– Dr. Ajay Nathani

Citations on Homicide and Murder

Section 299—Explanation two—Medical treatment—Nature of injury—Penetrating wound injuring liver and colon—Pre-meditated injury found sufficient to cause death—Merely because deceased could have survived with expert medical treatment is of no avail to the accused.

The mere fact that if immediate expert treatment had been available and the emergency operation had been performed, thee were chances of survival of the deceased can be of no avail to the appellant. Explanation 2 to Section 299 of the Indian penal Code clearly lays down that where death is caused by bodily injury, the person who causes such bidily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Morcha v. State of Rajasthan, 1978 CrLJ 1710 : 1979 AIR (SC) 80 : 1978 CrLR (SC) 547 : 1979 SCC (Cr) 241

Section 299 and 300—Culpable homicide—Distinction with murder—Sub classification of culpable homicide in the scheme of the Code—Method of interpretation and application of various provisions relating to homicide.

In the scheme of the Penal Code, `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 this generic offence, the Code practically recognises three degrees of culpable homicide. 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'. The second may be termed as `culpable homicide of the second degree.' This is punishable under the 1st part of Section 304. 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 Sections 299 and 300.

Whenever a court is confronted with the question whether the offence is `murder' or `culpable homicide not amounting to murder' on the facts of a case, it will be convenient for it to approach the problem in three stages. 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. Proof of such casual 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 Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. 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 Section 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 Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this

question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be `culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.

State of Andhra Pradesh v. Rayavarapu Punnayya and another, 1977 CrLJ 1 : 1977 AIR (SC) 45 : 1976 CrLR (SC) 485 : 1976 CAR 320 : 1976 SCC (Cr) 659 : 1977 Chad LR 65

Section 299 and 300—Dowry death—Circumstantial evidence—Disappear- ance of wife whose dead body recovered in a gunny bag along the railway track within few days after the accused travelled along that route—Wrong and misleading statement about disappearance and subsequent second marriage of accused corroborating guilt —Conviction of accused restored.

The fact that the accused gave wrong and misleading statement before Shanta Bai, the fact that he entered into a second marriage during his period of leave and the fact that Malu Tai's ornaments were found at the instance of the accused in the house of his second wife's parents are very telling circumstances. Some of the clothes of Malu Tai being discovered from his new wife/her parents' house is also a very telling circumstance. The discovery of a gunny bag along the railway track of the train from Solan to Delhi within a few days of the accused travelling along that route is also a telling circumstance. The identity of the dead body, in our view, has been established from the identification of the clothes of the dead body. The fact that the accused boarded the train with two trunks and one hand bag is also significant in the context of the discovery of this dead body. That the death occurred on account of poisoning has also been established. The High Court has also doubted the motive. The trial court has rightly relied upon the suggestions put in cross-examination by defence to the effect that Malu Tai was of a loose character as indicating a possible motive. But even otherwise looking to the entire chain of circumstances, the Sessions Court was justified in convicting the accused under Section 302 of the Indian Penal Code.

State of Himachal Pradesh v. Vilas Maruti Sutar, 1998 CrLJ 387 : 1998 AIR (SC) 230 : 1998 SCC (Cr) 354 : 1997 (4) Crimes 154 : 1998 CrLR (SC) 12 : 1997 (35) All CrC 888

Section 299 and 300—Homicide—Accused aged about 76 years at the time of disposal of appeal—No premeditative or preplanned fight which resulted in death—Conviction modified from murder to homicide.

It is not in dispute that there was a dispute as to the turn by which the water pump should be operated between the parties. It was not a premeditated or preplanned fight. The prosecution has not established by evidence that it was the turn to draw water by the complainant. Nor is there clear evidence that it was the turn of the appellant. Each was asserting that it was his turn and not of the other. In this circumstance, it would not be wrong to assume that the appellant in the exercise of his right got enraged and tried to prevent the mischief by the deceased. It seems to us that the action of the accused could reasonably be brought under Section 304, Part I, IPC.

Sunder Singh v. State of Rajasthan, 1989 CrLJ 122 : 1988 AIR (SC) 2136 : 1988 SCC (Cr) 905 : 1988 CrLR (SC) 774 : 1988 (1) Rec CrR 617

Section 299 and 300—Homicide—Bride burning—Suicide totally ruled out—Accused named in dying declaration— Conviction affirmed.

It is difficult to believe that on mere temperamental differences, as admitted by the deceased, she had led herself towards ending her life that fateful afternoon when the immediate cause of it is not evident either from the dying declaration or any other material on the record. Her marriage being hardly a year old was in the course of the usual "wear and tear". There is circumstantial evidence that the occurrence did take place at about 3 p.m. on the fateful day, when she was lying on the cot on which she had spread a mattress and a bed sheet. Those were found by the Investigation Officer to be soiled with kerosene. At that napping moment, the deceased was an easy victim to be poured over kerosene oil, instantly drenching her clothes and putting her on fire. Nor much time would be required to accomplish such an act and having achieved his purpose the appellant leisurely could walk away from that place.

