

MURDER

The term "Murder" traces its origin from the Germanic word "morth" which means secret killing. Murder means when one person is killed by another person or a group of persons who have a pre-determined intention to end life of the former. An offence will not amount to 'Murder' unless it includes an offence which falls under the definition of culpable homicide as per the definition of 'Murder' under IPC. All murders are culpable homicide but all homicides are not murders. Section 299 and Section 300 of Indian Penal Code deal with murder.

HOMICIDE

The word homicide is supposedly derived from Latin where "homo" means man and "cida" means killing. Thus, homicide means the killing of a man by a man. Homicide can be lawful or unlawful. Culpable homicide is punishable by law and is further divided into two categories:

- Culpable homicide amounting to murder
- Culpable homicide not amounting to murder

MURDER AS PER SECTION 300 OF THE INDIAN PENAL CODE

Section 300 of the IPC reads as follows: 300. Murder. —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—

(Secondly) —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—

(Thirdly) —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—

(Fourthly) —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.

If we analyse the definition under Section 300 of the IPC, culpable homicide is considered as murder if:

- The act is committed with an **intention** to cause death.
- The act is done with the **intention** of causing such bodily injury for which the offender has **knowledge** that it would **result in death**.
- The person has the **knowledge** that his act is **dangerous** and would **cause death** or bodily injury but still commits the act, this would amount to murder.

INGREDIENTS OF MURDER

- **Causing death:** There should be an intention of causing death
- **Doing an act:** There should be an intention to cause such bodily injury that is likely to cause death or

- **The act must be done** with the knowledge that the act is likely to cause the death of another.

ILLUSTRATIONS

- A shoots B with an intention of killing him. As a result, B dies, murder is committed by A.
- D intentionally gives a sword-cut to C that is sufficient to cause death of anyone in the ordinary course of nature. As a consequence, C dies. Here, D is guilty of murder though he did not intend to cause C's death.

CULPABLE HOMICIDE AS PER SECTION 299 OF THE INDIAN PENAL CODE

Section 299 of IPC reads as follows:

299. Culpable homicide — 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.

In the case of Reg. v. Govinda (1877) ILR 1 Bom 342), the accused had knocked down his wife, kept a knee on her chest and gave two to three violent blows with the closed fist on her face. This act produced extraversion of blood on her brain and afterwards, the wife died due to this. The act was not committed with the intention of causing death and the bodily injury was not sufficient to cause death in the ordinary course of nature. The accused was liable to culpable homicide not amounting to murder.

The difference between murder and culpable homicide is intention. If the intention is present the crime is said to be committed under Section 300 of IPC. If the intention is absent, then the crime is dealt under section 304 of IPC.

DISTINCTION BETWEEN CULPABLE HOMICIDE AND MURDER

Cause of confusion: The thin line is the **intention** behind the act. All murders are culpable homicide but the vice-versa is not true. Ever since the IPC was enacted, this distinction as to which 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 interpret 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. 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 planning then it is murder because the intention to kill is in high degree and not out of sudden rage or provocation. On other hand, if the victim is killed without pre-planning, in sudden fight or in sudden anger because of somebody's provocation or instigation, then such a death is called culpable homicide. Hence, whether the act done is culpable homicide or murder is a question of fact.

Distinguishing between the two: The distinction between the two was aptly set forth by Sarkaria J., in *State of A.P. v. R. Punnayya*, ((1976) 4 SCC 382) "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 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, punishable under Part II of Section 304."

EXCEPTIONS TO SECTION 300 OF IPC WHERE CULPABLE HOMICIDE IS NOT CONSIDERED AS MURDER

Clauses 1-4 of Section 300 provide the essential ingredients, wherein culpable homicide amounts to murder. Section 300 after laying down the cases in which culpable homicide becomes murder, states certain exceptional situations under which, if murder is committed, it is reduced to culpable homicide not amounting to murder punishable under section 304, IPC and not under section 302, IPC.

The exceptions are:

1. Grave and sudden provocation
2. Private defence
3. Exercise of legal power
4. Without premeditation in sudden fight and
5. Consent in case of passive euthanasia

SUDDEN AND GRAVE PROVOCATION

If the offender is deprived of the power of self-control due to sudden and grave provocation, and his act causes the death of the person who provoked or death of any other person by accident or mistake.

This exception is subject to a certain proviso:

- That the provocation is not sought or is voluntarily provoked by the offender to be used as an excuse for killing or causing any harm to the person.
- That the provocation is not given by anything that is done in obedience to the law, or by a public servant while exercising the powers lawfully of a public servant.
- That the provocation is not done while doing any lawful exercise of the right of private defence.

ILLUSTRATION

A is given grave and sudden provocation by C. A fires at C as a result of this provocation. A didn't intend or have knowledge that his act is likely to kill C, who was out of A's sight. A kills C. A is not liable to murder but is liable to culpable homicide.

