

## **Difference Between Culpable Homicide and Murder**

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### **Abstract**

To distinguish between culpable homicide not amounting to murder and murder, the provisions of Section 299 and Section 300 of the Penal Code. For culpable homicide under Section 299 and for murder under Section 300 of the Penal Code. Punishment for culpable homicide not amounting to murder is transportation for life, or ten years and fine under Section 304. Punishment for murder under Section 302 (1) and (2) is with death, transportation for life, or with rigorous imprisonment to ten years and shall also be liable to fine.

### **Introduction**

Offence means any act or omission made punishable by any law for the time being in force under the Code of Criminal Procedure. The word "offence" denotes a thing made punishable by Penal Code or under any special or local law is punishable under such law with imprisonment for a term of six months or upwards whether with or without fine under the Penal Code. Crime is criminal wrong concerned with the breach of public rights and duties and affects the community at large.

There are two kinds of offences affecting the human body:(1) Of offences affecting life; (2) Of offences affecting human body.

The offences affecting life are :- (a) Culpable homicide, (b) Murder, (c) Rash or negligent homicide, (d) suicide and abetment of suicide, (e) murder, culpable homicide and attempt to suicide, and (f) Causing of miscarriage, Injuries to unborn children, Exposure of Infants and concealment of Births and Exposure and Abandonment of Child under Twelve years, by parent or person having care of it.

To murder, whoever commit the offence of it. They are: (1) with the intention of causing death. (2) with the intention of causing bodily injury as in fact is sufficient in the ordinary course of nature of death. (3) in the absence of any circumstance which makes the act.

So, the above mentioned are the difference between the culpable homicide and murder.

Homicide is the killing of a human being by a human being. It is either (a) Lawful or (b) Unlawful .

Lawful homicide, or simple homicide, includes several cases falling under the General Exceptions.

If a man commits a murder, he can be tried and convicted of murder by the death sentence which the highest form of punishment, but not for every murder. Murder means whoever, in the absence of any circumstance which

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makes the act of culpable homicide not amounting to murder, causes death by doing an act with the intention of causing death, or with the intention of causing bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of murder.

Normally, the offender commits murder, but if that act brought the case within the ambit of one of the (5) exceptions prescribed in S.299(2) of the Penal Code, then that offence does not amount to murder, but culpable homicide not amounting to murder only. These (5) exceptions in short are:-

(1) Deprivation of the power of self-control by grave and sudden provocation; (2) Exceeding the right of private defence of property and person; (3) Exceeding the power of public servant given to him by Law; (4) Acts without premeditation in a sudden fight; and (5) Causes the death of a person who is above the age of (18) years.

### **Kinds of unlawful homicide**

Unlawful homicide includes :-

- (1) Culpable homicide not amounting to murder;<sup>2</sup>
- (2) Murder;<sup>3</sup>
- (3) Causing death by negligence;<sup>4</sup>
- (4) Suicide and abetment of suicide.<sup>5</sup>

### **Culpable homicide not amounting to murder**

According to S. 299 of the Penal Code this offence is defined as follows :

(i) Whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death commits the offence of culpable homicide not amounting to murder.

(ii) Whoever causes death by doing an act with the intention of causing such bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of culpable homicide not amounting to murder in any of the following cases :-

(A) If he, 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 the death of any other person by mistake or accident:

Provided;

First - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;

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<sup>2</sup> . Section 299 of the Penal Code, 1860.

<sup>3</sup> . Section 300, Ibid.

<sup>4</sup> . Section 304 (A), Ibid.

<sup>5</sup> . Sections 305 and 306, Ibid.

- Secondly - That the provocation is not given by anything done in obedience to the Law, or by a public servant in the Lawful exercise of the powers of such public servant; and
- Thirdly - 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 deprive the offender of the power of self-control is a question of fact.

