
CULPABLE HOMICIDE/MURDER AND THE THIN RED LINE IN BETWEEN

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Reading a newspaper we sometimes come across a headline that the accused was convicted for culpable homicide and not murder, which brings up a question as to what is culpable homicide and even if the accused killed the victim why isn't the offence called murder? This confusion is natural among readers as the difference between the two offences is very thin, in a worst case scenario there is a possibility that a person who actually committed murder may, through his counsel, be convicted under culpable homicide, the difference of punishment of the two is significant and the situation could happen in an inverse way as well. My paper herein seeks to dispel this confusion between the two offences, there may be many more such papers before mine on the same topic but I consider my paper to be a contribution to this topic. The consensus among legal scholars on this topic varies from case to case, for example how do you convict a boxer whose punch caused the death of his competitor in a match, this has been discussed later in this paper. In my humble opinion the missing element in this confusion of the offences is a clarity of thought and sound understanding of the two offences, oftentimes murder cases are tuned down to culpable homicide by taking advantage of this confusion.

There is no need however to add something new to the sections involved in these offences. All that needs to be done is to have a clear understanding of the difference between the two, which is oftentimes absent in the general discussion among the common public. The contribution therefore my paper aims to provide is to try to dispel this confusion by at least one percent in the mind of the reader.

Culpable Homicide

The Indian Penal Code, 1860 under *section 299* clearly provides for a definition of the offence of culpable homicide. Added to the definitions are three explanations. The section reads as follows-

“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 its simplest of forms culpable homicide is the offence of killing a human being by another human being. Further a bifurcation of the offence occurs wherein culpable homicide can either be (I.) Lawful; or (II.) Unlawful

(I.) Lawful or simple homicide- Simple homicide is not punishable as it is caused by, as the name suggests through lawful means. Some the provisions coming under this header are-

A. Section 80, IPC- Death caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act.

B. Section 77, IPC- By a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

C. Section 78, IPC- By a person acting in pursuance of the judgement or order of a Court of Justice, for example the executioner of a death sentence, Jallaad.

(II.) Unlawful homicide- Unlawful homicide is the offence which is the subject matter of this paper. Culpable Homicide is the first type of an unlawful homicide. It is caused by any of the three following conditions-

1. An act with the *intention* to cause death (I)
2. An act with the intention of causing such *bodily injury* as is likely to cause death (B)
3. An act with the *knowledge* that it was likely to cause death (K)

The three keywords that come out of this definition is I.B.K.- intention, bodily injury and knowledge. Without one or other of those elements, an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide.¹

Hence the offence of culpable homicide gets divided into three categories based upon the above mentioned points. When an intended injury is likely to cause death, the same would mean an

¹ Rahee, (1866) Unrep Cr C 6. State v Ram Swarup, 1998 Cr LJ 1067 (All)

injury which is sufficient in the ordinary course of nature to cause death which in turn would mean that death will be the most probable result.² This prevents the accused to take the defence that since the injury is likely to cause death, the offender did not 100% expected death as the result. The injury which he caused was just to cause pain and not death.

Five-Step enquiry process- The Honourable Supreme Court in its immense wisdom has provided the subordinate Courts with a ludic framework of enquiry conducted in five stages whenever a case comes where the death is caused by a person. The five-step enquiry is thus-

*“(i.) Is there a homicide? (ii.) If yes, is it a culpable homicide or a ‘not culpable homicide’? (iii.) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder (s. 300 of the Indian Penal Code) or is it a culpable homicide not amounting to murder (s.304 of the Indian Penal Code)? (iv.) If it is a ‘not culpable homicide’ then a case u/s. 304-A of the Indian Penal Code is made out. (v.) If it is not possible to identify the person who has committed the homicide, the provisions of s. 72 of the Indian Penal Code may be invoked.”*³

Such a five step process makes it more streamlined for the Courts to correctly identify the cases of culpable homicides. It also brings in some clarity to the legal scholars around the finer details of the legislation.

