  
murder of 9 halt-rother were ‘Gasworn evidence  
Of girl of 0 or 1) years wae held tobe admis. it  
wel Ht ft out a ue the nan idence Act  
Corroboration is not required by Hatute and oes only 10  
thee Un the Ian cea. there was Setoeraive  
  
if  
  
1. Sur porapaps 2 of he AR.  
  
  
Page 34:  
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(2) Vemireday, v, State of Hyderabad, 1956 SCR. 247,  
Sa EAL HISO SE. ssi, paseo 7 an pane 38  
paray  
  
(Obsersations to the effect that in the facts of the ease  
1: would be unsafe to hang four persons on the sole test=  
hon of dhebr boy. without coreaboration). ‘The dhobi  
Boye was not an abettor, he merely witnessed the crime  
Bal did not inform anybody’ on Account of the reign of  
terror that prevailed at that time.  
  
‘case No. 18.  
Kata v. State of UP.  
ALR. 1958 $C, 100= (1958) SCR. 187  
Gagenadhadas, Imam and Govinda Menon 33.)  
(Tudgment by Imam 3.)  
  
‘When D wes sleeping on 2 cot, the report, of shot  
fied woke up the people. They saw the appellant, rvnning  
owards the east. ‘accompanied by others. D died almost  
{nstantaneously at the result. of the injurles on his chest  
Shd'"stornach, from where belles were recovered at the  
tne af the postmortem examination. "Near D's cot, 2  
Eirtalge was found. The accused alto produced a plitel  
‘The fresorm expert depoced that he (Che expert) “had  
fred’ four tent cartedges from the pistol produced by  
the" accused, and found that the Individual characteristics  
Sie chamber impressed “upon the test cartridges and  
farnsn were lo present on the pepe vat tbe  
Cartsidge’ found near the cot of the deveased.  
  
Tze as evdence gf ve ae, (Qual  
svho should be the puardhan of one Ry and regarding cons:  
inn away the appelontove Rand ta bess  
soing on  
  
‘The appellant vos sentenced to death for murder of  
tne Heated "Appeal tothe High Court was dimisaed—  
Eppa ae sec eve fo appa othe Sopene  
  
‘The conviction was upheld by the Supreme Court, end  
appeal amis “(there iho discutson as to sentone)  
  
Case No, 18  
Mica Ji v, State of UP, ALR, 1998 Supreme Court  
s2=-1889 Supreme Court Journal S64 (1950) Supp.  
  
ASR. 962 (Imam, Das & Kapur JJ. Judgment by  
Kapur J)  
  
‘The appellants, 5 in number, went with the common  
‘object of petting foreble possesion of land which was) in  
  
  
  
Page 35:  
0  
  
sesion of the decessed. Appellant Mizai was armed  
Biihea lth isthe was artic wth aspen aed ofbers  
were armed with lets. When the complainants party  
Sere, tol that the ppeliante were cating the cof the  
Soimpltinents protented to. ‘the “appellant” “Beas  
father, whereupon the complainants Were threstened by  
Ee menberd of the aseuabs party that they would be  
Enished "if they oid not go. Then the father of sppellant  
Miah ested Singh oe and Mii ed the Bat  
elu of which "© was injured, fell down and led half  
‘in hour fnters All were convicted nder section 312 read  
‘with Section 48: and sentenced to imprisonment for ite  
‘at izes was sentenced to death." Appeated to the Sap”  
Teme Courts "The Supreme Court (agcussing tn detal  
$SScr\_ on sections 9¢ and 149) upheld the conviction. As  
tego The steer, the angment ot Mz was hat he  
Sifffot want to fie the pistol and ras hesitating to do so  
‘Sil he sear asked by his father, and thatthe Penalty” of  
Seath ‘should not have been imposed om him. "This was  
fepelied by the Supreme Court hzat fly shared the  
{Siomon cbject He alan carried the pistol from his house  
Sind must have been taken fo have carried it for’ Us  
it'and he did is i "Merely because a son ses 8 ps  
nd causes the deash of another atthe instance of his  
father je no mitigating circumstance which the Court  
‘Would take’ into consideration”  
  
Case No, 2.  
Mohan v. State of UP. ALR. 1960  
Supreme Court €59 (S. K Das, Sarkar and Hidaystullah)  
(Gudgment by Sarkar J.)  
(ot in SCR  
  
nce in the case shoved that the accused gave the  
eceased theve "peran” and within half an hoar the. de:  
‘eased became if end within two hours he died. It was  
liso proved that the food which the deceased had taken did  
‘hot contain Poison and that the deceased did not take any  
‘ther food apart from the “peras\*- Chemical examing-  
ton” showed that he. had ded of arsenie poisoning." (As  
reqards motive, suggestion wae that acetsed had’ ict  
Intimacy “with the wife of deceased). He Was convicted  
‘under 302 and sentenced to death.  
  
‘The igh Court confirmed the conviction. He  
appealed to Supreme Court with special leave,  
Court “dismissed the appeal. It pointed out that on there  
facts, the lower courts had found that arzenle was con:  
{ined in ‘the "peras”. ‘The Supreme Court saw no. ground  
Kerang Sacetion wo the ting, and the fing oe  
cevitably ‘conclusion that the appellant was in  
powession of arsenic before he gave the peras.  
  
  
  
Page 36:  
ase No. 21  
TE. Subba Rao, Raghuber Dayal and J. R, Mudhotiar  
Court 1787—(1962) 2 SCR. 395.  
1 Subba Rao, Rghubas Dayal and J.B, Mudholkar  
  
Judgment by Reghshar Dayal J)  
  
Appettant slg with 9 sumbor of other persons,  
sll cunt an companion out of,  
pace avout ponesion of lant The, de ete  
  
Pie ain appeliant’s pary. The deceased received  
  
ich ao ied Thurtcen, persons were ted but 12  
inluried or (as the evidenes id not prove the’ aso  
MeSoa doubt) apd 3 were convicted, One ‘contention  
boxers, foe eopellant was that snes 10 persons out of 13  
PUB Stguleas "the remaining > persons ‘could not  
bad een Sot una ful aceembly and the conwietion under  
SEQ Spo Oud Sr Indian Penal Code read with xeon  
Yilieae iigal. ‘This eontention "was repelled bythe  
Ropers Coury, hich na" down tha if the acta  
  
re of penfons im the appellant's party was nore  
TES GL RGig panty would constitute am unlawrl | as-  
Tenia, ‘Coen tndugh only 3 persons had een convicted.  
See of the serpsining persons would ony mean that  
SqpNachnot‘in the indent (Question of the sentence  
oP aicussed)  
Case No. 2  
KM, Nanorati v. State of Maharashtra.  
ALR. 1962 Supreme Court, 68 (Not n SCR)  
(S K\_ Das, K. Subbn Rao, and Reghubra Dayal J.)  
(Gudgment by K, Subba Reo J.)  
  
[A painber of points were Involved in tie cage, But for  
tne"bresumt purpose. the case is noted for Mts discussion of  
IRS Elgreddting to grave and sugden provocation consti-  
‘ied by tontentom of adultery by aie to er haba,  
he Bi pointed out, that words and gestures may al  
Tee cetaly circumstances cause grave and sudden pro>  
sneer in Tnaia, On the facts of te case, it was held,  
IESE Rough the confession Ey the wife of the accused of  
Wate Mndinacy with the deceased had caused momentary  
fos of selfcontc,. yet after this the eecused “drove, his  
‘eifeCand childrento'a cinema, feft them there, went {0  
  
eceased and shot him, Tnterval between the time of his  
Saving. fis house and the time for murder was § hours-—  
‘thie "for regaining sitcontra."Tlence the cane id  
Sor ‘tall within exception 1 to section 900 and the accused  
Stas ‘rightly convietad of murder. (The High Court had,  
Bitte “Wearing the teference made by the Sessions Judge  
  
  
Page 37:  
under section 307, Criminal Procedure Code convicted  
him of murder, and sentenced Im to imprisonment for  
life. Question of sentence was not discussed before the  
Supreme Court).  
  
Cane No. 28.  
Bonveri x. State of UP.  
ALR. 1962 $C. 1198 (Not in SCR)  
‘Raghubar Dayal  
Kopur and Sarkar Jd.)  
Guagment by Raghubor Dayal 3)  
  
[A number of points involving interpretation of sections  
54" and'298, Criminal Procedure. Code and section 272  
nd amentied secon $97 Criminal Procedure Code snd as  
to joint trials for offence under ection $02 and section 07,  
indian Benal Code "were decided ‘But for" the present  
rpote. the oint of importance is one of sentence on B.  
Bitte with s gun and Te armed wth an axe passed the  
field of LL asked B vthere he was ping He replied that  
the was going for shooting birds. 1, formed back. B. fired  
‘Seo shots tie who fel down and died Brand R thea  
ceded gouthwards and after. going about seven far-  
fomss met Bhagwan who questioned where he Was golng.  
ssid that he wes going to shoot crocoiles. Bhagwan  
ua that there weretno trosodiles and asked B to go back  
When Bhagwan turned South, B red a abot at hich Phas  
Wan sot down snd B again fred at hen and again Reed  
  
Sco) more shat Bhagwan died  
B was found guilty under section 302 Indian Penal Code  
for murders of Land of Bhagwan and eentenced to death  
{or bath the muitders. He ts abo” found guilty under  
fcetion 307 and. coneicted "end sentenced to'8 peat?  
  
orate imprisongvent. (Tig wac in respect of a  
heap! wolmurdratr ater the gts ba pe the  
ppelient).R was found guilty under section 302 read  
  
With section 34 and sentended (9 Ue imprisonment for the  
‘murder of Land of Bhagwan. He was also fotnd  
  
Under section 307 read seth section 34 and sentenced to  
"Years rigorous imprisonment.  
  
(There were points regarding irregularities, ete, not  
relevant for the present Purpose). lt-was urged on be:  
hit af 8, that the sentence Sf Gesth was to severe, as  
the shots at 1. were the result of the provocation const  
{uted “bv certain conversation with Bind there wat no  
Imotive for shooting at L. This argument was. repelled,  
frst, because the courts below had not beHeved Be ver”  
slon’ of the conversation and secondly, because the con  
‘versation even if believed was not euch as to provoke B to  
Sriow at twice “Furor, the wae no jstication. for  
  
ring at Bhagwan without provocation. Hence. sentence  
‘of death was ot reduced by the Supreme Court  
  
  
  
Page 38:  
‘As regards R, however, twas held that the evidence  
si ‘not prove the offence against him and that his running  
‘Sway feom the scene Was merely the result of his antici=  
‘ating popular reaction. He was acquitted,  
  
Case No. 26  
Tara Chand v. State of Maharashtra, AIR 1962, SC.  
10  
  
SCI-IT. (1982) 2 SCR. 75. (Qapur, Subba Reo,  
Hidayatullah, Shah and Raghubar Dayal JJ.)  
  
Majority judgment of Kapur, Subba Rao and Shah JJ  
held that a¢ both the trial court and the High Court had  
  
‘deceased, wife of the accused, had died as  
2 result of burns caused by fre cet to her clothes by the  
fccused who had sprinkled kerosene oil on her and this  
finding was supported by her dying’ declaration "against  
hich cogent reasons were iver, the concn based  
fn such evidence ay sustainable,  
  
‘The Sessions Judge had convicted the accused only of  
an offence onder section 30, Part fand sentenced him fo  
{hince year rigorous Imprisonment and a fine of Ra 109  
Gn appeal by the State the sccused wes sentenced by the  
Higa Court to death. The accused applied for eertiete  
{0 peal to the Supreme Court under article THQ)(a),  
butte certificate as reused and the Supreme Court gave  
special leave under article 196, Ultimately, however. Jn  
  
is care the majority of the court held thet the appellant  
wrasse oa Grice der ariel 14) eau  
Lince the appeliané had in the teal court been sequfted  
fhe offence under section 309 and convicted sine section  
304, Bare f the High Court's order the sequital  
Sind substfuting an acquittal under section S08 was one of  
fevessing an, onder of aequital Citing Kishen Singh ¥  
Emperor, AER ith, PO~234 5 Indian "Appeals 380,  
fhe court Held that scqulttal does not mean thet the teal  
‘ust have ended in the complete acquiial, and must  
Ite a cage aheze the accused is noqultted &f murder  
Dut convicted of'w leer offence  
  
‘According to the majority judgment the appeal failed  
andiete diced’ Queton af sentence was ota ach  
  
‘The minority —Raghubar Dayal and Hidayatullah $3.—  
‘was of the opinion that ft wag not satisfactorily proved:  
{that appeatiant committed the murder, and therefore allow  
fed the appeal.  
  
412 Law.  
  
  
  
Page 39:  
Ey  
  
Case No. 25  
  
Muniappon v, State of Madras, ALR, 1962, S.C. 1282—  
(sez) 8 SCH. 800. Kapur end Hiidayatullah 33.)  
  
(Gudgment by Hidaystullah J)  
  
After making « dying declaration which was complete  
in eft the deslacoat suddenly eoloped o that bi ham  
Iinpressian could not be affixed in his ite ime snd was  
{sien by tho Sub-Tospertor after his death on the slatement  
Sn recorded, "The court sbyerved that though the. Stbe  
Inspsstor should hac left the document agit was. yet he  
fe airy zotive i Taking he thm pres  
Mier death Tos dying declaration vas a complete state  
tent and soul be relied upon. In fact st needed no cone  
FeborationKhwchal Roo v. State of Dombay, 108, SER.  
ERATE 1968 SC. 22. There war in this ese,  
ther incriminating evidence also.” Convietion for murder  
wag spell "(Question of sentence was not dlcaed 98  
uch)  
  
Case No, 26  
  
Plare Dusadh v. Emperor, ALR. 1944, FC. 1, 4—1LR.  
  
28, Patna 159 1LK 1044 Nagpur 300—, 19448 FOR. OL  
  
(Spenz C.J, “Varsdachariar and Zafeulla “Khan 3)  
‘Uaudgment by the Chiet Justi  
  
“These appeals from judgments of diferent High Courts  
were heard ogether ab raising common question, of lw  
egarcing the special Criminal Court Ordinanen. FOr out  
upooe, th’ cate ln of interest only forthe observations  
Fegarding death sentence. in one of the appeals before the  
Eu, the death sentence had been imposed several monte  
‘go snd he appellants had been ying ever” since under  
{Preston ection day having bua ented Icgly  
{hetine taken in’ procostings reperding consttulonsley  
af the ardinance cfeating the courts, eto The Court  
Sheerved at it hd power to aubaivte less senienge  
sic here ad bee diate dey (aes which  
fame before If) even though the sentence when righ  
imposed was tight” But this was’. jurisdiction  
ny court should be slow to exercise, being a jurisdiction  
lowly entrenching on the powers ani duties of the execue  
tive. “Accordtogly, im case Noga, Al and 4, the court  
feted to reduce the sentences from desth the transportat  
lion, in view of the other “creumstances of those ars,  
(Bt he cosa had dat hath esaeg  
‘would give full consideration to the period that lapecd  
nd the mental suffering undergone by the convies)  
  
In case No, 47, the appellant was a. young man of  
twice Widowed, who had tlled his aust’ Gathers wit)  
  
  
  
Page 40:  
3%  
  
and who had, after being sentenced fo death. Lost his  
wed leis cuatting te exeeuton and wee now detained  
Bers lute Te cour reateed hs enenc (rage  
fisan tore on the ground thatthe appellant Probably  
Siifered from an wxbalenced mina.  
  
(Case Nos. 27 and 28.  
Rajagopalan v, Emperor, ALR 1, FC. 35, 98, 38  
‘ola, FCR, 160. (Spens CJ, Varadachariar and  
  
Zatculla Khan JI)  
  
“This eage gf mportanee for the proposition lid down  
(ey Zatealia Khan J. Specs C.J. Coneurting) that na  
oe eaten dom under section it read with ection 14,  
niin Ponal Code the sentence must in all. cases. be  
Nanaportation for the life could not be, accepted. ‘The  
(gosstlon of sentence ie 10 be decided on the facts of cach  
aise Ton, the. facts of the case, it was held that since  
Shere Wu been a fnding that the appellants were among  
the‘seven or eight porsons, who inficted large number of  
Injurien the sentence of death was appropriate.  
  
‘Varrdacharlor J. had, on the facts some diffeuity in  
sustining. the sentence of death on accused, No. 1, a8 he  
ihed'a doubt whether seeused No. 1, inflicted eny wound,  
But, since the question war bound up with inferences of  
fects with whieh "it was not the ordinary practice” of the  
Federal Court to interfere, and. since ie brother, judg  
‘Bought chat deo sentence was jet, he et  
matter there  
  
Cae No. 29  
Bheds, (1996), TLR. 19 All. 119  
  
Tt was held that Ht was not advissble to convict the  
accond soley gr the plea of gully bythe accused in, &  
foltal case, where there is shy doubt as to. whether the  
Sezoed fy"undersod the Testing an eet of the  
  
TNote:—Por other cages on this point, see the under-  
Mentioned decisions “of Bombay" and Madras  
‘The: Bombay case seviews the case Taw also, and  
holds that & plea of guilty can be accepted only,  
Sohen there are proper safeguards, which must  
inclode representation by counsel  
  
AbD, Raer Again. 0K. 4m, Noor ay Repos 25  
Ahh toe hem Ss Goel Ba So EP see tad Bean thabson  
  
2. Awe. (889) EER 9 Mads 61.  
  
  
  
Page 41:  
‘The Bombay, Special Bench of Abdul Kedar Allarakhis®  
is teresting, ‘The appellant had been convicted by Lokur  
Fenn pegial jury under section 902, Penal Code for the  
FAMIE?OBNE own daughter and only child—a git of about  
Ty yearsand found by unanimous verdict to be, guilty  
And Sentenced by the Judge to transportation for life.  
  
(On appest under section 411A, Criminal Procedure Code  
tec eialtion and sentence Ware set aside, and the ase  
bat to the next Seasons to be dealt with according to Taw  
Fen te ous for setting side the cunviclion. were these.  
‘Tho necused had” asked the committing Magistrate for  
Tegal sft, Buty at the opening of the Sessions, he was  
ip ed, wnt, comme fe srmi and  
Sheed io plead’ he aald that he was gully.” Tn tho  
tole fey. the Jute refered to he ples of gully,  
  
Beit th a (lone C35 ale, serv,  
‘Without proper safeguards, the ‘relly should not  
Te acogld “ene toga Eeah, ust include the  
Excassdl representation by counsel who must be in  
$Ssion to dower the questions of the Court with regard  
Tevet aun a ale lng and the  
‘consequences of his . port oF  
pedal evidence upon him).. Lacuna "in section 272  
Britta Procedce Code was alg polnted out by Sen J  
CoPRELdhvadaha 3, observing that Ht didnot cover 8  
aoe where the accused lye ora  
S30 GUNG convet hin fn exeretee of the discretion con-  
Fereel upon the Court under setion 2720)  
  
Case No. 20.  
Umi Kom Joyest (Bombay) (1911) Chandavarker and  
"Heaton J.  
  
‘A Warren woman who Killed another's child to get  
children ‘was sentenced t0 death.  
  
1, AM Kate lrgcn ALR. 1947 om. 345 (Stone Cy K  
na He DRS Bom a4 Gone Cho KG. Sen  
  
2, Pargranh 4 inthe AR.  
  
Paragraph 26d 3630 Ye [ALR disenng on ths, pe fom  
Pep Rae APR Mgt Cote wot RS Caos  
  
sae  
  
1, The wase congemacin, es  
eh ta, (pan p38 oe  
  
Bee  
  
  
Page 42:  
a  
  
Case No. 31  
  
Kali v. Emperor, ALR, 1925 All. 474(2)LLR. 48 All. M3  
(Staert 3)  
  
In this case, the Sessions Judge of Meerut requested  
‘the High Court to st aside the conviction recorded by his  
‘predecessor (and affirmed in sppeal by the High Court),  
Sn the ground that on certain material that had Since come  
UD the Knowledge of the Distriet Magistrate the conviction  
eas wrong. ‘This application ‘by the Sessions Judge for  
evi, it wa held cou not be emeraineg ‘The Dit  
Het Magistrate may, it was suggested, refer the matter to  
the Locel Government for exercising ite power under soe-  
‘ion 401 and 403, Criminal Procedure Code  
  
(The person concerned had been sentenced under see-  
ton 385, Tndion Penal Code fo 10 years rigorous imprison-  
rent for dacoity. After his conviction, one Te was arrest  
fed and Remade & confession regarding several dacalies  
Sncluding this ene, and sald that the convicted person Wat  
  
not in the gang at all)  
Case No 2  
Bandive v. Emperor, ALR. 1024, AN. 662, (Stuart and 8. M.  
  
Suletmen J.)  
  
In this case the appellant hd been found guilty by the  
Sevrons‘Sadge of moder under sscon 308 fadian nat  
Cie and sentenced to death, One Dy had been brutualy  
aha ih ne adele a ecg  
  
way alang the ground, leaving trnees of blood  
ragged by tho aucante wn they eed the Kolar  
iver, D hod never been sen since then ‘The stack wa  
‘committed af about midnight.  
  
‘The Hirh Court (on appeal) was unable to arrive at a  
conclusion that D was dead and therefore could not uphold  
the convetion for murder, but en the fs the eriine of 2  
stiompe to. murder under section S07 oat held 40 ave  
‘been domatted, andy therefore, the conviction was altered  
{0 one under that gection, and the appellant eentenced #9  
ansportation for fe  
  
Case No. 33  
  
Ghulom Jowat vy, Emperor ATR 1926 Lah. 271-1LR,  
Lah Ghadi tal CJ. & Jafar AW 3)  
  
(Gedgrent by Shad Lal C3.)  
‘A you git of 18 years marco to» boy of 18 years  
contre iinsy wl mae pete tod "Beet  
Ferson aed eove bith to eng de  
octal tok Same se stanfed ie che oa  
aad of Ture? nd wetted ts eet Tat  
  
  
  
Page 43:  
Life. Conviction and sentence were upheld, by the High  
Coxirt” But It made a recommendation to the Local Gow  
ferment to exercise its powers under sections 401 and 402,  
Criminal Procedure Code and commute the sentence to cne  
fof rigorous imprisonment for 3 Years.  
  
Case No. 34  
  
[MSt, Daulan v. Emperor, ALR. 1926, Lahore 144,  
(Scott Smith and Frorde 3)  
  
Sine hie ok ae a  
  
(On appeal, the High Court in view of the age and. the  
‘other artunstances, reduced it tg transportation tor life,  
‘and further recommended local Governinent to take action  
Under section 401, Criminal Procedure Code.  
  
Case No, 35.  
  
Ram, Nath v. Emperor, LLR. (1926) 1 Lucknow 327 —  
ATR 1920 (Sir Louis Stauart, Chief Judge, Oudh—294  
‘and Mohammed Razs J)  
  
{In this case, on Prag Gir (and others) had been attacked  
by some assailants at night With lathia, The dead badly o€  
Prag Gir had not been recovered, nor had he himself re  
tumed alive. “There was some.delay in. making of the  
complaint by those wo survived. The Sessions Judge had  
ound five persons guilty of the murder of Prog Gir, but  
refused t sentence them to death, giving this reasoa'—  
  
“T thin it i a legitimate reasons to say that when  
{im a case like this the dead body is not found, there is  
a reasonable care where’ sentence of transportation  
‘ay be awarded instead of the heavier sentence”  
  
‘The Chief Court “disassociated” itelf entirely from thie  
vyiew, and stated, that the question of sentence should be  
Getermined upon the gravity of the offence irrespective of  
the circumstances whether the tody or has ot bee dis-  
covered. A decision of the “Allahabad High Cour was  
explained as merely holding that death of the vietim must  
fe proved snd not ao holding that dead body must have  
  
ate TLR,  
aN ee  
  
  
  
Page 44:  
— Jn the fats, however, in view of the  
SENSU ine Calne the conviioh Was ebcrad)-  
  
NOTE: (a) To the same effect are the following cases  
  
() Bhagirath (1880), LR 3 AML 383, 384  
(Stesignt J).  
  
(2) Mayo Basuoa, (1950) 1 MLJ. 422—AIR,  
1950! Mad. 452,  
  
@) Bhairon Le, (1952) LR. 2 Raj 6@0—ALR,  
1063, Raj. 181  
  
(8) Munde ALR, 1091 Tah. 25,  
  
&) Jn. Regghav, Emperor, AIR. 1025, All 627,  
9, Mle ale Yet EA a Aah Te  
Sir Guimwod Mears Cana  
  
Lalit Mohan, Baner}t; J. held that the absence of the  
recovery af the dead body should not be taken into account  
‘a regards sentence, ifthe. court was ‘otherwise’ salsied  
‘about the guilt of the sowused, ana  
  
(©) Mukerji, 5. however, though upholding the eonvie-  
tog tinder section 202 road ‘with seetion 114, indies Penal  
Code expressed the view that the sentence sheutd be  
reduced to ‘transportation for life. He had no “reason:  
able™ doubt about the guilt of the accused, But in view:  
of the fact that the dead body hed not been recovered, he  
Inada doubt about the proper sentence. "There are degzees  
of doubt and there {sno harm in bsing cautious” ‘These  
Ear, ea doubt hich,” hough wan & Tenn  
edb)" might atl require thot ige be cautious in  
Basing the sentence. "There were cates where, ifthe Gead  
  
iy was not recovered or the facts were not clear, the  
lesser Sentence Wat given. He cited: —  
  
@) Queen v. Buddruddeen, 11 WR. (Cr) 20 (fsets  
ot given)  
  
(i) Queen Empress v. Gherya, LLR. (1888) Bom  
120 ha Sarine wed asad WF. hte ae es  
Sppeal from an qua, pussed'a entence 2 ane  
ovation because al thefts mere aot Seay  
  
i) Kashna (1004) Criminal Reference No. 7 of  
4804 (Bombay), (See Ratan Lal, 1961, page 778). fn  
this caso the accused had thrown a. gitl of lees than,  
{wo years into a canal, where the water was deep, and  
‘swollen by the monsoon. “The High Court held” him  
Eullty merely to attempt to commit murder  
  
  
Page 45:  
©  
  
(© For other cases on the point, see:—  
(@) Rajkumar Singh, ALR. 1928, Pat, 473;  
(i) Azam All, ATR. 1909 All T10.  
(il) Adu Shikdar, LEAR. 11 Cal, 685, 642, 644  
(2) For an Boglish detson, ee RV. Onuteeery  
(2088) 1 All Eng: Report, 247 (GCA) in which, a convic:  
tion for murder was upheld on other evidence, even though  
the desd body hed not been found  
(2) The celebrated New Zealand case of R. v, Harry  
(989) NZLR 11 (NZ. Court of appeal) also holds. that  
Giscovery of dead body is not essential  
  
Case No. 36  
  
ola Ram v. Emperor ALR. 1987 Lah. 6H4LLR.  
‘§ Lah. 694 (Zafar All and Tek Chand 3.)  
  
[Accused was convicted of murder. He was sufering  
fromm epileptic Pandy boca of that, wag lnble tolose  
sccm on ibe hen ovaries em  
Seced to transportation for le ‘Phe High Cart upheld  
Ee Sonyitn teen. fala made recommend  
tion ‘to the Slate Goverment for exercise of the pre  
$e St mercy under section 401 Cx Pe sd for "rubatan-  
{al reduction in the sentence.  
  
{Cites following cases where slmilar recommendation  
wat made  
  
Remean v, Emperr, (190) 99 PR 1918 Crt  
Cr Ld 7  
  
Lachman y. Emperor, ALR. 1824 AIL 4131LR.  
46 All: 265-4, v. Kedar, (1696) LLAR. 29 Cal, 604).  
  
Case No, 37  
Preman v. Emperor  
ALR. 1928, Lahore 93,  
  
(Ghadh Lal C. 5. and Addison J)  
  
In this caso the fatal attack was not premeditated and  
the ‘vietims "were injured in. the heat of pas  
  
inudden querrel, ‘There was, however, no fieht and the  
Fequlrements of exception 4 to section 300, Indian Penal  
Code had not been established. "A violent blow was de-  
fivered with a “dang” on the head and therefore the court  
‘observed, the assailant roust be deemed to have intended  
‘to cause bodily injury which be kpew was likely to cause  
Geath, Conviction ‘under section 02 Was upheld. but  
fentence Was Feduced from death to transportation for Ife.  
  
  
  
Page 46:  
a  
  
Case No. 38  
Harnamun v. Emperor  
ALR, 1928 Lab, 855  
(Shadi Lal C. J. and Coldstream 3.)  
(Wudgment by Shad Lal CJ.)  
  
‘The accused and one K killed one Narain Singh and bis  
‘wife while they were sleeping on the root.” K was attack  
Th. the ed’ adhe aan atten te  
wie tats hatchet in Mus land, Blood” stained clothes  
Grete also recovered from the sceused. Conviction under  
Xetion 362\_was upheld by the High Court,  
  
‘As regards sentence, the High Court noted thst on the  
fone hand, the accused was responsible directly for, the  
1d constructively for thet of the  
Furband and that the double murder was committed after  
Peemediistion and in cola blood. On the other hand, the  
Eteused wat a boy of 17 and, while youth alone was no  
Sntenueting ciseumstance, there was) the additional eit  
Eomnstance thet the accustd had no personal enmity with  
{he vicuns. and tras probably tool ia the hands of the  
Victims’ enemies Who had been sequitted by the Sessions  
Hi Hence he senteoce was reduced to transportation  
{for lite  
  
Case No. 39  
‘Shefi Khan v, Emperor  
ALR, 1929, Patna 161,~ TLR. § Patns 161,  
(Courtney—Terrell, C. J. and Macpherson 3.)  
‘udgment by the Chief Justice)  
  
In this ease, 18 persons were convicted by the Sessions  
Judge under section 302, Indian Penal Code for the murder  
ats onnable Mo ef them, were estenced eat  
Sha the remaining to transportation for 4  
Goze these "The socused who had been sentenced to death  
Wad long been suspected as dangerous criminals implicat-  
Basa VErious daceities and Tobberies, ‘There were come  
Dlaints of thefts ageinst them, and also e proceeding  
Rietion 110 Cr. Pe? pending against them. One prosccd-  
{ion ‘witnes in one of teae proendingsTodged a infor,  
‘mation at a police station, charging the appellants and  
Diher unknown persons with the theft of 6 bullocks, The  
FIR was recorded anda police party sent to the village  
Tor investigation, Thereafter, a party consisting of cons:  
‘{Ghte M (deceased) and anoiher constable, ete, was sent  
ASrarvest the appellants by the Sub-Inspeetor. ‘Tro hours  
  
T Todewent drogh sip ment Taian Fal One  
  
  
  
Page 47:  
the place, he heard an outery that the constables he had  
Sent had been beaten. He went to the spot and found the  
‘constable MM (Geceased) with his arm broken end bound  
{n'a sling, and the other constable had marks of Jathi  
Bota Sppeare tat conta A when he ied  
arrest appellants S and I wes resisted, and then about 14  
or 16 men including the appellants ran. up with lathis and  
Beat the "constables inficting the injuries. The Sub-  
Inspector, again, after recording the FLR, for this Incl  
Gent, went in the direction of the house of appellant S for  
Invetigating the matter of the theft the  
  
of perso  
Inspectors party. included the injured constable, MMT  
tied to remonstrate with the mob, but be was Immediaie-  
Bpirruck down by a ager, wound in te chest and Li  
the head, each of which wounds was  
‘ofa fatal character. ‘The attack by the mob still continue  
4,"and the: Sub-n hed to fre. ‘Three persons in  
‘he mob, RS. and J armed with spears, took refuge in a  
house, R. S Pid J. were arrested by force by the police.  
‘The  
  
High Court, while confirming. the conviction, re-  
fected the argument that Uose appellants who had been  
‘entenced to death should be  
  
had  
Gesirable that ¢ large number should undergo the death  
  
nalty, only ose who took the active part were selocted  
for deaih penalty, ‘The High Court rejected this a8 wn-  
sound. "In ts opinion prima fecie all the persons convict-  
thud sntnecl t denth peat, an way ony  
‘here special circumstances were shown tn favour of an  
odividusl that the court should sentence Bim to the lessee  
Penalty. "There were no. special circumstances in favour  
Br'the appellants who were sentenced to death. "In its  
opinion, RS. and J. armed with lethal weapons and (ake  
Sig's foremost place jn the assault should slo have been  
fentenced to death, but it was not the practice of the  
Goure, except in exireme caves, p enhance the sentence  
(Glence thelr sentence was not enhanced).  
  
Case No. 40  
Emp. v. Dukari Chandra Karmaker,  
ALR. 1830 Caloutta, 198, 38 CW. No, 1226  
(C. C. Ghose J. on difference of opinion between Cuming J.  
‘and 8. Ghose 3) a  
  
Accused was ‘with murdering his wife, ‘The  
wite wag staying with her father, and apparently there  
  
  
Page 48:  
2  
  
was st the time of marrige some arrangement thet acus-  
Bi uid clip’ Shih te tbershsow "Cen gharsomal),  
ne accused way not amshed wth this eeangement ao  
BERENS het e Sema th be  
Tethers though she aid g9 thet husbands house from  
time to time Relaone\*between the acctsed "andthe  
ellerin-nw were not cordial “On the day of occurence,  
fhe eccuzed went to his father-in-law’ house and stayed  
hee fore day and alo on the nextday. Next day” even  
Ing he went out returned at night and. after taking” his  
Ital retired {othe upper room, where bis Wife joined im;  
Sid the door way bolted, "Next morning the aunt of the  
  
fe seing that the wie aid ot come’ downy wet Ue  
Zaiis0eal her. “On pushing the dooe, she “icund. the  
sie dend in a pool of blood: with a-numiber of wounds,  
JFhe secu at got there “He resaned teconding for  
Ex weeks and surrendered himself after = proclamation  
Was Tusa and is property attached  
  
(On these fects, in the Sessions Court, five members of  
the Jury. found him not guilty and. the remaining Tour  
found him guilty. ‘The Séssiong dudge relerred the case  
to the High Court under section 307, Criminal. Procedure  
Code Hoth the Judges hearing the feference In the Tigh  
oui agreed about the guile of the accused; but there was  
Gifferenge of opinion ‘about the sentence. Cuming J.  
observing that If was\_a cruel and brutal murder perpe  
{rated apparently “wihout potve on a defence it  
In her sleep, thought that there was no ground for ot  
ving i the sentence of death, "Quoting section 30213)  
  
Himinal Procedure Code (as it stood then), he observed: —  
  
“te is clear that the sentence of death has been  
considered as the normal sentence and the sentence of  
Eransportation for’ life a0 the sbeormal sentence 1oF  
‘which reasons are required to be given.”  
  
SK. Ghose 32 regarded the sentence of tenaportation  
for life as suficlent ust, he. pointed out, the murder  
War committed fn s ft of desparate resentment in elreum=  
Hance for which the accused was not entirely to be blam-  
fed. Secondly. the accused had borne a) uniformly good  
‘character, had been good towards his wite's relations and  
hot outwardly quarrelsome, ‘Thirdly. his last visit was  
‘one of many that had ended in failure. Fourthly, It We  
{found that the wespon had not been taken by the aceused,  
Dut was already there in the room, being a sacrificial knife  
  
1 The idpmenot SK, Oder I x eared amin by Oe  
etd PP EEN SETS CH Mr wee  
  
  
Page 49:  
kept tn the room. (The fatherinlaw of the accused was  
{professional anerficer, who kept the knife there to avoid  
ite aoe by ebildren) ‘the provision in the Gryminal Pros  
  
nde, section 387, was regarded ty SK" Ghose J.  
i rong of procedure ony tai ot take eway ie  
pent futed the crime, "Renwood for death sentence, iw  
{Tue, wese not requlted to'be sated by any express prov  
sion'In section 967, sbut these reasons mist exist inthe  
‘ind of the Judge’ It's unthinkable that the Sudge will  
pass a sentence ef death jm preference to the alternative  
Fentece without good and mificient reasons  
  
‘The matter was referred to C. C. Ghose J. owing to  
this diference of opinion. C.'C. Ghose J. agreed with  
'S.K Ghose J that the facts of the case justified the lesser  
Sentence, because the accused committed the murder in  
the It of desperate resentment, and Was a mere lad of 20  
  
ars. ‘Moreover, his repeated visits had ened in fallure  
  
8 question of appraising the sentence to be passed on  
prisoner Is at all times @ dificult one, But T think in  
Ea cae would not be rning the language of sc.  
‘on 367 if T were to hold that the prisoner” should "be  
Sentenced to transportation for life” (Apparently, he  
greed with SK Ghose J. on the interpretation of sec-  
tion 367 Criminal Procedure Code also, though the point  
48 not discussed in bis judgment)  
  
Case No. 41  
Emperor v. Bhagwan Din  
  
ATR, 1981, Oudh, 892)  
  
(Reza and Pullen J3.)  
  
Accused was found guilty of murdering a small boy of  
tix: for hie ornamente He was sentenced to trnoporla-  
‘don for life, For imposing’ the. lesser sentence,  
  
Sesuans Jie had ven fre reuse) the bead  
seas a you ‘ay stil  
there’ Was to premeditation, ‘The Local Government ‘apr  
  
iid revi ahancement. The Chiet Court  
Fea the pe ot the setae ae easing conviction,  
‘The cher Gourt upaela the convicton.  
  
‘gn mentees, be Chet our cere ht there i  
  
no Ia whieh jie out fn nt Fsng 2  
BF dent ‘on any person merely because Is Soung, All  
wo" ean" understand the pate of Syste oe  
  
{Eabte to the extreme penalty of the nw. Youth mut  
{aren into consideration where the sceused fe notable £0  
Upecrstand the nature of hs act Gr acts under the influence  
wotkers.| ‘But ths was) detberete wurder for" greed,  
Next. the consideration that the accused may still reform  
  
  
  
Page 50:  
“6  
  
wehoutd be excluded entirely, im all questions where.  
Capital sentence con beTnficted. It is not for the legis  
  
ire to reform murderers”. The sentence of death Was  
Primarily = deterrent one. The lesser sentence Was im  
Fst ber sme extenuating ceeuranes was ers nd  
Rois mot necessary in the interest of the public at large  
that the sentence of death should be inficted, The  
tentence was enhanced to death  
  
Case No. 42  
  
‘Tit v. Emperor  
ALR, 1081, Rangoon 171  
(Maung Ba and Dunkley JS)  
  
‘Youth alone ie not an extenusting circumstance, but it  
‘con be taken into consideration with other facts,  
  
the case under discussion a young man, probably  
ander th ind ben gentened tenth or mandy of he  
‘un ncle because of some dispute regarding flow of water  
fra channel, The injury was an. inelsed wound, cutting  
Bake‘ through the spine, The High Court dismiased the  
Lol the accused agsinst the conviction, and regarded  
  
ee oe a “Euuper oe ths war a cold todd  
‘Sn ‘premeditated murder ata time when the deceased  
ios Pencetully engaged in hie plough and was unarmed.  
  
Case No. 4  
  
‘Aang Hla x, Brperor. ALR. 1991, Rangoon 205—LLR:  
O'Ringoon 404 (Special Bench), "(Page Cl. mya Bond  
Baguley J.)  
  
Gudgment by page CI)  
  
fn this case, 100 persons in all were charged under see  
tion Ist Tndien Penal Code (Wwaping war against the King)  
Brahe, Te were sentenced to death, 56 fo transportation  
for life discharged: 24 acquitted and there were found 0  
Ai sbeconded. Persons sentenced to death or transporta-  
tion for life appested to the High Court, and the High  
Geet alzo served notices ageinst 22 of the accused  
  
Giktinctanent of thelr sentence of transportation to death,  
‘itimately, the High Court confirmed the conviction of  
Tavera! persons and enhanced the sentences of 8 persons  
Ie'Gressot the iravity of the offence under section 121  
Tescelbing it as the most grievous offence that can be com,  
etted against the State, and said, that rebels who waged  
Bae sbete quilty of the mast etnous of all crimes. ‘The  
Jadement also contained a lengthy discussion of the mean-  
Sng’ of section 39. Evidence Act, (Waging war in this  
‘ake won comtituted by. deliberate attack on the armed  
  
fo prevent ‘collestion of taxes).  
  
  
  
Page 51:  
6  
‘Case No.  
Gul v, Emperor, ALR, 1882, Lahore 483. (Agha Haidra J.)  
  
“This was a case of rape of a young gil, discussed here  
to show the tnusual Geeunstantes is hich It was com  
Initte, The gist aged 18 or 17 Years had gone to the ails  
{or cating grass with her sister and other young children  
St about “rotiwels” (between 10 and 11 In the morning)  
Ai dnd" (accused) met them. "Both were armed witha  
gun, and sis carried s big daguer. ‘They got hold of the  
ill ‘ond dragged her to the hill On her ofering sesist~  
Ene, At truck her several Umes withthe batted and of  
the gun. ‘The accompanying three children coud offer no  
Tesience and returned to the tae eared  
‘ome, the git hed slnesdy heen Taped by rently,  
{ute She was allied Yo have been raped by" A sso,  
  
“The teying Magistrate. (empowered under section, 20  
Criminal Presedure Cate) Sind sentonced both Mand A  
fo three Years rigorous Imprisonment under section 968,  
find av regards the offence under sation 816 Indian Penal  
Code was sentenced a three years’ and A to one year’s  
SSgorour imprisonment. "The sentences ‘were to Tun cone  
seeuively.  
  
“The High Court, while dismissing their appeal, enbanc,  
the samtence of M uncer section 316 from three year  
to dve sears. m view ofthe circumstances of the cage and  
In slowof the fact thatthe accused were armed seth dead  
1y weapons and by a show of brute force they overwwed  
the children and ragged away the girl at the point of he  
fun, god committed rape.” (A was goqultted of rape, as his  
Bort in relation to at effence way not very clear),  
  
Cate No. 5  
awed v. Emperor, ALR, 1992 Lahore, 308  
‘Gheat Lal CI. Abaut Qadir 3)  
(Gudgment by Abdul Qudir J)  
  
‘This woe 4 case of marder committed by youth of  
tender age; who was provoked by the conde 3 the dee  
‘eased in having sexual intercourte with 2 relative of the  
fecuned in am open manner three days before the murder  
{Gaze Was recommended for exercise by the local Govern:  
iment of ite prerogative of mercy.  
  
(ge of the Youth was taken to be 15 ot 16 years).  
Cave No. 46  
  
Kartar Singh v. Emperor, AIR. 182 Lahore 259, 260.  
"0" “erek Chand & Sat Lal 33)  
Guudgment by Tekchand 3.)  
  
‘This was 2 case of young boy of 17 years participating  
  
‘in murder under the influence of his fethet and elder  
  
  
  
Page 52:  
a  
  
bother, He wat sentenced to transportation for life by  
‘he Ssislona Jedge. High Court agreed, and also recom  
ended to Local Government to reduce It under section,  
401 Criminal Prooedire Code to four yeors! rigorous  
imprisoninent,  
  
Case No. A ©  
  
‘Mt, Dhulan v. Emperor, ALLR. 1984 Lahore 31.  
‘Gal Lat and Bide 93.)  
  
Gudgment by Jat Lat J)  
  
‘A woman of 20 years and weak intellect was turned out  
bby her husband op sccount af her weak intellect and Ted  
roaming life. She became pregnant and was turned out  
by the relations. ‘She gave Birth to a child, Owing 0  
Poverty ‘and ill-treatment by the relations, she threw the  
Finiaa “Girl of IT daye—in a pond. She was sentenced  
{a transportation for ife by the Sessions Judge  
  
"The sentence wes afiemed by the High Court, But in  
view of the cireumstnces, recommendations was made by  
the High Court to the Locel Goverament for reducing the  
sentence to one one Yeer's rigorous imprisonment under  
Section 401, Criminal Brocedure Code,  
  
Case No. 48  
  
Keim  
ALR. 108, Sind 44, 46  
(Perzers 3. C. and Dadibn C. Mehta A.C)  
twas held that the Beluchl custom of killing. for  
senchastty Is not a miigating elreumsiance,  
Case No, 9  
Emp. v. Mominudali Sardar  
ALR. 1935. Co. 01,804,508  
‘Patterson and Curie 73.)  
(Gudgment by both)  
Penitance of the accused fe not a ground for imposing  
the Teaver penalty "(Nor is the fat hat accused eth  
  
fniy son of his wowed smother, But penitence can pers  
fiope he taken into account by the local Government  
  
(Gentence was, however, reduced in this cae on other  
sgrounde~that of provecation and the age of the accused,  
‘Sho was 22'or 29 year)  
  
Wingogh fine ALC =  
  
  
  
Page 53:  
Case No, 488  
Emp. v. Nirmal Jiban  
ALR, 1995, Cal, $13, 525, 526  
(Costello, Bartley and Henderson JJ.)  
  
in thie case, the High Court confirmed the sentences of  
death on Ones persone=tervorint convicted of by the Comm  
fmusioners (Special Tribunal) appointed under twe Bengal  
Criminal Law Amendment Act, 1025 of the. murder of  
Mr Burge, District Megisse, Midnapur. "The Commis-  
Soners, while noting their vevireme 3oUtH" (exact age  
fe ton in jen had so gard tat th ject  
of ete ates was “dendo® ane The’ High Court  
‘greed and stated that if the aocused hed shown that they  
‘were innreaonabe youths dominated by” others ah hod  
fopromed pegrel extnuating circumstances might hae  
Bela pleaded. Het that was not the case here  
  
Case No. 50  
  
Rangappe Gounden  
(1885), LR $9 Madras 249  
  
It was held that consent or admiction by the Advocate  
‘of the" accused to\dispense with the medical witness in @  
Iurder cate cannot relee the progcution of proving the  
hhatuze of the injuries and te fact that they caused death.  
{It eas also hold im this case that a post mortem report is  
‘np evidence and can only be Goud to retresh the INemOry.  
  
