

“Perceptive Clarification *Betwixt* Culpable Homicide And Murder” - An Analysis

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Abstract

There is a lot of confusion¹ between the two terms “culpable homicide” and “murder” and when the “culpable homicide” becomes “murder” and when the “murder” becomes “culpable homicide.” The academic discussion between ‘murder’ and ‘culpable homicide not amounts to murder’ has always vexed the Courts². The confusion is caused, if the Courts losing the sight of the true scope and meaning of the terms used by the legislature in sections 299 and 300 of I.P.C, allowing themselves to be drawn into minute abstractions³. Why because, a murder is merely a particular form of culpable homicide. “All murder is culpable homicide but, all homicide is not murder”.

“Culpable homicide is the genus and murder is the species⁴.” The basic difference in between these two offences lies in the gravity with which the offence has been perpetrated. Therefore, in this paper, we, the authors have taken a meticulous analysis for the clear cut understanding of the two terms “Culpable Homicide” and “Murder.”

¹ Recently, there was a hectic argument between the Apex Court of India and a retired judge of the Apex Court of India regarding the case *Govindaswamy Vs. State of Kerala* (Popularly known as Sowmy Murder case); CrI Appeal No: 1584- 1585 of 2014 Date of Judgment 15th September, 2016, in which the appellant’s/accused conviction under section 302 was altered to Section 325 of IPC, Though the victim was died by the act of the accused/appellant.

² Commentary on The Indian Penal Code, Manohar & Chitale, 1st Edi, 2014, A.I.R Nagpur Publication. P.1428.

³ Ibid,2.

⁴ State of Andra Pradesh Vs Rayavarapu Punnaya & Anr, 1977 AIR 45.

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1. Introduction

What is Homicide?

The word ‘homicide’ has been derived from Latin terms *homi* (man) and *cido* (Cut)⁵ or (kill)⁶. Thus, “homicide” means killing of human being by another human⁷. However, in every case of killing, one is not culpable. It may be lawful homicide⁸ and not culpable⁹. “Culpable homicide” is an unlawful homicide¹⁰. If the death of a human being is caused by any of the ‘acts’ falling within the ambit any of the three limbs of Section 299 of IPC, It is culpable homicide. It is a wrongful homicide done with culpable mental state¹¹.

Thus, the term homicide refers two types: (i) lawful homicides and (ii) unlawful homicides. “Lawful homicides” further classified into two categories (i) Excusable homicides¹² and (ii) justifiable homicides¹³.

⁵ P S A Pillai’s Criminal Law, By KI Vibhute, 12th Edi, Second Reprint, 2015, Lexis Nexis Pub. P. 569.

⁶ Criminal Law Cases & Materilas, K.D.Kaur, 18th Edi, 2015, Lexis Nexis Pub. P.389.

⁷ Ganesan Vs. State, Rep by. Inspector of Police, Alangulam Police Station, Virudunagar. D.O.J 16/11/2002.

⁸ See chapter IV of IPC “Of General Exceptions”.

⁹ Culpable means “Deserving to be blamed” or “considered responsible for something bad”.

¹⁰ The homicides that are made punishable under the Code obviously carries the label of unlawful homicides. See *ibid*, 4.

¹¹ Ganesan Vs. State, Inspector of Police, Alangulam Police Station, Virudunagar. D.O.J 16/11/2002.

¹² For example see Sections 80, 82-85, 92.

¹³ Sections: 76, 77, 79, 81, 78 & 100.

Definition of “Culpable Homicide” under the I.P.C:

Section 299 of Indian Penal Code defines the term “Culpable Homicide” in the following terms: “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”.

This section defines culpable homicide *simpliciter*. According to the above definition, to constitute, culpable homicide, the following ingredients has to be fulfilled:

- (i) There must be a death of a person
- (ii) It should have been caused by the act of another person
- (iii) The death must have been caused
 - (a) with the intention of causing death or
 - (b) with the intention of causing such bodily injury as is likely to cause death or
 - (c) with the knowledge that by his act he is likely to cause death.

As per Section 299 of IPC, there are two types of culpable homicide has been prescribed 1.Culpable homicide with intention and 2. Culpable homicide with knowledge and not with intention, that is to say,

(i) Causing death by doing an act or such bodily injury with the intention:-

For example: “A lays slicks 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 homicide¹.”

