

# TAMIL NADU STATE JUDICIAL ACADEMY

HEADQUARTERS, CHENNAI

*Refresher Course-I for District Judges (Batch-II)*

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## **'Murder' and 'Culpable Homicide not amounting to Murder' – Distinction**

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Former Judge, Madras High Court

Former Chairman, Intellectual Property Appellate Board.

### **I. INTRODUCTION:**

In a criminal case, the cardinal principle is that the accused is innocent till the guilt is proved beyond reasonable doubt by the prosecution. The prosecution must prove its case beyond reasonable doubt is a rule of caution laid down by the Courts of Law in respect of assessing the evidence in criminal cases. The general burden of establishing the guilt of accused is always on the prosecution and it never shifts. Even in respect of the cases covered by Section 105 of the Indian Evidence Act, the prosecution is not absolved of its duty of discharging the burden.

In **K.M. Nanavati v. State of Maharashtra, [1962] Suppl. 1 SCR 567** it is observed that:

*"In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution' to prove 'the guilt of the accused. But when an accused relies upon the General Excep- tions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, Section 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presump- tion. Under that Section the Courts shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the Court shall regard the nonexistence of such circumstances as proved till they are disproved. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstances and the evidence adduced by the accused. **But the section does not in any way affect the burden that lies on the***

***prosecution to prove all the ingredients, of the offence with which the accused is charged; that burden never shifts”***

Lord Denning, J. in **Miller v. Minister of Pensions, [1947] 2 All ER 373** while examining the degree of proof required in criminal cases stated: “*That degree is well-settled. It need not reach certainty but it must reach a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course, it is possible but not in the least probable", the case is proved beyond reasonable doubt.*”<sup>1</sup>

It is the utmost duty of the court to assess and analyze both oral and documentary evidence adduced by the prosecution in order to test the credibility and reliability of the prosecution version and also to arrive at a conclusion as to whether the accused committed the offence that has been alleged against him or whether he is the author of the injury caused to the victim and if so, what is the nature of the offence. The appreciation of evidence in a criminal case is the heart and soul of the dispensation of the justice delivery system in criminal law. It is well settled time tested rule is that acquittal of the guilty person should be preferred to conviction of an innocent person. The paramount consideration of the court is to ensure that the miscarriage of justice is prevented. A miscarriage of justice, which may arise from the acquittal of the guilty, is no less than the conviction of an innocent.

The topic is very vital namely Distinction of ‘Murder’ and ‘Culpable Homicide not amounting to Murder’. The term ‘culpable homicide is defined u/s 299 IPC and ‘Murder’ is defined u/s 300 IPC. Referring to these sections, Whitely Stockes, Previously Law member of the council of the Governor General of India, in his introduction to the Indian Penal Code in the Anglo Indian Codes, Volume 1, published in 1887, Page 41 comments as follows: “*The definitions just referred to are*

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<sup>1</sup> Vijayee Singh and ors v. State of UP AIR 1990 SC 1459

*the weakest part of the code, and the law on the subject should be recast so as to express clearly what is or sought to be the intention of the legislature".* But unfortunately such a legislative exercise did not take place. It has been left to the courts to bring out and expound the difference between culpable homicide and murder, as defined in the abovesaid sections<sup>2</sup>

In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide.

(1) The first is, what may be called, 'culpable homicide of the first degree'.

This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'.

(2) The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304.

(3) Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304

**The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the courts for more than a century.** The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. **The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the key words used in the various clauses of ss. 299 and 300.**<sup>3</sup>

In order to deal with this vital topic, it is proper to deal with three classified heads namely,

<sup>2</sup>Mani alias Subramian v. State by Inspector of Police 1986 LW (cr) 275

<sup>3</sup>State of AP.v. Rayavarappu Punnaya AIR 1977 SCC 45

1. **Exceptions as enumerated in Section 300 IPC.**
2. **Distinction between 'murder' and 'Culpable Homicide not amounting to Murder'**
3. **Distinction between S. 304 part 1 and 304 Part II IPC**

## **II. Exceptions to S.300 IPC:**

1. Section 300 IPC reads as hereunder:

Except in the case hereinafter expected, Culpable Homicide is Murder, if the act by which the death is caused is done with the intention of causing the death of the person, or-

Secondly- If it is done with the intention of causing such type of bodily injury as the offender knows to be likely to cause the death of the person to whom the harm of such injury 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 the 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.

As per penal provision under S.300 IPC except the exceptions culpable homicide is murder.

Exception 1- When culpable homicide is not murder- 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 accident.

The above exception is subject to the following provisos:-

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 defense

Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense 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 defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.

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.

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 manner

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.

### **Exception 1: Grave and Sudden Provocation:**

The first and foremost landmark decision of the Hon'ble Apex Court on the Exception 1 is **K.M.Nanavati v. State of Maharashtra AIR 1962 SC 605**, wherein the following principles have been laid down:

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1. *The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control;*
2. *In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act with the first exception of Sec.300, I.P.C.*
3. ***The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.***
4. *The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.”*

Our Hon'ble High Court on the principles as mentioned above, propounded the theory of “**Sustained Provocation**” in **Suyambukani In re 1989 LW (cr) 86**. In the said case, the accused Suyambukani was married to PW.1 and blessed with two children aged about 2 ½ years and 10 months respectively at the time of the occurrence. The accused was subjected to mental agony and torture at the hands of her husband PW.1. She was not given money for household expenses and she was not allowed to meet her parents. Children were not taken care even during their illness by the husband PW.1. PW.1 was also addicted to drink and there were constant quarrel between the spouses. The untold hardship and mental agony of the accused, at the hands of the PW.1 driven her to take the extreme step of putting an end to her life and the life of her children. As a result she jumped into a well along with the children. The children died and the accused survived. With the above factual background, the High Court held as hereunder,

*“21. It is clear from the opinion of the important architects of the Indian codification that Anglo Indian Codes, which were the first experiments in English language in the*

art of codification, inspite of their immense value, are far from being perfect and were intended to be overhauled from time to time. Therefore, though technically the Exceptions to Sec.300, I.P.C. appear to be limitative they can no longer be considered so, after the efflux of time. Infact, Courts have added one more exception known as 'sustained provocation'. **The leading decision in that field is the well-known Nanavati's case, A.I.R. 1962 S.C. 605. That decision is not the first one to take into consideration tire situation of sustained provocation.** There are previous decisions, which are reviewed in that case are: *The Empress v. Khagayi*, I.L.R. 2 Mad. 122, *Boya Munigadu v. The Queen*, I.L.R. 3 Mad. 33, *Murugien, In re.*, (1957)2 M.L.J. 9: 1957 M.L.J. (Crl.) 271: 1957 Crl.L.J. 970: I.L.R. 1957 Mad. 908: A.I.R. 1957 Mad. 541, *Chervirala Narayan, In re.*, (1958)1 An.W.R. 149: A.I.R. 1958 Mad. 235, *Balku v. Emperor*, A.I.R. 1938 All. 532 and *Babu Lai v. State*, A.I.R. 1960 All. 223. Thereafter several decisions have been pronounced and recently by this Court dealt with the same subject in the following unreported cases C.A.No.70 of 1981, dated 15.12.1982, *Lakshmi j. State*, C.A.No.417of 1985, dated 10.2.1986, *Dham an v. State*, CA.No. 184 of 1983, dated 6.2.1983, *Dsvanathan @ Mani v. State*, C.A.No.301 of 1984, dated 4.8.1988, *Gopal v. State*. **Though there has been here and there attempts, in those decisions to bring the sustained provocation under Exception 1 to Sec.300, I.P.C, there is a cardinal difference between provocation as defined under Exception I and sustained provocation. The only word which is common is 'Provocation'. What exception I contemplates is a grave and sudden provocation whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking the camel's back may even be a very trifling one. We are therefore far from grave and sudden provocation contemplated under Exception 1 to Sec.300, I.P.C. Sustained provocation is undoubtedly an addition by Courts as anticipated by the architects of the I.P.C.**

**22. Now that it is clear that the exceptions under Sec.300, I.P.C. are not limitative, we have to examine whether Nallathangal's syndrome can be considered as one of the exceptions.** Since the Code in its structure make the exceptions limitative, Courts have to show restraint on circumspection in adding exceptions and such additions should be ejusdem generis. In this connection, it is necessary to examine what is the true nature of the exceptions. The exceptions are

*in the nature of important excusing circumstances and they have the following characteristics.*

