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Difference Between Murder and Culpable Homicide

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ABSTRACT

In this article the author through some popular case laws, studies the various fine points which distinguish between actions of 'murder', 'culpable homicide not amounting to murder', 'attempt to murder' and others.

I. INTRODUCTION

The word, 'homicide' is derived from the Latin words, 'homi' meaning man, and 'cido' meaning cut. Thus the word homicide means killing of a human being by another man. In other words, it is an action caused by one human which causes or accelerates the death of another human.

The Indian Penal Code, 1867(**IPC**) describes homicide offences as broadly falling in three categories, namely: (a) culpable homicide; (b) murder; and (c) attempt to commit murder and culpable homicide.

A. Culpable Homicide

Section 299 of the IPC defines culpable homicide as below:

"Whoever causes death by doing an act with intention of causing death or with intention of causing bodily injury as it is likely to cause death or with the knowledge that he is likely to cause death such an act will amount to culpable homicide.

Thus from the above it appears that while every murder is a culpable homicide not every culpable homicide is murder. Culpable homicide is the *genus*, and murder its *species*. Thus homicide can either be culpable homicide amounting to murder or culpable homicide not amounting to murder.

However, to constitute the offence of culpable homicide, certain ingredients must be satisfied. There must be death. Such death should have been caused by another person, and the act of death should be associated with the *mens rea* of causing death, or intention of causing bodily

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injury that is likely to cause death, or knowledge that such act is likely to cause death. Interestingly, a person who caused the injury cannot escape criminal liability of culpable homicide by saying that, if the person injured did not suffer from a certain disease or disorder he would have not died. By way of an example, if Mr. A had a problem with his heart and his days were numbered, and Mr X knowing the problem of Mr A, gave him a punch near his heart which results in Mr. A's death, then X will be criminally liable for culpable homicide of Mr. A.

Popular Cases:

- *Basdev v State of Pepsu* - In this case, the accused shot a 16-year-old because he was drunk. However the court differentiated between motive, knowledge and intention and convicted him.
- *Chahat Khan v. State of Haryana* - In this case, the court held that when an injury is caused using a lethal or sharp weapon and the deceased has been attacked on a vital organ, then an irresistible inference can be made that the accused had all intention of culpable homicide.

As regards, punishment for culpable homicide, that is provided for in **Section 304** of the IPC. This section states that punishment for such offence could be imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Thus, if the act by which the death is caused is done to cause death, or of causing such bodily injury as is likely to cause death, such action shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

B. Murder

As per section 300 of the IPC, culpable homicide is murder: **firstly**, if the act by which the death is caused is done to cause death; or, **secondly**, if it is done to cause such bodily injury as the offender knows would likely cause the death of the person to whom the harm is caused, or has subjective knowledge that death will be the likely consequence of the said injury; or **thirdly**, if the act is done to cause 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 will constitute as murder. For example, if A shoots Z to kill him and Z dies as a consequence, A commits murder

if, A has *intention* of killing Z and such proof of intention in turn can be adjudged by many different ingredients. Proof of intention may be adjudged from, actions of the accused and surrounding circumstances, motif of the accused, and nature of the attack, weapons and injury.

Popular Cases:

- *Veera Muthu v. the State of Madras*- In this case, it was held that even if the accused who intentionally caused the injury may not be aware that such injury was sufficient in the ordinary course of nature to cause death, he would still be guilty of culpable homicide amounting to murder, if his intention to cause the injury in question is established and the injury is sufficient.
- *State of MP v. Ram Prasad*- In this case, where Ram Prasad lit his wife on fire, after an argument, the court interestingly held him guilty of culpable homicide amounting to murder, merely on the basis of knowledge that such action could lead to death of his wife. In essence the court emphasized in this case that only knowledge that an action could result in death is required and there is no need to prove intention.

