

CULPABLE HOMICIDE ARE NOT AMOUNTING TO MURDER

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ABSTRACT

Chapter XVI- section 299 to 304 dealt with culpable homicide and murder. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Ingredients of S.299

1. With the Intention to causing death.
2. With the intention of causing such bodily injury as is likely to cause death.
3. With the knowledge that the offence likely by such act to cause death.

Section 299 defined Culpable Homicide in simple way. Culpable homicide are of two kinds:

- I. Culpable homicide amounting to murder.
- II. Culpable homicide not amounting to murder.

Culpable homicide is the Genus, and murder is the Species. All murder are culpable homicide but not vice-versa, it has be held in Nara singh Challan v/s Sate of Orrisa (1997). Section 299 cannot be taken to be definition of culpable homicide not amounting to murder. Culpable homicide is the genus, section 300 defines murder which means murder is the species of culpable homicide. It is to be noted here that culpable homicide not amounting to murder is not defined separately in IPC, it is defined as part of Murder in the section 300 of IPC.

Section 300 – Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Culpable Homicide is not amounting to murder:

Exception 1 to 5 of s300 of IPC defines conditions when culpable Homicide is not amounting to murder

INTRODUCTION:

Some crimes are creations of statutes. These are called statutory offences. Other crimes come from years of judicial decisions together with legal principles founded on Institutional Writers. These are called common law offences. Murder and culpable homicide are both common law offences. Most common law offences require two essential elements before there can be a conviction. There must be a guilty act (called actus reus) and a guilty mind (mens rea). The degree and extent of the guilty mind can vary from crime to crime. For a conviction for any common law offence however there must be some degree of guilty mind (mensrea).

Homicide means the killing of a human being by a human being¹. Homicide is the highest order of bodily injury that can be inflicted on a human body. Since it is considered as a most serious harm which may be inflicted upon another person, it bags maximum punishment. Under Indian law and US law imposes death penalty² and in English law proposes mandatory life imprisonment. However in every case of homicide the culprit is not culpable. There may be cases where a law will not punish a man for committing homicide. For example, death caused in exercise of self defence, by reason of mistake of fact, bonafide execution of law etc. Likewise, if death is caused without any criminal intent or by an accident or misfortune, the man will be excused from criminal liability. On the other hand if the killing is not justified either by law or facts the accused will be prosecuted and punished under law. Hence homicide may be lawful or unlawful.

Lawful homicide may be classified as excusable and justifiable homicide³. Unlawful homicide may be divided into three categories, culpable homicide, cause death by rash and negligent driving and suicide. Under Indian law culpable homicide is classified into two; culpable homicide amounting to murder and culpable homicide not amounting to murder. Under English law there are several homicide offences: murder, manslaughter (both voluntary and involuntary) infanticide, death by rash driving and suicide⁴.

Learning out Come

This module will enable the learners to :

- i. Understand culpable homicide
- ii. Difference between culpable homicide and murder
- iii. To understand the degrees of intention in culpable homicide

I'm of the study

- To study about when culpable homicide not amounting to murder
- To study about the punishments
- To study about the critical impact of culpable homicide
- To analyse weather all murder comes under culpable homicide

RESEARCH METHODOLOGY

The method used in this research paper is doctrinal method. The present study demands an analytical and descriptive type of research. The data I collected for this research is secondary data from various sources. The sources I took are books, websites, references, articles, journals.

SUGGESTIONS

All murder are culpable homicide but not all culpable homicide are not murder. In both the cases there is intention to cause death. In both the cases there is killing of a human being.

HOMICIDE

From the earliest times has fascinated the human mind and has always been considered as the most heinous of offences. But then, not all cases of homicide are culpable as all systems of law do distinguish between lawful and unlawful homicides.¹ Further, with the growth of the concept of criminal responsibility, the laws of most countries admit gradations of unlawful homicides according to their heinous nature in order to fix suitable punishment for each. These distinctions are recognized by the Indian Penal Code as well. Under the Penal Code punishable homicide may be murder, culpable homicide not amounting to murder or only homicide by rash and negligent act. Further in some cases the accused may be punished for a lesser offence (e.g., hurt) even though death has resulted, if the injury resulting in death though voluntarily caused was not likely to cause death. For example, A gives B a blow and B, who suffers from an enlarged spleen of which A is not aware, dies as a result. A is not guilty of culpable homicide as his intention was merely to cause an injury that was not likely to cause death.