*One thing is clear from the above analysis viz. in all the exceptions either premeditation or ill will is absent. Therefore, when both are present, it will be impossible to consider the matter as an exception.*

*23. Now we shall proceed to analyse the facts of the case whether it would amount to excusing circumstance analagous to five circumstances enumerated in the Code. The case of the accused is that she has been living since her marriage in a situation of continuous adversity, that when the situation became unbearable she decided to commit suicide along with her children, went to the nearest well with the children in her arms and jumped into the well after ascertaining that there was water therein and that unfortunately there was no sufficient water for her getting drowned. This confession of hers before the Magistrate is corroborated by her statements to P.W.2, her brother, as soon as she was taken out of the well and to P.W.8, doctor, when the accused was brought before him for examination.*

*24. We have already set out in the beginning the continuous misfortune in the life of the accused and the desolation which she was subjected to one account of the ill-treatments meted out by the husband to the children. No doubt her parents were extending a helping hand whenever the misery became acute but they would send her back as soon as possible and the husband also would not tolerate her maintaining close connections with her parents. This situation of distress reached a climax after she returned from her parents on the 25th June, 1983, with her ailing baby. She was beaten in that evening and again beaten on the 26th morning and evening. The quarrel was about the accused having remained in her parent's house for so many days and the desire of the accused to go back there again to complete the treatment of the ailing baby. "Even if the baby should die let him die here", was the blunt reply of the husband. When the husband of the accused noticed the talisman attached to the neck of the baby in order to remove the evil, he became infuriated and scolded and beat his wife for having done so in her mother's house.*

25. On the ill fated day, viz. 27.6.1983, after the mid-day meal, she was beaten against and the accused could not bear it P.W.4, a neighbour overheard the following exchange of words 'go any where and pass out of my sight' to which the accused replied: "better die than live with you". It is to be noted that more than the misery to which she was subjected, the accused was afflicted by the sufferings of her children. The father was not only indifferent, but even barbarous towards them. She got persuaded that after her death the children will be uncared of and would suffer innumerable torments and she could not reconcile with that idea. So, it is after draining the cup of sorrow to the dregs that she decided to follow the Nallathangal's way. **It is obvious that an act like that of the accused would not come within the meaning of murder, as contemplated in the I.P.C.**

26. The attempt of the learned counsel for the accused/appellant while pointing out all the circumstances of the case was that the accused had no other alternative and that she should be completely exonerated. Learned Additional Public Prosecutor while conceding that the acts of the accused deserved special consideration would contend that the acts of the accused in causing the death of her two children amounted certainly to an offence. No doubt the social fabric, as it prevails now in India, is responsible for the creation of situations like that of the accused. But the society, will crumble, if each person even the mother who gave life to the children is to decide about life and death. The Society expects the citizens, however ill placed they may be, to react to the situation to call for help and to make an endeavor to survive. The act of the accused is obviously an offence in the contemplation of law, but it cannot be considered as an offence under Sec.302, I.P.C., which is the most heinous crime dealing with the most dangerous activities to the society, and the authors of which could be exterminated by the imposition of sentence of death. In fact, it would be incongruous to impose the sentence of death on a person who attempted to commit suicide and who was saved therefrom.

**27. As pointed out earlier, ill will and premeditation should be both present in the case of murder. The absence of one of them coupled with an important excusing circumstance would transform the offence into a culpable homicide. In the present case, there is, of course, premeditation but, obviously, no ill will. The extreme course of family suicide, the mother along with her children is**

***clearly, in our opinion, an excusing circumstance equivalent to those enumerated in the Exceptions to Sec.300, I.P.C. and will be therefore is the nature of an exception, when the mother escapes and children die bringing the offence to one punishable under Sec.304, Part I, I.P.C.”***

Further, “30. In the result, the appellant is allowed in part the conviction and sentence under Sec.309, I.P.C. stand confirmed, the conviction and sentence under Sec.302 (2 counts) I.P.C. are set aside, the accused is found guilty of an offence under Sec.304, Part I, I.P.C. (2 counts), convicted thereunder and is sentenced to imprisonment for the period already undergone by her.”

The above said decision was followed by the High court in **Sankaral alias Sankarayee v. State 1989LW(cr) 468**. In the said case conviction and sentence passed under S.302 IPC was altered to S.304 Part I IPC Plea of Sustained provocation, held can be accepted as falling within the purview of “grave and Sudden Provocation”-Charge against wife for causing death of her husband with an aruval-illtreatment and threat to her life by the deceased in drunken state-plea of sustained provocation was accepted. The high court held,

*“It is common knowledge that the term “self control” in the said provision is a subjective phenomenon and it can be inferred from the surrounding circumstances of a given case. Therefore in order to find out whether the last act of provocation upon which the offender caused the death was sufficiently grave as to deprive him of the power of self-control, we have to take into consideration the previous act of provocation caused by the deceased person.*

*When there is positive evidence to show that there was grave and sudden provocation at or about the time of occurrence, there would be no difficulty in applying the said principles. There are other types of cases where there has been sustained provocation for a considerable length of time and there would not have been a real sudden provocation immediately preceding the murder. In such cases, the Courts have given the benefit of Exception 1 to Sec.300, I.P.C. on the ground that the provocation, which is the route cause for the commission of the offence, need not arise at the spur of the moment. In a case like the one on hand we find that*

*the accused was leading a miserable life for a long number of years. It is in evidence that all along she has been leading a difficult life with the deceased having nobody else to support her. She has given birth to five children and all along, she has been working in lands for eking out her livelihood. It is also in evidence that the deceased was addicted to drink and that he sold away even the little property owned by the family. It transpires from the evidence that even on the date of the occurrence he had sold away the cycle that he was having for the purpose of drinking arrack. He was not in the habit of providing sufficient funds to the appellant, but at the same time, he insisted that food should be served to him as and when he wanted. On the date of the occurrence, he beat the appellant severely and threatened her that he would kill her and her five children before the daybreak. This was not an isolated act of ill treatment on the part of the deceased, but it was a sustained ill treatment on his part. All along the appellant lived on the hope that the deceased would turn a new leaf in his life. At last a stage came when she could not tolerate any more of the ill treatment meted out to her. This part of her story finds support in the evidence of P.W.1 and D.W.1 both happen to be her sons. Even though P.W.1 figured as a prosecution witness, he has categorically admitted about the ill treatment given to his mother, the appellant herein. The conduct of the appellant shows that all along she was under self-control, suppressing all her feelings perhaps for the welfare of her minor children. Only in this background we have to consider whether there was any justification for applying the said exception in favor of the accused*

*The appellant was under self-control inspite of the continuous ill treatment on the part of the deceased till the time when she cut the deceased. Even according to the prosecution the deceased beat the appellant some time before the occurrence and abused her in filthy language. It appears that he had also alleged that she had illegal intimacy with P.W.5, Arunachalam Gounder. In this connection, the judicial confession made by the appellant before the learned Magistrate assumes some importance. In spite of the fact that she has gone back in her statement to some extent, we find that her version about the misconduct of the deceased appears to be true and convincing. We find that there is absolutely no evidence on the prosecution side to disprove the said aspect. We can therefore safely proceed on the basis that the appellant was under sustained provocation, which broke out, when the deceased beat her and suspected her conduct. Apart from that, there is evidence to show that*

*the deceased threatened to take away the life of the appellant and her five children before the daybreak. When we take all these circumstances into consideration we feel that the appellant must have been under severe and sustained provocation. The last act of the deceased proved to be the last straw at the camel's back.*

*While coming to his conclusion we are aware of the position that nobody is entitled to take away the life of another person and that a provocation to come under exception 1 must be grave and sudden in the real sense of the term. It is only in such cases, the question of sustained provocation can be applied and we do not propose to lay down any hard and fast rule in this regard. It depends upon the facts and circumstances of each given case. The Courts have held that the provocation must be sudden and that there should not be any interval between the provocation and the act. It is the fundamental principle that whenever there was time to cool down, an accused person cannot take advantage of this exception, as the law protects only the cases where an accused person acted out of sudden and grave provocation and not in cases where he had time to cool down. Whenever there was time for cooling, the Courts have held that an accused is not entitled to the benefit of exception 1 to Sec.300, Indian Penal Code. Here again, the question whether there was sufficient time for an accused person to cool down or not is a matter, which depends upon the facts and circumstances of the each, given case. Bearing these principles in mind when we consider the present case we are satisfied that the appellant cut the deceased as a result of grave and sustained provocation which culminated in the last act of the appellant.*