Dharam Pal v. State of Punjab, 1992 CrLJ 3149 : 1992 AIR (SC) 1852 : 1993 Supp (1) SCC 517

Section 299 and 300—Homicide—Bride burning—Conduct of accused in attempting to save the deceased—No presence of kerosene at the scene of occurrence or its smell on the clothes of accused person—Absence of motive for one of the accused person—Acquittal affirmed.

We find absolutely no motive for accused No. 1 to cause the death of the deceased. According to the prosecution, accused No. 1's younger brother was having illicit intimacy with accused No. 2 with the connivance of accused No. 1 and the deceased was objecting to the same. In such a situation it is rather opposed to human nature to suggest that accused No. 1 would think of causing the death of the deceased. According to the witnesses, particularly P.W. 2, the deceased was found under a mattress and accused No. 1 was pressing the same on her and in the process he also got burns. The High Court has rightly observed that the culprits who had decided to put an end to the life of the deceased would never go the extent of extinguish the fire after throwing a mattress on her, and in this view, according to the High Court, the prosecution has not proved beyond reasonable doubt that this was a case of homicide and not suicide.

Panchnama of the scene of occurrence does not make any mention about kerosene in the bathroom but kerosene was found outside the bathroom. The clothes of accused No. 2, who was holding the deceased when accused No.1 poured kerosene did not show any smell of kerosene. Therefore, it becomes doubtful whether accused No. 2 held the deceased in the manner alleged. The High Court has adverted to number of these details and doubted the prosecution case. The High Court has rightly held that these features would not lend any corroboration to the dying declaration but, on the other hand, cause suspicion. There is no other corroboration coming forth. The conduct of the accused in throwing the mattress over the burning woman is an important circumstance which creates a doubt about the prosecution version.

State of Gujarat v. Mohan Bhai Raghbhai Patel, 1990 CrLJ 1462 : 1990 AIR (SC) 1379 : 1990 CrLR (SC) 313 : 1990(2) Crimes 691

Section 299 and 300—Homicide—Bride burning—Incident occurring after 10 months after the marriage—Defence of accidental death—Burnt injuries suffered by deceased and presence of kerosene on the clothes could not have been possible in case of accident nor any justification for suicide—Conviction, affirmed.

If indeed Chander Kanta had sustained the burns in one of the suggested modes it is incomprehensible she would have accused her husband of having set fire to her after pouring kerosene over her. Moreover she was found to have sustained burn injuries on the face, neck, trunk and left lower and upper limbs. Her clothes were found by the Chemical Examiner to contain kerosene oil. Such extensive injuries and

presence of kerosene in the clothes would not have been found if the stove had burst and Chander Kanta had sustained the injuries accidentally. As regards the theory of suicide there is no evidence that there was any proximate cause for her to attempt to end her life on that morning.

The recovery of the stove with its lid removed and burnt match sticks from the kitchen of the appellant's house clearly goes to show that the kerosene in the stove had been poured over Chander Kanta and then lighted match sticks had been applied to her.

The dying declaration clearly sets out that the appellant was in the habit of ill-treating her and that on the morning in question he had abused her and beat her and on top of everything he had also poured kerosene over her and set fire to her.

Surinder Kumar v. State (Delhi Administration), 1987 CrLJ 537 : 1987 AIR (SC) 692 : 1987 CAR 360 : 1987 SCC (Cr) 181 : 1987(1) Crimes 250 : 1987 (2) Guj LH 284 : 1987 CrLR (SC) 567

Section 299 and 300—Homicide—Bride burning—Possibility of accident—Probability of defence—Use of kerosene stove instead of gas stove—Highly improbable in the surrounding circumstances—Defence of accident cannot be accepted.

When Subhash returned to the house a few minutes before 9 at night, Sudha wanted to warm up the cooked food for being served to him. At that point of time, the child of Subhash (the other had gone with the mother) cried for milk, Shakuntala wanted the milk to be heated up for the child and asked Sudha to give the milk first for the crying child and then attend to Subhash. It is at that point of time that Sudha wanted to light the kerosene stove. The kerosene stove was in the open space. Judicial notice can be taken of the fact that around 9 p.m. of December it would be unbearably cold outside the house in Delhi. To work the kerosene stove would take sometime and if milk for the crying child was immediately necessary, the kerosene stove would not be the proper heating medium. On the other hand, the gas stove would have served the purpose better. Not much of gas was likely to be consumed for heating the milk, nor even for heating up the food for Subhash. We have to take note of the position that Sudha did not have any warm clothings on her person and as the evidence shows, she had only a nylon saree. Being a pregnant lady at an advanced stage she was expected to keep properly robed to avert getting ill from exposure to cold. It is, therefore, not likely that she would have ventured going out to operate the kerosene stove. There is another feature which also must be taken note of. She being in an advanced stage of pregnancy would have found it very difficult to squat on the floor for operating the kerosene stove which was on the floor itself. It is the defence version that the gunny bag was being used for sitting purposes for operating the stove. That is a conjecture accepted by the High Court. There is no evidence worth the name to explain why the gas stove was not used. In the absence of an explanation as to why the gas stove was not being operated for this purpose and in the setting of events which we have indicated it would be natural human conduct for Sudha to have gone to the gas stove in preference to the kerosene stove. In these circumstances we agree with counsel for the appellants that the defence version explaining the manner in which Sudha's saree caught fire is not acceptable. Once the explanation advanced by the defence that Sudha's saree caught fire from the kerosene stove is discarded, on the premises that the same had not been lighted, the prosecution story that fire was set to her saree is the only other way in which she must have been burnt.