Some real life situations-

- I. What happens in the case where it is alleged that the words of the accused caused the death? In such a case a detailed study of the person of the deceased is conducted, this includes his psychology, nature and disposition. The death of a young married woman in her matrimonial home was a case of suicide and not that of murder. A letter of hers sensing some foul play against her was neither sufficient for conviction for murder nor to dispel the presumption of suicide generated by the type of person she was and her mental make up.⁴
- II. What happens when a punch of a boxer causes the death of the other boxer? During a boxing match if death is caused by a punch coming in the normal course of the fight and without the intention of the boxer to cause death, then the boxer could not be held liable.

² Kesar Singh v State of Haryana, (2008) 15 SCC 753 (India)

³ Richhpal Singh Meena v Ghasi, 2014 Cr LJ 4339 : AIR 2014 SC 3595 (India)

⁴ Sharad Birdichand Sarda v State of Maharashtra, AIR 1984 SC 1622 : 1984 Cr LJ 1738 (India)

This is based upon the latin maxim *Volenti non fit injuria*.⁵ However if the punch is delivered after the match bell has been rung or the referee has stopped the match then the boxer could be held liable for culpable homicide. See the case of Michael Watson.⁶

III. What happens in a case where death is caused out of terror? Whenever, out of terror, a person takes any offensive action he should consider the repercussions of his actions. Illustration- A and B go for hunting in a dense forest. Night came and the lamps were out of power. A heard a noise from the bushes behind him and fell to terror thinking there was a ferocious animal in the bushes. Without thinking he fired at the bushes and in consequence killed B. Even though A did not intended to kill B, he is liable to be convicted under the offence of culpable homicide as he did not take any measures whatsoever to confirm whether B was in the bushes or not. See also the case of *Kangla v State*.⁷

Difference between intention and knowledge-

So far we know that intention or knowledge form the elements to culpable homicide. But these two words, intention and knowledge have to be seen in a different light, their meaning entail different interpretation of the section.

*“Knowledge denotes a bare state of conscious awareness of certain facts in which the 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. Whether there is such an intention or not is a question of fact.”*⁸

In my opinion, intention is the state of mind where the accused even after knowing all the consequences proceeds to commit the act. Knowledge is a part of intention but intention is not part of the knowledge. The offence of culpable homicide supposes an intention, or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence

⁵ Willingness does not make injury

⁶ *Watson v British Boxing Board of Control*, QB 1134, EWCA Civ 2116 (United Kingdom)

⁷ *Kangla v State*, (1898) 18 AWN 163 (British India)

⁸ *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 (India)

committed may be grievous hurt⁹, or simple hurt.¹⁰

Murder-

After understanding what offences constitute culpable homicide, let us now venture into a more finer offence of murder. The Indian Penal Code in defining murder under *section 300* takes a unique approach. First it establishes the offence through the four points given. Then it solidifies the offence of murder by giving us with five exceptions. These exceptions tell us what offences are culpable homicide not amounting to murder, this seems to be in line with the expression *Neti-Neti*.¹¹ When we reverse the meaning of these exceptions we can clearly point out as to which act is murder. *Section 300* of the Indian Penal Code, 1860 reads as follows-

“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.”

Upon a bare perusal of the two Ss. 299 and 300, the language of both the sections may read the same, but when we read the exceptions in s. 300 a clear picture is formed. By reversing the language of these exceptions, the offence of murder is formed. Here are the exception in a simpler manner-

⁹ *Empress of India v O'Brien*, (1880) ILR 2 All 766 (British India) : *Empress of India v Edu Beg*, (1881) ILR 3 All 776 (British India)

¹⁰ *The Empress v Safatullah and Anr.*, (1879) ILR 4 Cal 815 (British India) : *Empress of India v Fox*, (1880) ILR 2 All 522 (British India) : *Empress of India v Randhir Singh*, (1881) ILR 3 All 597 (British India)

¹¹ *Neti- Neti* is a Sanskrit expression found in the Upanishads meaning “not this, not that” or “neither this, nor that”