*The appellant is entitled to invoke exception 1 to Sec.300, Indian Penal Code and if it is so, she is not liable to be punished under Sec.302, Indian Penal Code. We find that the appellant has not come out from the jail and that she has been in jail for about 51/2 years from the date of conviction. Taking into consideration all the peculiar facts of the present case, we feel that it is unnecessary to keep her in jail any longer and therefore, we direct that she be sentenced to undergo imprisonment for the period already undergone by her. She is directed to be set at liberty forthwith."*

In **RajKumar v. State of Punjab (2015) 16 SCC 337**, the trial court convicted appellant under S.304 Pt.1 finding it as a case of grave and sudden provocation, High Court converted S.304 Part.1 to 302 IPC, The Apex court held that, *“the eye witnesses namely, P.W 2, Anil Chhabra and P.W 3, Gurbachan Singh are quite cogent and consistent that there was an altercation and that soon thereafter the appellant took out his licensed weapon fired upon the deceased. Even if we were to accept that any abuses were hurled by the deceased, questions such as who was responsible for such verbal altercation, who had initiated such verbal altercation, what was the extent of such abuse, whether such abuses would, in normal circumstances, have provoked a reasonable minded person still remain unanswered. These are issues which ought to have been proved by way of positive evidence or inferences clearly discernible from the record. We do not find any material even suggesting such inferences. In our view, the High Court was completely right and justified in negating the plea of “sudden and grave provocation”.*

In **Saroj v. State of W.B (2014) 4 SCC 802**, the deceased was found in house of accused at night to meet thier daughter/sister.-Grave and sudden provocation established-Nature of injuries- Absence of Premeditation – Apprecation of evidence- Conviction of Appelants A-1 to A3 u/s 302 r/w s.34 altered to one u/s 304 Pt.1 r/w s.34 and they were sentenced to undergo seven years’ rigorous imprisonment each.

In **Chaitu v. State of UP (2014) 11 SCC 218**, dispute was over sharing of water from canal leading to quarrel and upon grave and sudden provocation, deceased was injured in ensuing fight by the accused and sccumbing to injuries only on the next day.Agricultural lands were situated nearby the Appellants and deceased – accused opened Muhar of Nali and diverted the water of the canal to flow into his field - there was altercation between the parties and also scuffle between them - accused assaulted and gave blows with lathi, legs and fists - deceased succumbed to his injuries – Trail court convicted the Appellant – High court dismissed the Appeal - appellants contended that the occurrence took place 34 years ago on account of sudden provocation and the act was committed by the accused without premeditation –

Held that assault was in the heat of passion on a sudden quarrel in which the accused cannot be said to have acted in an unduly cruel manner - Evidence shows

that the accused/appellants gave blows with lathi, legs and fists mainly on the limbs of deceased - circumstances it was a case of grave and sudden provocation and would fall under the First Exception section 300 of IPC - Appeal is partly allowed.

In **Hansa Singh v. State of Punjab [AIR 1977 SC 1801]**, the accused on seeing one Gurbachan Singh (the deceased) committing sodomy on his son, assaulted him resulting in death. The court held that the accused (appellant) had done so under sudden and grave provocation which led him to commit murderous assault.

The appeal of the accused was allowed. Conviction of the accused was reduced from life imprisonment under Section 302 to imprisonment for seven years under Section 304, part-II of IPC vide Exception 1 to Section 300, IPC.

In **Muthu v. State of Tamil Nadu [(2007) 7 Supreme 547]**, it has been stated that in the heat of the moment people sometimes do act which aren't premeditated. Hence, the law provides that while those who commit acts in a fit or anger should also be punished, their punishment should be lesser than that of premeditated offences. We are satisfied that Muthu was deprived of the power of self-control by grave and sudden provocation which led him to commit the offence.

If rubbish is thrown into one's house or shop, one would naturally get very upset. It is evident that the accused had no motive or intention to cause death since he was not carrying the knife from before, and only picked it up during the scuffle with Shiva (deceased). The Court further said that this was not a murder but culpable homicide not amounting to murder punished under Section 304.

In this case, life term reduced to 5 years giving the accused benefit of Exception 1 to 300, IPC considering constant harassment may lead to deprivation of the power of self-control amounting to grave and sudden provocation.

In **Dattu Genu Gaikwad v. State of Maharashtra [AIR 1974 SC 387]**, the accused killed the deceased as the deceased attempted reign to outrage the modesty of accused's wife a month back. In view of the long time interval, it was held that the plea of 'sudden and grave' provocation was not available.

## **Exception 2: Self defense**

Under this exception, the accused is entitled to right of self-defense either to protect the body or to protect his property. It is pertinent to note that on the facts and circumstance of the case, if it is established that the deceased is the aggressor and the accused attacked him only while exercising his right of private defense, then it is not murder and therefore the accused is entitled for acquittal. On the other hand, if the accused exceeds his right to private defense, then he is liable to be punished u/s 304 part 1 or part 2 IPC.

The principles with respect to Self-defense or private defense was summarized by the Hon'ble Apex Court in the case of **Arun v. State of Maharashtra (2012) 5 SCC 530** as follows,

***“12. Law clearly spells out that the right of private defence is available only when there is a reasonable apprehension of receiving injury. Section 99 IPC explains that the injury which is inflicted by a person exercising the right should commensurate with the injury with which he is threatened. True, that the accused need not prove the existence of the right of private defence beyond reasonable doubt and it is enough for him to show as in a civil case that preponderance of probabilities is in favour of his plea. Right of private defence cannot be used to do away with a wrong doer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right to private defence.***

*13. It is for the accused claiming the right of private defence to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution, if a plea of private defence is raised. (Munshi Ram and Others V. Delhi Administration, AIR (1968) SC 702; State of Gujarat v. Bai Fatima, AIR (1975) SC 1478; State of U.P. v. Mohd. Musheer Khan, AIR (1977) SC 2226 and Mohinder Pal Jolly v. State of Punjab, AIR (1979) SC 577 and Salim Zia v. State of U.P., AIR (1979) SC 391.*

*14. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on*

*the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting.*

*15. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property of the person exercising the right or of any other person, and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to the property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To plea a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him.”*

**Plea of private defense need not be specifically raised.** Courts may only see as to whether the plea of Exercise of right of private defense was probable in facts and circumstances of the case. **Surendra v. State of Maharashtra AIR 2006 SC 4341**

Scuffle between the deceased and the accused. The deceased at that time was armed with knife and he was karate expert. Accused apprehended injury on him and inflicted three injuries on the deceased. Fatal injury on the chest penetrated deep into body. Held, accused exceeded his right of private defense. Convicted under 304 Part 1 IPC. **Udhayakumar Pardarinath jadav v. State of Maharashtra AIR 2008 SC 2827**

Evidence on record showing that accused attacked unarmed deceased with a dangerous weapon, which he fetched from his house and started stabbing him. Mere factum of lip injury caused to accused does not give rise to reasonable inference or even probability that deceased violently attacked the accused. On contrary is that there would have been some resistance on part of the deceased and in that process

accused would have fallen on hard substance and got injured thereby plea of self-defense is not tenable. **Shanmugham v. State of Tamil Nadu AIR 2003 SC 209**

In **Darshan singh v. state of Punjab 2010 2 SCC 333** this court laid down the following principles, which emerged upon the careful consideration and scrutiny of a number of judgments as follows:

*"The following principles emerge on scrutiny of the following judgments:*

1. *Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defense within certain reasonable limits.*
2. *The right of private defense is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.*
3. ***A mere reasonable apprehension is enough to put the right of self-defense into operation.*** *In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defense. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defense is not exercised.*
4. *The right of private defense commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.*
5. *It is unrealistic to expect a person under assault to modulate his defense step by step with any arithmetical exactitude.*
6. *In private defense the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.*
7. ***It is well settled that even if the accused does not plead self-defense, it is open to consider such a plea if the same arises from the material on record.***
8. *The accused need not prove the existence of the right of private defense beyond reasonable doubt.*

9. *The Indian Penal Code confers the right of private defense only when that unlawful or wrongful act is an offence*

10. *A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defense inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."*

In the recent case of **Prasad Swanker v. Ranjit Kumar (2015) 16 SCC 411**, it was a case of Murder wherein the plea of right to private defense was raised. A cross version of dacoity by deceased persons was held to be credible. Recoveries from the place of occurrence, non-explanation of the injuries to the accused, made the cross versions to be found probable. Reversal of the conviction was confirmed.

