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LECTURE-35

Murder (Section 300)

Murder is defined under Section 300 of the Indian Penal Code. According to this Act, culpable homicide is considered as murder if:

- The act is committed with an intention to cause death.
- The act is done with the intention of causing such bodily injury which the offender has knowledge that it would result in death.
- The person has the knowledge that his act is dangerous and would cause death or bodily injury but still commits the act, this would amount to murder.

Ingredients of Murder

- **Causing death:** There should be an intention of causing death,
- **Doing an act:** There should be an intention to cause such bodily injury that is likely to cause death, or
- **The act must be done:** with the knowledge that the act is likely to cause the death of another.

Illustrations

- A shoots W with an intention of killing him. As a result, W dies in that consequence, murder is committed by A.
- D intentionally gives a sword-cut to R that was sufficient to cause the death of anyone in the ordinary course of nature. As a consequence, R dies. Here, D is guilty of murder though he didn't intend to cause R's death.

Culpable homicide (Section 299)

Culpable homicide is covered under Section 299 of the Indian Penal Code. Culpable homicide means the act done by a person which causes the death of another with an intention of causing death or causing such bodily injury that is likely to cause death, or he has knowledge that the act committed by him is likely to cause death, is said to commit the offence of Culpable homicide.

Illustration

- X induces Y to put the fire at the place having the knowledge that Z was sitting behind a covered area. Here, X is liable for the offence of culpable homicide, as he had prior knowledge that Z was present in that area and his actions will lead to Z's death. Here, intention makes X liable to culpable homicide.
- Y is diagnosed with a terminal illness and to live from day to day he needs certain drugs. Z confines Y in a room and prevents him from taking his medication. Here, Z is guilty of culpable homicide.

Cases

In the case of *Reg. v. Govinda, 1876* the accused had knocked down his wife, kept a knee on her chest and gave two to three violent blows with the closed fist on her face. This act produced extraversion of blood on her brain and afterwards, the wife died due to this. The act was not committed with the intention of causing death and the bodily injury was not sufficient to cause death in the ordinary course of nature. The accused was liable to culpable homicide not amounting to murder.

The difference between murder and culpable homicide is intention. If the intention is present the crime is said to be committed under Section 300 of IPC. If the intention is absent, then the crime is dealt under section 300 of IPC.

Exceptions to Section 300 of IPC where culpable homicide is not considered as murder

Sudden and grave provocation

If the offender is deprived of the power of self-control due to sudden and grave provocation, and his act causes the death of the person who provoked or death of any other person by accident or mistake.

This exception is subject to a certain proviso, that is:

- That the provocation is not sought or is voluntarily provoked by the offender to be used as an excuse for killing or causing any harm to the person.
- That the provocation is not given by anything that is done in obedience to the law, or by a public servant while exercising the powers lawfully of a public servant.
- That the provocation is not done while doing any lawful exercise of the right of private defence.

Illustration

A is given grave and sudden provocation by C. A fires at C as a result of this provocation. A didn't intend or have knowledge that his act is likely to kill C, who was out of A's sight. A kills C. A is not liable to murder but is liable to culpable homicide.

Cases

- *K.M. Nanavati v. State of Maharashtra, 1961*

In this case, the Supreme Court had extensively explained the law relating to provocation in India. It was observed by the Court:

- The test of “sudden and grave provocation” is whether a reasonable man, who belongs to the same society as the accused, is placed in the situation in which the accused was placed would have been so provoked as to lose his self-control.
- Under certain circumstances, words and gestures may also lead to sudden and grave provocation to an accused, so as to bring his act under an exception.
- The mental background of the victim can be taken into consideration, taking account of his previous act to ascertain whether the subsequent act leads to sudden and grave provocation for committing the offence.
- The fatal blow clearly should trace the influence of passion that arises from the sudden and grave provocation. It should not be after the provocation has been cooled down due to lapse of time, otherwise, it will give room and scope to the accused for altering the evidence.
- *Muthu v. state of Tamil Nadu, 2007*

In this case, it was held by the Supreme Court that constant harassment might deprive the power of self-control, amounting to sudden and grave provocation.

When the person exceeds his right to private defence

Where the act is committed to defend them from further harm. If the accused intentionally exceeds his right to private defence, then he is liable to murder. If it is unintentional, then the accused will be liable to culpable homicide not amounting to murder.