(of the person who prepared it)  
  
(Case No. 51  
Tn re Rangappa Goundan  
  
ALR, 1995 Lahore 397  
(Comish and K. S. Menon 33)  
(Gudgment by Cornish J.)  
TLR 16 Lahore 1137,  
‘Young C.F. and Abdul Rashid J.  
Gudgment by the Chief Justice)  
  
In this case the High Court enhanced the sentence of  
transportation for fife fo death in the case of Al the tee  
fecused,, The facts of the ease were, chat tho Thres accu:  
ef'murdered one P who was ocling az a lambasdar and  
‘who used fo asi the poice in crimfnal matters He used  
elev inrmatin he paige eerie ines Se  
mi {wo of the accused ‘Somedays before the  
purer rcntion, on othe aed tla Ft, he  
  
[Bring information to the pote, tailing bleh  
Somethingwbuld happen fo nine ‘Phereair) Pan hie  
hophew were atackod by the three accused Who had hide  
den themelves to wait for Pa arrival 18 Injuries were  
  
  
  
Page 54:  
2”  
  
faflicted on, P, out of which 10 were on the head. The  
USing Judge awarded the lesser sentence on the sr0URd  
Seat i could hot be said which of the accused guve a fatal  
Blew  
  
"The High Court rejected this approach. The mere fact  
st wns imposible to fay who aclally inflicted the fatal  
‘found wae mot a censon for Tester punishment when the  
Court was satissed that there wa a common Intention to  
Sunder, Brotally eared ext apd tht all persons took part  
Inte Beating toe result of which wan death Th this ease  
there wore ne less han 10 wounds on the head ghd pro-  
Wibly “ich Of the accused gave a biow on the heed; the  
aly offer alternative was that ‘while only” one accused  
Sint beating the head, the others were giving blows on the  
Bdyi"it ebuld make no difference i elther of these alters  
elles was ine fat” Hence the senteness were enbanced  
  
Case No. 52.  
  
Bap v Bmp.  
A rr  
Yoong. and ore 3)  
Compas by Mane  
Ai onan yew pr mare  
eo Beh set ar wee eh eh  
EP aieer Ae Rednte Se  
ieee Sic te el  
oe at  
Tie pr Crt, whe cng th, svn, be  
gat MP Saati Sema eta  
SST tae ot Sete eae  
He MLE Pia cecaen a yes  
Hesse ty td ey eed bye  
Sele RSA ee ae See  
EG dete oe et of Stern  
LALSNITLS Siam cate OE  
ue 38  
  
Infanticide by young mother (ot her own son)  
ME. Telian v. Emperor.  
ALR, 1938 Lahore 473 OB)  
(Young C3. and Monroe 3.)  
Judgment by Young CJ)  
  
[Need for lenient view was stressed on the ground that  
childsbirth ‘occasionally produced peculiar reastion. Sen-  
{nce of transportation for life upheld, but Government  
Was requested to reduce it to short period.  
  
5-122 M of Law,  
  
  
  
Page 55:  
0  
  
‘case No,  
  
Mahobir Singh v. Bmperor,  
  
ALR. 1966 Cattutta BLR  
  
(aod) 2 Caleuta 287  
Five were convicted under sections 296, snd  
  
1g0b/ais"inaine Penal Code, The Sessions Judge refrain,  
UDB Vom passing the death penalty, as the murders (of 3  
Sortont) Fauld not be specidcally Fixed on anyone of the  
persong) SHe\sentenced them to eight years’ rigorous im  
sccustent, The Hagh Court enanced the sentence 10  
Pransportation for lite  
  
In view of the fact that the prisoners. were tried before  
the! Setelons Court tm December, 1942, and a certain amount  
SiS jelay way oscasioned by the necessity of making a re-  
ftcence the Full Bench the High Court refrained from  
fusing the death sentence. But for this, the High Court  
Reserved it could imagine no more sultable case than this  
for she maximum sextence. Tt observed, that i€ was preci  
‘ely for such a cave Hat eection 396 was  
  
Case No. 55.  
Emperor v. Ram Singh.  
  
ALR. 1948, Lah. 24  
(Marton and Khosla JJ.)  
  
(Gudgment by Marton 5.)  
  
Ia this case, on an appeal by the State, the High Court  
  
set Sude' the Scguital of the Fespondent for the murder  
  
Soman he tng ht comer tga  
  
aperdsnce et daurt avarded the sentence of death  
1h these’ words =  
  
“1, however, feel strongly that the learned Ses  
sions uae thoald undoubtedly have sentenced Ram  
SEGRE 'aESuh" ond av there are not intrinsic leew  
  
‘tances warranting leieney. T consider It the duty "of  
this Court aow fo do shai should have been done at  
the tral  
  
1 appears that before committing murder, the accused  
aad kbs ndesourse Sith te woman murdered and  
BG fad the approver” After the murder the accused and  
‘he approver bed the wornan of ornainents  
  
  
Page 56:  
a  
  
con  
‘nina La  
han 88.29)  
Chior hy te me)  
  
de i cm ig er he gate  
ont Pte MSO, Sa  
  
The Sey Jog gh eg ee  
og Samos aac ata tate  
sree matin rnc te  
Shy cael cu a a Mid and  
ee Bist Sc haere  
iach gary bata cated  
eh ced a oi ae  
SRE Bish afoot  
Seas tery ig on naa ae  
Sour aera Salt i dy  
sel Sede, heme Ge eda edd  
ee eae  
Ca cae ty ale i oat  
SSUES" Ryan BRI Stet  
eect  
  
Case No. 57.  
  
Kali Charan v. Emperor  
ALR. 1948 Nagpur 29(2)-1L-R. 1947  
sapur 258,  
  
(Biemeon and Padhya 15.)  
  
‘The accused committed ¢ murders in succession and  
ay sentgnced by the Sezione Judge alter conviction under  
section 202 to death. ‘The "persons murdered were. one  
woman, and three children. "it appears that he was not  
en ood terms with his wile, and because of thelr bad tex  
Jatians, the wife left nis house to stay with her sister: tn  
spite of his request she lid not return, This had chraged  
him. “Next morning the wite wanted some mosey ‘snd  
  
1 Pagina lathe A  
  
  
  
Page 57:  
2  
  
made reap he acute, wnereugen th aie  
Earaged and threw the keys on her. peed UP  
SRe"Eeye and went near the money box, This further <3  
seh ne accused, who, (to prevent and punssh his wile)  
ekce dod to, the fst floor where Use box was kept. Th:  
Pitter ton ‘of the brotherinlaw (wife's brother) of the  
miteed was the Arst to be the subject of the anger of the  
RECUSSG, “who itled. him by ‘causing not less than 13 in-  
scplee With 's sharp Knife” ‘He. then attacked ‘his wile  
  
ife was rescued by the wite of his brother-in~  
Taw with a daughter in the lap, they were killed by the  
Acused The accused also injured snother young daugh-  
{Gr of the aceusedls brother-in-law,  
  
(On hs appeal to the High Court, the High Court con:  
farmed ihe conviction A ples of insanity Was taken on  
Ghai of ime wceured in the Appellate Court, thovdh pot  
Tenihe lowes court, The Court held that Insanity of the  
Mature equines by section Hf of the Penal Code had not  
Btn proved “A chime is not excused by its own atrocity  
Re eapert had beer called to prove his mental condition,  
Narr8prece opinion by one Doctor that the accused may  
Bete bben ina tempofaty Nt of mania at the time of the  
Becigent did not help very much. "The Court was, howerer,  
BE Ge opinion that the sentence ought to be altered to  
eRe iebmaportation for life. The accused had no motive  
fe kil the woman and her three children, The motive,  
‘Pony, was aga the wile, who, Power was nt  
Te wad Inevidence that the accused Loved and used to feed  
{the ahildces billed by him. "Thete was no prearrangement,  
fo accomplice and no secrecy. Under a strong and sudden  
Bape without any motive he had coramitted the mur  
Sehe, H¥e was completely unninged. and had lost the bal-  
SESE of his mind, and acted abnormally under an iropulse  
ics proved too strong for him.” These were extenvating  
EnGinGtances which impelled the Court to modify the  
Siemee The Court reduced the sentence to transporta-  
lon for life and also recommended to the Provincial Gov-  
‘Shnment that the ease ray be dealt with under section  
So Cr. PC.  
  
souk regents or ts ecommandatin Wt he fo  
lowing’ cases —  
(1) Tola Ram v. Emperor, ALR. 1927 Lah, 674  
LLB S Lahore 624;  
(2) Emperor v, Gedka Gocta, ALR. 1997 Pat, 363-  
LR 6 Pat. 33;  
  
(2) Remedhin v. Emperor, ALR, 1832 Oudh 18  
LRT Lucknow 341  
  
  
Page 58:  
s  
  
Case No. 88  
Amn x, The Crowe  
AAR. 190. East Penjab 158  
‘Kapur and Soni 34)  
caudgment by Kopur J  
appellant and one R attacked 8, using a kirpan apd  
gputchia Brecened Mt inuren and die] tantaneculy  
eric ae tae came was dispute regarding main,  
Htttln Stes gifted in favour of R and others The Ade  
Ciflaual” Sessions Judge convicted the appeliant ofthe  
Seenee under section 02 Indian Penal Code and sentenc-  
2a hime fo transportation for reason for impos.  
sa Mite eater sentence was. that, the appellant was ot  
Ested to B, (ihe decessed) and did not stand ¢o gain by  
The iousder but took part im the murder simply 10 oblige  
r  
  
‘On apes! to the High Court, the High Court conirmed  
the Castleton ‘nnd regarded the above: feason for, imipes  
IMS Gheletcer semtence ss Inadequate. The murder wos  
UE, ‘brutal find and thete were ag extenuating circum  
atces That appalfans dia rot stand fo gain was not such  
SGreumstance., Howevcr, though the State made an ap,  
fucatlon for enhancement of the sentence, High Court dig  
Roerent ft considering the fact that the appellant had  
ea convietsd more than @ year ago.  
  
case No. 58.  
‘Charan Des v, The State  
ALR. 1950, East Punjab, 221  
co (Bosla and Sont JJ.)  
Gudgment by Khosla 3.)  
  
Information was received that gambling was going ce  
io TANT, Hefagee Camp af Mukusr” The Camp  
Eanmandant ests party fo take a5 nau. The percy  
eae ntarie ie tent and surrounded ft Hearoamm Sing,  
‘Hadidar of the National Volunteer. Cores and Charan  
‘Ban, tho ‘appellant (ot the same Cozps) constituted. the  
pat. Mong faith the Supervisor, Hefuyee Camp ad, one  
Foner perisn Directions were given to the inmates of the  
fent not to move out, on Whi protested. One of  
weet Metied to get out. ‘Thereupon Haranam Sings. the  
Haidar, gave orders io fre Das, the appellant,  
se ot the armed constables under the Havildar, fred es  
Sfosulcof which one Nand a woman Roni were injured.  
ant"Riceumbed to! her injuries” Om these. facts Charan  
Das ond Harnam ‘Singh were tried before the Additionst  
  
  
  
Page 59:  
ree real to the High Court, the High Court main:  
oie eee tealte, HBR. Gefence of te appellant was  
tained the connie} in obedience to the ofders of his sup-  
that be Bad ee onden the High Court polited od, wt  
Perier pe illegal. There was no disorderly crowd, nor  
anesthe erae merely a suspicion of gambling. An  
saute ring could pot be given rach cumstances  
arder of BFE <iopellant coud not be exonerated. (A  
aaretere ot ls manitesly legal orders of hs 34pe-  
Soe evra (unglish-indian cases discussed). Since  
POLES Ge appellant was a youth of 2, recruited {0 the  
  
Suho had an exaggerated notion  
  
$erqa gt (Frecommended to the State Government to re;  
Be dete sentence, to tates Years’ sigorous imprisonment  
luge the don abl, Criminal Procedure Code, ‘The case was  
fot one ‘of oramary murder and hence \*s recor  
Case No. 6.  
lav, The King.  
ATR 1950 Orisse 261—1LR 1980.  
‘Cuttack 288.  
(deganmadbadas and Panigrahi JJ.)  
  
ee arate  
CEM ee eee  
Ee  
Serta with  
  
appa  
aoe ya tne Cal mineses we televed.  
“in Doctor's statement.  
  
  
  
Page 60:  
38  
  
‘om sppeal tothe High Court, the convition was com  
rot Fix asputat fat the offence wav one of culp-  
ie Semctde not amounting to murder beenuse of prove:  
  
ejected on the fate There was more, verbal  
n't ths aus and t war mot scent to cae  
fim of witwontrl Bat in view of the fender oge of the  
avpelant the Tigh Caurt under section @ ef the Refer:  
‘ikory Schoo Alt. 18h recommenied detention in a Te  
{Germany eco! for five Sears Unsead of tarmporaton  
forte  
  
Case No, 6  
  
Serajuddin v. State  
ALK, 1961 Allshabod 834 at p. 836.  
AAs in awarding any other sentence, a judge who passes  
a sentence of death has to apply his Judicial mind. The  
fact hha to ecard saan fr suarding the eter  
fentence (under accion 367, Criminal Procedure: Code)  
merely meang that where to such Teason ts available. the  
Sentence of death ha to be pare, i oly otis in  
fed extent that death sentence i the normal sentence.  
4 capital offence. The Indian Penal Code leaves it to the  
Jude's judicial discretion to decide. whether he should  
pass'a sentence of death or transporation for life (cr ey  
‘ther sentence. peemisibie under Tas). He has to com  
ider the question ‘whether the case is one ‘where a sen\*  
tence of death should be passed or # lesser sentence, thos  
mo Fsdse would pass a sentence of death. (where iti Pro:  
Der to pass a lesser gentence) merely because he hee  
Bive reasons for the lesser sentence,  
  
Case Ne. 62  
  
In re Palaniswom! Coundan  
ALR. 1952 Madras 175, (Govinda Menon and Chandra  
Reday 33.)  
  
(udgment by Govinda Menon J.)  
Acgused murdered his, wile and father and injured bis  
son. “Though the accused was not held tobe of tnssund  
‘mind, yet there wag an evidence that he had to-a\ ind of  
freasy or heltuccaation” Sentence of desth wes" reduced  
to transportation for hte,  
Case Na. 63.  
State v. Kochan Chettayyan—  
  
AIR. 1994 Trav-Cochin 4851LR. 1953 TC, 1062 (Koshi  
  
‘Cd. and Kumara Pils 3.)  
  
(Gudgment by Koshi CJ.)  
  
Under the Travancore Penal Code, as amended by Pro-  
clamation of 11th November, 1944 rigorous imprisonment  
for life was the only sentence to be passed for murder  
But after the passing of the Part B States Laws Act 1861  
4 person convicted for murder committed after that date  
tan be sentenced only (0 death or tanspartation for lite  
  
  
Page 61:  
Case No. 64  
Vijayan, State.  
ALR. 1955 TravancoreCochin.  
402 LLR. 1058 (1) P.C. 514  
‘(Koshi CJ. and Menon J.)  
(Gudgment by Koshi CI.)  
  
(i) The Travancore Proclamation of lth November,  
roi end the ‘Cochine Proclamation of 26th Novem  
IgE, hotishing death sentence, were no longer goed lavi  
dtcr the extension of the Indian Penal Code and Cri vinal  
Procedure Code under legiiation of 1961. Under the  
Thdien PenslCode the dasth penalty was the normal  
punishment for murder  
  
‘di) Youth by Heel S¢ not an extenvating circumstance.  
  
Case No. 65.  
Moot Chand v. The State.  
  
(ALR, 1989 All, 20" LR (105) 1 ALL 08  
(Raghubar Dayal and CB. Aggarwals J3)  
(Gadgment by Aggarwal J.)  
  
tn this case, M aged 22 and P aged 90 years appented to  
the “allshobed High Court against thew conviction under  
Sender secon Sb wih ten Se  
  
Sly and the sentences af dea ts long  
ita others were ied for mundering one N while N was  
Sleeping an scot n'a Geld. ‘The ethers were acquitted.  
bu the appellants convited as above  
  
“There was some dispute about land, which vas the  
olive behind the’ murder. "The actaat atack "was ‘by  
{ppellan At and another Bey Lal, wile appellant P and  
bother ‘Rare Naresh held the feet of the fo faci  
Iitate hrs being hiled, “One or two person, 3ho could not  
be secogsisod, armed with ithis were standing. near”  
‘The. main question discused In the appeal war about se0-  
‘ace "(he convictions ware upbeid)  
  
Aggrawala J. maintained that section 367 (6), Criminal  
Procedure Code "(as It stood then) gave an absolute dis-  
cretion 0 the court as regards imposing the sentence of  
death.” He also expressed the view that the Judge hed to  
Keep pace with the Umes!, that capital punishment was  
being’ diicouraged and there was hothing in the law to  
yrevent his, diseretion. being exercised by "a Judge  
fp consonance with the more humanitarian view of the  
  
Somme of the cases in which the lesser penalty Was award  
ed'To my mind the’ true” principle of exercising’ the  
  
7 Cora fare Rectan e ALB. 10 Mad 98,13  
  
  
Page 62:  
iserstion of imposing either the penalty of death or of  
‘Gansportation for hte shold be that the sentence of desta  
ieee in cass in whch the ets very bral ond  
‘hip repugnant to morals and te sentence of teanspor-  
‘Hou for ifs imposed in all other esses”  
  
‘mn hi view, out of the four clasts of murder mention:  
cf “in secon 3i0 and iis four clauses, the sentence of  
‘Sau abou be restricted tom  
  
() Cases uader section 800(4) intgation to case  
death, dnenuse ig siwoye bratal and barbarous to  
Intentionally ll others.  
  
(6) As regards section 200—clauses (b), (c) and  
(3) Sn caaes Where the ijuies caused aze brutal or  
ction of the mecused To highly repugnant. Ih othee  
‘Sot trantfortatan’ aaouldoe i pose  
  
Even where death should be the ordinary penalty  
sccording to the above classfeation, transportation should  
bbe imposed in certain circumstances. But he took care  
soserve that Its net possible to enumercle the elreum~  
Stances exhaustively’ ot to lay down any hard and fast  
  
‘ie. Buch eage will Rave to be decided on its own fact,  
‘some of the eases enumerated’ by him as ft for’ levee  
penalty were  
  
(where the accused it very young or too, old  
‘1 would’ normally sonar that's Young Than below  
1 Sug eves ia oh fr death ere  
  
ce Similatiy a person above the age of 70 be too  
td for death sentence “  
  
(2) where persons under <9 ecting on the insti  
sation oF influence of elders;  
  
(2) where murder is commited during 2. sudden  
uae and who perma ty ee  
false chough the case oe not fall under the ex  
  
‘ions’ to section 300; =  
  
(when conduct ot the deceased furnished grave  
though not" sudden provocstion. For exarapla,  
‘sagrieved husbond or otbce near relation of « womal  
ipardrs aman eho perma tending the flings of  
  
usriewed relative carrying ah mmr  
Inteigve with the woman SY SPN  
  
(8) Where the lisbility Is vicarious and the accuse  
ed neither took “part im the beating ner Sntigatd  
  
(8) Seversl persons are involved in the mueder  
ard “onl one deat is ssusnd end the Reigns or  
several accused aro =spohle °F being graded nthe  
  
  
Page 63:  
8  
  
spatter of causing death, For example, where one pets  
atte ot einige which tring about the death end  
‘thers merely” help  
  
‘he former or perform a minor  
the others would be ventenced to  
‘eaders  
  
Rochubar Dayal J. did not agree with the view that sec:  
Racnaisy ielt any dacretion to the Court. He cited  
aoe ar Goes on the subject in support of the proposition  
Ghai the normal sentence is death (for capital offences)  
[hha sien the provisions in the Indian Penal Code and  
Cieinal "Procedure hed been consistently interpreted 10  
Gea nat im the absence of extenuating circumstances  
death was the normal sentence  
  
In his opinion, the fact that the appellant P was mere-  
ty sanding nearby ‘was not a justification for awarding  
The ieaser “sentence.” [Ha referred. to have diteusted the  
Federal Court ease of Rajagopalan]  
  
However, in view of his brother Judge's opiaion, that  
‘the fentones of death assed on P be commuted to trans-  
Dontatlon for iife, he agreed with the order proposed for  
‘Such commutation.  
  
ee Ha  
  
Inte Gocdanwom  
  
stm ns Mode 2  
  
(co Manon ad ae 31)  
  
Sutgens by Mask 3)  
thier com ne artery apgeth aged 1  
ve midted ene’ by cating ix nok wth an arava”  
wea oe te ORS he" tw Cte  
See hte Seti tha ae Ns  
Sich, ee GE OP Mat ie  
foe teri Sh ay ree  
thant, (eR Se ra cnt oie marke  
TS) ae see Flee send hn  
ar nlines MAN See CUR AG Mad at Gore Sphinn  
SRST AR AS ES  
  
  
  
Page 64:  
2  
to trangportstion for Ife only, as the accused aad com-  
uid the murder "i fhe fet hat ay mending  
Take @ report against hum at the police station regarding  
Some theft committed bythe accused,  
  
Mack J. dismissed the appeal against the conviction  
He had slso issued notice for enhancement of sentence  
But as Govind Menon J. was veluctant to interfere in  
such 2 cose for enbencing the sentence, Mack J. "though  
Drepared to do that unpleasant duty,”’yet\_ (out of defer  
Ence to brother's view) “merely dismisses the appeal  
Sihout, enhancement of sentence ‘Ie however pointed  
out to ions Judge that the ordinary penalty. {oF  
‘murder fe a death sontence in the absence of extenuating  
Elrcumstances, and that in the ingtant case there war no  
‘extenuating circumstance and netther the youth of the  
Scewsed nor the fest ofa complaint being made sgainet  
him af theft could ‘be taken inte consideration a8. an ex  
terluating circumstance.  
  
Case No. 6.  
Kanji v. The State  
ALK, 1953, Rajasthan #0LLR. 1961 Ra. 727  
(Wanchoo C.J. and Ranawat J.)  
(udgment by Wanchoo CJ.)  
  
"The appellant in this case was convicted of murder of  
4 bay aged Id years and sentenced to death hy the Sesions  
Sabe'SA mairage pry be cme tthe vag ad wen  
Suying in a mango-grove (bageech St connacton  
SrTotof drinking find been going on nce the morning, a  
dhe" Spin wa sso a of ina we bad ben Sine  
ing, ‘P'Stont & pm wivie the decensed boy was picking  
fe mange ot the nach wih ana, the  
{ppelant tarred up in tho bageschi with & gun. went  
320 the people who’ were siting inte and suey “seot  
tthe boy ftom a distance of about 10 paces The Boy fell  
down and died” “The other boy wae slpnty tejured  
  
Regia en meena  
Sia cee ea  
  
‘These pleas, were not accepted by the Sessions Judge.  
‘On appeal to the High Court the High Court alto did not  
‘accept the plese on the facie. It also pointed out, that  
Under section 300, Fourth Exception, Indian Penal” Code  
read with illustration (Q), an imminently dangerous ect  
was suficient to bring the case within section 200 and it  
was not necessary that the gun should be almed at a Dar=  
‘cular person. In the case before the court, further “the  
  
  
  
Page 65:  
‘evidence was tnat the appellant shot at the boy. | Where  
Siperuon lakes. the rik of shooting at another, the act  
Srcukl’ cedinarity be am Imfainently” dangerous act which  
ist in ail prossbility cause death ete  
  
owever, a9 regards the sentence the High Court  
poitted out two important features of the cae:—  
  
(0) There was no stsfactory evidence of motive  
cra alheg of tne daceased had deposed thatthe  
Sere dle ates ht deco, a  
Sredentally fund mt having seal i=  
seasons ce ns widowed sateinlow). Arsuming  
{Gor anis was admissible the High Court seas estat  
GMLtpr this as @ motive, and held that Deve was  
fo deat mative  
  
Gi) Though the appellant was responsible for  
the Sturt consequence of bis acts and guuty ‘under  
She itz, in the carcumatancer of the case intoxication  
‘SHockea ‘ts ‘s'sitelent excuse” for'not exacting the  
Rucme “penalty of law. Since there Was no eV  
SEEo. Pode andthe appelont was certainly  
runt, the sentence was reduced "to transportation  
for tes, "hn Support of the reduction of wontence In  
‘Sie of intoxication, the following cases were cited:=—  
  
() Pat Singh v. Emperor  
ALR. 1917 Lah. 226; and  
(&) Jedagt Maliah v. Emperor,  
ALR. 1980 Patna, 168.  
Case No. 68  
  
Gudder Singh v. Stare,  
ALR, 1994, Punjab 37—LLR, 1954, Pun, 649  
  
Falshaw and Kapur J.  
  
@udgment by Kapur J)  
  
@ and B were convicted of murder in these circiin~  
stencen," Certain people had refused to pay land revenue  
‘The, Tebsildar advised them to pay up the land seven  
Te also asked them to produce the rifles which the Gov-  
  
‘ernment of India had given £0 villagers under the order  
  
J iferitr aoa it Tet ae thar hs Rasim ec  
  
Basse Ste  
  
egg Tees 16g pram 6, ee ae,  
  
  
  
Page 66:  
a  
  
Defence Scheme at the time of the formation of Pakis-  
fan, “Atter some time, 70 or 80 persons of the village. in-  
‘cluding G and'B, ‘came armed and stopped at a distance  
Of 15 er 20 Karamy trom the place where the Tebsildar  
land others were. ‘They shouted to G and B and others to  
Kall Revenue and Police officials. Sub-inspectar KC tried  
  
pacify them, and while he was so doing, "G fred his fle  
‘hich bit Kin his cheat and Ke fell down dead Other  
people started firing, and the Police took up positions for  
Firing in self-defence. “Ultimately the villagers retreated  
  
(Subsequent events are not relevant)  
  
G and B were convicted under section 32, Indian Pensl  
Coveor the murder of. ‘Grwes sentenced to death. and  
B was senegced to anaportaen oe. The High Court  
Gismlised the ee conviction. At ree  
isthe sentence on Gbectaneof toe fact ate Ned  
ein custody “dcom Magy 181, the. Hage Court subst  
{ted ansportaton for life in place of death  
  
Case No, 69  
Is re Munigands,  
ALR. 1964, Madras 196 (Mack and Chandra Reddy 43.  
  
(Judgment by Mack, J.)  
  
appellant and one X intercepted two \_ persons,  
vcotant ip the fm of Canton Dery wh were  
carry Im cash on cycle ‘The appelient was  
Simed with kn and X waa comed witha pevelven, 3  
fot hold of the cycle and asked one of the accountants. fo  
Bop. "That accountant jumped ff the cycle. he other  
Ssecountant riding the eyele lest hig" balance. and "fel  
down, and stouted ‘for hep, when X fed four shots at  
isin rau i nls death instanton, Tne  
itely, the appellant went to remove the money bag. The  
fsecountant “ined to prevent him shereupon the Spel  
fant’ cut him with krife-on the hand and snatched 339  
the money” bef. "Then both the atesllan Tan awey.  
  
Four months after this, X and the appellant happened to  
be artedted for some other crime, and ete identiied for  
Ths “came also. had been alstady sentenced: to death  
feet te rin and he venience, ante  
ase "was now concerned. "only with the appellant. The  
Sessions Judge convicted the appellant under section 302  
read with secon 34, and senteneed him to death and algo  
convicted ism under section and’ sentenced ims 40°?  
yess rigorous imprisonment. “¢Por dhe" “other case the  
arpalant had "ateagy been sentenced to teacpartation  
cof life under section 802 read with nection 24).  
  
  
  
Page 67:  
e  
  
"The High Court confirmed the conviction on the merit  
‘The “argument, thst since there was no prearrangement  
to ail the accountant, the appellant could not be convici-  
cd under section 303 read with section 94, was repelled  
“When two persons start together for committing robbery  
land one of them la armed with a revolver and\_ the other  
‘vith knife, we may presume that the intention of these  
two. persons is (0 use the Weapon if the necessity should  
arise "Hence, the shooting was committed in further~  
Since of the common intention. and it was unnecessary. to  
Gstablished @ presrvanged plan for the murder of the  
Yietim.  
  
‘As regards sentence, having regard to the fact that it  
wat 5s ive the shots fms evolser andthe inary  
Siuted to the surviving “secountant by the appellant was  
“f'simple nature, the court felt that the ends of justice  
‘Would’ be met by reducing the sentence of death to One of  
‘ansporiation for fe  
  
(lore: (1) As regards section 34, the court ree  
ferred to B\_K, Ghosh v. Emperor, ALR. 1929 PC. 1—  
LER. $2. Cal, 107 followed in Remaswami v. Steve  
ALR 1052 Mad. 411.  
  
(i) Te Judgment records the fact\_that inthe  
the die he Sn “Seed death ante  
tne ang Senet fe tana,  
Sei unl sein rend th scien Bae  
So eee sen ec ke eater nee  
fee peter “Showiag enience te splat he  
S58 Snr Seats” igotous impenoreent for 92) were  
a ieee ee ee) ee  
Sri ofan concrete sete  
seers  
  
Case No. 10  
I re. Palani Moopan  
ALR, 1965, Madras 495.  
Panchapakesa Ayyar and Basheer Ahmed Sayeed J3  
(Gudgment by the latter),  
  
‘The appellant aged 24 had been convicted of the murder  
of i wile aged 28 yore, "by lnltngInvurieg with 4  
Gippers knife’ and sentenced to death ty the Adal.  
Sessions Judge. Tt seems that there ‘were some quarrels  
Between the two soon after the marriage in 1969 and the  
spprllant started beating and Htreating his wile. ‘The  
‘Sppellant shifed to his sisters howe leaving his wife in  
‘he house. “The appellant made a confession under section  
164, Criminal Protedure Code’ setting out the particulars  
Of ‘the offence sha also stating thet his wife was in eit  
  
  
  
Page 68:  
6  
  
meth oe LE  
Foor te corona ei  
esas ing, dae, sha Geer  
seas Wi i et a ar ct  
scTeg BP Cer etn he een ani  
set ert ate oan A  
  
Hi  
  
ase No. TL  
Khan v. The State  
  
AIR, 1985 Caleutta 146  
  
(Chakravarti CJ. and PB. Mukherjee J.)  
(Gudgment by Chakravarti C. J.)  
  
‘Appellant K had in this case been convicted under sec-  
‘uon 02, Tadian, Penal Code and sentenced to death, while  
Sppellant Ahad been convicted under section 303 read  
sith section 109 and sentenced to trancportation for Ife  
‘The. tral.wae held in the Sessions Division of the High  
Court of Calcutta by'S. "Sen, J. "They both appested.  
  
‘The facts were these. While the deceased was engaged  
in conversation with one G, the two appellants came up.  
‘The. deceased told the appellants thet he was having some  
private conversation with Gand they were intruding and  
Erowid move away. Appellant Kad that he had no tm  
fention to do anything of the kind and challenged the de  
ceased to do what he could. The deceased repeated his  
equest, but without any heed. “Hence the deceased put  
his hand on the back of appellant K and pushed him a few.  
Subits wheceupon appellant. A shouted out to appellant Ke  
fo strike the deceased down. Appellant A slo” grabbed  
the deceased by the hands and held him fast, Appellant K  
‘whipped out # knife and inflicted several injuries on the  
ferson of the deceased, who later expired in the hospital in  
fhe mht  
  
‘The High Court, while confirming the conviction, re  
duced ‘the sentence on K to one of transportation for Life  
  
  
Page 69:  
6  
  
‘view of one feature of the case, “which bears very per  
Gnenily “onthe question of Sentence and requires atten:  
ion’ “rpet was this After the appellants ad refused  
weit the place, was the decensed who frst id bit  
Mant! Sn Appelisat "Rand forther started pushing—the  
Packing, bang of 4 somewhat vigorous kind, He was re  
Bates Moeause each was pushing the other, and "it was  
‘Guring such affay that the Knife, was suddenly, whipp  
Sut ata"“Stet"took the place of bare hands. “in those  
‘ircumstances, it appears t0 me thet although no sudden  
Shi'fuave provecaton, sush ar would reduce the cHime  
fom muraer ta emer ofence an be ade oe tere  
Sor such Provocation. at bears pertinently ‘dpon the  
Pew een even fie agvgeon mut pave  
caused by the contuct of te frst appellant him  
[Si'andTateaer might not be wiaweat ease for the  
‘Sat dong by him™| Hence the extreme penalty was not  
Shel Yar, There was pushing, pushing for Considerable  
‘ime and pushing between man’ who aze notoriously of  
Skeliable. mature’ (The Court made it clear that this did  
Sot mean that an exeltable person is entitled to go about  
Th the sireets and do people to death whenever his will is  
he siets and de PAD ial esata wes cornmenced  
Wer the deceased and when the struggle grew. the fury of  
the frat appellant fanned by the second. appellant rose).  
Hence the sentence on fest appellant "K' wae reduced.  
{Cine sentence on the other appellant was maintained).  
  
Case No.  
AIR, 1995 NUC. Bombay, 2077.6  
Shivrudrappa v. State  
(Dixit and Gokhale JS)  
  
‘Youth by itself js not a sullcient reason for imposing  
the lesser penalty for murder  
  
Case No. 73  
Sabir v. State,  
ALR 1955, NC. All 2279,  
(Beg and Chowdhry 33.)  
  
Accused being only 22 years old is no reeson to award  
tesser ponishment  
1. So pragrph 29 in the ALR. - ~  
  
2, Ste tame etree Kom Bp ALR. 1939 Ca LED.  
sue ge ia gS sa ete ha  
  
  
  
Page 70:  
6  
case No 4  
ALR, 1955 NUC, Bombay 4251.  
State v. Nemdeo  
(Chainani snd Gokhale 33)  
attack which retulted in four  
  
fesollants took part im the attack, out wae dificult to  
bute any pmrticlar fotal injuries to any particular  
Sccused Court refrained from imposing death Sentence  
  
Cre No. 75  
Nath Lat v. State  
ATR, 1955, NUC. AML 2288,  
(Agarwala and Rey JJ)  
  
‘Thet the accused was drawn into the murder  
birelling is no extenuating circumstance.  
  
Case No. 16  
(Gabba Rao C. J. and Satyanarayans Reju 3)  
(Gudgment by Subba Rao C3.)  
1 ve Musitathnam Reddy, ALR. 1998, Andhea 1  
Accused, 2 student of college, below 21 oars, shot the  
deceased when” he abased bimn and his father. "He was a  
Jaa of good antecedents, He wae sentenced to transporte:  
tiow for life, but the High Court recommended bis case to  
government to take action under section 10A of the Madras  
Bxrsial Sehoole Act (Act 5 of 1028).  
  
Case Ne 7  
  
In re Shivenna  
  
ALR. 1955 Mysore, IT—LLR, 1954 Mys. $69,  
hn this case, there was difference of opinion between  
Medapa’ CJ and Vasidevamurthy J. a ‘0 whether. the  
accused where guilty of murder. “The case was based. on  
Circumstantial evidence as to possession of stolen articles  
‘of 2 women murdered. Tho case was referred under se  
thon, 429 of Criminal Procedure Code to Mallappa J who  
acquitted the sccused,  
122 Law.  
  
  
  
Page 71:  
Case No 18  
Atma Singh v. State  
ALR. 1955, Punjab 191  
Bhandari CJ. and Falshaw J.  
(Gudgment by Falshaw J)  
  
Theve was some dispute between the appellant’ father  
fon the one band and the father of the deceased on the  
‘ther (both Jats) “reserding irsigation of lend. A" pane  
havat ‘was called to sete the matter, snd at that EE  
chayat\_ the appellant and his. fether hed kept  
son Sen and ck senety ete esting  
Was golng on. "The discussion devstoped into. an exchange  
ff atune between the tater of the deceased on the ‘oR  
Nand ond appellants" father on the other hand’ \At he  
Sod of the exchange of sbve, the appellants. brothers  
fon out of their houwe armed with sticks and the deceased  
fame out of his father’ house.” On the arival of the  
‘Sccensed,” the appellant and this father and brothers bet  
hi nd he agpeliant speead im on the leit de ot  
fhe’ chest while otters gave him a Blow with thei sticks  
‘The “deceased ed the fext day ss 2 resulé of this pest  
Injury which had penetrated to a depth of 4} inches in-  
Juviig the left lung. ‘The sppellant wae convicted under  
Seco Sia and sentenced to sth by The Seasons Jade  
‘Gis father “and brothers were also ted Dut acquit  
  
On appeal to the High Court, the argument was that  
the tase fell within the tourth ception to section 900--  
Sips Romicde come In therhent of Soe moment  
Sind without premeditation and tn the course ofa mulden  
fig teiowing upon a sudden quarrel-was rejected. The  
{9s ‘Court punted out that the deceased hed not come  
{ue with a weapon, nor had attacked or feted to. attack  
ihe abe tt len setae wi ny weapon he  
cuted bad ot laid sy such evidence oF put question on  
  
that “line in crosrexartinaion to any." prosesstion wit:  
hese Ie'war hss duty to prove that the case fel within  
the Exception whieh be had not discharged, Moreover  
ven “ifthe seceaed had ‘come with a wespon, there hed  
theen\_no fight” because i takes two fo make # Sight The  
Secensed had no simmed any blow at fant Hones  
  
‘But the  
transportation for life, after  
‘making these observations:—  
  
"Tt is, however, clear that Atma Singh speared  
Shangara Singh ts the hea of the moment ann the  
  
“Gudden quarrel and that the murder was  
Sot premeditates  
  
  
  
Page 72:  
e  
  
Case No. 79  
Bansi v. The State  
ALR, 1986 Allahabad 668, 670  
Raghubar Dayal and BR, James J5.)  
Gudgment by the latter)  
  
ty hg ome Drain was coed oy he  
rmusiet of o'Bhangi ‘woman. It appears that 9 smal pig  
Tart a he Bong woman entered the houge of the  
tei'Sod) eiled tt Thi enrsoged the acctsed and he  
a Bogan ing wth 9 Tah  
  
spare the ania, proms  
feate Thereupon the accused  
Mie ide oman with nuaberof lath blows, and both the  
sand the pa fell down. and died, ‘The Sessions  
SObsecouwite. ik der section 3u2 dian Penal Code  
  
{nd sentenced hina to transportation for life.  
  
‘On appeal to the High Court, the interpretation of, sec-  
ao shaper Seegnely Tel ny gucued and  
WPSias\ pointed out. Cin reply argument that. t  
Sree nd intention to cause Geath) that the accused “was  
Hable under the Third Clase of secon 300, because the  
Hecly injuries were suficient In the ordinary’ course of  
Xe mature to cause the woman's death. This was in view  
of the circumstances detaited below, namely, use of a lath,  
evocity of the blows, fact that the viclim was a woman  
Sn daks That the blows were given in the chest and sbdo-  
fea. lacerating the liver and the spleen. ‘The Court con-  
isc conten Reprding encement of rentence  
fs observations a5?  
  
Since the Learned Trial Judge has himself awarded  
hhim the lesser sentence for tig ofence no reeconsidera-  
toe of the sentence is possible  
  
site Ptr  
Gey Ba 3  
  
hhim under section 503. Indian Penal Code and also order  
‘ed him to pay a fine of i, $00) oho ond  
  
  
Page 73:  
‘The High Court, while confirming the conviction, en-  
hanced the sevens rane of athe sentence ot fre  
‘tae set aside as the offence. was not committed for any  
JRonetary gain) The Cour observed, that the normal Sem  
{Emoe foF murder was deat andthe diacetion In award  
Ing the sentence must be judicially exercised In the in-  
Stint case theve was no extenuating circumstance, Some  
ors yeats age. the deceased and mis brothers had been  
Gcnviewt of an-olfence under sections $25 and 324 Indian  
Fenal Code against the accused, but that could not justify  
fhe aesused to argue (ag waa done in the Sessions Court)  
{hat 'they wete in danger of thetr ives, If, with a view to  
{king the Taw ‘nto his own hands, the accused. planned  
murder for. wreaking vengeance. the proper sentence  
Fhould be death and aot leser one. Sentence enhanced.  
Case No. 8  
Stare of Bihar v. Remautar Singh  
  
ALR, 1956 Patos, 16,15. '  
  
(Ahmad and Sahat J3.)  
  
Gudgment by Sahai J.)  
  
‘Tae appellant had been convicted by the Sessions Judge  
‘of murderot one Mand sentenced to death.” (le Was al  
Convicied of an attempt to commit” the murder of M's  
‘Ganghter) "On the Thursday preceding the day of occur.  
fence a bullock belonging to the ts tamil bad  
Sed. ‘Oi Saturday, the appellant's father weat to one  
‘Bhagat who told him that bullock had died due to witch-  
craft practised by NM. Annoyed at this the appellant  
Gle‘sonset came with artangr\* in his hand to the fel  
fe which Mand his daughter was watching the crops. He  
vo several blows to M and Killed him on the spot and  
  
‘Gagged Ms body to'a weil at « stance of about 185. fect  
‘nd threw the body in that well. Ms daughter raised hue  
ind fay, whereupon the appellant began to throttle. her  
frit the Intention of killing her-, But one person heard  
Ber cries and came to the plage of oecurrence, where  
the appellant left the daughter and went away saying,  
fe would Ell hey mother  
  
‘The High Court, while confirming the conviction on  
bot counts reguced the sentence to-one of trantportation  
for lie.  
  
Making these observations:—  
  
“The appellant belongs to a backward class and he  
5 aged abeat 20 to 22 years. Obviously, he believed.  
that deceased Mangan Singh practised witcheraf and  
fag responsible for the death of his bullock. AS it  
  
Teer poner 9  
  
  
  
Page 74:  
©  
  
scems co me that he under the stress of great  
‘emotion, {think thatthe leaser sentenoe will meet the  
‘Chds of justice ta this ase  
  
Case No, 8  
In re Thothan  
ALR. 1960, Madvas 425.  
(Somasundram and Ramasweml Gounder JJ)  
‘Gludgment by Somasundaram J.)  
  
‘Toe appellant, aged about 40 years stabbed his wite  
ayed uit geaia it appears that the appellants. Wate  
Seiced Teequertty going 19 the house of @eousin of ihe  
Sppelint and became INtmate with hm, and did rot sep  
‘he totimaty ip spite of the protests of the appellan. Ore  
diy, ine appellant way sleeging in the “pial’of the howe  
nd’ als wife'was sleeping at the thresbeld of the house,  
‘chon ihe wppellant heard a notse cased by the beating  
‘OF the ‘coc leaves wth which We deceased was covers  
ing Derselt" Appellant asked her-se fo what the ‘nous  
  
was. and sho tepled that she was deiving awoy inosg  
Keer seain ded hi alle a the dog at barking. but  
the ite cave no satisfactory reply. Next morning, the  
i Guestioned ner about the previous night ince  
  
den, and the wife gave no aattactory reply, On rete  
inom he Sel the appeant was Tourd sharpening. "s  
Enife in the presence of the deceased snd on being tues  
tioned, he replied that he was doing so to cut a gout “Pas  
‘wife lat hs place and went to het uncle, being @egusted  
ith, er heband'sthveats, A few days afte ha soe  
Sppeilant stabbed and led fs wife "e was" ceavited  
4o'murder By the Sessions Judge and sentenced to death  
  
‘The High Court confirmed the conviction and sentence  
An argument was advanced before the High Court that the  
conduct of the deceased proveked him to commit the. act  
that the girl was unfaithful to bits and that in spite of  
repeated Tequests and threats the giel presisted in going  
fo M's house and that ina ft of passion the appellant state  
ed ber. “High Court did not agree and pointed ut. ‘that  
‘he appellant had been sharpening his Koife even in the  
Dresence of the deceased and intended 0 use’ the hae  
‘sgainst the decessed ‘There was no eitcumstenoet at the  
ime of the commission of the silence which could ‘be  
taken into consideration for lesser penalty  
  
{As regards the recommendation of the Sessions Judge  
sith regard fo the desirability of commuting the sentosse  
‘ory of atpetaon fr He he Wigh Gon ebmrved  
Bat it Was forthe Governmens +9 C-asider whether i Soe  
[tease for sich "commutation,  
  
  
Page 75:  
mo .  
ase No. 83  
Prem Narain ve. Stare  
(Mukher}t and Choudhary JJ)  
(Gudgment by Maker}! J.)  
‘ALR. 1967 Allahabad 177  
  
On the facts in view of the youth of the accused,  
the sentence was commuted to imprisonment for life  
Ce NOH ceoatah ve i  
ALR. 1967 Allshabod 377  
  
(Gioy and Sahat JJ)  
  
Gudgment by Roy 3.)  
  
