

A COMPARATIVE STUDY ON MURDER AND CULPABLE HOMICIDE

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ABSTRACT:

Murder and culpable homicide seems to be more similar to each other , but they are not synonymous to each other. Where Section 299 of Indian Penal Code defines Culpable homicide and Section 300 of Indian Penal Code deals with concept of Murder. These terms always snarls up the one who starts leaning these concepts. The major difference lies in the fact that in Murder the act is done with an intention of causing any bodily injury which itself is sufficient to cause death of a person. Whereas in case of a Culpable homicide, the act is performed with an intention to cause bodily injury which is likely to cause death of a person. The difference lies inoo the probability of death to occur in both cases, where both murder and culpable homicide is done with intention to cause bodily injury to a person. This concept is obscure and causes great chaos. in India, the heinous offences like killing a person may be termed as Murder, Culpable homicide and Non-Culpable homicide whereas in America, they are termed in degrees such as First degree Murder, Second degree Murder and Third degree Murder. This is depending upon the severity of the crime being committed.

KEYWORDS: Murder, Culpable homicide, intention, probability of death, obscure concept.

INTRODUCTION:

Section 299 of Indian Penal Code and Section 300 of Indian Penal Code deals with the concepts of Culpable homicide that doesn't amount to Murder. Both mean, to harm a person but there are certain things that makes Murder differ from Culpable homicide. Hence, the problem rises here in the fact that both Murder as well as Culpable homicide are concepts that relate to harming a person but the difference shall be decided on the basis of final outcome of a certain act.

Section 302 of Indian Penal Code deals with punishment for Murder where the convict of a Murder is punished with death or imprisonment of life and shall also be liable to fine. Murder is a cognizable

offence and it is non-bailable. And Section 304 of Indian Penal Code says about punishment for Culpable homicide not amounting to Murder. Where punishment for Culpable homicide is imprisonment for life or imprisonment for a period of 10 years and shall also be liable to fine. Culpable homicide is also a cognizable offence and it is a non-bailable offence as well.

Murder and Culpable homicide can be differentiated with certain points. Also there are certain ingredients to say that the act of a person or a suspect is said to constitute a Murder as well as a Culpable homicide that does not amount to Murder. The common ingredients are “actus reus” and “mens rea” where the person would have caused harm to a person by certain act. As above discussed, the difference lies in the knowledge of outcome of the act he or she does.

This paper aims to analyse the differences between Murder and Culpable homicide in detail which in addition will study the ingredients of Murder and also the ingredients of Culpable homicide too.

METHODOLOGY:

The present research is, descriptive and conclusive. The study was conducted on secondary source of data books, articles, journals, e-sources, theories and the relevant provision with decided case laws.

MURDER:

‘Murder’, this term traces its origin from the Germanic word ‘morth’ where it means ‘secret killing’. Murder means when one person is killed with an intent of another person with any malice or a forethought. It can also be said as a serious offence when compared to Culpable homicide. Moreover an offence will not amount to Murder unless it includes an offence which falls under the definition of culpable homicide. To broadly explain, we can say that Murder is a species where Culpable homicide is a genus.

Murder consists of four main components which can also be known as essentials of murder, before going in-depth with essentials, here are the core concepts discussed:

The Culpable homicide amounts to murder except in some cases, wherein the act which caused murder should be done with an intention to cause death or Such intention of causing death should cause a bodily injury to that person or If such intention of causing death causes a bodily injury and that bodily injury must have caused the death of that person or He must have the knowledge that the act he [21]has done is immediately dangerous in all probable sense to cause death or a bodily injury that is likely to cause death of a person. And it is a crime to commit an act, even after knowing that the act he does is a risk of causing death or such injury as discussed above[22].

TYPES OF MURDER:

There are six types of murder and they are explained as follows:

First degree murder - in this type, there is a highest level of planning is involved concerned to the victim

Second degree murder – here a definite intention to harm a person is involved but there is no necessary intention to kill a person.