Illustration

- X attempts to flog Y, not in a manner to cause grievous hurt to Y. A pistol is drawn out by Y, X persists the assault. Y believes that he had no way to prevent himself from being flogged by X, Y fires at X. X is liable to culpable homicide not amounting to murder.

Case

- *Nathan v. State of Madras, 1972*

In this case, the landlord was trying forcefully to evict the accused. The accused killed the landlord while exercising his right to private defence. There was no fear of death to the accused as the deceased was not holding any deadly weapon that could have caused grievous hurt or death of the accused. The deceased

had no intention to kill the accused, thus, the accused exceeded his right of private defence. The accused was liable to culpable homicide not amounting to murder.

Culpable homicide in case of Public Servant

The act is done by a public servant who is acting to promote public justice. If the public servant commits an act which is necessary to discharge his duty as is done in good faith and he believes it to be lawful.

Illustration

- If the police officer goes to arrest a person, the person tries to run away and during that incident, if the police officer shoots the person, the police officer will not be guilty of murder.

Case

- *Dakhi Singh v. State, 1955*

In this case, the appellant was the constable of Railway Protection Force, while he was on duty he killed a fireman unintentionally, while he was firing bullet shots to catch the thief. The constable was entitled to benefit under this section's benefit.

Sudden Fight

The sudden fight is when the fight is unexpected or premeditated. Both the parties don't have any intention to kill or cause the death of another. The fact that which party had assaulted or offered a provocation first is not important.

Case

Radhey Shyam and Anr. v. State of Uttar Pradesh, 2018

In this case, the appellant was extremely angry when he got to know that his calf had come to the deceased place. The appellant started abusing the deceased, when it was tried to stop him, the appellant fired at the deceased. The deceased was unarmed at that time, thus the appellant had an intention to kill the deceased, hence, he was held liable to murder.

Consent

If the act is committed with the consent of the victim. The consent should be unconditional, unequivocal and without any sort of reservation.

Illustration

- A instigated F who was under 18 years of age, to commit suicide. F was incapable of giving consent to his own death. Therefore, A is guilty of murder.
- X killed his stepfather Y, who was old and infirm. X killed Y with his consent. This was punishable under Section 304.

Culpable Homicide in the exercise of good faith

Culpable homicide does not amount to murder if it is done in exercise of good faith in order to protect the private or public property. If the act committed by a person exceeds its power provided by law and kills someone in order to save someone or something, then the act does not amount to murder.

Illustration

Y attempts to horsewhip Z, not to cause grievous hurt to Z. Z takes out a pistol, Y persists to the assault. Z in good faith in order to prevent himself from being horsewhipped, shoots at Y, such that he dies because of that. Z is guilty of culpable homicide and not murder.

The act is punishable under Section 302 of IPC if it does not fall under the exception of Section 300 of IPC.

Culpable Homicide by causing the death of the person other than the person whose death was intended (Section 301)

Under Section 301 of IPC, Culpable Homicide amounts to murder even if the person who was not intended to die, dies due to the act committed by the perpetrator, though he had planned to murder someone else.

In other words, there is no distinction in the eyes of law between cases where the death is caused to an intended person or whether it results in the death of an unintended person.

Case

Abdul Ise Suleman v. State of Gujarat, 1994

In this case, the accused persons had freely fired on the fleeing complainant party in a commercial locality in the course of an altercation. In the first shot, the person was injured, while a ten-year-old son of a complainant was dead in the 2nd shot. It was held by the Supreme Court that the child death was intentional and hence applies Section 300 read with Section 301 of IPC.

Causing Death by negligence (Section 304A)

Under Section 304A of IPC, if someone causes the death of another due to rash or negligent act that does not amount to culpable homicide, shall be punished with imprisonment which can extend up to two years or with fine or both.

Cases

- *State of Karnataka v. Mohd. Ismail, 1988*

In this case, a 28-year-old motorcyclist had pushed an 85-year-old man from behind. The old man died on spot due to head injuries attained at the time of the accident. The death was a result of rash and negligent conduct.

- *M.H. Lokre v. State of Maharashtra, 1971*

In this case, the appellant who was not driving rashly was not held guilty under this section for causing the death of the person who came under the wheels of the vehicle while suddenly crossing the road. A man however vigilant and slowly he might be driving he cannot avert an accident if a person suddenly comes in front of his vehicle while suddenly crossing the road.

Dowry Death (Section 304 B)

Section 304 B of IPC states that if within seven years of marriage a woman dies by a bodily injury or burns, or it is revealed that before the marriage the woman was exposed to cruelty or harassment by her husband or by any other relative of her husband, in connection to the demand of dowry then the death of the woman will be considered as the dowry death.

