

Illustration: does an
act which, if it caused



**ASSIGN
BUSTER**

Illustration: A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

” Section 315 is aimed at foeticide while in the womb, after the foetus develops sufficiently to assume the human form, which it does in normal cases in the sixth month. When it attains that degree of development, the act which would, if done earlier be abortion, ceases to be so, as the delivery of an undeveloped child would be premature labour, for which the accused is held more responsible owing to the more advanced stage of foetal life. This offence is distinguishable from infanticide, which would in the similar circumstances be murder, pure and simple. The only difference between such foeticide and infanticide which is murder is that the former offence is committed before its delivery, while the latter can only be committed after its delivery.

One of the essential ingredients of an offence under Sections 315 and 316 is that the culpable act or the actus reus should be before the birth of the child and should result in preventing the child from being born alive or cause it to die after its birth. If the act of killing the child is done after its birth, Section 315 is not attracted, it being then a case of murder or culpable homicide. It is only injury caused to an unborn child which is covered by Section 315. Another important ingredient or element of an offence under Section 315 is that the act should be done with the intention of preventing the child from being born alive or cause it to die after its birth. Only exception given in

Section 315 is that if there is any danger to the life of the mother and it is necessary to kill the child as per the medical experts opinion, Section 315 exempts such incidence from its purview. This offence is non-cognizable but warrant should ordinarily issue in the first instance. It is both non-bailable and non-compoundable, and is exclusively triable by the Court of Session. Section 16 is a graver variation of Section 315.

In both these Sections, the offence contemplated is death of an unborn child. Under Section 315, the offence contemplated is death of an unborn child. Under Section 315, the act is done with the intention to cause the death of the unborn child. But under Section 316, the act is done with the mens rea or the intention to commit culpable homicide (presumably of the mother), which act though does not result in the actual death of the mother, but results in the death of the quick unborn child. Merely causing death of the quick unborn child is not sufficient.

The prosecution has also to prove that the accused acted with the necessary intention to cause the death of the victim. If the act of the accused actually results in the death of the victim mother, then the offence committed will be culpable homicide. Imprisonment of either description for a term which may extend to ten years, or with fine, or with both under Sections 315 and 316.