

rather an evidence of such deliberate malice. To allow to passion any extenuating quality, the proof must disclose the existence of an adequate exciting cause. The clemency of the law is not extended in favor of a class of mankind, whose minds and hearts, from habit and indulgence, prove the darker passions are apt to become too easily and dangerously excited upon slight provocation, and to resent slight affronts with disproportionate violence. The provocation which extenuates an act of homicide in consequence of the passion it excites must be of a character and degree which in a heart not naturally wicked and depraved would be reasonably calculated to produce the result. Mere words, however reproachful and insulting, are not a sufficient provocation to lessen the grade of crime of an act of homicide.

Any act of killing a human being, therefore, which from the facts and circumstances disclosed and affirmatively established by evidence in the cause, we cannot reasonably and fairly refer to the controlling impulses of sudden and violent passion, upon adequate provocation, and where in addition it is made to appear by the evidence that the killing was the result of design and intention of the person inflicting the mortal wound, is a wilful, deliberate and premeditated killing in the meaning of the statute, and is murder in the first degree.

On the other hand, unless the circumstances indicating deliberate malice and premeditation are affirmatively proved by the evidence in the cause, to have existed in the particular case we are examining, then the law presumes the killing to be murder in the second degree only. Murder in the first degree is distinguishable from murder in the second degree in this, and although each requires the same characteristic quality of deliberate malice, and although there is supposed the absence of proof of sudden and violent passion alike in each degree, yet in murder in the first degree the law requires that the facts and circumstances indicating deliberate malice and premeditation shall be shown and established as affirmative facts, deducible from evidence in the cause alone, and to be found by the jury. Whereas, in murder in the second de-