

ABSTRACT

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4186109234 : MAJOR CRIMINAL LAW

KEY WORD : PROVOCATION / SELF – DEFENCE / PREMEDITATION.

PINTHIP LEELAKRIANGSAK : THESIS TITLE (A STUDY OF PROVOCATION AT THE TIME OF SELF – DEFENCE AND PREMEDITATION.) THESIS ADVISOR : ASSOCIATE PROFESSOR VIRAPHONG BOONYOBHAH. THESIS COADVISOR : DR. CHIRANIT HAVANOND, 167 pp. ISBN 974-03-0830-9

Provocation under Penal Code Section 72 may happen coincidentally with the act of excessive self-defense or excessive necessary case of offence as the calm has past under Penal Code Section 69 which is the action to complete the constituent part of the offence, whereby the actor has no power to commit and no any law to make an exception of punishment. However, it may be the cause that the Court may use its discretion to punish the offender as less as it does fit whereas Section 69 is somewhat benevolent to the offender in case that the acts is done under the excitement, fear or alarm, the Court may not punish the actor.

It must be consider on the problem which case should be adjusted under Section 69 or Section 72 that should be considered under these 3 cases : The first case is that the offender has started to use his right of self-defense and acts continuously even though the harm is over, this should be adjudged as excessive self-defense under Section 69. The second case is that the offender has started to use his right of self-defense and acts continuously even though the harm is over, but the offender believes that the harm get being threatened inspite of the fact that the attacker is not able to commit further harm, this should be adjudged as a mistaking lawful defense. The third case is the offender has started to use his right of self-defense after the harm has finished, this should be adjudged as the circumstance of being sudden provoke not as excessive self-defense due to the offender has not started to use his right and has no intention to offend at the time the harm arising.

Apart from this, the case of reasonable provocation that sudden provoked the actor but has not make promptly offence, this must be considered either being provoked suddenly that should be a cause for less punishment or being a case of premeditation that should be a cause for more punishment.

The clear focal point should be considered on reasonable time to cool off under the process of Objective Test by comparing with a reasonable man who is harassed in the same manner as the offender as well as under the process of Subjective Test whether the offender has sufficient time for the passion to subside, if should, after consideration, the reasonable man has not sufficient time for the passion to subside while committing the offence, this should be adjudged as provocation. Should the reasonable man has a cooling off period to suppress his passion but the offender still be provoked longer than the reasonable man and commit the offence without self-control, this should be adjudged as the offence of intentional killing. However should the reasonable man and the offender, after consideration, have reasonable cooling off period and the offender is not provoked during committing the offence or even the reasonable man could not control his passion yet, but the offender could have self-control completely and think carefully, thus should be adjudged as premeditation.