



CULPABLE HOMICIDE AND MURDER

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ABSTRACT: It is very important to understand the differences between criminal wrong and civil offence. The nature, punishment and liability incurred for both are different. The two have been called a viscous intermixture. Any conduct which harms an individual to some extent harms society; since society is made up of individuals; and therefore although it is true to say of crime that it is an offence against society, this does not distinguish tort and crime. Any conduct which a sufficiently powerful section of any given community feels to be destructive of its own interest, as endangering its safety, stability or comfort, it usually regards as especially heinous and seeks to repress with corresponding severity; if possible it secures that the force which the sovereign power in the state can command shall be utilized to prevent the mischief or to punish anyone who is guilty of it. Offences of this kind are termed crimes. The proceedings taken in court in respect of these crimes are called as criminal proceedings.

BLACKSTONE defines crime as “an act committed or omitted in violation of public law forbidding or commanding it. “Actus non facit reum nisi mens sit rea” meaning “an act does not make a person guilty unless mind is also guilty”. It is to be noted that a person is guilty if they are proved to be culpable or blameworthy in both thought and action. That’s the general difference between murder and manslaughter (culpable

homicide). There is very thin difference between murder and culpable homicide. The difference is only intention to commit murder. In culpable homicide the offender has used the intention of causing such bodily harm which is likely to cause death. In murder, the offender must know that his act will cause death or bodily harm will be sufficient in “ordinary course of nature to cause death”. For example if a person uses a sharp object and injures a vital part of body with a knowledge that such weapon would cause serious injury and subsequently the person dies, then it murder. On the other hand if a person uses a blunt weapon or something which does not injure a person and still the person dies it is a culpable homicide and not murder. In both the cases punishment is awarded but, the nature of punishment in murder is grave and the latter one is comparatively not serious as murder. There are also situations in which culpable homicide is treated as murder.

In this paper one would understand legal difference between culpable homicide and murder, in what circumstances culpable homicide would amount to murder and also the punishments, provisions with reference to case laws. Why is it important to understand the difference between culpable homicide and murder? In order to determine intention (important to hold one guilty), in determination of charges, determination of punishment to be awarded.

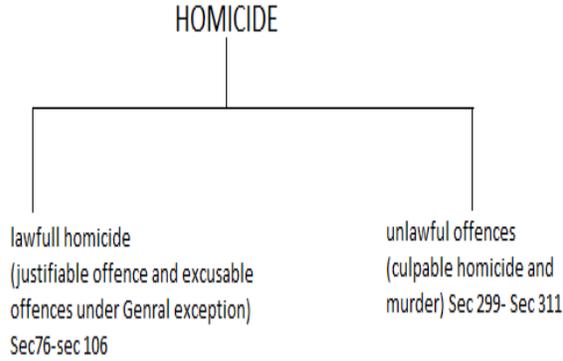
SEC 299: CULPABLE HOMICIDE:

Sec 299 of the INDIAN PENAL CODE 1860 lays down the provisions for culpable homicide. The word culpable means criminal and homi means “man” cide means “I cut”. Homicide means killing of human



being by a human being. There are two kinds of homicides a) lawful homicide b) unlawful homicide.

- ii) With the intention of causing such bodily injury as is likely to cause death; or
- iii) With the knowledge that the offence likely by such act to cause death;



EXPLANATIONS :

EXPL 1- A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity and thereby accelerates the death of that other, shall be deemed to have caused death.

EXPL 2- Where the death is caused by bodily injury to another who causes such bodily injury shall be deemed to have caused the death although by resorting to proper remedial and skilful treatment the death might have been prevented.

EXPL 3- The causing of the death of a child in the mother's womb is not a homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that has been brought forth, though the child may not have breathed or been completely born.

Lawful homicide: All those offences under general exception under Sec 76 – Sec 106 are justifiable and excusable. Under certain circumstances the criminal liability is lessened or completely waived of. This is because the offender was a minor, insane, intoxicated, or was under compulsion, or the offender was acting in good faith for the benefit of other person without consent, or necessity to avoid a greater harm, or was an accident. In these cases the burden of proof lies on the accused.

