

CULPABLE HOMICIDE AND MURDER – THE OVERLAPPING OFFENCES

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INTRODUCTION

Homicide is the killing of a human being by another human being. It is either lawful or unlawful. As per the Indian Penal Code, 1860³ (hereinafter, ‘the IPC’), lawful homicide includes several cases falling under the ‘General Exceptions’⁴. These include:

1. Death caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution.⁵
2. Death caused justifiably, i.e. to say,
 - a. By a person, who is bound, or by mistake of fact in good faith believes himself bound, by law.⁶
 - b. By a judge when acting judicially in the exercise of power which is, or which in good faith he believes to be, given to him by law.⁷
 - c. By a person acting in pursuance of the judgment or order of a Court of Justice.⁸
 - d. By a person who is justified or who by reason of a mistake of fact, in good faith, believe himself to be justified by law.⁹
 - e. By a person acting without any criminal intention to cause harm and in good faith, for the purpose of preventing or avoiding other harm to person or property.¹⁰
 - f. Where death is caused in the exercise of the right of private defence of person¹¹ or property¹².

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³ Act 45 of 1860.

⁴ *Ibid.*, Chapter IV.

⁵ *Ibid.*, s.80.

⁶ *Ibid.*, s.76.

⁷ *Ibid.*, s.77.

⁸ *Ibid.*, s.78.

⁹ *Ibid.*, s.79.

¹⁰ *Ibid.*, s.81.

3. Where death is caused by a child¹³, or by a person of unsound mind¹⁴, or an intoxicated person¹⁵.
4. Where death is caused unintentionally by act done in furtherance of good faith for benefit of the person killed, when-
 - a. He or, if a minor or lunatic, his guardian, has expressly or impliedly consented to such act¹⁶; or
 - b. Where it is not possible for the person killed to signify his consent or where he is incapable of giving consent, and has no guardian from whom it is possible to obtain consent, in time for the thing to be done with benefit.¹⁷

Unlawful homicide includes, 'Culpable Homicide not amounting to murder'¹⁸, 'Murder'¹⁹, 'Rash or negligent act'²⁰ and 'Suicide'²¹.

CULPABLE HOMICIDE

Culpable homicide under Section 299 has certain ingredients. To attract this section, death of a human being must have been caused by doing an act, (i) with the intention of causing death; or (ii) with the intention of causing such bodily injury as is likely to cause death; or (iii) with the knowledge that such act done is likely to cause death. 'Knowledge' and 'intention' must not be confused. The provision in defining first two categories does not deal with the knowledge whereas it does in relation to the third category. It would also be relevant to bear in mind the import of the terms "likely by such act to cause death". Herein "likely" would mean probably and not possibly. Injury is likely to cause death, when the same is sufficient in the ordinary course of nature to cause death which in turn would mean that death will be the most probable result.²² "likely"- The accused was convicted of an offence of behaving in a manner likely to endanger the safety of an aircraft by persistent use of his mobile phone. His

¹¹ *Ibid.*, s.100.

¹² *Ibid.*, s.103.

¹³ *Ibid.*, ss.82,83.

¹⁴ *Ibid.*, s.84.

¹⁵ *Ibid.*, s.85.

¹⁶ *Ibid.*, ss.87,88.

¹⁷ *Ibid.*, s.92.

¹⁸ *Ibid.*, s.299.

¹⁹ *Ibid.*, s.300.

²⁰ *Ibid.*, s.304A.

²¹ *Ibid.*, ss. 305,306.

²² *Kesar Singh v. State of Haryana*, (2008) 15 SCC 753.

appeal against conviction failed since the word “likely” was correctly construed in its statutory context as meaning “a real risk not to be ignored”.²³ “with the knowledge that he is likely by such act to cause death”- While it may be difficult to delve into the mind of the attacker to decode his intention, knowledge of the consequences of his actions can certainly be attributed to him. The appellant had knowledge that his actions are likely to cause death. He would, therefore, be guilty of culpable homicide not amounting to murder and liable to be sentenced under Part II of Section 304 IPC. Where the accused inflicted injury by piercing a sharp edged weapon into the heart of the victim, resulting in his death and the witnesses also testified that the accused uttered the words before inflicting the injury “of doing away with him”, the court said that the intention to kill the deceased could be inferred.²⁴

