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INDIAN PENAL CODE

CULPABLE

HOMICIDE

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INDIAN PENAL CODE : CULPABLE HOMICIDE

CULPABLE HOMICIDE DEFINED

Section 299

- 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

Explanatory Notes from DLA

What is culpable homicide?

- There are two major ingredients of the offence of culpable homicide:
 - The **actus reus**: causing death of a human being by doing an act
 - The **mens rea**: the act must be done with the intention or knowledge specified in the section
- It is **not** necessary that any **intention** should exist with regard to the particular person whose death is caused, as in the familiar example of a shot aimed at one person killing another, or poison intended for one being taken by another.
- The word “**likely**” in section 299 conveys the sense of ‘**probable**’ as distinguished from a mere possibility.

Illustrations to Section 299

Illustration (a)

- 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
 - treads on it, falls in and is killed
- A has committed the offence of culpable homicide



DLA NOTE

- The first illustration shows that **it is not necessary that the intention to cause death should be towards any particular person.**
- It could be quite general in nature. Here, the intention is to cause death of **whoever** comes that way and walks on the trap.

Illustration (b)

- A knows Z to be behind a bush. B does not know it
- A **intending** to cause or knowing it likely to cause Z's death
 - **induces** B to fire at the bush
- B fires and kills Z
- Here B may be guilty of no offence
 - but A has committed the offence of culpable homicide

DLA NOTE:

- The second illustration holds an abettor guilty of committing culpable homicide.
- In the absence of this illustration, A would be guilty of abetment only, but by force of this illustration, he is to be held guilty of committing culpable homicide.

Explanation 1

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

Explanation 3

- Causing death of child in mother's womb
 - is not homicide



- But it may amount to culpable homicide
 - to cause 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

Case Study 1

Facts:

- In a fight between a husband and a wife inside their home, the husband hits the wife with a heavy wooden object on her head.
- The wife gets injured, falls down and becomes unconscious. The husband thinks she is dead.
- To save himself from the charge of killing his wife, he proceeds to hang the dead body of his wife with a rope on the beam of his house to give it a colour of suicide.
- Post mortem shows that she died not by the blow on her head, but by asphyxiation caused by the hanging.
- The husband is tried for the offence of culpable homicide.

Analysis :

- In the incident under consideration, the accused did two acts.
- By the first act, he hit his wife with a heavy wooden object on her head and caused grievous hurt to her.
- For this act, the court found him guilty of voluntarily causing grievous hurt and punished him under section 326 IPC.
- By the second act, he hanged his wife with a rope. This act caused her death. He thus caused death of a human being by doing this act.

Question:

- **Is he guilty of the offence of culpable homicide for this second act?**



Ans:

- A layman would say, yes, he is guilty of the offence of culpable homicide. A person well-versed in law would say, no, he is not guilty of the offence of culpable homicide.

Reasons:

- In the present case, actus reus is present. The accused did an act which caused the death.
- What about the mens rea? Let us find out:

(1)

- **Did he hang her with the intention to cause her death?**
- No, he did not hang her with the intention to cause her death because to him she was already dead. No one can form an intention to cause death of a person whom he believes to be already dead.

(2)

- **Did he hang her with the intention of causing such bodily injury to her as was likely to cause her death?**
- No, because to him she was already dead.

(3)

- **Did he hang her with the rope with the **knowledge** that he is likely by such act to cause her death?**
- No, because as per his knowledge she was already dead. *The **knowledge** must have reference to the particular circumstances in which the accused is placed.*

Decision:

- The intention or knowledge required by section 299 was absent. Accordingly, he cannot be held guilty of the offence of culpable homicide.

DLA Note:

- This is a real-life case. Citation of the case: **Palani Goundan v. Emperor [1919 Mad]**



Case Study 2

Facts:

- Two persons attack a woman in her garden in a bid to kill her. They cause three punctured wounds upon her head.
- Believing her to be dead, they throw her in a well to cover up their deed.
- The Post mortem report says she died not from the wounds on her head but from drowning in the well.

Analysis :

- In this case, two acts were done by the accused.
- In the first act of beating her, the accused had the intention to kill the woman but the act did not result in her death, though they believed her to be dead.
- The second act of throwing her into the well caused her death but this time the accused did not have the required intention or knowledge. Let us see how:

(1)

- **Did they throw her into the well with the intention of causing her death?**
- No, they did not throw her into the well with the intention to cause her death because to them she was already dead. No one can form an intention to cause death of a person whom he believes to be already dead.

(2)

- **Did they throw her into the well with the intention of causing such bodily injury to her as was likely to cause her death?**
- No, because to them she was already dead.

(3)

- **Did they throw her into the well with the **knowledge** that they were likely by such act to cause her death?**
- No, because as per their knowledge she was already dead. *The **knowledge** must have reference to the particular circumstances in which the accused is placed.*



Question:

- Are the accused still guilty of the offence of culpable homicide?

Ans:

- Yes.