Explanation of all the ingredients and explanations:

Unlawful homicide: all those offences under Sec299- Sec311 are unlawful. They are murder and culpable homicide/ man slaughter.

- 1) Causes death:- Death means the death of a human being and not that of a animal(a/g Sec 46 of IPC). The word death does not include the death of unborn child as stated in EXPL 3 of the section. If a person intends to kill A but kills B, he has committed the offence of culpable homicide. Though he did not intend to kill B, he shall be booked for the offence of transfer of malice under Sec 301 and the law presumes he intended to kill B because the nature if the act itself is an offence. Death occurs when brain dies

INGREDIENTS OF SEC 299:

- 1) Causing of death of a human being by a human being;
- 2) The death must have been caused by doing an act;
- 3) The act must have been done:
 - i) With the intention of causing death; or



completely. A person cannot be said dead if some brain activity is present.

CASE 1- ARUNA RAMCHANDRAN SHANBAUG Vs UNION OF INDIA

In this case petitioner Aruna was a staff nurse working in KEM hospital, Mumbai. On 27, November 1973 she was attacked by a sweeper in the hospital who wrapped a dog chain around her neck and yanked her back with it. He tried to rape her but finding that she was menstruating, he sodomized her. To immobilize her during this act he twisted the chain around her neck. The next day she was found unconscious on the floor. It was found that due to strangulation of dog chain the supply of oxygen to the brain had stopped and the brain got damaged. The petitioner prayed for mercy death; to die peacefully. She was on permanent vegetative state for 44 years.

The court held that Aruna was not brain dead, she was responding to certain situations in her own way. For example she likes light, devotional music and prefers fresh soup. She was breathing on her own without artificial ventilation. She was uncomfortable when the room was crowded and was calm when they were fewer. Based on this report and definition of HUMAN ORGAN ACT 1994, she was not brain dead. Though she was in permanent vegetative state her condition was stable. So terminating her life was unjustifiable.

But recently the Supreme Court has given legal sanction to passive euthanasia, by permitting “living will”. In this method the medical support for a patient would be withdrawn so that they slip into irreversible coma. It was observed that “a person cannot be allowed to continue suffering in a

comatose state when he or she doesn't wishes to live. A petition was filed in the Supreme Court by an NGO, “Common Case”, who contended that a person right to life includes right to die with dignity, keeping a patient alive by artificial means against his/her wishes is an assault on his/her body. On March 9, 2018 Supreme Court recognised ‘living will’ and laid down guidelines on procedure to be adopted.

- 2) By doing an act:- by doing an act which causes death, act includes illegal omission(under Sec 32 and Sec 43). Death may be caused by number of ways, such as by poisoning, starving, striking, drowning, or communicating some shocking news. For example jailer voluntarily causes death of a prisoner by omitting to supply food, a nurse voluntarily causes death of a child entrusted to her care, or a jail doctor omitting to supply medical care to the prisoner voluntarily they shall be liable for murder.

3)

Death caused by effect of word: death may also be caused by effect of words such as by making some communication to another person, which caused excitement and resulted in death of other party. It is said to be culpable homicide. For example A with an intention or knowledge aforesaid, relates some excitement or agitation in the mind of B who was in a critical illness; and B dies. A will be held liable for culpable homicide.

3)(i) With an intention to cause death:- the doer of the act must have an intention to kill a person otherwise he shall not be liable for the offence. As depicted in EXPL 1 of this section where the doer had an intention or expected someone to die. Here if the word intention is subjective. For example A



intended to kill B but in the course of exercising the act C dies, here the court and law presumes that A intended to kill C (under Sec 301 TRANSFER OF MALICE) and is committed culpable homicide.

For example: 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, trends on it falls and is killed. A is held liable for the offence of culpable homicide.

