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Sixth Session Fifth Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 90 of 2000

[L.S.]

AN ACT to amend the Offences Against the Person Act,
Chap. 11:08

[Assented to 2nd November, 2000]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. (1) This Act may be cited as the Offences Against Short title
the Person (Amendment) Act, 2000.

(2) This Act shall come into operation on such date as the President may appoint by Proclamation.

Section 3 of the Act amended Chap. 11:08

2. Section 3 of the Offences Against the Person Act (hereinafter referred to as “the Act”) is renumbered as section (1), and the following new subsection (2) is added thereto:

“ (2) Notwithstanding anything in subsection (1), a person shall suffer death if he is convicted of murder 1.”.

Sections 4D, 4E, 4F, 4G, 4H, 4I and 4J inserted

3. The Act is amended by inserting after section 4c the following new sections:

Murder 1 4D. Murder 1 is the category of the offence of murder as may be determined under section 4J which is not reduced to manslaughter or which is not required to be punished as manslaughter under any written law and consists of the offences specified in section 4E.

Categories of Murder 1 4E. (1) Subject to subsection (2), murder committed in the following circumstances is Murder 1, that is to say:

(a) the murder of—

- (i) a member of the security forces acting in the execution of his duties or of a person assisting a member so acting;
- (ii) a prison officer acting in the execution of his duties or of a person assisting a prison officer so acting;
- (iii) a judicial officer or legal officer acting in the execution of his duties or a former judicial officer or legal officer where the murder was intentionally

carried out in retaliation
for the performance of his
official duties,

and includes the murder of
any such member of the
security forces, prison officer,
judicial officer or legal officer
directly attributable to the
nature of his occupation;

(b) the murder of any person or
the immediate family member
of that person for any reason
directly attributable to—

(i) the status of that
person as a witness or
party in any pending
or concluded criminal
proceedings; or

(ii) the service or past
service of that person
as a juror in any
criminal trial;

(c) any murder committed by a
person in the course or
furtherance of an arrestable
offence involving violence;

(d) murder committed by means
of a destructive device, bomb
or explosive—

(i) planted, hidden, or
concealed in any place,
area, dwelling, building
or structure; or

- (ii) that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his act would create a great risk or death to one or more human beings;
- (e) murder committed pursuant to an arrangement whereby money or anything of value—
 - (i) passes or is intended to pass from one person to another or to a third party at the request or direction of that person; or
 - (ii) is promised by one person to another or to a third person at the request or direction of that other person,
as consideration for that other reason causing or assisting in causing the death of any person or counselling or procuring any person to do an act causing or assisting in causing that death;
- (f) murder that is especially heinous, atrocious or cruel, manifesting exceptional depravity;

(g) murder where the deceased was intentionally killed because of his race, religion, nationality or country or origin.

(2) Where it is alleged that a person accused of murder is guilty of murder 1, the offence shall be charged as Murder 1 in the indictment.

(3) In this section—

“prison officer” has the same meaning as in the Prison Service Act;

Chap. 13:02

“judicial officer” means—

(a) a Puisne Judge or a Justice of Appeal, a Master in Chambers or any person for the time being performing the functions of a Puisne Judge or a Justice of Appeal or a Master in Chambers;

(b) the Registrar or Deputy Registrar of the Supreme Court of Judicature, the Board of Inland Revenue or the Court of Appeal or any person for the time being performing the functions of Registrar or Deputy Registrar;

(c) a Magistrate or any person for the time being performing the functions of a Magistrate;

“immediate family member” means a husband, wife, father, mother, daughter, son, brother, sister, step-parent, grandparent, step-child or grandchild;

“legal officer” means an officer of the court who carries out the function of the prosecution of offences and includes State attorneys in the office of the Director of Public Prosecutions, attorneys-at-law engaged to carry out functions on behalf of the Director of Public Prosecutions and police officers who prosecute in the courts;

“member of the security forces” means a member of—

(a) the Police Service;

(b) the Prison Service;

(c) the Defence Force to the extent that such member has been assigned to act in aid of the Police;

(d) the Special Reserve Police;

“terrorism” means an act involving the use of violence by a person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public.

Non-
applicability
of section 4

4F. Notwithstanding section 4—

(a) a person convicted of murder 2 shall suffer death only in the circumstances referred to in section 4G;

(b) a person convicted of murder 3 shall not suffer death.

Multiple
murders

4G. (1) A person convicted of Murder 2 shall be sentenced to death, if before conviction of that murder he has been convicted in Trinidad and Tobago of another murder, whether or not done on a different occasion.

(2) Where, pursuant to subsection (1), a person is charged with the murder of two or more persons, no rule of practice shall prevent the murders being charged in the same indictment or, unless separate trials are desirable in the interests of justice, prevent them being tried together; and where a person is convicted of two murders tried together but done on different occasions, subsection (1) shall apply as if one conviction had preceded the other.

Murder 2

4H. (1) Murder 2, subject to this section, is the category of the offence of murder as may be determined under section 4J that is reduced to manslaughter or that is required to be punished as manslaughter under a written law, and includes, gross negligence, mercy killing, recklessness as to participation in the offence of murder, the use of excessive force outside the contemplation of section 4 of the Criminal Law Act, but does not include Murder 3 or matters falling within Murder 1.