In **Yogendra Morarji v. State of Gujarat AIR 1980 SCC 660**, the Supreme Court dealt with the extent to which the private defense can be used as hereunder,

*"12. Before considering this question in the light of the evidential material on record, it will be worthwhile to remind ourselves of the general principles embodied in the Penal Code, governing the exercise of the right of private defence.*

*13. The Code excepts from the operation of its penal clauses large classes of acts done in good faith for the purpose of repelling unlawful aggression but this right has been regulated and circumscribed by several principles and limitations. The most salient of them concerned the defence of body are as under? Firstly, there is no right of private defence against an act which is not in itself an offence under the Code; Secondly, the right commences as soon as and not before a reasonable apprehension of danger to the body arises from an attempt or threat to commit some offence although the offence may not have been committed and it is conterminous with the duration of such apprehension (Section 102). That is to say, right avails only against a danger imminent, present and real; Thirdly, it is a defensive and not & punitive or retributive right. Consequently, in no case the right extends to the inflicting of more harm than it is necessary to inflict for the purpose of the defence. (Section 99). In other words, the injury which is inflicted by the person exercising the right should be commensurate with the injury with which he is threatened. **At the same time, it is difficult to expect from a person exercising this right in good faith, to weigh "with golden scales" what maximum amount of force is***

*necessary to keep within the right Every reasonable allowance should be made for the bona fide defender "if he with the instinct of self-preservation strong upon him, pursues his defence a little further than may be strictly necessary in the circumstances to avert the attack." It would be wholly unrealistic to expect of a person under assault, to modulate his defence step by step according to the attack; Fourthly, the right extends to the killing of the actual or potential assailant when there is] a reasonable and imminent apprehension of the atrocious crimes enumerated in the six clauses of Section 100. For our purpose, only the first two clauses of Section 100 are relevant The combined effect of these two clauses is that taking the life of the assailant would be justified on the plea of private defence; if the assault causes reasonable apprehension of death or grievous hurt to the person exercising the right. In other words, a person who is in imminent and reasonable danger of losing his life or limb may in the exercise of right of self-defence inflict any harm, even extending to death on his assailant either when the assault is attempted or directly threatened. This principle is also subject to the preceding rule that the harm or death inflicted to avert the danger is not substantially disproportionate to and incommensurate with the quality and character of the perilous act or threat intended to be repelled; Fifthly, there must be no safe or reasonable mode of escape by retreat, for the person confronted with an impending peril to life or of grave bodily harm, except by inflicting death on the assailant; Sixthly; the right being, in essence, a defensive right, does not accrue and avail where there is "time to have recourse to the protection of the public authorities." (Section 99)."*

Further "Furthermore, the accused should not have fired all the three rounds in quick succession. He should have after firing one round waited for a second or two to see its effect on the persons attempting to hurt him. If that fire did not have the desired effect, then he should have fired the next round. But **the mere fact that he did not assess the necessity of firing each successive shot does not negative good faith on his part in the exercise of his right because a person placed in peril is' not expected to weigh "in golden scales" what amount of force is necessary to keep within the right.** Thus, this is a case in which the accused has exceeded this limit of the right of private defense available to him under Section 101, Penal Code.

*Nevertheless, this is a circumstance, which can be taken into account in mitigation of the sentence.*

*40. We agree with the High Court, that the offence committed by the accused is one under Section 304, Part II, Penal Code and does not amount to murder under any of the four clauses of the definition given in Section 300, Penal Code."*

### **Exception 3: Act of Public Servant**

According to Exception 3 to Section 300, 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 the 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. The essential ingredients of the Exception 3 of Section 300 are as follows:

- (i) The offence must be committed by a public servant or by a person aiding a public servant;
- (ii) The act alleged must have been committed by the public servant in the discharge of his official duties;
- (iii) He should have exceeded the powers given to him by law;
- (iv) The act should be done in good faith;
- (v) The public servant should have believed that his act was lawful and necessary for the due discharge of his duties;
- (vi) He should not have borne any ill-will towards the person whose death was caused.

In **Dakhi Singh v. State [AIR 1955 All 379]**, a constable of Railway Protection Police shot a thief suspected to be tampering with sugar bags from the goods wagon on order by the havaldar. He did so in discharge of his duty and that it was just an accident that he hit the fireman instead. He was convicted under Section 302 by the lower Court.

On appeal, it was held that the case would be covered by Exception 3 to Section 300 of IPC. In the present case, there was no ill-will between the appellant and the

deceased. The appellant was a public servant and his object was the advancement of public justice.

He caused the death of the fireman by doing an act which he, in good faith, believed to be lawful and necessary for the due discharge of his duty. In such circumstances, it was held that the offence committed was culpable homicide not amounting to murder punishable under Section 304, Part-11 of I PC and not murder. The conviction under Section 302 for murder was set aside.

Exception 3 of Section 300 gives protection so long as the public servant acts in good faith, but if his act is illegal and unauthorized by law, or if he glaringly exceeds the powers entrusted to him by law, the Exception 3 will not protect him.

In **Subha Naik v. R [(1898) 21 Mad. 249]**, a constable caused death under orders of a superior, it being found that neither he nor his superior believed that it was necessary for public security to disperse certain crowd by firing on them, it was held that he was guilty of murder since he was 'not protected in that he obeyed the orders of his superior officer'.

The Hon'ble Madras High Court held that

*"We are of opinion that the accused Police officers cannot shield themselves on the plea that they were acting in good faith, For nothing is said to be done in good faith which is done without due care and attention, and we are of opinion that neither the first nor the second accused believed that it was necessary for the public security to disperse such an assembly by firing on them.*

*The degree of force which may be lawfully used in the suppression of an unlawful assembly depends on the nature of such assembly, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be obtained. (Lord Bowen's "Report on the Colliers' Strike and Riot--1893".)*

*6. The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed. Keighly v. Bell 4 F. & F. 763 at*

p. 790 *Rex v. Suddis* 1 East. 306 at p. 312 and *Alexander Broadfoot's case* (*Foster's "Crown Law"* 154).

7. We are of opinion that the second accused is not protected in that he obeyed the orders of his superior officer. The command of the head constable cannot of itself justify his subordinate in firing if the command was illegal, for he and the head constable had the same opportunity of observing what the danger was, and judging what action the necessities of the case required. We are of opinion that the order the second accused obeyed was manifestly illegal, and the second accused must suffer the consequence of his illegal act. "

#### **Exception 4: Without Premeditation**

The Apex court in **Surendar Kumar v. Union Territory, Chandigarh (1989) 2 SCC 217** summarized the principles as follows,

*"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 of passion; and*
- (iv) the assailant had not taken any undue advantage or acted in a cruel manner.*

*The cause of the quarrel is not relevant nor is it relevant who offered the provocation 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. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly"*

In **Amirthalinga Nadar v. State of Tamil Nadu (1976) 2 SCC 195**, Justice P.N.Bagwati, held that In a case of Sudden fight, where the fatal blow was given as

part of the sudden fight that arose out of sudden quarrel between the appellants part and deceased's party, there is no scope for premeditation. The appellant neither took undue advantage nor acted in cruel and unusual manner. Conviction altered from section 302 to 304 Part 1.

In the case of **Dattu Shamrao valake and ors v. State of Maharashtra (2005) 11 SCC 261**,

In spite of having an axe with him, had suffered quite a severe injury viz., contusion of 8"x1" over chest which could have been caused, according to the Doctor, by an object like cycle chain. It is not possible to say at what stage A3 had received such injury. At any rate, there was no clarification bearing on this aspect from the prosecution side - Though three injuries were noted, they are all on the left parietal region causing the fracture of skull bone. Looking at the nature of injuries, it is quite possible to say that all the injuries would have been caused by one or two axe blows, but not necessarily three. In fact, PW6 states in cross examination that she had seen one axe blow being given by accused No.3 on the neck of B - Cannot say beyond doubt that the 2nd appellant acted in a cruel or atrocious manner by attacking the deceased with the axe once or twice - **Not inclined to deprive the 2nd appellant of the benefit of Exception No.4 - It would be appropriate to convict him under Part I of Section 304 IPC because having regard to the gravity of the injuries caused with a dangerous weapon, each one of which was fatal, the 2nd appellant must be imputed with the intention to cause such bodily injury as was likely to cause death, if not the intention of causing death.**

The prosecution couldn't prove that the accused anticipated the arrival of the prosecution party and they were lying in wait to cause harm to the deceased . It was not possible to say with reasonable certainty as to which party provoked the other and how the fight was initiated. Initially only one accused was armed with axe and was later on joined by the others in fight , which is indicative of the fact that there was no preconcert among the accused to attack the prosecution party. The incident was for a short duration and the accused fled from the scene immediately after the fight. There is nothing to show that the accused had taken undue advantage or acted in a cruel or usual manner. Therefore the court held that the Exception-4 of Section 300 is applicable.