State (Delhi Administration) v. Laxman Kumar and others, 1986 CrLJ 155 : 1986 AIR (SC) 250 : 1986 SCC (Cr) 2 : 1985 CrLR (SC) 501 : 1985 CAR 304 : 1986 (1) Rec CrR 184 : 1986 Mad LJ (Cr) 86

Section 299 and 300—Homicide—Bride burning—Witness—Partisan witness—No possibility of any person other than neighbour being around at the time of occurrence—Conduct of witnesses not supporting the allegation of animosity—Their evidence cannot be discarded.

Both the trial Judge as also the High Court have accepted the fact that P.Ws. 1, 2 and 5 rushed to the spot on hearing Sudha's cry for help If relationship between these witnesses on one side and members of the family of the accused on the other had been strained as alleged, the spontaneous response which came from these witnesses would not have been found. We cannot lose sight of the fact that one of the curses of modern living, particularly in highly urbanised areas is to have a life cut-off from the community so as even not to know the neighbours. Indifference to what happens around is the way of life. That being the ordinary behaviour of persons living in the city, if added to it there was animosity, these witnesses would certainly not have behaved in the manner they have.

These witnesses not only rushed to the spot but took a leading part in putting out the fire from Sudha's person and ensured her despatch for medical assistance at the shortest interval. As expected of a good neighbour, information was given to police, blanket was made available, a taxi was called and human sympathy and assistance to the extent possible was extended. If the accusation of animosity and ill-feeling is not accepted, these witnesses must be taken to be not only competent being present at the post, but also acceptable in respect of what they say as being truthful witnesses.

State (Delhi Administration) v. Laxman Kumar and others, 1986 CrLJ 155 : 1986 AIR (SC) 250 : 1986 SCC (Cr) 2 : 1985 CrLR (SC) 501 : 1985 CAR 304 : 1986 (1) Rec CrR 184 : 1986 Mad LJ (Cr) 86

Section 299 and 300—Homicide—Cause of death—Victim chased by accused persons who jumped in the well hitting his head on the wall and losing consciousness—Cause of death opined to be asphyxia—Death not caused by any act of accused with the intention or knowledge of likelihood of death—Conviction set aside.

Joginder Singh and another v. State of Punjab, 1979 CrLJ 1406 : 1979 AIR (SC) 1876 : 1980 SCC (Cr) 255 : 1979 CrLR (SC) 611

Section 299 and 300—Homicide—Circumstantial evidence—Murder of wife —Possibility of suicide by the wife—No reason for husband to attempt to screen the evidence by packing the body in a box and attempt to dispose of at a far off place—Conviction affirmed.

It is plain logic that if she had committed suicide, there was no reason for her husband to pack her dead body in a box and throw that box from a running train into a river. Dr. Saxena travelled with that box from Hardoi to Lucknow by the Sialdah Express, took another train from Lucknow to Kanpur and threw the box on way. It is also impossible to understand how, when Dr. Saxena was himself present in the house. Sudha could hang herself by a rope in that very house, with a two-year old child near her. No rope was found in the house and the medical evidence does not show that Sudha hanged herself. The conduct of Dr. Saxena in buying a box, packing the dead body of his wife into that box and throwing it from a running train leaves no doubt that he committed her murder. There is the clearest evidence of motive on the record of the case. Dr. Saxena had an illicit affair with the Nurse due to which he used to harass, pressurise, threaten and assault Sudha. Not only did he tell Sudha's father and his own father falsely that Sudha had run away but he lodged false and misleading reports that she had run away. Little did he realise that the Ganges had refused to accept the box, which contained tell-tale evidence of the dastardly murder of a defenceless woman.

Dr. V.K. Saxena v. State of Uttar Pradesh, 1983 CrLJ 1731 : 1984 AIR (SC) 49 : 1983 SCC (Cr) 869 : 1983 CrLR (SC) 461

Section 299 and 300—Homicide—Conviction—Solitary eye witness—If a witness is truthful, his sole testimony can be relied for conviction.

The evidence of the eye-witness, if accepted, is sufficient to warrant conviction though in appropriate cases the Court may as a measure of caution seek some confirming circumstances from other sources. But ordinarily, the evidence of a truthful eye-witness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons etc. at the instance of the accused by the police. The Judges of the High Court were wrong in treating the evidence of eye-witness as `one of three legs of a tripod' which must collapse if any of the other legs collapses.