(ii) Causing death or such bodily injury with knowledge and not with intention.

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 be guilty of no offence; but A has committed the offence of culpable homicide².”

In *Mani Cholakar Vs State*, it has been held that “when the occurrence took place, the accused was

unarmed. Death of the deceased was the outcome the sudden quarrel. The accused was not acted in a cruel manner. It is not an intentional culpable homicide not amounting to murder. The accused was imputed with knowledge that the deceased crossed 67 years. Therefore, the accused conviction under section 304 (ii) is confirmed³.”

For the first limb, the punishment is provided under section 304 (I) of IPC⁴ and with respect to the later, the punishment is provided under section 304 (II) of IPC⁵.

(iii) If there is neither intention nor knowledge to kill then, there is no question of culpable homicide.

For example: “A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death⁶.”

From the above, it is crystal clear that if any death is caused with intention (*mens rea* ‘intention’ is required), life imprisonment or ten years imprisonment will be awarded along with fine. Likewise, if any death or bodily injury as is likely cause to death is caused with knowledge (*mens rea* only “knowledge” is required and not intention – “here *intention is completely missing*”), ten years imprisonment will be awarded or fine will be imposed or he will be punished with both.

For example, in a case, where the accused could have known that the death was likely to be caused but he did not intend to cause death, it was held that the accused could only be convicted under the third clause of Section 299, i.e., for “culpable homicide” punishable in Part-II of Section 304 but neither under Section 302 nor Part-I of Section 304 IPC. “Knowledge” thus cannot be equated with an “intention” and as compared to “knowledge”, “intention” requires something more than mere foresight of the consequences⁷.

Where there is no evidence to show any “knowledge” of the likelihood of causing death

³ 2017 (1) TNLR 254 (Mad) (MB). P. 257.

⁴ Imprisonment for Life or Ten Years imprisonment and shall also be fine.

⁵ Ten years imprisonment or with fine or with both.

⁶ Illustration 3 to Section 299.

⁷ Sanjeev Nanda vs The State, 12 May, 2009.

¹ Illustration 1 to Section 299.

² Illustration 2 to Section 299.

on the part of the accused, the Hind part of Section 304 IPC will not apply¹.

The section 299 of IPC has contained three explanations. According to which, “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 death².”

Explanation 2.—“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 skilful treatment the death might have been prevented.”

Under this explanation, the person who caused the bodily injury cannot take the defence that if proper remedies and treatment have been given, the death might have been prevented.

Explanation 3.—“The causing of the death of 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 form, though the child may not have breathed or been completely born.”

MURDER:

Section 300 lays down what acts of culpable homicide amount to murder³. As we already told in the introductory part, the provision relating to murder and culpable homicide are probably the most complicated in the I.P.C and are so technical as frequently to lead to confusion⁴.

The verbatim of the definition given under section 300 of IPC, for the term “murder” has been reproduced 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.

Analysis of the term ‘Murder’ or When Culpable Homicide becomes ‘murder’:

Murder is an aggravated form of culpable homicide. The plain reading of the above definition shows that the ‘culpable homicide becomes murder’ only when any one of the four conditions specified above is satisfied. “Culpable homicide *sans* special characteristic of murder is culpable homicide not amounting to murder.”

For better understanding of terms ‘culpable homicide’ and ‘murder’, see the Table below:

Section 299 (Culpable Homicide) Whoever causes death by doing an act	Section 300 (Murder) Culpable homicide is murder, if the act by which the death is caused
(a) With the intention of causing death.	(1) Is done with the intention of causing death.
(b)With the intention of causing such bodily injury as is likely to cause death	(2) 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. (3) 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.
(c)With the knowledge that he is likely by such act to cause death	(4) 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.

¹ Sanjeev Nanda vs The State, 12 May, 2009.

² Explanation I.

³. For Murder, the punishment is provided under Section 302 of IPC. According to which the death or Imprisonment for life along with fine has been prescribed.

⁴Commentary on The Indian Penal Code, Manohar & Chitaley, 1st Edi, 2014, A.I.R Nagpur Publication. P.1428.