The punishment for Dowry death is imprisonment for a minimum of seven years or a maximum of imprisonment for life.

Attempt to murder (Section 307)

Section 307 of IPC deals with an attempt to murder. Whoever commits an act with an intention or knowledge and under such circumstances, that causes the death of the person would be held guilty of murder and shall be punished with imprisonment for a term that can extend up to ten years, and shall be liable to fine, and if that act causes hurt to a person, the offender shall be liable to imprisonment for life, or such other punishment as decided by the Court of law.

Illustrations

- R shoots S with an intention to kill her. If under such circumstances death has ensued, R will be guilty of murder.
- P, with an intention to cause death to Q, who is a child of seven years of age, leaves him in a deserted land. P commits an offence under this section, though the death of the child is not ensured.

Attempt to commit Culpable Homicide (Section 308)

Under Section 308 of IPC, whoever commits an act with such intention or such knowledge and under such circumstances, and if that act causes death, he would be guilty of culpable homicide not amounting to murder and shall be punished with imprisonment that can extend up to three years, or with fine or both. If the act causes hurt to any person, the offender shall be punished with imprisonment that can extend to seven years or with fine or both.

Illustration

- A due to sudden and grave provocation fires at Z. If Z dies due to this incident, A will be guilty of culpable homicide not amounting to murder.

Punishment

Punishment for murder (Section 302)

The punishment for murder is provided under Section 302 of IPC. Under this section whoever commits murder is punished with:

- Death
- Life imprisonment
- Fine

Punishment for Culpable Homicide (Section 304)

Culpable homicide is not murder if it falls under any one of the five exceptions given under Section 300. Section 304 of IPC describes the punishments for culpable homicide not amounting to murder, that is:

- Imprisonment for life,
- Imprisonment for either description of a term extending up to ten years,

- Fine.

Punishment for murder by life-convict (Section 303)

Life convict is a person who is found guilty of a crime and is sentenced to life imprisonment by the Court. Section 303 of IPC provides that if any person commits murder who is sentenced with life imprisonment shall be punishable to death. Section 303 is only applicable to the person who is convicted under section 302 read with Section 34 or Section 302 read with Section 149. Section 303 makes capital punishment necessary for the person who is convicted for life imprisonment commits murder.

It was held by the Court that if a person is released by remission who was undergoing imprisonment for life for murder, is not considered under the sentence of imprisonment for life any longer. If the murder is committed during the period of remission, it will not be considered while giving punishment under Section 303 of IPC. Thus, the accused shall not be given imprisonment for life.

In the case of Mithu v. State of Punjab, 1983 the constitutional validity of Section 303 of IPC was questioned. Section 303 was held to be arbitrary and unconstitutional as it was held by the Court that mandatory death penalty to a life convict is arbitrary and unreasonable, due to:

- There is already a lot of stress that a life convict is exposed to in jail.
- No justification is found for prescribing a mandatory death sentence for the offence of murder that is committed inside or outside the prison by the person under life imprisonment.
- A standard mandatory sentence in the form of death fails to take into account the facts and circumstances of each act.

Conviction of a Pregnant Woman

Section 416 of the Code of Criminal Procedure, 1973 deals with the postponement of capital sentences given to a pregnant woman. Under this Section, if the pregnant woman is convicted, the High Court can postpone the execution of the sentence or reduce the sentence to life imprisonment.

Under this section, the rights of an unborn child are protected. The main aim of this section is to protect the child from being killed who didn't make any mistake. The pregnancy should be proved with proper medical examination and reports.

Conviction of a Minor

According to the Juvenile Justice (Care and Protection of Children) Act, 2000, the individuals who were under 18 years of age, when the crime was committed cannot be executed. The Juvenile Justice Act, 2000 was replaced by The Juvenile Justice Act, 2015. The amended Act allows the person from 16 to 18 years of age to be tried as an adult if they are found to be liable for any heinous crime like rape and murder.

Sentence to Co-accused

Section 30 of the Indian Evidence Act provides confession of the co-accused. The persons who are accused of the same crime shall be awarded the same amount of imprisonment. The confession made co-accused holds a proper evidentiary value. It is ensured by the parity principle that the sentence should be similar for the same offenders or persons who are convicted of the same crime. Fairness and equality are ensured by this principle while awarding the sentences.

