

The Indian Penal Code 1860

Section 300 - MURDER Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused

a) A shoots Z with the intention of killing him, Z dies in consequence, A commits murder. (b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death. (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A guilty of murder, although he may not have intended to cause Z's death. (d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual. Exception 1 : When culpable homicide is not murder Culpable homicide is not murder of 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 the death of any other person by mistake or accident. The above exception is subject to the following provisos:-- First--That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. Secondly--That the provocation is not given by anything done in obedience to the law, or by public servant in the lawful exercise of the powers of such public servant. Thirdly--That the provocation is not given by anything done in the lawful exercise of the right to private defence. Explanation : Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Illustrations (a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation. (b) 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. (c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers. (d) A appears as a witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder. (e) A attempts to pull Z's nose. Z in the exercise of the right of private defence, lay hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence. (f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder. Exception 2 : 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 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. Exception 3: Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting 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 his duty as such public Servant and without ill-will towards the person whose death is caused. Exception 4 : 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. Explanation : It is immaterial in such cases which party offers the provocation or commits the first assault. Exception 5 : Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, 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. COMMENTS All the four clauses require that the act which causes death should be done intentionally or with the knowledge or means of knowing that death is a natural consequence of the act. The Penal Code recognizes three degrees of culpable homicide. The first is the culpable homicide of the first degree which is its gravest form is defined as murder in s. 300. The second is the culpable homicide of the second degree punishable under the 1st part of s. 304. The third is the culpable homicide of the third degree and is punishable under the second part of s. 304. It is the lowest type of culpable homicide. There is a very thin line of distinction between s. 299 and s. 300 IPC. 'Culpable homicide' is genus and 'murder' is its specie. All 'murder' is 'culpable homicide' but not vice versa. The distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. This distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between cl.(b) of s. 299 and cl. (3) of s. 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or lowest degree. It is culpable homicide where death must have been known to be a probable result. It is murder where it must have been known to be the most probable result. All acts of killings done with the intention to kill, or to inflict bodily injury sufficient to cause death, or with the knowledge that death must be the most probable result are prima facie murder; while these committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder. An offence cannot amount to murder unless it falls within the definition of culpable homicide. The two offences involve the killing of a person. They are the offences of culpable homicide and the more heinous offence of murder. What distinguishes these two offences is the presence of special mens rea which consists of four mental attitudes in the presence of any of them the leaner becomes greater. These four mental attitudes are stated in s. 300 IPC as distinguishing murder from culpable homicide--Rajwant Singh v. State of Kerala AIR 1966 SC 1874; Sampuran v. State of Haryana 1980 Cri.LJ 951; Monica Mandal v. State of West Bengal (1985) 1 Crimes 429 (Cal) Conviction of the accused on extra judicial confession was proper and no corroboration was necessary--State of U.P. v. M.K. Anthony AIR 1985 SC 48. Also see Vinayak Shivajirao Pal v. State of Maharashtra 1998(1) Crimes 131(SC) Provocation need not necessarily be confined to a physical or verbal attack but there could be that small class of exceptional situation when the situational provocation gives rise to commission of an offence and even though concept is comparatively lesser known in criminal jurisprudence, it is not foreign to it--Sulaiman K v. State of Karnataka 1998(1) Crimes 414.