Shrishail Nageshi Pare v. State of Maharashtra, 1985 CrLJ 1173 : 1985 AIR (SC) 866 : 1985 SCC (Cr) 235 : 1985 CAR 156 : 1985 CrLR (SC) 198 : 87 Bom LR 269 : 1985 (2) Rec CrR 56

Section 299 and 300—Homicide—Custody death—Arrest of deceased on false charge of dacoity to settle score with him on account of complaint made by him against a constable for making demand of bribe—The accused persons are guilty as the conduct of accused persons fell in clause Secondly under Section 300.

The distinction between murder and culpable homicide not amounting to murder is often lost sight of, resulting in undue liberality in favour of undeserving culprits like the respondent-police officers. Except in cases covered by the five exceptions mentioned in Section 300 of the Penal Code, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or if the act falls within any of the three clauses of Section 300, namely, 2ndly, 3rdly and 4thly. In this case, the injuries suffered by Brijlal would appear to fall under the clause `2ndly' of Section 300, since the act by which his death was caused was done with the intention of causing such bodily injury as the respondents knew to be likely to cause his death.

State of Uttar Pradesh v. Ram Sagar Yadav and others, 1986 CrLJ 836 : 1985 AIR (SC) 416 : 1985 SCC (Cr) 552 : 1985 CrLR (SC) 73 : 1985(1) Crimes 344 : 1985(1) Rec CrR 600

Section 299 and 300—Homicide—Defence of trespass—Deceased a wrestler entering/trespassing into the house of accused persons and picking up a quarrel—No clear evidence as to how occurrence originated—Medical opinion not clearing indicating depth of all injuries—Accused liable for culpable homicide not amounting to murder.

The deceased had tresspassed into the house of the respondents, received the injuries, then came to the road with bleeding injuries and fell down. As to how the occurrence originated there is not clear evidence. But we have to infer from the circumstances that the deceased had not received all the injuries while he was on the road as spoken to by PWs 1, 2 and 6 but even earlier to the arrival of the witnesses to the scene when the deceased tresspassed into the house of the respondents and picked up quarrel with them. Hence, we are in full agreement with the view expressed by the High Court that there is suppression of genesis and origin of the occurrence. There is no clear evidence as to what was the justifiable cause for the deceased who was a well-known wrestler, to enter the house of the respondents, and to pick a quarrel. As we have pointed out earlier, the irresistible inference is that the deceased

should have fallen victim at the hands of the respondents only after he entered the house of the respondents.

The Medical Officer has not given the depth of all the injuries except injury No. 5 in the post-mortem certificate. None of the injuries seems to have been deep cut injuries. In the absence of evidence in regard to the depth of the injuries and of the opinion of the Medical Officer with regard to the nature of the injuries except injury No. 5, we have to infer that the injuries Nos. 1 to 4 and 6 to 11 were not serious in nature. Evidently, the High Court taking into consideration the peculiar facts and the exceptional and special circumstances of the case coupled with the nature of the injuries, as could be inferred from the post-mortem certificate, has concluded that the offence is not one of murder but of culpable homicide not amounting to murder punishable under Section 304, Part II, I.P.C.

State of Karnataka v. Siddappa Basanagouda Patil and another, 1990 CrLJ 1116 : 1990 AIR (SC) 1047 : 1990 SCC (Cr) 698 : 1990 CAR 141 : 1990 CrLR (SC) 235 : 1990(2) Crimes 233

Section 299 and 300—Homicide—Dowry death—Appreciation of circumstances surrounding the death to distinguish a case of suicide from a case of murder.

It is true that sometimes a case of suicide is presented as a case of homicide specially when the death is due to burn injuries. But it need not be pointed out that whenever the victim of torture commits suicide she leaves behind some evidence—may be circumstantial in nature to indicate that it is not a case of homicide but of suicide. It is the duty of the Court, in a case of death because of torture and demand for dowry, to examine the circumstances of each case and evidence adduced on behalf of the parties, for recording a finding on the question as to how the death has taken place. While judging the evidence and the circumstances of the case, the Court has to be conscious of the fact that a death connected with dowry takes place inside the house, where outsiders who can be said to be independent witnesses in the traditional sense, are not expected to be present. The finding of guilt on the charge of murder has to be recorded on the basis of circumstances of each case and the evidence adduced before the Court. In the instant case, the occurrence took place in the open courtyard during the day-time which is not consistent with the theory of suicide. Apart from that, as already stated above, the Dying Declaration of the victim along with the evidence of PWs 6, 7 and 8, which we find no reason to discard, fully establishes the charges levelled against the appellants.

Om Parkash v. State of Punjab, 1992 CrLJ 3935= 1993 AIR (SC) 138 : 1992 SCC (Cr) 848 : 1992 CAR 273 : 1992 Cr LR (SC) 639 : 1992 (3) Crimes 581

Section 299 and 300—Homicide—Dowry death—Defence of accidental death—Smell of kerosene from the body as well as burnt hair rule out of possibility of accidental death.

Ashok Kumar v. State of Rajasthan, 1990 CrLJ 2276 : 1990 AIR (SC) 2134 : 1991 SCC (Cr) 126 : 1990 CAR 355 : 1990 CrLR (SC) 633 : 1991(1) Crimes 116

Section 299 and 300—Homicide—Dowry death—Dying declaration recorded by Investigating Officer—Investigation commenced on the basis of the statement of deceased recorded by him—No one present in the room except the Doctor at the time of recording—Statement corroborated by the motive of dowry established by evidence of brother of deceased—Conviction affirmed.