Landmark Judgments

Jag Mohan Singh v. State of Uttar Pradesh, 1972

In this case, there was a murder which came up after the amendment of the Code of Criminal Procedure in 1973, where the death penalty was no longer a mandatory sentence for murder and it became subject to the discretion of the Court. The arguments were raised regarding the constitutionality of a death penalty, it was on the ground that a wide discretionary power vested with the Courts as there were no guidelines or standards. It was held that it violated Article 14, Article 19 and Article 21.

It was held by the Supreme Court that the Right to life was not a part of Article 19 and the death could not be called as unreasonable or opposed to public policy since it was the punishment which was part of the law even before the commencement and the legislature would be presumed to know its existence. And since it was not removed, it could be assumed that the legislature did not think of it as unreasonable.

Article 14 could hardly be invoked in matters involving judicial discretion, as each case would be peculiar to facts and circumstances. The discretion given to Courts to award a death sentence cannot be termed as unguided. The Code of Criminal Procedure lays down the detailed procedure about when a death sentence is imposed and following the procedure established by law cannot be held as unconstitutional.

Article 19

In this case, writ petitions were filed in the Supreme Court, challenging the constitutional validity of allowing the death penalty as an alternative to punishment for murder.

The significant changes from Jagmohan case to Bachan case was that the scope of Article 19 and Article 21 was expanded by the interpretation given in the *Maneka Gandhi's case*. By this time India had become a party to the International Covenant on Civil and Political Rights. It was held by the Court that the Covenant did not outlaw the death penalty.

If the freedom mentioned under Article 19 are infringed, then Article 19 can be invoked. Since the right to life is not covered under Article 19, it cannot be invoked to determine the constitutionality of Section 302 of Indian Penal Code, that provides death penalty as an alternative punishment to murder. Merely on the

ground that the death penalty remotely affects the freedom under Article 19, the death penalty cannot be held to be unconstitutional.

The Court held that a pre-sentencing hearing introduced in The Code of Criminal Procedure was a mandatory requirement. It was made necessary to consider the circumstances of both crimes as well as the criminal.

Triveniben v. State of Gujarat and Ors, 1989

In this case, the appellant was given a death sentence. He was the main accused for conspiring and by impersonating a customs officer had murdered several persons, by abducting under the guise of interrogating officer in order to rob and then murder them. For eight years the accused was kept in solitary confinement. The appeal was that Article 21 was violated as there was a delay in execution.

It was held that the sentence imposed should be carried out under procedure established by law. If there is a prolonged delay irrespective of the cause in carrying out the execution, it has a dehumanizing effect, which violates Article 21 by unjustly depriving a person of his life and liberty.

If there is a delay beyond two years, it entitles a prisoner for quashing of a death sentence.

Sher Singh v. the State of Punjab, 1983

In this case, it was held that delay can be a ground for invoking Article 21 of the Constitution of India. There is no binding rule that the delay entitles a prisoner to quash the death sentence.

Rajendra Prasad v. State of Uttar Pradesh, 1979

In this case, it was discussed about the special situations to be considered before awarding the death penalty. It was held by the Court that not only the nature of the crime but also the various factors of criminals before awarding the death penalty.

Raju Jagdish Paswan v. The State of Maharashtra, 2019

In this case, the Trial Court had awarded the death sentence to the appellant, who committed rape of a nine-year-old kid. The same sentence was awarded by the High Court. On appeal in the Supreme Court, the punishment was reduced, since the death can only be awarded in rarest of rare cases. It was held by the Supreme Court that life imprisonment is a rule while the death sentence is an exception. The death penalty was not awarded by the Supreme Court in this case for reasons:

- There was no pre-planning for the murder.
- The person who committed the act was not a continuous threat to society.

- There was a lack of evidence by the State to prove that the person cannot be rehabilitated and reformed.
- The appellant was just 22 years of age while committing the crime.
- The basic principle is that human life is valuable and a death sentence should be awarded only when it is mandatory if there is no option for any other punishment and even in cases where the range of crime is heinous.

Most famous murder cases you need to know about

Arushi Talwar case

The 14-year-old Arushi was murdered on 16th May 2008 along with Hemraj Banjade who was 45 years old then. There were a lot of suspects on the list of the accused including Arushi's parents. This case received a lot of media coverage and aroused public interest.

For a very long time, Arushi's parents had been held under custody. Still, it is not clear whether it was Arushi's parents or the other two servants that worked in her house. Though Arushi's parents have been acquitted, yet no one knows who killed Arushi and Hemraj.