In the case of **Bhimanna v. State of Karnataka (2012) 9 SCC 650**, Due to a dispute over pathway, there was a sudden quarrel between the accused and the deceased. The accused stopped attacking as soon as the deceased fell down. This is indicative of the fact that there was no intention to kill and there was no premeditation. The Apex court finally held that the accused should be convicted under s.304, 447,504 r/w 34 while setting aside the conviction u/s 302 r/w 34 IPC.

In **Prabhakar Vithal Gholve v. State of Maharashtra (2016) 12 SCC 490**, It was a case of sudden fight without Pre meditation. There was no proof of motive and injuries were present in the body of the accused. when injury on the appellant has also been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation. it can be safely inferred that there was no intention on the part of the accused persons to cause death. However, the injuries on head did prove fatal and knowledge of such effect of the injuries can be fastened against the appellant. Therefore the conviction of appellant under section 302 IPC, substituted with conviction u/s 304 Part II IPC. The juvenile offender Balu went to the house of the prosecution party and allegedly committed assault for which he was overpowered. On his cries, the appellant and four others rushed with sticks. the appellant assaulted the deceased by stick on head followed by Balu who also assaulted the deceased by stick on head. The deceased fell down and died immediately. The High court confirmed the appellant's conviction u/s 302 IPC. the appellant contended that the conviction could at best be valid under Section 304 Part I and not under Section 302 of the IPC. The Apex court held that, there is no reason for the assault except an assertion that the appellant was unhappy with a female inmate of the house of prosecution party on a minor issue that she had received some message on telephone but did not convey the same to the appellant.. It would be natural for the family members of juvenile offender Balu on hearing his cries, to rush for his help and when injury on the appellant has also been proved there is sufficient material to infer the reasonable possibility of a grave and sudden provocation.

In **I.Nanak Ram v. State of Rajasthan (2014) 12 SCC 297**, due to dispute over possession of land accused persons duly armed, entered into bara and started dismantling the fence. On being questioned, the accused persons in heat of passion simultaneously inflicted barchi-blow on head of deceased which proved fatal. High court convicted the accused u/s 304 Part II IPC. The Apex court held that the exception 4 is applicable and the conviction and sentence is altered from Part II to Part I of S.304 IPC.

### **Comparison of Exception 1 and Exception 4:**

While comparing Exception 1 and Exception 4, the Hon'ble Apex court in **Thankachan v. State of Kerala AIR 2008 SC 406**, observed as follows,

*“10. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. **The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each***

*fighter. The help of Exception 4 can be invoked if death is caused ( a ) without premeditation; ( b ) in a sudden fight; ( c ) without the offender having taken undue advantage or acted in a cruel or unusual manner; and ( d ) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and that there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".*

**11. The above position is highlighted in Sandhya Jadhav v. State of Maharashtra (2006) 4 SCC 653"**

### **Exception 5: Consensual Homicide/ Suicide pacts**

According to Exception 5 of Section 300, culpable homicide is not murder when the person whose death is caused being above the age of 18 years, suffers death or takes the risk of death with his own consent.

The points to be proved are:

- 1) The death was caused with the consent of the deceased;**
- 2) The deceased was then above 18 years of age;**
- 3) That such consent was free and voluntary and not given through fear or misconception of facts.**

The Apex court in **Vijay alias Gyan chand jain v. State of MP (1994) 6 SCC 308**, held as follows,

*“it may be noted that exception 5 to Section 300 I.P.C. must receive a very strict and not a liberal interpretation and in applying the said exception the act alleged to be consented to or authorised by the victim must be considered with a very close scrutiny. In this connection, reference may be made to an old Full Bench decision of the Calcutta High Court in Queen Empress v. Nayamuddin and Ors. Indian Law Reports Calcutta Vol. XVIII 484. In our views, the learned Counsel for the State is justified in his contention that consent by necessary implication should not be permitted to be raised by way of defence. The appellant at no point of time had spoken about such consent and simply on account of the son not hearing any shriek or sound of agony, it cannot be held that the deceased wife had consented to or authorised the appellant to cause the murderous assault. “*

In **Ujagar Singh v. R [AIR 1918 Lah 145]**, the accused killed his stepfather who was an infirm, old and invalid man, with the latter's consent, his motive being to get three innocent men (his enemies) implicated. It was held that the offence was covered by the Fifth Exception to Section 300, and punishable under the first part of Section 304, IPC.

In **Re : Ambalathil Assainar AIR 1956 Mad 97**, out of poverty, husband directed his wife to go back to the house of her mother. She refused and stated that it is better to kill her than going to the house of the mother. Husband then inflicted an injury by knife. Since consent was not unequivocal, but, conditional otherwise, she will have to deprive the company of the husband. The husband more or less was responsible for making her conditional consent. On these facts, Madras High Court held that Exception 5 cannot be denied

In the case of **Rajesh R.Nair v. State of Kerala 2008 CrLJ 524**, a division bench of the Kerala high Court dealt with exception 5 of S.300 IPC while also referring to Halsbury Law of England as follows,

*“The prosecution case itself is that due to the unconscionable conduct of the father of the accused, his sister and mother together left the house to the place of incident*

*for ending their lives. According to the final report filed by the police, both accused and the mother (original second accused), as per the suicide pact, strangled the sister and thereafter head injury was also inflicted. Mother, who was a party to the same even after seeing this, did not make any try for escape and son was authorized strangulating her and killing her and head injury was inflicted. The accused also jumped in the nearby pond, but, there was no sufficient water and he went with the bath towel used for strangulating the sister and mother to the police station and surrendered himself with the bath towel. Consent granted by the mother and sister was unequivocal and unconditional. The fact that mother did not move or offer any resistance and who helped the accused for murdering his sister also shows that there is substance in the claim that the murder was executed on the basis of the suicide pact. In England, before introduction of Homicide Act, what was the common law position was mentioned in the Halsbury's Law of England (Vol. 11(1), Fourth edition, Reissue) wherein it is stated as follows:*

*23. Consent: In relation to offences against the person or against property it is the general rule that acts are criminal only when they are done without the consent of the person affected or the owner of the property concerned. If a person agrees to physical contact or consents to an appropriation of property or is willing that his property be destroyed or damaged, there is no offence of assault, theft or criminal damage. Consent is a defence only to the extent that the act constituting the alleged offence falls within that which is freely permitted by the other. Consent obtained by threats is no consent. Whether consent is nullified by fraud depends upon whether the fraud goes to some matter fundamental to the consent or to something which is merely collateral to it. Consent is not negatived merely because the victim would not have agreed to the act had he known all the facts; nor is consent negatived where the victim is deceived in some collateral matter. Consent is negatived where the victim is deceived as to the nature of the acts; and as to the identity of the doer.*

*Consent is not considered as a defence to murder or legal prize fight or certain statutory offences involving children or young persons who cannot concern. Exemptions were created by the Homicide Act, 1957 as amended by Suicide Act, 1961. Section 4 of the Homicide Act reads as follows:*

*4. Suicide pacts: (1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other...being killed by a third person.*

*(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.*

*(3) For the purpose of this section 'suicide pact' means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but, nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.*

*Under the above section, a person acting in pursuance of a suicide pact between himself and another, kills the other or is a party to the other being killed by a third party, he is guilty of manslaughter. For these purposes, 'suicide pact' means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but, nothing done by a person who enters into a suicide pact is to be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact. It is true that burden is on the party to prove the above defence. Here, the prosecution evidence and the police charge itself would prove that the murder was committed by the accused on the basis of the suicide pact even though his bid to kill himself did not succeed. In the above circumstances, we are of the opinion that he is entitled to the benefit of Exception 5 of Section 300 of the Indian Penal Code and he can only be found guilty for culpable homicide and manslaughter not amounting to murder. It was argued by the learned Counsel for the appellant that he was aged only 19 at the time of incident. Father was not maintaining the family. He was a coolie. They were totally frustrated that father was not allowing them to live a peaceful life though by the meagre income received by the accused doing coolie work, he was maintaining the family. Hence, conviction and sentence under Section 302 of IPC are liable to be set aside. But, we are of the opinion that even though under the suicide pact, with their consent, he killed his own mother and sister, in view of the nature of crime, a very lenient view cannot be taken. We convict and sentence him to undergo imprisonment for ten years and to pay a fine of Rs. 2,000/- under Section 304, Part I of the Indian Penal Code and in default of payment of fine he shall undergo imprisonment for another three months. Appellant is also entitled to right of set off."*

In **Dasrath Paswan v. State of Bihar [AIR 1958 Pat 190]**, the accused was a tenth class student and failed thrice. He decided to end his life and informed his wife. She asked him to first kill her and then kill himself. In accordance with their pact, the accused killed his wife aged 19 years. He was arrested before he could kill himself. He was convicted under Section 302, IPC for the murder of his wife and sentenced to transportation for life.