3)(ii) With the intention of causing such bodily injury as is likely to cause death- the intention of the offender may not have been to cause death but only injury that is likely to cause the death of the injured. For example A might intended only to hit on the skull of a person so as to make him unconscious, but the person dies. In this case the intention was to cause an injury which is likely to cause death. Thus the person is held for culpable homicide. However, if A hit B with a broken glass. A did not know that haemophilic. B bleeds to death. A is not guilty of culpable homicide but only of grievous hurt because he had no intention to kill B or had intention to cause a bodily harm which would amount to death.

For example: 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 not guilty of no offence, but A has committed the offence of culpable homicide.

CASE 2- NARAYAN Vs STATE OF MP:- A sudden quarrel arose between the accused

and the deceased. Accused stabbed the deceased. A single knife blow resulted in the death of the victim. The accused had no motive to kill the deceased. The court held that by doing such an act, the accused knew it would result to death of the victim. Hence he is liable for culpable homicide and awarded punishment under Sec 304 part II imprisonment for 10 years.

CASE 3- NAGA PO NYEIN- The accused gave one blow to B with a long wooden handle on the thinner part of the head. He was not liable for murder but for culpable homicide as the weapon could not be said to be a formidable one and the intention to kill would not be presumed.

3)(iii) With the knowledge that he is likely by such act to cause death:- the word knowledge imports certainty and not merely a probability. Here knowledge of the person refers to the personal knowledge of the person who does an act. When a person does an act which he knows that it has a high probability to cause death, he is responsible for the death which is caused as a result of this act. In **JAMALUDDINS CASE** the accused while exorcising a spirit from the body of a girl beat her so much which resulted in death. They were held for culpable homicide.

For example: A, by shooting at a fowl with intended to kill and steel it, kills B who is behind a bush; A not knowing that he was there. Here although was doing an unlawful act, he was not guilty for the offence of culpable homicide, as he did not intend to kill B, or to cause to cause death by doing an act that he knew was likely to cause death.

BASUDEV Vs STATE OF PEPSU- The accused was alleged to have shot 16 years old boy in a marriage fest. The accused was



drunk and asked the boy to vacate his chair so that he could sit, but the boy refused to do so. Aggravated accused shot the boy and surrender himself to the police and plea the defence of intoxication. But the court held that the act of the accused was due to voluntary intoxication and he had sufficient knowledge of what he was doing. The court distinguished between intention, knowledge and motive.

In **MANSEL PLEYDELL CASE** the accused kicked the abdomen of B with such violence as to cause fracture of two ribs and rupture in the spleen which was normal. In the course of this B died. It was held that the accused knew that abdomen was the delicate and vulnerable part of the human body and should therefore be presumed to have kicked with the knowledge that by so kicking he was likely to cause death.

SOMETIMES GROSS NEGLIGENCE MAY ALSO AMOUNT TO KNOWLEDGE:- if a person acts negligently or without exercising due care and caution he will be presumed to have knowledge of the consequences arising from his act. In such cases death must be in direct consequence of the act of the accused.

CASE 4- LAXMAN KALU- A had gone to father in laws house to fetch his wife. He had an argument with A brother in law B. A lost his temper and gave blow on B chest with a knife, which resulted in B death. A was held guilty for culpable homicide under Sec304 part II, because death was caused by doing an act with knowledge that it was likely to cause death.

CASE 5- GANESH DOOLEY- A snake charmer exhibited in public a venomous

snake, whose fangs he knew has not been extracted. To show his skill and not with an intention to kill anyone left the snake on a person head. The person was scared and was trying to push it off in the mean course the snake bit him, and he was dead. Here the court held the snake charmer to be liable because he had sufficient knowledge and was booked for culpable homicide.

4) Death caused without intention or knowledge:- in such cases it amounts to grievous hurt or simple hurt and does not amount to culpable homicide. This is because a person should be punished for what he intended to do or had knowledge it is likely to cause death.

EXPLANATION 1: this explanation lays down that the accused will be guilty of culpable homicide if he, voluntarily does an act which results the death of the victim who was already suffering from disorder, disease or some sort of infirmity. The law presumes that he had sufficient knowledge about the victim health and his act accelerated his death. But one of the elements of culpable homicide must be present.