‘This was a case of the accused giving the deceased =  
number of incised wounds with sharp wespon like 9  
knife, wbieh entered the ribs, causing rupture of the pet:  
ftneur apd the sbdomina) cavity and entering into the  
ftomach, the liver and the spleen. Sentence of death war  
Ineld to be the proper sentence  
  
Case No. 85  
State ws, Shankar  
ALR, 1957 Bombay 28-TE.R. 1958 Bom. 1082.  
(init and BN. Gokhale JJ)  
  
‘Gudement by Dixit J)  
  
4 this case, 5 members of a family and a servant were  
ulled ty fhe accied persons Those eile included  
lak'monihs’ oid calld. fojuries inflicted numbered 67. The  
Court deseribed it as a shocking crime which would per~  
Speremain sonorpaned in erst There Wat 6  
deliberste conspiracy to commit the murders and the con  
Spiracy was carried Out ina planned manner, Some of the  
Secured ‘persons were. acquitted and the remaining con-  
‘ieted, and ost of those convicted some had been sentene-  
fd to death'by the Sessions Judge. "The conviction was  
‘under section 902 read with gections $4, 109 and 149, In-  
ldlan Penal Code. The proceedings befote the High Court  
‘comprised confirmation, State appeal against acquittal and  
lippeat\_againes conviction by those convicted. ‘The im-  
pertance of the ease. lies in the observations regarding  
Sentence and the final order passed reducing the sontence  
fieaceued Nes 10 ana 1 from death to imprisonment for  
“The principle om which the reduction was ordered was,  
that where several persons were Involved in murder  
land evidence war forthcoming to show who were the per  
sons who ‘ectuelly assaulted, then ina proper case the  
‘court should. discriminate. between the "varlous accused  
‘on the ground of thelr major Or minor part in the occur  
rence. After diseussing several eases on the point whether  
{n'a Gase of vicarious or jolat Tlablty or lability Cor corn  
mon intention for the act of others. the court should dis-  
friminate. the Court came to the conclusion that if « just  
  
  
  
Page 76:  
Ey  
  
‘decision ig to be arvived at, the Court should follow the  
principte lald down in Dallp Singh v. State of Punjab’ to  
the effect that in cases white the Yacte are more fally  
town and itis posible to determine ‘who inflicted the  
fatal blows and who took a lesser part, it would be a Sound  
‘exercise of judicial discretion to dieeviminate in tie mate  
fer of enishient he "Coue wa "net prevent, Lem  
doing s0 by the later Supreme Coutt case of Rishidey y.  
Slave olding that the mere Jack that dhe appellant ad  
‘ot intiet blow did not justify # lesser sentence. The  
Court refeited to what mown a4 the “Battle thurder  
ease'—Emperor v. Shaft Ahmed decision dated Zor May  
4925 (esfeived to in 31. Bom” Law Reporter 515) in Which  
there was a charge of criminal conspiracy, and Crump  
Jn awarding sentence ‘ipon several’ acsused. considered  
the principle of discrimination ax sound: ‘The Court alo  
referved (9 the following deeisions’s—  
  
) Queen v, Besvante, (1900) LAR. 28 Bombay 168,  
  
©) Reayendra, Chandra v, Emperor, AIR, 1986 Cal-  
cut SEL", “caicutta #28" “(Plague ‘germs  
ase, congpleaes)  
Case No, 8%  
‘State vs, Basu Tanti  
ALR. 1957 Patna 462—1LR. 34 Patna 462  
(Mishra and Sahai JJ.)  
(Gudgment by Misra J)  
  
‘Thia was 4 case of death by poisoning caused by the  
accused by administering cleander in liquor in high dose.  
‘Accused did this act for the benefit of his friend (sons:  
law of the deceased) for a pettv domestic matter between  
the husband and wife, It was held that this was an eee  
lusmely eked murder, and sentence of death could Sot  
be commuted,  
  
Case No. 57  
In re Murugien,  
ALR. 1657 Madras $41, 646, ILR.  
1857 Madras 805.  
(Somasundaram and Basheer Ahmed Sayeed JJ.)  
‘Gudgment by the latter).  
  
Tn this case the accused murdered hig wife (who was  
iso his sister's daughter). The accused bad suspected ine  
timacy between one P and his wife, and asked her to ntop  
  
© Bal Sah ATR, wy —  
  
2 Be Rie ee  
  
4 Ue Rmreacne aese ens Se States ware secede  
  
ujpsration See ela ie es Fe atl dee A  
  
  
Page 77:  
hee relations, ‘The wife sad that she would not leave P  
Sine’ had looked atter her well and then abused him and  
Mieve that 'se would continue her intimacy with P. The  
aceaned ist his stcmtcol and murdered er he Se  
‘oqe Judge convicted him ster section 302, Indian Penal  
ode, and Sentenced bim to imprisonment for life.  
  
‘On appesl, the High Court regarded the case as fallin  
within Bet eyeeption of section 200 (Part He alter  
The convicion to one under section 904, Part and redc-  
fs he emtence to ve Years It eypresced the view that  
fhe 'Rnglish decisions to the eect thet mere words of a  
Shigen'contcsion of adultery’ would not constitute provoe  
Sunone did not apoly in Inds. in western countries, vo-  
fition’of marital tex was Tonked upon with » greater lati  
{de than in Jncis where adultery is an offence.  
  
Ina socety where adultery ie made punishable, if the  
rwhully" wedded wite not merely Tesorte to adultery but  
‘ity gueare openly in the face ef the husband that she  
‘ould persist'im such adutery, and also abuses the Buse  
band. for remonstrating against such conduct, the court  
SESuid tone amore arfous view of the matter in deciding  
‘Whether such acts could not cause the husband to lose his  
Selecontels (Caelnw acon).  
  
Case No. 68  
  
Sunder vs. State  
ALR. 1957 Allahabad 809  
(Mulher}t and Choudhary 3)  
(Gudgment by Choudhary J.)  
  
‘The acewsed dealt 4 "Kanta” blows out of which 3 were  
dalton the skull. In these clreumstance, the mere fact  
Uthat he war old70 or 7 yeare of age—did not warrant  
‘commutation of death sentence, He was old enough. to  
hhave known elter and his life was not being nipped in  
the bud  
Case No. 89  
  
Satyavir vs, State  
AIR. 1958 Allahabad 748  
DN, Ray and RC Chaudhary 31)  
‘gudgment by Choudhary J)  
  
Determination of the right measure of punishment is =  
matter of discretion and, therefore, within the province of  
the trial court, Hence interference by the appellate court  
fs justited only on exceptional ground. One such ground  
‘may be that the tral court progeeded on wrong principle  
  
"The assumption that the sentence of death was the nor-  
‘mal penalty for murder and life imprisonment the excep.  
lon, "was based on the law embodied in section 367(3) of  
the Criminal Procedure ‘Code before the Amendment of  
4105s which eame into forse from Ist Janusey, 1036. Since  
‘the Amendment, the aues''on of proper sentence is to be  
decided not on any such assumption but like any other  
  
  
  
Page 78:  
8  
  
point for determination with the decision thereon and the  
reasons for the decision as provided in section 367(1). Abe  
Sence of Cause of eniuity between the agcused and the oe  
(ceased is a elrcumstance justitying lesser punishment!  
  
fey ous athe Ahab High Cou: hs one de  
rege Sat fay he aon Nomad  
PPStaet Rae ages Al sor Wid) At Grane toe  
fie (Delp Sagh CSc ass Sy et  
IS murs. Yen wat he nea semcete” Bu"  
iotns "goed ht Ser Hmgrphs To ane 3-58  
  
Case No. 98  
  
In re, Govinda Reddy  
AIR. 1988 Mysore 150-LLR. 1957 Mysore 177  
‘(Hombegowda J. and Malimath J.)  
(Gudgment by Hembegowds J)  
  
This way a cate of murder of 6 persons (belonging to  
an acirocate’s family) coupled with robbery. While "Scone  
Himing the convielon and the 4emence of death aeatSed  
to ach of the 3 appellants under seston 302 read with  
Sect 31 of the Indan Penal Code, the Hligy Cour re  
Failed the contention tht ina case of ercumetantal e-  
Ecce the extreme: penalty shoul not be imposed" ‘The  
Aueston of sentenoe was tobe determined not with scler  
fice to the volume or character of evidence bat with >  
fexence to the fact whether there. were any extenuating  
{Grcumstances) The Sepreme Court case of Vad Vela v  
Slate of Nearer, ALi 1961 Supreme Court 16h was cited  
to the’enec that the nature of pros had nothing 10. >  
‘sith the question of punishrnt. In the Instant case  
ere Were no extenuating ercumstances "Appellants se:  
4 bosbareusly and hiled 6 persons inciuding 2 children  
Stho were fast asleep. "They" commisted the murders for  
gain and ‘were prepared forall eventualtes and the Toure  
ern were dastardly, “No sentence other than Geath ould  
tevapproptate. (lite appellans’ had "been'convited of  
Certain other offences albo not relevant for’ the present  
purpese  
  
Case No,  
  
Dasrath Paswan vs. State of Bihar  
‘AIR. 1958 Patna 16  
Séhal and H. K. Choudhary 43.)  
(Gudgment by Choudhary 3.)  
  
‘Accused was a student of class X He failed st the  
examination suecestively for 3 years Being very uch  
Spset at these failures he decidCd to end is fe end in:  
{erred hie wife of bie decision. ‘The wile aged 10. ahd  
  
TT Resse a  
  
Ihe ATR te poe Fe bn,  
  
  
  
Page 79:  
f literate woman, asked him to fist Kil her and thea iit  
humsell tn sccotdance with tis suede pact, the accused  
Killed ris wile end was arfested before he could kill Rim=  
fei Tt was tela that the ease fell not under section. 303  
But under section 304, Fits: Part, in view of the Fifth  
Exception to section SOD. ‘The wife gave her consent with:  
‘out fear of injury or misconception" A lenient view Was  
taken and the accused was sentenced to § years rigorous  
Impelsonment.  
  
Case No.  
  
Hazara Singh v. The State  
ALR, 1958 Punjab 10LLL 1987 Punjab 1941  
  
(Gudgments by both)  
Gudgments sere delivered by both)  
1m this case, the accused laboured under a, strong dela  
sion that his wife wae unfaithful. "The over the  
‘character of the wife had an effect on hie mental faculties,  
‘which effect Was’ described by the medical witness as tole  
ing the form ot temporary insanity. But it was not ins  
ally of the type, mentioned in secon #4, Indian’ Penal  
CodeThe murder was committed at night by throwing  
‘ltric acid’ on all pacts of the body of the wife, He wat  
Sentenced to death by the Sessions Juage after conviction  
Inder section 302, Indian Penal Code,  
  
The High Court, while u the convietion, reduc-  
‘ed tne sentence to, Imprisonment for life, ae the: mental  
Stace’ of the accused showed that it was not's proper case  
{or the extreme penalty. Tek Chand, J. pointed oat. that  
according to metieal evidence, the accused. was sensible  
in every respect but had a' delusion about his wife's un-  
feuhilnes This defution aot mean that he wa i  
capable of knowing the nature of the act, ete. Asvuming  
thas his wife did have lie! relations, the law did not ex  
  
‘nt vite normal and wag labouring under an cn  
ble delusion. "A mental derangement ‘which falls  
short of unsoundress of mind ay understood in avr, ie a  
circumstance whieh must be taken into consideration” in  
‘warding the sentence.”  
  
ase No. 83  
  
Peethembaren.  
ATR, 1989 Kerala 165  
(Koshi C5. and M.S. Menon J.)  
  
(Judgment by Koshi C1.)  
  
() In this case, a dest and dumb person (otherwise  
sane) convicted of murder "was sentenced. by She High  
  
  
Page 80:  
Ey  
  
Court with the minimum sentence of life imprisonment,  
‘The case was dispooed of bY the High Court by virtue of  
the provisions 4m secuon $41 of the Code af Criminal Pro  
cedure’ (Case Taw eiaborately discussed).  
  
(4) 8 suggestion was also made a to why the State  
Governinent should “not, under section 401 Croninal  
Procedure Code reduce the sentence  
  
(0) Since tte imprisonment was the minimum ime  
  
sonment, i was awarded. ‘Bot the Judgment shows  
  
That ita lighter sentence was allowed, the court would  
fsbarded a ail lighter sentence  
  
Case No, 94  
‘Thennoo ¥, The State  
ALR, 1959 Allahabed, 131, 192  
(R. K. Chowdhry J)  
  
In this case, the accused had been convicted of culpable  
hhomfeide not amounting to murder under section 304, Ine  
Gian Penal Code and sentenced to nine years rigovous im  
[ritonment by the Sessions Judge. Relations between the ac-  
used. and the deceased were strained, because of the  
fact that the secased wanted to bulld some bullding on the  
Sispued land whieh the deceased did not like. ‘There was  
fan altercation with exchanges of abuses between the ap.  
Dellane and the deceased, and then the appellant struck  
the deceased with a lathi on the head. Thig single blow  
faused the death of the deceased on the spot  
  
n appeat to the High Court th High Court tok the  
view"hat tho act of the appellant clearly fell within seo.  
tion 300 (Qhitdls) and the ease was one of murder An  
Injury had been inflicted intentionally: and if the injury  
twas such as wee suffclent undoubtedly "in the ordinary  
‘course of nature to cause death, Because, shad caused da.  
pressed frecture of the skull and Jaceration of the brain  
od Geath way instantaneous (citing the Supreme Court  
‘cae of Virsa Singh v. State\_of Punjab, ALR. 1986 SC.  
45) (not seported ithe SCR) The court pointed out  
{hat Section 300, Indian ‘Penal Code clause thirdly eid ot  
oqule that the intention ust be related to the wonde  
aly Inne sucunt tn oes wordy, the. Intent  
required need net be inked up with the veroisness of the  
sary  
  
‘The appeal was dismissed end conviction and the sen-  
tence malntsined. The High Court observed that the Con-  
‘ition ehould have been under section 802, but apparently  
Aid’ not alter the conviction.  
  
  
  
Page 81:  
6  
In re Puttawwa,  
  
ALR, 1969 Mysore 116-L1.R, 1958 Mysore 411.  
(Sroenivasa Rau and A. Narayana Pal, 13)  
  
In this ease the accused, a widose, was convicted of an  
offence niet section 302, Indian Penal Code for having  
kuled her newly bora child and was sentenced to impei=  
sonment. for life. ‘The Sessions Judge’ also recommended  
that in the circumstances of the case, the ease was a At one  
Tor Government to reduce the sentence to one Year's  
rigorous imprisonment.  
  
1m the appeal against the conviction to the High Court,  
the High Court set aside the conviction on the facts. The  
‘ecused ad lost her husband, married again and lost her  
‘second husband; while staying in her parental house, she  
feome to have ilisit intimacy with One As she was sent ext  
Stom ber parent's house: then she came toa vallage and  
‘obtained shelter im the cattle shed of one T. who, on die-  
‘covering that she was carrying, Wanted her to leave the  
hhouse. She, however, prevailed upon T to allow her to stay  
here athe nigh se gave bet to alive eit and the  
Wile of T assisted her during the confinement.  
  
‘Some time afterwards, the deod body of a child was  
found Tyin  
Killed by her. (Post mortem examination of the discovered  
  
Id showed that it'had born. alive and. strangled. to  
th). The seeused denied having rommitted the offence.  
She admitted that she had given birth toa child, but stated  
that she becaine unconscious; that she did not know that  
the child was bora alive, that she saw the child some hours  
after the delivery and it was lying dead, and T's wife took  
it'sway for burying  
  
‘The High Court, on the fact, held that It was not prow  
ce thatthe eld dzcovered and found dead near the Fowse  
Cia he hid boro he ec ant ead ar  
It agroed that ever in the abvence of discovery or produc:  
onto dead body a convicton for murder Gould be sts-  
{ined But the evidence must establish that the partie  
{ist perom wat steal ed which was ot proved  
  
"The High Court also decided that remissions of sentence  
‘aid not mean ecquittal, and the aggrieved party had every  
ight to’ vindicate himself or be  
  
  
  
Page 82:  
Case No. 98 .  
Balhir Singh v. The State  
ALR. 1080 Punjab, 382—LR. 1988 Pun. 1473.  
(Khosla and Tek Chand 33)  
(ualgment by Tok Chand J  
  
‘The accused was carrying on intrigues, with a lady  
teacher in the Government He suse  
pected that MT was also carry! that lady.  
Reacher, and became jenious apd exhorted the teacher not  
to ascocate with My The teacher persisted in mixing with  
Sand the sceused lef her im anger. The teacher wrote a  
Miher‘te him thet ake seosld not have anything more to-do  
fuith Mf, But did not give up relations with Mt  
  
On the day of occurrence Mf came to her, stayed witht  
baer end the eo hha meals together. At about 239 6  
the Sccused came’ (all the way ftom Delhi) and knocked  
  
he door of the teaches house which was chained from,  
wiltins Phe ‘teacher advised M to conceal himmelf bel nd  
The nuter door, so that Mould escape while accused en-  
fered. "(Shue had recognised the volee of the accused). The  
Sccused suspecting. that ahe wat not\_alone, insisted that  
fe should bring some Tight.” At that me Mi came up end  
fctught hold of the accused by the neck, whereupon the  
sSsteed stacked M wth "Charo (dager) and M died  
fn the spot  
  
‘The accused war convicted of murder under section 292,  
Indien Penal Code by the Session Judge, Jullundur, who  
earded him the lesver” penalty “of imprisonment  
  
n appeal to the High Court, an argument was advanc-  
ed about seltdelence (sections 100, 9, Exception 2 Indi  
Penal Code) The High Court held, that on the facts  
there was ng sight of seltdefence. Tt did not believe the  
‘version thet M had attacked the accused. But even if that  
‘Wes true, that could not have caused in the mind of the  
‘ceused sm apprehension of death or of grievous hurt. Mt  
‘ns unarmed, and on Betng taken unawares by the accused,  
Wanted to make good his escape. ‘He was standing behind  
‘the door so thst he could run sway. The accused was not  
Buaeing from the deeshold, and was Iosisting on coming  
face to face with hie val. “The moment he cast eves on  
bir, he did not leave him till he had drawn blood by hav  
{ng even him 0 less than 16 thrusts with his chhura  
‘There was not a semblance of the existence of tho right  
of private defence. ‘The attack wae without a warning,  
avige and tineparing and pursued from the start to the  
  
  
  
Page 83:  
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finish with unaliated vigour and undiminished fury', As  
regards the Sentence Jt observed:  
  
“The Sessions Judge has already awarded him the  
lesser penalty and therefore tere ts no further scope  
for any) interference swith the sentence”.  
  
Case No. 7  
Joi Rem v. The State,  
ALR. 1959 Bombay 468—ILR.  
1969 Bombay 158061 Bombay Law Reporter, 38.  
(Mudhotkar and Kotwal J3.)  
(Gudgment by Mudbolkar J.)  
  
Ths appellant was tied for he fence of he order  
‘of his wile. They used to quarrel quste often. On the  
‘ioming af the date offence the appellant wont (0 a eld  
‘Where his wife and others were  
  
Sperations. “When the 99  
hither and truck her Wee of seven tines witha Kate  
‘using serious inurtes leading to her death the very day  
  
‘The appellant's defence was that his wife was a woman  
ot Joos tharacter, tat the previous night he hed teen er  
Entering the houve of a relaton of one P vith whom his  
site was carrying on intrigues, and that he also saw het  
Soming out of that house af about 1 ast. Mext snoreing,  
‘when he went to the fla, be asked his wite whether she  
Tied wane to the house im question on the previous night  
‘The wife repisd, “yes, Twill gor is my Sweet will if  
You fel sts much then Twi bogin residing with P (the  
ipa ns posed te ae bog  
on int appellant tried to pursuade hie  
10, improve her waya, but she said “Ifyou are s0 much  
‘Shamed, then get sway irc here. Wty have you come  
ere and also sed fout Tanquage”, hie enraged the  
cis and he caught her hans the wife etalated 8  
ticking him, whereupon he Jost his selécontrol and om  
initted the offence” Te therefore plesdod exception T 10  
‘eeton 36. ""This plea tailed  
  
He was convicted under sectlon 902, but awarded the  
lesser sentence of imprisonment for life” On appeal to the  
High Court, the High Court selected the defence of grave  
citcotrl te previous night aot wes thus sic  
cont it night and was. thus stent  
end We ico Spe heen ak  
ost his power ‘by reson of something feos grave which  
appened ifthe Aid iat in the morning ‘Apart from  
Shae what oocarred in the field’ could not orderly be  
reguzded ae grave and nudden provocation,» (Passage fom  
  
pear ae oe ALR  
  
  
  
Page 84:  
»  
  
Holmes! v. D.PP. that mere words do not amount to pro-  
vocation eited)\*  
  
"The High Court observed, that it would be extremely  
avin apo the Fiat Exception fo srton 32 4  
eerie ind merely on the ground that offences against  
Sarita tights are made punichable by law in India.” What  
TOEND be considered was Whether provocation was of a  
ina whieh would else 2 reasonable man belonging ¢o  
Recoil seratam of the accused to Jose his self-control  
‘Sultcry though frowned upon in India, was not uncom-  
enti the village commanity and even before the law  
Blcvided. for obainings\_-divoree, a customary form of  
Bitee prevailed im the village les Bearing  
Srimiea these considerations It would. not be right,  
‘told that the reaction of am Indian spouse from such  
Simo be dierent tm hat of one In the  
Convetion upheld. A& regards the sentence, the court  
ebsceved—  
  
“fe has already been awarded the lesser sentenog,  
and throne there i nothing more that can be done™  
  
case No, 88  
  
Uy, Kanaan v. The State  
ALR. 1960, Kerala 24  
(Sankaran CJ. and Anna Chandy 3)  
‘Gudgment by Anna Chandy J.)  
  
In this case the aeeused was convicted by the Sessiong  
udge Under section 302, ndlan Penal Code and sentenced  
Tree unesment (or life. His defence of insanity had been  
reseed by the Sessions Court, ‘The ease was one of mt  
EES ane tecused. aged 48 of his mother aged 70° The  
ache Guidence of motive was that the accused used to qu,  
Scr sgomuentiy with his tother over the quality of food  
Whisk dhe tied to serve. "(The accused was unmarried)  
  
‘Om appeal ta the High Couct, the High Court on the  
foc acted ‘his ples of tnsanliy. Tt regarded the ease  
  
eSSrrepteptic inonity. ‘The cousin of the  
Tyas lations bad. given evidence thot the accused  
seer trequentiy from epileptic fs. ‘The cousin  
TRet one that the aceused would bein to, show slams of  
aoe nore eut 2f hours before the actual Bis and dung  
Trae ode the accused Used fo abuse hie mother an  
theft Prat his house like » mad man, and that when the  
Fist Suen the caused sould fell dovn unconscious and  
Ar cc ubout Halton hour Tater recovered. There was alo  
Bisckee thet there were signs of an approaching epileptic  
  
1 Engnd Repors  
  
rs  
salto ete, fo re Marpon, MER. 957 Mads  
  
  
Page 85:  
ry  
  
seizure noted on the day in question, The accused made  
SUetean once iy crime. When the police arived,  
Pease ad tung in the compound quietly and wth Bis  
ae ends seared, wilt bload.-Moitiple Tosii~  
resend Neo cad ochook, wooden reaper snd a stick  
caer rasan the fact showed that he Was commiting  
ihe adr ot tine whan be wan napa of owing  
(Biche was domg sometting that was wrong oF font  
Pont hee das ei uncer section 08, Indlan Penal Code  
Wo, ccorlanes with section #1, Criminal Procedure  
Bee ier wap ued for hie dotntion iP safe custody  
codsi and eeparting the matter to the Stale Government  
Betuviher necessary ation  
  
Case No. 98  
  
In re. Navesan.  
ALR, 1960, Madras, 48.  
(Ramaswarai and Anantanarayanan JJ.)  
(Gudgment and Anantanarayanan J.)  
  
i case the accused, a young man of 22, was cons  
ld of the murder of 2 young gil The gitl aged. 19  
Tei been married 6 months ago.to N: The aceussd. had,  
En. Sime before the crime, attempted to take liberties  
‘eth the girl (Phe gurl had informed her husband who  
however Fegarded. the matter’ a6 trivial) Again. shortly  
before the crime. when Ube girl was drawing) waic) om  
fa ell, the sceused patted hor on the check and attempied  
fo engage her in conversation in an improper manner. Tals  
‘as reported to the husband, and the two families ceased  
{o be on talking terms. On the day of recurrence “When,  
the pitt was alone in her portion of the house, the actused  
Stabbed her. “Apparently the accused had made tome kind  
tf overture and the gir] resisted, whereupon the accused  
Snsieteg the Injuries with a knife. Soon after the murder  
fhe eee stabbed himeet Im an attempt to commit sue  
  
The High Court while confeming the conviction, also  
refused to reduce tbe sentence of death and pornted oat  
a's yal rel tof a ana  
Git. Age of tbe accused (2) was urged as a ground fr  
{ter Mien bat south. not cteutancl that the  
‘Coir can take sato acount im awarding the penalty. That  
feust be covaidered by the authorities of the State in exer=  
Sine their prerogative of mere)” The attempt ot suicide  
Star fico not regarded an an extenvating circumstance  
  
Sm,  
(TiMehon fat x Bageor ALL aang Lap. uy (Ataien Cold  
‘Ine hab 25 math ean)  
  
  
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Pre Narain Set AL.  
SAS Tage eae 9 han 255)  
  
(i) Naps Sam Hav, Bape, ALR. 137 Rane 124 13. (Accused  
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(be Cas rete at oe sale.  
‘riggeedigt te moat fra lad Spe ah  
  
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eee) ERR A eat tater oy a's stmnting  
  
Case No. 100  
Arun Kumar v. State.  
ALR. 1962 Cal, 504, 00  
(PB Mukerji and N. K, Sen JE)  
Giodgment by Mukerji J.)  
  
Catal Punishment-—tesser penalty swhere evidence not  
i eer taf bi,  
  
In this, the evidence did aot make it clear which of the  
two appellants gave the fatal blow or did the the last act of  
strangulation. While the conviction for murder was UP-  
Iheld. the rentence Was altered to life imprisonment. The  
ust lioted the procpleIald down by the Supeme  
Court in Dalip Singh's case, where the following observe  
tions had een nade! —  
  
“This is a case in which no one has been convict-  
fed for his own act but is being held vicariously tes:  
Donsible for the act of another or others. In cases  
Where the facte are more fully known and itis possible  
to determine sho inflicted blows which were fatal 2nd  
‘Sho take a lesser part it ig a sound exercise of Judie  
al diseretion to discriminate in the matter of ponish=  
‘ment. It Iv an equally sound exereise of judicial dis-  
hetion to refrain from sentencing fet when  
{tis evident that some would 20t have been, if the facts  
had been more fully known and it had been possible to  
determine, for example, who hit on the head or who  
‘only on a thumb or an’ankle; and when there are no  
‘means of determining who dealt the fatal blow, a judle  
‘ial ming can legitimately decide to award the Tesser  
penalty im the cage."  
  
Tepes Comma a  
  
Tw Law.  
  
  
Page 87:  
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Case No. 10  
Amalla Koleswere Roo, In re  
ALR. 1968, Andhra Pradesh 249  
(Bast Reddy and Muhammed Mirza JJ.)  
(Gudgment by Basi Reddy J.)  
  
Since the amendment of section $87 Criminal Procedure  
Code im 1955 the theory that death Is the normal sentences  
ce capital offences does not old good. If there’ are age  
frevating Stcumslances, ath must be imposed fa the  
  
jarger interests of the sooty, If there are no aggravating  
circimstances, the Court would be justified in giving the  
Tesser sentence. ‘The fact that human life has been take  
oss ot asl the impositon of the extreme penalty ot  
  
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APPENDIX IV  
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APPENDIX. VI  
  
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nounced only by the Supreme Court of the respective  
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52 of the Australian Capital Tetritory Supreme Court Act,  
sii and Sevgh #7 of the | Notiner, Terriry  
Supreme Court Act, 1901, respectively. References to the  
Fgh Court intone sections are to the High Court of Aus  
  
ay Does gm Py ae oe  
glee Sess we CASE  
fice” (rd Edn) p. 137 et seq.  
  
NEW SOUTH WALES! (Australie)  
By virtue of the provisions of she Criminal Appeal  
‘Act, 118, as srandegy a person convicted on indictment  
‘hay appeal fo the Cour of Criminal Appeal whichis  
‘onsututed by ies or more. Judges Of the “Supreme  
‘Sourt of Rev South Wales “Phe appeal may be  
  
(a) against his conviction on any ground. which  
  
savolves's question of law alone; and’ ™™  
  
(©), with the leave of the court, oF upon the  
feat ofthe Sug of the Coa a ‘eat Wis  
ase Sor sppetl ‘convietion on any ground  
‘St appeal which Involven a question of fact lone,” Of  
  
“ground  
  
‘Quetion of mixed Taw and dah or anyother  
SES Spear othe Cour. fo be  
or appeal? and  
  
Bled oy trmaion cband ragh ie Aantal igh Gram  
iss bind thsagh the Assan High Cr amib>  
  
Sround  
  
  
  
Page 98:  
Second  
ope  
  
(©) with the Teave of the Court, against the sen-  
tence passed on is convietlon,  
  
‘The Commonvwealth Judiciary Act, 1903, a5 smended.  
provides a Tight of appeal in erioinal matters to the High  
Eur of Aaa" Soc an anpee trae Coat of  
  
‘minal Appeal iy iM special leave, which is  
Snage'on notice 10" the Court, where an indictable cffence  
involved  
  
Under Orderein-Council of 2nd April, 1902, and 2nd  
May, I0i5, appeals ie to the Privy Couneil from the, High  
Cours in cauminal matters, only by special leave of the  
Privy Coune!l.  
  
SOUTH AUSTRALIA  
  
‘Section 11 of the Criminal Law Consolidation Act pro-  
vides that any” person wha fs convieted of murder shall  
Suffer death a¢ a felon. On conviction for mirder p  
ouncement of sentence of death i= automatic. Tt is ‘the  
daly sentence which can by law be imposed, Whether  
he sentence le cartiod Into effect or commuted ie q mats  
{Er for the Governor of the Sule, “with the advice “snd  
tongent of the Executive Council, to decide.  
  
‘There is no appeal to any Court against. sentence of  
death a3 such, although of course aR appeal against cone  
fon lige to the Full Court of ihe Supreme Court, sitting  
a 2 Court of Criminal Appesl  
  
‘An appeal on matters of law lies ag of right; an appeat  
fon matter of fact ot mixed fact and law lies only with  
the eave of the Pull Court.  
  
Further appeals can be made to the High Court of Aus  
tralia and to the Privy Council, but only with the leave of  
‘those tribunals.  
  
TASMANIA! (Australis)  
Under the provisions of the Tasmanian Criminal Code  
‘Act, 1094, sentence of death is restricted to” ro crimes  
‘le’ Treason (Section 56) and Murder (Section 138)" and  
fn both caves sentence of death is mandatory.  
arding appesls, see sectlon 401, of the Criminal  
Code Act, 1984." Section 401 (1) statas “A person convicted  
before a Court of trial may appeat fo the! Coutt of Crime  
zal Appesl—  
@  
i)  
  
Bevel on information valved through the Austallan High  
ie ake Giead hough the Aeon ihe  
  
  
  
Page 99:  
fy  
  
(e) by leave of the Court of Criminal Appeah  
agsiSst ie Sentence passed on hs conviction “Unless  
Ee Soeence is one aed by law"  
  
‘As the semen of death sone, whic xed by amy  
the position Is that 2 person 20 sentenced has no right ol  
bpeat agunst the seience az such. Bat am appeal by  
Petsco under sentence of death ogatist his cowvietion 5  
Fogulated by tumerous statutory provisions  
  
VICTORIA! (Australia)  
  
(i Deata sentence is not appealable as such  
  
(ii The Full Court of the Supreme Cour: of Vietorta  
heats the Sst appeal  
  
(iy Appeals from (i) may be made to the High Court  
of Austria or to the Privy’ Counell oF in succession to  
heitgh Cours of Australis and then to the Privy Couar  
Eh  
  
Pint (i) may be elaborated thus: There is an appeal  
as of iat against conviction on any ground of appeal  
hich ‘involves a question of lato alana otherwise & ere  
Tilete of leave is Sequired. ‘See section 887 of the Crimes  
‘Ro, 1060 (cited below)  
  
In elaboration of Point (i), sca eave of the High  
Court is necessary on sppeals to the High Court.  
rounds are not prescribed by statute, so itis s matter of  
Siscietion for the High Court. As."{o appeals to the  
Privy Counel, the appesl ig only by Teave. Such leave  
maybe granted "bythe Court giving the judgment  
Sppealed rom or UY the Privy Council The grounds on  
‘hich leave will be given are not preseribed by statute,  
But depend cn the practice of the Court or the Privy  
Council as the ease’ may be  
  
‘Sestion 567 of the Crimes Act, 1988 (No. 6231), reads  
as follows —  
"S67. A person, convicted on indictment  
appeal unde this Part to the Full. Court  
(a) egainst his conviction on any ground of  
‘appeal which involves a\_question of law. alone:  
Brovided that the Full Court ip any ‘such case  
rage if thinks fi” decide thatthe procedure  
WitK Felation to Crown. cases reserved. under  
Part TH of this Act should be followed, and re-  
quire & case 10 be stated aceurdingly under. that  
Part in the same manner ae Ifa question of Taw  
  
1. Bred o infcnaion chained trough he Autraan High Com  
ii Sew Be e  
  
  
Page 100:  
w  
  
hnad been reserved and thereupon the provisions  
of the saud Part shall with the necessary modife  
cations apply accordingly;  
  
(b) upon the certiicate of the fudge of the  
Supreme Court or shaman of general seats  
jolore whom be waa tried. that if is a Ht case for  
  
Sepeal suinst ‘hus tourition en any" grosnd af  
  
appeal which Involves a question of mked law  
  
ant fact  
  
(©) with the Jeave of the Fell Court  
scSoch Giound so is"mentioned fn pazagraeh  
bi. orang ether ground which appears 0 the  
  
Full Coutt to be “a” sutiient ground of appeal;  
  
and  
  
(2) sith, the leave of the Full Court, against  
the sentence passed on his conviction, unless the  
  
Nensente is one fized by Tow.  
  
WESTERN AUSTRALIA‘  
  
(Section 68 of the Criminal Code provides nm parae  
‘graph (o) "A. person convicted on indictment may ajpeal  
forthe Count “ay with the leave of the Court  
nusins the sentence pasta? on his conviction.” "The right  
ithe case of sentence of death Is ot of areat eight at  
the sentence of death is mandatory and cannot be varied  
BF a Courts “Therefore, a man is convicted of wilful  
fnurder or teason. the sentence ot death Dost be passed,  
tnd tnfess commuied by the Rxceutive Counet, must. be  
curried ol  
  
‘The Full Court of the Supreme Court of Western  
‘Austtllg heats the fst appe  
  
(i) These ace, no further appeals, posstble, although  
where’ the High Court grants special Leave to-appeal and  
stians s Goviton fon eee cence” ae  
the apoeal ‘hen itsubstitutes the appropriate "penalty,  
Which nll eaves (exeept wolf murser and freaoa}  
Gis not involve sentence of death,  
  
QUEENSLAND"  
  
4. The death penalty wae abolished in Queensland by  
‘the Criminal Code Amendment Act of 1222 whieh Waa  
‘seented to 00 July 31, 1022  
  
usa?  
  
‘The information ts ltited to pertinent Federal state  
  
tory procedure inchoding the avallaility of review in  
ras Bad on inooaton obtained Tough he Aus Hig Coma  
sic Nebo  
  
4 Based on iafmatonsaplef by te Depscment of Sun, USA  
sidsug "amen Ema, New Deb  
  
  
  
Page 101:  
\*  
Federal Court of a death sentence imposed in a Sate  
Court.  
  
(i) Whether sentences of death are appealable es of  
‘right to the highest appellate court?  
  
Sentences of death imposed in a Federal District Court  
axel pot aopelue ss of ht to the highest appelate  
Soir, the Supreme Court of the United view  
ff death sentence In the Supreme Court is limited to  
thote cases Wherein the Supreme Court in the exercise of  
ite Giseretion grants certioreys from the intermediate  
  
Federal Court, the Court of Former section 61  
‘of Title 18 allowed an accused the right to direct appeal  
from a Federal District Court to the Supreme Court in  
  
‘Cases Invelving conviction of a ceptal efenes.. This sec  
tion was repealed by thove sections of Tile 28 which com-  
Pletely resrganiced distribution of ppolate.Jursdicton  
Botwcen the Supreme Court and the Circuit Courts of  
Appeals. "Now "a defendant ‘sentenced to death in ‘a  
Federal District Court mast appeal to a Citcut Court. of  
Appeals,  
  
(i) which court Bears the first appect?  
  
As indicated, the first appeal in a case where the death  
sentence hor bien imposed a a Pederal‘Dustiet™ Cort  
‘Would be to Circa Court of Appeais. The Courts ot  
‘Appeals have furidiction of sppeais from all final. ec  
ons" ofthe district courts of the United States,” the  
‘United States District Court for the District of the Canal  
{Zone the District Court ot Guam, and the Diatict Goort  
of the Virgin Islands. "Av defendant is ontiied tg & ull  
Seview of hia eases in a Circuit Court of Appeals. The  
regain flrs to in, Seu hic le  
‘insted direct appeal to the Supreme Court in, capital  
‘ater “iniringedMho substantial right of a defendant sen-  
fenced to death to-a full review of his case, for he may  
{ake an appeal to a Circuit Court of Appeal “ts 2 matter  
cr right. "fe'ras simply 2 sultatlon where the channel of  
Sppeat was changed.  
  
i)\_Are there any further appeal or epeals. If 0,10  
sonlgh cout and on what ground? 4  
  
A defendant sentenced to death ip @ Federal court may  
attciopt to have his ease further Teviewed in the Supreme  
oure of she United States by writ of certioran, Cases in  
fhe Courts of Appeals may be reviewed by. the Supreme  
  
1. Sw dicen 1D  
  
2 See Untad Sas. Seno 49.8 Mich, sn arp  
seni Sig BS. S35 0 F SPE WTO. MS 80)  
  
3, Pll econ ae econ, Reman, Una usa  
asd t Rinse Gd See ESE SE a  
  
8 US tt  
  
  
  
Page 102:  
if  
  
\*  
  
‘Court by writ of certiorari granted upon the petition of  
fy patty to any criminal cage, before or after rendition  
of judgment or deeree'. Supreme Court” Rule 19 sets  
orth the guidelmes for the Court to follow in deciding  
‘whether to review a case an certiorar, They sre as follows:  
  
19 CONSIDERATIONS GOVERNING REVIEW ON  
‘CERTIORARE  
  
1. A roview on writ of certiorari Is not a matter of  
right buy of sound judi discretion, aa will be granted  
‘oly where there are special and important reasons there  
for The following. while neither contvolling nor fully  
micasuring the courts discretion, indicate the characte  
Of reasons which will be considered’ —  
  
(a) Where a state court has decided » Pederal  
‘question of substance not therefore determined by this  
hurt, hag decided it in a way probably” not im ace  
ford with applicable decisions of {his court.  
  
(b) Where @ court of appeals has rendered a doci-  
sion in gontiet with the decision of another court of  
fppeats on the same matter, or has decided an io  
Perso state or retrial question i way In cane  
  
ict with applicable state oF territorial law: or ‘has  
decided an important question of Federal law which  
hhar not bees, but should be, settled by this cour’, oF  
hiss decided Federal question in a way in confit  
with applicable decision of this court; oF has so far dee  
parted from the accepted and usual course of judiciel  
rocecdings, ot 30 lar sanctioned such a departure by  
lower court at to all for am exercise of this oourt’s  
Power of supervision.  
  
2. The same general considerations outlined above will  
  
conte in respect of petitions for welts of certioran to re  
  
Wiew judgments of the court of claims, of the court "of  
  
Gesiomg sid Patent Appeals. of of any other court whose  
Aeterminations are by law reviewable on writ of Certon  
  
Review by a Peal Court for a prigone in Federal  
custrd may also be obtained under 25 USC. 2255 to the  
‘Oetent shat relief fs available tinder This Section. Tt pro-  
idee that?  
  
sid Og 9 tes gg tt  
  
Scan  
  
b-122 Law.  
  
  
Page 103:  
for that the court was without jurisdiction to impose such  
Sentence, or that the sentence was in excess of the max  
‘mum ouihorised by law, or is otherwise subject. to” calla:  
teal alteck, may move the court which Imposed “the sens  
ence to vacate, st aside of correct the semene.o. =  
‘Thus, a murder indictment which charged that the ime  
hhad been committed on a. Washington Teservation But  
failed to allege thet the defendant or the victim wae an  
Traian te po asi for Federal traction, and. even  
‘thouh the defendant had pleaded guiliy, he could there  
after collaterally attack the charge. in a's. 2259 proceed  
ing’  
  
"This section, however, is not a substitute for appeal and.  
‘cannot be resorted to by a petitioner to Teview the suff  
‘lency of the evidence,  
  
Final judgments or decrees rendered by the highest  
court of a'stae in which a decision could be had may be  
Reviewed by the Supreme Court of the United Stator’. “A  
Setendant Who has been sentenced under a state statute  
which he claims is repugnant to the United States Const:  
{ation of who claims’ deprivation of ether Consticutional  
Fights may petition to have bis case reviewed by the. Sil-  
  
rene Court. Once again, the standards of Supreme Court  
je 18 apply, A recent state case lustrates the attitude  
fenbers of this Court toward the granting of  
Tin death cases.” ‘The case involved “the imposl=  
tion of the desth penalty on'a convicted rapist. who con:  
cededly had neither taken nor endangered human life. Ale  
though certioreri was denied, Mr. Justice Goldberg, ith  
whom Mr. Justice Doublae and ide. Justice Brennan Join  
(ed, dissented. He said,—  
  
“would grant certiorari in this cage and in Snyder v.  
Cunningham 169 Mise. to consider whether the Eighth  
land Fourteenth Amendments to the United States Const  
{ution permit ‘the imposition of the death penalty” on &  
convieted rapist who has neither taken nor’ endangered  
hhuman life. ‘The following question, inter ali, seem rele  
vant and worthy of argument and consideration —  
  
1 Me of nd ah oe cone an  
  
sg te by Hen  
th pee by these  
Eandacts of dacenty that ark the proses of oech  
enlarger “ears Soe of foe]  
  
Jess universally accepted"?  
  
5. Set Hiddron! ¥ Unie Stam, 261 Fan 356 (CA. 9, 159)  
2 USE oe,  
  
  
Page 104:  
2) ts the taking of human life to protest a valbe  
cei aman ile ete wih te ns  
Siena (prseipton ageast punishment. Whi  
iki ekecaiveas cheverity ace prenly Sspropor  
tioned to the eilence charged?  
  
(@) Can the permissible ans of punishment (€  
detetreace goaton, rehabilitation) "be achieved as  
Sect by vanhing tape tea eprely han  
SES ey. by fe imprisonment) "itso, does. the  
{Eepontion of he death penalty for Tape” constitute  
Ainecesary erulty’?  
  
Finally, a Federal court has the power to grant writs  
of Habeas eoraue for the purpose of inouiring into case  
of restraint of liberty of anyone in custody under suthor-  
ity Cf tie state in violation "of the Federal Constitution),  
Provided the apphicant hag exhausted all remedies avai  
hie in the eourls of the alate and in the Supreme Court  
Of the United States by appeal or wit of serovars, Thi  
defendant convicted of murder and sentenced to ceath,  
Jina state court who claimed that his eonviction violation  
the Fourteenth Amendment because of the admission in  
fidence of 2 confession eblained while he was tinder the  
fntluence of drugs and who had exhausted all state reme-  
dies wae held to be entitled to'a  
jing fa the Federal court on his  
{in view of the fact that bo did not get a full and fair hear  
‘ng en this question in the state courts?  
  
ENGLAND  
  
1. Appeals to the Court of Criminal Appeal Under sec-  
on'2 et the Crianinal Appeal Act, 1007, (7 Baw. 72.73), 0  
person convicted on indictment may appeal under that Act  
{o.the Court of Criminal Appeal. The tection in quoted be-  
  
“2. A person convicted on Inditment may appesl  
under (hil Aet to he Court of Crimiaal Apes  
  
(2) seainst his conviction on any ground of  
appeal which involves a question of law alone; and  
  
A i with the leave of the Cont of woeinal  
‘ara teen the sett RS ee he  
ea spa et  
epoca le ete  
hating eo, agen med  
rc tic Sate pi see  
  
TRADES Bey Pw Dl 9 US. oe Goa  
BTetmad Sn 272 US. 293 95.  
  
  
Page 105:  
100  
  
lh yt av a the Cot of Cina:  
peal against the sentence pared on his ca  
{idm unless the Sensence cone fied by law =  
  
2, Under section 2(4) of the Sentenge of Death (Ex  
ecient Mothers) Act, 1991 (21 and 22 Geo. 5, ch 24) read  
With section 2(1), where a Woman convicted of a eapltal  
offence alleges that she is pregnant. or, the. convicting  
‘court thinks it proper to make an inguily. the question  
Sf pregency sla deanna by ay Bete the  
sentence Is passed: and if the. jury finds” that she is\_not  
Pregnant, she may appeal under the 190? Act to the Court  
of Crimmal Appeal, "That Court if sstished thet for any.  
eason the finding should be set aside, shall quash the  
Sentence of imprisonment for life  
  
nding sentences on eapital murder, there are  
gertain special provisions in section 9(I) and Furst “Schee  
dle, paragraph 1(2) of the Homicide Act “1007 (S86  
Elz Zell) which are not of much importance for oUF  
purpose  
  
4, House of Lords.—Under section 1 of the Adminis:  
{ation of Justice Act, 1960 (@ &°9 Elis. 2c. 60), an appeal  
shall ie ffom the Court of Criminal Appeal to’ the Tease  
‘of Lords in certain cases, The section Te quoted below =  
  
\*S. ()—Subject tothe provisions of this section,  
an appeal sal eto the He af Lote ne cot  
tance of the defendant or the prosecutor  
  
(2) from any decision of a Divisional Court  
of the Queen's Bench Division “In a eriminal  
Shuse or matter:  
  
(2) from any decision of the court of Crimie  
‘nal Appeal on an appeal to that court?  
  
Hesse we  
  
(ection 3 of that Act makes special provisions to the  
‘effect that an application for leave to appeal ins case In-  
Yolving sentence of desth a well as an appeal for which  
eave is granted on such application “shall be heard and  
determined with ‘as rmuch expedition as practicable, and  
provides that the sentence shall not be executed antl x=  
Plration af the time allowed for such application, ste)  
  
  
Page 106:  
101  
  
NEW ZEALAND!  
  