State of Punjab v. Amarjit Singh, 1989 CrLJ 95 : 1988 AIR (SC) 2013 : 1989 SCC (Cr) 58, 1988 CAR 241 : 1988 CrLR (SC) 722 : 1988 (3) Crimes 295

Section 299 and 300—Homicide—Dowry death—Social reform—Social osterisation is required to curtail the malady of bride burning.

Dowry killing is a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and their family members, to make the boy available, once again in the marriage market. Eliminate it and much may stand resolved automatically. Social reformist and legal jurists may evolve a machinery for debarring such a boy from remarriage irrespective of the member of family who committed the crime and in violation penalise the whole family including those who participate in it. That is social ostracisation is needed to curtail increasing malady of bride burning.

Ashok Kumar v. State of Rajasthan, 1990 CrLJ 2276 : 1990 AIR (SC) 2134 : 1991 SCC (Cr) 126 : 1990 CAR 355 : 1990 CrLR (SC) 633 : 1991(1) Crimes 116

Section 299 and 300—Homicide—Fatal injury—Identification of—Failure of Doctor to opine the exact injury which caused laceration of lungs resulting in death—Conviction of accused for murder is not proper.

On internal examination the right clavicle was found fractured so also the third, fourth and fifth ribs. Laceration on the right lung in the lateral side was also found. This laceration of the lung was the cause of the death of Kalu and in the opinion of the Doctor it was by itself sufficient in the ordinary course of nature to cause his death. But the Doctor did not say further whether the fracture of the right clavicle and all the ribs on the right side was as a result of injury No. 3, the author of which according to the prosecution evidence was respondent Sheoram. He had not caused injury No. 6. This was caused, probably, by respondent Sohan. In our opinion it may well be that the fracture of the ribs or at least of some of them was caused as a result of injury No. 6. In such a situation the laceration on the right lung could not be connected positively with injury No. 3 alone. It might have been caused by injury No. 6. Respondent Sheoram, therefore, on the facts of this case could not be and cannot be convicted under Section 302, I.P.C.

State of Haryana v. Prabhu and others, 1979 CrLJ 892 : 1979 AIR (SC) 1019 : 1979 SCC (Cr) 949 : 1979 CrLR (SC) 90

Section 299 and 300—Homicide—Fire arm injury—Injured witnesses though relatives of deceased proving that injury caused by accused—Conviction affirmed.

Gurnek Singh and another v. State of Punjab, 1989 CrLJ 299 : 1988 AIR (SC) 2249 : 1989 SCC (Cr) 70 : 1988 CAR 263 : 1989 CrLR (SC) 254 : 1988(3) Crimes 630

Section 299 and 300—Homicide—Free fight—Prosecution witnesses giving distorted version—Number of infirmities in prosecution case—Conviction set aside.

A person would not be guilty of a crime merely because he was present unless his complicity in the crime can be inferred by some act or the other or by way of constructive liability. If it was a case of free fight then different considerations would arise.

A free fight is one where both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such event is wholly immaterial and depends upon the tactics adopted by the rival commandors. "If that is the nature of the fight, in the instant case,

then the witnesses have completely given a different and distorted version. At any rate there is absolutely no scope to convict any of the appellants under Section 304 Part II simpliciter as there is absolutely no material as to which one of them caused the single injury on the head of the deceased. Nor can they be convicted under Section 304 Part II read with Section 149 as it is not possible to hold that they were members of an unlawful assembly. Further the number is less than five. In any event the High Court has doubted the prosecution version as a whole. Thus there are any number of infirmities in the prosecution case. For all these reasons, the convictions and sentences passed against the appellants are set aside.

Abdul Hamid and others v. State of U.P., 1991 CrLJ 431 : 1991 AIR (SC) 339 : 1991 SCC (Cr) 187 : 1991 CAR 12 : 1991 CrLR (SC) : 1990(3) Crimes 707

Section 299 and 300—Homicide—Identification of accused—Lighting at the place of occurrence not proved—Witness could not have opportunity to identify the accused—This inherent infirmity rightly led the Court to disbelieve the case of prosecution.

In the absence of cogent evidence that P.Ws. 1 and 2 by reason of the visibility of the light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in order that their features could get impressed in their mind to enable them to recollect the same and identify the assailants even after a long lapse of time, it would be hazardous to draw the inference that the appellants are the real assailants. There is no whisper in Ex. P1 that there was some source of light at the scene. The omission cannot be ignored as insignificant.

When no natural light was available and the street light was at a distance it is unlikely that the eye-witnesses by momentary glance of the assailants who surrounded the victim had a lasting impression and the chance of identifying the assailants without mistake. The credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorize the impression.

