

"302. (i) Except in the case specified in sub-section (2) whoever commits murder shall be punished with imprisonment for life and shall also be liable to fine.

(2) Whoever commits murder shall,—

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any armed forces of the Union or of any police force or of any public servant whose duty it is to preserve peace and order in any area or place, while such member or public servant is on duty,

be punished with death, or imprisonment for life, and shall also be liable to fine."

Thus, it is very evident that the amendment proposed by me has been fully incorporated in the amended Indian Penal Code Bill which is before this House. As the Government has been pleased to incorporate the entire amendment suggested by me, I think no useful purpose would be served by me trying to advocate this Bill now before the House. I, therefore, take your leave to withdraw this Bill.

MR. DEPUTY CHAIRMAN : The question is :

"That leave be granted to the Mover to withdraw the Indian Penal Code (Amendment) Bill, 1972."

The motion was adopted.

SHRI ANAND NARAIN MULLA : Sir, I withdraw the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1972

SHRI ANAND NARAIN MULLA (Uttar Pradesh) : Mr. Deputy Chairman, Sir, this Bill is going to share the same fate which was of the earlier Bill placed by me before this House. This Bill was also introduced by me more than four years ago. In the meantime, the Criminal Procedure Code has been amended by Act 2 of 1974 and the relevant section is section 384. That section reads as follows :—

"384. (1) *Summary dismissal of appeal.*—If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily :

Provided that—

(a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same ;

(b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve inconvenience disproportionate in the circumstances of the case; and

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Sessions or Chief Judicial Magistrate it shall record its reasons for doing so.

[Shti Anand Naiaim Mulla]

(4) Where an appeal presented under Section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the Same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393 if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law."

The amendment suggested by me was that the invidious distinction between the appeals filed by those accused persons who are in jail and who have not or could not engage counsel and [those appeals which have been filed through counsel by accused persons in jail or outside should be removed. And I had raised the point that this offended article 14 of the Constitution of India for this discrimination cannot be accepted as a reasonable discrimination. I was happy to see that my view was acceptable to the Joint Committee when it was redrafting the Criminal Procedure code and the representative of the Ministry of Home Affairs also saw my point and accepted it. It has been incorporated, and now it has become the law of the land.

Still, it has not been incorporated fully. There is a snag which I place before the hon. Minister for his consideration to see whether in an administrative way it can be removed or not. I invite the attention of Mr. Mohsin to this. Section 384 (b) reads-----

"no appeal presented under Sec. 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that appeal is frivolous or that the pro-

duction of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;"

Now, ostensibly, this is a very reasonable restriction but it can be abused by the authority concerned. Therefore I am drawing the attention of Mr. Mohsin that there should be some administrative direction that when an accused is in jail or he is put in jail, he should be kept near the place where his appeal is going to be heard. He should not be removed far away and then a plea should not be permitted to be taken that since he is far away, for reasons of convenience we cannot produce him before the court.* In this way it can be abused. Some administrative order should also be passed that pending the appeals those persons who are filing their appeals from jail under section 383 will continue to remain in those jails which are never and which cannot be described as so far away that it would be inconvenient in the circumstances of the case to produce them before the courts.

With these submissions I again seek your permission to withdraw this Bill.

MR. DEPUTY CHAIRMAN: The question is:

"That leave be granted to the Mover to withdraw the Code of Criminal Procedure (Amendment) Bill, 1972."*

The motion was adopted.

SHRI ANAND NARAIN MULLA: I Withdraw, the Bill.

MR. DEPUTY CHAIRMAN: Next Bill Shri Nripati Ranjan Choudhury. He is not here.

Yes, Mr. Khurshed Alam Khan.