3, Treason i now the only. crime which ts punishable  
by the death genaliy in New Zealand” Grei 3of he  
Chimes Act, 1850." Appeal against conviction for ¢  
sth cess qoveed hy ston tof ha Cres Ace  
‘and ties to the Court of Appeal. On any ground of appeal  
Sehich involves a question of law alone, the appeal is as  
‘ight On any round hich, inva = "Geestion of  
fact or of mived fact and Jaw, the leave of the Court  
Rijpent The cerieate of the tral oF sentencing fudge  
‘that it is "it ease for appeal” is required.  
  
2 Ther is mo longer any provision tn the Crimes Act  
aga Ay ger Rew Scala fpataton povading fi ue  
ther appeals from the Court of "dhere ix sll how:  
iver # right of appeal to the Pray Counel by wietie. of  
the ative. Halebury's Lawn of England. Sra  
Bin, ‘Val 'Ve'pp. 685 a gives on adequate acount of the  
New Zealand postion. Two points “should however ‘be  
‘oted. “In the rst place. New’ Zealand Courts "no longer  
Ktave juradiction in‘any case fom the Independent State  
of Waster Samoa" tn the Segond plage, the Court "ef  
‘Appeal in Woolworths NZ" bids we Worene” (963)  
ZF og held that, it could grant jeave to appeal to the  
Privy Counch in certain circumstances (eee Halbury” op.  
ft b 623) bet the fegstation on which that decison Was  
Bese fs now senealed. The result in therefore: that, spe  
‘Sel leave. to appeal mast be btamed from the. Privy  
Cove ane i granted ony i exseptioa cream,  
tances where ya distegard of the. forms of  
lege pres ory same vation of the ‘Pines St  
Tura justice or otherwise substantial ve infu  
BESS ae aes  
CANADA  
  
The position regard: sin capital  
Canada Ean be gathered from the folowing Provisins of  
the Griminal ole of Canada” (as acoed in 16 bp 810  
Elie 3 Ch 44 ssuented to on idth July 1961) sections 889,  
‘04, 497, 590 and 601 cited below:—  
  
“583, A person. who is convicted. by a tral court  
fn proceedings by indictment may appeal to the cout  
ot appeal—  
  
(2) against his conviction  
  
) on any ground of appeal that Involves  
a question of ise alone,  
  
Wi) on any ground of appeal that involve  
e=.a question efToct alone oF'a guration. tf  
‘ited wand fect with Teave of the court  
  
aya on loan olunned though New Zand High Corsini,  
vet Bait  
  
‘rea  
  
i  
  
  
  
Page 107:  
of appeal or upon the certificate of the ial  
Sage that the ave I's proper case for appeal,  
  
(UN on any ground ot appeal not mene  
cone a ata) eS) hat  
topes he Coat Appa toe asl  
eet spree Me hee cee  
fours SE ape ot  
(6) aguna the sentence peed by the til  
court fai of ean Baad A cage  
Berl whee that seeanc i ne Eaed by fo  
S24, (1) Notwithstanding any other, provision Bot  
of this Act's person who has been’ sentenced to death seeesse  
‘may oppeal to the court of appeal. Feencedtto  
"a) actin he conieton on any ground. of Sue"  
appeal shat tnvolves‘s question ef law Sr fact ot  
Serer a aps a  
(©) adsorbs sentence unl that sentence  
is ose ena fa  
A perm smenced to dats sal othe Nn,  
san ot tee noe Pusan te ett Sen  
Sit" be Hecmed to hate giver such notice sod to have Amt  
Sheed spn i cision shd Mga ae awe  
“ce Scie that suitence sche ted yf  
(2) The court of appeal, onan appeal pursuit (0 Caso  
vis Sa, Sal ae  
(a) conser any ground of appestalegea ta  
oe SCT aE et 2  
  
une conse, the rep to seriain whether  
the conviction ought to\be set aside of "the Aer  
tence varied 2s the case may be  
504 (1) The Attomey General or counsel instruct: Rt of  
ca by him for the purpose may appeal tothe court of Aten  
pa Sexhe  
(2) against a judgment or verdict of aeqitts  
of a Snel our fn preceding “by tlesnen on  
‘Soy ground of appeal that faves question of  
I meson we  
  
{@) Acquittal. For the purposes of this section a judg  
ment of verdict of acquittal includes an acquittal in tex  
pect of 2 principal offence where the accused has been con-  
‘Viced of fn offence sneluded In the principal offence,  
  
  
  
Page 108:  
‘Appel fin.  
  
La  
  
Hi  
  
aS  
  
103  
  
7. (1) A person wa ie convicted of an indict  
Bite Gtoned"whese conviction fs efirmed by the  
Eourt of appea! may appeal tothe Supreme Court  
oe Canad  
  
(a) in case of dissenton any question ot  
law Si which a Judge of the court of appeat di  
ents or  
  
(b) on any question of law, if Jeave is er  
ea vy the, Bupctme. Goutt of, "Canada tices  
Sentyne days after the judgment appealed  
Eoin hpronounced or within sath extended time  
tthe perme Court of Canada or Joe here  
Sf tay, for special reatong, allow, 1086, 0 48  
%.  
  
(2) A person  
(a) Appeal where acquittal et aside—  
no aeheiied “of an indictable offence and  
‘hose abquittal is set aside by the court of eppeal  
  
far son aot ed saint  
Song tae) Sree cat arte ana  
See aapeet  
appeal to the Supreme Court of Canada oo. 2  
Goce of lowe fan 1059 (1), (2), 1088) hn pat}  
Senda als, Puls  
SOTA, Notwithstanding any other provision of this  
Poti  
(a) why hasbeen santenced\_ to death and  
whol cilitn SS aed "by “tn! uc  
0) who {5 acquited ofan offence punishable  
aah gal  
imayappeit to the Supreme Court of Canada on an  
Foleo ase Br etal ee an ces 7  
SH (1) Where a Sulgment of + court of appeat  
set aia’ cnet atc oS apes “Bn  
ssi gy Params en tee, ker  
(hese aratarn "ef att EY of ae  
Ran ieePaeaey Gentil may appeal ie  
Soins Gut oF Cahad  
(e) tn cae of Digent—en any auestion ot  
raw high age oe RToas appease, of  
(0) on any question of ae,  
ts ramed ty tal Sipe Soe Cael  
ern aay Be we falcata  
  
  
  
Page 109:  
i  
  
from is pronounced ot within such extended time  
Sve Supreme Curt of Camda or Jody here  
Gf ing for opecal reasons, allow” [Am- 036,  
cern  
  
601, ‘The Attorney General of Canada has the Rit of  
  
samme rigs of uppeal in proceeSings matted a the fen  
fhstance of the Government of Canada and conducted Sst  
  
by ot cn behail of that Government 25 the Attorney spp  
Genera of 2 province has under this party wee  
APPENDIX VIL  
Provisions nesannive Prowaner Woxeex ano Desttt  
Siermer  
  
(Position in certain other countries)  
PREGNANT WOMEN  
Australia.—Sentence to death, not to he passed on ex  
pectant mothers (U.N. Publication, “Capital Punishe  
Trent” (1982) page 25, paragraph 69).  
It is to be respited in Tasmania, and W. Australia (R,  
© Report, page ast, paragraph 47)  
  
Canada—Section 577, Criminal Code, Women \_sen-  
enced i death tay inv im arent of execion” ea  
  
mand ‘of pregman reupon court hat to direct one  
Simo reir redial prcignere To be, swern to  
amine rom thett feport it appears that she Is  
Sregoant, execution "ahall be arrested® antl delivery, of  
nefits tno longer possble in the course of nature that  
the be delivered  
  
(Appeal against Minding allowed).  
  
Ceylon—Sentence of death not to be passed on an ex  
‘pectant mother.  
  
(S 4, Penal Code) (See B.C. Report page 451, para  
raph 6),  
  
ChileSentence of death not to be notified tll 40 days  
lapee after child-bieth.  
  
Greece—Pestooned for 6 months in case of breast  
feedings cherie pontponed for 30 Sess  
‘Iron—Poetponed for two years in case of bresst-feed-  
fing; otherwise postponed for 3 months  
(W. N, Publication, page 25, psragraph 68).  
New Zealand (Section 18, Crimes Act, 1961)  
Sentence of death not to be passed on pregnant  
  
women," "Instead, she Is to be sentenced to life imprison  
ont. (Appeal against fnding allowed).  
  
  
Page 110:  
103  
  
UK:-Sentence of Death (Expectant Mothers) Ac,  
1951—Substitution of penal servitude for lite  
  
Many other countries —Bxecution of sentence is poste  
poned intl delivery (U.N. Publication, page 49, ara  
soph 185).  
  
APPENDIX VIII  
  
‘Ace sto Capra, Puwisiniier—rosrmoN I cenraty, States  
op inoia sno 1 CRRTAI OTHER COUNTIES  
  
AGE  
Part A~Position in some States of India  
Andhra Pradesh  
See Hyderabad.  
Bombay  
Hombsy Children Act, 1948  
(it of 1948)  
  
‘Section 68(1) reod with eection 4(e) end (6)  
No youthful offender can be sentenced to death.  
  
“Youthful offender" means any child who has been  
found to have committed an offence.  
  
“Child” is a boy or giel under 16,  
  
Under section 5, a person is deemed a child if at the  
time of erree or initiation of proceedings he bad not atti  
fed the age of 16 years. But if euch person attains 16 dul  
Ing the proceeding, the proceedings shall be continued and  
NOfders may be passed in respect of such person under  
this Act ae if such person was a child”  
  
Central Provinces  
CP. Children Act (10 of 1928)  
  
tion 28, read with Section 2(0) (0)  
  
1a” oF “young person” can be sentenced to death.  
  
‘withstanding that he may have attained 14  
  
“Young person” is a person who is aged 14 years or  
upwards But under 16. \*  
East Punjab  
  
Under section 27 of the East Panjab Children Act (Bast  
Punjab Act 30 of 1940) ‘no person Who was a child at the  
  
  
Page 111:  
108  
  
date of the commission of the ofence” shall be sentenced  
Wideath, sts. Under section 36) of that Act, “ch  
edt ton ce the age of hacen Seats" The =  
on contsing the usual provision relating to # child sent  
to'a certiied school.  
  
Gujarat  
  
Se Ratey  
autora  
  
Tas etn 3 ot Nps te dt,  
eae Bas oe Ratan Og ts Ht  
Sie DS Ocoee aa  
SES oa gees ra Soe  
EOS Batis de gebractr fs  
heer uy Ua, Sr te 0), a  
Sir eee acne raat  
PR ha ei]  
Fat  
  
‘Madhya Pradesh  
‘See Central Provinces.  
Madras  
‘Madras Children Act, 1920 (4 of 1920)  
Section 22 read with Section 30), 82)  
[No ehild or young person ean be sentenced to death,  
  
“Child” ie a person under the age of 14; but if 2 child  
4s sent to an approved school, the deBnition applies to him  
uring the whole period of detention. “Young person” is  
fiperion who is aged Io years or upwards and is Under the  
‘age of eighteen years. (See Amendment Act 31 of 1958).  
  
Maharashtra  
  
See Bombay.  
Mysore  
Under section 25 of the Mysore Children Act (Mysore  
‘Act 45 of 1943), 2 child shall not be sentenced to. death.  
Under section 2(a) of that Act, “child” means a person  
under the age of sixieen years. The section contains the  
Usual provision as to a child sent to's certieate sehocl,  
  
Uttar Pradesh  
  
‘Under section 27 of the U.P. Children Act (UP. Act 1  
of 1952), no court shall sentence a chid to death. Under  
Section 2(4) of that Act, “child” means 2 person under  
the age of sixteen years.  
  
  
  
Page 112:  
107  
West Bexgat  
West Bengal Children Act  
(West Bengal Act 30 of 1958)  
‘Assented to by the President and published on 3.11964  
  
‘Section 24(1) read with section 2(h)—‘juvenile delin-  
quent and section 2(€)—"ehild”.  
  
No juvenile delinquent can. be. sentenced to death  
‘suvenile delinguent" Iss “child” who has been found t0  
have committed an offence.  
  
“cu” em person wh has no tied he ae of 8  
years. Under section 3, if ducing the course of any  
2eeings child aang 1, Se proceedings may be come  
fd snd osders maybe made wher this Actin respect of  
Rit as if be was a cha  
  
Union Territories  
CChildcen Act, 1960 (Centrat Act 69 or 1960)  
‘Section 22(1) read with section 2(€) Q)  
  
‘A boy snder 16 oF a girl under 18 cannot be sentenced  
to death’ “This ig the effect in substance, because a deline  
{quent “child"— that fs & child who haa been found to have  
Sinmitted an offence’ cannot. be sentenced to death  
Shiai dete boy who has not atsined 18 or pr  
who hae not atiaibed 18.  
  
‘Under section 8 where am inguiry hae been initinted  
and during the inquiry te “child” ceases to be such, the  
Inquiry mey be continued and “order” ray be made as if  
such person had continued to be'a child.  
  
Part B-Position in some other countries  
Austria (Europe)  
  
‘A person under 29 years cannot be sentenced to death’,  
  
Canada  
  
No exemption for age seems to have been enacted by  
statute.  
  
Prove  
|A person under 18 years cannot be sentenced to death’,  
  
Ta UN. Publication, Capital Punishment, 1963, pape a5. pareeraPh 7°.  
  
  
Page 113:  
108  
New Zealand  
  
No death sentence can be ordered in respect of a person  
vender 18 jonrs st the time of offence. Seton I, Crimes  
Bet 0.  
  
No death sentence con ne orden respect of  
who “appears to the court” to have been under 16 yeare  
Whe Wine of otence  
  
Section 38, chilien end young persons Act 198 a8 sabe  
stated by seston B(3), Homielde Act (957),  
  
  
Page 114:  
APPENDIX IX  
  
Ccanveay Caintes 1m some covrrntes oF ttt Barris  
‘ConmeosweaLti (DETAEED STATEMENT)  
  
Note ; Expl. of Symbols: + = Capital murder  
  
Tove (Quran hel (Su Cima Cad of Canad Pena (Revie, (Se Cris Ae su ane Sue  
General Note (Quen hy Q  
  
satan gon Sr as ie oe GiSS ne  
2a ‘Sti Te  
  
(© Pleas Ae 937  
(© Bamse Ace 957  
Saltese  
vtener gSimmtoeeot Casal maser + “eran ee ot  
  
mee Ack a9.  
  
“Nice seston 478  
cals Rl  
  
  
  
Page 115:  
“Teen  
  
Su a  
oon  
  
‘sediont, Cia Law  
  
tas  
"Re as  
eBevern Aearain  
  
eM Se <a ana  
  
2 Criminal Cote 00  
irae ela Tt  
  
Coes (Ameren) Ae 958  
++Newuts  
  
{Commarea  
asoral +  
“Yitoia  
+ Tasaauia  
Piverern Ame  
“ENew South Wate  
  
‘remounly cata  
  
WS ais “oth  
  
+  
  
sresting Fee  
  
om  
  
  
Page 116:  
m  
APPENDIX X  
  
(Cousins 1 WHUCH DEATH SENTENCE 1S MANDATORY! YOR  
  
‘ceetact OFFENCES  
  
ie of sores drt scons fs manly for cain eres  
  
couney  
  
Maoaaoey  
  
Reape Ue (Pron ani  
WWbremvss, Sas)  
  
America Canta  
  
UA.  
South Ameren -  
eke  
  
toy on eet of sepia maker", pati  
Monee Hale ent we  
  
Manheory 6 aay an eon (Sentmce  
ech “oid esa.  
  
| Mandony fr tines aso ton Seay.  
  
\_Mandory in cen Sots  
Manor ie seta cae iereinary ln oter  
  
ola Atanas  
runiney formar aod eon  
  
- Mandiory i some cases Disetoary in ters  
  
Manan (0 sper miedo mie  
sorast inthe courts of oh ct  
  
mot comin ie crime,  
IRE ft i onan aepioiel onms fone  
Mopar fo ein cies a cei the  
Mandir fr murder commited by conn serving  
semen i imgenonmen fo usin  
{on Refcxo, cesion ei,  
Mandory fot een aggrte forms of murder  
  
Madaory ig mater somite by 2 ork ea  
  
Mandatory f crane  
  
+ Magasory for ola eared of mae  
  
Mansuory (or extn augroewed fem of mate  
‘ie  
  
ofp ts Ute Nas 958),  
  
  
Page 117:  
m2  
APPENDIX XI  
  
[Bxrmicrs rion rir Bunneese Peat Cone, AND ANALYSIS OF  
‘Tie Busta raovisions  
  
Extracts from the Burmese Penal Code’  
  
‘the intention of causing such bodily injury as is likely to h°micse-  
anPihe ass SASS fate  
Gh ag ta a Oaks  
fouree of ualure’ to cause desth, commis’ the ofence of  
Sia hia Shes Sa  
seh tie tet ee  
al en eee oe  
SG GPiid oy Ss eg aa  
Sa  
Pn  
Tinh Oe penn th  
seas eta  
  
Toisly—tat she provocation ts not ven by  
ansthi “nthe fs exercise of fhe right  
private defence \*  
  
Esplenaton Whether the provocation wa grave\_ and  
andi ough to apeive (oe of te ver at  
icone is gueston of fee  
{By thn the ex n goed th fh ah  
ste, dee of erm or propery, etzeeds the Peet  
Frc to hi byw adCast nth of the pret  
Eine! whom bei xorcnng ack ight of efenctie  
Se pemedlnon sal wiht ay tntertion ot leg  
ford hum thm'is eer for te pupae ot defence  
(©) Ith, bing a puble servant or ing a pe  
sel he tent opal oe Sele  
em fren thn by nr waa et  
Evie aic fio fh tees to be ay  
eceay ft the dw dachnge ofthe ety of such pte  
errant tad'without iwi towards he etsn Whos  
ee Sass  
  
  
  
Page 118:  
uy  
  
(D) If he acts without premeditation in a sudden Aight  
tn the heat of passion upon a sudden quarrel and without  
avi takes Uae advantage or actin a cruel or une  
  
Explanation—t is immaterial in such cases which party  
offers the provocetion er comrnits the frst assault  
  
(B) It he causes the death of a person who is above  
the age of eighteen years and who suifere death or takes  
the Fisk of death with his own convent  
  
200. Whoever, in the absence of any circumstances  
Which inakes the act one of eulpable homicide not amou  
Ing to murder, causes death by doing an act with the  
tention of causing death. or with the intention of causing  
Lodi injury as in fact ie suflcient in the ordinary course  
tf nature {o cause death, cooumits the offence of murder  
  
300A. In sections 20 and 300  
  
(2), person who causes bodily injury to another  
who is labouring under a dioorder, dacase\_ or “edly  
infirmity, and thereby accelerates the death of that  
‘ther, shall be demed to have caused Nis death,  
  
() where death ig caused by bodily injury, the  
ented of Geen oil  
person on whom the badly injury fs inflicted isa  
relevant factor in proving thg nature of his intention  
  
() the offender's knowledge that an act 2 20  
min angers it una pose  
cause desth, or such bodily injury” ar ip likely to cause  
death isa Felevane factor im proving the nature of his  
inkention,  
  
(©), the causing of the death of a child in the  
‘mother's womb is rot homicide. ‘But it ‘may amount  
{0 culpable homicide to cause the death’ of 2 living  
child if any part of that child has been Brought forthe  
though the child may not have breathed or been com!  
pletely born  
  
201, If a person, by doing anything which be intends  
‘or knows to be likely to cause death, commits an offence  
‘by causing the death of any person whose death he nelther  
intends nor knows himself to be Ukely to. cause, the  
offence committed by the offender is of th of  
Which it would have been if he hed caused the  
the person whose death he intended or knew himself to be  
IMkely to eause  
  
faba py AS 2000, a  
  
9-122 Law.  
  
fhe of  
et  
  
irate  
Sofas  
Feuine  
Sater  
San pes  
  
see  
  
  
Page 119:  
oz  
  
Peothnes  
Eraie  
Sosa  
  
pond  
sees,  
  
4  
  
planation in tls secion the word ‘offence means  
an offence ‘im section 299 or section 300 or sec~  
‘Son OIA of the Penal Code.  
  
302, (1) Whoever commits murder—  
being under sentence of transportation for  
  
Site,  
  
(b) with premeditation, or  
  
(© in the course of committing any offence  
punishable under this Code with Imprisonment for  
Ferm which ‘may extend to seven years,  
  
Bal be punihed with death, and shall also be ele to  
  
(2) Whoever commits murder in any other case shall  
bbe punishes with transportation for life, or, with rigorous  
mprisonment for @ term which may extend to ten years,  
4nd shall "sso be liable 40 fine.  
  
Ezplanation—Whether an act Is premeditated is =  
question of fact,  
  
208 . . .  
Whoever causes the death of ny person by  
  
x  
life, or imprisonment of either’ description for. @ term  
EMSS oa extend fo ten ‘Jars, and sl seo able to  
  
044%, 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  
ier design for ein whic may extend  
feven years, and shall also be lable t0 fine provided that  
Sfsuct act ig done with the knowledge that iti Mkely to  
fuse death the terin of Imprisonment may extend to ten  
years,  
  
305. If any person under eghtoen years of age, any in-  
  
‘sane person any delirious person, any indict, r any” per~  
‘Son ih. state of intoxication commits suicide  
  
‘er Sets the commission of such suicide shall be punished  
  
with death or transportation for life or imprisonment for  
Feta exerting ten years, and shal feo be Hable to  
  
Satta or scans on na os A  
2 Sobatted by Act XXXT, 1967  
  
  
  
Page 120:  
us  
  
‘300, If any person commits sulcide, whoever abets the Atement  
commission of foth sulede shall be punished with impr % He  
Stine of elie description for a fem which may extend  
  
fo ten years, and shell also be liable to fine  
  
907. Whoever does any act with such intention [¢ ¢ #] Anumpt 1  
and under much citeurstances that, if he by that act caus. "St  
Sd'ucath, be would be guilty of murder, shall be punished  
Sith imprisonment of either deseription for a term which  
may extend 0 ten Years, and shall be Tiable to fine} and,  
  
HF hurt ie caused to sny person by such act, the offender  
Shall be Tiable either to transportation for life, or to such  
punishment ag Js hereinbefore mentioned.  
  
‘When any person offending under this section is under Asem by  
sentence of transportation for hfe, be may, if hurt is caus- "Cane  
‘ca be punished with death.  
  
Mtustrations  
  
(o) A shoots st Z with intention to Fall him, under such  
circumstances that, ie death ensued, A would be guilty of  
{nurder. A is liable to punishment under this seetion,  
  
(A wit the intention of causing the death ofa child  
of ender years exposes it in a deserted Place. A has com  
{uted the offence defined by this seco, Cough the death  
oF the child does not ensue  
  
(6) A, Sotending to murder Z buys a gun snd loads i  
‘A bas aot yet commated the offence Afires the gun at  
2 leas’ committed the-effonce GeBned inthis secton,  
Sao eh Hang te weunae hea tabe te e  
Panithnvtnt prov latter part ot the At “para:  
(raph of thi section. ™ "  
  
(2) A, intending to murder X by poison, purchases  
poison and mixes the same sith food which remains in A's  
Ereing A has ht pet conmited the offence in ths ax  
fom poses the fond om Z's fable or delivers fo Ze  
Servants to place it en Ze table. A. has comvnitted the  
‘ffence defined tn this section,  
  
308 Whoever does any act with such intention (1  
and under such cireumetainees that if he by that act caused mnt  
‘death, be would be gully of culpable homicide not amount. gabe,  
ing Yo murder stall be untsbed with imprisonment "of  
ther description for a term whien may extend to three  
Sere or wih A th oth and bt cater Yo  
any person by such act shall be Punished with imprison  
Tent of ether description for a term which may extend (0  
seven Years, or With fine, of with both.  
  
Wis wore “or owl were omied by Act SN, pet  
  
  
  
Page 121:  
us  
Mluszration.  
  
A on gra uudden provocation, res a pistol at Z,  
  
under ‘such ciscurmstances that if he thereby eased death  
  
he would be guilty of culpable homicide not amounting to  
  
murder. Avhas committed the ollence “defned in this  
  
Analysis of the Burmese sections  
  
The important changes made by the Burmese Pens]  
Coden the sein relating fo culpable homicide and teu  
‘dev can be roohly anaes folows:==  
  
(1) Causing death by an act done with the intention  
‘of eauring death ty murder in India in the’ sbscnce ot  
the exceptional circumstances (mentioned n section 340,  
Exceptions, in india) But in Burma” the exceptional  
cumstances have been grouped with the section re=  
lating to <ulpsble homicide not amounting to murder,  
snd Bave been removed from the section dealing. with  
‘murder, for beiter understanding, Section 300. Burma  
and section 209(2), categories A to E, Burma.  
  
(2) Where death ig caused by an act done with the  
intention of causing such bodily injury as iy likely t0  
use death, itis only culpable homicide. The offend  
rs knowledge of the peculiar infirmity of the ‘viet  
does not necessarily make it murder but is @ relevant  
factor in proving the nature of his intention, Section  
200(1), Burma, section SOOA (b), Burma,  
  
(2) Causing death by an act done withthe intention  
‘of causing bodiy injury Sofa sliient, ety fo cause  
‘eath—in this category, the words “in fact” have been  
Inserted before "in suficient"=-apparentiy to make it  
clear that it is not the subjective knowledge of the  
Sffender which it here zelevant, but Cobjectely) the  
Ralure of the injury.” Section 300, Burma (If excep  
onal Slcumetances are presen), section 2900),  
  
(4) Causing death by an act done with the know:  
ledge that the offender is Tikely, by such act to cause  
seat, ceases to be culpable homicide and ceases to be  
‘murder als, and merely becomes an offence punisheble  
‘5 “causing death by negligence” under section ‘904A,  
the cnly special provision being that in auch a case, the  
{mprsonment may extend to 10 years Section S04a,  
fer hall, Burma,  
  
(6) Having made the substantive changes regarding  
the fence of murder, so a2 to tale out certain cote,  
sories oUt of that offence, the Burmese Code. divides  
‘murders Into two sub-<lauses forthe purposes of punish  
ment. Tf the murder is committed by 8 person  
  
  
Page 122:  
ut  
  
(a) being under sentence of transportation for  
sites oe  
  
(by with presmeditation; or  
  
(6) in the course of committing any offence  
punishable under tne Penal Code ‘With imprison:  
Tent up to 7 years:  
  
the offender “shall be punished with death and shall  
also be liable to ne” (no discretion to couct to award  
Jesser Sentence). ‘Section S02), Burma  
  
Apeiieg gummung murder in anyother cases  
posiibtble with ansportation for “life ov rigorous  
mpracament up to 10" years. and. also liable t9 fine,  
(Thus the imprisonment” need “not ‘ber for ie. as ih  
{dla}: Scetian 302(2), Burma,  
  
(©) Punishment for culpable homicide which doce  
rot amount to murder. has been simplified. “Instead of  
{he {vo Gategories mentioned inthe dedlan Penal Case,  
tion $0, the punishment in Busmas is Transportation  
{or life os imprisonment of elther description wp t9 10  
dears, and aso five. Section 304 Burma.” "?  
  
1 Causing death, by megligence—section 304A—  
the punishinent in india ls two “years “imprisonment  
while is Burma, tis 7 years (or ifthe act is done with  
tbe fnowledge that iis likely to cause death, thet 10  
gears). Further, in India imprisonment is not compa!  
sry, because fine can be “awarded without awarding  
Iimpriscoment while in Burma imprisonment is compat,  
sory. Section $0, Burma.  
  
(@ Regarding attempt to murder, mere knowl  
's not cnoush and intention is required. Apparent  
Zave knowledge or likelibood of death in @ ease’ of  
attempt to murder is left to be dealt with by the ors  
farm wecn 8 Tls appenrs Sn  
  
ential on the removal af knowledge from the ses.  
‘fon dealing with mraee Secs 365 Haran  
  
Attempt to commit culpable homicide not emount-  
ing to mutder—Sere alo the word “Rnwwlcdge™ bas  
been removed. This is aso apparently” ‘consequential  
‘on the removal of the element of knowledge from sess  
  
{on “20 and ts placing tinder section 04, Secuan 3,  
  
Summary  
The scheme appears to be  
(© To concentrate on intention while dealing with  
cafences both under section 0 and under secten Sh  
(ih Further, even international acts gunhasie  
der murdet have been classed, es spurts punch:  
  
‘ment, mainly on the basis of premeditation (apart from  
feo special capes).  
  
  
Page 123:  
ue  
APPENDIX Xit  
  
Cevion Acts nrcanorne  
‘Carri Punssnese  
  
Suspension of Capital Punishmen Act  
‘No: 0 of 1958.  
  
(Date of Assent May 9, 1856)  
  
LD.0. 19/38.  
  
AN ACT TO SUSPEND THE IMPOSITION OF CAPITAL  
PUNISHMENT FOR MURDER AND THE ABETMENT OF  
SUICIDE AND TO. PRESCRIBE OTHER PUNISHMENT  
FOR THOSE OFFENCES.  
  
(Date of Assent: May 9, 1958)  
[BE it enacted by the Queen's Most Excellent Majesty,  
‘by and with the advice and consent of the Senate and  
  
House of Representatives of Ceylon in thie present Parlia-  
‘ment assembled, and by the authority of the same, as  
  
follows: —  
  
1. This Act may be cited as the Suspension of Ceptal  
utsment Act, No. 30 of 1858  
2 During the Continuance in force of this act  
(2) capital punishment shal not be impored under  
$98 of the Penal Code for the comission sof  
  
sect  
‘murder and under section 289 of the Penal Code for  
the abetment of suicide, and  
  
() section 296 and section 209 of the Penal Code  
shall have effect as if for the word “death” cccurring,  
in ‘each of theas pections, there were substituted the  
‘Words “rigorous imprisonment for lite:  
  
3 This Act shall continue in force for three years and:  
shall then expice  
Provided, however, that if the Senate and the House of  
  
Representatives bp seilation so dole this Act shall Sone  
{Eni ore fr soc further pid soy be speed  
  
in'such resolution,  
  
  
Page 124:  
19  
“Suspension of Capital Punishment (Repeat)  
‘Act, No, 25 of 1959  
(Assented to on December, 2, 1959)  
ED-0. 13/30  
AN ACT TO REPEAL THE SUSPENSION OF CAPITAL.  
BonISHMENT ACT NO. 20 OF 1958, AND TO PROVIDE  
  
FOR CERTAIN MATTERS CONNECTED THEREWITH  
{Date of Assent: December 2, 1989)  
  
BE. it enacted by the Queen's Most Excellent Majesi, by  
Ey with the advice and conseat of the Senate” ord the  
House of Representatives of Ceylon in thig present Farlia~  
Frat seed. and by the shor of "hee a  
  
1. This Act may be cited af the Suspension of Capital stole  
  
Panishment (Repeal) Act, No. 25 of 1858  
2. The Suspension of Capital Punishment Act, No. 20 of  
  
2, Notwithatanding anything in anyother written In, tepige  
asia puntahment shall be Imposed tres  
:  
  
(4) under tecton 236 of the Penal Code on every Rae  
ert chat e pte after tne date ofthe commencement Si,  
Pee ee Sheet of the offence of murder com he dara  
tated puis to that dates and Satie,  
  
() under section 259 of the Penal Code on every Racite  
  
person eho, on or after that, date is convicted "of the icy  
  
Bfrnce of sbetment of suicide committed prior £0 that thmnen ot  
bees  
  
date  
Seine  
APPENDIX XII ae  
  
LExanacts oF stetioss 198, 201 avo 202 oF THE Cantor  
Crnuman Cove  
“498, (1) A person commits homicide when,  
  
rectly OF Homie  
  
aires, bay mean; he esis he death os human  
Seine  
  
(2) Homicide is culpable or not culpable. Kinds of  
(@) Homicide that ig not culpable is not an offence, Hemide  
(4) Culpable homicide is murder or manslaughter oF cups  
  
Stee.  
  
intanticide  
  
(5) A person commits culpable homicide when he causes Léon.  
  
the\death'of a human being.  
  
(a) by means of an unlawful act,  
(by criminal negligence,  
  
  
Page 125:  
Fecepti  
  
(e) by causing that buman being, by threats or feat  
ef. eolerte abv ocean, © do anthing tht causes  
(2) 5 wilfully eightening that human being in the  
caus of child of sek peiton  
(6) Notwithstanding anything im this section, a pergon  
does hot commit homiide witha the meaning of Ws. Act  
reason only that he causes the death of a human being  
By procuring, by falee evidence, the conviction and: death  
of that humen being by sentence of the law.  
  
201. Cutpable homicide is murder—  
(9) where the person who causes the death of a  
human being  
() means to cause his death, oF  
(iy means to cause him Bodily harm that he  
knows if likely to eaUse hls death, and is reckless  
wwhethcr death ensues or not:  
  
sun titers gerson, meaning 10 cause death (0 2  
human being or meaning to cause him bodily harm that  
he knows o fikely to cause his death, and being reeks  
tess whether death, ensues or not, by gecident or mus=  
tke eaueey death to another human being. -netwithne  
Standing that he does not mean to eause death ot bodily  
Fierm (© that humen being: or  
{c) where a person, for an, unlawful abject, docs  
anything that he knowe or ought to know te ikely to  
ents th tory tae death a Buran be  
Ing- notwithstanding that he desires to effec his object  
‘without causing death or bodily harm to any human  
being  
‘202. Culpsble homicide is murder where a person causes  
‘the death of @ human being while commiting or attempt.  
ing to cominit treazon or an offence mentioned is section  
ED piracy. escape or rescue from prison of lawful custody.  
fects lawful arrest, rape, Indecent asswult. forible  
‘duction, robbery, burglary or arson. whether or not the  
[person means to cause death to any human being ang the-  
ther or not be knows that death likely to be cased to  
sa hucaan being. if  
(2) e means to case bodily hari fr the purpose  
  
(© feclitating the commission of the offence,  
  
(8) facilitating his fight after committing or  
sutempting to. commit the offence, and the ext  
fensues from the bodily harm;  
  
  
  
Page 126:  
1  
(he administers a stupetying or overpowering Adm  
thing Zoe's purpese mentioned in penageoph (a). and ES  
the death ‘enstes therefrom Bing  
(6) he wilfully stops, by any means, the breath of Somping,  
4 buipan being for a puipose mentioned in paragraph ™ e™  
a), and the death ensues therefrom; of  
  
(4) he uses 9 weapon o hv: it upon his person Wang.  
  
() dusing or at the sime he commits or  
‘avienipts to commit the offence, of  
  
atthe sme of ie fig ate  
Sa‘the dfath enact ss consequence’ °°  
APPENDIX XIV  
Cavan ACT oF 196)  
Canodo—1981 Amendments  
2-10 ELIZABETH 1  
CHAP. 4  
‘Am Act to amend the Cumisat Cole Capt Murder) 19.8  
  
(Assented to on 13th July, 1961) a  
Her Majesty, by and with the advice and consent of the 1936.5  
‘Senate and Hotse of Commons of Canada, enacts as fol 327  
  
1. The Criminal Code i amended by adding theres  
immediately after osetion 302 thereof, the following’ see.  
  
“202A. (1) Murder is capital murder or non  
  
capital murder. sea  
(2) Murder is capital murder, in respect of any C2!  
person, there re  
  
(a) This plemed and deiterete on the part Dimer  
2 tat been  
(8) 1 within section 282 where such person  
(i by ig en act cased cr. assisted Gen  
sausing the boliy harm irons which ey  
scot tose  
(i) by his own, ack aminstered or  
setnd it adminnering te ‘tepeing\_ of  
Srerpowering thing from which heath  
  
(i) by Now act lopped or ented in  
the Hopoty of he” Keen Ra” ase  
Eero)  
  
  
Page 127:  
Fr  
x) himself wsed or had upon his  
the Weapon ass coseguenee ef which te  
atsch enmued oF  
(0) Counstied or procured another pare  
son {3'do an act mentioned in sub-paragraph  
(), (i) oF {i} of to.aee any weapon mete  
[eset subparereph i), oF  
(o) mich person by hi own act caused oF  
assisted in casing the death of  
einer (0) a pale oftcer, poles constable, con-  
y sigue dept shi heifer or  
Other person’ empyed forthe preserveion  
nd mlintenoe ofthe pabie pete, ating in  
ihe course hs uti, oF  
(i) 2 warden, deputy, warden, instructor,  
keeper ater, guard or other elector perma’  
bent employes Gf prio acting nthe couse  
Phy dtl or coutucied ar procured another  
ferson todo any act causing or asiting i  
Enusing the death 7 ms  
Xoo (2) AML murder other than capital murder is “none  
re api murder”  
2, Section 208 of tho sid Act is repated snd the fol-  
owing nibetuted Warton  
ss guilty ofan indltate fence and shal be sents  
ato deeth,  
  
(2) Everyone, who commits nonceapital murder is  
frame. guilty of an indstable offence tnt shall be centenced  
oe Bentprsonment for We  
Reon (@) Notwithstanding sub-section (1), person  
Gizetoes who appears to the court to have been under the age  
rs at the tine be commited a cepa  
  
erage  
PENI, ok eighteen  
— ‘murder shall not be sentenced to death ‘upon convic~  
tion therefor but shall be sentenced to imprisonment  
for ite.  
‘Misia (4) For the of Part XX, the sentence of  
‘Pemiinrax imprisonment for life preseribed by this section ts  
‘minimum punishment”  
3. The ssid Act is further amended by adding thereto,  
immediately after section 492 thereot, the following see:  
  
“024, No person shall be convicted of capital  
‘murder unless In the indictment charging the  
Fes specifically charged with capital murder.”  
  
  
  
Page 128:  
ws  
  
4. Sub-seetions (1) and (2) of section $18 of the said  
‘Act are repealed and the following substituted therefor,  
  
“518. 2) Am accused who is nok charged with an Ps  
offence yusighebie by death and i cae’ epen to plead  
uty now guy eth spel es auton y gay  
Bis Part and Sw ethers  
  
(2) Where an, accused who is not charged with Rust ©  
an offence punishable by death refuses to plead or does  
hot answer directly, the court shall order the clerk of  
  
the court to enter a plea of not guilty  
  
isthe My Seat a ieshedopon pad ay ots  
anihable by ‘Seth and i clad upon to plead may og  
Plead we “gulty, or the special pleas authorized by this pata  
fare and fo there  
  
(2b) Where an accused who is charged with an Ties 9  
citence puntehoble by dent does not lend not guy Po  
fr one of the special pleas authorized by this part or  
  
‘Soon ‘hot answer divecty, the court shall order the  
  
lark of the court to enter a plea of not gullty.”  
  
5. Subsection () of section 518 of the sald Act is re-  
pealed and the following substituted therefor:—  
  
(0 en the pleas referred to in sub-section () Petng  
are disposed of ‘accused, be may plead \*\*\*  
fuilty OF not guilty, "ules be is charged with an  
‘ffence punishable by death, in which case the court  
  
‘hall order the clerk of the eourt Yo enter 8 plea of not  
ity”.  
  
6 Section 519 of the sald Act is amended by adding  
hereto immediately afer sub-section (2) there, the  
foflowlag subsection:  
  
(2a) A conviction or soquittal on an indictment prs of  
{for expitsl murder bars a subsequent for pevins  
the Same homicide charging it as non-capital murder, Sut  
and a conviction “or acquittal on an indictment for gi  
Ron-capital murder bars a subsequent indictment for eon peat  
‘the same homicide charging it as capital murder.” sae  
  
7, Section $89 of the sald Act is amended by adding  
thereto, immediately after sub-section (1) thereof, the  
following sub-section:—  
  
“(1) (a) For greater certainty and without Limit. Where sspi-  
tng abeyance ant wit Uy ass?  
Show taplat murder but proves son-eoital under  
  
Se gt Ss dt fot  
Bre camel ice, eros arene ae  
ene er  
  
Bee  
  
yee,  
  
  
  
Page 129:  
wetiem.  
  
ut  
guilty of non-capital murder oF am attempt to commit  
ao so OS ay be  
8, The gid Act Is further amended by adding thereto  
spell ater secon i Bees, he ftemine so  
tion  
  
op2A, (2) Notwithstanding any other provision  
‘of tha Ack S pergoa who has been sentenced (© death  
  
hay appeal to the court of appeal.  
{gin cone ote Seat ot  
app tetilite e queria of Taw 9F fact OF  
  
SRR law and facts and  
  
‘),agalnat his sentence unless that sentence  
is one Axed by Ia.  
  
(2) A person who has been sentenced to death  
chat Rotuistanding be hes oot given notice pursuant  
Shel neti be deemed to hove given such notice  
1 eave appesied against his conviction nd egainst  
30S SG ees that asntence Is one Axed by Taw  
  
{@) The const of apes, on am appeal pursuant to  
ois Sedo, saa erst P  
  
(ay consider ony ground of apes! alleged in  
th SOUS appen ptt as been ive,  
() consider the second to sscertaia whether  
none preset any other grounds spon. which  
‘HeSonvlcdon ough to be set aside oF the sentence  
Waiied os the case may Be  
  
9, Section 586 of the sid Act Is amended by adding  
thereto the following subsection’  
  
E pursuant to a conviction, » sentence  
  
os deth hog Soe ipa he exeein of eo  
  
tion of the sentence 1  
i Nye sentence or any judge who might have  
  
{Melt or satin the same court”  
10. (1) Subssection (2) of section 508 of the sald Act  
fs repesied and the flowing substituted therefor: —  
(2) A copy of transeript of—  
(a) the evidence taken at the tela,  
  
  
Page 130:  
2s  
  
() the change to the jury, if any,  
(o) the reason for Judgment, f any, and  
(a) the addresces of the prosecutor and the  
accuset of counsel for the accused by way of  
summing up, if  
) @ ground for the appeal is based upon  
‘esther of the addresses, or  
  
i) the appeal is pursuant to. section  
5834, shall be furnished to the court of appeal,  
‘except in so for as itis dispensed with by order  
fof a judge of that court.”  
  
(2) Sub-ection (4) of section S88 of the sald Act is  
repealed and the following substitution therefor:—  
  
(A party to the appest is entitled to receive, Gs ©  
(2) without charge f the appeal is against a P=  
  
conviction in respect of which a sentence of deeth  
  
fas been impasse or sgainat such atone, of  
  
(s) upon payment of any charges that re  
Axed By Pues of court in any other Sze,  
  
4 copy or transeript of any material that is prepared  
  
finder subsections @) and @) me  
  
11, The sald Act is further smended by adding, thereto, Veving.  
Immediately after section 597 thereof, the following sec:  
  
“SQ7A, Notwithstanding any other provision of Ape ce  
‘this Act, 2 person. ® fear  
  
(a) who has been sentenced to death and Sten”  
  
whose conviction is afirmed by the court "of Sime  
  
appeal, or ea  
(bo) who is acquitted of an offence punishable 2  
  
bby death and whase acquittal is set-aside by the  
  
court of appeal  
  
may appeal to the Supreme Court of Cansda on any  
{round of law or fact or mixed law and fact."  
  
4 2 Al at zor of subsection or auction a8  
e sold Act preceding peragraph (a) thereat i repeal  
id the following substitined therefor—  
08, (1) where = judgment of a court of appeat  
seis aaie\@ conviction pursuant 1o"an appeal taken Ag  
Under secon 388 or 5024 or dinmiases tm appeal taken Ga?  
  
  
  
Page 131:  
26  
  
suant to paragraph (a) o sub-tection (1) of sec-  
{ica'S0d, the" Atsmney General" may appeal tthe  
Supreme Court of Canada”  
  
13, The sald Act is further amended by adding thereto,  
immediately after section O42 thereat, the following see  
ton  
  
Gi2A. (1) Where 2 jury finde an accused guilty of  
tn offence punishable by death, the Judge who prenides  
at the ‘rial shall, before discharging the jury, put £0  
them the following question:  
  
You have found the sccused guilty and the law  
requires, thet 1 now pronounce ‘wentence of death  
fsginst him (or “the law provices that be may be  
Sentenced to death’, asthe case may be). Do you wish  
{o'make any recommendation a¢ ta whether or not he  
should be granted clemency.” You are not required 9  
foie ny Fecrmendatian but if You do make a ee  
oramendation either In favour of clemency or against  
{Your rsecramendtion Wil be incluced fn the feport  
{het I'am required to make of thie ete fo the Minister  
‘of Justice ond will be given due consideration  
  
(2) Af the jury reports to the Judge that it $9 un-  
able to agree upon a recommendation, either in favour  
of elemeney ot against it, and the Judge is. tatished  
that further retention of the jury would not lead to  
E it he shall ascertain the number of jurors  
‘who are in favour of making for recommendation for  
clemency and the number ef jurors who are agsinet  
‘making such a recommendation and shall nclade such  
Jnfermation in the report required by sub-section Tot  
  
14, Sub-section (2) of the section 648 of the sald Act  
4s repealed and the following substituted Uherefers—  
  
(2) Where a judge who sentences person to  
death or any judge who might have held or satin the  
Sine cour cooaGers =  
  
(a) that the person should be recommended  
{for the royal merey, oF  
  
(©), that, for ony reason, st is necesary to  
‘elay the exiecation at the sentence,  
  
the judge may, at any\_time reprieve the person for  
fany' period that is necessary for the purpowe  
  
  
  
Page 132:  
a  
15, Section 656 of the sald Act ¢ amended by adding  
thereto the folowing sbseetion’—  
  
(a) Af the Governor in Council so directs in the Age ty  
instrument of commatation, person in respect of usc  
‘horns guatesoy of death i commuted to imprison st afer  
Jen for life ors term of imprisonment, sall,notwithe Srweui>  
  
anting ny oer In or authority, ot be released  
‘Surng his tle such term, au the caso may be, with  
fut the poe approval of the Governor ia Council”  
  
16. This Act shall come into force on a day to be fixed Coming into  
bby proclamation of the Governor im Counell 4  
  
2, (2) Where proceedings in respect of an offence that, Zn  
sander the provisions of the Criminal Code a i Was before Foul  
‘being ametiod by this Act, was pusiahable by death sere ="  
cquenced before tbe coming isto force of ths Act, the  
{eitowing rules apply, nemelys—  
  
(a) subject to paragraph (b), the offence shall be  
dealt with, inquired into, tied and determined, and  
‘any punishment in respect of that offence shall be  
‘imposed, as if this Act had not come into foree;  
  
() where upon conviction for the offence 9 person  
ts sentenced to Seath after the coming int farce ef  
{hi Ae proviso the Camina Code a ten  
bby this Act, eating to appeals apply respec a  
Se conviction snd senteaee au ifthe fence had  
incon committed after the coming ino force af this  
Ae and  
  
(c) where 2 new trial of @ person for the offence  
Inss been ordered by the court of sppeal of the  
Court of Canada and the new tial is commenced after  
{he coming into farce of this Act, the new tral shall  
be commenced by the prelerring of « new indictment  
Before the court before which “the accused ‘is. to be  
fried, and determined, and any punishment in respect  
of the offence shall be imposed, be It had been com=  
mitted after the coming into force of this Act.  
  