However, section 300 of the IPC provides certain exceptions (as below) when culpable homicide would not amount to murder

- **Grave and sudden provocation** - In the case of *R v. Ahluwalia*, Ms. Ahluwalia a victim of domestic abuse for years, set her husband's foot on fire to teach him a lesson and the husband died after five days of the crime. In its judgment, the court recognized the concept of 'battered woman syndrome', and reduced her prison sentence for murder, as the court felt the accused acted under grave and sudden provocation.
- **Private defence** - In the case of *Mohinder Pal Jolly v. State of Punjab*, Mohinder argued that he fired shots at his company workers (who were aggressively demanding their unpaid salaries), as an act of self defence. However, the court held that as there was no indication that Mohinder experienced any apprehension of death or grievous hurt, he exceeded his right of private defence and was therefore liable for the offence of culpable homicide amounting to murder.
- **Acts of public servants** - In the case of *State of West Bengal v. Shew Mangal Singh* certain public officials gave orders to shoot a person. The court held that there was no need for such order and therefore the order being illegal, the officers could not have been said to have acted in good faith and thus were liable for the offence of culpable homicide amounting to murder.

- **Sudden fight** - In the case of *Surain Singh v. State of Punjab* the court emphasised that where a murder is committed without premeditation, like for example in the case of a sudden fight and in the heat of the moment where the accused got into a sudden quarrel, and acted without undue advantage or unnecessarily cruelty, then such action would not amount to culpable homicide amounting to murder.
- **Consent** - In the case of *Dasrath Paswan v. State of Bihar* the court held Dasrath Paswan guilty and he was convicted for the murder of his wife and sentenced to transportation for life. Dasrath was a student of class X and was disappointed by his failure. He decided to kill himself. He was married and he told her wife that he will kill himself. His wife told him that he should first kill her then he may die. In consequence, he killed his wife but people caught him.

C. Attempt to Murder

Section 307 of the IPC defines an, ‘attempt to murder’ as any action done with an intention or knowledge and under such circumstances that causes death. Punishment for this offence could be both imprisonment and fine. For example, A may want to kill a child and with the intention to kill the child, may leave the child in a desert. A will be held liable for an attempt to commit murder, even if the child does not die.

In short for this section to apply, the action of the accused must be capable of causing death.

Popular Cases:

- In the case of *State of Maharashtra v Bodya Ramji Patil* the victim received injuries that were described by the doctor as injurious and was likely to cause death. However, since such an injury was insufficient in the ordinary course to cause death, section 307 was made inapplicable.
- In the case of *Liyakat Mian v State of Bihar* the court held that knowledge that an action could result in death plays a vital role in deciding whether the accused can be held liable under the provisions of section 307 of the IPC. For example, if the accused shot a person from close range and such shooting resulted in injuries in the abdomen and the left arm, as there was clear knowledge that such an act could result in death of the person shot at, the accused could be convicted under section 307 IPC.

D. Attempt to Commit Culpable Homicide

Section 308 of the IPC defines an attempt to commit culpable homicide, where the accused under grave and sudden provocation shoots Mr X and causes his death.

In the case of *Ali Zaman v. State*, The accused used a revolver but it did not result in anyone's death. The question that arose here was whether if any of the persons hit with the revolver shots had died, the offence would have been murder. It was considered by the Hon'ble Court that had it happened that one of the persons shot had died in consequence, the offence would have been culpable homicide not amounting to murder. It was held that the accused was liable for the attempt to commit culpable homicide, but, if the shot had killed any of the persons, the offence would have been a culpable homicide, which is punishable under Section 304 of IPC.

The conviction of the accused was altered to section 308, P. P. C. and after taking into account all the circumstances, his sentence was reduced to two years' rigorous imprisonment.