Jessica Lal murder case

The case got highlighted with the heading 'No one killed Jessica' in the year 1999. The eyewitnesses had amnesia and there was hardly anyone who came forward to give an account of how an aspiring model was shot dead. Later people came to know that it was the businessman Manu Sharma who was refused by Jessica to serve liquor had shot her dead.

Pradyum Thakur murder case

A student of II class, Pradyum Thakur was found dead in the washroom of Ryan's International School in Gurgaon. The kid who didn't cause any harm was thought to have been killed over a situation of sexual assault by a bus conductor, who got arrested but later it was found that the murder was committed by a student of 11th year, whom the Court said that he will be tried as an adult.

Sheena Bora murder case

Sheena Bora's mother Indrani Mukherjea was the real culprit who had planned the murder of her daughter Sheena Bora. It was claimed by Indrani Mukherjea that Sheena was her sister and she never admitted to having two children. The limelight was brought to the Murky Financial dealings of Indrani Mukherjea and her husband Peter Mukherjea.

Pramod Mahajan murder case

Pramod Mahajan was a politician in the Bharatiya Janata Party. He was killed in a broad daylight inside his house. April 2006 Pramod was shot dead by his brother, Pravin. After killing his brother, Pravin walked to the nearest police station to confess that he had shot his brother Pramod. Pravin was sentenced to life imprisonment and later on died due to brain haemorrhage.

Amar Singh Chamkila murder case

Amar Singh was a popular Punjabi singer, musician, songwriter and composer. Amar Singh along with his wife and two members of the band were killed on 8th March 1988, by a gang of unknown youths. No one got arrested even when they got killed in front of so many people and in broad daylight.

Sunanda Pushkar murder case

Wife of a former Indian diplomat and famous politician Shashi Tharoor's wife, Sunanda Pushkar was a renowned businesswoman. She was killed in Delhi's Leela Palace's hotel room. It is suggested in the report that when Shashi Tharoor saw Sunanda Pushkar, he assumed she was asleep and when she did not wake up, Shashi Tharoor informed the police.

She died after a day she had accused Pakistani journalist Mehr Tarar of stalking her husband on twitter. According to the post-mortem report, it was concluded that she had committed suicide. But the report from doctors of All India Medical Institute said that the death was due to drug overdose and she had injury marks on her body.

Neeraj Grover murder case

This case received a lot of attention due to how fatal it was. His body was firstly chopped into pieces and then later stuffed in three garbage bags and put on fire in the forest.

Neeraj's friend Maria Susairaj had filed a missing complaint in the police station. She was later found to be involved in the killing. It was discovered that Maria's boyfriend in a fit of rage had killed Neeraj suspecting that Maria was having an affair with Neeraj.

Sharath murder case

Sharath was a 19 years old son of an Income-tax officer who was killed in Bangalore. Sharath's body was found on the outskirts of the city near Ramohalli lake with his hands tied together. It turned out that the kidnappers had strangled Sharath to death and later on the same day they had dumped his body.

The police found out that the kidnappers were friends of Sharath and his close friend Vishal was the one who had planned this murder and abduction to clear off the loan.

Conclusion

The Court awards death penalty only in rarest situations only in cases where the accused is a threat to the society as the Court understands the value of life. The Court has all the rights and power to reduce the punishment.

MCQs-

i. '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:

- Grave and sudden provocation
- Murder
- Culpable homicide not amounting to murder
- All the above

ii. A snake charmer while showing his play claims to cure the snake bite. The deceased got himself a snake bite believing on assurance of the snake charmer. The snake charmer could not cure the deceased. The snake charmer is liable for:

- Murder
- Cheating
- Culpable homicide not amounting murder
- No offence

iii. X intending to kill Y by poisoning purchases poison and mixes the same with a glass of milk. He gives the glass to Z to serve it to Y. Z drinks the milk and dies. Which one of the following statements is correct in this context?

- X commits no offence as Z drinks the milk voluntarily
- X commits the offence of abetment of suicide by Z
- X commits the offence if death by rash or negligent act
- X commits the offence of murder

iv. 'A' intentionally causes B's death partly by illegally omitting to give food and partly beating. A has committed the offence of:

- Culpable homicide not amounting to murder

- Murder
- Grievous hurt
- Hurt

v. Intending to kill 'A' instead killed B whom he had no intention to kill. Under which doctrine is he liable?

- Doctrine of transfer of malice
- Doctrine of extended malice
- Doctrine of mens rea
- Doctrine of diminished responsibility