(2) Where proceedings in respect of an offence that  
would, if t hed been committed before the coming into ™™  
force of this Act, have been punishable by death are com  
‘menced after the coming into foree of this Act, the offence  
shall be ‘dealt with inquired Into, tried and° determined,  
fand any ‘punishment in respect of the offence shall. be  
imposed, as i¢ {¢ had been committed. after the coming  
Ane force ofthis Act irrespective of when It was actualy  
comm  
  
  
  
Page 133:  
a8  
  
WWivn peo (2) For the purposes of this section, proceedings in  
  
Sutin” cespect fn fence shall be dzemed to have commenced —  
  
cement () upon the preferring of a bill of indictment  
before the grand jury of the court, inthe ease of @  
‘court constituted with a grand Jury, and  
  
(©) upon the preterring of an indictment belore  
the court, in any other pnd  
  
‘APPENDIX XV  
[AsoLrTIon counrates  
‘TADLr ANALYSING EFFECT OF RESTORATION  
  
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als aya the at ef Retion  
  
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APPENDIX XVI  
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ie sea  
  
1 So RG Report page 357 Table 35  
2 Se RG Repo pa 38% paraaph 5 ad page 35, Tale 3, es 3  
  
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4 Se RC, Report, page 3k  
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Te x so ter) Hed the oe  
  
‘APPENDIX. XVIE  
Cases of cruel murder  
CRUEL MURDERS  
We may refer to a few cases of cruel murder.  
SUPREME COURT CASES  
  
(2) One Fahim, cruelly murdered Mrs. Nelson, wife of  
an American Missionary, at Handia on Vatanasi-Allababad  
Rlghway. (lhe husbend had gone to Allahabad to get re-  
patned a damaged tyre of his cat, leaving behind his wife  
fi'the Car). The Allahabad High Court confirmed the  
sentence of death. ‘The Supreme Court refused leave to  
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(6) A student —Vijal Karan Singh, stabbed hig Vices  
rity, ereing through his heart, as revenge for the  
Brintpal, Here, powa action. againt the accused fF  
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(6) Chinnarwami, « domestic ecrvant murdered Nay.  
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(8) ‘The late Shri HN. Sanyal, Solicitor General of  
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(a) The recent sadistie murder tried at the «rial known  
ax “Bodies on the moors" may be refered to":—  
  
Sedism, sexual perversion and cruelty which  
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‘The scciued who were convicted were Tan Brady, a  
lens of 38, and’ Myra Hindley, = sborthand ‘ypist aged  
Serhis girl frend who worked mn the same ofice anc lived  
igetiet Inthe same house.  
  
Evidence at the trial brought out that the couple had  
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ding’ Sf Marguis de Sade. Smith had ac  
  
tement, been at fre drawn tn by. thet  
  
(gra iad heard Brady boest of having killed many persons  
inter when he witnessed Brady axing to death Evans who  
Rod been invcigied into the house, he broke down ard ran  
to the police  
  
Other discoveries by the police included a tape record=  
Ing.of the frightened ties of a child sdentihed as Lesley  
‘Ain Downey. 10, stom the accused admitted t@ having  
Photographed in the mute but denied murder. The girl's  
Body "had been found burried on the moor at a spol a  
Photograph of which was found’ in Brady’ album.” The  
Bathetic pleadings of the child were heard by the court  
Ed'the jury: when the tape was played cut’ during the  
ie a ali be comand of Brel tod Hindley to the  
ain  
  
‘The police also produced a diary kept by Brady in which  
there veg the name of Jobn Kilbride, 12, whore body also  
Wes Found om the moors near the other burial Other nds  
Ineiuded « plan for disposal of bodies drawn up by Brady.  
  
‘The contention of the preseeution was that Brady was  
1 ealdcblooded pervert ho took pleasure in iaficting pain  
Sn helpless cidren and sho kdiled for Kicks. ting ey,  
Watts broueht out had fallen wnder hia spel and becos'é  
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‘A curious sidelight om the sonsational Press in Britain  
was thrown by the evitence of Smith. He admitted that  
the News of the World had signed him on fo give material  
{or article on the murder afte the accused were convic‘ed  
In the meanwhile they Were giving @ substantial weekly  
  
APPENDIX XVIII  
  
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APPENDIX XIX  
  
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In the 18th century in England the impo:tant capital  
offences were theses  
  
(a) High Treason  
‘Treason in all its manifestations was 2 capital offence  
under the Act of 1861" An Act of 1796 incorporated sove-  
‘provisions inserted inthe meantime by" enactnents  
‘Orders passed between 1889 and T547  
  
‘An At of 10" provided, that Many eer oes  
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Persons holding correspondence in person, by letters,  
speweagon or otnerwise withthe pretender” and petsons  
Rolaing such cortesgondence, ete, Wwith a son of the pre  
tender\* were punishable with death, All such acts were  
egerded as hgh treason  
  
ishment  
  
8) Offences apuinst the protestant et  
  
Several statutes punished with death persons who, by  
writing or teaching, maintained the spiritual authority” or  
Junsdilon of @ foreign prince, or comuitted similar other  
ews  
  
Several other statutes supplemented or elaborated the  
‘Acts mentioned above  
  
() Desertion from the armed forces  
  
Desertion foen the King’s armies, whether by land ot  
sea, was made a felony BY several statutes, 31!  
  
410, ap Ack was based which bad the lect of  
‘posing capital punisiment on any subject of Great Bek  
{ain who enlisted or entered himpelt fo go beyond the seas  
to serve any foreign prince, State or potenate a8 a soldier  
‘without dhe King’s eansent  
  
Unde an Act of 1736 as clarited by foreign Ealistment  
‘Act! taking ce sceepting mitary copwmission or entering  
‘he’ militar? Seevice of the French King without Kings  
Consent was similarly punishable  
  
Going or embarking to go to France, ete, during the  
war was a capital offence \*  
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“Many acts consisting in seducing others from their alle-  
iante and obedience fo the Crown were capital offences:  
  
Persons rescuing, ete, Napoleon Buonaparte were  
punishable with death”  
  
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{0 conielt any traitorous Or mutinous practice whatsoever,  
  
Remaining in communication with the crews of ships  
declared in'a state of mutiny Wag 8 capital oflence!  
  
3) Injuring the King's armour  
  
Several statutes punishable with death falt under the  
  
hheag injuring the King’s armour’ An Act of 1889" punish-  
fed 4 person in charge of custody of any ermocr, ordnance,  
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By a later Act! tho Judge war given power after  
sentence, 10 transport such "offender. ef an alternative  
panishment to the death penalty.  
  
An Act of 1740" extended capital punishment to any  
person ia the fect who unafully burnt or get fre t0 any  
fagazizs, ete, or s™, ete, belonging and not at that time  
Appereaining vo an enemny or rebels  
  
Burning or destrozing any of the King’s ships, stores.  
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tor the building of ships or magazines, exe, war made 8  
fapital offence by an Act of ITT  
  
fu Act of 1710 enacted that every pert who hal un  
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So Niny Act itm (as Geo. 3-38,  
  
4g Breas a Pltetion Act 072 as Gen 3 6 29) Sano  
See Haare 303 Esa VEN pt apt and  
  
  
Page 175:  
10  
  
Durished with death is balleweds that the was posed  
Titer the pabbing of Useley by" Anthony Gulscard during  
int laters cxamfoation before the Privy Counel  
  
By an Act of 1747° rebels who returned from transpoc-  
tation without licence or weet voluntarily t0 France of  
  
Spain, as well as those who alded such rebels or were In  
tsorvespondence with them, Were punishable with death  
  
(©) Riotous offences  
  
‘Tae following offences were capital  
  
(@) riotously to assemble (12 persons or more) and  
not (© disperse for an hour after” the proclamati  
‘Thus, the eitence wer constituted by unlawfully, not.  
ualy’ and ‘tumaltuously remaining er continuing to.  
gether" although no specific act had heen committed;  
  
(®) opposing the making of the proclamation and  
not to disperse within an hour after the making of the  
oclamation hed been opposed,  
  
(©) unlawfully to assemble to the disturbance of  
the public peace and when so. assembled unlawfully  
spa ts fret ais all down any aco  
  
pel, or a foc religious worship, ceri  
Saal registered, or any dvvelling house, ete  
  
in the offence amounted to aiding the abetting.  
  
‘The Act of 3714 was amplified by a later Act\* what  
ided that pulling Gown, eke, any ill which had been oF  
‘was being erected or an works belonging thereto was 230  
Dunishable with death  
  
1 Atempt onthe fe of « Paivy Couser Ac £710 Anat 15.  
  
2, Ratoni, ory of te Bagh Cas Law, ap Vo,  
‘page 619, foornote 38. in  
  
2. Toes Transported Act, 1747 (30 Geo. 26.48,  
{The Riot Ac 1714 1 Geo. # Sate 2 6 9.  
Ronee, (1967) 4 Bas 207  
  
4, Maou Try Ac, 169 (@ Ges. 3.6 29  
  
  
  
Page 176:  
m  
(7) Destroying baxks, food-gates ang bridoes  
Several gatates provided death penalty for destroying  
  
river banks!" and wilfully and maliciously biowing up, pulle  
Ing down or destroying certain Bridges”  
  
(8) OGfences ageinst the puilic onder  
  
Ile soldiers wandering about, or overstaying their leave  
withouts testimorsal oF pase from a Justice of the Peace  
Shere punishable with death, If after conviction and alter  
being retained in service by "an honest treebolder™ they  
Separted within s Sear without licences  
  
“Eayptians” (Gypsies) xemaining more than one moath  
in the Kingdom, of ant person, a8ove 14, found In thelr  
compan who remained one mom am the Kingdom, were  
[punlhable wit death  
  
(8) Ofexce egainet administration of justice  
  
Capital Punishment was appointed for certain offences  
connected eth suministration of js, such a8  
(a) ackaowledging fine, yecovery, judgment, et,  
lin the name ot @ person nat privy Serco”  
  
(6) fale entry in marviage register, or destcoy~  
ing Sch roaster. te. with Intent to avoid any manson  
Geis sthect any paso to any of te penalties ofthe  
  
(ota vera lp olen gn Te  
US ay Loe tigen RE a  
George, the First;”"\* " "  
  
(a) Avoiding justice by taking shelter in suppose  
  
rd places {ike alent places of the Crown)  
+ Ree ry 6,  
Sry FES as  
We For ‘Sood gate or shiice sande for,Benrhting the Bestord Leve  
  
SHE i tact eam,  
  
arr  
  
tame Sans  
  
Emin Ree het Je 36,  
  
site eed Rat, nyo ns  
‘Criminal Low, (isa, Vol 1 page 682. i "  
  
priv  
  
  
  
Page 177:  
m  
  
(c) escape of or liberation of prisoners prison  
breaking, by foree, rescue of a prisoner by foree, return  
ing or Being at large alter transportation  
  
(10) Offences against public health  
Following offences were capital: ~  
(a) Infected person having upon him infectious un-  
‘cured sores, disobeying orders 10 remain in hig house;  
o) Disobeving ceder prohibiting entry of vesel i  
te plague; and  
(c) Concealment by ship's masters of fact that thelc  
vessa! had come from infected place ete; refusal “to  
condorm with obligation to remain. jn quarantine,  
‘Seal offences under an Act of 1758 re-enacted  
Tater  
  
(1) Smiggting  
  
Smuggling, 1 appears, was carried on by great gangs  
casiying fiesims or ethers offensive sreapons, snd sever  
‘officers of Customs and Excise had been swounded, mained,  
fad gome of them even killed in execution of thei ofice  
Hinge an Act of 1740 made it capital offence to assemble  
fra the arbor ot te ge tar ode aust  
in landing or carrving away pr \'uneustomed or re  
edd goods; to puck masked or dgatsed with prohibited,  
Sestdned op wefanded goods team or naan fect  
{oing oa boards. ship within a port to shoot at or danger  
ScsIf Sound otcry on aed Such ships th execution of  
their dasy ete  
  
‘The Act of 1745 was supplemented by an Act of 17847  
making ita toptal efenes to choot at or upon any ship  
boat oF vessel belonging to His Mojesty within four leagues  
of the coast oF to shoot at naval, customs and exeise  
oficers  
  
‘An act of 181% relaxed the Jaw, but still retained death  
‘penalty for sevious offences against the public venue  
  
‘Am act of 1895" consolidated the law again, and made it  
ll tore fenient. but continued death penalty for certain  
Sitences of smugiling. eg» three. or more: persons armed  
‘with fieccrms assembled to asin in the ilegal expoctation  
  
1 foods, ete, and persons shooting at a bost belonging 10  
the navy.  
2, Ba oowicn, History of English Grimieal Lew, (apa, WoL ts Pane  
  
es beast  
SRE Ac, ey (a ae 6 3  
§ Goren fe ss BS om 2 98.10  
  
| bare AS: 152 ela by hating Aa os Gen 36,  
  
Ps eamble Ofenes apa te Caos Act 148 C9 Ge. 2  
°° 4, cece maine te Castors Ace 174609 Ges & 34h sons 1.2  
9 Sama Acs SG. Sey ec 32  
E Laebne Ccigtats formn’ he tis GaGa fe ue  
9: Gate A 199 © Get} 15 sein  
  
  
Page 178:  
13  
  
(22) Counterfeiting stamps, ete.  
  
Several statutes imposed capital punishment for forging  
  
or counterfeiting duty stamps on Various kinds of goods, oF  
  
forging debentures relating to exeise duties and cervain  
other documents exceutod tinder revenue laws  
  
(23) Petiy treason  
  
Petty (reason was an aggravated form of murder, and  
consisted tn the horicde of  
(i) a master by his servant;  
  
(Gi) husband by bls wife;  
Gi) am ecclesiastical superior by is in  
  
oa of wae  
= founded.  
  
1 was o capital offence. 16 had this fea  
‘mon. sith ‘reason, that Th amounted to viel  
oufdence on which the particular relationship  
  
‘Men convicted of high or petty treasone were, alter exe:  
cation te be dowabowthied bad quarered sod oma 6  
convict were (alter execton) burnt In seual practice  
seme leniency in execstion was observed in most cases”  
  
Petty treason was abolished by @ later Act!  
  
(19) Bturder  
  
Murder was felony at common law. ‘The punishment  
foc murder had boon made the abject of twa statates’  
But the matier way defintely -so‘tied by an Act of I  
‘That Actexciused the parehit of elem, any person "atta:  
fd or sonvicied of miurdoy of mallee prepenge or of Polson  
Ing’ with malice: prenenss ‘The specific mention 1  
poconing was de to the cate of the Bithop of Rechester’s  
{eck who had put some pion into veil of eas tere  
by causing the deaths of several persone.  
  
(© Cases ent ne i 1787 (27 Geo 36.33)  
i Stanee Aa, 797 G7 Goo 3 © 922  
  
2 Traton Aa 5 (5 Bil 9 Se $6 3  
  
4: Det of Cin Ac. 4968 Hen. 7 = 2)  
  
aed 35g aMOWIE, ivory of Elohim Lam, (ae Wk  
  
aE Wn ogi iin La (a4 Vo, pes  
  
{6 Oenes asin the aon A 836 (9 Ged. 4 «90, ston  
17 Tho Bent of ons Ae spe 3 Hoes $6  
8, Stabe Mate tes A 89 (85 Bem #9  
9, Trt Pony Ac 1567 (0 Bd. Se 2) seston 1 an 3.  
  
  
  
Page 179:  
m  
(15) Bosterd Child-Kitling  
  
‘An Act of 1623 enacted (in substance) that if any woman  
who i delivered of any issue of her body, male or female,  
Whe would be a bastard, she endeavours privately so 10  
Soneeal the death thereof that st'may not come to light (te.  
fhe fact whether it was born alive or not. conceal  
by acon) then Sh sal er death aye cae of  
‘murder unless she could prove at Teast by one witness  
‘the: child was born dead.” Thus, in substance, concealment  
‘ef birth amounted to a presumption of murder; this ig ex-  
plained by the fact that in such casey It was difBeult to  
prove that the child had been born alive”  
  
‘This Act evoked great controversy, particularly because  
it was contrary to the presumption of innocence: ‘  
It appears, went Uo extreme limite in narrowing down lke  
‘scope, egy () by holding that there ‘eas no concealment if  
‘the micther had called for help ot had confensed. that abe  
was about to have a child, or (a) by requiring some sort of  
evidence that ‘the child, had beon Born alive, or (ui) by  
fing that hee coud be no coneaimeat if any peteon  
‘be present, even though that person wae privy to the guile”  
  
One of the arguments used against the Act was that it  
rap intately beter that ten-pulty persons should ecape  
Zather than that one innocent person be hanged. This law  
‘asserted that 10 innocent persons should be hanged, so that  
ne guilty person does not escape  
  
‘The Act was replaced in 1609 by a statute which re-  
<rafted the definition of the offence of murderiog the bas:  
‘ard children? bringing it in line with the general positicn.  
  
(16) Stadding  
  
Tn view of frequent outrages committed by person, of  
ammable spirit and deep resentment, who, Wearing short  
daggers under their clothes stabbed 2 person on, sight Dro  
‘Nesation an Act was passed in I604" whieh made ita capi  
fal offence without benefit of clergy to stab or thrust any  
person (who had not any weapon drawn of who had Pot  
Struck the party stabbing or thrusting) eo that the person  
stabbed or thrust died within 3 months, although if could  
  
“pr Sree cB of Besar Ja Gay Gn Tm ch male  
‘apt the Connie AE Te Cae gy? 2  
2, St Ratuioons, Hiwory of Engh Canist Lam, (948 VoL te  
post a wid te protic the Ac good oe hoee ae  
3S Rago ay of te sh Cami Law 106, Ves,  
4 Se Rain, Hi of Balak Criminal La,  
os!  
  
14, tage  
  
5 Lac lenborwghs Act, 1094) Geo 6 $8 ston 3.  
  
sos agarycs Hoty og Cain Lashes 0,  
  
FSi Act 104 (ae 6 8.  
  
  
Page 180:  
15  
  
not be proved tha: the same sas done of malice afore.  
thoughe  
(17) Mayhem or maiming  
  
yan. Ac af 10? peri hoon, malice, fre  
‘thought uslgsetully cut off or divabled the tongue, put ou  
ange atthe nous, ips, ete, oe disabled any’ Lim or  
ny Member of a. subject of His Majesty, way (0 suffer  
‘deauy wnthous bene of clergy  
  
(48) Shooting in ducelting Rowse  
  
By on\_ Act of 17227 a person wilfully and maliciously  
shoollng at any person in 8 dwelling house or other place  
‘Nos pupishabie with death, whether or not his action re-  
Sulted In killing oF maiming. The shooting had to be  
malicious, and therefore should amount to murder if death  
Fad ensued, snd it must have been with @ gun and other  
Instrument so loaded as to ereate danger for the party aim-  
‘ed at. the probable consequence of which would be to till  
‘Sr matin and the gun, ele, also Had 10 be levelled at hits,  
according to the Act as inierpreted”  
  
‘The Act contained seversl other provisions punishing  
‘other offences with death, but these are not relevant undet  
the present head,  
  
(19) Ships  
  
Under an Act of 1788. it was 2 capital offence to beat  
‘or wound, with Intent to kill or destroy, or otherwise wie  
fully to cbstract| the escape of any person endesvourmng  
{to save bis or her ite from a ship of vestel or from the  
lwreek thereof. (The Act was primarily designed to ensure  
the protection of ships in distress)  
  
(20) Causing of Miscarriage  
  
‘Under Lord Ellenborough's Ae! administering poison  
‘or any other noxious and destructive substance with in  
Got to cause msearrioge was a capital offence,  
  
(21) Shooting, ete. with intent to murder, ete  
‘an Act of 1813? shooting at, or attempting to shoot,  
  
sisting oe eotins ane’ person, with intent. to mura  
sain. cise ec, and {0 resi” lhl apprehension  
  
‘y Govety Act 703 and 35 Car 3 eon 7  
The Waku Bak Ac 133 9 Gent © 3)  
  
$natsmunic, Hey of Criminal Lay 938. Vo. pugs 6-70  
4 Seting Shipsvrectad Goede Ac, 1798 G8 Gee 2 6 9), se  
  
Lae slenbroug’s Ac 80349 Geo 3 6 5 sein  
Lee Elesbrouprs As, 1803 Guo 9 6 $y ation  
  
  
Page 181:  
6  
(This Act provoked a Jor of criticism)?  
  
2) Rape  
nny ag ns, ln ae ite ea’  
mo AS Td aa  
Bice ge ence a epee  
See SERA iy ae ih  
Fetii ” EP ai aAThe  
LOIN aa ena i ont ee  
Sethe atte tat Se at  
SEAPuS ty kc we ated eat Mae  
Sere allo one eect i na Sosa  
Sines Rees  
  
assed under a statute in 1376 any person who felon  
‘ously committed rape and wos found guilty by verdict or  
‘was outlawed, oc confessed the same upon arraignment,  
Was (o suffer death This statute was repealed and super  
seed in 1628."  
  
“he punshment for repr ts England now is imovson-  
  
(23) Sodomy  
  
‘An Act of 1582! (which revived and confirmed earlier  
statutes) appointed capital punishment for sodomy and  
‘rmes agaimar nature, bY an Act of 1748." Any person te  
His Majesty's Heet who committed either of these offences,  
4&5 well a¢ his suders and abettors, were to be tied bY &  
‘Gurtsmartial and sentenced to death,  
  
In fact im ancient times, the punishment for this  
ence was dent, nd about the Rime. of Richard, the  
nha, ts gk ia aw ie Vl a  
alinoncy, ior of Bega Crimi Le, oy, Va 6  
on! extn 5 Rel “es Camt, onil Walt pige St nm  
Nepah Sr, Ve ne td Raine,  
  
iy af ag ne ae ate de page onl  
  
"Sette of Weuminer 1 Ease t © 13) 378.  
  
Resell ot Cee, (ity Vo. ge 708  
  
6: sate o€ Weiner Sond (3 Baw 1 © 38)  
  
&  
  
Sr haw we Cee oa ae te  
Bt ny a Bie  
  
Sart tea Nag Or eid  
  
ne Ra a a “  
  
plete ot ved vai Sova Oto. Ae 4a  
  
"x Salomy Act 15626 Ble & 17h  
1a, Naw Act op (22 eo. 26. 3)  
  
  
Page 182:  
m  
  
First, the Practice was to hang a man, and drown a  
‘woman, guilty of ths offence! Death sentence for sodomy  
Yas eelained by the Act of 1628, whlch was in force unt  
  
Toe pegept punishment for the offence Is imprison  
ment for lite  
  
(24) Abduction of heiress  
  
Under statute of 1986 abduction of woman wo  
was an bet eri and who had substance ether 19  
: Tends, followed by her marriage or deflement,  
‘Fas punishable with death?” This was not a purely sevual  
Ulenee, the. motive was economic? though often accom=  
panied by Sexual offences,  
  
‘The preamble to the statute! recited, that women—  
maids. widows and wives having substance in goods. ele,  
Had been often taken by misdoets for the “lucte of sch  
Substances” and afterwards marred or defiled.  
  
‘The offence of abduction of a girl under 21 years in 3  
similar situation ts noW punishable with Imprisonment for  
i years\*  
  
25) Simple grand larceny  
  
‘Theft not accompanied by any aggravating elreum=  
stances was, at common law, simple larceny, the Yalue Of  
  
ie stolen goods exceeded 12 pence, it was simple grat  
larceny. Such larceny was originally punishable by Whig  
ping, then with transportation for 7 Years, and (by latei  
‘Act with tmpetanmies or fine ‘oy, death wit bene ok  
Clorgy, or ifthe beneRt was claimed, by burning. in. the  
hang ete. ‘Buta great number of statutes excluded fom  
the Senet of lary fenders gully’ of gets Inds at  
grand larceny. Of these offences, only 2 few may be met  
floned here, such as stealing of horses, ele, feloniously  
driving away. or stealing sheep, cows, etc, felonloasly cut  
‘ing amd ‘aking cloth from the reck or tenter in the Might  
time? "Theft ef goods valued at 40 shillings in any ship  
  
2 Otto sans he Peron Act. 28 (9 Gene 30  
4 Often spot te Ponon Ac Het 4 and 39 Vee 00  
4 Serine 0 an Send Olesen Bo  
£ Non Wom cy (9 Hi 7 2)  
8 Ser Raine, Harr of nah Cia Lam, 8, Vo  
past a SS te al we  
Te ree ened Radeon, Mauer of gh Cai  
  
evr anubt'Wel page a  
Sesion 1, Sexual Of ets Act 1986 and $B 3.6)  
  
g,fiateowic Hr of Ein Crimi Law, as ol panes  
  
1-12 Law.  
  
  
  
Page 183:  
a  
  
ete, on any navigable river or in amy port of entry o dis;  
Chaige. was made punishable with death. One Acti  
puned win" eaty theft of sry matt tom any Dag of  
Fetters cent by the post or of any letter oF packet convey:  
Gu by ibe post or ott of any post alee or any place Used  
for the reset or delivery of letters. Other Acts whic  
Geserve to be noted are Acts of 1500, and of 1670? under  
Sen: larceny of military and naval stores by ony per  
on in change of such places to the value of 20 shilling’ at  
Une OF several efferent times, was punishable with death  
  
(26) Burglary  
  
Larceny committed ina dwelling house was known ae  
ble compound larceny” and 20 was larceny fro the  
ferson of another. “Tareeni ina ‘dvelling house as  
Known a¢ burglesy. “At commen law it was felony within  
the benefit ef clergy, but, by statutes it was mad= 2 capi  
tal offence without benefit of clergy A:number of other  
Tarcenies in houses, shops and warebouses were also made  
capital by statutes?  
  
‘Tiuse statutes are too numerous to be discussed here.  
(21) Larceny from the person  
  
‘Twio classes of larceny from the person were 1  
‘capital offences without benebt of ‘clergy, namely—  
(4) any person convicted of feloniously taking  
aay any mney goods ar cates from th person  
5 any’ other, privily. without his Knowledge. in any  
lace whatsoever (Rnown ae larceny calm et secrete  
from the person) if the value Was 12 £ or more>  
(i) Robbery, 4, felonious taking of money or  
goods of any value from’ the person of another, or ia  
Spence, galt his, wit by wolence oF putting  
‘him in fear.'We mey note oniy the main statute,” re  
Tating 10 a person who robbed any other person ‘ce  
comforted, aided, abetted, assisted, ete, any person {0  
commit the said’ offence  
(28) Larceny by servants, ete  
  
While many of the statutes punishing larceny were  
wide enough to cover theft by a servant in the master’s  
House, tanglble property, some diicuty survived, re-  
garding other kinds'of property stolen by a servant. The  
  
4, See Radioowie, Hicory of Bnglah Csminal Law, (948), Vol 3,  
  
relat Radsinowice, Hisory of Knghah Ceiminal Law, (1948, Vol  
  
ase  
Dent ot Clee ct 1565 (8 Els 4 sation 2  
1 Bene of heey Act, 198 @ and Ws M,e 9h sacton 2.  
  
  
Page 184:  
- 19  
  
ine that property once delivered to bis servant is no  
fencer ip the master’s possession and that 9 servant who  
agplepslnes each good ie therelore ot guilty of felany,  
ae the cause of this eitculty, mad to meet thi dificult  
Thumber of sates bad ben passed punhing various  
fete by servants amounting to embessiement of secures  
Sd olf effects, parcularle inthe case of employees of  
‘nk, ceriatn companies and the post of”  
  
(22) Blackmait  
  
Th send letters threatening injury to Iie oF pro  
tn Gide to extort mane has! a” high misdemeene at  
in aw. punishable by a fine and imprisonment. In  
fan Act was passed whereby a person who knoe  
Ing Sent laters ether unsigned of signed with a fet  
‘ois naive, demanding money was guilty of a felon ith:  
fut benefit of clergy. "A later Act passed in 1754 Suni  
{arly punished with death ats person who knowingly st  
leltei2 without a pame o” wi Retous name, threat  
‘ng 79 Kill or to burm any house, although no none, oF  
aleabe effects had "been demanded int  
  
The coup le contraction on the fot Act  
apparently bectuve extaring money by sending tnresten:  
Ng Titers was a commen ofece i the Hoth century  
  
(20) Ransom  
  
‘An Act of 1960 rected that many person within the coun  
ties ot Cumberland. Northumberland, ete, had been (either  
m their house or while traveling) cavvied as prisenets and  
‘Kept barbarousiy and cruelly until redeemed. by ovat  
Fansem, et vo that many persons had been forced to pay  
a Certain rate of money, corn, cattle or other considerstion,  
‘commonly called blackmail in order to be freed oF bro:  
‘ected im safety from the danger of such robbery, ete. Yor  
  
these offences, and for being privy, ete, thereio, eaptal  
Pontshment was provided for by that Act  
  
(3) Offences by Bankerupts  
  
By on Act of 1792” ater made permanent? death penslt  
vethout bene of clergy. was appointed” for baskrapls  
  
sap! 2 Ratios, Minar ot Engin Crninl Law, Geb, Wal ape  
2, A t0 Pot Occ we the Post Ofce Oeces Acs 1967 Gee. 3 6  
ee te Pos et 69  
3 Weldon Back Acs 1722 @ Gea 1 6 27.  
4 Pees Gg Armed nd Digied A #754 (27 Ge, 2615  
5. See Rainn, History af Engh Crna cam (ag, Wel. age  
  
1 uae in Northern Couey Ac, 260 45 Eli.)  
7. Banbrsts Act 1792 (5 Geo, 36.305 weton 1.  
1 Bankrpts Act yar (7 Geo 3 6 ta  
  
  
  
Page 185:  
180  
  
vio tale ther to suzender themacves the Commis  
Sloners within 4 days after notiee or to submit  
Sxamined or fully. diclose their etatcs and\_offecis of  
io elver thr etn ad eects fr Ihe bene of ht  
‘roditors or who removed, concealed or embessied any  
of ther estate to the value of 20 pound, ee  
  
Another Act” provided death penalty for a person who  
refsed to deliver a schedule of his estates end effects (0  
creditor (apparently after'an ofder of the court). ‘The  
‘elses Hie Sete peranas "were peagners ft  
debe chose to. continue in prison, and to spend theie  
Stances there than to discover an deliver Up to Uheir ere-  
Gitors their estates, ee  
  
(82) Forgery  
‘At commen lave, forgery was a misdemeanour only.  
1g Thea" am Act was passed to brosden the legal concept  
at forgery and to etablian, a new system of punishment  
Section I of the Act recited, that the “wicked: pernicious  
snd Practice of making, forging and publishing  
{else charters, cridenecs, deeds, et, bad st late time Bee  
‘ery inuch practised’ (6 the High dlapleasute of God apd  
the reat injury of the subjects and this was due chiefly  
tpl tenon tat he pamtheta war nl an mi  
let providing the Panistment of cutting of ears  
{he estrls ete for certain types of forgery, the Ack ane  
ie pied obeners contd for thes ine  
of forgety with death thou Bonet of clergy. Te Act  
won virtually superseded by later“ Aety ut Tormally te  
mained in force fil 1650. There were certain other capital  
Bates {too numerous to be mentioned here) Puoishing  
Yasious types of forgery. with "desths These feated to  
Herery ai dee, Soh, il, hare of bc cmpanic,  
stampa: and marks, forgery of the sel of Bank of Engl  
‘nie notes, ete. tis well known that this seventy of  
Ppanichent for forgery Induced many’ Bankers to petion  
{er leser punishment’ as it had rendered conviction dite  
  
cult  
(23) Personation  
  
‘The offence of faleely personating another with intent  
to defraud was 2 misdemeanour at simmmon law But. by  
several statutes® petsonation of certain classes of perier,  
Such as. proprietors of shares tp Stock of bodies Corporate,  
‘or petsonation of ofcers,seacen, ete, oF of a certain pen:  
floher. of personating the nominesy of ie, anwulties et  
‘was made © capital dence’  
  
1 sens Debis Ree Ac 758 GB Gen. 3 © 13), alow 3  
  
2 Regent i) (Ble <i.  
  
5.,$1¢ Ratsinowin, Mistry of Enea Cina Law, (948), Vo,  
meet a Laws ca9, Vod  
  
4 Se Redsinowin, Hory of Engh Cell Law, (ish Vo.  
paps gS 83 Sr tt and pcan ogee  
  
sigasenonic. Hiry of Engh Comin Law, 4h Yok 1,  
  
  
  
Page 186:  
18  
  
(GA) Destroying ships to the prejudice of ineurance com-  
Portes  
  
By an Act of 117 superseded by a Tater Act, if an  
‘owner or captain, master, ete, of any ship or vessel wit  
fully ‘castaway, butnt cr otherwise’ destroyed. the. ship,  
SE ath inten to prejsdce the taster, be was euly  
of felony without benedt of clergy  
  
There were also earliee statutes under which the acts in  
auestion were foloniously" punishable. with death. “One  
those statutes rected thet {often bappened that mas  
{ers and mariners of ships, having tnstred or taken” Upon  
Botiomry. greater sums af money than the value ot thelt  
scree "Way Gt away, burt or oherse dew  
[oyed the ships, fo dhe merchants and owners grent ey  
‘The'impsct of the Att of THT ayn le eng he  
‘offence fo the owner, ete, who defrauded ‘the insures  
  
(25) Coinage  
Many offences connected with evinage, such as counters  
  
feiting, bringing faise money into the Telin, and impaling  
oine ere Image capital fences!  
  
(88) Arson  
  
Several kinds of arson were made capital by statutes  
and i Is enough to note the Act of 1722° which appointed  
gosolute capital punishment for setting fre to enyy house,  
barn or outhouse, to, any hovel cack mow ‘or cart hey  
‘or wood. A Tater Act® punished with death setting on te  
‘any mine, pit, of delph of cal, ete,  
  
Sul another Ac” made ie a capital offence ty set on  
fre or Berwise. destroy ships of Wats ot Host oF aie  
ets of butding arsenals, mapainesvctualing Se oy  
Py ofthe buldings erected theren or belnging taseto?  
  
Severat statutes made it capital offence to set en  
Ace he's own house er bldg Bngne oF credo tac  
for catyiag tn any trade of manufac with tent Se  
Infore of dew  
  
“i Sunde Sips Aa, ing Gem Be  
  
23 Gamtnoance At 34 (ot Get 3,  
  
a, > Meta Shiite Pay Act 870 (2 and33 Cet. 3611), seal  
4 Sf Badsivowce, Misery of Engin Crinial Lew, (198), Yo 1,  
  
poe Sa inry of Bagh Vt  
1 The Wallan Diack Act 1723 (9 Ot. #62 se  
6 Oeoss asst the Petes Act 1727 29 Ge. 2«3)cotion &  
  
Hear, a En, Volto, page 34 foosere 4) sn pages  
Almay of te Bagi .  
pege noon, Hiner of se English Criminal Law. 5), Vou,  
  
  
Page 187:  
m2  
  
(31) Wajud destruction otherwise than by fire  
  
tain lle ete ong or Tac, frame machine  
  
Beside this, a captain, master, ec, who wilfully cast  
sy, bart o there deataied shy "or 8 phon  
Who did these acts to the prejudice of the owner cf the  
hp any" aechant wthyse goods ere onde theveeo  
ro destroyed any goods in any ship in dress were  
Purishable with death  
  
(8 Piracy  
In the middle ages, piracy was regarded as a kind ot  
teeta i Te ofc as no an lea if the lender  
wwran alien i was felony In more sent times, pracy  
‘tas held te’ be robbery oF ubeuthorises. depredation on  
the nigh seas”  
1s was note felony at commen law, and the first  
tute made it 2 capital olfence though ‘nota felony, snd  
Some doubts survived as to whether the benefit of Cetgy  
‘War‘avullable In respect of ths efence:  
  
‘An Act of 11006 declared that the King’s subject who  
committed an act of hestity on the high sets against any  
‘other subject of the King by commission of any foreign  
power or under pretended authority from any person what  
‘Spever, should be considered guilty of piracy and punished  
‘with death, and loos of lands, etz, as pirates, felons and  
robbers upén the seas ought to have std sulfer  
  
Section 9 of the game Act made a certain number of  
‘other acts of piracy llable fo the same punishment. Later  
‘Acts made supplementary provisions  
  
‘The law on the subject is now contained fa the Act of  
1887} under which piracy is punishable with death where  
‘any’ person on or Belonging to the Vessel attacked ‘ig 35.  
‘Saulted with intent to murder or wounded ot has his Ie  
‘sndanered, or with imprisonment for fe or for any sHore  
fer term in other eases,  
ent, Hay of Engin Ln, a,  
eo. Rants, Mary of Bra Cina Lam, (94, Vp  
  
5. Radiowie, Moet Engh Coal Law, (94 Vo re  
4 Supprsion af Piney As 1700 (01 and 1, Wl 3,1), sara  
, Radaoorc, Misery of Eagsh iii Uw, (3, Wo. rene  
  
6. Piney Ac. yy (7 il gad Vist c #9  
1 Sou ars, Set En, Vol 20 ge 6, Page 148  
  
ne  
  
c  
  
  
Page 188:  
13  
APPENDIX. XX  
Bxcusi LAW op TResson  
English Law of Treason  
“The relevant provisions of the treason Acts of 1551 and  
179) ave quoted below =  
cTrepign Act 185 (2 Baw 8, 8,6 2)-—Deela  
Item, whereas diverse cpinions have been befo  
this! tine In what case treason abell be seid. aod  
‘whatnot; the Ring. at the request of the rds and  
Wr the’ commons, hats made a declaration inthe no  
te ts berealer followeths that to say, when © man  
“do compass on imagine the death of our Tord. the  
‘guor of our lady the Queen, or of their eldest som  
nd herr; or if @ man do-ciolute the. Kings. compa.  
‘Non, 'or the King’s eldest daughter unmarted, or tie  
Xie of the King’s eldest son and deiry or if @ mon  
Ao Teng wer agotnae our lord the King tn ha veal oF  
Se aanerent fo the King's enemies in his realm, ging  
4 them id and comfort in the realm, oF elscshers,  
tad, thea be erbibty Corratemeyiy ettaied 9!  
pen ded by the people of their condition. sand 1  
Tman sen (Ge) the clancelon rescuer 9} the Kings  
jistice of the one bench, or the other justices eyre  
fr justices of aance, ond ail otter jutice assigned 13  
her tnd determi, being in their placer doing their  
‘fences {see Steph. Big Cel, (Oth ed) 0), Andi te  
Bertrersod tho i the eae above tuba aad  
Gogh to be judged treason which tend to ou? er  
tie King, and his royal majesty” «And “if precse  
any man of thi relin side armed covertly or secrets  
Wity "ier of ates against angr other to aay hue ot  
{oly imo take hitm or retain Bim ill he hash made  
tne ar Fangom for to"have he deliverance it iy act  
Inthe mind of the King’ mor his couse, shat in such  
ace t"Shall be judged, treacon, ut shall be fudged  
ftpy oe tee aeong toi as of te end  
Eat time used and according as the case Teqireth\*  
“Treason Act, 119, (96 Geo. 3 6.1) &. 1—Plots to  
  
Kail, ete, the sovereign or his or her heirs and steer.  
  
If any person or petsons whatsoever... shall,  
within the Zeal of wRhout compass: ing, ivan  
est inion dean on ection ot any Roly  
harm fending to death or destruction, maim of wou  
  
ing imprisonment or restrain, of the person of fis  
Majesty, Tig heits and successors... sand such com  
passing: imaginations, inventions devices, or intentions  
fr any of them. shall express utter. of declate, ‘by  
publishing ny” printing. or veeting’ Ge by any ever  
‘act or deed: being legally convicted thereat, upon the  
  
  
  
Page 189:  
104  
  
‘oaths of two lawful and eredible witnesses, upon triad  
for otherwise convicted of attained by the course of  
Iw then every such person and persons, so ag afore  
aid offending. shall be deemed, declared and adjudg-  
Sd'to be a trator and traitors, and. shall suffer pains  
Of death... as in cases of high treason.”  
  
Certain other acts wore declare, to. be felony now  
‘treason felony”, by” the Acts of 1795 and I  
iment for such acte Is not death. Hence, we need not ais.  
‘cuss them in detail”  
  
1 fs no longer necessa  
‘witnesses to prove treason.  
  
‘sto treason whlch iy ot hgh oan, Wt mecely  
felony, the punishment for Imprtgoament ‘of life i laid  
down by the “Presson Felony”  
‘The fllowing chart wil show the comparative position  
‘puniabmont im England ad. tn india “on the  
Yess Rc whic const treason according ong.  
  
to have & minimum of two  
  
agish Lew San Law  
  
Longe we gmege Kinein is Wage a ant he Gomrrnst  
int ST blag ae de EGF Ses he Sipe tps  
Keeescomictatsretim sites ser ee purtltie cea st  
  
aueaks omen ses  
Saevess SSRIS  
orth con sot mento  
Shen Death  
eryesceeeinstem en ef pny  
seca Doe Sr re,  
estan Dew,  
  
‘Bnet eth  
  
1 Sr Rost on Came, G6), Vo page 030  
  
LER I ee eine Spee os mea  
nel RR et, ee rece nat  
Spe Pao fants Uae  
glee alate  
Sen ane Sao a,  
  
  
Page 190:  
105,  
  
The ahove comparison of the English and the Tdian Being ak  
  
provisions would show that, roughly speaking, the onty Reg,  
Extegory of ireazon about which thee ino specie anon. hein  
  
tion ‘in the Tadian Penal Code.ie that indicated by the  
Words of the Bnglish Act “be adherent to the King’ enc:  
‘mies i his Teal, giving to them aid and comfort in the  
Feaim ot elsewhere.” Onder’ the words “adherent ete  
an actual adherence must be proved \*  
  
‘The leading cases under this head axe the under-men-  
tioned. 9" In one of those eases, Sir Roger David. Cate  
ment was tied for treason beeause he Went to Germany  
uring the Fisst World War and there actively endeavour  
fed to persuade other British Subjects (Irish Soldtere who  
‘were. prisoners in Germany) io" join an" Irish brigade  
and assist Germany. “He also took part. in an expedi-  
lon rom Germany with the object of landing army 1  
Iteland for supply to Irishmen for being used on behalf  
of Germany” He war held guilty of treason. by adhering  
to the King's enemies elsewhere than in the King’s real  
  
In the other case, Willam Joyce was tried for traitor-  
‘ously contriving to aid the King’s enemies ('adhering™ to  
‘swell ag “giving ald and comfore"to the enemigy in areas  
‘without the realm of England) ty broadessting to British  
subjects propaganda on Behalf of the enemies of the King,  
  
‘The words “giving sid cs!" would cover any act done  
  
4 Beltsh subject shih strengthens or tend to iseng.  
{Bet thet enemies of he Quetein tae soe ot we  
gnats or when weaKons x tad to weaken  
the power ofthe: Queen and’ of the country to sestst er  
attad the enemies of the Queen\*  
  
Regarding transmission of jnteligence, an interestin  
case lp that of Stone\* There, Lord Kenyon ©. observed  
that ifthe intelligence transmitted was such a¢ was Ekely  
{0 prove useful to-the enemies In enabling them “fo ennoy  
ls defend themselves or shape their attacks" sending such  
inelligence with a view to its reaching the enemy Was  
undoubtedly high treason.  
  
“hus. may be noted ta under thse heads ther  
i So tr it  
  
TA, inti  
oi  
  
4 oe to appeal ms reese by De Atcmey Gener. Ser Dacor,  
agi Tason Trak Gon Pee 2  
  
"S-Aehbld, Cumist! Ming, 19) prgaph 338  
gS Br Sete 5 Se Tents dd Inaba  
  
  
  
Page 191:  
108  
  
‘As to communication with enemies) the following ex-  
act from Halsbury" would be helpful :—  
  
“Cpmimunication, ith the enemy from which he  
idee “or “defence ‘constitute am adherence io. the  
enemy-\*  
  
‘The fact that the communications were intercept  
‘ed and did: not reach the enemy is Immaterial  
  
APPENDIX XI  
earn Pexatay sx Russia  
  
Since the penalty of death is now permissible for cer.  
in oftences tm Russia, it mey be useful to summarise the  
sions ‘on the ‘aubjeet. ‘The death penalty  
  
reduced some months  
  
in 1918, reabolished in i020 apd again secintrodee  
‘ed'in 1920, Se. in ‘the game year, "In May, 1981) = Was  
‘abolished again, but in Januaiy. 1050 ft was’ reintroduced  
for certain sertous crimes (enemies of the regime, walters  
spies. and’ subversivediversonists).- In 1954, It" was cx:  
to ander under agra secumstncee  
  
‘repeated tn ‘he ‘General Principies of  
Criminal Legislation Haid down in 1958. "Thereafter, ia  
YOUI-O2, it has been extended Yo certain esonamie cries.  
  