EXPLANATION 2- According to explanations a plea that death could have been prevented by resorting to proper remedies and skilful treatment is not allowed to be raised to defeat a prosecution because it may not always be within the reach of wounded man. Therefore, if death results from an injury voluntarily caused, the person who caused injury is deemed to have caused death, although the life of the victim might have been saved if proper medical care was given, and even if the medical treatment was available and no proper care



was taken, provided the treatment was given in good faith by a physician or surgeon.

IN **SOBHAS CASE**, A caused simple injury to D and D died of septic meningitis which developed on account of the use of wrong remedies and neglect in treatment. It was held that in such cases death did not occur due to the injury but due to lack of proper care and the accused was not punished under Sec 304 for culpable homicide.

EXPLANATION 3- this explanation provides that causing death of a child in mother's womb is not culpable homicide because it is part of mother's life, and is not separate and distinct existence. But as soon as any part of the child has been brought forth from the womb, the child is regarded as a living human being, to cause whose death would amount to homicide. Thus complete birth is not a requisite.

PUNISHMENTS:

SEC 301: Causing death of person other than person whose death was intended. The law presumes the accused intended to kill the victim and TRANSFERS MALICE under this section. Hence such act is considered to be culpable homicide.

SEC 304: punishment for culpable homicide not amounting to murder. This Section is of two parts, part I the punishment is imprisonment for life or imprisonment which may extend to ten years and shall also be liable to fine. Part II punishment may extend to a period of ten years , or fine , or with both.

SEC 304 PART 1	SECTION 304 PART II
The act was done with the intention of causing death, or of causing such bodily injury as is likely to cause death.	The act was done without any intention to cause death or to cause such bodily injury as is likely to cause death.
The accused shall be punished for imprisonment for life or imprisonment for a term which may extend to ten years and shall be liable to fine.	The accused shall be punished for a term of ten years or with fine or with both.
Punishment is higher than in part II	Punishment is lesser when compared to part I.
Fine is compulsory as said in the phrase "and" shall be liable to fine.	Fine may be imposed or may not be imposed. The phrase "or" with fine, "or" with both.

SEC 300: MURDER

The term murder is derived from the Germanic word 'morth', which means 'secret killing'. Murder is unlawful homicide with malice aforethought. Murder is more serious offence than the culpable homicide. Culpable homicide is a genus, where as murder is a species. An offence cannot amount to murder unless it falls within the definition of culpable homicide. SEC 300 deals with the cases where culpable homicide is murder. So murder includes culpable homicide but culpable homicide may or may not amount to murder.

INGREDIENTS OF SEC 300:



CULPABLE HOMICIDE IS MURDER-

- 1) Intentionally causing death, or
- 2) Intentionally causing bodily injury with knowledge that it will cause death, or
- 3) Intentionally causing of injury sufficient to cause death, or
- 4) That the act is so imminently dangerous so as to cause death.

1) Intentionally causing death - Death means the death of a human being and not that of an animal (a/g Sec 46 of IPC). Death may therefore be caused by illegal omission as well. Hence an act which is illegally omitted is done with an intention of causing death is culpable homicide amounting to murder. It is the simplest at the same time most gravest of the species of murder. It is the action of a person with a clear intention of killing a person. If a person administers a deadly poison to a man, then it is very clear that he has an intention to kill that man, because the cause and effect of the act is very clear.

- Thus where parents neglect to provide proper substance to their children although repeatedly warned of the consequences and he child dies, it will amount to murder.
- When an accused, on seeing the deceased said that he was searching for him everywhere and stabbed him with knife, and especially when the knife was drawn downwards as if to cut the body into two, it was held that the intention to kill the deceased was clear from facts.

For example A shoots Z with the intention of killing him. Z dies in consequence. A commits murder

In **R. VENKALU CASE**- The accused set fire to the cottage in which D was sleeping

and locked the door from outside so that D's servant might not help him escape. He took active steps and prevented villagers from helping D. Here the man had sufficient to kill D hence he was held for murder.

