

Homicide

299 to 304

HOMICIDE				
Unlawful/culpable homicide			Lawful homicide	
Not amounting to murder (section 300- exceptions)	Amounting to murder (Sections 300 and 302)	to	Justifiable 1) Right of Private Defence	Excusable Insanity 2) Accident 3) Intoxication

Definition of Homicide

- **Stephen** defined murder as: *“killing of a human being by another human being”*.
- **Lord Edward Coke:** *Murder is when a man unlawfully killeth any reasonable creature or rerum naturae (living creature) under the Kings peace with malice aforethought, either **express** by the party or implied by law, so as the party wounded or hurt dies of the wound within a day and a year after the sin.*

Mensrea and Homicide

- **Malice aforethought: Operates in many ways:**
- **Specific/Particular:** Intention to kill a particular person who in fact was killed. Malice directed towards one particular person.
- Example: Indira Gandhi/ Rajiv Gandhi's assassination
- **Exception:** X wanted to kill Y, mixes poison in Y's food, but Y's daughters are killed. Technically, X had no intention to kill Y, intention to kill only Y's daughters. Here, constructive malice or transfer of malice is made. Law transfers malice. **Section 301 is applied here.**
- **Transfer of malice:** Intention to kill a particular person but not the one who was actually killed.
- **Emperor v. Mushnooru Suryanarayana Murthy (1912) 22 MLJ 333**
- **Facts:** Suryanarayan takes policy in name of X, tries to kill X by poisoning food, X's daughters killed, Suryanarayan was liable by transfer of malice.
- **Universal malice:** Intention to kill but without selecting any particular individual as the victim. Section 300(4)
- **Homicide Act 1957 of UK**
- Intention only to hurt but not to kill; but to hurt by means of an act which the prisoner/accused realised was likely to kill someone.

In UK

- Till 1957 the above definition was used. Now, the Homicide Act, 1957 gives the following definition:
- *“Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same **malice aforethought, express or implied**, as is required for a killing to amount to murder when not done in the course or furtherance of another offence.”*

Features of culpable/unlawful homicide:

- There must be death of a person: which shall be proved
- **Causation:** Link between act and death.
Prosecution has to prove causation, that the act of the accused was operative cause of the death.
- ***Corpus delecti*:** Body has to be present to prove death.
- **Sir Mathew Hale:** *“Without a dead body you cannot convict a person.”* In India the rule is not as strictly followed as it was for centuries in England.

- **Guilty mind and homicide-**
- Intention and knowledge- There are 2 kinds of guilty mind in applying 299 and 300 of IPC. Intention: Design of doing an act. It's a subjective inquiry. Knowledge also forms part of intention for homicide. This is easy to prove.
- Intention from the weapon used, **place of injuries, manner of commission of the act**. Intention is subjective, state of mind evident from his conduct.
- **Knowledge**: it is objective, consciousness is future contingency
- There can be no knowledge without perception, but the knowledge in its wide sense connotes the future probabilities. It is based on reasoned inference.
- Knowledge is a condition of mind and as such incapable of proof. Not the best evidence procurable can therefore warrant a finding that the accused knew a certain fact.
- All that such evidence would justify is a finding that its knowledge was **extremely probable** and this is all the law requires.
- The knowledge so proved can only be the knowledge of the likelihood'. The word "likely" means probably.
- **The degree of probability will determine the degree of crime.**

- Knowledge implies consciousness. Consciousness is necessarily of a future contingency, the happening of which may depend upon a variety of circumstances. There can be no knowledge without perception but it is knowledge in its wide sense as connoting such inference as future probability as is only next to.....| In this sense it is something more than belief because it is based on reasoned inference.

Knowledge contd

- Test of Ordinary reasonable man: The standard which the Court fixes is that of a reasonable man and the question it ultimately asks itself is not whether the accused had the knowledge but whether as a reasonable man he could have had that knowledge. This is the real test for knowledge.
- The Court/jurors have to place themselves in the situation of the accused and then judge what the degree of his mental consciousness was at the time of the act in question. For this purpose it is necessary to take not only the facts that are proved but also the facts which are probable. These furnish the data upon which the inference as to knowledge as well as likelihood is to be based. In judging of the knowledge had by the accused, we must consider the circumstances.

Meaning of Life

- Who is *a rarem naturae* ? - can an unborn child or half born child come under the purview, if child is brought out of mother's body, but umbilical cord is not cut, if the baby is still—born.
- When the baby is in mother's womb- no offence of murder. Now, it is an offence under common law,
- If part of child's body- **no murder**
- If umbilical cord is not severed- it is murder
- If baby is born without movement, it is an offence
- Intentional killing of unborn child till 1925 was not an offence,
- **Case: R v. Poulton (1832) 1, C & P 330**
- **R v. Reeves (1839) 9 C & P 25:** life existed should be proved by crying, moving, breathing, pulsation.