Foran menting dscanion, <c Here = Meine Ep oro  
att eed  
  
2 Mabry, rd Bn, Vo. o, pages pagar ene  
  
J BLD Rv Gp et, a2 Som Te 4p Rv. Grae  
ge a =e ea as  
  
monet ee eee ee § See cad cite see  
Eee ory  
  
tr peda oman 2 sae Vt med  
iis" Seichcfed Whe ser ects spi i neem  
  
(pg ame Togo peer pe  
et AR a Spear Be Ea a ase  
HR aie SAR Eo ee  
iad  
  
  
Page 192:  
187  
For convenience of reference, the present position is given  
‘offence wise inthe following form"s—  
  
ape asic of Febuary, Domb pri can te  
  
earl speed  
ae Eo pe comm  
  
‘png enmcisses ash ‘ewan ogee  
  
{own in 2 Bok 09  
‘oe sted it ae  
  
conics Te  
  
Meecae whtase  
= Secs  
Desh semonce san be  
pay  
  
ee  
  
ype  
‘Pie nd, peng of Daa of Dead semence cane  
‘ite a gee Pe  
  
crm ts Dg oe Dat so  
acs =  
  
Drcrteag Febery Dest tte cn be  
Sar Pa  
  
erm  
Eases ee  
‘Bove he rie a Set  
SRE dca atid  
Sire riod ante  
ne SPU cel  
SE Ses ae come  
  
‘Frscnoven 9 ond 40, a0 paaes gu and 04 Sandton E  
Dart Camegia he see Uae, Journal of ie ereauonsl Coneesion  
Ff ee osha ps aed  
  
  
Page 193:  
188  
  
Taking of bribe was a capital offence in the Russian  
Ccesminal Code of 1982" In 167, fe was changed to impr  
Eee thats Wes alered in o80 te  
Iimprscnment up 10.5 years for an erdnary ofene, en  
  
‘ipeserment Up 1 yea fora ssond emec oF  
  
fy with extortion. “he: present postion ts af” fol  
Panu  
  
Batery by minor ofa impriaumes som 3903050  
ery by, peron a ypaaite pie) Arona fom 8 10 15  
Soot op titmed Steeate ce Ye  
  
Geko wn emanise  
 Contenie of ropes +  
  
ALENT pasos  
(>) Deg tence i sees  
  
A detailed discussion of the recent developments re-  
garding death penalty in Russia may be quot  
  
“Toe fh rice ety stig 8  
way dai eat ot etn  
soy raise tie a aes  
See og heels  
Patina b tele het mated  
See petey r ems l e  
pris res tied ea ae ee aes  
ce ie te ar rtee esa A  
bso ie mete de gene Sree  
seman see te Coe ea  
Se eae Siriaas Cat  
ST alt eng ana ate  
ara (cee Ge San  
SST aT t's Saas iene  
abs rs ir Sa ae ee  
Sa tea ed  
ee ee  
oe one meee seca fae  
Baaiy Seance edu eons ace  
pal Sees ee ce, tae  
ret Scorn ee es re Pare  
soaks namin i Sex rena ay Se  
ie ae et =  
  
be prescribed by the legislation of the USSR" ¥  
  
Bers Keg asian Cima Cate, (vt cao et  
Omoniit Low Goma ans te  
  
  
  
Page 194:  
APPENDIX X11  
Pnovisioss IN Frexcx Penat, Coot REGARDING TREASON  
Regarding disclosure of secrets, an extract of the fole  
owing provisions from the French Penal Code™ would be  
Interesting  
  
“Anite %  
  
Any French national shall be guilty of treason  
and sentenced to death, if he:  
  
(1) bears arms against France:  
  
2) bas dealings with a foreign power in order  
to induce st to undertake hostilities against France,  
of provides 1t seth the means therefor, either by  
faelltating the entrance of forelgn forces into  
French territory, oF by undermining the allegiance  
oi the arg nay oF lr free, oF by anyother  
  
(2) delivers to a foreign power of to i agents,  
any French troops oF tezrllones, cies, fortresses,  
{fortifcations, posts, stores, arsenals, materials,  
Smmunition, skips oe alreraft bolonging to France  
Grito countries over which France exercises  
sovereignty:  
  
G4) Jn time of war Snatigates soldiers or sao  
to enlist in the service of a foreign power, facile  
tates their doing #0 oF enlists persons to service  
Sith a power which is at war with France;  
  
(2) In ime of war ha dating with foreen  
power ors agents in mote the actions  
‘of that power against France, mm  
  
‘Within the meaning of this section, the nationals  
fof countries over which France. exereises  
Sovereignty, ag well” as” foreigners serving  
France at soldiers or sallor, ate to be cons  
Gered like French national.  
  
Within the meaning of this section, the territory  
‘of countries over” which France" exercises  
Sovereignty ate to be considered as French  
fereitors  
  
7 Fem  
pa pote  
  
  
Page 195:  
“Article 78  
  
Any French national shall be guilty of treason and  
sentenced t0 death, if he:  
  
(2) By any means whatsoever delivers, to @  
forelgn power oe Hes agents 9 secret of the national  
etence!, or who acquires by any means the  
Seasion of such s secret in order to deliver It to a  
foreign power of to is agents;  
  
GR a me  
SNE are cn Sure  
Sts tae ee Pa  
Sry EPS cy oe  
Re er  
comin ae  
  
ox ig i Ea  
  
(lad wk ag  
manship is not of such a kind as to cause ap  
Ea,  
  
(i ema ti of ate  
sy i rs in  
es  
  
(ey pt he tain  
of wees  
og deme reget te  
Lr as  
  
‘Tho wilful participation in\_an, action performed  
by a group and’ with open force, directed St and Te  
sitng in one ofthe fleas refered fo paragraphs  
(a), (6) aod (6), of the Article, re prepara  
fs SP att Sinai aso be punished by aoa  
confinement”  
  
“Article 7  
  
ie Wh perageophe ana 2” aba be gully ok  
tn Senlenced fo death,  
  
‘@ \* Sees of Naioal Delon  
  
  
  
Page 196:  
8)  
  
Toatigation or fer to commit ong of the floes  
referred to an. Articles and im this Article  
SSIGS poutatd tke he leony sae  
  
“Article 78  
Within the meaning of this Code, the following  
  
xe considectd sores of the hatonal defense  
{) Muitary. a5 well 25 diplomatic, economic  
‘or industeat information, which, by Its nature, te  
tot to be made known except io those vented  
thereto” and which ought tobe heptseceet froma  
‘iyody thee nthe interest ofthe national defense;  
(2) goods, materials, documents, designs  
ys, pleures of other reproduc:  
ions and ail other documents whstaoever which,  
Uy their nate, are nat to be made kosen except  
16 those who ate ented to use and to have them,  
Spd which eught to be lept secret {rom anybody  
ee because they may allow the discovery of itor  
‘nation pertaining to the categories mesoned In  
  
the’ foregoing pategreph,  
  
(8) mutary information of any nature what-  
seever not made public hy the government end not  
ineluded in the above list and the publiestion, pro=  
pezatlon, duclosure or dissemination of which has  
een prohibited by Taw or decree of the Council of  
Ministers:  
  
(2 information pertaining to measures taken  
tog the dacney an area Grins and  
accessories of felonies and misdemeanours  
the external aacurty of the vite orto provers,  
{nveSigation or pleadings.”  
  
APPENDIX XXII  
‘Carma Poxismm in Hiioe Law  
(Detaled sb-heads—  
A. Chronology.  
B Homicide Hindy Lowe  
©. Capital Punishment in Hindu Perod.  
D. Principles of punishment.  
E, Clasifeaton of punishment ox Hindu Law.  
F. Digerent kinds of punishment in Hindu Law:  
G, Arguments against capital punishment.  
HE. Capital punishment for various crimes.  
I. References from Menu.  
J, Capital punishment end Buddhist Rules  
1X. Capital Punishment n the Maratha Period]  
  
  
  
Page 197:  
1s  
A. Choronolgy  
  
ecfore dealing with the postionin Hinds Law, i¢ would be  
comenion stat the chro ology of wre ety ety elena  
{2th Hind Peg, which fe piven Below  
sgo0—1000 BC. Vedic Samhitis and Brahmans:  
to00—#e0 BC. Principal Upnishads  
620-300 BC. —Dharmarotre of Gastams, Apastan'ba  
\*e ‘Baudnayane and Varchite  
yeo—tco BC. Sankha-Lathies Smid  
‘eo 3o0 BC. Works of Pal Buddhist Canon  
proces BG. Arihhawra of Kauya  
S20 BC-AD. 200 ManiSmuih  
Seo BC-AD. 00 Ramayana  
AD. 100300 Yainavalls Sma  
AD. tco—t00Huthocharia and Saundarananca of  
‘Asvgheshe.  
AD, to0—00 Orginal Pachatanca  
AD. teomsooPrtima-ataka and other works of  
‘Shae  
AD. 10300 Works of clasical Tamil teranue  
AD. toomtoo Works of Jaina (Svetambra) Canon  
AD. reomwso Naa  
AD, 200300 Chatush taka of Alyadeva.  
AD. toms Sabuals cmmentey om Jiinis  
AD. 500-00 Brikuspa-Smih  
AD. soo-q20 Abbidharmakoe of Vanubandhe.  
AD. 3e0—w0o \_Jatakanala of Anasura.  
AD. qoo—gooVisuddhinagas of Buddhaghos.  
AD. 320-620 Vayu, Vishnu and Markandeya Puranas  
AD. 330-90 Abhinansahumtalam and otber works  
\* Kansans  
AD. goo~6ooKatyyane Sm  
AD. jpo—6eoNitcata of Kamas.  
AD. joomSoo | Mudraabsha,” Dhactaya, Kiraacy  
Faniyam, Siupalaradhs “aod other  
  
AD, 650700 Tanuavarita, and other woiks om  
\* “Mimamsa by Kumarila-Bhatta,  
AD. 600-650 Kedambar of Bara  
AD. Go0—#50 Dwnakumarachartn of Dandin  
  
1 Taten om Ghia, A Minny of Tin Poni ea, 99,  
  
  
Page 198:  
Goonmenearies oo Avayakasuaras te  
iy Hint a  
|AWD, 800-839, commsneary of Vaimavatyte  
‘Shue by Visa  
  
A.D. S30—928 Manubiinha, commonary om Mane  
‘Saves by Medhatihs  
  
AD. 959 Nirivabgamsiom of Soradens.  
  
AID. 1ove—1teo Commemrarice on Uvanguasay and  
‘ather works be Abhay alee  
  
AD. 10531081 Kutharitgats of Somaieva  
A.D. rof2—103 | Mitkchaca, commentary on Ysinavalkya-  
‘Sma by Vinonesvaa  
AD. 1o8y—1173ASgatacharita anf other works by  
‘Heechanaea  
AD. ttoomni3e Gemnenary a Yoinavaliya Saris  
38 Ge Ratha  
AD. roo1199 Raiadbarmuabanda and other works be-  
‘aging tthe ‘Sewn gent called  
Rosle of Lakshendhara  
AD ust Minolta by King Somesvara IL  
‘Bhulekamala  
Raatarangini of Kalhona,  
Vsavahacanienya of Varadarsia  
ND. 14301300 Commentaries om Gautana—Dhranae  
sere Ostia and Apastambe=Dhaama-  
so—t302 Commentary on ManurSmriti by  
uke  
AD raoc--t335Sait'shang tka by Devanbhums  
  
AD. 705:  
  
B. Homicide om Hind Law  
  
z the baw of homleide in the Hindu period, the follow-  
ng observations of Dr. P. N. Sen would be of interest  
  
“Sahasa.—The word “Sahasa” isa generic term compris: Sais ot  
ing various offenes having the commen charactriatie of site  
ting‘attended with or accompanied. bythe Ue of force. tt gape  
In broader unse, therefore ft included cevtan offences  
  
hth Would aso come under cthey deseiptions of eens,  
  
built ie eetsleted sense it wns ied to. denote ecrain  
  
sie ffencey noch ae mischit, robbery. murder ete,  
characterised by deliberate and aggressive violence. Dierenee  
inierstond in his say. i siferentiates ian froma the ees  
{nt and indsedollences (Seyay by the element of foros Seo  
  
ip emtere nt cron the seg ef actin om  
‘which such am offence aroeceds is passion Grroge, herent  
Un'Gtee ot thet tnd other Kinds of offences the spring “of  
  
spot PS, Hite ee, TEE eH i, ma  
14-122 Law.  
  
  
  
Page 199:  
198  
  
to put it shortly offences of the former  
and aggressive in their character. whl  
  
‘tfences of the laiter iund ase. generally secretive in their  
nature Hence, the Mitakshara pasts out that aihough 4  
Bahasa (or violent offence) Involves either theft, oc verbal  
fabases of personal violence, of outrage of the modesty of &  
‘onan a8 an element in iis consttition, yet it difores  
{ates Itselt feom them by the adjunct of aggressive vio  
lence which gives it'a peguliat shape. and this difeentis  
‘ion marke ogt that the offence should visited with  
heavier punishment. “There.ave three different degrees of  
thie ind of offence, of the fret degree, intermediate and  
[rove, and diflerend degrees of punbinent Were cuexcrib,  
‘50 as'sporopriate to them. It was also latd down that if  
‘Several persons combined in striking another, they should  
be visted wth double the ordinary: punishment, sad tur  
Rhermore he eho struck “at the oi part was to receive  
the severest sentence. In 4 case of Sahuse in the nasrowe  
  
Sense, as distinguished from dasdparushie "end sarees  
fbrandn diferenee In casle did ot ead to any aifference in  
Seenes, at thi mst ‘he underslad as subject 9. he  
{Yeneral jule, that a" Brahrain could never be capitelly  
utithed, alinough in a proper case he might be chained oF  
fmprisoned. or banished from the country branded with  
marks of disgrace’  
  
©. Capital Punishment in Hindu Period  
  
Before swe deal in detsil with the position cegarding  
capital punishment at cach stage of the Blinds period, it  
Seal connie empha, to ay Ota apd  
vey, the fact that capital punishment grag in Vogue at almost  
very stage during the Hindu period  
  
‘The emphasis on “Danda" (coureive, authority of the  
King) may be noticed. During the Vedic period (1300 to,  
607 BC) originated the doctrine of the Divine afBnity of  
the temporal ruler  
  
‘The authority of the King sas coupled with his oblige  
tioa towards his subjects’ and the coercive authoriy  
(Ganda) of the ruler "was recognised as the “cause of  
Dharma.  
  
1. ULN, Ghoshal, A Hor of totian Pale Ha (Oxf, Unie  
sey Pi, Srp pte See ao gees fo? Eesha The  
BOE SB AGRe EO ie dst Ved eTchaae, entond Unibet  
rc ora) chaps 99 1S  
  
2, U.N, Ghoshal, Also of Indlon Pic is, Oxf Cohen  
res 95, ge 2  
  
UN. Goa A Miao of Inn Pee Has, (fod Voie  
es (i) poe  
  
  
  
Page 200:  
tn the pre-Massya period (600 to $25 B.C), the oblige  
tional te Ring to prover big abject was developed. Tn  
Se of the earliest Smuts’ the lst of fenders punishable  
ore th incluies Thou’ who exused igury tothe seven  
Soncituens of the State, ana those eho forged Yoral ect,  
see Ane eho fale to indt pontsment (anda) om &  
ity aa‘oe whe psished an seocent any was, re  
Ey Sundeige a fasting. Some of the Pell Texts of that  
Tosod, Whi emphasing the importance of righteousness,  
EioSSippasioed he duty ofthe Ring to protest his pele!  
  
Keutilyat explains, theta, King who gives out just  
punnbment does not destroy righteousness. ‘Kautlse aiso  
Emohactsey that danda (punishment) is the surest and most  
Universal means of ensuring public security  
  
During the Maurya period ($25 BC. to $20 A.D), fellow:  
iug Kawlilyas the taw of treason was developed, "Various  
tis of tevason attracted the death penalty  
  
“The Smwitis of Manz and Yajnavalkya emphasized the  
King’s sary 0 protect hig subjects An oft-quoted. text of  
‘Menu says. that davula rules al people, danda alone protects  
hear, dawa ts awake qchen others are asleep. and the wise  
fieciste danda to be identical with the law: through fear of  
‘leeda all creatures, movable and immovable, “vicld them-  
Selves for eajovmeat™ and sesve not from” their dutles  
‘Shen dando fs apolied after due consideration, it makes ail  
people bappy. but when applied without consideration \t  
destroys everything Tf the King does not antiingly apply  
‘long’ agsinat the wicked, the= strong. would roast the  
‘enter fike fsh tm spit When dand walls abovt destioy-  
Ing.sinners, the people are not disturbed, provided that its  
wthiler discerns walle  
  
Mans, therefore emphasne the, oigaten of the King  
to detect and punish all culprits, and included, among those  
punishable sath death, even thieves caught with stolen  
foods and the implements of thefts  
  
a. vides yom to. ed oN Showa A  
aut Halts Hale Ee eh a  
  
2, LN. Ola, A Hon of stan Petal Ket, (Oxford Unie  
servis Be, Goi  
2 Vine Ghats Toi Ba Oxtad Vo  
  
wr Re ms Miz 0 na nt (Oar Ue  
5 Raise Bink IV, 8 9. toed on UN. Ghoal A History  
of 1a Pala fas (outed Uber Pes, gy pars 7  
‘2 U.N: Ohne, &Hisoy of tndise Pla Tons, (Oxfor Unie  
verse Bess ms Pars tonne  
WIN, Ohl, A Hlsory of clan Petite es, (Oxford Unie  
verety Pe sn pac 180  
versity Bicone tao  
  
Piel tds, (Oxford Unie  
  
  
  
Page 201:  
6  
  
‘There are interesting discussions inthe Mahabharata  
ge 3G, fo AD by abst the coerce authority of ibe  
Kins\* “Tn the dialogue between Yudhisthira and Bhishia  
shui danda, Bhishma states that danda isthe means plac  
a in the hands of the King for the smooth running of all  
Sian aitaive on fhe path a havin  
  
a the address of Kaninks Bhardvaje’ danda is fst  
contived in genta fetes to be a undacnental elieal  
Eviveiple and 4 guard ofthe security of person and property  
Sell stably of Me soci order” Secondly the key  
{fo this funetion 1 the principle that fear of danda 1s the  
Fae pte for he indus’ bedience anor.  
he, the purpese of the Divine ordination of danda in  
‘ings favour fe stated to be the fuliment of ao. Thirdly  
tnetqualfictions required for the king's use of anda. aie  
Aserimination and mpartiality.” At one place, Uhishmat  
sched the king to slay’ without healtation & person acting  
‘asin the interest of his ingdom, whoever he may be  
At'another place’ Bhishma declared the king’ in whose  
Kingdom ‘women are forebly abducted, to: be more dead  
that ale "The pages ate refered io made fo chow  
the emphasis ploced in Bose times an provection of saclety®  
  
In the Buddhist Sanskrit and late Pall texts, one finds  
sefetences relating to death gentence. One work states, that  
the king is one ‘who rules and guides the world: he cen:  
sures, nes apd executes the man who transgresses “his  
‘commands; ruling in righteousness, he becomes dear t0 his  
people”  
  
Tp another work Ava states, that after the birth  
of Buddhs, Buddha's. follower’ Shuddhodhans, while not  
<xecuting criminals, Kept them under mild. restraint, 95  
their release would not have been good policy."  
  
Asoka does not seem, to have abolished capital punish-  
ESR BOL ated thatthe greatest kn of the Sata  
‘ahana dynasty, Gauiamipatra Satakarn\, refrained. from  
  
UN. Gbostal, A History of odin Politel Tes, (fess), page  
  
2. Mahara 300, #2.  
ondetonte ATT esto U.N, Chal, A itor of nin  
4 Mibbtaes ts 37.  
Matton Sh 6h, 935,  
6 Naewen, Malnde-Picka, TY, $37.  
27. GN. Ghosh, A Hesory' of indian Pot, Teas, (59 pe 2  
5. Adiaightha Badd I, 416  
  
9: VN. Gos, A Hisry of in Painless) ye 367  
Sgt ESR Se aa anes  
  
26  
  
ei epee  
  
UUM Ghoshal A Hisy of tn Pia ae 99), 6  
  
  
Page 202:  
wr  
  
hurting the life even of an offending enemy. and that  
Rudvadaman of the Sais dynasty never took life except in  
  
bere  
  
D. Principles of Punishment i Hisdu Low  
  
‘The principles of punishment have been well put by  
Keutilya! "Punishment, If too severe, alsem ‘men if too  
fild, frustrates ise Pumashment. according to deserts  
‘Should be encouraged. Punishment. properly determined  
land awarded. makes the subjects conform to dhorma (gh),  
friha (wenlth) and heme (desi) "When improperly  
fiwarded due to ignorance, under the influence of lust ond  
fnger, enrages even Metmits and (religious) mendicants,  
fot tp speak of householders. - Punishment una warded  
‘would verily foster the regime of the fish 12-1 the absence  
{of the upholder of lave the strong would swallow up the  
weak. Protected by the upholder they would prosper.  
  
A good summing up of the abjects of panishoieat 35  
conceived in the Hinds peried is found fa recent study  
“If we analyse the implied and explicit parzoses of  
punishment. we find that punishment was conceived,  
ist as a detervent measures ealculated to sibs fear  
Inte the hearts of the eriminally minced nd to cece  
the tama! auntie panons Has prtone  
vas served raricularly by” disproperionsiely severe  
Punishment and by-branding’, “parading! and publics:  
tng puisoment "Me scond cbjet waste prévention  
‘at the posstlty of the culprits tepesting She crime  
8p, the culprit was Imprisoned, fetteted, killed, or ex.  
fed, ‘Reteioution may be said to ‘be the thied nsctive of  
Puoishment in. two difetcst senses retaliation, and  
Tieng the weongdoer ales the favo? ss cx  
Burma ‘the Brat is paticutarly noticed in the ruta:  
eh ver lth by wth the ro ay cone  
(ep. cutting off ngers or hand of a thief the tongbe  
St%s defames) Punishments, fourthls. are canceled  
to be am educative, nd, therefore, a reformative process  
Sin. “Sulera points out thar consstont with the Vedic  
teaching of nom-injury ‘9 lie. a calpr: should be edu  
Gated (siksayet) and tmade to Work. He takes 9 very  
toler octomyhaonel vt when be re GLAD  
"Such persons. Were core ‘company.  
King shout panish them and always educate them back  
‘onto the right path” But punishment was thought  
be, not onl seormatve, but alo puricaton” Ina  
rmaral sense. This fs mare evident” nthe fact thet  
Dunishment also included diferent forms of repentence,  
  
¥, Kasia iedin Dg, Son, "Perce it a hen” Geass  
tevin SRD Bah, ha  
  
2:D.M Data, “Pula! Ll ant ganic hog adae  
Fecptate™ Alpe on) einorty “od Canara soe We,  
‘Saher was a0 pe 205  
  
  
  
Page 203:  
198  
  
ccafesson, praver, penitential starvation, and eng  
feriods of penance (@o. a Brabmin, wile spared cape  
2h punishnten, ad to lve even ae long as twelve years  
in dherst austen and ebay te ste fr  
murder)  
  
B, Classifation of Punishment mm Hinds Low  
  
‘The classification of punishment in Hindu Law has been  
claborately explained by Dr. P. K. Sen!  
  
“The chapter headed Dandabhedsh deals with | the  
vusual fourfold. lassiieation based on. the text of  
Brhaspati:, Vag-Danda, Dhig-lenda, Dhano-danda and  
Vadhadando,  
  
“Vag dhig dhanam vadhas ealva  
‘caturdha Kathito dameb,  
Purasim vibbavam dosam Jnatva  
tam. perikalpayet  
Brhospati”  
  
“Punishment is four-fold, namely, admonition, re.  
  
proof, fine and corporal. It should be meted cut after  
  
Rinaidering the offender, his pecuniary condition, and  
the crime committed by him.”  
  
‘The first, Vag-danda, may be taken to mean punishing  
with words ia giving polemin wacning soch ae “Phou hast  
Seted" most improperly” The. sscond, Dhigedanda, means  
Duniehing with strong censure such ‘as “shame on thee,  
‘ou riatreant™; i dirs trom the fest in intensity, not in  
kind. "Phe third, Dhana-danda, means punishing with fine  
‘which may be of two kinds, ixed and fluctuating. In cer  
Ula eases the fixed ‘fine may easly be lay Certain  
‘Sther eases do not admit of sich easy handling. Allowance  
faust be made in the latter class of cases for soive elasticity  
{h view of repeated inclinations to offence and other cit-  
‘cumstances such as Violence attending it. When the offence  
{S'Eecompanied by violence the punkshnent must be grad  
.sccondng to ccumstanees, 10 Bt prathama sahao (vie  
Fence of the iirst order) jamasehase (vio-  
lence of the second order, and uttam sohesa (violence of  
the last of extreme kind)  
  
« Yadhedand, gues dela eaten Vath maybe  
cof three kinds pidano, engoceheda and promepana, Plana  
{aflicting) ie subsdivided nto four modes: (0) tadane such  
A whipping or fogging, (U) avaromhane or restraint of  
  
iy by seeans of imprionvent, (at) basdhana, restraint  
Or ibecty by chaining. fettera ad the Wke, without actual  
  
TBs POE, Sem, enrol ond we, (Tago Law Lets i)  
nd Bs  
  
  
  
Page 204:  
19  
  
apriohiment, and (6) eidumbans, i.e exposing o ridicule  
if saniatton sue us by shaving the head of the offends  
taking hima ide ona as8, branding bis perso vith  
  
i enoting hie oflence, protleiming Mis cAlonce ih  
‘of Geum making hm pauol the os, etc!  
  
Angaccheda, mutilation, may be of different libs and  
coxgane-of the body. Man inentions ten Kinds of rite:  
{ch “Bihaspati prescribes fourteen’ referring to fourteen  
parts of she body whic may be mutilated, nately hand,  
  
organ of generation, eye, tongue, eet, owe. halltongue  
haltleg. thumb and the stdex Angee taken tage, tne:  
Iisad, upper ip, rectum and waist  
  
Pramapang means capita} punishment, It may be cf the  
pure and the mixed variety Le, in the later ease taublation  
(f some other form of panishment may be combined th  
‘he death sentence. ‘The pure variety again is of two kinds,  
ainaty Goicram) and extreordinary (ecam).. The oF  
inary form of execution is by means of ordinary weapons  
SHoh hs sword snd the like; the extraordinary le by means  
of impaling. or other sweinspiring methous.  
  
4: is noteworthy that aecording to Behaspati Vag-ande,  
nil dhigstande, were within the jurisdiction of Vipras oF  
Pradewakas) whereas artha-lan ia and Vadha-lunda "store  
‘within the sole Juriedichon of the Ring himself  
  
F, Different kinds of punishment in Hindu Law  
  
‘The diferent kinds of panishment prescribed by the  
nu Lav and same of the peineiples oh whieh tne) were  
“rected be administered, have been thus descrived by  
Dr'P-N. Sent” "Vajnavaikya speaks. o€ four classes of  
Durichment, viz, censure, Rebuke, Pecuniary punisbunent  
Sind corporal punishment, and says that these should be  
aed either separately or jointly aceording to the nature  
af the crime, Ot these, mere eensare Was the lightest fart  
ST punishment and rebuke came after ik pecuntary punish:  
ficht mchuded fine and forfeiture of property and corporal  
Dunishmest included fm arisonent, banishment, brandin  
  
utting of offending lita, and Tasty death sentence. it  
ocr without saying’ that “the measure of punishment  
pcaded chleny on the gravity of the olfence, the ofence  
fetnot vert serioun the punishment must be light. while if  
elfen: be seviows the punishment must be severe  
  
Dancsrieka, Gras Crsest Seis, Vol 52, page  
1 Danton tone 13  
  
Se RtyF Si Son Hos Irene (ese Lee Lets, 1997  
cont Big pam eS  
  
  
  
Page 205:  
G. Arguments against capitel punishment in Hindu Law  
  
‘Avpuments against capital punishment aze also met  
with Stine extract from an authoritative study ney be  
  
would be no exaggeration to say that the mind  
othe Item mt ange pated onthe  
Propriety or expedieney of eaptal ponishinent. An ine  
creung evidence of this te be found, n the Maha.  
Gharsta (Chapter CCLVIE of the Santiparva) in which  
there «cdscusion between King Dyunatiens and hit  
Son Prince Satyavan-A number of men having been  
tought cut for execution atthe Command of his  
{ater Prince Satjzvan gives vent to hig thoughts ths  
“Sometimes yitue sues the form of sin and sin  
‘sou the form of virtue, It is tot posible that the  
Eaton of faisuae gan eve be vita et  
reupon Byumatsena “obyerves, "Hf the sparing 0  
‘Bowe sho should be Mled be virtuous, i robbers be  
  
{roving the bod ofthe offender the King should punish  
Mints ordained by the senptuze. ‘The Hing shod not  
ct otherwise, neglecting to Fedect wpon the eaarscter  
the offence and opan the seience of morality. By  
icing fhe wrongdoers the King lis a large number of  
lnnocent mom Behold! By ing single robber bis  
ese iber and dren are” ten  
Injured by Wicked persons the King sheuld, therefore,  
{Rink serum dhe question of punabment "Some:  
LUmes = wicked person fr seen to iinbibe good conduct  
from a pioas person. It is seen that good chlgron  
‘pring’ from’ Wiked persons, The wicked. therefore,  
Bold not be exterminated. ‘The extermination of the  
Ske tie ganee wn geal By  
Drunlshing them gens. by depeiving them et all thelr  
Fiches by chains and imprisonment, By aisiguring them  
they ay bende fo expate tel nee Te Fe  
ives should rot be punished By iniicting of capital  
punishment on them \*  
  
‘Tae sentiment and reasoning against capital pusishment  
4 found in Suara" according to wham. this bad practice  
Violas, the Vedie injunction against taking any life, end,  
Should be replaced by imprisonment for Iie. tt nescssary.  
is naturel timizal should e trangporied to a ila  
or fettened and made to repair the public Toads. Fa Hien  
  
Soh Be ER Sy, Romie ot ood ws Cage aw Tasers  
sang ith Ein, Sats 3 ets Giese  
2S Seago 4. goti, seaned w oD. M. Da  
  
tend 3 Soon inhn tae Rape  
‘ies aed aiane Ese ed We (ara of Ha  
  
Pra Se Se  
  
tise!  
‘  
  
  
  
Page 206:  
m  
  
got find any capital punishment in India (948-400 8.)  
A fines wee there, and motion In eases of treason  
  
Revectheless, i seems that, at various periods in the  
hisiny of ancient India, capital punishment was one of the  
Tecognised todes of punishment.  
  
HL, Capital punishment for various erimes im Hindu Law  
(According to Jolly)  
  
Jolly’s observations as to the crimes regarded as copitel  
ae’ interesting”  
  
‘Pe punishments for thelt ave very heary.\_ tall ie  
ase of Sone ties the “asisad "ig estenced to  
  
Sesh be opal banged or downed and ten hie  
Hae hue ean sr rar reed et  
  
the’ purpese of auaravtig the panshiment The same  
funkhrscte ace dnned loo i the cas of bargin.  
Frequently fpenied astances of poking pockets 10:  
tetsu cows horsey oe elephanG or more than  
TBR rae ste than 18 Pass of pelos  
  
Healy peticuy valle’ fewels oP ade te  
CSS Ne San) onl Bek afte  
  
“Fougng of ropa grants ad even of private document cai  
Ss punithed "By death. (V3, 96 Med, 292) the King S2Binen  
Eidalt ve aaehones goldsmith ext w paces “ict esse  
‘eonding ote comedian those whe ata" figs  
iieigts ogchstoney loys and pate ter nds  
  
oF fends Qt 8h In termining the magrtade  
  
SL the pnlshinen storing ts the vale 9 te ales  
  
fhoperty aten thee, gndes re astingucheesTMic vans  
oP speaks about the thet of anal dling er Beene  
large properties and similarly speak Nr. 14, 13; 15, 6; for eft  
App 29 and Beh. 25m 24. Enumerations of objects” of SSE.  
ose alae paca gen sone a  
Staak the punhrente for misarproprating the same Sees =  
Whveh beldes the alseady menting caper of capital  
bumansets conde the hacking ‘if oa band ot  
  
Toot and ether kins of mutans ane tn ost  
etna oma ns te ae oe en  
  
oper. No distinction iy made beweentotbesy nd  
{hele a segards punishment and moreover taking part  
  
In'thete eter Sbeting ef every kane or etese to  
  
fender help vege ve egualyerunal (1,12  
ii 8 be ce  
  
DM. Duma, “Poel. Lapland Bese, Theat a Tdion  
Rare PMTave Hae Paubny ood Cline te bd Wee  
FGSE Sy wal be pen Moe  
  
2 J, Hite La  
  
‘Cast, (938), page 273  
  
  
Page 207:  
I, References from Mama  
  
Fiom the Mamusmeits it appears that capital punishment  
sas awarded for thett of tore than 10 “iumbhas + ape  
Ey Sinan of the lower caite with a woman of the higher  
  
as 4 capital offence.” Brahmins were not subject 10  
fie acath ‘penalty Mutilation of the particular offending  
Hina Wes algo pieserbed by Sanu!  
  
141. Capital punichmest and Buddhist rulers  
  
1: would appear, that in the fourth eentury B.C. capital  
punishment was in fores, and death penalty without torture  
{iar administered for erimes accompanied with cruelty.”  
  
‘Though, in the Buddhist period, the doctrine of Ahimsa  
(nonviolence) became int, the Emperor Asoka docs  
for seem to have abolished eapital punishment totaly, Re-  
Povonce to capital punisoment Is found in his edicts!  
  
‘Vincent Smith” observes  
  
“The most pious Buddhist and Jain Kings had no  
hestatlon about nfeing capital "punishment pon  
{hele subjects, and Asoka himself continued to sanetion  
the death penalty throughout his reign. He was con  
enu‘to salafy his humanitarian feelings by a slight  
{mitigation of the sanguinary penal code inherited from  
hit stern grandfather in conceding to condemned per-  
Zones three days" grace to prepare for death.™  
  
‘Atoka’y Pillar Edict TV has been thas translated”  
“For a5 much as it is desirable that there should  
be uniformity in judicial procedure and uniformity  
I penalties, rom dhis time forward my rule Is this~  
“To condemned men iying in prison under  
sentence of death a respite of ye Ts pean  
  
ed by me"  
  
‘During this intereal the relatives of some of the condinn-  
Ei'men will invite hem to, deep meditation, oping to  
‘Save their lives or in order to lead to meditation him about  
‘edie wll themselves give alms with a view to the other  
  
1 Maou 8, vere.  
2 Mana pee  
5 Mann 8, sees 379 an 380,  
Eyes. Be Rareindse Ditsiae, Maunon Tos, (Mads Unie  
veo Hiesisi ERS Geen. rae etre  
2 Theediguot hia se ceaed be D.C. Sita, Inripens of AAS,  
Goninment ef Indi as  
Vine Seth, ay Hany of I, (4 Fa pe 1,  
Ste Bae, 1  
5: Sie Vinca Sih, Auta, and Ea, page 186  
  
  
  
Page 208:  
em  
  
world of undergo fasting. For my desire is thot even 12  
tevtice oh THE, Seeman the cose men fd  
iin the nee nerld and thst arcong the people pus prac  
‘ges ef various kinds may grow inelocing sele-contol ond  
Sisrbudlon of alse  
  
‘There isa somewbat diferent vetslon,of this Taiet  
scan by soae"authore hus, Bhandarkar! pives the {0  
fowing translation  
  
“And even so far goes my order: to men who are  
und ith fetter en thom sentence as been Basted  
tnitlwiy hove. been condemned to. death,” have  
"granted thee days ae something rightfully and  
fesklunvely thie awn (ln that interval) (ei) re  
EXivey sah odeedpropitite some (of the Kajal)  
titorder ta. grater life and to proptinge Death  
they (ues tie conviets) ‘wil give ols” and obnerve  
{2% feriainng’to the next world." For my desire  
tint ven heh the fie for ir teing) has Ox  
eo they may inthe neat wordd and. that manifold  
floss Gracie sellretrant and Uberality may thus  
row Simong the people"  
  
In a recent study, the position ts thus stated:—  
  
‘Continuing his efforts to secure greater welfare  
for ne subjects he orders a reap ot three. cays be:  
fer doth sean ie aed Ths on at  
  
Grace, since he "recognizes tht this time may,  
1% Seen ase, 'Be vilized to prove the innocence of  
{he condemmed’ person oF to) Secure. his repentence  
t's Sarous that despite bs firm bole! in Bodh wr,  
fe aid not abolish caplalpunshinent Doubilesiy  
IS fegardeg eapatal penwchment az essential fo the  
Maintenance of law and ender. and, despite bis per  
‘Ea convictions to the contrary. fly that justice 0  
Eeaste mast be based on recognised paint punish  
Inents or lessirable rewards  
  
The following translation of Pillar BAlet TV of Delhi  
‘Topra is given im a Foeent Work :—  
  
“and my order (reaches), even so far, (hat) 9  
  
ul thseedaye i pranted by me to persons lying  
  
“Beant, Ata, (Camcieel Lc, 15), Uaenty  
  
2 Roo Thar, Ac  
  
nf he Das ofthe Maras, (Oxon Uae  
Page 19635 Soe pune 03 oe elf he  
  
Elie, se  
venience tes cite tt  
  
  
  
Page 209:  
204  
  
fo (grant) thet lif or if thefe is none who Derruades  
Bow istraericis tes oil  
inthe ether (world)  
  
‘This is the translation of the Edict given in chat study:  
  
“Thus speaks the Beloved of the Gols, the king  
Piyadaast "When bad been conseeated twenty:  
shv'Jears I had this inseription on Dhamme cngrat-  
  
‘My rajukag (rural\_offcers) are appointed over  
‘any Randved thousands ‘of people, To jodgment oad  
pumhment T have given them independent author  
Kanata ihe alsa ty te ton  
tons calmly. and) featlesiy and may promote the  
‘welfare and happiness of the country people and bene:  
Wether “ey el ear hat makes for happiness  
and unhappiness and together with those’ doveted to  
‘Stemma, they will admonish the sountry people that  
they may obtain happiness ths World and the next  
$B rj are ager toy et thy wi  
Wise gbey my envoys who Enow my W =  
Iikewiee Yel aginonish he erring Fajkas) 0. that  
they wie able to give me salslacton  
  
Just as one entrusts his child to an experienced  
nurse and ie contdent that the experienced ramse 15  
Abe to cate forthe child satisfactory, 0 my rajukat  
Have been appointed for the Wella aad happiness of  
the country people In otder that they my ful6l the  
functions "tearesiy, confident, and cheerfully. T  
have given them independent authority in Judgment  
4nd punishment But eis desirable that there dod  
be"uhiformity in judi! procedure and. punishment.  
  
‘This my Instruction from, now on : Men who  
are impeconel or spance ea ae tb elven  
ee days Tes thee relations a  
  
Tor ther lives or if there i 30 one to plead for them,  
they may make donations or undertake a fast for  
Uetter"rebith in the mest hte. ‘For iis my wish that  
they should gain the next word. And among the  
people various practises of Dhamma are Incressine  
hich as Self-onttol and the distention of charity”  
  
The view that Asoka abolished capital punishment is  
therefore n misconception mee  
1 Remi Types Aa sng de Dee oh arn Od Va-  
venti Feta age ag °  
  
2 ery Re Romovndes Datta, “Mason Paes”, =  
ven Hic Ste ap sone aseaan” TORY atm  
  
  
  
Page 210:  
205  
  
(Asoka came to the drone about 270 BC, according  
sw the generally accepted view)  
  
It may be noted, that when Magasthenes was in India  
cc beticen 0 aod 265 B.C.) the severest pen.  
‘hpusva, having regard to the needs of the  
  
Keutilya advocated the death penalty, though only in  
specified cases  
  
One may alo refer to the views of Prince Shotoku  
(Japan (G04, A.D.» who thought hig “Seventoer- Articles  
Gonsttutlon? Was Based on the spirit of Baddnism wrote —  
  
Ligh ctimes should be embraced by ost power  
ot reeling Infucnee ‘and. grave criaey should be  
Surrendered to our power of strong force”  
  
King Harsha (seventh century) inflicted espital punish-  
rmcnt om all who ventured to slay any living creature”  
  
K, Merocha period Impating and Trampling wader Feet by  
‘Elephants  
  
As to the Maratha period, Jolly has observed!:—  
\* (Of the death sentences, impaling, which  
  
js meatioried also Im the Mah. Rajatar’ and in che  
  
literature of fables, wat ie, Vogue for insianee in Gal-  
  
fonda even in the ith Century, in Kolhapur nts  
  
{he pected of Betis ule and ihe "trampling down  
  
By’ cleghants meationed aiso'in Mriocha, 148 and the  
  
Jtakes (Fausboll) 1.103, was universally. practis-  
  
fedlin the Mahrata sistes’” Moreover under Mahratia  
  
Tule, specially in Central india, the following are said  
  
to have been the customary punishments fen, 87g Varia  
‘np Haptonment pulling In stocks) forfeit ana panes  
sale of the whole property, amputation of ans, fe MS  
fers ‘or. nose “and” other corporal punishments: the ®  
fRands ofa forger of base coins were crushed with one  
  
low of the hummer which is apparently a symbotcal  
  
saa Se Go Bi, Hs a Bad, GH), Vo Be  
  
2, Sig Satace,Aain nd Poa hot ad Eins  
sks ising Ga No Pa pe Se ws  
  
Sutore, Ascari Politica Tose,  
paves sng Ram, Book TW, Chote ie pops Sousa  
  
4 Ny “Ba ere te leapt and cme hue  
Totty Se Mi, es ete Siegen ene mae  
4 Bacelpactin of Regios and Etion WoL 4, page 3B  
6 ots, Mind Law ae Cat, 9095 age 285, Hy  
1 BG. 2 a6,  
we  
  
  
  
Page 211:  
punishment’. Fines wete particularly in vogue in Raj-  
  
Hana according >, ‘fo im Mguore, atsrding fo  
Wuboi ang-in Keolhaput according to the Gazetteer;  
mong the Prayascttas fines gill play the ene 2016,  
‘G. avticle 37. in Nepal besides, the very frequent  
Hat! sometimes nounting tthe canticalien of the  
‘hole property. banishment and) detracting punish  
tment slch'ay the shaving of the bait carte 42) a3  
well ax the horrible ‘mufilation, and death-sentences  
cof the Srertis are still Vout.”  
  
