Journal of Positive School Psychology http://journalppw.com
2022, Vol.6, No.4, 4591-4594

ANALYSIS OF HOMICIDAL CAUSATION IN INDIAN CRIMINAL JURISPRUDENCE

Sidhartha Sekhar Dash[1], Prof H.C Padhi[2]& Dr Biswadeep Das[3]

[1]Assistant Professor-II, KIIT School of Law, KIIT Deemed to be University, Patia, Bhubaneswar, sidharthadash.1981@gmail.com
[1] Guest Faculty, KIIT School of Law, KIIT Deemed to be a University
[1]Assistant Professor-I, KIIT School of Biotechnology, KIIT Deemed to be a University

ABSTRACT

Understanding the principles of causation in jurisprudence unties the knots in the substantive law for fixing the legal responsibility. However, the principle of causation is much more complexand wades into the physical, moral, and normative branches of studies. The scope of physical and moral causation sometimes getscircumscribed when the adjective and procedural branches of legal studies come into the picture, that more often is the case in actual legal practice in the court of law. The scope of this paper is to analyze different spheres of causation in homicidal crimes under the Indian Penal Code, 1861.

Keywords: Causation. Harm. Homicidal Causation. Section 300 of IPC.

1. Introduction

A conceptual understanding of causation is necessary to learn the principle of legal liability. A person can not or should not be punished if *his action* does not produce the proscribed culpable harm to another person. To fix the responsibility on him the harm or the injury that happened to another person must be having the link to the offender. Legal analysis of this simple understanding of link goes through various semantic churning and ismore strictwhen the offense is homicidal punishable with the death penalty. The author here attemptsto analyze the causation by plowing through the language of the homicidal section under the Indian Penal Code, 1861.

2. Concept of Causation: In simple understanding, causation means finding the association between two events, facts, or phenomena where one is said to be the cause of the happening or non-happening of another. It is to establish a direct relationship between the two conditions. A condition is an event or a phenomenon. A condition is a fact. When legal liability arises due to a breach of a contractual relationship or a rule of law, causation links both the conditions to establish the liabilityfor the infraction. "Causation, in legal terms, refers to the relationship of cause and effect between one event or action and the result[1]". "It is the act or process that produces an effect[2]".

Causation is the establishmentof a cause and effect relationship between conduct and harm of a person. This is the causal relationship between the conduct of the person and the harm that is affected.This is significant considering its relevance under the law of Evidence as well as to establish *directly* the association of the action or conduct of a person to that of the effect he produced. So, "A causal inquiry, therefore, would first ascertain the sine qua non, or necessary, in the strictly physical sense, participation of the defendant's conduct in the production of the harm" [3]. However, the conduct should not produce incidentally harm. According to Jeromy Hall, the conduct should *be effective enough to cause harm*. Hall finds that if the action is not that effective, it does not contribute to the casual connection to the harm. The criterion of effectiveness in causation is pivotal. "As Hall rightly notes, the use of the criterion of effectiveness in causation is not confined to the law, but in law, it has achieved singular significance"[4].

In the principle of causation, when we collect the manifestation of casual effect or relationship between the act and the effect, we see causation in fact. These facts are produced before the court to ascertain the causal relationship. Section 7 of the Indian Law of Evidence recognizes the principles of causation for the proof of a fact in an issue.

3. Principles and Analysis of Causation in Homicidal Crime under The Indian Penal Code.

Understanding theprinciple of causation under Sec 299 and 300 of the Indian Penal Code is not simple. The language employed in both sections is seemingly similar for a lay reader. Section 299 defines culpable homicide simpliciter and Sec 300 defines that culpable homicide which amounts to murder. In English principle, the former is known as manslaughter. The reading between the lines of both sections is necessary. Section 299, states "Whoever c*auses* death with the *intention* of causing death or with the intention of causing *such bodily injury* which is *likely* to cause death or with the *knowledge* that he is likely by such act to cause death, commits the offense of culpable homicide..Explanation 1– A person who causes bodily injury to another who is labouring under a *disorder, disease or bodily infirmity* (whether he knows or not) and thereby *accelerates* the death of that other, shall be deemed to have caused his death..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 intervening cause...Explanation 3-The causing of death of child in the 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 been breathed or been completely born[5]".Section 300 states, "Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death 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 cause 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[6]".

The word "causes" denotes the causation of the crime. When a person causes death means when a person does or acts one to death. Understandably, it is the voluntary commission of death. The word voluntary has a wide meaning in the penal code[7]. The word 'act' however, has been used in the Code. Under section 32 'act' includes 'omission' and to broaden the purview and maybe to find a link with the 'effect' of the 'act', section 33 exemplifies 'act' means 'acts' and 'omission' means 'omissions'. Interestingly, neither word has been attempted to define in the Code.