On appeal, the Patna High Court, having regard to the extraordinary nature of this case, held that a moderate sentence is proper. The appellant is immature young man and was suffering from an inferior complex. The loss of a devoted wife has already been a great punishment to him. Appellant was sentenced to five years of rigorous imprisonment under Section 304 Part-I of the IPC, relying upon Exception 5 to Section 300.

In **Ganesh Dooley v. R [(1879) 12 R5 Cal. 351]**, A and B, snake charmers induced C and D to allow themselves to be bitten by a snake believing that they extracted the fangs. C and D died with snake bite. A and B were held guilty of culpable homicide under Exception 5 to Section 300, on the ground that the deceased gave their consent 'with full knowledge of the fact, in the belief of the existence of powers which the accused asserted and believed themselves to possess.

### **Free and voluntary consent:**

In the recent case of **Narendra v. State of Rajasthan (2014) 10 SCC 248**, the deceased after leaving her matrimonial house, developed love for and intense relationship with appellant. They eloped and live together for about 10-15 days. Deceased having left her husband, wanted to marry the appellant. Since deceased and appellant were of same gotra, their relationship was not accepted by villagers and therefore, both tried to commit suicide. Accused inflicted injuries with sword on the chest and abdomen of the deceased. Death was due to shock and haemorrhage due to injuries caused by the appellant. Accused caused self inflicted injuries and tried to commit suicide. In these facts and circumstances, **Hon'ble Justice Banumathi** held that, *"The death of deceased was not premeditated and the act of*

*the accused causing death of Nathi, in our view, appears to be in furtherance of the understanding between them to commit suicide and the consent of the deceased and the act of the accused falls under Exception 5 of Section 300 IPC. Since the accused intentionally caused the death; the appellant is found guilty under Section 304 Part I IPC."*

### III. Distinction between 'murder' and 'culpable homicide not amounting to murder':

Homicide means killing of a human being by another human being. A homicide can be lawful or unlawful. Lawful homicide includes situations where a person who has caused the death of another cannot be blamed for his death. For example, in exercising the right of private defense or in other situations explained in Chapter IV of IPC covering General Exceptions. Unlawful homicide means where the killing of another human is not approved or justified by law. Culpable Homicide is in this category. Culpable means blame worthy. Thus, Culpable Homicide means killing of a human being by another human being in a blameworthy or criminal manner

The Hon'ble Apex Court in a landmark case **State of AP.v. Rayavarappu Punnaya AIR 1977 SC 45** made a comparative table in order to appreciate the points of distinction between S.299 and S.300 as hereunder.

The following comparative table will be helpful in appreciating the points of distinction between the two offences.

"Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done -

<p><b>INTENTION</b></p> <p>(a) with the intention of causing death; or</p> <p>(b) with the intention of causing such bodily injury as <b>is likely to cause death; or</b></p>	<p>(1) with the intention of causing death; or</p> <p>(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the <b>death of the person</b> to whom the harm is caused; or</p> <p>(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the <b>ordinary course of nature to cause death; or</b></p>
<p><b>KNOWLEDGE</b></p> <p>(c) with the knowledge that the act is <b>likely to cause death.</b></p>	<p>(4) with the knowledge that the act is so <b>imminently dangerous that it must in all probability cause death</b> or such bodily injury as is likely to cause death, and without any excuse or incurring the risk of causing death or such injury as is mentioned above."</p>

**S.299(b) v. S.300(2) & (3) IPC:**

Clause (b) of s. 299 corresponds with cls. (2) and (3) of s. 300. The distinguishing feature of the mens rea requi- site under cl. (2) is the knowledge possessed by the offend- er regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that' such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of el. (2). Only the intention of causing

the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of cl. (2) is borne out by illustration (b) appended to s. 300.

Clause (b) of s. 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under cl. (2) of s. 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient 'in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

In clause (3) of s. 300, instead of the words 'likely to cause death' occurring in the corresponding cl. (b) of s. 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between cl. (b) of s. 299 and cl. (3) of s. 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in cl. (b) of s. 299 conveys the sense of 'probable' as distinguished from a mere possibility. The words "bodily injury... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury having regard to the ordinary course of nature. For cases to fall within cl. (3), it is not necessary that the offender intended to cause death, So long as death ensues from the intentional. bodily injury or injuries sufficient to cause death in the ordinary course of nature. **Rajwant and anr. v. State of Kerala AIR 1966 SC 187** is an apt illustration of this point.

**In Virsa Singh v. The State of Punjab, 1958 SCR 1495** Vivian Bose j. speaking for this Court, explained the meaning and scope of S.300(3),

*"The prosecution must prove the following facts before it can bring a case under s. 300, 3rdly'.*

- *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. It must be proved that there was an intention to inflict that particular 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 was 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."*

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 not be murder. Illustration (c) appended to s. 300 clearly brings out this point.

### **S.299(c) v. S.300(4) IPC**

Clause (c) of s. 299 and cl. (4) of s. 300 both require knowledge of the probability of the causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that cl. (4) of s. 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general--as distinguished from a particular person or persons---being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the

offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

The Hon'ble Apex court in this decision laid down the following guidelines,

“

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.*
2. *Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in s. 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of s. 300, Penal Code is reached.*
3. *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 s. 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of s. 304, depending, respectively, on whether the second or the third Clause of s. 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in s. 300, the offence would still be 'culpable homicide not amounting to murder' punishable under the First Part of s. 304, Penal Code.*

*The court also observed that, “The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so inter-twined and the second and the third stages so tele- scoped into each other, that it may not be convenient, to give a separate treatment to the matters involved in the second and third stages.”*

The Madras High Court in *In re Jabamalai Royappan and anr* 1981 LW(crl) 136 referred to the decision of *State of A.P. v. Rayavarapu Punnayya* [(1976) 4 SCC

**382]** and made a detailed discussion on this aspect. Hon'ble **Justice S.Ratnavel Pandian**, as he then was considered elaborately in respect of distinction between murder and culpable homicide not amounting to murder and between "motive", "intent" and "knowledge". His lordship, also considered the meaning of the words "likely" and "probable".

Ultimately in the said case, according to the prosecution, the accused 1 and 2 has repeatedly fisted and kicked the deceased on the vital parts of the body and as such, the High court held that the accused could be imputed with the knowledge that death was likely consequence of their criminal acts thereby attracting Cl(c) of S.299 IPC and punishable under section 304 part ii IPC.

The Hon'ble Apex court again in **Dayanand v. state of Harayana AIR 2008 SC 1823**, the deceased was killed by a gun shot which hit the waist. Death was due to the solitary injury. After a detailed consideration of the above-mentioned principle convicted the accused under 304 Part II.

In **Nankaunoo v. State of Uttar Pradesh (2016) 3 SCC 317**, Hon'ble Justice **R.Banumathi**, sitting along with Justice T.S.Thakkur and Justice A.K.Sikiri, held that *"1. Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of Section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. Considering the clause thirdly of Section 300 IPC and reiterating the principles in Virsa Singh's case, in Jai Prakash v. State (Delhi Administration) (1991) 2 SCC 32, para (12), this Court held as under:-* "Referring to these observations, Division Bench of this Court in Jagrup Singh case, (1981) 3 SCC 616 observed thus: (SCC p. 620, para 7) "These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh case, AIR 1958 SC 465 for the applicability of Clause Thirdly is now ingrained in our legal system and has become part of the rule of law." The Division Bench also further held that the decision in **Virsa Singh case AIR 1958 SC 465** has throughout

been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove

**(1) that the body injury is present,**

**(2) that the injury is sufficient in the ordinary course of nature to cause death,**

**(3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended.**

**In other words Clause**

Thirdly consists of two parts. **The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature.** Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part **whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury.**

The language of Clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. **The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances.**

The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue.

Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end."

12. The emphasis in clause three of Section 300 IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of the

*weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place.*

*13. Keeping in view the above principles, when we examine the facts of the present case, **the deceased sustained gunshot wound of entry 1-1/2" x 1-1/2" on the back and inner part of left thigh, six gunshot wounds of exit each 1/3" x 1/3" in size in front and middle left thigh.** Due to the occurrence in the morning at the barber shop of the deceased, the appellant emerged from the northern side of the grove carrying pistol in his hand and fired at the deceased. **The weapon used and the manner in which attack was made and the injury was inflicted due to premeditation clearly establish that the appellant intended to cause the injury.***

*Once it is established that the accused intentionally inflicted the injury, then the offence would be murder, if it is sufficient in the ordinary course of nature to cause the death. We find substance in the contention of the learned counsel for the appellant the injury was on the inner part of left thigh, which is the non-vital organ. Having regard to the facts and circumstances of the case that the gunshot injury was caused in the inner part of left thigh, the sufficiency of injury to cause death must be proved and cannot be inferred from the fact that death has taken place.*

*But the prosecution has not elicited from the doctors that the gunshot injury on the inner part of left thigh caused rupture of any important blood vessel and that it was sufficient in the ordinary course of nature to cause the death. **Keeping in view the situs and nature of injury and in the absence of evidence elicited from the doctor that the said injury was sufficient in the ordinary course of nature to cause death, we are of the view that it is a fit case where the conviction of the appellant under Section 302 IPC should be under Section 304 Part 1 IPC.***

*14. In the result, the conviction of the appellant under Section 302 IPC is modified as conviction under Section 304 Part 1 IPC and the appellant is sentenced to undergo ten years rigorous imprisonment and the appeal is partly allowed."*

#### **IV. Distinction between Sec304 part I and part II IPC:**

In the case of **Rampal v. State of U.P (2012) 8 SCC 289**, the Hon'ble Supreme Court made the following observations while discussing the application of Sec302 and Sec 304 IPC,

“Having noticed the distinction between 'murder' and 'culpable homicide not amounting to murder', now we are required to explain the distinction between the application of Section 302 of the Code on the one hand and Section 304 of the Code on the other.

In **Ajit Singh v. State of Punjab [(2011) 9 SCC 462]**, the Court held that in order to hold whether an offence would fall under Section 302 or Section 304 Part I of the Code, the courts have to be extremely cautious in examining whether the same falls under Section 300 of the Code which states whether a culpable homicide is murder, or would it fall under its five exceptions which lay down when culpable homicide is not murder. In other words, **Section 300 states both, what is murder and what is not.** First finds place in Section 300 in its four stated categories, while the second finds detailed mention in the stated five exceptions to Section 300. The legislature in its wisdom, thus, covered the entire gamut of culpable homicide that 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in Section 300 of the Code. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences.

An analysis of these two Sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. This Section deals with cases not covered by that Section and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to

imprisonment for 10 years. The first clause of this section includes only those cases in which offence is really 'murder', but mitigated by the presence of circumstances recognized in the exceptions to section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in the case of **Fatta v. Emperor, 1151. C. 476** (Refer : Penal Law of India by Dr. Hari Singh Gour, Volume 3, 2009 )

Thus, where the act committed is done with the clear intention to kill the other person, it will be a murder within the meaning of Section 300 of the Code and punishable under Section 302 of the Code but where the act is done on grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the offence would fall under the exceptions to Section 300 of the Code and is punishable under Section 304 of the Code. Another fine tool which would help in determining such matters is the extent of brutality or cruelty with which such an offence is committed.

**An important corollary to this discussion is the marked distinction between the provisions of Section 304 Part I and Part II of the Code. Linguistic distinction between the two Parts of Section 304 is evident from the very language of this Section.** There are two apparent distinctions, one in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. **It is neither advisable nor possible to state any straight-jacket formula that would be universally applicable to all cases for such determination. Every case essentially must be decided on its own merits.** The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.

22. A Bench of this Court in the case of **Mohinder Pal Jolly v. State of Punjab [1979 AIR SC 577]**, stating this **distinction with some clarity**, held as under : "***A question arises whether the appellant was guilty under Part I of Section 304 or Part II. If the accused commits an act while exceeding the right of private defence by which the death is caused either with the intention of causing***

***death or with the intention of causing such bodily injury as was likely to cause death then he would be guilty under Part I. On the other hand if before the application of any of the Exceptions of Section 300 it is found that he was guilty of murder within the meaning of clause "4thly", then no question of such intention arises and only the knowledge is to be fastened on him that he did indulge in an act with the knowledge that it was likely to cause death but without any intention to cause it or without any intention to cause such bodily injuries as was likely to cause death. There does not seem to be any escape from the position, therefore, that the appellant could be convicted only under Part II of Section 304 and not Part I."***

23. As we have already discussed, classification of an offence into either Part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of pre-meditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view, i.e., by applying the 'principle of exclusion'. This principle could be applied while taking recourse to a two-stage process of determination.

Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, 'culpable homicide amounting to murder'. Then secondly, it may proceed to examine if the case fell in any of the exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused."

In the case of **Elavarasan v. State (2011) 7 SCC 110**, Death caused of 1 ½ year-old child Assault on deceased caused only two injuries with a resultant fracture - No premeditation - Family had gone to bed after dinner around 9 p.m. - Quarrel between appellant and his wife started at 12 midnight and escalated into an assault around 1 a.m. - Appellant used a sharp-edged cutting weapon against his wife, and mother who intervened to save her - Deceased child was wholly unconnected to incident - Deceased started crying and attracted appellant's attention towards her - Appellant did not use sharp-edged weapon for causing injuries to deceased as he had done in case of PWs 2 and 3 - There was no intention of appellant to cause death of deceased - Appellant must be presumed to have knowledge that injuries were likely to cause death - Held, appellant committed culpable homicide without premeditation in a sudden fight and in heat of passion - He did not act in cruel or unusual manner nor did he take undue advantage - Conviction of appellant under S. 302 not justified - Appellant convicted under S. 304 Pt. II and sentenced to ten years' RI

In **Mayandi v. State (2010) 11 SCC 774**, the Apex was confronted with the question as to whether section 302 or 304 would be applicable, the court after deep consideration on the nature of injuries and the cause of death held that,

*"It is the admitted fact that the Doctors have not opined that the death was caused due to the injuries caused by the appellant. There is also no evidence to show that the injuries could have independently caused the death of the deceased even if the deceased had not been suffering from a heart problem. It is also the conceded position that the deceased had a serious heart problem which was matter not within the appellant's knowledge and on the contrary the medical evidence reveals that he had undergone an angioplasty but had nevertheless suffered a heart attack thereafter.*

***In this background the High Court's assertion that the death was occasioned by complications on account of the injuries caused by the appellant is not quite accurate. We are, therefore, of the opinion that the case would fall within Section 326 of the IPC and not under Section 302 of the IPC thereof.***

***Mr. R. Sundravardan's argument that this matter would nevertheless fall within Section 304 Part-I or Part -II of the IPC, is also rejected as there was no***

***intention on the part of appellant to cause the death of the deceased nor could he be attributed with the knowledge that death would be caused.”***

In the above said decision the factual background is that the deceased was the managing director of Palmgrove Hotel, Chennai. The accused was an employee working in the kitchen. On the fateful date of occurrence on 6.25 am on 08.02.2005, the deceased was inspecting the store room and returning to his office and at that time, the accused attacked him with a sickle. Even when the deceased tried to escape, the accused further attacked him and caused several injuries. The deceased was admitted in the Appollo hospital Chennai, and died on the next day. Both the trial court and the high court concurrently held that the Accused is liable to be convicted u/s 302 IPC. The doctor who has conducted the Post mortem, opined that the deceased died due to complications, arising out of Myocardial infarction and in the post mortem report there was no suggestion that the death was a result of the injuries. On the above said facts, the hon'ble Apex court reversed the concurrent finding of conviction u/s 302 IPC and altered to S.326 IPC.