Chap. 10:04

(2) In this section—

“mercy killing” means an act or acts otherwise amounting to murder done with respect to a patient *in extremis* in such circumstances as demonstrate the absence of culpable malice aforethought.

Murder 3

4I. Murder 3 is involuntary homicide committed otherwise than is referred to in section 7 for which a person is liable to be convicted, and includes manslaughter by provocation, negligence and causing death by reckless driving.

Discretion to prosecution

4J. (1) Notwithstanding anything in this Act or in any other law, in exercising his discretion to prosecute for a category of the offence of murder under sections 4D to 4H the Director of Public Prosecutions may—

(a) having regard to the nature of the circumstances in which the killing took place, himself determine in which category the offence falls; or

(b) in any case where he considers the interest of justice so requires apply to a Judge to determine whether an indictment shall lie and if so for what category of the offence.

(2) In any proceedings under subsection (1)(b) any person who is charged or to be charged or who is

otherwise concerned with any offence before the Judge or collateral thereto, or who may be involved in the prosecution of such offence has the right to be present and to take part in the proceedings.

(3) No appeal shall lie from any determination of a Judge under this section.

(4) A determination under subsection (1) shall be taken to fix the category of the offence for the purpose of liability to conviction for any act or acts amounting to, or consisting of Murder 1 or Murder 2.

4. Section 6 of the Act is repealed and replaced as follows: Section 6 of the Act repealed and replaced

"Life imprisonment for Murder 2

6. (1) Subject to the provisions of this Act every person who is convicted of Murder 2 shall be sentenced to imprisonment for life.

(2) Notwithstanding any other law, on sentencing any person convicted of Murder 2 to imprisonment for life, the Court may specify a period, being longer than ten years, which that person should serve before becoming eligible for parole.

Procedure

6A. (1) On an indictment charging a person with capital murder, he may be found not guilty of capital murder but guilty of Murder 2.

(2) Capital murder shall be treated as a distinct category of offence from Murder 2 for the purpose of any appeal against conviction.

(3) Where on an appeal against conviction of capital murder the Court substitutes a verdict of guilty of Murder 2 for the verdict of guilty of Murder 1, the Court shall nevertheless determine whether the sentence of death is warranted by section 4G(1) and shall confirm that sentence if it is found to be so warranted.

(4) Subject to the foregoing provisions of this section, Murder 1 shall not be treated as a different category from the offence of Murder 2 for any purpose.

(5) A person referred to in section 4G(1) shall not by virtue of that subsection be sentenced to death by reason of a previous conviction for murder, unless—

(a) at least seven days before the trial, notice is given to him that it is intended to prove the previous conviction; and

(b) before he is sentenced, his previous conviction for murder is admitted by him or is found to be proven by the Jury.

Provisions as to appeals in relation to repeated and multiple

6c. (1) Where a person is sentenced to death by virtue of section 4G(1), he shall have the like right of appeal against the sentence as if the appeal were against the sentence as if the appeal were against a conviction involving the sentence of death.

(2) On any such appeal against sentence, the Court shall have the same powers as to allowing or dismissing the appeal as on an appeal against conviction; and where the Court allows the appeal,

and it appears to the Court that, having regard to the decision on the appeal, the sentence is not warranted in law, the Court shall quash the sentence and pass the appropriate sentence in substitution for it.

(3) Where a person is sentenced to death under section 4G(1), (which relates to more than one conviction for murder) and afterwards one of the convictions is set aside on appeal—

(a) that person may apply to the Court of Appeal to set aside the sentence of death on the ground that it is no longer warranted in law having regard to the decision on appeal; and

(b) whether or not an application is made under paragraph (a), the Registrar of the Court of Appeal shall notify the Court that the sentence is one which should be set aside on the ground referred to in that paragraph,

and the Court if satisfied that the sentence is no longer warranted in law, shall set it aside and pass the appropriate sentence in substitution for it.

(4) Where a person is sentenced to death as aforesaid then, unless he is so sentenced on being convicted of Murder 1, the sentence shall not in any case be executed so long as the other conviction can be set aside on appeal or by any other legal process.

Provisions as to procedure regarding two or more murders tried together

6D. (1) Subject to subsection (2), where a sentence of death is passed on a person convicted of two or more murders tried together it shall be treated as passed in respect of each of the convictions.

(2) If one of the convictions as aforesaid is and any other is not set aside on appeal, the Court deciding the appeal, unless satisfied that the sentence remains warranted in law in respect of any other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it.”.

Section 54 amended

4A. The Act is amended in section 54 by—

(a) deleting the words “under the age of ten” and substituting the words “under the age of sixteen”; and

(b) deleting all the words commencing with the words “but no person who claims to be the father.”.

Chap. 10:04 amended

5. The Criminal Law Act is amended by substituting for the word “murder” occurring in section 2A the words “murder 1”.

Passed in the House of Representatives this 13th day of October, 2000.

D. DOLLY

Acting Clerk of the House

Passed in the Senate this 24th day of October, 2000.

N. COX

Clerk of the Senate

Senate amendments agreed to by the House of Representatives this 25th day of October, 2000.

D. DOLLY

Acting Clerk of the House