II. PUNISHMENT PROVISIONS

➤ **U/s 302 IPC(Punishment for Murder), U/s 303 IPC (Punishment for Murder by life convict)**

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

In the case of *Bachan Singh v. State of Punjab* wherein it was observed that when the court can avail the recourse of life imprisonment then why the court has to go for such an inhumane punishment like death penalty. The Indian Judiciary has defined certain conditions in which death penalty could be used as a recourse these were laid down in the *Machhi Singh And Others v. State Of Punjab* which are as follows:

1. When the murder committed is extremely brutal, ridiculous, diabolical, revolting, or reprehensible manner which awakens intense and extreme indignation of the community. For instance, setting someone's house on fire with the intention to burn them alive;
2. The magnitude of the crime is at a large scale which means causing multiple deaths;
3. When death is caused because of the caste and creed of the person;
4. When the motives of the accused were cruelty or total depravity; and
5. When the murder victim is an innocent child, a helpless woman or person (due to old age or infirmity), a public figure, etc.

But it is still subjective to determine what is rarest of the rare and what is not. Hence it leaves an ambiguity that in what cases can the death penalty be applied and with recent developments in the *Mukesh & Anr vs State For Nct Of Delhi & Ors (Nirbhaya case)* where all the accused

were sentenced to death penalty, made this topic the epicenter of several heated debates across the country, the major question raised is that like other countries why can't India sort to abolish the death penalty when there is a recourse like life imprisonment present with the judiciary.

➤ **U/s 304 IPC (Punishment for Culpable Homicide)**

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.

In the case of *Shanmugam v. State of T.N.*, there arose a quarrel between the accused and the deceased. In course of the quarrel the accused stabbed the deceased with a spear in the abdomen and the chest resulting in the death of the victim because of septicemia. The accused was sentenced to life imprisonment under part I of Section 304 of IPC.

➤ **U/s 307 IPC (Attempt to Murder)**

Imprisonment may extend to ten years. The offender might also be liable to pay a fine.

In an attempt to commit murder, if it results in injury to any person, then the offender shall be imprisoned for a time period that may vary from 10 years to life imprisonment. It may also be accompanied by any amount of penalty.

If any person is already convicted for life imprisonment, hurts someone again with the intent to commit murder, then he will be punished with death penalty.

In the case of *Liyakat Mian and Ors. V. The State of Bihar, 1973*, appellant no. 2 was charged u/s 307 IPC. While the appellants were committing dacoity, appellant No. 2 fired a gun at Burhan Mahton which injured him gravely. The Sessions Court held that Burhan Mahton died because he succumbed to the injuries caused by accused No. 2 and the accused No.2 would be held guilty of attempt to murder under Section 307.

➤ **U/s 308 IPC (Attempt to Commit Culpable Homicide)**

Section 308 states that anyone accused under this Section will be sentenced to either imprisonment which may extend to three years, fine, or both.

If a person is injured in the attempt to commit culpable homicide, then the offender will be sentenced to imprisonment for a term which may extend to seven years, or fine, or with both.

- **Popular Cases:**

In the case of *Ajay Singh v. State (Govt. of NCT of Delhi)*, A bus conductor was held guilty under Section 308 because he pushed the injured out of the moving bus. The accused went into appeal against the judgment dated 22nd February 2001 and order dated 24th February 2001 of an Additional Sessions Judge convicting him under Section 308 IPC and sentencing to undergo rigorous imprisonment for 4 years.

In the case of *Om Prakash v. the State of Punjab*, Hon'ble Supreme Court stated that to invoke Section 308 of IPC, intention to commit culpable homicide not amounting to murder must be established i.e., it should be established that if the act had been committed, it would have resulted in culpable homicide and not murder. This can be proved by facts and circumstances of that particular case.

III. 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 defense by proving "no intention". After the analysis of Section 307 and 308, it has been well established that not only committing an offence, but attempt is also punishable. But it should be kept in mind that for an attempt to be punishable, the presence of an intention and preparation of the crime is important. In Section 307 and 308, the intention, knowledge, and means to perform it, are elements the courts deem essential for an act to become a crime.