Actus reus and Homicide

- SC: “We have to consider in each case the relative value and efficiency of the various causes in producing the effect and then to say whether responsibility should be assigned to a particular act or not as the proximate and efficient cause.
- It cannot be a sufficient criterion in this connection whether the affect could have been produced in the case in question without a ‘particular cause’, for it is involved in the very idea of a cause that the result would not have been produced without it.
- Contributory cause: Cumulative effect has to be seen.
- Death should have been caused by the act/omission of another person.
- Act of death should have been done with the intention of causing death, Causing such bodily injury as is likely to cause death,
- With the knowledge that such act is likely to cause death.

SECTION 300- MURDER

- 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
- 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
- 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
- if a 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.

Cases under 300 (1)

Rawalpenda Venkalu v. State of Hyderabad AIR 1956 SC 171

- The first information report of the occurrence was lodged at Penpabad police station on the morning of the 19th of February by Yousuf Ali, a cousin of the deceased, to the effect that some goondas of the village had set fire to the cottage occupied by Moinuddin after chaining the outer door, with the result that he was burnt alive and that the villagers who tried to extinguish the fire had been beaten away by those goondas. The villagers thus became terrified and had to retreat to the village.
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Contd....,

- It has been found by the courts below that there was longstanding dispute between the deceased and the family of the second Appellant over land which belonged to the deceased but which was in cultivating possession of the second Appellant's family.

(Motive)

Vasant v
The State of Maharashtra
AIR1998SC699

- It was the prosecution case that Shridhar, a Social Worker, was complaining against the appellant as he has parking a jeep near his house and thereby creating an obstruction to the residents of that locality. That led to enmity between him and the appellant. A few days before the date of the incident, Shridhar had threatened the appellant that he would complain about his behavior to his superior officers. On 13.7.84, at about 1.30 p.m., the appellant was seen grappling with Shridhar on the road about 400 feet away from Shivni Bus stand. This incident was witnessed by PWs 3 and 5 - Gajanan Murumkar and Shrikrishna.

- The appellant and Shridhar were separated by Pws 2, 3, 5 and others. Shridhar at that time told the appellant that it was open to him to put him in jail on that day as he was drunk but he would see him on the next day after coming out of the jail. The appellant thereupon went running towards the place where boring work was going on and where he had kept his Jeep bearing No. MTJ 7343. He jumped into the jeep, started it and took it in reverse upto the intersection of the road and then took it towards the deceased in high speed. PW 4 - Sultan who was walking ahead of the deceased got frightened and as a result thereof articles which he was carrying on on his head fell down and he had to run for cover. The appellant proceeded ahead by taking his jeep on the wrong side of the road and then knocked down Sridhar-deceased, Sridhar fell down and was run over by the jeep. The appellant took his jeep ahead by a few feet and then brought it back on the left side of the road. It was the prosecution case that the appellant had dashed his jeep against Shridhar intentionally with a view to cause his death.

Sec 300(2)

- Intention to cause **bodily harm**
- There is **subjective knowledge** that death will be the **likely** result.
- **Ram Sagar Yadav v. State of Uttar Pradesh**
AIR 1985 SC 416

- Brijlal was hale and hearty on the morning of August 29, 1969. He was ploughing his field when respondents 3 and 4 reached Haibatpur in order to arrest him. They took him on foot to the Hussainganj Police Station which is about 3 km. away from Haibatpur. They reached the police station at 10.00 A.M. Two hours later, Brijlal was taken in a police van to the Court of the learned Additional District Magistrate for obtaining remand. Shri R.C. Nigam, the Presiding Officer of the Court, had finished the winding list of the remand applications, at the end of which the Moharir of the Court informed him that a remand order had remained to be passed against an accused who was brought from the Hussainganj Police Station and that the accused could not be produced in Court since he was lying in the verandah in a badly injured condition. Shri Nigam (P.W. 5) says in this evidence that since the accused could not be brought to the Court-room, he himself went to the verandah where the accused was lying and he asked him his name. The accused was unable to respond at first since his condition was "very serious" but, on repeated inquiries, the accused told Shri Nigam that his name was Brijlal. On being questioned as to how he came to receive the injuries, Brijlal replied that 'the Darogah of Hussainganj and the constables had beaten him very badly'. Shri Nigam made a note of the statement made by Brijlal on the remand application (Exhibit Ka-1). That application bears Shri Nigam's signature and the thumb impression of Brijlal.

judgment

- In this case, the injuries suffered by Brijlal would appear to fall under the clause '2ndly' of Section 300, since the act by which his death was caused was done with the intention of causing such bodily injury as the respondents knew to be likely to cause his death.

- Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police Officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. It is ironical that, in the instant case, a person who complained against a policeman for bribery, was done to death by that policeman, his two companions and his superior officer, the Station House Officer.

