

CHAPTER XVI

OFFENCES AFFECTING HUMAN BODY (Ss. 299-377)

OFFENCES AFFECTING LIFE (Ss. 299- 311)

Homicide – Killing of a human being by a human being.

It is of two kinds:

(A) Lawful – includes cases falling under the General Exceptions (Chp. IV)

(B) Unlawful – includes -

- i. culpable homicide not amounting to murder (S. 299),
- ii. murder (s. 300)
- iii. rash or negligent homicide (S. 304A)
- iv. suicide (Ss. 305, 306)

S. 299- culpable homicide	s. 300 - murder
<p>A person commits culpable homicide if he causes death by doing an act -</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>(c) with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.</p>	<p>A person commits murder if he caused death by doing an act-</p> <p>(1) with the intention of causing death, or-</p> <p>(2) with the intention of causing such bodily injury as the offender <i>knows to be likely</i> to cause the death of the person to whom the harm is caused, or-</p> <p>(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted <i>is sufficient in the ordinary course of nature to cause death</i>, or-</p> <p>(4) with the knowledge that it is so <i>imminently dangerous</i> 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</p>

	incurring the risk of causing death or such injury as aforesaid).
<p><i>Expln 1.</i>—A person who causes bodily injury to another who is labouring under a disease or bodily infirmity, and thereby accelerates the death of that other, is guilty of homicide</p> <p><i>Expln 2.</i>—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.</p> <p><i>Expln 3.</i>—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.</p>	

Illustrations to S. 299 (Culpable homicide)

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Illustrations to S. 300 (Murder)

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exceptions to S. 300 (Murder)

Exception 1- Culpable homicide is not murder

(a) if the offender, whilst deprived of the power of self-control

(b) by grave and sudden provocation,

(c) causes the death of

- (i) the person **who gave** the provocation or
- (ii) any other person by mistake or accident.

This exception is **subject to the following exceptions:**

1.- That the provocation should not be voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

2.- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of his powers.

3.- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2- Culpable homicide is not murder

(i) if the offender, in the exercise in **good faith** of the right of private defence of person or property,

(ii) exceeds the power given to him by law and causes the death of the person

(iii) against whom he is exercising such right of defence

(iv) without premeditation, and

(v) without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3- Culpable homicide is not murder -

- (i) if the offender, being a **public servant exceeds the powers** given to him by law, and
- (ii) causes death by doing an act which he, in **good faith**, believes to be lawful and
- (iii) necessary for the due discharge of his duty and without ill-will towards the person whose death is caused.

Exception 4.- Culpable homicide is not murder if it is committed

- (i) without premeditation
- (ii) in a sudden fight in the heat of passion upon a sudden quarrel and
- (iii) without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

- In short, culpable homicide is not murder if the death is caused –
 1. under grave and sudden provocation
 2. by any person exceeding his right to private defence
 3. by a public servant exceeding his lawful powers
 4. in a sudden fight without premeditation

5. by consent of a person above 18 years of age.

Difference between Ss. 299 and 300

Earnest efforts of distinction were made in the following cases:

Queen Empress vs Gora Chand Gopi (1866) 5 WR 45 by Peacock J.

R vs Govinda, (1876) Bom. by Melvill, J.

Barakatulla vs R, (1887) PR 62 by Plouden J.

Indar Singh vs King Emperor, (1933) Lahore by Dilip Singh J.

St. of AP vs R. Punnayya, AIR 1977 SC 45 by Sarkaria, J.

***R vs Govinda* – by Melvill, J.**

Distinguished in the following manner on the basis of above mentioned comparative table:

- (1) **With the intention of causing death.** – Clause (a) of S. 299 and clause (1) of S. 300 have exactly the same language. Therefore, intentionally causing of death is always a murder.
- (2) **With the intention of causing such bodily injury as**
 - Clause (b) of S. 299 corresponds with clauses (2) and (3) of S. 300.
 - Under clause (b) of S. 299 and (3) of S. 300, the offence is culpable homicide, if the bodily injury intended to be inflicted is *likely* to cause death; it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. It is a question of degree of probability.
 - E.g., a blow from the fist or a stick on the vital part may be likely to cause death; wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.
- (3) **Clause (b) of S. 299 and Clause (2) of S. 300**
 - The distinguishing feature of *mens rea* under clause (2) is the *knowledge* possessed by the offender regarding the particular victim being in such a peculiar condition of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health condition.
 - The intention to cause death is not essential requirement under clause (2). Only the intention of causing the bodily injury coupled

with the offender's knowledge of the likelihood of such injury causing the death of the particular victim is sufficient.

- Clause (b) of S. 299 does not postulate any such knowledge on the part of the offender.

(4) The act is likely to cause death

- Clause (c) of S. 299 and clause (4) of S. 300 both require knowledge of the probability of the act causing death.
- Whether the offence is culpable homicide or murder depends upon the degree of risk to human life.
- If the death is likely result, it is culpable homicide; if it is the most probable result, it is murder.

St. of AP vs R. Punnayya, AIR 1977 SC 45 by Sarkaria, J.

- 'Culpable homicide' is genus and 'murder' is its specie. All murder is culpable homicide but not *vice versa*.
- 'Culpable homicide' sans 'special characteristics of murder' is culpable homicide not amounting to murder.
- An offence cannot amount to murder unless it falls within the definition of culpable homicide, but it may amount to culpable homicide without amounting to murder.
- All acts of killing done with the intention to kill, or to inflict bodily injury sufficient to cause death, or with the knowledge that death must be the most probable result are *prima facie* murder;
- While those committed with the knowledge that will be a *likely* result are culpable homicide not amounting to murder.
- Where the act done is not 'with the intention of causing death' (clause 4, s.300) the difference between culpable homicide and murder is merely a question of different degrees of probability that death would ensue.
- It is culpable homicide where death must have been known to be a *probable result*; it is murder where it must have been known to be the *most probable result*.
- If an injury is deliberately inflicted, in the sense that it is not accidental or unintentional, and the injury is sufficient to cause death in the ordinary course of nature and death results, the offence is murder. (clause 3, s. 300)