- **ABU THAKIR Vs STATE**:- It was held that motive loses importance when direct evidence is available.
- **FAKE ENCOUNTERS**- This means cold blooded, brutal murders by person who are supposed to uphold the law. Supreme court held that ordinary people are given ordinary punishment, but for the offences committed by a public servant or police officers, when proved shall be given death sentence, treating it to be a class of rare cases.

2) Intentionally causing bodily injury with knowledge that it will cause death- In case of an offence falling under this clause the mental attitude of the accused is two-fold. First, there is intention to cause bodily harm and secondly, there is there is the subjective knowledge that death will be the likely consequence of the intended injury. Here unlike in culpable homicide under Sec299, the offender knows such bodily injury will cause death of the victim. Here knowledge on the part of the offender imports certainty and not merely a probability. A case would fall under this clause if the offender having knowledge of that person was suffering from some disease or was of unsound mind and cause bodily harm which would result in death, which may not amount to death of a sound man, in the same situation, but knowing the condition of the diseased the accused takes advantage of the same shall be committing the offence of murder. Death can be caused due to poisoning, burning provided the prosecution proves the same.



For example:- A knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with an intention of causing a bodily harm which amounts to death. Z dies in the consequence. A is guilty of murder.

In **KARU MARIK Vs STATE OF BIHAR**:- The accused gave a blow with a sharp weapon on the chest of the deceased. When she tried to escape, the accused caught her hair and threw her on the ground and inflicted two more blows on the abdomen and back which resulted in grievous hurt amounting to death. Hence it was held that the accused had sufficient knowledge that such bodily harm would amount to death. Hence he was booked for murder.

BN SRIKANTIAH Vs STATE OF MYSORE- There were 24 injuries on the deceased and 21 of them were incised. They were on his head, neck, shoulders and forearms. Since most of the injuries were on the vital parts and the weapons were sharp, it was held that intention if causing bodily injuries was established and was covered under Sec 300 of this act.

3) Intentionally causing of injury sufficient to cause death :- It speaks of an intention to cause bodily injury, which is sufficient in the ordinary course of nature to cause death. For the application of this clause two things must be proved, firstly the injury was intentionally inflicted and secondly, that the injury inflicted was sufficient in the ordinary course of nature to cause death of any person. The word sufficiency is used which means there is a high probability of injury resulting in death.

For example:- A intentionally gives Z a sword cut, or club wound sufficient to cause death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he did not intend to kill Z.

STATE OF UP Vs VIRENDRA PRASAD- The court held that clause 3 of Sec 300(IPC) culpable homicide becomes murder when , a) the act which causes death is done with intention of causing death or is done with an intention of causing a bodily injury, and b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

4) That the act is so imminently dangerous so as to cause death :- The act described in this section is so dangerous that it would likely cause death. Under this clause, the act need not be directed to a particular individual or intention to cause death of a individual. It has to be a mere recklessness act, which is imminently dangerous.

Example: A without any excuse fires a loaded gun into the crowd of persons and kills one of them. A is guilty of murder, though he has no intention he is held for the offence of murder.

The essential ingredients in this clause are (i) the act must be imminently dangerous (ii) the person committing the act must have knowledge that it is so imminently dangerous (iii) that in all probability it will cause (a) death (b) bodily injury as is likely to cause death (iv) such imminently dangerous ct should be done without any reason or justification for running the risk of causing death or such injury.



The mental element contemplated in this clause “knowledge” that the act is so imminently dangerous that it is likely to cause death or such bodily injury is likely to cause death. The term “imminently dangerous” requires that danger should be immediate and close at hand. Hence under this clause the intention to kill anybody is not required in order to constitute the offence of murder.

IN STATE OF MADHYA PRADES Vs RAM PRASAD- In this case, Ram Prasad and his wife Raji had a quarrel. Villagers were called to mediate the dispute, but to no avail. The accused poured kerosene on his wife and set her to fire. She suffered extensive burn injuries and died as the result of injuries. The court held that under cl (4) of Sec 300 the accused had knowledge and no intention.