Sir Syed Shamsul Huda states "the Indian Penal Code recognizes this distinction between acts and omissions, but wisely refrains from defining either. I say 'wisely', for an attempt to define with scientific elementary ideas often leads to failure, and what is still worse, to confusion[8]". In most of cases, death as a fact cannot be converted. The next examination is to find whether the death is caused with that very intention or the intention is in injury only (which is a subjective one) leaving the rest of the examination at the mercy of objective facts where the death is only the effect of the injury. If the intention is on death (or to cause death), it is murder. If due to objective examination the injury has the likely effect of death it will be considered the culpable homicide. In this connection, the 'acts' or 'causation' or 'causes' which may be taken as a sequence of events(phenomena) is important to find "whether 'intention' was on (to commit) death or on (to commit) 'injury' whose likely effect was death[9]". This would solve the problem of finding corpus delicti if it amounts to culpable homicide or murder. The comparative reading of both the sections leads to that if the death is a "likely" effect of the harm caused it is culpable homicide. Whereas, apart from intention fixated on "bodily injury", if the offender "knows" that the act or harm or injury is likely to cause the death of the person then it is murder. It is also murder if the act or harm or injury is "sufficient in the ordinary course of nature". Here too, the intention of the accused should be to inflict the very injury which has been actual find on the person of the deceased. And the injury is particular, with an intention to strike at a vital part of the body, and that it is not accidental or unintentional or that some other kind of injury is not intended[10]. Here the causation is not only ranging from mere muscular contractions to "injury" or "harm" to the person of the deceased but also spreads to death that may amount to culpable homicide or murder. In the former case, the causation is a subjective investigation whereas in the latter case it is objective. When death is sufficient in the ordinary course of nature it means it will "most probably happen". But when the death is "likely" it means it is "probable to happen". In "likely" chances are fifty-fifty whereas in "sufficient in the ordinary course of nature" chances are highest. It can be objectively known from the nature of the weapon used, on the part of the body, the injury that is caused. To reiterate in the language of causal minimalist, it is cause-in-fact. The moot question is whether it is sufficient in the given occasion or not.According to Prof. Allen Gledhill,*this distinction of words is artificial and leads to considerable arbitrariness in application to any given case*. And as stated earlier in the introduction to the topic that the principle of the adjective and procedural branch of legal study circumscribes the matter of investigation in actual practice, the Supreme Court of India held in Virsa Singh vs. the State of Punjab[11] "in absence of any circumstances to show that the injury was actually caused accidentally or unintentionally, it had to be presumed that the accused had intended to cause the inflicted injury and the conditions of clause (3) of section 300, I.P.C were satisfied.The presumption is an inference drawn from a known fact to an unknown fact, generally logically and naturally, subject to disprove, sometimes. This is a natural and logical presumption under section 114 of the Evidence Act. However, in section 299 two more statutory presumptions have been incorporated. In these cases, the causation of the crime has artificially been *connected*. In Explanation 1 to sec 299, if one hastens or accelerates the death of a person under

disorder, disease, or bodily infirmity the court shall presume that death has been caused. Once the 'acceleration' is proved, the rest of the court is bound to presume. And it will be considered under the first head of the section i.e. causes death with the intention of causing death. Therefore the causation of the crime though not strictly proved, with the assistance of statutory presumption it is considerably relaxed. And to avoid the supervening acts which break the causation, Explanation 2 to the sec 299 has also incorporated a statutory presumption to consider the case under the second head i.e. when one intentionally causes bodily injury. The objective inquiry from the 'bodily injury to death is simplified. Or it has made a limitation on legal responsibility. Here though 'logically' death might have been due to inattention (that does not amount to tortuous or criminal wrong due to the legal limiting theoryfor responsibility) of the medical treatment and is a supervening cause or condition or a cause-in-fact, the statutory presumption abridges the causation and legally it is taken that the accused has done 'bodily injury. Hence, causation apart from being natural or logical is also normative in functional. The principle for limitation on legal responsibility is the policy of the law.

4. Verbal Causation

The usage of the word "harm" is sometimes assigned to the death (or grievous hurt if it is charged) where the investigation may tread into normative or policy decisions of a particular penal statute. In other times it is given a literal meaning, as is used above in the sense of injury caused on the body of the person from mere muscular contractions. It is the entire episode of "acts". The theory of causation puts stress on finding a "substantial factor", "dominant factor", and "real factor" in linking 'act' to 'harm' in the latter sense. In the passing, it may be iterated that the factor is different from the cause. The word injury is interchangeably used in this context with harm. Noteworthy, injury is inclusively defined in the Code. It includes harm. However, harm has not been defined in the Code. Harms are "actual disvalues, viewed from the perspectives of realism and sociology [12] ". Under section 44 "the word injury denotes any harm whatever illegally caused to any person in the body, mind, reputation, or property. The penal code several times distinguishes the effect on the body and the effect on the mind. It is formulated when the knowledge of psycho-somatic discipline was crude. Now, the knowledge in this field has sufficiently advanced and it has reached a "reasonable common man" understanding that the effect on the mind has a corresponding effect on the body. Under Section 32 act also means "speaking". If a person (intentionally) speaks some words to another and it harms the mind which correspondingly affects the body, it would not be "unreasonable" to find causation in the "bodily injury" under sections 299 and section 300. Understanding causation, in this case, needs awareness of the phonetic effect of words taking in their literary significance. Seemingly harmonious, ear-soothing, innocuous words comprehended with "circumstances [13] " may transpire the causation of the crime. There too, a substantial factor, or real factor, or dominant factor is key to causation.