CASES/JUDGMENTS FOR DISCUSSION

K.M. Nanavati v. State of Maharashtra, 1961 (AIR 1962 SC 605):

In this case, the Supreme Court had extensively explained the law relating to provocation in India. It was observed by the court:

- The test of "sudden and grave provocation" is whether a reasonable man, who belongs to the same society as the accused, is placed in the situation in which the accused was placed would have been so provoked as to lose his self-control.
- Under certain circumstances, words and gestures may also lead to sudden and grave provocation to an accused, so as to bring his act under an exception.
- The mental background of the victim can be taken into consideration, taking account of his previous act to ascertain whether the subsequent act leads to sudden and grave provocation for committing the offence.
- The fatal blow clearly should trace the influence of passion that arises from the sudden and grave provocation. It should not be after the provocation has cooled down due to lapse of time, otherwise, it will give room and scope to the accused for altering the evidence.

MUTHU V. STATE OF TAMIL NADU, ((2007) ILLJ 9 MAD)

In this case, it was held by the Supreme Court that constant harassment might deprive the power of self-control, amounting to sudden and grave provocation.

WHEN THE PERSON EXCEEDS HIS RIGHT TO PRIVATE DEFENSE

Act of private defence can said to have been exercised, when the act is committed in order to defend oneself from further harm. If the accused intentionally exceeds his right to private defense, then he is liable to murder. If it is unintentional, then the accused will be liable to culpable homicide not amounting to murder.

ILLUSTRATION

- X attempts to flog Y, not in a manner to cause grievous hurt to Y. A pistol is drawn out by Y, X persists the assault. Y believes that he had no way to prevent himself from being flogged by X, Y fires at X. X is liable to culpable homicide not amounting to murder.

NATHAN V. STATE OF MADRAS, AIR 1973 SC 665

In this case the landlord was trying forcefully to evict the accused. The accused killed the landlord while exercising his right to private defense. There was no fear of death to the accused as the deceased was not holding any deadly weapon that could have caused grievous hurt or death of the accused. The deceased had no intention to kill the accused, thus, the accused

exceeded his right of private defence. The accused was liable to culpable homicide not amounting to murder.

CULPABLE HOMICIDE IN CASE OF PUBLIC SERVANT

The act is done by a public servant who is acting to promote public justice. If the public servant commits an act which is necessary to discharge his duty as is done in good faith and he believes it to be lawful.

ILLUSTRATION

- If the police officer goes to arrest a person, the person tries to run away and during that incident, if the police officer shoots the person, the police officer will not be guilty of murder.

DAKHI SINGH V. STATE, 1955

In this case the appellant was the constable of Railway Protection Force, while he was on duty, he killed a fireman unintentionally, while he was firing bullet shots to catch the thief. The constable was entitled to benefit under this section.

SUDDEN FIGHT/RAGE

The sudden fight is when the fight is unexpected or premeditated. Both the parties don't have any intention to kill or cause the death of another. The fact that which party had assaulted or offered a provocation first is not important.

RADHEY SHYAM AND ANR. V. STATE OF UTTAR PRADESH, 2018

In this case the appellant was extremely angry when he got to know that his calf had come to the deceased place. The appellant started abusing the deceased, when the latter tried to stop him, the appellant fired at the deceased. The deceased was unarmed at that time, thus, the appellant had an intention to kill the deceased, hence, he was held liable to murder.

PUNISHMENT

PUNISHMENT FOR MURDER - SECTION 302, IPC

Whoever commits murder shall be punishable with death, or imprisonment for life and shall also be liable to fine.

PUNISHMENT FOR CULPABLE HOMICIDE - SECTION 304, IPC

Culpable homicide is not murder if it falls under any one of the five exceptions given under Section 300. For culpable homicide not amounting to murder, Section 304 of IPC describes the punishments as:

- Imprisonment for life or
- Imprisonment for either description of a term extending up to ten years and/or

- Fine.

MEANING OF EXPRESSION "BEYOND REASONABLE DOUBT"

For a doubt to stand in the way of conviction of guilt it must be a real doubt and a reasonable doubt. If the data leaves the mind of the trial judge in doubt, the decision must be against the party having the burden of persuasion. If the mind of the adjudication tribunal is evenly balanced as to whether or not the accused is guilty, it is its duty to acquit the accused.

EXAMINING RAREST OF THE RARE CASE IN IMPOSING DEATH PENALTY

Rarest of the rare case is the principle enshrined in *Bachan Singh v. State of Punjab (1980)* (2 SCC 684) which limits the vast discretion of the court in imposing death penalty. Death as a highest punishment was removed from being a general rule to being awarded only in exceptional circumstances and that too after recording the special reason for imposing the highest punishment which cannot be reverted under any circumstance after its execution. The phrase "rarest of the rare" case still remains to be defined while the concern for human life, the norms of a civilised society and the need to reform the criminal has engaged the attention of the courts. The sentence of death has to be based on the action of the criminal rather than the crime committed. The doctrine of proportionality of sentence vis-a-vis the crime, the victim and the offender has been the greatest concern of the courts.

CONCLUSION

As discussed above, there is a thin line between Murder and Culpable Homicide. The courts have time and again taken efforts to differentiate between the two offences the end result of the two being same, intention behind the offence being the important factor of consideration. The entire case of the prosecution can be based on a single point i.e. "intention" and in the same way the entire case of the prosecution can be destroyed by the defence by proving "no intention".