There are five exceptions to murder, when culpable homicide does not amount to murder-

1) Provocation – culpable homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation or causes death of any other person by mistake of accident. There are few provisos (i) the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. (ii) the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the power of such public servant. (iii) that the provocation is not given by anything done in lawful exercise of the right of private defence.

2) Exceeding the right of private defence – culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of a person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

3) Act of public servant – it deals with situation where a public servant exceeds his lawful powers in the discharge of his duties and thereby causes death. The essential ingredients are (i) the offence must be committed by a public servant (ii) the act must be committed by the public servant in exercising his duties (iii) he should have exceeded his powers given to him by law (iv) the act should be done in good faith (v) the public servant must have believed in good faith that his act was lawful and necessary for the duty to discharge his duties (vi) he should not have an ill will towards whose death has been caused

4) Sudden fight – culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

5) Death by consent – culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes risk of death with his own consent. The essential points to be proved are (i) the death was caused due to the consent of the deceased (ii) the deceased was above the age of 18 years (iii) the consent was free and voluntary, and was not



given through fear of misconception of facts.

PUNISHMENT FOR MURDER:- Sec 302 of IPC lays punishment for murder, whoever commits murder shall be punished for death (which is an exception), or imprisonment for life, and shall be liable for fine. Nature of offence: Cognizable- can arrest without warrant and start investigation with or without courts permission, Non-Bail-able, Tried only under session court, and Non-Compoundable - where charges shall not be waived off because of compromise between the parties.

Sec 303- Punishment for murder by life convict. When a person who is already under imprisonment for life commits an offence of murder he shall be punished with death. This SECTION was upheld in ***MITHU Vs STATE OF PUNJAB*** . The Supreme Court struck down SEC 303 which provided for mandatory death penalty for offender serving a life sentence.

DIFFERENCE BETWEEN CULPABLE HOMICIDE AND MURDER

Both culpable homicide and murder deal with killing of a person. Culpable homicide is the genus and murder is the specie. All culpable homicides are murders but not all murders are culpable homicides. The question of law arises whether the offence is culpable homicide amounting to murder or culpable homicide not amounting to murder. For the purpose of fixing punishment, proportionate to the gravity of this generic offence the code recognises three degree's of culpable homicide.

- The first one is culpable homicide of first degree. This is the gravest form

of culpable homicide which is defined under SEC 300 as "murder". Punishment is death, imprisonment for life, and shall be liable for both (SEC 302).

- The second may be termed as, culpable homicide of second degree. This is punishable under part I of SEC 304. Punishment is may extend to 10 years or imprisonment for life or both.
- The third one is culpable homicide of third degree. This is the lowest of all culpable homicide and punishable under part II of SEC 304. Punishment is with fine only, or imprisonment up to 10 years, or both.

The only difference of culpable homicide and murder is the degree of intention and knowledge. Greater the degree of intention and knowledge the case would fall under murder. Lesser the degree of knowledge and intention, the offence would fall under culpable homicide.

The distinction between SECTION 299 and SECTION 300 was laid down in ***R Vs GOVINDA***, In this case the accused had knocked his wife down, put one knee on her chest, and struck two or three blows on the face with closed fist, she died in the consequence, either on spot, or very shortly afterwards, there being no intention to cause death and the bodily injury not being sufficient in the ordinary course of nature to cause death. The accused was liable for culpable homicide not amounting to murder.