With respect to the intention of causing such bodily injury as is likely to cause death, the connection between the act and the death caused thereby must be direct and distinct, and though not immediate it must not be too remote. If the nature of the connection between the act and the death is in itself obscure, or if it is obscured by the action of concurrent causes, or if the connection is broken by the intervention of subsequent causes or if the interval of time between the death and the act is too long the above condition is not fulfilled.<sup>6</sup>

The provocation appear the party, before any provocation is given, intended so use a deadly weapon towards any one who might assault him, this would show that a fatal blow given afterwards was not to be attributed to the provocation, and the crime would therefore be murder.<sup>7</sup>

#### **Illustration**

“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.

(B) If he, 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 the 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.

#### **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.<sup>8</sup>

(C) If he, being a public servant or doing a public servant for the advancement of public justice, exceeds the powers given to him by Law, and causes death by doing an act which he, in good faith, believes to be Lawful and necessary for the due discharge of the duty of such public servant and without ill-will towards the person whose death is caused.

(D) If he, acts without premeditation in a sudden fight the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel or unusual manner.

<sup>6</sup> . Ratanlal & Dhirajlal the India Penal Code p. 24, 1954.

<sup>7</sup> . Thomas (1837) 7C & p. 817.

<sup>8</sup> . Ratanlal & Dhirajlal, the India Penal Code P. 239, 1954.

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

(E) If he, causes the death of a person who is above the age of eighteen years and who 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**

Murder is defined in S. 300 of the Penal Code as follows :-

“Whoever, in the absence of any circumstance which makes the act one of culpable homicide not amounting to murder, causes death by doing an act with the intention of causing death, or with the intention of causing bodily injury as in fact is sufficient in the ordinary course of nature to cause death, commits the offence of murder.<sup>9</sup>

Explanation of culpable homicide is mentioned in Section 300 (A) of the Penal Code. In Sections 299 and 300 :-

- (a) 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 his death;
- (b) where death is caused by bodily injury, the offender's knowledge of the weakness or infirmity of the person on whom the bodily injury is inflicted is a relevant factor in proving the nature of his intention;
- (c) the offender's knowledge an act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, is a relevant factor in proving the nature of his intention;
- (d) 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 skillful treatment the death might have been prevented;
- (e) 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.

If a person, by doing anything which he intends or knows to be likely to cause death, commits an offence by causing the death of any person whose death he neither intends or knows himself to be likely to cause, the offence committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.<sup>10</sup>

**Explanation** – In this section the word “offence” means an offence described in section 299 or section 300 or section 304 A.

<sup>9</sup> . Section 300 of the Penal Code, 1860.

<sup>10</sup> . Section 301, Ibid.

Punishment for culpable homicide not amounting to murder : Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.<sup>11</sup>

Punishment for murder is provided in Section 302. It is as follows;

(1) Whoever commits murder

- (a) being under sentence of transportation for life, or
- (b) with premeditation, or
- (c) in the course of committing any offence punishable under this Code with imprisonment for a term which may extend to seven years, shall be punished with death, and shall also be liable to fine.

(2) Whoever commits murder in any other case shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.<sup>12</sup>

### **Explanation**

Whether an act is premeditated is a question of fact.

### **Causing Death by Negligence**

Whoever causes the death of any person by doing any rash or negligent act not punishable as culpable homicide or murder shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine: provided that, if such act is done with the knowledge that it is likely to cause death the term of imprisonment may extend to ten years.<sup>13</sup>

### **Suicide or abetment of Suicide**

If any person under eighteen years of age, any insane person, any delirious person, any idiot or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.<sup>14</sup>

If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.<sup>15</sup>

### **Differences between culpable homicide and murder.**

In S. 299 (1), if the person doing an act is only with the intention of causing such bodily injury as is likely to cause death and causes death, then it only amounts to the offence of culpable homicide not amounting to murder.

But in S. 299 (2) there are (2) kinds of act :-

- (1) An act with the intention of causes death, or

<sup>11</sup> . Section 304 of the Penal Code, 1860.

<sup>12</sup> . Section 302, Ibid.