Third degree murder – the death in this type, is caused as a result of any indifference or by any neglect of the offender

Fourth degree murder – this is used to charge a person who has helped the offender to cause a crime in a homicide

An Aggravated felony Murder – a non-participant victim when dies during the commission of an offence by the offender, the crime is considered as a felony murder

Justifiable homicide – this type is a murder but not a charge because it applies in self defence situations.

RULE OF FELONY MURDER:

The rule of felony murder is the exception to normal homicide rule. In normal circumstances, the prosecution side will prove the intention of the offender who acted with the intention of killing the person with a reckless indifference. However in this rule, the defendant can't be proved to be acted upon any intention to act recklessly against the victim but the only way to convict that offender is to prove that he was a part of such felony when occurred.

This rule allows the defendant who is the offender to be convicted with first degree murder. Even if the defendant is not the killer with any intention to do so, he is convicted for the killing a person during the dangerous felony. This rule will only apply to the cases where the act involves any act which is more dangerous which the society thinks to deter the individuals who are involved in those acts.

ESSENTIALS:

An offence is said to be murder when the act done by a person contains the following

Firstly the act should have an intention of causing death to a person - this is what said as culpable homicide which amounts to murder and this includes omission and the illegal omission as well. The act should be done with a clear intention to kill a person. The intention of a person should be in a conscious state where the person is aroused and he must have deliberately acted particularly to kill a person.

For an instance, if a man administers any deadly poison to another, then it is evident from this act that he has an intention to kill that person, where the offender knows the effect of his act clearly. Here the intention is related to the motive of his thought.

Secondly the offender has the knowledge that his intention to cause an bodily injury is likely to cause death of the person – according to section 300 of IPC, the intention to cause any bodily injury with the knowledge that such injury will cause death to the person, this will amount to Culpable homicide which would amount to Murder.

Here the knowledge is not a probability but he is well known that the act he does against a person is dangerous that would lead to death of such person. Hence, this is Culpable homicide which amounts to murder.

In a case, *Milmadhub Sirchar Vs. R* (1885), the deceased was kicked and beaten for several times by the offender even after the victim falling senseless. In this case, the court held that the murderer would have known that beating and kicking several times would surely result in the death of such person. Thus, he was accused of murder.

In other case, *Sheik Choollye Vs. R* (1865), a person got his head fractured after a man who stuck his head with a stick while he was asleep. The court held that the offender should have known the likelihood to causing death to that person. And thus, he was convicted for murder.

Thirdly if the act done by the offender is done with an intention to cause any bodily injury as it is sufficient in normal sense to result in death of that person – the subjective factor ends with the fact that in any ordinary course of action if a person acts to kill or harm a person with full knowledge of causing a bodily injury which is sufficient to cause death of such person. There is no need of any further enquiry in this context.

In a case, *Visra Singh Vs. State of Punjab* (1958), the Supreme Court ruled that when the offender fails to prove that the act was done accidentally or unintentionally, then the presumption is that he would have intended to act to cause a deadly injury to the victim of such crime.

CULPABLE HOMICIDE:

Homicide means killing a human being either by lawful means or by unlawful means. Whereby the lawful homicide comes under the ambit of general exceptions in Indian Penal Code under Section 76-106. And the next one is the unlawful homicide which comes under the category of offences against human body in which Section 299 of IPC specifically deals with Culpable homicide which does not

amount to Murder, then Section 300 of IPC talks about Murder and lastly Section 304A which deals with the concept of Death by negligence in which death would be caused by any rash or negligent act.

When dealing with concept of Culpable homicide, Section 299 of Indian Penal Code comes into play. This section says that whoever causes death to a person by doing certain act with any intention of causing death or with the knowledge of doing such act to cause death to a person is said to be an offence of Culpable homicide.

There are certain exceptions to this concept and they are to be broadly discussed below:

Culpable homicide when not amounts to murder – A Culpable homicide does not amount to murder is the offender acts without a self control by a sudden provocation and that act amounts to death of a person by mistake or by an accident. Here the provocation is not voluntary and such provocation should not be against anything in law or against a public servant who is in lawful exercise of his powers and also one should not be provoked against anything done in lawful exercise of any right of private defence.