Comparison of Clause (1) of Section 300 and Clause (a) of Section 299:

Clause (1) of Section 300 reproduces the first part of Section 299. An intentional killing is always murder unless it comes within one of the special exceptions in Section 300. If an exception applies, it is culpable homicide not amounting to murder¹. Where there is an intention to kill, the offence is always murder². Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result³, it is murder⁴. (See the illustration below):

“A lays slicks 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 homicide⁵.” – In this illustration, the death is a likely result, it is culpable homicide⁶.

“A shoots Z with the intention of killing him. Z dies in consequence. A commits murder⁷” - In this illustration, the death is most probable result, it is murder⁸.

¹ Anda & Ors Vs The State of Rajasthan, AIR 1966 SC 148.

² Reg Vs Govinda, (1877) ILR 1 Bom 342. Available @ Indian Kanoon.

³ “When a person is causing an injury on a vital part (region of the head) of the body, the intention to kill can certainly be attributed to him.” – Chahat Khan Vs. State of Haryana, AIR 1972 SC 2574.

⁴ Reg Vs Govinda, (1877) ILR 1 Bom 342. Available @ Indian Kanoon.

⁵ Illustration (a) to section 299 of IPC.

⁶ Under this illustration, the offender did not have any intention against any particular individual. See also Illustration (d) to Clause 4 of Section 300.

⁷ Illustration (a) to Section 300 of IPC.

⁸ When a person sets fire to the deceased, after another poured kerosene on his body, the intention of the accused was to kill the deceased. “When the accused hit the deceased on the vital part of the body, the chest, with such force as to impair the liver and the aorta, the offence, is plainly one of murder.” – Rau Bhagwanta Hurgude Vs. State of Maharashtra, AIR 1979 SC 1224.

Comparison of Clause (2) of Section 300 and Clause (b) of Section 299:

Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The 2nd clause to Section 300 postulates that “if a person intentionally causes bodily injury with the knowledge that such bodily injury will cause death of the person injured, then it will be culpable homicide amounting to murder.” The *mens rea* contemplated under Clause 2 of Section 300, is (i) intention and (ii) knowledge.

In Clause (b) to Section 299, *the knowledge of the doer is immaterial*. Whereas, under Clause (2) to Section 300, the offender possess the knowledge of the likelihood of such injury causing the death of the particular victim. This knowledge must be in relation to the person harmed⁹. Therefore, under clause (2) of Section 300, the culpable homicide becomes murder only “when the intention of causing such bodily injury is coupled with the offender’s knowledge of the likelihood of such injury causing the death of the particular victim¹⁰.”

For example see illustration (b) to Section 300 of IPC, which is as follows:

“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.”

THE DIFFERENCE BETWEEN CLAUSES (1) AND (2) OF SECTION 300 OF IPC:

In the 1st clause, the act is done with the intention to cause death, straight and simple. But in Clause (2), the intention is only to cause such bodily injury as the offender subjectively knows is likely to cause death.

The Comparison of Clause (3) of Section 300 and Clause (b) of Section 299:

⁹ Anda & Ors Vs. State of Rajasthan, AIR 1966 SC 148

¹⁰ See Illustration (b) to section 300.

The third clause speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. In Clause (3) of Section 300, the word, Injury inflicted....“Sufficient in the ordinary course of nature” to cause death has been given. Here the emphasis is given to the term “sufficient in the ordinary course of nature”. The offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death; it is murder, if such injury is sufficient in the, ordinary course of nature to cause death¹. Under this Clause (3) of Section 300, intention to cause death is not material². If it is proved that the “injury inflicted is sufficient in the ordinary course of nature to cause death³”, then Section 300 (c) would be attracted⁴. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder⁵. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature. A blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death⁶.

If the intended injury cannot be said to be sufficient in the ordinary course of nature to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but within culpable homicide not amounting to murder or something less⁷. In *Virsa Singh Vs State of Punjab*⁸,

¹ Reg Vs Govida (1877) ILR 1 Bom 342.

² See also *Anda & Ors Vs. State of Rajasthan*, “The sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death”.

³ “Injury inflicted is sufficient in the ordinary course of nature to cause death or not, is obviously a question of fact.”