Bollavaram Pedda Narsi Reddy and others v. State of Andhra Pradesh, 1991 CrLJ 1833 : 1991 AIR (SC) 1468 : 1991 SCC (Cr) 586 : 1991 CAR 256 : 1991 CrLR (SC) 494

Section 299 and 300—Homicide—Intention to cause death—Accused beating his wife to death—Recovery of blood stains sari which deceased was wearing at the time of occurrence—Dead body hastily disposed of—The accused apprehending that his wife was practising witch craft—Eye-witness deposing that accused continued to beat the deceased till she was silenced—The intention of accused was to cause death—Conviction for murder, affirmed.

The apprehension that Shubhangi was a witch was totally unfounded. No reliable evidence has been led by the defence to show that there was any substantial ground for entertaining this belief. Furthermore when appellant No. 1 started beating his wife continually for one or two hours and left her only when she was silenced the only inference that could be drawn from his act was that he deliberately intended the murder of the deceased. In these circumstances, therefore, we fully agree with the courts below that the prosecution has proved its case of murder beyond reasonable doubt.

Ashok Laxman Sohani and another v. The State of Maharashtra, 1977 CrLJ 829 : 1977 AIR (SC) 1319 : 1978 CAR 26 : 1977 CrLR (SC) 158 : 1977 SCC (Cr) 243

Section 299 and 300—Homicide—Intention to cause death—Accused squeezing testicle of victim resulting in cardiac arrest—No knowledge could be attributed that death would result from such an act—The act would not amount to murder.

In the facts and circumstances it cannot be said that the respondent had any intention of causing the death of the deceased when he committed the act in question nor could he be attributed with knowledge that such act was likely to cause his cardiac arrest resulting in his death. We wish to make it clear that it cannot be that in all circumstances such an act would not be covered by clause Thirdly and therefore amount to culpable homicide amounting to murder punishable under Section 302 or culpable homicide not amounting to murder punishable under Section 304 Part II. It all depends on the facts and circumstances of each case whether the accused had the requisite intention or knowledge.

The act complained of would not amount to culpable homicide amounting to murder or not amounting to murder punishable under Section 302 or Section 304 Part II.

State of Karnataka v. Shivalingaiah, 1988 CrLJ 394 : 1988 AIR (SC) 115 : 1988 SCC (Cr) 881 : 1988 CrLR (SC) 734

Section 299 and 300—Homicide—Intention to cause death—Accused alongwith deceased persons on a hunting spree got drunk and in inebriated condition shot from the gun killed the deceased—No intention to kill—Exception I & IV applicable—Conviction modified to Section 304 Part I of IPC.

The circumstances make it clear that the appellant would not have intentionally shot Darya with a view to kill him or even with a view to cause an injury which would be sufficient in the ordinary course of nature to cause death. For nearly three days the appellant was moving closely with Darya and if he had wanted to kill him he would have done so on the night of the 5th or 6th of December in a lonely place in the forest area. Furthermore, there is evidence that the appellant, Amar Singh and Darya were engaged in some heated argument when they passed the land of P.W. 2 a few minutes before the occurrence. It is also in evidence that the appellant and Amar Singh were found to have consumed liquor when they were apprehended. They had confessed to P.W. 2 and others that in their inebriated condition they did not know what had happened. No doubt they tried to run away from the scene but it must be more on account of fear than on account of any guilty mind. We, therefore, feel that the circumstances warrant the conclusion that the appellant must have shot Darya either on account of some grave and sudden provocation or in the course of a sudden quarrel attracting Exception 1 or Exception 4 to Section 300 I.P.C.

We, therefore, modify the conviction of the appellant from Section 302, I.P.C. to Section 304 Part I I.P.C. and award, for the said conviction a sentence of 8 years' R.I.

Radha Kishan v. State of Haryana, 1987 CrLJ 713 : 1987 AIR (SC) 768 : 1987 CAR 349 : 1987 CrLR (SC) 191 : 1987 SCC (Cr) 413 : 1987(1) Crimes 479

Section 299 and 300—Homicide—Intention to cause death—Attempt to forcible removal of possession—Accused throwing away the child on the ground causing injury in brain resulting in death of child—The outcome of death not intended by accused persons—Accused liable to conviction culpable to homicide not amounting to murder.

Of course, the other side very humorously submitted that while lifting and throwing the boy on the ground accused 1 was not fondling the boy. That is indisputably correct. But that does not mean that every death must be viewed backward so as to charge the one who caused death as a murderer. Such an approach would remove the well recognised line between culpable homicide amounting to murder and culpable homicide not amounting to murder. Primarily in any action taken by the criminal, his state of mind is very relevant. The state of mind may either disclose intention or knowledge and that is a very relevant factor. It is equally true that these are a bit illusory factors to be deduced from surrounding circumstances such as the genesis of the occurrence, the motive, the weapon used, the seat of injury, the ferocity true that every grown up man is presumed to know the natural and probable consequence of his own act. This is undeniable. Therefore, it is necessary to find out whether when accused 1 lifted the boy and threw him on the ground, did he intend to cause any particular injury as envisaged by third part of Section 300? And the second question which stares into face is whether the intended injury was caused and it was shown in the ordinary course of nature to cause death. The autopsy Surgeon has taken a shifting stand when he said that death was due to injury to the brain and the only injury he found in the brain was congestion and proceeded to explain that congestion of brain does not necessarily result in death. But it is equally true that soon after the injury, within a few hours the victim died and he had suffered an injury and no other probable cause of death is shown. There must be some correlation presumably between the injury and its outcome. The question is not whether there is such correlation or causal connection but the question is whether the outcome was intended by the act undertaken. If every time a push is given to a boy or an infant is thrown it is not possible to attribute the necessary intention of causing the death. Therefore, both clauses 1stly and 3rdly of Section 300 are out of the way and clauses 2ndly and 4thly were not pressed into service.