A Culpable homicide does not amount to Murder when an act is done with an intention of good faith with effect of any private defence of person or private defence of property, where it exceeds the power which is given to him by the provisions of law and thus causing death of a person against whom he is exercising such right of private defence without any intention of causing more harm than necessary at that point of time for the purpose of private defence.

Culpable homicide will not amount to Murder when the offender, in case of being a public servant or a person serving and acting for the advancement of public justice or aid for public does any act that exceeds the powers which are given to him by law and by that act any death is caused which he is believed to be in good faith and to be lawful or necessary for the discharge of his duty without ill-will towards the person.

Culpable homicide does not amount to Murder when it is said to be committed without any premeditation or as a sudden fight in any heat of passion which is a result of a sudden quarrel and where the offenders taken any undue advantage or having acted upon in a cruel or unusual manner.

INGREDIENTS OR ESSENTIALS :

With reference to Section 299 of Indian Penal Code, there are certain essential ingredients of Culpable homicide. They are discussed as follows

The intention of causing death - The Intention of causing death to a person by the act is the question of fact which involves the knowledge of the act in prior time of acting in such way which Showa up the willingness or the intention to cause such impact on another person.

The intention of causing a bodily injury that likely to cause death – In order to prove that a crime amounts to Culpable homicide the intention of the offender to cause death of the victim was directly connected to the act performed by him.

The knowledge of the act which is likely to cause death – when an act is performed, the person who is performing the act he is presumed to be aware of the result of such act done. But such awareness may not be taken as the intention to do certain act which is an offence. This is of the fact because intention and awareness of knowledge are two different concepts.

CULPABLE HOMICIDE AND MURDER:

There are certain mechanism to differentiate the concepts of murder and culpable homicide. The difference is hidden with the terms of seriousness of the intention. In this regard the apex court has held that:

Once when a crime has occurred and to find whether it is a murder or culpable homicide, there are certain points to be observed. Firstly one who investigates the crime should establish the act done is murder. Then he should find whether the crime fulfills the ingredients of Section 300 of IPC are satisfied. Next the work is to find whether that crime is Culpable homicide which not amounts to murder or some other like crimes which attracts the exceptions to murder that is, private defence. At last, after finding these things, the crime would fit into a certain hole as said in the Pigeon hole theory and thus the punishment for that crime would bound and the offender would be punished according to the crime done by him.

The offence committed is a Culpable homicide when the injury done to a person or victim by the offender which is likely to cause death, it would cause murder when that injury sustained by the victim lead him to death in normal and ordinary course of action. The difference lies in the intensity of injuries

inflicted upon the victim. If the victim is found to be sustained with several injuries then the accused is convicted under Section 300 of IPC which is murder.

In case of a person stabbing another person with knife in chest or abdomen then it amounts to Pima facie that would amount to Murder. Where the intention of several persons is to inflict injuries to that person which ensures death of that person then this Act would amount to Murder under Section 300 of IPC. Similar to this, if an offender inflicts any injury by a terrific smash with a hammer in the head which resulted in breaking bones of head, it is clear and evident that he intended to cause murder to that person. Hence, it is the probability which determines whether it is Culpable homicide or murder

The difference between death possibility in both these concepts:

Every murder is committed after committing a Culpable homicide but every Culpable homicide does not amount to Murder. Murder is said to be an aggravated form of a Culpable homicide. The existence of one of the ingredient of Section 300 of IPC turns the crime into a murder where the exceptions to murder turns the crime into a Culpable homicide which does not amount to Murder.

In both the concepts there is intention which is mens rea involved, to kill a person. But whereas in certain case the offender will not be certain in death of the victim, in that case the offence done by the offender is a Culpable homicide but when the offender has certainty in his act will surely cause death of the victim and this will fit into the definition of murder. Because the degree of probability of death is high in murder whereas in Culpable homicide the degree of death is low.