Clauses 1 and 2- The practical difference between the two phrases is expressed in the punishment provided in section 304. But the phrase, ‘with the knowledge that he is likely by such act to cause death’ includes all cases of rash acts by which death is caused, for rashness imports a knowledge of the likely result of the act which the actor does in spite of the risk. Both the expressions “knowledge” and “intent” in Section 299 postulate existence of a positive mental attitude which is of different degrees. Further, such mental attitude towards consequences of conduct is one of knowledge and intention. If the death of the deceased is caused in any of the circumstances envisaged in Section 299, offence of culpable homicide is said to have been committed.²⁵

‘Knowledge’ v. ‘intention’- ‘Knowledge’ is an indication of a bare state of conscious awareness of some facts in which human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself. Intention need not necessarily involve premeditation. Existence of such an intention or not is a question of fact.²⁶

Some judicial pronouncements- Where the facts were that the acts of the accused was in the category of a rash act which brought about dashing against the victim and ultimately in his death. There appeared to be no intention or knowledge of bringing about a fatal consequence.

²³ *R v. Whitehouse, The Times*, Dec. 10, 1999 (CA).

²⁴ *Katta Ramadu v. State of A.P.*, AIR 1997 SC 2428.

²⁵ *Jagriti Devi v. State of H.P.*, AIR 2009 SC 2869.

²⁶ *Supra* Note 20.

The liability was under Section 304A.²⁷ The accused, while engaged in a verbal wrangle with his wife, struck her a blow on the left side with great force, the effect of which was that she vomited and bled from the nose, and within an hour died. The death was caused by spleen rupture. It was held that he was guilty of grievous hurt only.²⁸

PUNISHMENT FOR CULPABLE HOMICIDE

Section 304 provides punishment for offence of culpable homicide not amounting to murder. Under this there are two kinds of punishments applying to two different circumstances:

1. If the act by which death is caused was done with the intention of causing death or such bodily injury as is likely to cause death, the punishment is life imprisonment or imprisonment of either description for a term which may extend to 10 years and fine.
2. If act is done with knowledge that it 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 10 years or with fine or both.

Section 304 Part I v. Section 304 Part II- Linguistic distinction being apparent, there are two other distinctions as well. One in relation to the punishment, while other is founded on the intention of causing such act, without any intention but with the knowledge that the act is likely to cause death. It is neither advisable nor possible to state any fixed criterion that would be universally applicable to all such cases. Every case must be decided on its own merits. The Court has to perform the delicate function of applying the provisions of IPC to the facts of the case with a clear demarcation as to under which category of cases, the case at hand falls and accordingly punish the accused.²⁹

²⁷ *Satpal v. State of Haryana*, (2004) 10 SCC 794.

²⁸ *Empress v. Idu Beg*, (1881) ILR 3 All 776.

²⁹ *Rampal Singh v. State of U.P.*, (2012) 8 SCC 289.

MURDER

An offence cannot amount to murder unless it is a 'culpable homicide'. Section 300 of the IPC merely points out the cases in which culpable homicide is murder. To render culpable homicide murder the case must come within clauses 1, 2, 3, or 4 of Section 300 and must not fall within the five exceptions under the Section.

Some judicial pronouncements- When several persons assaulted the victim with various weapons but death of the victim was caused due to head injury caused by the accused whose lone conviction for murder was held to be proper.³⁰ Owing to dispute between two brothers over the undivided family, one of the brothers caused bleeding injuries to his brother with cart-peg resulting in his death. The eye-witnesses deposed that the assailant categorically declared that unless the deceased was killed, they could not get rid of the evil in the house. This established his intention to kill. His conviction for murder was not interfered with.³¹

Punishment for Murder

Section 302 provides the punishment for the offence of murder under Section 300. The punishment prescribed is death or imprisonment for life and fine. In such case, the court has no power to impose a lesser sentence once the offence is proven.

Constitutionality of death penalty- The constitutional validity of death sentence was challenged in *Jagmohan Singh v. The State of U.P.*³². The Constitutional Bench while upholding the constitutional validity of death penalty examined whether total discretion can be conferred on the judges in awarding death sentence, when the statute doesn't provide guidelines on how to exercise the same. The decision in Jagmohan case was rendered when the incumbent Code of Criminal Procedure, 1973³³ (hereinafter, 'the CrPC') was not in existence. However, with the coming of the CrPC, the aforesaid provision substantially changed with the introduction of a reformed sentencing structure under the Code. In *Rajendra Prasad v. State of U.P.*³⁴, it was held that special reasons mandatory for imposing death penalty must relate not to the crime but the criminal. It could be awarded only if the security of the state and society, public order in the interest of the general masses compelled that course.