When accused lifted Radhey Shyam he must have immediately known that the boy was a very young infant and at that age neither the bones nor the muscles are strong and he was thrown with force on ground, obviously the distinct possibility of death being caused may not be foreign to the mind of the accused 1. He can, therefore, be attributed with the knowledge that by his act he was likely to cause death. His case would squarely fall under Section 299 which defines culpable homicide not amounting to murder and will be punishable under the second part of Section 304, IPC which provides punishment if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. Therefore, the conviction of accused 1 from Section 302, IPC and sentence of imprisonment for life is altered to one under Section 304, Part II, IPC.

Sarabjeet Singh and others v. State of U.P., 1983 CrLJ 961 : 1983 AIR (SC) 529 : 1984 SCC (Cr) 151 : 1983 CAR 1 : 1983 CrLR (SC) 19 : 1983 All LJ 464

Section 299 and 300—Homicide—Intention to cause death—Single stab injury lending on the chest of the deceased—Incident occurring on a spur of a moment without pre-meditation—Conviction modified to Section 304 Part II.

The occurrence had happened most unexpectedly in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither Clause I nor Clause III of Section 300, I.P.C. will be attracted.

We hold in the present case that the offence committed by the appellant is the one punishable under Section 304, Part-II, I.P.C. but not under Section 302, I.P.C.

Hem Raj v. The State (Delhi Administration), 1990 CrLJ 2665 : 1990 AIR (SC) 2252 : 1990 SCC (Cr) 713 : 1990 CAR 277 : 1990 CrLR (SC) 533 : 1990(3) Crimes 220

Section 299 and 300—Homicide—Intention to cause death—Sudden altercation between neighbours—Accused person going inside his house and bringing out knife causing fatal injury to the deceased—No premeditated intention to cause murder—Conviction modified to Section 304 Part I of IPC.

The houses of Bhima and the accused were adjoining and the incident took place infornt of their houses. That PW-2 Satyanarayan, PW-5 Bhoridevi, PW-9 Ram Gopal and PW-11 Phoolchand were injured during the incident, is proved by their evidence and the evidence of the Doctor who had examined them on that very day. The fact that they were injured ensures that they had seen the incident. The have stated that after causing injuries to them with an iron pipe, the accused had entered his house and closed the door. At that time, Kesar Lal had come there and started complaining as to why the accused was quarrelling like that in the morning. The accused came out with a knife and inflicted a blow on the abdomen of Kesar Lal. However, it appears from the FIR filed by PW 2 that the accused had really aimed the blow at PW-9 Ram Gopal but as Ram Goal moved away, it hit Kesar Lal on his stomach. This version in the FIR is also supported by PW-9 Ram Gopal. Except this improvement, the evidence of the injured witnesses does not suffer from any infirmity.

Merely because no blood was found near the house of the respondent, it cannot be said that no incident took place there. The fact that Kesar Lal had received a knife blow near his house was admitted by the accused though according to him the knife was with PW 2 Satyanarayan and not with him. As the trial Court has pointed out, the place was a public road and there was lot of traffic on that road. That could have been the reason why no blood was found when the spot panchnama was made after few hours. However, the evidence discloses that intestines of Kesar Lal had come out and that could have blocked the flow of much blood. Some blood was absorbed by the clothes. Therefore, the circumstances that not sufficient blood was noticed when the spot panchnama was made should not have been utilised by the High Court for holding that the prosecution version was not correct and that the defence version was more probable.

In our opinion, the prosecution had established beyond doubt that the respondent had given a knife blow to Kesar Lal and that he died as a result of the injuries caused by that blow. Though the injury was sufficient in the ordinary course of nature to cause death, the evidence discloses that the respondent had not aimed the blow on any vital part of Ram Gopal or Kesar Lal. The blow was aimed at Ram Gopal but as he moved aside, it landed on the stomach of Kesar Lal. The dispute was not such which would have prompted the accused to cause the death of Kesar Lal, particularly when he had no dispute with Kesar Lal. The dispute was with Bhima, the brother of Kesar Lal. This aspect was not at all considered by the trial Court or by the High Court. In our opinion, in view of the facts and circumstances of the case, the appellant should have been convicted under Section 304, Part I, IPC and not under Section 302.

State of Rajasthan v. Satyanarayan, 1998 CrLJ 2911 : 1998 AIR (SC) 2060 : 1998 SCC (Cr) 1539 : 1998(1) Curr CrR 280 : 1998(2) BLJR 1115 : 1998 CrLR (SC) 183

Section 299 and 300—Homicide—Intention to cause injury—Knife stabbing at vital parts of body—Location of injury is not always relevant—The intention of accused has to be gathered from the manner of inflicting the injury.