⁴ Illustration (c) to Section 300. “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 is guilty of murder, although he may not have intended to cause Z's death”.

⁵ *Anda & Ors Vs. State of Rajasthan*, AIR 1966 SC 148.

⁶ Reg Vs Govida (1877) ILR 1 Bom 342

⁷ *Anda & Ors Vs. State of Rajasthan*, AIR 1966 SC 148.

it has been explained that to bring a case under Clause (3) of Section 300, the following has to be proved.

(i) A bodily injury is present (ii) the nature of the injury must be proved (iii) it must be proved that there was an intention to inflict the particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. (iv) it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature.

It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death.

Thus according to the rule laid down in *Virsa Singh's* case (supra) “even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder⁹.”

The difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of the degrees of probability of death resulting from the intended bodily injury. The word ‘likely’ in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility¹⁰. The words “bodily injury.... sufficient in the ordinary course of nature to cause death” mean that the death will be the “most probable” result of the injury, having regard to the ordinary course of the nature¹¹.

The Comparison of Clause (4) of Section 300 and Clause (c) of Section 299:

Both clauses require the knowledge of the probability of the act causing death. The clause 4 of Section 300, comprehends generally the commission of imminently dangerous acts which must in all probability cause death or cause such bodily injury

⁸ AIR 1958 SC 465.

⁹ *State of Andhra Pradesh Vs Rayavarapu Punnayya and Anr*, AIR 1977 SC 45.

¹⁰ *Commentary on The Indian Penal Code*, Manohar & Chitale, 1st Edi, 2014, A.I.R Nagpur Publication. P.1428.

¹¹ *Commentary on The Indian Penal Code*, Manohar & Chitale, 1st Edi, 2014, A.I.R Nagpur Publication. P.1428.

as is likely to cause death. Under this clause, the act need not be directed against any particular individual nor there be an intention to cause death of any particular individual¹. When such an act is committed with the knowledge that death might be the probable result and without any excuse for incurring the risk of causing death or injury as is likely to cause death, the offence is murder. This clause covers a case in which there is no intention to cause the death of any one in particular².

For example: “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 individual³”.

In the given example, the offender A without any excuses fires a loaded gun into a crowd and thereby kills one of them. In this example, the offender A does not have any intention to kill any particular individual but he is having the knowledge that it is so imminently dangerous that it must, in all, probability, cause death of any one or such bodily injury as is likely to cause death. Therefore, he is liable for murder.

Test to determine whether the act of the offender is ‘Murder’ or ‘culpable homicide not amounting to murder’:

Whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages⁴.

1. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another.

Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering

2. Whether that act of the accused amounts to "culpable homicide" as defined in section 299.

If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of I.P.C is reached.

This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative, the offence would be 'culpable homicide not amounting to murder'. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder' punishable under the First Part of Section 304 of I.P.C.

WHEN CULPABLE HOMICIDE IS NOT MURDER?

The culpable homicide referred under Section 299 of the I.P.C would become murder if it satisfies the requirements of four clauses of Section 300 IPC (As we discussed above) and even if it satisfies four clauses, then again it may be reduced to culpable homicide not amounting to murder if the facts attract any of the 5 exceptions herein after provided under Section 300 I.P.C.

The exceptions provided for under section 300⁵ are (1) grave and sudden provocation (2) private defence (3) acts of public servant (4) sudden fight and (5) consent.

The verbatim of the exceptions are as follows:

Exception 1.—“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 the death of any other person by mistake or accident⁶.”

⁵ The exceptions provided to section 300, unlike the General Exceptions enumerated in Chapter IV (from 76 - 106) of IPC do not exonerate the wrong doer from the criminal liability. In order words, these are the special exceptions applicable to murder only and reduce the criminal liability of the perpetrator and acts as mitigating factor.

⁶ The above exception is subject to the following exceptions:--

¹ PSA Pillai's Criminal Law, K.I. Vibhute, 12th Edi Second Reprint 2015, Lexis Nexis Pub, P.583.

² Anda & Ors Vs the State of Rajasthan, AIR 1966 SC 148.

³ Illustration (d) to section 300.