‘The position in Mabratta times was a5 follows!:—  
  
"Far yen crimes. the Sunaobedars had the poet  
ox panei ay ada sth tals  
Bare te, he aay tia ia senate  
SeEee® wate pales 9 detogey Oy deseo  
Rett ade prio auton ale" Ween  
eee ery cmon an enfin So geal  
Poehler aobeli eben Lec tak hea  
Heise’ ceee Sas tae Sas  
ani undo Sone Baie Neste ab Flee  
Scelayea Puree prongs one towns  
wr gulS’ot the ascused buy te Syste canny be  
thine of Sha’ to tho toe sey  
Seah mo Se de re  
Mae Means antec ate es ay  
  
‘An interesting incident may be referred (o in this cone  
ction Sogn afer the death of Madhaerac 1 was sue  
Dected ihat Regunathrao was privy to the mutder gad he  
SSked Ram Sastrl (the eelebrated Chief Justice of Poona)  
‘hat was tho penalty for the tet, arn Shastri) ot only  
clans tat eta punhment was the oly penalty for  
the offence, but declined to serve any longer under  
Peshwa who ad murdered his own nephew. ‘This wat  
roundabout the gear 1774 Later om, In 1779, he was Inve  
(0 return to Poona to resutve his Work, with an snsisal  
Shlery'of Bi. "200"and’an allowance of RE 1,000 for his  
palankeen  
  
Gesu, GP Gaemueer7o C5 Malm, A” Menor of Cel  
na Ean, S| A Memos of Conca  
  
2 Anna of Raith, 1, 12 6  
4. People of Enda, 99 f  
  
4 James Grant Du Misery of the Mbestan, (pt), Vo a,  
pet Be com  
  
5D, 8 Peni Noe im pen He Kings nd Pan by A  
Winwaty O€ the Maratha People, (ost), pages 475-470. “  
  
  
Page 212:  
Ea  
  
Da, Comes. Regen, Sate in, Poona eth  
In 1810, some valuable notes on the administiwtion 0: juss  
fioe in Poona to the Bombay Literary Society. quoted he  
tow  
  
ores Se abs cians otra  
srr ae Hae int pated ven  
SSR efter ale he aie  
Sm etbattn targeh chon te Theacts  
snd Sane setae do ig by Ee  
EP ime nb nae ede ec apgated  
IRE A hee ie a  
ted tal sat ogg i ena pat  
Seta tee it Se hase hehe  
Scere ler clagas Settee lik ote  
sehen tnd letzaratec an here were any  
{SC SGRRE™Rehs ted a bee and Uae ere  
Sadana" the: eal made Tee  
SAP fae i Bp Tat eee.  
ida Mee aot blob sess cg  
Bie mA Cha Mele  
Ein dunn at ence they eae,  
RCT LEE Aa Hes nerd  
Thom ter he cede fed ta cna on Bs  
SUR conte te presto ht od the  
‘Grahmins of the eourt.in ordinary esses warded The  
ST thal AAR St a ha  
fhe besa Naser poner ented  
Tule hha een a a  
‘Bhar cae ae tn en  
Deir pale deni Seed fo sop nl  
or Simin init arma ids hy  
fre cen te epone ordre tr pene Ce  
BU, and pet" us ene? gece A  
ees Ri aed aay hee  
ots soins ia three Ete and het  
thelr sine visited om the chidzen Gunga commiting  
  
inca and Pian A Mitr  
  
  
  
Page 213:  
28  
  
1, highsay robbery, and housebreaking, were  
ished by death, and thelt bodies ung upon the  
Eldes ‘of roads: other professed iucorgtble thieves  
were punished. acearding to the extent of their crimen,  
by the cutting off of @ Anger, or hand. or foot, cr both,  
fd lett to their fate: Perjury was panlahed by the  
Serjurer Being made to make good the lose thet de  
Deeded on hs fase oath and ering fhe to Gov  
Stament."Burgery. by the Hindy Law, ought to Aave  
heen punished: by the culting off of the Fight bands  
ut unis ike almost every crime at Poona, was com  
‘mutable for money. Women were never pustshed Uy  
Tegth for any crime. ‘Turing them out of their casts,  
‘parading ther on an ass with thelr Reads shaved. cut  
ihe off their noses. et, were the usual punishments”  
  
APPENDIX XXIV  
  
Canmat, Pomisinarer 1x Inoue sURING THE MUstARE vERIOD  
1 —Iermooucrory  
  
During the, Muslim mes (Mughal ines) the, main  
system af criminal law administered vas the Quranic one  
‘The iystem had originated and grown outeide Todla. Tt  
main pgces were the uran astsupplemented end ive  
preted by caselaw and opinions of jurists. Since al  
  
fires sources were “tranteindian’' it became necessaTs  
for Indian Gezis to have a digest of Islamic lave. “The last  
seh get Nas the FatwiseAlamgn complied by 8  
‘dicate of theologians under the orders of Aurangzeb:  
  
Thar portion of the Islamic Criminal Law which con.  
‘tuted the crimes in the estimation of all nations, was  
‘applied to Muslims and non-Muslims alike, eg adultery,  
murder, theft. ete"  
  
ly the Moth pro Mai ergs a  
pete fas Me ers a  
inetd ET Wii aaa al  
western ire Gott Atal  
Me BONA eso Os Whi ey at  
Sehr fly Sete al  
SEONG SR mca ee  
ASD bite ery Eat  
  
Tiduah § Sat, Bhyhal Adminsoaon, (93), page ton  
2 eth Sekar, Magid! Adninsrnon, 950) page 2  
2» Nabe Hani, Atminirtion of Jusce Ssrng the Moin Rate io  
ns (Unwen ot Cat 9) age  
4, Wated Husain, Admieiran of Jatice daring the Mani Rae In  
nid Urn Sen pany pose So  
  
  
  
Page 214:  
Bay  
  
AKhar’s a of Juste may te gathered tom his in  
tion fli Goterne of Gules thee ye oes  
IEC MPUe GH ater Se ment ane Seibert  
‘Roe gdar iel wos the"bat Gaur of ‘Appel and  
Ext BPpneared in fone wagon every orn,  
eee ua aneiiecang onkee Seno  
Shovgh “eae was seo mae!  
  
Akbar was keen to lay down, that capita) puntsim.ot  
eat sot to be accompanied sith mutilation or exher etcel  
terand that, exceot in cases of dangerous seditcn  
‘Governor should not insiet capital punishmen® unt the  
Efosredings wore sone tothe Brpetor nod senfitned #Y  
  
1p the tire of Jehangit, no sentence of death eeu be  
ex ed out Watt the constmation of the Emperor!  
  
Te has been stated that  
cx the whole. well polices”  
  
Capiea parishment. it 1s stated, was almost totally one  
known under Aurang2e8  
  
we Tonds of the Mghu's were,  
  
Unie the dictates of anger and passion he acver issued  
cerdsrs of deeth'  
  
The Farmans issued, by Emperor Aurangseh tthe  
Dicsn of Gujarat on the 16th Sune, 1772 gives @ smali  
C8 of eftencen™  
  
‘The frst Indian Law Comrmlesion frst prepared the  
trate of Penal Code before Macaulay's departure for  
England in 1837. "But the Penal Code ‘could actually “be  
ERG aly ip ae ss sed on the drat proposed  
Macaulay's commission and revised Sy "Bethune. the  
See] member of council, and ‘Sir Barness Peacock  
  
1 Wided Hosain, Admustraiom of Jusice durieg the Mun Rate  
pager leap ee. ce ahaa,  
  
"Sooke Kean Miser the Great Moshi (ge Wa. page  
  
2 Nabe Hac Adminstration of Joc dying the Masti Rein  
  
Ina, Unsere af Castings ate. ctng Biwi:  
seh ee ss Sere ho the Sesee a  
  
1, ited Hawtin, Adminiiesion of Jsice dang the Mat Rake  
im waa avers af eas is wake  
  
{Pregl Rene ter fe Oe Mego, Tracer Sp & Cay  
Catowica}, C9as), Vols 3s page 3. me  
gti in, Aan Sc in he an Rae  
Boia Fie ME OHS PE 8. serge Alan  
Peed Rema ot of the Grow Mail os Thad  
spol Sh Canta Vp eo  
{sf tan tn Say Mh Artie  
Scimuige Hoey t tose  
ster  
  
15-122 Law  
  
0) VoL Vis rage 384, Abo  
  
  
Page 215:  
20  
  
‘The Jndion Penal Code was, itis suid, intlueneed by the  
French Penal Code and. the Code of Louisiana’. but the  
foundation was the English law divested of techni  
Unt it was enacted. for a Jong time, the substantive law  
Ol the criminal courts consisted of the Muslim few, with  
‘odifiestion made In some respects by the Regulations.  
  
‘he general emia aw entered in he Upeey Bro  
‘yinces also (until the Indian Pensl Code was enacted) was  
the Muhammadan low as altered by British regulations  
fand judicial decisions  
  
ven in Madras, “for want of anything better” the  
Musammadan eviminal law as interpreted by law oficers  
fi mouified by enactment as applied until the Penal  
bde"eame into  
  
1 was only in Bombay that an attempt had been. made  
to codify the eiminal law in 162? by a Regulation’  
  
1p. view of this postion, itis desirable to study briefly  
‘the Mislim eriminal Tam  
  
fore Indian Penal Code is thus statd:—  
Provisions Were manifestly unjust. | In 1790,  
Beth cree Bae el in  
se cay SEG Bi  
  
TF Gamtedge History of India, (a9si), Vol. VE, page 387.  
  
& Cody page 175, paragranh 240. sp Case cata. =  
Senor SRR TEE  
  
as fealetse Teas cad gto. 1a Mads Repltion "ts  
  
‘of u83 (Preamble ss " Keel \*  
:Em mae rama 8  
  
  
  
Page 216:  
an  
  
the Mubammadan Criminal Code for offences cognk  
2Bbie under the general Regulations.  
  
‘At Madras, in the year 1892, provisions were made  
respecting, the administration of” the | Mubammadan  
Grminaliaw in the Courts of the EastIndia Company,  
Simtar to those enacted in Bengal by Regulation 9 of  
ius,  
  
‘The Criminal law administered in the Company's  
Courts at Bombay previous to T8ZT, was ordered to be  
regulated by the law of the accused party: Christians  
find Parsis to be judged on the principles of the Eng-  
{ith few, and MuAammadans and Hindus according fo  
thes own particular laws'- ‘The Mubaromadan law  
Was {0 be fegulated by’ the Fatwa of the Taw officers  
which seas" directed to be\_given according fo the doc-  
{ine of Yusuf and Muharimad: respect whieh, and  
the law of the Hindus, the Judges” were enjoined to  
fefer to the translation of the Hidayah by Hamilton,  
fand of the Hindu laws by Halhed and Sir” Wil  
Sones; ss likewise to a tract entitled “Observations”  
‘whieh then constituted part of the eriminal Code for  
the province of Malabar and Salsette: ete In’ 1818,  
  
fe Hinda. Criminal Law was directed to be adeninis-  
tered to Hindus fm the special Court’. The Native Cri-  
inal Laws were abolished in the Bombay Presidency  
Jn i021, and regular Code substituted In their place.  
  
‘The Muhammadsn Criminal Law, even when  
fap seerved 1 th nates of te Brih tenrie  
in India, was subjected to many important restrictions  
in Ste application: and if has been so modified by the  
Subseqitent Regulations im the Presidencies of Bengal  
‘tnd Madras as to present no vestiges of ils sanguinary  
character. and but few of its original imperfections”  
  
Tega Repu Vi aa, sean 5.  
2 Madras Region VI, 80 veto 15 16,  
1 Made Regula VIL, 1803, sons 9 51  
  
vy, Nin vg eet, Bai 1  
‘of 1803, eooa 36; Bombay Regulation VII ot 1830, section 17, "  
  
Sosy tpt eri, ey ta  
enc ea en a et  
  
bey moan X sm  
  
cape cron yee compu de Meat  
mage sae ame aces MER SE  
TEE ee ee ee ee eee  
‘om see ar, ne estore mite Bre ee ‘exerciged by the Presi-  
Smet a, momenta a eee ere  
  
Efe ofthe Brae om  
SEIS Rape Won eta Chama oh Ho Eo  
  
  
Page 217:  
212  
  
TL—MUsLine Law as 2% Force Ax 16 Apvnir OF BxITiis  
‘Nowe  
  
General picture  
  
For the present purpose st Je unnecesary to give. &  
etaied disdusion of the theory of punishment in Muslin  
Goel bat ibe following brief extracts from an suthortar  
{ive Book will sce, to give a general pieture:—  
  
Classifcation of Crimes  
According to Muslim ideas of jurlaprudence crimes  
fall into three groups, namely:—  
(a) offences against God,  
() offences against the State, and  
(6) offences against private Individuals,  
  
Punishment for the first of these classes is “the  
right of God (Haqq Allah)", while for the other {wo  
‘Sasser of offences the injured party, may forgive oF  
Compound “with the wrong-doer.” Thus, curiously  
‘though, manslsughter ie net = violation of God's law  
for ef the king’ pesee, bat only a damage 9 the family  
Of the murdered man, Which can be setled by paying  
‘money compensation (ealled “the price of blood") to  
the next of kin of the victim. without the Executive  
Had of the State of the Judge of Canon Law having  
th take en further notiee of {It was only when the  
Telatives of the murdered man refused to accept money  
Gamages and inuisted on retaliation, that the uae!  
hhad to pronounce the eentence of death and the execs  
tive to enforce it  
  
‘The Institute of Timur puts the matter with grest  
coats and force. He wites-— =  
  
“Robbers and thieves. in whatever place they  
might ‘be found, or by whomsoever detected, 1  
Commanded te be put to decth” (Note: This how.  
Sine Wasvnot Ta Venat accordance with Quranic  
  
‘And 1 ordained that, if uny one selzed by vio.  
lence the property of eater the sine of that  
roperty showld be taken trom the oppressor, and  
Rerestored to the oppressed  
Concerning other erimes—the bresking of teeth  
the putting cut of eves, the slitting snd cutting of of  
the ears and now, wine. drinking and adultery 1  
Ordained that wheever should be gullty of these. or  
‘ther erimes, they should be brought into the courts  
Gf the ecclesiastical and lay judges (the exact terms  
‘ping Qoafci-‘slam and Qazit-Ahses—ahdas meaning  
  
9  
  
iar, Magia Aaineron, 952 pages  
  
  
  
Page 218:  
aa  
  
‘ritual ampurity"); that the ecclesiatical judge should  
decide om thone couses which are determinable by the  
Sacred laws (Shara). and that those which id not  
fait under his eogalzance (uel bashad, Les perisin to  
the customary ot sccusr lew) shouldbe investigated  
fe aid: before me by the Iny jodge”(Davy's nate  
{utes af Timur, pages 25 and ho, Corrected by refer:  
ce tothe Person tex).  
  
Deseription of punishments allowed by Muhammaden law  
‘The punishments for erimes were of four elasses:—  
(@) Hata.  
(b) Taste  
6) Qisas.  
(@) Tashbir  
add (i pura tng bagud), ears a punishment  
  
prescribed by ‘Canon Law and considered as ‘the Tight of  
Goat, whieh, therefore, no human judge can alter  
  
"add must tae ortain prescribe forms of punishment,  
  
(0 Sting to denth for adultery; scourging for  
torlcuon iby pes) sewing  
  
(i) Seoarging. for folly accusing» maried  
woman of adultery (80 stripes} \*  
  
(i Scvorgng for inking wie ad eter stax  
coung gears HEC ae ante puss ae  
Sar Tene emilee  
  
(i) Cutting the sight hand fr thet.  
  
(2) For sple rokery on the highway the foes  
of amas and fees for robbery "with urdee iesth  
Sitter by the sword or by encioon  
  
acl is punishment tmended to reform eulpeit  
tests infcted for such teanegrensons exe dd  
futishinent ‘and so explation preseibed for" tert, “he  
Kind and amount of tai eee entirely to the dietetion ot  
the judges. The Jisige can completly tei ae ee  
he pret of (a pln cnt fe Ba  
lence silent Was ten made 19 escape Walt by bib  
[Eoey. Islam iv. 719). ° ” "  
  
soul gs Rot the “rebt of God”, 1 could take one of thase  
0) Public reprimand (aaib.  
he {t,o areas te lender othe door tot  
the court house’) and exposing him to publi’ acorn:  
somewhat like putting ® mon in the ploy  
  
i) Imprisonment or exile  
  
  
  
Page 219:  
a4  
  
(60) Boxing on, the ear; scourging. The stripes  
sus ot be less than 3) nor more than 30 (or 73  
cvording to the Honaf School se in Abu Yustt)  
  
We ae adn he Hedaya a Reren comgiatin of  
Istamic aw nocorng to the Hanah schoo of jurists drawn  
pty Mulla Tojudai, Nir Muhammad Husoln, and Mulla  
Sharlatallah about 1760, that the above punishments should  
be"inficted.secoréing to the offender’ Tanky and that  
Imprisonment and scourging were to be confined to the  
thd and fourth grades of people, the petty Uaders  
find common labourers, enpeetivey, (or es Manu would  
intve putt the Vatihyas und Shas) while the lighter  
forme” of pnishment ere reserved for the notity and  
frentry, (Hedaya, 20-204; fll details im Hughes, 32-834)  
  
‘As for lanbilnal or “chanbement in propery’ ic  
fine, only Aba Hania pronounces it to be fegal, but all  
‘lhe Jesmed men reject it ae opposed to the Quranic lav,  
(Hedaya, 213) Aurangeed, who. wat a strict Hana and  
Himeelf well-read in Canon Law and the Iteeature of pre-  
cedents (fatavea), issued an order to the diwan af Gujarat  
thd alto of other aubaha, in 1619, to the effect that as fine  
‘was ‘not permited by Canon Kaw, every cv file  
amal), zamindar or other person found guilty ‘of an  
offence, Should, stcording to the aature of his act, be impri-  
foned gr dismissed or banished. but not punished with  
fine, (Mieatleahmadd, 1.308)  
Private vengeance, public degradation, ete.  
  
‘Qisas of retaliation: This was the personal right of the  
victin or is next of kin, in the “chee of certain crimes  
hnotably smurdes, Ke he demanded the legs! punishment,  
the qazt was bound to inflict it, and nelther he nor the  
king could exercise the royal clemency by modification or  
‘abrogation of the sentence. If, on the other hand, the next  
Sf Kin of the deceased was gtitied with the money damag  
fs, calied “price of blood” (Arabic diya) offered by" th  
‘murderer, of pardoned him unconditionally, (was hi  
IBok-out, and neither the qaai nor the king waa to take any  
further notice of the erime. For minor offence, the retalla-  
  
fon was, as laid. down by the Mosale law, "a tooth for  
twat and an Sve for an eyes with cert. exceptions  
‘Hlaghes, 48, Beye st 1088),  
  
Tashhe or public degradation was a popularly devised  
punishment of universal eurenty throughout the Muslin  
‘world: ang even Hindu Tndia and Medieval Europe. It ie  
Teli seeogilesd not "ep ‘the iswsbooks of  
{Glam bot wae inflicted by all Muslim qazis snd age and  
ven by tho lay pute, aa i eas a mild form of lynching  
  
‘n'Indla, the. olfendet's head was” shaven, and he. wes  
‘mounted on an aus with his face turned towards its tall,  
overed with dust, sometimes with a geland of old shoes  
  
  
  
Page 220:  
placed round his neck, paraded through the streets with  
EBoisy music, and turned out of the city. “The judge may  
blacken the’ face of the eulpnt, cut his hair ot have hime  
Jed through the streets, “ete.” (Eneyelo, Islam, 1 182}.  
‘Thie last refers to the Arabian practice  
  
As for olfenocs against the State, such as rebellion,  
peculation and defasit im the’ payment of revenve, the  
Eoveregn inleted punishment a€ his pleasure, becuse the  
‘Guramis aw gives ho guidance here. Among the prevalent  
‘odes of pulling nm offender to death were having. him  
Een leat ie ls being le mone by edie  
a1 English law}. Tortures of various degrees of ingen  
Nice teured ta het Gata) a pondabobl wil the  
Siting off of ene Hand one fest Bue if the offender has  
‘obljed and kled, he ito be put to deuth. "and his body  
publicly exposed for three days on a eros o in some other  
Xray. ‘The punhment of death fs here consigered a haga  
‘lsh and Ulood-money is out of the question, All accom  
ces are punished inthe atve way. “The judge can inft  
ie atove' punishments, as had only’ when Sl the Tegal  
fonditions ae fullled” The legal inquiry has to bo coa-  
fiuetod, "witnesses. are ecessary, or confession, If the  
{te 'has given back the arc’ stolen Geore the charge  
iets been from punishment cy  
  
‘The capital sentence (gat) i infcted, ater the offence  
vas been legally proved, in the following case  
() When the next of kin of a murdered persoa  
dara the he Ie dee a and etl  
Scrept the ‘sllernative of money tompetsation,  
or rie of Bond);  
Gi) in cersin cases of immorality; the woman  
i stoned to death by the pubic (Bncy. tet ¥.  
te! Baan  
on highway robbers.  
  
‘Pi Mastin, Clmial Law compared more favourably  
  
iivas in forge at thet  
The Enh ew wl presi barat nie  
is and contained some dinring snomales wile, as  
Hastings had declared” the Misti law wae founded Sn  
the most Ielent principle and an abhorrence of Hood  
  
1, Movehen Jone Hesings i Sega pose 3, ted by Alo,  
een Benga srs Bales Hes, phi  
  
  
Page 221:  
216  
  
‘A brief summary of Muslim law of homicide is quoted  
below from one study!  
  
‘The law of murder, for example, needed radical alters  
on if life Wag to be made seduré.” Abu Hanif, whose  
opinions were generally accepted by the Bengal Judses,  
had drawn a sharp distinction between the two kinds of  
Resscde Low bythe terme Amc (ula murder) and  
‘Shabit-amd (culpable homicide not amounting to murder),  
Although such dlstinction was not recognised by the Quran  
‘The distinction was based on the method by which. the  
crime was committed. Ifa man filled another by stviking  
him with pis fsts, emrowing him from the upper flvors of  
a houte, throwing him down a well, or” into a. siver,  
Serangling him, or with @ stick, atone, club, or any othe  
‘weapon on, which there was no iron and which would not  
ta Bro, eas gay ony Of habeand tox of  
Imutrder, and he could not be capitally punished" Aman  
Was guilty of murdor only if he used «dah. (knife) oF  
ome’ other blood-drewing ‘Instrument, and was lable to  
be sentenced to death". Persons guilty of shabih-amd were  
‘merely sentenced to pay the blood-Ane. to their victims:  
relatives if those relatives chose to accept it. Abu Hania,  
however, had declared Unat f-a man repeatedly committed  
‘murder by strangling, he might be executed\*. Abu Hata,  
who wae, boon inthe eightiets year of the Jelia, had  
sees, fake pas ln fhe administration ose,  
though jhe had been greatly revered vas a. virtuous and  
scholarly" theologian. “Tt was sald of im that be left his  
‘writings and opinions open to the correction of his disc  
pics, a0 faa thote epinions tight be found to der  
rom the Holy ‘Tradition: but although these = dee  
  
Abu Yusuf and Muhammad.” the former being. Chief  
‘Justice st Baghdad, did, i was said, help to brag thelt  
‘master's doctrines into groat renown, yet nevertheless they  
entirely ifered with hum regarding the punishment of  
homicide, laying down the more rational doctrine that if the  
Intention of murder be proved. no distinction should ‘be  
drawn with regard to the method employed". Abu Yusus  
‘opinion, however, never cime to ‘ipersede that of Abs  
Honita, and the linportant pont we have to notice Ts that  
  
-  
  
1. Aspial, Cermvaie Ia Bengal (1932) page ssh,  
1 Bengal Rew Cane, 38 Now. i788 30  
1 Benga Res, Cam 28 By, 1  
4 Bengt Bee Conn 28 Jb 730  
  
Bengal Rev Cone. :9 Aug: 089} Juke tro. Thi aformsion  
  
Birt Faminan Drea, te Campin Rent Reta De  
tnkaan fuses of te Hess Cae  
  
  
  
Page 222:  
ar  
  
the Jatter's view was, generally accepted and acted upon  
in Bengal a: this ioe.  
  
Jn several her cee he Muhammatan Law which  
wat adminatered in Bengal gid not pormlt murderers  
be excuuted: Provided they were Muslims, neither fathers  
Dec mothers suffered death for the murder af thee children,  
Ear tere dowd they avere lable to be hanged only foc  
Imurdeing other peoples, lion. “Grandisthers and  
ancinothers enjoyea a similar immunity with Cempect (9  
{hoi grandchildren: 90 a's Master for the murder of his  
slave, or « man for the marder of his sonn-lev, provided  
Shot ls daughter, wes actualy living with her Busbund  
sttne time. Patrichde of mairiclde, however, might be  
‘Punished with death  
  
Homicide was justifable in the following cases: A  
‘woinam might kill & man who persisted in carrying on at  
Tndeceu ecnveraton “ath tsence and ews 9 man  
Using’a dangerous weapon in the sirests of a town du  
the fight, cf outside the Town during the day, might legate  
Jy be killed. Under certain circumstances @ man Tweht  
Bathe it cut er ethe ato ler, ad aaa  
het paramour: andshe might slay a man who stempted  
to pape his wife or his lave gir The muthoriies who were  
fetloned in the Courts of Justice in Bengal diflered some:  
‘what on this matter. ‘One law Book taid-down that a man  
‘nigh Ril grother Who atemptad to rape hi wie of aleve  
Bit, Another authority maintained that’ an adulterer  
Feizht be slsin provided that, I he "mate a nolse™ to give  
The offender a chance to desist)” second. the adulteret  
neither fled nor desisted on. hearing the noe third, the  
fftenter was a Sussulman: and fourth, the offender’ was  
seen in the vary actA third authority stated. Aman  
finding another with his wile, sty lawful for him to hil  
fn Suid he now shat te foment. wil tae Bi  
fomot at bis crying out, oF ing him with wen  
bot tnoral, he fs tot to lay’ im. Should he know teat  
is death aly wil tetra, itispermnitedtoslay hi  
‘A fourth euthorty ‘emphases the necenily of producing  
‘witnesses to prove the act of fornication. Ii murderer  
Shall state that he hag sain anyone on eccount of fornica  
tion, andthe eles of the slain shall deny hs allegation,  
the murderer having no witnesses, ‘his assertion  
  
1. Banga Rey Cony 26 Nov, 178: 9 De. Sa, tn a writan cave  
sprain Sha Fie tac Ae Be Se  
iowa i ee eet eo oe  
  
23 Weegl Rev, Canty 30 De. 789) 39 Jane rye  
  
  
Page 223:  
18  
  
without testimony, shall be deemed inadmissible”. A.  
‘man might slay a person cought in the act of robbing his,  
house’  
  
But by far the most important reason why murderers  
frequently escaped the death penalty was that provision  
of the Muhammadan Law whieh gave to the sons or next  
of kin the privilege of pardoning the murderer of their  
parents or Kinsmen. This misplaced power of life and  
‘death made the fate of u murdered largely depend on the  
‘eaprice, venality, or indifference of the deceased man's  
relatives  
  
Detailed Analysis  
A-Homicide  
  
‘The Muslim tow of homicide (as administered at the  
sdvent of the British rule) seems to have been elaborate.  
CCentain types of homicide were regorded ss lawful and  
justified. Further, “retaliation” for tho murder was allow-  
fed in cortsin eases. Homicide in self-defence or in the  
prevention of adultery, rape or other serious offences or  
st the express desire of the person Killed was excusable, and  
so was homicide committed under threat of death’. Apart  
from these, and apart from specified eases, homicide was  
an offence and “wilful homicide"--Qatl-lAmd'—was  
punishable with death or retaliation where permissible. The  
other types of illegal homelde were punishable with “Bie  
of blood” (Diyut), and, in certain cases, by explation and  
exclusion from the inheritance!  
  
‘This brings us to the question of what was “wilful  
Ihomieide”, and what were the other types of “legal homl-  
  
15, ATesion ten  
HE Ghote Qi Sed ed  
seed ‘Le hes Hoe ou an et he four See  
  
2. Bengal Rev, Cons, 30 Dee. 1789.  
  
+3, Hamikes: Traaaticn of the Heys, (Landen (190) Volpe  
ap th mye 6 may bese  
  
4 Hacgets Amys of Bengal, Reyulion, (81) Volt, pose  
as  
  
s grnents Aii o Beg Rept, (BNL  
  
  
  
Page 224:  
219  
B\_Types of iMegal homicide under Muslim Lav:  
  
For the purpose of punishment, Muslim Law classified  
‘legal "omielde tnto 5 types, which were a8 follows  
  
“Type of okie Proihmen  
  
1. Wal ot bei oe) Dene sete  
‘ern A toned b's Reataton BF be fam ofthe queen  
‘Sita tema ened ot ven fete  
Sheil commie to PRS oS raaont  
SS pry tia ane prop pee as  
ss ther ice  
oop sie ete 2  
  
Boe tie ‘  
ihe Sly neg  
imam  
  
SERRE ops ae  
Bete ty Sup Sewn,  
iSeh. Capote (CALS  
  
s e]  
  
scone tee  
Seer ee anger  
  
Beopees ah + Hana wer 7  
  
BS Vat i at" oe Boe deals “pein  
"aes ade  
  
Hrceme Arie of Bena  
  
‘Cote arate, Cs Va  
  
ee ae ee  
  
4 Bopp Rena Coating a  
  
‘B Breses, Buaetag  
an oie ae  
  
Esa Sarge oe  
Sa ae  
  
Ten erp  
Witten eT ass  
  
  
  
Page 225:  
“Type ot heme Pensrnene  
  
ox wl, tome or  
Ege © big b's bo,  
  
aba,» etait ters Meu hg  
Ses es Rae  
Sages  
Sores  
ee  
  
etna, 3: Erde nha ee, Pee wih Dye Mot mou)  
  
‘fo aero  
aie  
Osim, + neces Pupihtie sity Soa geoey  
° ee eee pa kia on Sh, ean  
Maswnatar ft ai lata to kata  
bs {ple or dent acne  
  
San  
  
2 Hanigtn, page 251 24,296 \*Haington, page ast  
> Pa ae San ame  
  
Mays "U. page 99.  
4 Haine Hains, Vol pg Hang, Vo tome as.  
  
‘ton  
Anatase {188s  
  
5 Hanon, page 253  
  
si So  
‘See ae ic  
  
Seep etetan Horan me  
  
eit Frcetinge 2  
  
  
Page 226:  
ma  
C—Other Capital Ofences under Mustio Law  
  
Other offences punishable with death under Muslim  
Law at the advent of the British rule wete a3 follows:  
  
» Zea nna comin of Dah nly Lapden seine  
sen Sa Stig eam  
Ieee be mei  
  
Felten ie  
tm  
See Tate  
ist ae ted Ssh  
roto, ae sce,  
Bawa ier  
  
at death sptece ae posed  
Seale ome  
ost ie ane det tn ct  
syne cn ae owned  
  
2 Ryne commotion ft At a centrpesihmes dt  
‘tise eee 30 deme  
GST pes  
  
Sa  
DUS  
  
1. ttn, Vo pane 3H, “Hagan, Vol ny pres 27.  
“ope ar Towa  
  
Hope sties (mt ac ae pz  
  
Mima nm), Yl a 2  
metas Sage es amma  
  
ie Bireclnant of  
  
  
Page 227:  
me  
APPENDIX XXV  
  
TTL Carseat, Portanencr Onoge 1st BRETIGH RULE AU  
NEFORE TE EXAETMEENT OF Te INOTAN PENAL Coot  
  
(CavrtaL, Punaeusceny Uwomn Tie BRITS RULE, U7 BEFORE  
"yar EnACEMEEN? OP THE Txblan PENAL Coot.  
  
Hise! We may now consider the statutory modifestions made  
  
in the Musi Criminal law during Baitsh times, in the  
period before the commencement 6 Indian Penal Code,  
  
re polley of the British being to interfere as litle 35  
posible with the Muslim Penal Tew, only such modifies:  
tions were made as were required to remove Its glaring  
Selects  
  
1n\_1772 for suppressing robbery, 9 provision was made  
that dicots were to bs executed Ih heir villages, the  
lagers were o be fined and the families of the dedi were  
torbocome the slaves of the State ‘The provision, pena:  
ling the villagers and the family, however, very hora  
csosed to be enforced  
  
"The leter of Warren Hastings, President of the Council  
dove tn Su, 1H acrid eo the procedings of Coane  
a dated 3rd August 778% ig detal the principles  
of Bustin Celminel Law’ as expounded in thenty and  
Spplied in practice, snd. made several suggestions a3 10  
severe punishment and for dacoit relevance of instru.  
ment used for commiting Homielde, the requizement of  
{tte witnesses inthe ease of posites capital olfence, ete  
Hats troy barb Hah a ote ign of ans  
of transportation of life in respect of “every convicted felon  
fs arden nok condemned to deth by the sentence af  
  
he Reguton dated 8 eso, 1H made se  
ont  
  
1 dose Pep tegen tt pa hap ter  
soa ane Se ed tapes SR aes  
Henat 2 iaea aes  
eter to ‘ased Sor 5, O “ “  
> te Rens Ct De 9,  
at  
  
SNR Rees Sram ST OO Ulett  
  
Sian seman te)  
  
  
  
Page 228:  
Regarding, homicide, by « Bengal Regulation of 1708  
(ccna ESAS hg Regan 9 178 ute  
fies by Regulation 4, 1797)—  
  
(2) usture of the instrument 25. signifying the  
inteation wag made immaterial in homicie; the tnten-  
Ton" war co be gathered from the general eircumstanc-  
(5 an the evidence: end  
  
(@) the dlscrtion left to the aext of in of the  
usieved person to remit the penalty of death was  
taken away  
  
‘Thus, the motive, not the method, should determine the  
senience: In 1701. the punishment of mutilation was  
Sirsished, ‘Rul ertmnuis tajudged tn secordance with the  
Fativa of law officers to lose two limbs were to suffer,  
Instead of it, imprisonment with hard labour for 7 years"  
  
Cornwallis, intcodced a, number of changes in criminal  
Ins ay ine "Cornwallis Code”.  
  
(Tg Cornvralls Code, 1799 really comprised 48 regul  
tices desling ‘with: various ‘of revenue, civil and  
Justia administration, ielading jurisdiction and proce-  
we of Civil and Criminal Codes)  
  
‘Cornsalis also deprived the relatives of a murdered  
men of thelr power (9 pardon the criminel, and the Taw  
Was to take Ite course.  
  
‘A Bengal Regulation of 1797 provided that in cases of  
ry iaaer, Shgzment wae toe given, on, the aur  
tion thet "vetallaton" ‘had been ‘laimed. ‘The sentence  
ould extend to death if that Was the proscribed sentence  
Wider Mahommedan Lew. Ag regards “Ane of blood”, the  
Jadges were ditected to commute the punishment :o impri-  
Tonment=—which could extend to life: imprisonment”  
  
7 Booms Roguinion 9 of aa. A Region fy revarng 9h  
Meipehien Reset Beebe “Sagat they co Sg  
‘iodo te fndomenta alt for naman cB  
  
2 Marsope, Vol, pags 312312  
  
5 Nii comeae t ,  
cd WE wate ph Has  
  
Bibs avo  
1. Sr ato Clorss Dig, (Cae fo, Soppemt a 55.  
& Raina, Commas Bes Musee Unvesi Pres)- 0990,  
poe id Sta sea Rotem Clendlts ed ese?  
“Tes Region 4 of 7975 Mac, #97, en 2  
5. Bameson, Volts pase 3.  
  
  
Page 229:  
24  
  
By the same Regulation of 1797, offenders guilty of put-  
ting to death "any person on the ground tiie her bei  
‘etsed in and practising sorcery or any other ground s  
eran or perione” were delaved 1 be gully of mupdet  
En being euueted ofthe enms,and punishable according  
wv  
  
By sectlons 1 t05, Bengal Regulation 4 of 198, elaborate  
etnies ade for the al of pris creed th  
  
{son and other crimes agains the State  
  
Certain homicides which were regarded os justifiable  
hemiides. under the Stun Taw Mere, considered ap  
Opposed to public justice, and dy” Bengal Regulation 6 of  
iB such eden wete declared liable to capital punishrocal  
These included such cesee as the prisoners being one of  
ancestors ofthe slain, or being the master of the deceased,  
fr the consent of the deceased" Death sentence could  
Se pod provided ifthe court saw oo elzeumstance Which  
maf sender the prisoner a proper object of mere.  
  
Ly the same Regulation (section 8), it was made clear,  
that wilful homicde by poisoning oe. by drewning when  
the intention of drowning. ete, was evident wat included  
inte rule™ that‘ ithe intention which ly material and  
fot the manser and instrument of perpetatien  
  
1 would appear, thet the cxime of dacoity was ram-  
ani inthe beninning of the 19th eentury’—Sir He  
Buachey Challe ee whe Hades of tect tn the dttet  
Gaieutta. in his report in the year 1002) said? “The «ime  
ff dacoiy, haa, I Believe, created greatly aince the British  
‘e&minisiation of justice, ‘The number of convicts. cone  
Fined atthe sx stations of thin division. se about  
40, OF them probably wine-ienths ere dacots  
  
Mr. Doweleswell! (Secretary to Government) in a re-  
EES She zgneral tte of oles Bengal sal ob  
ery Tepe tm even murder fuel are not the worst Aigures  
inthis honnd “snd. disgusting picture. An exoediet of  
Shon ocureece whe daclty meray  
induce coptesion of property, supposed to be concssl-  
fi, ss to buen the proprietor with straw of troche, Unt  
fe alae the poperty or pres fo the Names.  
  
1 she information obtied is ot extmely envonesds, he  
  
1 Benga Repl 4 of 17 eon 6 \_  
  
2. Deg Repu 4 6 9, ects F§  
  
5 terga Reatioe & of ep, sete 2 td 3  
  
4 Hsrgon, pee sg, fore 1  
  
{saad a been ened Br Ber Regeln 9 of 9, eee  
wen 3.  
  
Ese Hey sys Rep of 82, Cased in B . Sine, "The  
seg slay af tl Coss Pape 3s ne umes? ™  
sand Mergers Ree on, come in BS. Sih, The Leet  
  
  
  
Page 230:  
Ey  
  
‘offenses, hereattor noticed, himself committed fifteen  
‘murders in'nineteen days: ‘and volumes might be  
filles with the atrocities of the dacoits every fine of which  
‘Would make the blood run cold with Leroi”  
  
orth sentence was prescribed by Bengal Regulation  
ull of 180 fer accidental homicide (as known to Muslim  
Taw) occurring in the prosecution of unlawful murderous  
Intention, eg» shooting at A with intention to Kill A and by  
‘seeident balling BY  
  
Certain other changes were made, not relevant to eaple  
tal punishment  
  
By Regulation XXI of 1795 (as extended in its territorial  
appliation, by Bengal Regulation IIT of 1808) Infanticide  
‘mong "Rejumars" was declared to be murder  
  
By Bengal Regulation VI of 1802, the whole practice of  
Infanticide by drowning was declared to be wilful murder  
‘onisnable with death It was sated that the practice of  
illing female children had been widely prevatent im India,  
and the object s7a8 to stop that practice” The Regulation,  
however, punished the throwing into sea, riveree of "any  
Infant oF perwon not artived st the age of maturity”  
  
Regarding robbery, by, Bengsl Regulation 83 of 1809,  
tenth astence was proved TS al Choe af murder com  
rite i the prosecution of robbery, ar aiding, oF abet  
The'same, ete" The Nlasmat Adalat was empowered to  
Infce the capital” sentence on habitaal and” notorious  
  
Resarding eecape by convicts, by Benga! Regulation 53  
of 16m. eunvicts escaping frem thelr places of transporta  
tion. if appreheaded, were directed to be trsd, and on con  
vistion, were fo be sentenced to death” "lf no eireumstan-  
es apgear to the Court to render gach convict an object af  
mere  
  
sorting. sg yt eciant §e  
‘mtr ere mt be ns eenion te earer ore “een  
Scio sah Tt oa al hws abe ye  
  
2 Came soy of Toda, (95), VEL VI page 139, eno  
  
2, Set Bengal Repulse 31 of tps eon 19 (a ened BY Bengal  
Replace 5 2F Seon °  
  
i Henst Reston 6 of 0s (2h August she), vaso 2.The  
‘palit at he ena pee aie  
fErbreypoing hem tobe downed ce devewelby shart wie seperced  
‘Sipreitm sor anther pes eases at tsa mee  
  
Combe Hstry of ada, 8), Vol VI, wae 13  
  
& nenat Regulation £9 of #86, scan 3, ce Sect  
  
7 Bel Repution sof oy sen 9 else Seon  
16-122 Taw  
  
  
  
Page 231:  
Regarding hostility to Government open hostility to the  
eitsh Government or Sctual commizion of any overt  
ct of esbellion again the authority of the same, or he  
SS ct openly aiding and sheting the enemies ofthe British  
Government were, in I806 declared to be lable io. the  
Sinmedinte punishment of death and tothe fortlture of the  
Property, ele of the convict." The fegUlstion provided for  
Tat by courts martial and was applicable ducing times of  
  
0 ope tin, a ld glad he, vere  
tment from causing the Persons to be cherged under Regu  
Titone dof 1308 anda of ta  
  
Regarding rotbery, Bengal Regulation 3 of 1818 made  
specisl provisions’ it had been brought to light that many  
‘lage Watchmen and some polies offcers were concetied  
in the reparation ef robberg. or connived at the cornice  
Son ef robbers. Hence the Regulation Iaid down that a=  
Bolle officer Convicted of robbery by open Violence oF of  
fhurder, wounding. maiming or shy vibe agsravating ac  
inthe prosecution of robbery or am attempt to rob Was tobe  
Sintered deh! ‘Any direc on induce coaivance st  
ny of these crimes on Of any police ofcer was  
toh ondord ss actull commission and punishable  
seeorsingl  
  
‘By Bengal Regulation XVil of 1817, persons convicted  
‘of murder in prosecution of robbery, burglary or theft were  
sade Tne dh the sentence of dent By section 15 of  
the same. Regulation. exemption of Brahmins of Benaras  
fon capital punhment was abolished!  
  
of 1849 provided a5  
  
Regarding insane persons, Act  
follows  
  
“1, No porton, who does an act which, if done by  
  
1 parson of sotind mind {san ofence, shall be acquitted  
  
ff stich offence for unsoundness of mind, unless the  
  
‘court of jury. ms the cago may’ be, In which according  
  
te the Consifuition of the Court the power of convice  
  
ton or acquittal Te vested shall finds thet by reagan  
  
of unsouncdseas ef mind not wilfully caused by himself  
  
fhe Was tnconseious and capable of knowing, at the  
  
time of doing the said act, that he was doing an act  
  
orbidden by the law of the land.” (But even in such  
  
Sy ep Resue toed an alone  
2. nen! Repiton vo of Ho sin =  
  
5 Denga Relea of 1a Seas 3 106.  
{Rg Resin 3 io, sans 2 6; Mnom, wash  
  
ms  
5 Harsngen, page 38.  
‘nity, Rogon 9, (Sein 2) made ce pou prove: for  
pests ipa as hence nose anno’ ees  
  
Beg Cate Ws, es, occ 2  
  
  
  
Page 232:  
a  
  
facquittals, the court as to order him to be kept ia  
Enis custody ual the orders of the Government were  
  
rreelved  
  
Regarding waging war, in the yest ofthe tndian Mutiny,  
swags tar and other offences agains, Uhe State or instige  
Unrel the same was made punishable with death or trans  
yportation for life nr rigorous imprisonment rp 1934 Years  
An'Sdaiton to forctetute af property. ete  
  
Resarding Mutins. an earliey Act had providet that  
exity person who “maliciously and advisedly" endeavour  
Si to Seduce say perso oF persons, in the military or  
aval Forecs of the East India Company trom  
Seglance to Her Majesty or duty t0 the said’ Company,  
‘or eneuvoured to stir up any person or persons to commit  
‘malting, ete, was on\_convietion to be transported for fe  
for mpetvendd wp (0°7 yours  
  
In 185%, the offence of intentionally seducing o- cnde  
vouriny to seduce any efcer or sliier from his allegiance  
te Bntish Government or duty’ to Bast India Company,  
‘exciting oF eausing others to exelte mutiny” oF sedition In  
the army’ 3s made liable to the punishment of death oF  
canspottation for life ot iinprisorment with hard labour  
Up to 1) eats, besides foreelture, ete  
  
Later, the 1953 an Act! wag passed to deal with persons  
‘who had escaped from jails during the mutiny. “Punichment  
‘ae transportation for Mfe-—eectione T and 2  
  
‘The offence of waging war was dealt with by Act 11 of  
1692, prcambls and yection Lot which may be quoted:"  
  
tne AEMERES neces to, ae due preison Prom  
ioe the prevention, nal eh punaiment of eon  
acainat the State: it ls enacted fe follows:  
  
1. All persons oving allegiance to. the Brite rude  
Gextinment halter fe png ot tulsa rn  
‘Sebel, or wage wat tecingt the Qoren or the Cavern: 0,  
trent ofthe East india Gorpans or abel stempt oe Ges.  
  
ee soch war of shall futtaeaet ay mock ma  
von or the wn of such war. o thal! Conve  
  
Actor eal  
  
ASEH 2f sere Se fo th prevenin, i md pine of  
on at Besa 15 i  
‘chs tag An Acero punishtmperg wih the Any 6c Ney  
cost tet ig en 9 ®  
ACCT eC 85, Seon (Dunas was er ome Sari Ee ah  
  
5,35. 06 Am Ae forte phe rn eps wh  
ese  
  
tye ied fo ST Foe SMAI nena oe  
SRS of apn ay Ae fee presotn til and pai of  
  
  
  
Page 233:  
rove  
  
0 to rebel oF wage war, shall be lable, upon convic~  
{lon wo the punishment of death or to the punishment  
Sf transportation for Tie, or of fmprisonment | with  
ard Ioteur for any term not exceeding fourteen years;  
se sal aa foetal thee property and efets of  
very description  
  
Provided that nothing contained in this section  
shall extend to any place subject to Regulation 14 of  
1827 of the Bombay Code™  
  
Regarding the offence of preparing to wage war, we may  
efor fo AU 20 of 1058 correeponding to section 122 of the  
Fiion Beal. Code), under which the ‘allection of man,  
Zima ammunition te otherwise. preparing to levy wat  
[Staines the Queen or the East India Company ot Insigaing  
  
ther person f0 commit such offence, Was punishable  
siith'desth or transportation for Iie or impraorment fot  
ite or imprisonment sith hard labour up to 14 years, end  
{so forfehare of all propery and effects of every dectip-  
  
‘An Act’ of 1857 should also be referred to, which made  
provisions for tral of Retous offences in gevtan districts  
{n'which martial lave had been established  
  
Sections 1 and 2 of Act 16 of 1857 may be quoted:—  
  
Whoever shall commit of attempt to commit  
aay heinous offence in any Distt or pace in which  
Siu Law hath been or shall be establahed, or in  
fry Durie ope to which this Act ‘tall be extend.  
Beatle conviction to tbe puntbment ak  
Shell fe liable on eonvictin to the  
fzath orto the Punishment of transportation for Iie,  
Sceecing fsurtsen years and shall frtt ll He pro-  
eceedng faursen yeas: a  
feriy and eects of every description ae  
  
. The words “heinous offence” shall be deemed  
‘once go item murder ape, maiming daca  
robbery, burglary, knowingly "receiv  
‘Sbiainad by Gocaly, robbery or ‘burglary, breaking  
‘and entering a dwelling bouse and stealing therein,  
Isto setting fee fa vlog, house, of any  
public sealing or “destroying any property  
‘Provided for the conveyance or substance of Troops,  
[End all erimes against person or property attended wath  
  
Tr Ast abl 185%, Geeion D Tempone).  
2: Ac 16 of yy. Am Act 19 make. temgarary rowan fr ste ead  
0 Ganshoet of balou fens mera Sate (1) Jone 857)  
3. De exmregion, “nau eee” was define by a ince de  
“ CoureMart could be etblshed under Act 14061857  
  
  
  
Page 234:  
28  
  
reat personal violence, and all crimes committed with  
Efe invention. of assisting those who are waging Wat  
‘Sgainst the State oF forwarding thelr designs”  
  
"The brotd feotures of the Muslim Criminal law, as alter.  
1 by Regulations on the subject, before the Indian Penal  
Code was enacted, Inay be indiested.  
  