I. Act done under grave and sudden provocation or mistake or accident

Provided,

A. Such a provocation is not sought or voluntarily provoked

B. Provocation is not given by anything done under the obedience of law

C. Provocation not given by the lawful exercise of the right of private defence

II. Act done in good faith in the exercise of the right of private defence, such powers being exceeded

III. Act done by exceeding the powers given to a public servant or a person aiding such public servant

IV. Act done without premeditation in a sudden fight in the heat of passion, without the offender taking any undue advantage

V. Act done with the consent of the person to cause his own death provided the person is a major

An intention to kill is not always necessary to make out a case of murder. A knowledge that the natural and probable consequence of an act would be death will suffice for a conviction under *section 302*, IPC, 1860.¹² Establishing the fact that the offence falls in any one of the four points mentioned in *section 300* is as important as making sure that the offence is also not coming under the five exceptions as well. The four points forms the basis or foundation of the offence of murder and the five exceptions solidifies or confirms it.

The thin red line in between-

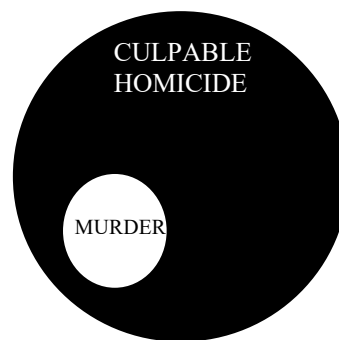
The line of difference between the offences of culpable homicide and murder has been drawn very significantly in two important cases. First is the case of Govinda¹³ set forth by Melvill, J.

¹² Santosh v State, 1975 Cr LJ 602 : AIR 1975 SC 654 (India)

¹³ Reg v Govinda, (1877) ILR 1 Bom 342 (British India)

Second is the case of Punnayya,¹⁴ set forth by Sarkariya, J. The Punnaya case provides—

“In the scheme of the Penal Code, ‘culpable homicide’ is genus and ‘murder’ its specie. A;; ‘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 Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in s. 300 as ‘murder’. The second may be termed as ‘culpable homicide of the second degree’. This is punishable under the first part of s. 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 the Second Part of s. 304.”



To distinguish between the two offences all we have to do is to look upon the keywords of both the sections at a very high degree of attention. For example the difference between the two sections can clearly be seen when we read s. 299 (b) as against s. 300 (2) and (3). In clause (2) the intention to cause death is not the primary motive, mere ‘intention to cause bodily injury’ is sufficient coupled with the offenders knowledge of the fact that such injury is like to cause death.

In section 299 (b) the words “sufficient to cause death” gives a very bright contrast to the words in section 300 (3) “likely to cause harm”. The word ‘likely’ carries with it more probability of causing death than the word ‘sufficient’. Distinctions as fine as these if overlooked can result in a grave miscarriage of justice.

¹⁴ State of AP v R Punnayya, 1977 Cr LJ 1 : AIR 1977 SC 45 (India)

A way forward-

After deliberating upon all the points mentioned above, legends in the legal field Ratanlal and Dhirajlal provided with a brilliant system of observation to be adopted when seeing the two offences.¹⁵ To summarise this system it is thus-

The charging of the offence begins by determining whether the death is caused or not in the first stage. If yes then the second stage involves finding out whether the offence comes under *section 299* as culpable homicide. If yes, then the third stage is activated where it is determined that the offence comes under the four points mentioned in *section 300*. If no then the offence is culpable homicide. If yes then it is checked further whether the five exceptions are applicable or not. If any of the five exceptions are applicable then the offence is culpable homicide, if they are not applicable then the offence is murder.

Thus we can now clearly observe the fine difference between the two offences. Knowing this difference is crucial for every legal practitioner in order to fight for the right thing. With this paper I hope that some of the mental confusion is now cleared.

¹⁵ Ratanlal & Dhirajlal, *The Indian Penal Code 431/432* (Reprint 2021)