SECTION 299 – CULPABLE HOMICIDE	SECTION 300 - MURDER	SEC 304 lays down punishment	SEC 302 lays down punishment
A person commits culpable homicide if the act by which death is caused is done -	Subject to certain exception culpable homicide is murder if the act by which the death is caused is done-	This Sec lays emphasis on probability of the act	This Sec lays emphasis on certainty of the act
INTENTION		The punishment is Part I- imprisonment for life, extents to 10 years, and shall also be liable for fine.	Punishment is death (subject to exceptions), imprisonment for life, and shall be liable for fine
With the intention of causing death; or	With the intention of causing death; or	Part II- a term which may extent to 10 years, fine only, or shall be liable for both	
With the intention of causing such bodily harm which is likely to cause death;	With the intention of causing bodily harm as the offender knows such bodily harm is likely to cause death of whom the harm is caused; or	<p>SHALBHAI KADAR ALI Vs EMPEROR- The deceased was stabbed in the abdomen by the accused with a knife, and the deceased died due to gangrene and paralysis of intestine. It was held that if an operation would have taken place in an hour of infliction of abdomen injury then the life of the deceased might have saved. The court held it was culpable homicide not amounting to murder, thus convicted the accused under SEC 304 Part 1.</p> <p>SITUATIONS WHERE CULPABLE HOMICIDE DOES NOT AMOUNT TO MURDER</p> <p>The IPC has also laid down provisions where culpable homicide does not amount to murder. They are laid down under SEC 300 of the act.</p> <p>Clause 1-4 of Sec 300 provides the essential ingredients where culpable homicide amounts to murder. This section also provides five exceptional situations, the existence of which will remove from the purview of Sec 300. Such offences which falls within the exceptions of Sec 300,</p>	
	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		
KNOWLEDGE			
With the knowledge that the act is likely to cause death	With the knowledge that the act is so imminently dangerous to cause death		
It is a genus	It is a species		
Punishment is less compared to Sec 300- murder	Punishment is relatively higher when compared to Sec 299- culpable homicide		



ceases to be murder. It will merely be culpable homicide amounting to murder. However it becomes necessary to take note of two significant propositions about the nature and operation of these exceptions to Sec 300. First, there are “special exceptions” to murder only. They are the “general exceptions” under chap IV Sec 76 – 106. The second kind of “special exceptions” covers merely ‘murder’ to ‘culpable homicide not amounting to murder’ and therefore reduces the criminal liability of its perpetrator. These exceptions to Sec 300, unlike the ‘general exceptions’, do not exonerate the wrongdoer. They only operate as mitigating Factors.

The general exceptions under this Sec are:

1) EXCEPTION 1- Grave and sudden provocation – Culpable homicide is not murder if the offender, on account of grave and sudden provocation loses his self control and cause death of a person. The person, whose death is caused may be the person who gave the provocation or any other person by mistake or accident. This act must be done under the immediate impulse or sudden provocation.

This exception has three exception- (i) the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. (ii) the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the power of such public servant. (iii) that the provocation is not given by anything done in lawful exercise of the right of private defence.

The expression “grave” indicates that provocation be of such a nature so as to give cause for alarm to the accused. ”Sudden” means an action which must be quick and unexpected so far as to provoke the accused. Provocation should be both sudden and grave. If the provocation is grave and not sudden, sudden and not grave one cannot avail the exception. Further it should be shown that the provocation was of such nature that the offender was deprived of the power of self control.

While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide and as per the facts was not culpable homicide amounting to murder. The test of ‘sudden and grave provocation’ is whether a reasonable man when placed in the same situation in which the accused was placed would be provoked as to lose his self control.

The provocation can be an act or series of act done by the deceased to the accused resulting in inflicting of injury. The mental background created by previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled done by lapse of time, or otherwise giving room and scope for premeditation and calculation.

***K.M.NANAVATHI Vs STATE OF MAHARASTHRA-***

Nanavathi was working as second in command in Navy. His wife had illicit relationship with Ahuja a business man in Bombay. Ahuja had illicit relationship with several other women. When nanavthi returned home after work he noticed change in behaviour of his wife. He asked for reason and she confessed that she had illicit relationship with Ahuja. Nanavathi met Ahuja and got provoked with his behaviour. he went to the ship. He took his revolver and loaded the same. He went to the residence of Ahuja and shot him dead. Thereafter surrendered to the police.

Judgement – he was convicted for imprisonment for life by the Supreme Court.

The Court also laid down certain principals – (1) the test of “grave and sudden” provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self control. (2) In INDIA, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring him under within the first exception. (3). The mental background created by previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled done by lapse of time, or otherwise giving room and scope for premeditation and calculation.