Regarding sentences, it was felt? that the discretion  
wihtekethe Stusiim criminal Inw tet for benious crimes as  
Mather unlirited, and its administration became arbitrary  
Gnd ancersain. Fy the adjudication of punishment under  
the discretion hug allowed, the postion regarding sent  
‘ence (it was stated) was fen governed by a consideration  
GF the dogree of proot eather than the degree of guilt and  
Criminality of the act established against the accused. Tt  
Sag conshdered necessary to amend the Inve 03 these points,  
{nd that was done by a Bengal Regulation.  
  
Before this, the position was that the sentences of the  
‘court were to be regulated by Muslim law except in cases  
{n'which a deviation from st was expresely directed by any  
Regulation"  
  
‘The operation of the law may be illustrated with refer  
‘ence oan aclisl case, Four persons ‘were charged with  
faurder, “The peiacipal was sentenced to death, one con  
‘eled of being ab secesuory belore the fact apd of bring  
Sna'a false accusstion of murder against ar innocent person  
tis wentenced to imprisonment for life; the remaining two  
convicted of psity of etime sfler the fact and concealing  
their knowledge thereof, were sentenced to Imprisonment  
for three years  
  
‘The rule of the Muslim law. that sf any one of the gang.  
‘of sobhees setnmite murder. the prescribed punishment 1  
inflictod on the whole, was maintained,  
  
In cases of murder, wounding of other personal injury,  
a dessipdon of the weapon oe other aauent and 6  
fave" nie pectin of the 4 wate  
fecvrded in the papers ‘including such particulars an are  
Svallable die ntent of the prisoner the length of the  
ramen. te general ftom. Not one i corron oe,  
  
1 Beal, Dies of min Law, GR  
2 Section f, Bengal Regulation 9 af 1803  
toa? BMT Replaion $80 Teh, sen 2, pana fet  
  
yo, ca  
Se ee cial ae re  
sea a 8 Se  
  
pear 1 parang  
  
  
Page 235:  
Baa  
sbi.  
  
20  
  
It wa recognised that there was @ great  
betwout an fence entered upon vith deliberat  
Eriminal inte nd She comted wih premed  
Anprovoked. by pievious enmity and malice. Intoxication  
we Considered b's ground ef Mitigation for punishinent  
In corain caves unless wiful.  
  
Io al sien where the Sessions Court eondetng px  
‘ones tg salfer death penalty oF maprisonment for lite,  
ie'Was'totransmt 8 copy of the. sentence to te Nieamut  
‘Adawiut, and: not to: execute the sentence” ull the final  
sentence of that court’ (he Nizamat Adsl)  
  
Tiere as to hae been sr, comtuveay as 10  
‘whether person sho ls compelied by another by a menace  
wach P'murdee a ied person, could be excused or  
he'murder. "One view was, that is such cases the person  
Sompelied, as the, "instrament” rather than the author of  
the homicide, snd. therefore, subject. to, discretionary  
‘punishment chiy if the elretmatances of the cage 40 Te  
Guired. “Another view was, that both the partes” were  
Table to murder"  
  
Speci mention must be made of the law applicable  
tp ‘Baan abject (ie, those who were get ates)  
From the Report No. Si at the Indian Law Commissioners  
{othe Gover, Geral dated Wh November 11  
‘would appear, that they’ were "as governed bY  
the Englich law. Act of 1658 embodying the provisions  
ST criminl law passe inthe frst yonr of Queen Victoria  
mended the lav’ on the subject. It principal object was  
fo take away capital punishment in. certain cases, and  
tnitigate the rgnir of the law In ther respects,  
  
Briefly speaking, the following efflences were remeved  
from te Category of capital offences; (in respect of  
SBatich™ subjece):—  
  
(2) Matsions injuries:  
  
(@) Burglary,  
  
@) Robbery;  
  
(Burning and destroying ships  
  
Testes Dos Gilat a Gis oP  
1 ho enn 9 tn  
  
ERE ES Te, we 1  
11 See Resor, Digest of Criniral Lae, (1846, page 28, panera 95,  
  
a  
  
Sere Gums Ties, Pee 335) A Tae SHH an  
  
  
Page 236:  
Ey  
  
As enumeraic: im that ceport of 1843', offences (in  
respect of Batish elbjects) ‘waich remained capital =fter  
‘Act of 1652" (an Act of the Government of Tada) and  
the Statute © Geo 4. ¢74. (passed earlier to remove cule  
{cin ellences {rom the category of capital offences) were  
(2) Reture from trausportation;  
  
@) Murder:  
@) Attempt to murder, whes Injury infleteds  
() Sodomy:  
8) Rape:  
(6) Abuse of female children under eight years  
of age,  
() Robbery with wounding  
(8) Burglsry with assault (  
murder):  
(8) Arson, where person within house, and life  
endangered  
(10) Riotously destroying buildings  
(11) Destroying ships. and Tife endangered;  
(12) Exhibiting Zalse lights  
  
The Report fecommended that M was age expedient  
fo give the “provincial tribunals” “juridietion over  
Briish-born subject in capital eosee  
  
th intent to  
  
APPENDIX. XXVI  
  
List oP Cyprma, Orrevcas useen Bonen Rec  
oF 2T, o erovions Se aacatoiN  
INAS List oF capreat orreNeks UsaeR Bomaay Recetssi0N  
“RIV or Tea avo snoresions mrt eacasne ovFoneea  
reZM, Bombay, Repu of WET (RIV of 132),  
egultion or defining erumes and ollnces snd Speeiyiny  
the punishments to be iniited for the same was pace  
By fre" Goversorin-Coumell on Ist Januory, Test hs  
Important provisions of Intetest in commectiex with capital  
Punhment are noted below’  
  
Section 1—slouse 2¢—Attempie—~"An atterapt to some  
‘tang’ (ae ubore ace’ shall be punted Clery to  
the Gott Hedghnent Sound on a cbmbined conser dice  
Tego NST3t of he fal Lew cones ce  
  
eeveeer  
  
PS 9 cae re  
  
{Sena ttn li ete al sos pile mdr he Cn  
  
  
  
Page 237:  
2  
  
of the measure of guilt attempted and commited, bt the  
DDunthinert for sudh atempe shall in no caye exceed that  
Breocrbed. for ‘he setual commision ‘of the oftence  
sempted”™  
  
Section 1—elause 3—Negligence—“The unintentions!  
commision of any of the above cls shall be punished 9:  
SSrdng to'ehe Courts Judgment of the culpable daregard  
‘of inky to others evineed by the person eommittng the  
Shua"tet Uae ‘the punishment for sich ‘unintentional com  
sis fot" exceed that prsbed for the fence  
commited  
  
Section I-clause Sth—fastigation ond abetment—ns-  
ating or alding in any ofthe above offences comnmatted et  
Stiompted, shall be’ pinishable ax the nexpoctve offences;  
anit trenon, rebelion, murder, or ging. robbery, con:  
Eeatment whether before ar after the fact shalt be Punch  
Siie'equally with instigation tr ald”  
  
Section II—clause Ist—(Table item First) authorised  
te punishment of death tm accordance with the tues pre  
cribed in the succeeding section.  
  
Seetion IV dealt with the mode of sfticting punishment  
‘of deeth, Under clause Ist, hanging the criminal bythe  
heck’ wa the mode of cartying out the sentence, and it  
‘wae slso stressed that the time should be between sunrise  
Evd feaset, and the spot should be selected in such a way  
ay afar the greatest posible pully othe exec  
tion, “Under clause 2d, it directed that the executions  
should be conducted in manner calculated to imprest the  
spectators with awe and to increase the impression on the  
spectators, Under clause Sth, death was not to be indicted  
‘ou Brahmins ot on females in districts where the religious  
feelings of the native community would be shocked there:  
by, ubless in cases of such deep ‘atrocity as may be ex:  
‘ested to counteract the effec of thove feelings,  
  
Section XII—elouse Ist—de8ines “treagon” and under  
clause 24. the punishment of treason shall be death and  
cconfisction of property.  
  
(Note:—Under Regulation 1 of 182, snctlons VIL and  
1X:tn ease of War Or febellon, the Goversor-in-Councl By  
‘rcelamation could supend the ciil ad eximinal Taw for  
le safety and dung such suspension the Goversorte-  
Council eould onder acts of treaon or rebellion against the  
etn Goverment commited by eran oviag by birth  
fr residence allegiance to he nment to be tied  
iy coure martat'and the immediate punishment of death  
“authorised  
Under section AVL siause 24. the offence ot prrfury  
vss fined ‘with Impasonmeat, Aogging et public dlograce,  
BS  
  
  
  
Page 238:  
238  
  
Segton NAIVE clauses It 2nd, Sd and th deal with  
  
Clase tet—Any pert who shall purpose. and Mtr  
  
siftout Juatlabie oe extenuating cause deprive a tunun Sw  
being of life, or who shall’ commit or assist mn any uns  
  
Inwitt'act, the perpetration of which 1s accompanied with  
  
the death of aiman being Shall be tale to the, panishe  
  
ment of murder. provided always that death take place  
  
‘Within sie month afer the act twas comunitted.”  
  
Clause 24—The Belief that sorcery was practised by The bet  
the deceased chal not be admitted az 2 Justinable cause 106,05  
{or putting him or her to death, nor shall the deceased's own $a  
equcat be so sdmiteds by tasting at any’ rites of self- nak co  
{mmelation, as directed by the religious law of the persin sme!  
Fetocmi such nao, sal rt ject any Oe 1 Nem,  
{he penalty of murder” poe  
{efeanmoie  
Shane  
sore,  
  
Clause 34—"Deprivation of life may be considered Cetin  
fustifable as @ means of resistance (provided ithe the only Shay  
Event aot ecient one) to Volence offered fo the Boren ihe  
or property of any one. of as the only evident and eficlent fia" s  
Imdana of securing. petson Who has committed robbery He  
‘or murder, or any other strocious dffence”  
  
Clause 4th—The punishment of murder shall be death, Punshment  
transportation, imprigonment for life or solitary imprisons © =\*"  
ent with fogging”  
  
sebftdee Sctlon XLV, capable homicide was dened 3s  
  
1.y person who shal. by commiting of axclstiag  
sn any uileta ach, oceasion She deh @ Buoy  
beng. provided, as before, that death ensue within  
sk months after the act tras committed, under ei  
fuinstances which the Court in Justing of the, sch  
ington ae ato cosbders thou aihable  
jer the preceding section. yet sficientiy extent  
Ing to divest the agt of no much erfminalty a foul  
constitute murder" shat] be deemed guilty of culpable  
fomicde. and shall be punishabte sith Ae. of Te  
Prisonrment not exceeding. ten Sears. or both com:  
Bined™  
Unde: section EXXVIL, clause Ist, gong robbery com:  
mitted by dav ot night when necompanied with fore, was  
unhele in Gu ofthe matey specied n scton  
{xcept confiscation. ‘This Included the punishment "of  
  
  
Page 239:  
=  
APPENDIX, XXVIL  
acountnostnss oF THE Iwate 1  
Days Pevat Code, 1697  
Zhe Dealt Penal Code (Fst Report) was prepared by  
he: tdi Law Gotmmianensts she pubintiod in 18,  
‘ict satlng the remons foe proposing the ensctnent cf  
uniform Eenat Code to take the place of the rules of  
stim laws aad the various Regtdtens moutfiog it  
Jn Bombay coufying the Penal Eaw' and explsning the  
theme of the. propeoed’ Code’, they proseded ta sel ut  
{he recommendations In the form of a Bilt Under cause  
4 one of the punishments to which lenders weve Table  
wis death. "Sve nent was tsnaportaton” Case h save  
Dover to commute the sentence of death t the Gosern-  
rent of the Presidency without the lfenders’ consent,  
‘Tie offences which mere made cst seem to. be the  
iiewing  
Giause 100—taging war te — (death or transportation  
for life or imprisonment of either description for ife and  
sto forfeluure of all proper).  
(Clauses 116 and 117—abetting mutiny ete—only  
separation for ite te)  
(Clause 181—Giving, ete, false evidence with the ine  
tention, ee, that any pervon ay Be convited ot pl  
‘enee™trsiaportaion Zor hfe of Figoroue impesonbent  
‘otis thom far, et But where innocent furs as  
aecuted, wat stgarded’ as" clpabie” honiede ace  
sincon 3s ‘letration @)  
Clauses 294, 299 and 200—murder—desth or teanspor-  
ation for for gots imprisonment fo ie nda  
(There were lesser punishments for manslaughter,  
vvolsntary culpable homicide, with consent or in defence  
and for easing death by rash or negligent act)  
Perjury—Hihstration (2) to clause 294 ran a5 follows: —  
“(@)\_A withthe intention or knowledge soresid  
fatetydeposes before a Court of Sustce that he saw  
2 consmite a capital time, 'Z ls Convited oi execute  
Edin consequence: “A's commited the olan of  
Sotuntany eapabie homicie®  
Clause 206—previously abeting by aiding the commis-  
sion Ol tale By aay Said unde 12 pen of ages Bay  
  
Counusstonans  
  
a Reval Cole pepued by he Indian Law Commision, 1,  
eel  
  
"3 Drak, pes (pc).  
  
‘er punishment net pot be entered ee  
  
  
  
Page 240:  
5  
  
insane pessoa, any deliious person, any idlot o cay person  
in'the Haw of intstenton-deth or transportation for ie,  
oF rigorous iegrisnment tor lle and eho hte  
  
(Clauses $8, 909 rend with cine 32—voluntary cause  
ing'hurt im an atcmpt to coramie murder —trangportstion  
Tor lite, of rgorous imprisonment for a term witch may  
‘Sten ute but not lee than T years and also fie),  
  
Clause 290—Dacoity with murder—Ut any one of siz or  
more persons who are conjunctly commiting dacoity tome  
ute ard to commiting daly everyone of tone  
fae shal be punahed with death Ueagtaton for  
ie. or rigorous Imprisonment for a term which may ex:  
ten to life and must not be tess thon? yenrs and eal  
io be lable for fine  
  
We now come to the reans given by the framers of Sonn  
the 1897 Draft in Support wf the various provisions ret. PG,  
ing the death ventncesupsetod by then Au tga wate  
death sentence generaly, thet observations “were a  
fottowst=—  
  
“Fist among the punishments provide for affenc-  
  
2 by this Code sand death Novargument that sg  
Seen brought to our notes as salfafed us that would  
be desirable wholly to dispense with this punishment  
But we ae convinced that W ought to be very spanng:  
iy tnflctea, sd we propose to employ i only fh eases  
there ether murder oF the highest” offence ‘aetnat  
The Siete has Been committed"  
They were not apprehensive thet they would be  
  
ip ave etd to eam ea ih  
  
ment, Rather they\_Wwere. afraid that people ought crit  
  
‘ise the Code ag erring on the other side." this context,  
  
ihe diseused the question sehether gang robbery, cruel  
  
‘mulilaton of the pervon and tapes shoul be punishable Rotter aod  
  
wth death “These aze doabligs fences which, sf we te fp  
  
Jooked ony at their enormity, at tho evil which they: proc 857 Beat  
  
ie, at Ue ‘terror wach they" spread hroogh ste at  
  
the depravity which they indeate we might be include  
  
cet io punish copitally.” Bot atroitia ay hey ater they  
  
ronot, as it sppears to us, be placed in the tame class  
  
With marder "Eto the great majority of mankind, noth:  
  
Ingl dear ase "And we are of option that to put  
  
rollers rovisher and mutters on the fame Tooting wth  
  
Tmurlerer isan szongement which diminiuhes the sary  
  
oie’  
  
‘They observed, that there was a close connestion in  
  
practice between murder and most of thate fences svbich  
  
ome nearest to murder in enormity. "The -clfender in  
21097 Dra, Now A, page 4, mids  
  
  
  
Page 241:  
‘those offences nad always in his power to add murder to  
fis guilt, ‘The samme opportunities, ee, which enabled a  
nan to rob, to mangle, er te ravich, would enable him ‘9  
Jo further and to despatch his victim, By doing <o, he  
Mould remove the only witness of the crime. If "he  
ansioer of e crime which he as already commatk  
  
cantly the same with the punishment of murder, the  
offender Would bave no restraiming motive. "A law which  
imprisons for rape and robbery, and hangs for murder,  
Folds out to ravighers and robbers « strony inducement to  
Spare the lives of those whom they have injured. A Taw  
SRlch Nangs for rape and robbery, and which also hangs  
Yor murder, holds ut, indeed if it be rigorously carried  
Inla"eflect. ‘a szong motive to deter men from rape and  
Tobbery, bat es soon as 2 meh has ravished, or robbed, 18  
SBalde ott to. him @ strong motive eo follow’ up his erime  
‘with a murdes\*  
  
Regarding crimes against property, the framers of the  
drat Serted hats great shock wold be coused to  
Heat techng it wile the most atrogous persona out  
Par dor St murder) were exempled from punishment  
SrSSealh”tht punishment we toe sneted even in the  
Sot cases of Hoel, cheating or michiel.  
  
Regording the power of commutation It vas observed  
that it was evidently fit that the Government should be  
Empowered. to commute the sentence of death (without  
Sonbent of the offender) for any other punishment  
  
(Of some interest are the observations regarding com  
  
tion for esime!. ‘The framers recognised that his  
matter of the law of procedure, and of elvil rights  
But dhey were declaedly of the opinion that “every person  
Silo was injured by an offence ought to be legally entitled  
5's compensation for the injury" and recommended (hat  
fn every eave In which fine was part of the punishment of  
Shd eficnee I ought to be competent to the fribunal which  
fas tried the offender (acting under proper checks) to  
Evan the whole of part of the Ane to the sufferer, provid.  
(Sd thet the sufferer signifies his, willingness to. receive  
Sthat is So awarded in fall satisfaction on nis cfvil claim  
Bor'eparation, They. thodght it likely that® this plan  
‘wourd be in great majority of cases render a civil proceed-  
{ng unnecessary.  
  
We may now refer to their discussion relating to speci-  
fe crimes.  
  
tot Dra, Nowe A page Tie  
ogy Dn, Neve A ae 2108  
  
3 e837, Dr, Noe A, poe 9, mid  
{tay Best, Be A, HB 1,1  
  
te sed toner.  
  
  
Page 242:  
at  
  
Homicide —The question of illega] omissions was elabo-  
ately considered “The expression “esusing death’ Jn the  
Cefition of toluntary culpeble Bomicide was explained,  
{and the view was expressed that acts or illegal omissions  
sth aid not ordinarily ease death cr caused death very  
Temotely.noed not be eacepied. ‘There was Undoubtedly  
42 great difference between acts causing death immediately  
Schl thoce causing « death remotely, or between acta certain  
to cause death and these whieh cause death only under  
Very extraordinary circumstances. ‘But the dfference  
‘Sas one to be considered by the tribunal when estimating  
the effect of the evidence fn a particular ease, not by the  
legislature in froming the geneFal aw. It would, require  
ttong evidence, thes seid fo prove thet an act of a kind  
‘hich very seldom causes death, or am.aet which coused  
etn ee smote, Hur actly caused det i ar  
ler case Te will require stil stronger evidence to prove  
‘hatsich an tl was contemplated as kel) to enue death  
But if axtntacory evidence proved that death was 30  
Cased Soluntariy, jt need no fh theif opinion, be well  
‘ed fom the punisiment for voluntary ealpetié homiide!  
  
‘The case of homicide by words was considered. A.  
verbally directs Z to swallow a poisonous drug. 2 swal-  
lows if and dies, Thin should Ue homnelde ia A. and for  
the purpose, speaking should be considered ag an act”  
  
Regarding the case of a person who died of 2 slight  
‘wound which, from neglect of from the application uf im-  
proper remedies, has proved mortal, the framers saw no  
Feason in exeluding it from the general rule. They noted,  
‘that In India, foar, neglect and bed treatment “were far  
more common than good medical treatment.  
  
‘Tho scheme of the proposed section relating to homie  
cide as tht voluntary, fulpable honed. wes. ude  
Sines it fell within thise mvsigated forme, namely, ()  
  
ave and sudden provecation (n which ease twas "mane  
Saughter”) or i) comatted by consent or (ll) commit-  
tea fn deeice  
  
Regarding provocation, the framers agreed that homi-  
cide fr soch Goes cught to be punahed, in order to teach  
Shen fo entertain respect for human life and give them @  
olive for governing their passions: but homicide coma:  
{ed in violent passion an provocation should nat be visited  
‘with the highest penalties of the law. To treat” sucht  
person in the samme way a the law treated. s  
  
11837 Dr, Nowe M6, paps 36  
  
2 ess Dra Nove AL pape 3,9  
  
yy Daa, Nove ML page $75 me  
4.3837 Desf, Noe M6 pe 8  
  
{$37 Dat, Case 395 397, 298 and 9p.  
  
Proeon  
  
  
Page 243:  
omic  
ben  
  
veould be highly expedient, would sock the unlverad  
ealng ef maniond and woul engage te pebic senpsthy  
(the soe ofthe oflender aaa We In”  
  
rosea by war wa le conedere, andthe ale  
of fae Engi la" “not recognising tie effect of anger  
excited iy words ‘alone was criticised". If a man felt an  
{SSultimore tm a wound Waid not show that he was  
‘han of pesllnty bad hear  
  
Homicide by coment wax trnted as a mitigated form,  
Sach’an ac should be punishable, of ‘eouren ‘becouse 's  
Srite lnwogiver ould desire to prevent such desthy if it  
eve oniy for the (making human “Ife” more  
Sered’to the tulitude. Consent ought nt therefore be  
@ fustdcation forthe Intentional causing of death But  
they felt that ie should mot be punished™ as Severaty at  
rutder for thew Testone  
(9) The motes which prompt tan to the com  
tnision of ine offence were generally far more repect.  
Shiethan thse which pfomsted) men 40 Som  
(0) Such erie was by no means productive of s0  
smash evil to the community at murder. It Gid net  
Produce general inwcutity of spread terror shrough  
Sccety. ‘Winen the low punishes murder with seves  
Fie, hal tao ends. One ond wes that people may  
‘not 'be murdered, and another that people ieay ‘not  
tive in constant dread of being murdered: ‘snd the  
second was perhaps more important that’ the frst  
‘Taie ‘propery" of the elfehet of murder “wae ‘not  
{und tn olde by consent  
  
{It was also noted, that the burning of a Hindu widow  
bby consent was not’ (even under the law. then In fores)  
Punished as rrurder, though it was an ofence under the  
Fegolations tn force’ in the Presidencies  
  
Regarding homicide in self defence, the framers admit-  
ted that they were “forced to leave the lave on the subject  
Of private defence in am unsatisfactory state”. They eX-  
Beth the far tha tay contin 0 be Ge of  
  
st precise parts of every system of jurisprudence,  
‘The portion of the law relating to homicide in’ defence  
Must necessarily partake of the imperfections (of law of  
felfedetence), The reason for treating this kind of homi-  
ide as less thon murder was, thet law itself invited men  
{fo the very verge af the crime designated ae voluntary.  
‘Calpsble homicide. ‘The law authorised acts which were  
  
37 Bay Nae Mopar 3p Sood Fook Faas  
2017 Dat Soe aL pe 9. ee porwinin  
3.187 Dre Neve B, pape 26 hme ad pee 17,  
  
4: thy Dit Now B pape 6, boom.  
  
  
Page 244:  
very near to homicide, and this circumstance greatly miti-  
‘ateathe guilt  
  
The tole of causing death Uy say. rashes ot negli RAB,  
gener ay bo cate whet of de regard for aman te  
Bye ngk seem to have been sepnrately deale ‘tin 3m the  
‘ates, though Clause 204 made it punishable with kmpel-  
Tommment pin 0 Sears oF Hae.  
  
Pt death in cause of felng-—ie, me stuaiion where  
a peson tagaged in the commission of ar oFence eaues  
Jekin’gs radhwness ‘cee negligence (witequt ate anenceon  
  
to cease death or kavtwledge that it is hiely tv cause  
athe tie) vas elaborately. dlteussed. along. wih  
Station whete a petgor engaged in the cvmauiasien  
Stteace eateed death by pure seed  
ates to art des and acento  
mitigated forms” ot a volumtary celpable homicide wire  
CSpleincd. and thutrsted "An interesting czamnple ulven  
SEA “ete posomed ford lefore Z 2 docs po! sual ow  
Ensign of the potuened food to dsurder in” A -Rowd  
Ee ateted os guilty of a Crime of a most attcious descrip  
Now Tt wag emphasized that auch an act (Ge. attempt  
{o commis murder) should be purishable nots. tetandiog  
‘hot it does not amount hy Meet to asa, (espass or fut  
hurt wad cagord tm an atterpi to commit niurdev. i  
ould be punishable (under clause $20) with transporte.  
on for ie, ete, where murderous intention made out  
{cverity of "hurt should nat be a ciecumstance to be con-  
‘Sidered in apportioning pasishment though Mt may be i"  
portant ws eveence  
Tresen was discussed in detail. Tt wes noted, that eu  
inert ine some doubt as 10 whether the statute law of  
England (ceyarding‘Trosson! Was binding on, natives  
‘Apart rom the Bombay Regulation 14 of 1824 ¢shetein  
‘ere. wes a sweepmg Clsuse empowering, the courts to  
Wvara Punishment” i any case in which hey conceived  
‘hat morality and socal order required protection) treason  
‘tas ‘not as offence uncer any other ‘Regulation. The  
Bshomeain law might posably be ae Violently srcined  
Jsiio reach it'in Bebgal and ia the Madras Presidency  
Bur ose provisions ould not be retained.” That is "hy  
{specie gection eos proposed ‘on the subject.” Regard:  
fag'the Rayal perton. Rwas felt that it was tirprobable  
Bas Sy Bhatt Hine ul ne the Tdi nna,  
ind thurefore specie: provision wat not necessary. Bit  
gainst the. British Crown should. it ex  
  
TRY Dit NM pane 0 il  
gAasPyBnh SNe pe y Room Ae oe mit,  
{Dy Den Nove 8, pgs 65909 and me  
J tga Dg of te toon Pera Cal, Dae NEN  
ear  
  
  
  
Page 245:  
40  
  
(Code also explained’ why the anomalous postion regard-  
fag tease preva, "ha Beit utero, SP  
Degsnning. disguised their real power "under the forms of  
vasialage, and loft “the Mogul and his Vieeroye oe empay  
fms ol fy overgny ch wat rely he hy he  
Company" This policy was abandoned only slowly 8  
sieges” ence it way impossible to polnt aut the par,  
cular time when the “natives” became British subjects  
  
Reasons for making abetment of hostilities against the  
Government in ceri eases a separate atone (instead  
‘of Teaving it t© genetal sbetment) were also explained  
Firstly. the general rules of abetment would rot reach  
a.perion iho, while residing in the Britah territories abet  
fell the waging of war by 2 foreign prince against che  
British Government” (The foreign prince himgll’ ould  
get aly a ace by waging auch war) See  
juga in general, a person who is 8 party to the Crk  
tinal design Which ha fot been eared Pn eect aught  
Not tobe punished at if the design had been Carvied iste  
fies, yettan exception should We made With Teapect of  
Ligh lfencessguinot the State. Crimes agaest ee Stace  
‘had this pecullarity that if-they were sittentully eee  
mitted the criminal wes “slmoet always: secure. Lea  
punishinent." “After murder, the murders isin greater  
‘anger than before murder. “But the rebel Is gu o¢Slanger  
38 Soon ae he has subverted the Government.” Hence the  
eal Thole ae song ond share sgt he  
rst beginning of rebelion, against ieasonele detigns,  
which have to be cartied no further than plots and fret  
ations.” Ror this reason, such plots and preparadns  
ld not be left to the ordinary law of abetment  
  
Jia Detaled segs fr punishing shtent of  
mutiny Were given. "A person who, not being himeal  
subject to Miltary law, extorts ot astste those {who bein  
  
subyec to Military law’ commit breach of discipline would  
“hen proper subject of ponishment But the general low  
ssspectng the abetting f offences will not reat him, Se  
‘nue the Military delinquency which he has abetted would  
ot be punishable by thi Code, and therefore Would net  
Emstiute an oifence”. Explaining thet approach rexerd  
{ag panishment for such abetiments the traters of thet TES  
Heport stated that while the general tule which they hod  
opted was that the punishment of the abetter soda be  
gull ‘or proportional Yo. the punistmest of the peteon  
camming the offence, yet in this case they had depart  
Sartor these reasons  
  
‘But the Military penal law, {sand must necessarily  
to, far more severe than that Under whiee te bod of OS  
  
  
  
Page 246:  
En  
  
le tive. The severity of the Military lay’ can be fusst-  
BGPP" Gy reasons desi (tum the pecan Rabuts and  
Gates of soldiers. and fom the peculiar reation ir. which  
they sland tn the Government Thee ‘uc  
Ssveritg to persons not memers othe Seliery oes  
Sion eppeare to us afogetier untwarsontgbie" They also  
aded hat it's person Shot ap biiltary™ who abetted  
Uren of Miitay aicipine was made Table fo» punish  
ment, regulated “according. to cur general. rute by" the  
Punishment to which auch a freach cf disciple renders  
PSoidier lable the whole syrnmetry of the penal law would  
beldettoyed " B'person who induces a e\dler 10 disobey  
Shy exter of a commanding offer would be liable to be  
punished mere severely than & doco, Tavisher, et.  
  
Perjury—The tramers of the 165% Draft expressed this  
“At ayo fale ecdsnee actualy causes deagh the  
  
son who bas given of fabricated it falls under 1  
Ucinition of mufder, snd. is lable to capltal punish  
rent. fn this Test point, the Taw, as we have framed  
Teeagices with the 618 law of England, which, though  
ie ger opnon, stand reasonable, hs" become oto  
  
Dacoity ~The following observations are interesting!:—  
  
“His Lordship in Couneil will perceive that we  
have provided punishment of exemplary severity for  
that ateocious crime, which is denigrated im the Re  
{ulations of Bengal and Madras Uy te name of Dacoity  
vmame me have though convent tora for  
‘he purpose of denoting. not only actoal gang  
bile stamping to Fob, Shen sh ah icompt  
miede or nigel by 8 gang”  
  
General view of eriminat lew as prevailing in 1687  
  
[A picture in brief of the position regarding criminal  
haya obtaining im tT wil be found In the Law Comins  
Saners" Report of that year!  
  
‘The printed draft of the Indien Penal Code was sub  
sptted {0 the Government of India on ath October, 8st  
Thereatter, Government requested he Indian Law’ Com:  
innsgonets to examine the opinions receved onthe Iasi  
raft ang. also to atedy the’ draft Act contained ip the  
Seton Report of be "Commissioners on Cimital Law  
GF England and to give thelr Report sccordingly. ‘The  
  
~ 7 Wr Dat, Now 6, pee Boum  
2:7 Dane, Nove 8, pepe 39, mle,  
4. tay eporyain Bepos, paps 11 4  
11-122 Law,  
  
  
Page 247:  
m2  
  
Indian Law Commissioners submitted in 1846 chetr Report’  
UBint Report) of the draft Penal Code. Later. in Lod’,  
hey submitted” heir Second. snd “conclu me  
{Seton Report on the Indian Penal Code) on “th June,  
IEA ii Si Lawrence Pe, Chil i of the  
Supreme Court at Fort Williams (previously | Advocate  
Sete), Staving’ received. from the Government the  
Report of the Law Commissioners, studied it and gave his  
obvervations 19 the Government in 1848  
  
It is not necessary t0 state each point dealt with by  
the! Law Commissiontrs in 1846, but & few points which  
fre still of interest may be noted:—  
  
(a) Homicide —Death caused by words was speci  
sally’ dealt with ip the discussion in the 1897 drat  
ind the 1046 Commissioners also dealt with it in detail  
Jing came to the conelusion® that af death i certainly  
Givbed by words deliberately used by a person with  
intention to cause that result, or with the knowledge  
that im the condition of the party to whom the wards  
fre spoken itis likely that the words will make such  
{an impresion on him as to cause death, and without  
{ny such excuse ar admissible under "General Excep-  
flohs's sueh person should suffer the penalty. of cul  
able homicide: —  
  
‘Here is the wilful doing of that which is known  
tr be likely to produce evil, manifesting the mens rea  
‘csential {2 criminal Tespodsbility. the evil produced  
Sdeath, the efficient cause.—the words spoken. Tt is  
Seareely’ agreeable to reason, that having traced the  
eftect to its cause, the Taw should refuse to acknow  
Tedge it xe an effective cause; or that the Judge should  
be obliged to say. ts true that the effect was produc.  
‘ed by the operation of the words, but words in law  
‘ire not an set, therefore the speaker is not eriminally  
‘responsible  
  
Death resulting from a slight, wound which from  
neglect or from the application of improper remedies  
has proved fatal wae considered i deta  
  
Provocation by words was specifically considered,  
and the proposal inthe original’ Code. to cover such  
  
bprovecation fe. not to. recogise any distinction bet~  
Sun provocation by mere words er estes, and  
  
Rap, Ga 39.7186, of te Indian Law” Coneision, 6  
nd ES aS GAZING oe In La Ge cs  
2 Reported 24-4847 (Sexo, Rep of te Ton Lew Coen  
onde 6h te Brat tion Pens Cot  
  
3p Oteemnioes of Sir Lamence, Ps, oo de Dat Tnsan Fenel  
contd  
  
“E1806 Reo, poet 77, paneraph 298  
  
{Nye Repo pees 770, parsaphs 250 27  
  
{6414s Rep, pase 8-4, pangsaphs 269 1 273  
  
  
  
Page 248:  
a  
  
Other points relating to provocation were consi  
dered  
  
‘The teple of voluntary culpable homieide by con  
sen; has Sbnaidered and the proposed. provision that  
Sch ows soul oot San tomar, wat  
s ‘With‘s alight Tnodification, namely, the con  
SEETShouid ave been given nat cals. by’ pescy  
Trove 13 years of age ut by a person capable of make  
ing an inklligest hole"  
  
Voluntary culpadte homicide in defence—the provi-  
sired Sto manclauiter—was approved io  
Srinciple™  
  
frefer the provisions of our Regulations, which define  
fie grounds for mitigating the capital" punishment."  
On this comment, the 4846 Report noted that Mr. Hud  
  
featon had not spectied the provisions which he  
Ip mind, “In the general fw relating to murder "in  
the"adras Regulations. which Me. Hiadleston must  
‘ev undrsiog f nee to ther no seh detinion,  
  
1 D'diseretion is given to the Judgen not to pass sen-  
nbc of death, i ere appear to tem tobe Salevia  
Ing cicomstances” im the cose—e discretion suficient  
vaoitrary  
  
“The topie of rash or negligent homicideclause  
4 Gt the Ta aeate—woe approved after alscusion?  
  
‘The case of a man attempting to commit a rape oo  
‘2 woman and in the attempt involuntarily causing her  
deathecleuse 308, tlustration tn the 1057 draft—as  
considered. and the proposal in the draft approved?  
[The iifustration seas to the effect that in such @ case,  
{he homicide was culpable but not voluntary, because  
death was an effect wholly unexpected and uieonnect-  
‘Si'with the Intention and act of the party, except bY  
fecldent. Mr, Pyrne (Judge, Sidder ‘Bornsay)  
Sad stated that it was posible that rape of delicate  
‘woman may cause death for example, rape Was com>  
Imitted on an infant of 6 or 7 years "of age, death  
nates therefrom. (Te had stated that a vecent ease  
54s Report pages 6-86, pump 374-9.  
£45 Report. poe 93, Parag 254  
15gh Report, es 9-5, feng 29630,  
See ge Repo pape 3 lest porcenph aed sie roe  
ue Report, pee 95, snug 30  
gs Report ge 95, TOE 33.  
ah Repos, uses 86-10, Pra 209 10 314  
5 MBG Repo, pgs 100, at 345 1 37  
  
Rave,  
  
  
Page 249:  
a  
  
had come before the courts)  
painted out that yt was volint  
Bath being Isely  
  
(Ate of siecle 308 ak the 187  
Repatt ia propose the, popnkment of death (oper!  
£ ater ate ate Poaihment) Yor abetment. ol  
‘ilae'CF child unde 12 yearn ny insane person  
ere A comment from hur Je PF. Phomes had been re  
Sed the ete tht the. inducement ao ‘comet  
Sechrest in the ordinary coume of vents  
  
SAAS Sight that ararely seemed nececarp  
i place the ctente on level with the st tries  
SBUG Siaanmes the penalty of dea In his op  
Mons leer penalty would sce to check Ube co  
Misicn of tecrime. Me ‘Thomas pateslrly ele  
Moke Tania wut ace incaded sn Begs  
Sristons and pointed out shat instances of suides  
SHR Saldaearevensed by partons were nomeroes  
Sau "at present Shey have mot the mos remote tea  
Tee dePire veing cioaly and that they shoud  
wot be eid lable fo tne heavy penales. “Az this  
the 108 Teport observed that cause 306 was based  
{On the sume principles “as cinuse 6, second proviso  
the ie arate (Beoiige with, conseny of gueh pe  
fla te be mend) ine much Sethe sence at  
Causing dest of posses concerned (e. person Us  
  
ge ob under Susbiigy ses reqand ao murder even  
$Esagh deuth won caused "otth ahete consent and  
thovelee awe aie abetment of suicseatached  
the penalty, ‘of murder to the stance described, there:  
Ine when committed jm repect of 9 ptson ther fe  
GF dievigr ine‘ louse was sppreved. subject fo  
folleaton rearing age of 2 Youre ing fepiaced  
sam age where a parson could form an, intelligent  
Plasmas “Stas abso observed (rogurding ileal  
dmniolors) that the “rule would fh to be applied  
indo’ ese ‘clnuseschlfiy tn cues where'e parton  
bound to take care of the person of another had, by,  
Arles} “omission of he Gut tnenonaly given,  
Hm the opportunity of hing Riel er “perited  
him to obtnin the means of killing himself (econ  
Iorall'inthe ese nha one peo ating sneer  
person preparing fo destroy himself, Gay by hanging)  
iMtemp: to peuvent hy ie, (as aay be expected, te  
timp to prevent hit I (ab may ,  
  
ine oP precede inte ia ‘commen ay incumbent  
Spon al mon to ast In poventing fencer sbout 1  
SE Eammited in their presence "Phe intention here  
ih Siesta ese eo be" frac tom the “See  
  
(€) Attempt 10 commit murder—Atterpt to cone  
mit Voluntary culpable homicide was. under clause 500  
  
te this, the Report  
yy culpable. homiewe  
  
7. aR4e Repon, pages 101-163, pangaphs 321 3ah  
  
  
Page 250:  
8  
  
of the 187 draft, punishable with tmprizonment up to  
Stig ei of te te Ropert olde  
That ths case was meaat fo apply to. attempts  
  
Elise Uesth under eiccumstances which, death one  
Sid would nae the offence ob walt ible  
ovmielde of one of the iigtedenerplons; beste  
SMomplto commit moder was expresely provided for  
iy atthe: esse 305" “They heretore recommended  
Ue necesany clarteation "AS regerde “atempe 10  
fovoinig murder, causes 300, ra ‘Si had “hs eet,  
thar"where ort wan cauned the fence \_swould be  
puntshable ws taneporatsa fr life o rigorous i  
isonent or life Bot not ese than 7 eats an alan  
ine No change was Fecommended’ on that clase.  
  
(8) Perjury—tn the 1837 drat, clause 294, deat  
with ‘Voluntary culpable homicide zead with lst  
tion (a) thereto had this eer, that i A fate depose  
‘cd belore a Court of Justice thst he saw another person  
SSmit capital erume sod tbe otoer person way com.  
Sicted and executed in consequence, Avwtas gully of  
lhe eifence of voluntary culpeble homicde,” (if A had  
the intention to cause Geath or Knowledge of, kel  
hood of his causing death, ete). “Fhis proposal sas  
‘in the 1096 "Report. It stated” that “the  
‘question fall naturally within the definiion  
of Voluntary eslpable homicide, which could not Be  
‘Gxpresed properly in terms. that did” not cover I  
BRRIE went on to sayand but that "we “think  
desirable to. restrict rather than. to" extend capital  
Punishment, and thet 1 would be In effect an exten  
Sion of it to make the perorer ae te the convicted  
SC homieide, which Would be mutder under Clause 29,  
‘nen his false swearing has caused the condemnation  
find execution of an innocent persia, we Would not  
freste to recommend that this part of the Cade be  
left untouched. For the Tesson st stated, however,  
‘We, sould advise that the iilstration (a) Be amited  
pai cause 2, and thst Clase 3, in the Cheer  
fences against public justice be declared applica:  
be generaliy to the elence of giving foe evidence,  
wie the intention of causing 4 petson to be convicied  
cfs copia ime, thee he obec ated Ee  
tected or not’ iighment which may be  
Ssrarded tnd aie hale ieamporaton Torley  
Gr rigorous imprisonment for Ife or fora term net isd  
than seven Years, and fine \*  
  
(2) Decoity with murder—By Clause ©  
  
tasr Brat where moar wa coms net  
  
‘one of gang of the dacelts, every one of the gane wee  
Ge Re, as aoe a ST —  
  
184 Repo, pose 1 pertengh SP.  
  
3 18 Reper oe pomp  
  
  
  
Page 251:  
236  
able 49 be punished with death. "The 1846 Report  
, pentane ih Seah sore in Bengal and  
feet swith an offensive  
  
weapon. With Sis quity of dacoly, aod that by shove  
  
Regutetions cleedors of gands oF  
  
Eefeitea oven of oe Sikes, es  
  
Shen repetition of Cruelty. wilence, oo  
int Svhich under the discretion  
  
vas punishable sn any of the ma  
MSE BSReNth included death). ‘The 1848 Report how.  
Ton ens consider, st advisable to, extend the  
SUslebinert ‘of death to. any-cave other than that al  
Pay given in clause 200 of the 16S? Draft  
  
1 also noted the suggestion? that heads of gangs of  
anciiGSQuould be sentenced to death, Because in such  
colts ath was desirable vas an example” to the country.  
P Naggestion by Mr Giberne", a Judge of the  
  
‘Thos wag  
Di aNtbsure A Bombay. ‘The Report did not consider  
Sueesbte t extend the punishment of death to any case  
  
seis 0 eal wth i elnuse $00, But it did express  
Sennen wih te sageton of MG, JF, Tomas st  
Bere bers gre distinction in adjudging punish  
met between ever ig ae o Tegular oF  
1 oitmernbers of a gane following robbery a5 8  
Eabion meters fa poor ees enticed fo nel  
{penn er on the her mand. (Mr. Thomas had sogest-  
SE fRampertation tein the cate of very leader, replay  
ee Mame the gang. every person atimed with weapon  
Expabie of infting death ete)  
  
Foor the prevent purpose itis unmecesary to, deal in  
acthiatth Be ater Escuotons relating to the drt Indian  
at ode “On the 30% May. 68], the revised edition  
Boneh Codec eiscstted to adges for comments, Later,  
fe UL 4 Commitee comssting “at Barnes, Beacack, SE  
1 a Se FP, Grant, D. Ello ete. was asked to cons,  
FergCOMG Chae. "hat committe did not recommend  
Ger hs ential alterations In the orignal Code.” ‘The Code  
ia  
Sih aE a aE Pe  
  
2 yp nepons noe 15. ress 2, ih AMET 38  
Been nese pa sie rer ad 8 1  
  
Sf ue Repo pnw 3 a 3  
  
£4 Ber ra a pote aniie, Sr Rs, Ma &  
aan ish  
  
  
  
Page 252:  
aT  
  
was read for the ret time on the 28ch December, 1256 and  
[Erie Steed ine the Sed January, St, Sd eferzed  
ory Select Committee 'Tt ces then passed by the Legis  
ErukeOStis? of insist recelved fhe assent of the Gover:  
porGenersl on the 6th October, 186,  
  
APPENDIX XXVEL  
scexowents netzvane To CaPtal. Pouusintent, Arron ate  
‘passnte of tie InotaW PRNAL COOE (1080)  
  
Ameniiments to Indlan Penal Code after it was pasted  
may be noted:—  
  
Segomydakal al Uake "ARR te Stars onat on fet  
"Sos 53 Nan Beal Cae an See  
Seton 8h Sereno facie as epherd  
Sree rane  
  
‘The position according to the Hedaya? was this—if any In gan.  
one of gang of robbers commits murder, the preseribed 1H,  
‘nishment it indicted pon the whale; because the punish- Mardy,  
nent inthis instance ts eoosidered as a penalty for the dr  
fsavlt of the whole, which is established by each of ther  
  
being siding end abetting to the other  
  
Cansing death dy negligence hoover caused the Jou Sedan  
dea a an person by deny sy rack ot meget act ot Fe  
Smoueting to'culpable homicide shal be punished with n-  
froonmen of eltner description for aterm —sehich ena  
stand toto years, or wth ine, or with both  
  
(dnaerted by Act 27 of 1870 section 12)  
  
se 304 area Ti norms ie sen, a  
  
GEISOTS Sct eg  
  
(age of stn 7 at Ce  
ade ett ge  
YX), Comical Preceure Cate, Reto for esr verence eed  
  
5,  
Stk phen igs amends Gee  
ce  
  
TeDUTERSSENRSCHE pidge racy atin Vena  
  
SPuTenmneeeeae” IS  
{Sadana by Aes oan eines  
  
nse  
  
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APPENDIX XLIV  
  
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(@) Indian Penal Code —Pessons below 18 years of age at th time  
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