Sec 300(3)

- 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,

: Virsa Singh Vs The State of Punjab

AIR1958SC465

- First, it must establish, **quite objectively**, that a bodily injury is present;
- Secondly, the **nature of the injury** must be proved; These are purely objective investigations.
- Thirdly, it must be proved that there was an **intention** to inflict that particular bodily injury, that is to say, that it was **not accidental or unintentional**, or that some other kind of injury was intended.
- *Once these three elements are proved to be present, the enquiry proceeds further and.*
- Fourthly, 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**. This part of the enquiry is purely **objective and inferential** and has nothing to do with the intention of the offender.

facts

- The accused thrust a spear into the abdomen of ,he deceased. This injury caused his death. In the opinion of the doctor the injury was sufficient to cause death in the ordinary course of nature. It was found by the Sessions judge that the accused intended to cause grievous hurt only. In his opinion however the third clause Of S. 300 Indian Penal Code applied. He accordingly convicted and sentenced the accused under S. 302 India, Penal Code. The High Court upheld the conviction, It was argued that the third clause Of s. 300 Indian Penal Code did not apply as it was not proved that the accused intended to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature as s. 300 Indian Penal Code third clause states, " 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

- Three coils of intestines were coming out of the wound." The incident occurred about 8 p. m. on July 13, 1955. Khem Singh died about 5 p. m. the following day.
- When the common object of the assembly seems to have been to cause grievous hurts only, I do not suppose Virsa Singh actually had the intention to cause the death of Khem Singh, but by a rash and silly act he gave a rather forceful blow, which ultimately caused his death. Peritonitis also supervened and that hastened the death of Khem Singh. But for that Khem Singh may perhaps not have died or may have lived a little longer

Facts

- There was only one injury on Khem Singh and both Courts are agreed that the appellant caused it. It was caused as the result of a spear thrust and the doctor who examined Khem Singh, while he was still alive, said that it was.
- "a punctured wound 2 x 1/2" transverse in direction on the left side of the abdominal wall in the lower part of the iliac region just above the inguinal canal.

judgment

- first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach,
- how deep it penetrated, whether any vital organs were cut and so forth.
- These are purely objective facts and leave no room for inference or deduction : to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention too cause the bodily injury that is found to be present

- The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that is to say, **if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though an injury to the heart is shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved.** In that case, the first part of the clause does not come into play.
- **But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining -**
- "and the bodily injury intended to be inflicted" is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, **that the injury found to be present was the injury that was intended to be inflicted.**
- **Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.**

- In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted.
- It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart.
- Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry.

Laxman Kalu Nikalje
Vs.
The State of Maharashtra
AIR1968SC1390

- Some days before Nag Panchami of the year 1962 Shantabai was brought to her parent's place. She stayed with them till the 10th August 1962. Laxman wanted his wife back and arrived at Gartad to take her away to his own house. Bhika put in some excuses saying that he had no money and he could only send his daughter back after he gets his pay on the 21st or the 22nd. The excuse given by Bhika and his wife Gangubai was that they could not let the girl go without giving her some presents and that money was needed for the purchase of these presents. However, as Laxman insisted on taking his wife away immediately, a sum of Rs. 10 was borrowed. It is said in one place that money was borrowed from one Tarachand and in another, from Laxman himself. Gangubai in the company of Shantabai went to Dhulia to make some purchases and returned on August 10 in the afternoon. It appears that a train was then due and Laxman is said to have insisted that his wife should go with him by that train.

- The parents, however, said that it was not auspicious to send the girl at night and that they could go in the morning. It does not appear that any quarrel over this took. Whether Laxman was reconciled to this suggestion or was still angry is not known. In the evening at about 7 P.M. Laxman was sitting with Shantabai and Ramrao outside the quarter and Bhika was chopping some fuel at the back of the hut, Kamlabai (the widow of Ramrao), Gangubai, Bharat and Laxman were inside the room. According to Shantabai, Ramrao and Laxman had a few words and on that Laxman took out a knife and stabbed Ramrao on the shoulder and ran away. Ramrao shouted and so did Shantabai; Bhika and others arrived on the scene. They carried Ramrao on a cot to the Railway Crossing and when the train arrived, it was stopped by showing the danger signal. Ramrao was placed on the train and left on the train accompanied by Bhika, Gangubai and Kamlabai. On the train, Bhika told the Guard that his son-in-law had stabbed the injured man. The Railway guard noted this fact in his log book.

- On examination the injury was found to be situated 2 inch below the outer 1/3 of right clavicle on the right side of the chest and penetrated to the depth of 4 inch into the chest cavity. It is no doubt true that the injury was serious, but it is to be noticed that it did not penetrate the lung. Death was caused mainly because it cut the auxiliary artery and veins and caused shock and haemorrhage leading to death. In these circumstances, it is necessary to consider whether this case is covered by any of the clauses of s. 300 of the Indian Penal Code.

- It must be remembered that the quarrel between Ramrao and Laxman was not such as would have prompted Laxman to make a homicidal attack upon his brother-in-law. The quarrel was only this much, whether Laxman's wife should accompany him by the evening train or the morning train. It may be that some abuses might have ensued as is common among these people, and Laxman having lost his temper whipped out his knife and gave one blow. It must be remembered that he gave one blow and although it was given on the chest, it was not on a vital part of the chest and but for the fact that the knife cut an artery inside, death might not have ensued. Therefore the question is whether the offence can be said to be covered by thirdly of s. 300 of the Indian Penal Code.