Reasons:

- In the present case, there was at the beginning an intention to cause death.
- This intention was apparently completely carried into effect but in fact was not.
- Even if the intention at the second stage of the transaction had been merely to dispose of a dead body, the two phases of the same transaction were so closely connected in time and purpose that they must be considered as **parts of the same transaction**.
- The result of the actions of the accused taken as a whole clearly was to carry out the intention to kill with which they began to act.
- Even if at the time when the woman was thrown into the well she was alive and even if the accused then thought her dead, they would be guilty of murder.

DLA Note:

- This is a real-life case. Citation of the case: **In Re Thavamani [1943 Mad]**

Case Study 3

Facts:

- The accused gives a person some halva in which a poison containing arsenic and mercury had been mixed with the intention of killing him. He ate a portion of the sweetmeat and threw the rest away.
- A girl, aged 8 years, who was a niece of the accused, took some of the sweetmeat and ate it and gave some to another little child who also ate it.
- The two children who had eaten the poisoned sweetmeat died from the effects of it, but the person who was intended to be killed eventually recovered.



Question:

- Is the accused guilty of the offence of culpable homicide for causing death of the two girls?

Ans:

- We need to settle the following three issues before we can answer this question:

Issue 1: Contributory action of the victim

- There is contributory action of the girl in picking up the sweetmeat and eating it.

Question:

- What is the effect of this contributory action of the girl?

Ans:

- It is clear from the **first illustration** to section 299 that contributory action by the person whose death is caused will not necessarily prevent the act of the offender from being culpable homicide even if the death could not have occurred without such contributory action.

Issue 2: Contributory action of a third party

- There is contributory action of the person intended to be killed in throwing away part of the sweetmeat.

Question:

- What is the effect of the contributory action of a third person?

Ans:

- It is clear from the **second illustration** to section 299 that contributory action by a third person will not necessarily prevent the act of the offender from being culpable homicide even if the death could not have occurred without such contributory action.

Issue 3: Remoteness of the cause

Question:



- Can it be properly said that the accused “caused the death” of the girls, in the ordinary sense of those words? Was not the accused connected with the deaths too indirectly or remotely?

Ans:

- Action of the accused was the **efficient cause** of the girl’s death though her own action in picking up and eating the poison was also necessary in order to effect her death.
- This situation is fully covered by the first illustration to section 299:
- There, the man who laid the turf and sticks over the pit with the intention of causing death has been held to be the cause of the death of the man who ignorantly fell into the pit although death would not have occurred if he had not of his own free will walked to the spot where the pit was.

Question:

- **What about the mens rea?**

Ans:

- The mens rea which is essential to criminal responsibility existed with reference to the act done by the accused in attempting to kill the person to whom he had offered the poisoned halwa, though not in regard to the girl whose death he, in fact, caused, and that is all that the section requires.
- It is sufficient if death is actually, even though involuntarily, caused to one person by an act intended to cause the death of another
- It is the criminality of the intention with regard to the latter that makes the act done and the consequence which follows from it an offence

Decision:

- Yes, the accused is guilty of the offence of culpable homicide for causing death of the two girls.

DLA Note:

- This is a real-life case. Citation of the case: **Emperor v. Mushnooru Suryanarayana Murthy [1912 Mad]**.



Question:

- **Is a man guilty of culpable homicide if he shoots at a living human being believing him to be dead?**

Ans.:

- No.
- *The intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances.*
- It follows that a man is not guilty of culpable homicide if his intention was directed only to what he believed to be a lifeless body.

PUNISHMENT FOR CULPABLE HOMICIDE

- There are **three components of mens rea** in section 299:
 - **Intention** to cause death
 - **Intention** to cause such bodily injury as is likely to cause death or
 - **knowledge** that the act is likely to cause death

(1)

- Where there is **intention** to cause death, the offence of culpable homicide gets aggravated and converted to the offence of murder and the punishment is either death or life imprisonment under section 302.

(2)

- Where there is **intention** to cause such bodily injury as is likely to cause death, the offence of culpable homicide is punishable under the first part of section 304 with imprisonment for life or imprisonment of upto ten years and fine.

(3)

- Where there is **knowledge** that the act is likely to cause death but **without the intention** specified in section 299, the offence of culpable homicide is punishable under the second part of section 304 with imprisonment of upto ten years or fine or both.



Three types of punishment for culpable homicide:

For the purpose of fixing punishment, the Code practically recognises three degrees of culpable homicide.

- The first is what may be called the ‘culpable homicide of the first degree’. This is the greatest form of culpable homicide which is defined in section 300 as ‘murder’.
- The second may be termed as ‘culpable homicide of the second degree’. This is punishable under the first part of section 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. Culpable homicide of this degree is punishable under the second part of section 304.
- It is **the degree of probability of death** which determines whether a culpable homicide is of the gravest, medium or the lowest degree.

Question:

- **When does culpable homicide become murder?**

Ans:

- In the scheme of the Penal Code, ‘culpable homicide’ is the genus and ‘murder’ is its species. All ‘murder’ is ‘culpable homicide’ but not vice-versa.
- Speaking generally, ‘culpable homicide’ sans ‘special characteristics of murder’, is ‘culpable homicide not amounting to murder’.