In **Surajit Sarkar v. State of West Bengal (2013) 2 SCC 146**, the court while considering whether the accused is punishable u/s 302 or 304 IPC, held as follows, Is it a case of murder:

*“70. What now remains to be considered is whether Surajit Sarkar intended to murder Gour Chandra Sarkar or is it a case of culpable homicide not amounting to murder?”*

*71. Given the nature of injuries, it is difficult to accept the view that Surajit Sarkar intended to cause the death of Gour Chandra Sarkar or that the injuries were so imminently dangerous that they would, in all probability, cause death. The murder of Gour Chandra Sarkar would, therefore, be ruled out. Nevertheless, the injuries were quite serious and inflicted by Surajit Sarkar on Gour Chandra Sarkar's head with an iron rod, as stated by PW-8 Achintya Sarkar. We can surely credit Surajit Sarkar with the knowledge that if a person is hit with an iron rod on the head, then the act is likely to cause the death of the victim. That being so, in our opinion, it would be more appropriate to hold Surajit Sarkar guilty of an offence of culpable homicide not amounting to murder. Since we attribute to him the knowledge of his actions, he should be punished under the second part of Section 304 of the IPC.”*

## V. Single blow and Single stab cases:

1. In **Pappu v. State of MP AIR 2006 SC 2659**, the Apex court held that, **it cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out**. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body it was given and several such relevant factors.
  
2. In **Bunni Lal Chaudhary v. State of Bihar AIR 2006 SC 2531**, the death was caused by a Gunshot injury. There was no dispute that the injury inflicted on left side of the chest of deceased was single one. No attempt was made by the accused to cause serious injury on vital part of the body of deceased. Act, which was done by the accused, was done with knowledge that he was likely by such act to cause death of deceased. The court held that the case falls under the third part of S.299 and punishable u/s 304 Part II
  
3. In **Lakshman v. State of MP AIR 2006 SC 3204**, the Apex Court held as follows, *“the fact situation shows that arrows were being shot from a distance, not with any accuracy. One of such arrows hit the deceased. As established by the evidence of eye- witnesses the appellant had shot that arrow. There was no sudden quarrel as stated by the appellant. The evidence shows otherwise.*  
*Considering the background facts as noted above, appellant has to be convicted in terms of Section 304 Part I IPC and not in Section 302 IPC. The conviction accordingly altered. Custodial sentence of 10 years would meet the ends of justice.”*
  
4. In **Hardeve Bhanji v. State of Gujarat 1993 CRLJ 64**, According to P.W. 2, A-2 dealt only one blow. The nature of the injury shows that the sharp edge of the axe was not used. The whole thing happened in a sudden manner. The

court held that, under these circumstances clause I of S. 300, IPC is not attracted. If A-2 had the intention to cause death, one would expect him to use the sharp edge of the axe. The very fact that he used the blunt side of the axe shows that he had no intention to cause the death. Further it is not a premeditated act. Now coming to clause III of S. 300, IPC, admittedly he caused only one injury with the blunt side of the axe, which unfortunately resulted in the fracture of skull bone. Further this happened during the quarrel. Under these circumstances, it is difficult to hold that he intended to cause that particular injury which the Doctor found to be sufficient in the ordinary course of nature to cause death. Under similar circumstances the courts have held that the offence punishable would be one of culpable homicide as knowledge that he was likely to cause death by such an act can be attributed to the accused. Accordingly, the court set aside the conviction of the appellant under S. 302, I.P.C. and the sentence of imprisonment for life thereunder. Instead convicted him under S. 304, Part II

5. In **Augustine Saldanha v. State of Karnataka AIR 2003 SC 3843**, only one blow was given in the darknight. Though it cannot be said as a rule of universal application that whenever one blow is given application of Section 302 IPC will be ruled out and that even a single blow delivered with a heavy or dangerous weapon on a vital part of the body would make the offence a murder. On the peculiar facts found in the present case, we feel that clause 'Thirdly' of Section 300 cannot be applied. The blow was said to have been delivered with a stick and in a pitch dark night of time in the forest surroundings of the area where it occurred. It could not reasonably be stated with any certainty that the accused chose that vital part of the body to inflict the injury and that the blow was aimed without any of such specific intention could have landed on the head due to so many other circumstances, than due to any positive intention also. The Apex Court, therefore, alter the conviction of appellant Augustine Saldanha from Section 302 IPC to Section 304 Part II.
6. In a case where there was a single fatal knife blow, the Apex court in **Sudhakar v. State of Maharashtra (2012) 9 SCC 725** held as follows, "*Going by the narration of the facts disclosed, there was nothing to suggest that there*

*was any premeditation in the mind of the appellant to cause the death of the deceased. Taking into account the statement of P.W.1 that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner the appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by learned counsel for the appellant, we are convinced that the offence alleged and as found proved against the appellant can be brought under the First Part of Section 304 of IPC. Accordingly, while affirming the conviction of the appellant, we are only altering the same as falling under Section 304 Part I of IPC in place of Section 302 of IPC.”*

7. In **Ramakrishnan unnidhan v. state of Kerala 1999 CrLJ 2101**, the court held as follows,

*“The question then remains for consideration is whether on the materials on record can it be said that the appellant gave the blow on the deceased with the intention of causing murder of the deceased so as to be convicted under Section 302 IPC. The eye witness account of the three eye witnesses is to the fact that when PW1 cried aloud, his sister rushed there and at that point of time his father, the deceased came out, opening the door and asked as to why his son is being beaten up and then the appellant stabbed the deceased on his abdomen with the knife. The post-mortem report of the deceased indicates existence of a sutured incised wound inverted "L" shaped on the left side of the abdomen, the vertical limb was parallel to the midline, 4 cms. in length and the horizontal limb from its upper end measured 3 cms. and was placed 1.3 cms. to the left of midline and the junction of the two limbs were at the level 25 of umbilicus. The wound entered the abdominal cavity. The doctor PW14, who was working as tutor in surgery, Medical College, Trivandrum and was in the casualty on 17.4.85, in his evidence stated that the deceased had an incised wound 4 cms. long below the umbilicus, left to the midline of the*

*body with a part of the intestine protruding out and that is the only injury. The doctor who conducted the autopsy, PW9 in his evidence also stated that though there are three injuries on the deceased as per the post-mortem report, but injury Nos. 1 and 3 are surgical injuries and injury No. 2 is the inflicted injury. Thus it is established beyond reasonable doubt that the appellant had given one blow but the blow no-doubt was quite severe, as a result of which the intestines had protruded out . It is however crystal clear that the appellant had no animosity against the deceased and he was involved because of the altercations with PW1. The scenario in which the appellant has been stated by the eye witnesses to have given one blow on the deceased, it is difficult for us to hold that he gave the blow in question either with the intention of causing murder of the deceased or he can have said to have the requisite knowledge that the death would otherwise be the inevitable result. In such a situation, even on accepting the prosecution case we hold that the accused did not commit the offence under Section 302 but under part II of Section 304 IPC. We accordingly, set aside the conviction of the appellant under Section 302 IPC and instead, convict him under Section 304 Part II. The incident is of the year 1985 and more than 13 years have elapsed. The accused is on bail pursuant to the orders of this court dated 6th February, 1992. Mr. Lalit, appearing for the accused-appellant stated that he has already undergone sentence of about four years. In such circumstances, for his conviction under Section 304 Part II IPC , we sentence him to the period already undergone. His conviction under Section 324 IPC remains unaltered but no separate sentence is being awarded. This Criminal Appeal is disposed of accordingly. The bail bond furnished by the appellant stands discharged.”*

### **Single Gun shot case**

8. In **State of Rajasthan v. Daud Khan (2016) 2 SCC 607** the appellant convict fired **only one bullet** at the right side chest of the deceased and did not take undue advantage of situation. The Apex court upheld the High Court's decision that the appellant convict only wanted to cause bodily harm, which is likely to cause death.

## **VI. Conclusion**

The cases cited supra are only illustrative and not exhaustive. The Landmark cases of the Hon'ble Apex Court and the Hon'ble High court cited supra are only with a view to highlight the guiding principles, laid down in the said decisions in respect of distinction between the Murder and Culpable Homicide not amounting to murder. Each case is to be decided on its own facts and circumstances, careful scrutinization, examination and appreciation of evidence coupled with the interpretation of the statutory provisions and the guidelines laid down by the Apex court and the High Court.

Before concluding I must record my appreciation to the commendable assistance rendered by the young and dynamic advocates Mr. Ashwin kumar and Ms. Vishnupriya Upendran.