The difference between murder and culpable homicide not amounting to murder is based upon very subtle distinction of intention and knowledge involved in these crimes. Intention is a state of mind and it can be proved only by its external manifestations. In several cases intention to kill was held to be evident from the facts

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Culpable Homicide is not amounting to murder:

Exception 1 to 5 of s300 of IPC defines conditions when culpable Homicide is not amounting to murder:

1. I. Provocation.
2. II. Right of private defense.
3. III. Public servant exceeding his power.
4. IV. Sudden fight.
5. V. Consent.

Exception-1-culpable homicide is not amounting to murder if the offender, whilst deprive of self control by grave and sudden provocation, caused the death of the person who gave the provocation or causes the death of any person by mistake or accident.

The above exception is subject to the following provisions:-

1. The provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
2. The provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
3. 3. The provocation is not given by anything done in the lawful exercise of the right of private defense.

Provocation must be grave: upheld in Venkatesan v/s State of Tamil Nadu (1997)

1. The test of grave and sudden provocation is whether a reasonable men belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to loss his self control.
2. In India words and gestures may also, under certain circumstances, cause grave and sudden provocation.

3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

Culpable homicide

is a categorisation of certain offences in various jurisdictions within the Commonwealth of Nations which involves the illegal killing of a person either with or without an intention to kill depending upon how a particular jurisdiction has defined the offence.

Culpable Homicide under section 299 –

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Ingredients -

1. Intention of causing death
2. Intention of causing such bodily injury as is likely to cause death
3. Knowledge that the act done is likely to cause death.

Section 300

Culpable homicide is Murder

if the act by which the death is caused is done with the intention of causing death, or-
 2ndly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. or-
 3rdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-
 4thly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

Ingredients -

1. Intention of causing death
2. Intention of causing such bodily injury which is likely to cause death of the person, and this is known to the offender

3. Intention to cause such bodily injury as is sufficient in ordinary course of nature to cause death of a person

4 Knowledge that the act done is sufficiently dangerous that in all probabilities it must cause death, or cause such bodily injury which is likely to cause death, and the act is done without any excuse to cause death or such bodily injury.

Punishment for culpable homicide not amounting to murder

Whoever commits culpable homicide not amounting to murder shall be punished with 104[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Classification u/scheduled 1crpc

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

Section 304 of the Code provides punishment for culpable homicide not amounting to murder. Under it there are two kinds of punishment applying to two separate degrees of culpable homicide depending upon: (i) intention to cause death or bodily injury likely to cause death under Part-I (i.e., para-1) and (ii) knowledge that the act is likely to cause death under Part-II (para-2). For conviction of the offence of culpable homicide not amounting to murder under Section 204, Part-I, the following two circumstances must be proved, viz., the act by which the death is caused is done: (a) with the intention of causing death; and (b) of causing such bodily injury as is likely to cause death. Under Part- 1 of Section 304, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine.

ADVERTISEMENTS:

If the act is done with knowledge that is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either

description for a term which may extend to ten years, or with fine, or with both under Part-II of Sec. 304 of the Code.

The offence under Section 304 of IPC is cognizable, non-bailable and triable by Court of Session. In *Shanmugam v. State of T.N.* [AIR 2003 SC 200], the accused stabbed the deceased, over a petty quarrel, with a spear in the abdomen and chest. The victim died after a week of septicaemia. The court imputed to the accused the intention of causing severe injury. He was punished under Part-I of Section 304.

In *V. Sreedharan v. State of Kerala* [AIR 1992 SC 754], where the accused, as a result of provocation caused in the heat of passion upon a sudden quarrel, chased the deceased to some distance and then gave the single fatal blow, it was held that the whole incident was a continuous sequence. Hence the conviction of the accused was shifted from under Section 300 to under Section 304, Part-I.

CONCLUSION

The bare reading of the section makes it crystal clear that the first and the second clause of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court.

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