³⁰ *Bhakua Kampa v. State of Orissa*, 1996 CrLJ 350 (Ori).

³¹ *Chinnam Chandraiah v. State of AP*, AIR 1994 SC 959.

³² (1973) 1 SCC 20.

³³ Act 2 of 1974.

³⁴ (1979) 3 SCR 646.

Legality of capital punishment- Though death sentence has to be awarded in “rarest of the rare cases”³⁵, yet the Apex Court has held that in no uncertain terms that capital punishment is legal and is not violative of Articles 14, 19 and 21 of the Constitution.³⁶ It has further been held that the mode of executing death sentence by hanging as in Section 354(5) of CrPC is not violative of Article 21 as it is not a cruel, barbarous or degrading method.³⁷

Doctrine of transferred malice

Section 301 of the IPC is a specific provision. It lays down that if a person causes death, whose death he neither intends, nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been, if he had caused the death of the person, whose death he intended or knew himself to be likely to cause.³⁸ For instance, blow aimed at the intended victim, if alights on another, offence is same as it would have been if the blow had struck the intended victim.³⁹ This provision under IPC embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under this section, if X intends to kill Y but kills Z whose death he neither intends nor knows himself to be likely to cause, the intention to kill Z is, by law attributed to him.⁴⁰

Some judicial pronouncements- In a scuffle between accused persons and the complainant’s party, one member on the side of the accused fired a shot at a particular member from the complainant’s side but the shot actually hit another person and he died. The court held that the doctrine of transferred malice was attracted. The act done was covered by Section 304 and he was liable to be convicted under Part II of that section, though the deceased was neither aimed at nor intended to be harmed by the accused.⁴¹ The accused with the intention of killing X, on whose life he had effected some insurance, gave him poisoned sweetmeat. X ate a portion of it and threw the rest away which was picked by the 8-year old daughter of accused’s brother-in-law, without the knowledge of the accused. She ate it and gave some to

³⁵ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

³⁶ *Ibid.*

³⁷ *Deena@Deena Dayal Etc. Etc v. Union of India and Ors.*, AIR 1983 SC 1155.

³⁸ *Dan Behari v. State of U.P.*, 2003 CrLJ 4959.

³⁹ *Viswanath Pillai v. State of Kerala*, 1994 CrLJ 1037.

⁴⁰ *Shankarlal Kachrabhai and Others v. State of Gujarat*, AIR 1965 SC 1260.

⁴¹ *Kashi Ram v. State of M.P.*, AIR 2001 SC 2902.

another little child. The two children died from the effect of poison but A eventually recovered. It was held that the accused was guilty of murder.⁴²

THE DISTINCTION BETWEEN CULPABLE HOMICIDE AND MURDER – THE THIN LINE

Culpable homicide is the genus of which murder is a species. All murders are culpable homicide but the vice-versa is not true. Ever since the IPC was enacted, this distinction and as to what case will fall under which category is a perennial question with which courts are often confronted. On a plain reading of the relevant provisions of the Code, it appears that the given cases can be conveniently classified into two categories but when it comes to actual application, the courts are often confronted with this dilemma. This confusion often emerges when it is difficult to decipher from the evidence whether the intention was to cause merely bodily injury which would not make out an offence of murder or there was a clear intention to kill the victim making out a clear case of an offence of murder.⁴³ The most confusing aspect is ‘intention’ as in both the provisions the intention is to cause death. Hence, you have to consider the degree of intention of offenders. If the person is killed in cold-blood or with well-planned then it is murder because the intention to kill is in high degree. On other hand, person is killed without pre-planned, in sudden fight or in sudden anger because of somebody’s provocation or instigation, then such death is called the culpable homicide. Hence, whether the act done is culpable homicide or murder is a question of fact.

The distinction between the two was aptly set forth by Melvill, J., in *Reg v. Govinda*⁴⁴ and by Sarkaria J., in *State of A.P. v. R. Punnayya*⁴⁵, “In the scheme of the Penal Code, ‘culpable homicide’ is genus and ‘murder’ its specie. All ‘murder’ is ‘culpable homicide’ but not vice versa. Speaking generally ‘culpable homicide’ sans ‘special characteristics of murder’ is culpable homicide not amounting to murder. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the IPC practically recognises three degrees of culpable homicide. The first is what may be called, culpable homicide of first degree. This is the gravest form of culpable homicide which is defined in section 300 as ‘murder’. The second may be termed as ‘culpable homicide of the second degree’. This is

⁴² *Emperor v. Mushnooru Suryanarayana Murthy*, (1912) 22 MLJ 333; *Ballan v. The State*, AIR 1955 All 626.