2) EXCEPTION 2- Exceeding the right of private defence-This right, under certain circumstance even extends to the causing of

death. The clause is in respect of cases where a person has exceeded his right of private defence. it may be pointed that the fact that a person has exceeded his right of private defence does not totally exonerate a person under this exception. It merely considers as a mitigating factor to reduce the offence from murder to culpable homicide not amounting to murder. Before this exception had to availed the accused has to prove that he had right of private defence under Sec 96 – Sec 106, IPC. It is only after the existence of the right is established the question is whether the accused exceeded the right of right of his private defence. If a person genuinely exercises hi right of private defence within the prescribed limits then he commits no offence. However if he exceeds the right of private defence, it will amount to a lesser offence than murder. Thus the exceeding right of private defence by the accused should be unintentional. Only then the accused can avail the exception.

NATHAN Vs STATE OF MADRAS-

The accused and his wife were in possession of some land which they had been cultivating for several years. They fell into arrear in respect to the lease amount due to the landlady. The landlord tried to evict them forcefully and tried to harvest the crops. So the accused in right to private defence of the property killed the deceased. The Supreme Court accepted the contention that the incident took place when the accused had exercised his lawful right of private defence against property. However the deceased part had no harmful weapons to cause death or grievous hurt on the part of the accused; the right of private defence of property had limited only to the extent of causing death



under Sec 104, IPC. It was therefore held that the accused exceeded his right of private defence and was held for culpable homicide not amounting to murder. The offender was convicted for imprisonment of life.

3) **EXCEPTION 3- act of public servant** - it deals with situation where a public servant exceeds his lawful powers in the discharge of his duties and thereby causes death. The essential ingredients are (i) the offence must be committed by a public servant or by a person aiding the public servant (ii) the act must be committed by the public servant in exercising his duties (iii) he should have exceeded his powers given to him by law (iv) the act should be done in good faith (v) the public servant must have believed in good faith that his act was lawful and necessary for the duty to discharge his duties (vi) he should not have an ill will towards whose death has been caused

A suspected thief was arrested by a police constable and was being taken in train. The thief escaped from the running train. The constable persuaded him. When he was not in a position to apprehend him, he fired the gun. But in the process he hit a fireman and he was dead. It was held that the case was covered under this exception.

4) **EXCEPTION 4- Sudden fight**- there are four conditions for an offence to be termed under this exception- (i) it was a sudden fight (ii) there was no predetermination (iii) the act was done in the heat and passion (iv) the assailant had not taken undue advantage or acted in cruel manner (v) it is immaterial as to which party offered the provocation or committed the assault (vi) the fight must have been with a person killed.

Fight here means something more than a verbal quarrel. A fight is a combat between two or more persons whether with or without weapons. Fight must be sudden and not pre determined or pre arranged. Therefore the time gap between the quarrel and fight is important. Mere exchange of words is not enough, exchange of blows is necessary, but use of weapons is not necessary. The fight must be with the person who is killed and not with another person. Undue advantage means unfair advantage.

GHAPOO YADAV Vs STATE OF M.P –

It was held in case that a fight is a combat between two or more persons whether with or without weapon. There is not particular rule about what is sudden fight. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. A fight is said to be sudden and in a heat of passion when there is no time for the passion to cool down. To claim the exception it is important to prove that there was no predetermination and further it should be proved that there was no undue advantage or the offender acted in unusual manner or cruel.

5) **EXCEPTION 5- Death by consent** – culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes risk of death with his own consent. The essential points to be proved are (i) the death was caused due to the consent of the deceased (ii) the deceased was above the age of 18 years (iii) the consent was free and voluntary, and was not given through fear or misconception of facts.

IN UJAGAR SINGH- the accused killed his stepfather who was an infirm, old and



invalid man, with the latter consent, his motive being to get three innocent man implicated. It was held that the offence was covered by the fifth exception to Sec 300,IPC and punishable under Part I ,Sec 304 ,IPC.

CONCLUSION: From the above description it is clear to understand the difference between the two offences. Hence it is clear that intention of a person is very important to determine the nature of his act and award punishment.