<sup>13</sup> . Section 304 (A), Ibid.

<sup>14</sup> . Section 305, Ibid.

<sup>15</sup> . Section 306, Ibid.

- (2) An act with the intention of causing such bodily injury as in fact is sufficient in the ordinary course of nature to cause death.

The offender commits the offence by doing one of the above acts, normally he commits murder, but if that act brought the case within the ambit of one of the (5) exceptions prescribed in S. 299 (2) of the Penal Code, then that offence does not amount to murder but culpable homicide not amounting to murder only.

The (5) exceptions in short are :-

- (1) Deprivation of the power of self-control by grave and sudden provocation;
- (2) Exceeding the right of private defence of property and person;
- (3) Exceeding the power of public servant given to him by Law;
- (4) Acts without premeditation in a sudden fights;
- (5) Causes the death of a person who is above the age of (18) years.

Punishment for culpable homicide not amounting to murder is transportation for life, or ten years and fine.<sup>16</sup>

In S. 300 of the Penal Code definition ingredients of murder can be analyzed as follows :-

Whoever caused death :-

- (1) by doing an act with the intention of causing death, or
- (2) with the intention of causing bodily injury as in fact is sufficient in the ordinary course of nature to cause death commit the offence of murder if one of the acts done by the offender is not falling in one of the (5) exceptions of S. 300 which are prescribed in S. 299 (2) of the Code.

Punishment for murder is prescribed in S. 302 with two sub-sections:

- (1) whoever commits murder :-
  - (a) being under sentence of transportation for life, or
  - (b) with premeditation, or
  - (c) in the course of committing any offence punishable under this code with imprisonment for a term which may extend to seven years, shall be punished with death, and shall also be liable to fine.
- (2) whoever commits murder in any other case shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

To distinguish between culpable homicide not amounting to murder and murder, the provisions of S. 299 and 300 must be compared carefully and S. 302 also be needed to mention for the offence of murder. Whoever commits the killing of a person under S. 302 (1), then that offender commits murder, he

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<sup>16</sup> . Section 304 of the Penal Code. 1860.

shall be punished with death, but under S. 302 (2) he shall be punished with transportation for life.

The most salient point for the difference between these two offences depends upon the intention of the offender who kills another person. In the case of *Phyu Thee Aung Vs The Union of Myanmar*<sup>17</sup> it is held that the material question of intention of the offender for the purpose of S. 299 or S. 300 of the Penal Code, has to be determined and weighed very carefully on the basis of legal evidence adduced in that regard and that when such evidence is unavailable, it will be entirely unsafe to convict an accused person murder for culpable homicide under S- 299 or for murder under S. 300, merely because the deceased met with his death as a result of injury or injuries caused by the accused person.

### Conclusion

The difference between culpable homicide and murder is that if, the offender commits the offence by doing one of the acts under S. 299 (2) of the Penal Code, normally he commits murder; but if that act brought the case within the ambit of one of the (5) exceptions prescribed in S. 299 (2) of the Penal Code, then the offence does not amount to murder, but culpable homicide not amounting to murder only. The provisions S. 299 and 300 must be compared carefully and S. 302 also be needed to mention for the offence of murder. Whoever commits the killing of a person under S. 302 (1), then that offender commits murder, he shall be punished with death; but under S. 302 (2) he shall be punished with transportation for life. Punishment for culpable homicide not amounting to murder is transportation for life, or ten years and fine under S. 304 of the Penal Code.

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### References

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ဦးမြင့်အောင်၊ ရာဇဝတ်မှုခင်းအဘိဓာန် (ရာဇဝတ်ကြီး) ၁၉၇၀။

ဦးဗကြိုင်၊ ပြစ်မှုဆိုင်ရာနာကျင်စေမှု၊ လူသေမှုနှင့် လူသတ်မှုဥပဒေသိမှတ်ဖွယ်ရာအဖြာဖြာ (၂၀၀၄)။

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<sup>17</sup> . 1960 B. L. R (H. C) 356.