⁴³ *Ajit Singh v. State of Punjab*, (2011) 9 SCC 462.

⁴⁴ (1877) ILR 1 Bom 342.

⁴⁵ AIR 1977 SC 45.

punishable under the 1st part of Section 304. Then, there is ‘culpable homicide of the third degree’. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under Part II of Section 304.”

The distinction is laid down below⁴⁶:

Section 299	Section 300
<p>A person commits culpable homicide if the act by which the death is caused is done-</p> <p><u>Intention</u></p> <p>(a) With the intention of causing death; or</p> <p>(b) With the intention of causing such bodily injury as is likely to cause death; or</p> <p><u>Knowledge</u></p> <p>(c) With the knowledge that the act is likely to cause death.</p>	<p>Subject to certain exceptions culpable homicide is murder of the act by which the death is caused is done-</p> <p><u>Intention</u></p> <p>(a) With intention of causing death; or</p> <p>(b) With the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused; or</p> <p>(c) 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</p> <p><u>Knowledge</u></p> <p>(d) With the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse or incurring the risk of causing death or such injury as is mentioned above.</p>

⁴⁶ *Ibid.*

Some judicial pronouncements- Where the deceased, an old man with an enlarged and flabby heart, was lifted by the accused during a quarrel and thrown on the ground from some distance with sufficient force and the deceased got his ribs fractured and died of a rupture of the heart, it was held that the offence fell under Section 325 and not under Part II of Section 299, as the accused had no intention or knowledge to cause death.⁴⁷ Where the accused stabbed the deceased in a sudden incident during an election fever which resulted in his death four days later in hospital where he had been operated upon in a bid to save his life. There was no evidence that the accused intended to cause death or cause such bodily injury as was sufficient in ordinary course of nature to cause death. It was held that the case fell within clause (b) of Section 299 but did not fall within clause 3 of Section 300, and as such his conviction under Section 302 was set aside and he was convicted under Section 304, Part I.⁴⁸ Similarly, where a young boy of around 18 ½ years old gave only one *kassi* blow to the deceased following an altercation between his father and the deceased, which resulted in latter's death six days later, it was held that it cannot be said that the intention was to cause an injury which was sufficient in ordinary course of nature to cause death within the meaning of Section 300(3) and conviction was changed from Section 302 to Section 304, Part II.⁴⁹ Where a man lifted a four year old child and threw him on the ground, thereby leading to his death, it was held that knowledge of death under Section 299 could safely be attributed to him and he was therefore liable under Section 304, Part II.⁵⁰

In a sudden quarrel, the accused, a young man, administered a single knife blow on the chest of the deceased causing his death, it was held that the case did not fall under clauses 1 and 2 of Section 300 but since he had knowledge that death might follow, he was guilty under Section 304 Part II.⁵¹ A police officer was punished under Part II of this section with 7 years rigorous imprisonment for causing death in custody by resorting to third-degree methods.⁵²

It has been held that a person exceeding the right of private defence is punishable under Section 304, Part I and not under Section 302.⁵³

Intention is not the only criteria to look into while convicting a person for on offence of murder. It must be accompanied with necessary knowledge that such act done will cause

⁴⁷ *Putti Lal v. State*, 1969 CrLJ 531.

⁴⁸ *Jayaraj v. State of Tamil Nadu*, AIR 1979 SC 1519.

⁴⁹ *Randhir Singh v. State of Punjab*, AIR 1982 SC 55.

⁵⁰ *Sarabjeet Singh and Others v. State of U.P.*, AIR 1983 SC 529.

⁵¹ *Jagtar Singh v. State of Punjab*, AIR 1983 SC 463.

⁵² *Gauri Shanker Sharma v. State of U.P.*, AIR 1990 SC 709.

⁵³ *Sundaramurthy v. State of Tamil Nadu*, AIR 1990 SC 2007.

death of the deceased. Hence, intention along with the necessary knowledge is the most important ingredient of murder under IPC. Hence, even if the act does not cause death of the victim but was done by eliminating all probabilities whereby the victim could have been saved, the offence of murder is attracted.

