Murderers and Tyrannicides: Slaying in Roman Law and Declamation

D 48.8.1.pr: Lege Cornelia de sicariis et veneficis tenetur, **qui hominem** **occiderit**: **cuiusve dolo malo incendium factum erit**: quive hominis occidendi furtive faciendi causa cum telo ambulaverit: quive, cum magistratus esset publicove iudicio praeesset, operam dedisset, quo quis falsum indicium profiteretur, ut quis innocens conveniretur condemnaretur. Praeterea tenetur, **qui hominis necandi causa venenum confecerit dederit**: quive falsum testimonium dolo malo dixerit quo quis publico iudicio rei capitalis damnaretur: quive magistratus iudexve quaestionis <o>b capitalem causam pecuniam acceperit ut publica lege reus fieret.

He is liable under the *Lex Cornelia* on murderers and poisoners someone: **who slays a man**; **or by whose bad intention a fire is set**; or who goes around with a weapon for the purpose of killing a man or committing theft; or who, while he is magistrate or presiding over a criminal trial, arranges for someone to give false evidence so that an innocent man should be entrapped and condemned. Furthermore, he is liable: **who puts together and gives poison for the purpose of killing a man**; or who gives false testimony with bad intention by which someone is condemned of a capital offense in a criminal trial; or who, being a magistrate or judge of a *quaestio* on a capital charge, accepts money so that he may be found guilty under criminal law.

Quint. 7.2.25: Tyrannus suspicatus a medico suo datum sibi venenum torsit eum, et cum is dedisse se pernegaret arcessit alterum medicum: ille datum ei venenum dixit sed se antidotum daturum, et dedit potionem ei, qua epota tyrannus decessit. De praemio duo medici contendunt.

A tyrant, suspecting that he had been given poison by his doctor, tortured him. When the doctor persisted in denying it, the tyrant called for another doctor; this doctor said that he had been given poison, but he would give the antidote. The tyrant drank the potion the second doctor gave him and died. The two doctors contend for the tyrannicide prize.

Sen. Controv. 3.6: Quidam tyrannum ex arce fugientem cum persequeretur, in privatam domum conpulit. incendit domum: tyrannus cum domo conflagravit. praemium accepit. agit cum illo dominus damni.

A man, while pursuing a tyrant fleeing from his citadel, forced the tyrant into a private residence. He set fire to the house; the tyrant burned along with the house. He received the reward. The house’s owner seeks repayment for the damages from him.

D. 9.2.7.1: **Occisum** autem accipere debemus, sive gladio sive etiam fuste vel alio telo vel manibus (si forte strangulavit eum) vel calce petiit vel capite vel qualiter qualiter.

We should regard him as “**slain**” if someone struck him with a sword, or even with a club, or with another weapon, or with his hands (e.g. he strangled him), or with a rock, or with his head, or in whatever manner.

D. 9.2.7.6: Celsus autem multum interesse dicit, **occiderit an mortis causam praestiterit**, ut qui mortis causam praestitit, non Aquilia, sed in factum actione teneatur.

Celsus however says that it makes a great difference **whether he slays or furnishes the cause of death**, in that he who furnishes the cause of death is not liable under the *lex Aquilia*, but instead under an *in factum* action.

Quint. 7.3.7: Diversum est genus cum controversia consistit in nomine quod pendet ex scripto, nec versatur in iudiciis nisi propter verba quae litem faciunt: an qui se interficit homicida sit, an **qui tyrannum in mortem compulit tyrannicida**, an carmina magorum veneficium. Res enim manifesta est sciturque non idem esse occidere se quod alium, **non idem occidere tyrannum quod compellere ad mortem**, non idem carmina ac mortiferam potionem, quaeritur tamen an eodem nomine appellanda sint.

There is a different sort of question when the controversy concerns a word which is in a written text, which only happens in the courts when words create a legal conflict: whether someone who killed himself is a killer; **whether someone who compelled a tyrant to die is a tyrannicide**; whether magic spells are poison. The matter is clear enough, and everyone knows that slaying oneself is not the same as slaying someone else, **slaying a tyrant is not the same as compelling him to die**, spells are not the same as a deadly poison, but it is nevertheless asked whether they should be called by the same name.

Decl. Min. 345 (sermo): Duo efficienda sunt diviti, ut sit tyrannicida, ut dignior sit praemio. Ut tyrannicida sit non potest aliter efficere quam si κατὰ συναθροισμὸν dignum se praemio probaverit et pro eo sit ac si occiderit.

The rich man must do two things: show that he is the tyrannicide, and that he is worthier of the prize. He cannot make himself the tyrannicide in any way other than if, through accumulation of detail, he proves himself to be worthy of the prize and makes it as if he had slain the tyrant.

D. 9.2.7.3: Proinde si quis alterius inpulsu damnum dederit, Proculus scribit neque eum qui impulit teneri, quia non occidit, neque eum qui impulsus est, quia damnum iniuria non dedit: secundum quod in factum actio erit danda in eum qui impulit.

Therefore, if someone causes damage by pushing another person, Proculus writes that neither are liable, the one who pushed because he did not slay, the one who was pushed because he did not cause damage wrongfully; it follows that an *in factum* action should be given against the one who pushed.

Sen. 4.7: Tyrannidicae praemium. In adulterio deprehensus a tyranno gladium extorsit tyranno et occidit eum. Petit praemium. Contradicitur.

[Let there be a] prize for a tyrannicide. A man caught by the tyrant in adultery wrenched the sword from the tyrant and killed him. He seeks the prize. It is spoken against.

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