⁴ State Of Andhra Pradesh vs Rayavarapu Punnayya & Another, 1977 AIR 45, 1977 SCR (1) 601.

According to the first exception, the culpable homicide is not murder if it is done by grave and sudden provocation and the offender deprived of his power of self control. The person, whose death is caused, may be the person who gave the provocation or any other person by mistake or accident¹.

In order to claim the benefit of this exception, it has to be proved that the provocation was both sudden and grave. If the provocation is sudden but not grave, or grave but not sudden this exception cannot be claimed. Further, it has to be shown that the provocation was of such a nature that the offender was deprived of his power of self control².

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

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.”

As we already mentioned, under chapter IV (Section 96-106), a person has a right of private defence to protect his body and his property. This right in certain circumstances³ extends to causing the death of the assailant. If any person exceeds his right of private defence⁴ and causes death of the assailant,

“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 a 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 of private defence.”

¹ PSA Pillai's Criminal Law, K.I. Vibhute, 12th Edi Second Reprint 2015, Lexis Nexis Pub.

² See exception 4 of this section (infra) which is also identical with this exception.

³ See Section 100 and 103 of IPC for knowing the circumstances under which the right of private of private defence extends to causing death of assailants.

⁴ According to Section 99 of IPC, “the right of private of defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.”

then, according to this exception, he will be punished not for murder but for culpable homicide not amounting to murder.

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.”

Under this exception, if any public servant or by a person who is aiding a public servant while discharging his duties as a public servant, exceeds his power given by law to him and without ill-will towards causes a death, it is not a murder.

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 offender having taken undue advantage or acted in a cruel or unusual manner⁵.”

This exception applies in the absence of any premeditation. The 4th exception to section 300 covers acts done in a sudden fight. The said exception deals with the case of provocation not covered by 1st exception⁶. No doubt, in both exceptions there is absence of premeditation. According the 4th exception, culpable homicide is not murder if it is done in a heat of passion and upon a sudden quarrel and without premeditation and undue advantage or acted in a cruel and unusual manner⁷.

In *Surinder Kumar Vs Union Territory Chandigarh*⁸, the Supreme Court held that “to invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat

⁵ There are some differences between exception 1 and 4 of section 300. See: Surain Singh Vs. State of Punjab, Supreme Court of India, D.O.J: 10/04/2017.

⁶ Surain Singh Vs. State of Punjab, Supreme Court of India, D.O.J: 10/04/2017.

⁷ See also: Suresh Vs. State Reb. By Inspector of Police, Theni, 2017 (1) TNLR 336 (Mad) (MB). P.343.

⁸ 1989 AIR 1094, See also Sikander @ Mohd. Safiq Vs. State of (Delhi Admn) AIR 1999 SC 1406; Kikar Singh Vs. State of Rajasthan (1993) 4 SCC 238; Ajay Bindu Vs State (NCT) Delhi; Delhi High Court D.O.J:7th July 2017.

of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner". Further the court pointed out that "the cause of the quarrel is not relevant nor is it relevant who offered the provocation¹ or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel 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.

Under this exception, if any death is caused with consent of a person who is above the age of eighteen years and suffers death or takes the risk of life is not murder. Here, the consent should be free and voluntary and without any fear or misconception of facts.

Section 301 - Culpable homicide by causing death of person other than person whose death was intended

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide 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.

Conclusion:

From the above discussion, it is categorically clear that there is no major distinction between culpable homicide and murder. The real distinction between the two terms is only the difference in degrees of intention and knowledge. If any person while causing the death of another person has a greater degree of intention and knowledge, then his act would fall under the category of 'murder'. On the contrary, if he has a lesser degree of intention or

knowledge, his act would fall under the category of 'culpable homicide'. It is therefore, practically difficult to come to a definite demarcations or strait jacket distinction between the two terms.

To decide whether a particular act fall under the domain of murder or culpable homicide first of all the facts has to be ascertained and then intention and knowledge of the person who caused the death or bodily injury has be ascertained. If the intention or knowledge is higher, then, the case would fall under the 'murder' or otherwise, it would fall under the 'culpable homicide.'

¹ Under the 1st exception, the offender should not have sought or voluntarily provoked the provocation – See 1st proviso to exception 1 to section 300.