In a case, where a married woman, aged 25, met a sudden death in her matrimonial home. Her letters and complaints spoke of harassment. The medical report put the cause of death as spleen rupture and rupturing of pancreas caused by external pressure. Her husband, who was attempting to escape by resorting to the theory of death by poisoning, was found guilty and his conviction under Part III of this section and a sentence of 5 years rigorous imprisonment was upheld by the Apex court. Though he might not have intended to cause death, he did cause an injury about which he must have known that it might cause death.⁵⁴ Where one of the accused came forward and delivered a blow on the head of a man which proved to be fatal, the Apex court held that this act did not attract clause 1 or 3 of Section 300 because the accused were not armed with any deadly weapon and the head injury was caused by a farmer with an agricultural instrument which he happened to carry with him. Conviction of accused causing head injury under Section 300 was altered to one under Section 304, Part II.⁵⁵

The Court will not instantly give death penalty in every case that falls under section 300. The provision for discretion has been given so that every case can be looked through the prism of its facts and circumstances and not only through the provisions. It must be noted that provisions in law are merely directional and provide classification of offences. If they are started being applied *verbatim*, then the whole purpose of deterring crimes and reforming the society from the clutches of such crimes would be refuted. A humane approach must be taken always while punishing individuals even for the most heinous crimes.

Where a person killed his wife under grave and sudden provocation, a lenient punishment of two years imprisonment was awarded to him taking into consideration the welfare of his children.⁵⁶ Where the accused delivered a single stab blow on the chest of his wife out of sheer frustration, momentary impulse and anger, on her refusal to oblige him with sex without any intention to cause her death, his act was held to be culpable homicide not

⁵⁴ *S.D. Soni v. State of Gujarat*, AIR 1991 SC 917.

⁵⁵ *Pularu v. State of M.P.*, AIR 1993 SC 1375.

⁵⁶ *State of Karnataka v. R. Varadraju*, (1995) 2 CrLJ 1429 (Kant).

amounting to murder and his conviction was altered from Section 302 to Section 304, Part I.⁵⁷

A pregnant woman who went to draw water from a well was stopped from doing so by several persons armed with 'lathis' and started abusing her. One of the accused gave a 'lathi' blow on her head while another kicked her abdomen, as a result of which she died on the spot. Her son who tried to rescue her was also injured. Looking at conduct of the accused it couldn't be said that they had common object to kill the woman or cause injury to her son. Both the assailants were convicted under Part II of Section 304 and the rest were acquitted.⁵⁸

CONCLUSION

'Culpable homicide' and 'Murder' are two overlapping yet distinct offences. The distinction between the two is in the 'intention' and 'knowledge' of the culprit in committing the crime.

Though on plain reading of the provisions, it appears that the cases can be conveniently classified into the two categories but when it comes to the actual application of these two sections in a given case, the courts are often confronted with the dilemma of culpable homicide and murder.

A general line, however, cannot be drawn. Hence, every case must be looked into depending on the facts and circumstances. Hence, the role of the judge becomes very important. One cannot expect him or her to be precise all the time as a human is meant to err but a judge deciding such a sensitive case must leave no stone unturned in analysing all the nuances of the case and then come to any conclusion. Since "A person is what he thinks", the courts needs to spy the minds of the accused and by applying certain logics and theories with parameters determine as to whether the person intended to cause the death. Such determination has to be arrived at after extensive observation.

Since there is no radical difference between the two offences except the degree of intention and knowledge (being higher in case of murder), a common line of distinction cannot be drawn. Hence, it will depend from case to case. As noted above, it's the judge who plays the most crucial role in such cases. Hence, it is quite obvious that such decisions do attract lot of scrutiny by lawyers, judges, law scholars and professors, as it's all about the facts of the case

⁵⁷ *Ghansham v. State of Maharashtra*, 1996 CrLJ 27 (Bom).

⁵⁸ *Roop Ram v. Stat of U.P.*, 1995 CrLJ 3499 (All).

and nothing else. Since it's the facts that will determine the gravity of the offence, the burden of presenting good arguments before the court will be borne by the lawyers representing the two sides, as to how well articulate and precise are there arguments in support of their clients, irrespective of which side they are representing. Also, another important postulate would be as to how the law or Code dealing with the crimes regards the two offences as distinct and what the criterion for distinguishing them is.