SUGGESTIONS AND CONCLUSION:

Though both the concepts of murder and culpable homicide seem to be same in certain sense they differ in the aspect of degree of probability of death or it can be said as the seriousness of act of the crime. If the act done by the offender is either a heinous crime or it be a very dangerous act that causes only death to a person, without any other result it would aptly fall under the concept if Murder and not Culpable homicide. If such an act by the offender leaves the victim to be alive with some grievous hurt with chance of escaping death, then it is said to be a Culpable homicide which does not amount to murder.

There are growing threats to women and children by crimes like rape and murder. The recent reports say that these crime rates increase day by day. To resolve this, the legislations shall consider giving deterrent theory and punishments mentioned in it. Thus, the crime rates may get reduced by this

theory. When there is increase in punishments, there is a decrease in crimes. Murder is a crime for which the punishment may be prescribed as death penalty with implementation of the deterrent theory.

REFERENCE:

- [1] <http://www.shareyouressays.com/knowledge/legal-provisions-regarding-murder-under-section-300-of-indian-penal-code-1860/119092>
- [2] <http://www.lex-warrier.in/2015/11/ingredients-of-culpable-homicide-under-section-299/>
- [3] <http://nikkilogan.com.au/six-types-of-murder-and-three-types-of-manslaughter/>
<https://www.justia.com/criminal/offenses/homicide/felony-murder/>
- [4] <https://www.karenalexanderlaw.com/criminal-defense/articles/4-classifications-of-homicide/>
- [5] <https://www.quora.com/What-is-the-difference-between-a-culpable-homicide-and-an-attempt-to-murder>
- [6] <http://www.lawyersclubindia.com/articles/Distinction-between-Culpable-Homicide-and-Murder-8591.asp>
- [7] <https://timesofindia.indiatimes.com/india/Salman-Khans-hit-and-run-case-What-is-culpable-homicide/articleshow/47173696.cms>
- [8] <https://www.firstpost.com/india/delhi-drunk-driving-case-accused-charged-with-culpable-homicide-2833278.html> <https://www.indiatvnews.com/news/india/high-profile-murder-cases-with-family-members-as-killers-54047.html>
- [9] <https://www.financialexpress.com/india-news/crimes-in-india-rise-in-2018-as-compared-to-last-year-murder-rapes-see-a-spike-says-this-report/1080222/>
- [10] <https://www.slideshare.net/mobile/AhmadFarouqAmir/2-exceptions-to-section-300>
- [11] <http://www.shareyouressays.com/knowledge/guidelines-as-to-whether-the-offence-is-murder-or-culpable-homicide-not-amounting-to-murder-indian-penal-code-1860/111705>
- [12] https://criminal-law.freeadvice.com/criminal-law/violent_crimes/degrees.murder.htm
- [13] <https://legaldictionary.net/murder/>
- [14] <https://definitions.uslegal.com/f/felony-murder-rule/>
- [15] <https://legal-dictionary.thefreedictionary.com/Felony+Murder+Rule>
- [16] <https://www.scoopwhoop.com/inothernews/unsolved-murder-mysteries-india/#.xuuskkkgg>
- [17] <https://www.firstpost.com/india/teen-charged-with-culpable-homicide-in-mercedes-hit-and-run-case-is-a-repeat-offender-absence-of-a-new-motor-act-helped-him-get-away-2720628.html>

- [18] <https://www.hindustantimes.com/bollywood/inside-the-mind-of-raman-raghav-mumbai-s-serial-killer-of-the-60s/story-LaA01Mt0wrAM0ZprCoLYJ.html>
- [19] The Indian Penal Code, 5th edition, Prof. T. Bhattacharya
- [20] The Indian Penal Code, 14th edition, Surya Narayan Mishra & Sanjay Mishra.
- [21] Dr.Lakshmi T and Rajeshkumar S “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25, March 2018.
- [22] Trishala A , Lakshmi T and Rajeshkumar S,“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30, April 2018.