5.Causation in omission

The problem is confounded when the causation is in the shape of omission or omissions. Nothing is omission unless there is a legal duty to act. This is seeminglyunderstandable, however, it is tautological as this is the very matter of investigation as to whether in this (a) case a legal duty arises or not due to omission, and it is answered through a general statement of legal duty. Most of the time this legal duty unknowingly entrenches into the sphere of moral duty. And the court begins to create new normative duties out of moral issues. The prescriptivism of the court is rarely called into. One of the reasons perhaps as morality is deep-rooted to society the first opposition to it is substantially reduced. Like finding omission to provide food may be culpable in some cases. And if a person is reduced to death due to systematic omission to supply food necessary for the existence of life the 'relationship' is taken into account to find the sphere of (legal) duty. When the doer or the person who caused omission is a warden of a Jail or the like ones the investigation is simplified as the statute itself prescribes the duty. Likewise in the nearness of a relationship, some statute prescribes the general duty to care or (considering) welfare. However, the issue is exposed when the relationship distances to a point of strangers. And finding the causation in that context

becomes the examination of morality which as possible as to be restricted. It is an uncharted course and sailing into the vast sea of morality is a rudderless expedition, which at present is attempted by other non-legal disciplines such as neuroscience.

5. Conclusion

Causation is a more normative description of an offensewhereasit is factual in the evidentiary application. While applying before the court of law, the problem of causation is resolved more in common man sense than a rigid demonstration of a semantic burden on logic.

Acknowledgment

None

Conflict of Interests

The authors declare no conflict of interest in this study.

Endnotes

[1]What is the Legal Definition of Causation? (2015, July 2). WKW. https://www.wkw.com/legal-dictionary/blog/legal-definition-causation/

[2]What is the Legal Definition of Causation? (2015, July 2). WKW. https://www.wkw.com/legal-dictionary/blog/legal-definition-causation/

[3] Mueller, Gerhard O.W. (1959) "Criminal Theory: An Appraisal of Jerome Hall's Studies in Jurisprudence and Criminal Theory," Indiana Law Journal: Vol. 34 :Iss. 2 , Article 2. Available at: https://www.repository.law.indiana.edu/ilj/vol34/iss2/ p.222

[4] Mueller, Gerhard O.W. (1959) "Criminal Theory: An Appraisal of Jerome Hall's Studies in Jurisprudence and Criminal Theory," Indiana Law Journal: Vol. 34 :Iss. 2 , Article 2. Available at: https://www.repository.law.indiana.edu/ilj/vol34/iss2 p. 222

[5] Section 300 in the Indian penal code. (n.d.). Indiankanoon.Org. Retrieved April 28, 2022, from https://indiankanoon.org/doc/626019/

[6] Section 300 in the Indian penal code. (n.d.). Indiankanoon.Org. Retrieved April 28, 2022, from https://indiankanoon.org/doc/626019/

[7]Sec 39 of Indian Penal Code, 1861.

[8] The principle of the law of crimes in British India by Syed Shamsul Huda. Tagore Law Lecture 1902. Butterworth & Co, Indian Lt. Calcutta. P.35

[9] In this connection, the ‘acts’ or ‘causation’ or ‘causes’ which may be taken as sequence of events(phenomena). . Here too, the intention of the accused should be to inflict the very injury which has been actual find ontheperson of the deceased. And the injury is of a particular nature, with an intention to strike at a vitalpart of the body, and that it is not accidental or unintentional or that some other kind of injury is not intended –Virsa Singh vrs. State of Punjab AIR 1958 SC 465

[10] Section 300 in the Indian penal code. (n.d.). Indiankanoon.Org. Retrieved April 28, 2022, from https://indiankanoon.org/doc/626019/

[11] Supra Virsa Singh vrs. State of Punjab AIR 1958 SC 465

[12]General Principles of Criminal Law. by Jerome Hall. 2nd Ed. The Law Book Exchange Lt. Clerk, New Jersy. 2005. p.216

[13]“Circumstances” may transpire causation of the crime.Read Chapter-VIII,General Principles of Criminal Law. by Jerome Hall. 2nd Ed. The Law Book Exchange Lt. Clerk, New Jersy. 2005