The nature of the offence does not depend merely on the location of the injury caused by the accused. The intention of the person causing the injury has to be gathered from a careful examination of all the facts and circumstances of each given case. The present is not a case where the appellant merely swung his knife towards the leg of the deceased during some struggle and it happened by sheer misfortune to cut an artery. That the appellant had intended to cause injury to vital parts of the deceased is clear from the fact that he had administered a stab wound on the chest of the deceased on back side. It is also significant that the knife blow dealt by the appellant in the groin of the deceased had caused a wound 8 cm deep piercing both the femoral blood vessels. Moreover when PW 6 tried to intervene, the appellant inflicted two stab wounds on him, which were of identical pattern namely, one on the back of the chest and one in the groin region but fortunately those injuries did not prove fatal. Taking into account all these circumstances, we have no hesitation to agree with the Courts below that the appellant was clearly guilty of the offence charged against him under Section 302, I.P.C.

Jaspal Singh v. State of Punjab, 1986 CrLJ 488 : 1986 AIR (SC) 683 : 1986 SCC (Cr) 119 : 1986 CAR 57 : 1986 CrLR (SC) 111 : 1986 BLJR 439 : 1986(1) Crimes 435

Section 299 and 300—Homicide—Intention to cause injury—Single blow— Incident occurring in spur of moment over sudden quarrel—Knife blow on chest resulting in death—Absence of pre-meditation and malice—Knowledge on the part of accused cannot be inferred that the injury was likely to cause death—Conviction modified to Section 304 Part II and sentence reduced to RI for five years.

Jagtar Singh v. State of Punjab, 1983 CrLJ 852 : 1983 AIR (SC) 463 : 1983 CAR 240 : 1983 CrLR (SC) 228 : 1983 SCC(Cr) 459 : 1983(1) Crimes 976

Section 299 and 300—Homicide—Intention to kill—Cross fight over quarrel between two sides—No intention to kill can be attributed—Conviction modified to Section 304, Part II.

State of U.P. v. Jodha Singh and others, 1989 CrLJ 2113 : 1989 AIR (SC) 1822 : 1989 SCC (Cr) 591 : 1989 CAR 269 : 1989 CrLR (SC) 561 : 1989 (3) Crimes 7

Section 299 and 300—Homicide—Intention to kill—Fire injury—Accused a police constable firing with his rifle on another constable—Five shots fired one after another—Use of dangerous weapons—Injury sufficient in the ordinary course of nature to cause death— Conviction for murder, affirmed.

Having regard to the fact that the appellant had used a dangerous weapon like a rifle (being a police constable he must have known that it was a dangerous weapon) and having regard to the fact that he had fired at Kaptan Singh as many as five shots, one of which was fired after Kaptan Singh was hit by a bullet and collapsed on the ground, it is impossible to accept the contention that the appellant had not done the act with the intention of causing his death. It is naive to argue that the intention was merely to frighten him or to cause grievous hurt for it overlooks the two salient features viz. (1) as many as five shots were fired from his 303 rifle and (2) that he fired a shot even after Kaptan Singh had collapsed on the ground having been hit by one of the shots. A bare glance at Section 300 of the Indian Penal Code would show that if the act is done with the intention of causing death, culpable homicide would be

murder. Under Clause 2ndly of Section 300 if the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused it would amount to murder. When the appellant, a police constable fired from his 303 rifle (he must have known that it was a deadly weapon) no other inference is possible but that he intended to cause such bodily injury as he knew to be likely to cause death of the person to whom the harm was caused. Clause 3rdly of Section 300 provides that if the act 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 it would amount to murder. Again having regard to the facts narrated hereinabove no other conclusion is possible except that the appellant intended to inflict such bodily injuries to the deceased which were sufficient in the ordinary course of nature to cause death. In any view of the matter it would fall under Clause 4thly, which provides that if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid it would amount to murder.

Sehaj Ram v. State of Haryana, 1983 CrLJ 993 : 1983 AIR (SC) 614 : 1983 CAR 366 : 1983 SCC (Cr) 621 : 1983 CrLR (SC) 240 : 1983 (1) Crimes 1080

Section 299 and 300—Homicide—Intention to kill—Innumerable injuries— Deceased dying on the spot—Intention to murder is established.

The deceased was belaboured mercilessly. There were innumerable contusions on the entire body of the deceased from head to toe. The wrist, humerus, etc. were fractured and the whole body was full of rod-marks. There were several contused lacerated wounds on the entire face and the left eye was bleeding. The totality of the injuries caused to the victim clearly supports the finding of both the Courts below that the appellants went on belabouring the deceased till he died on the spot. In the circumstances, we do not think that we can uphold the contention that the appellants did not intend to cause the murder of the deceased.

Prabhu & others v. State of Madhya Pradesh, 1991 CrLJ 1373 : 1991 AIR (SC) 1069 : 1992 SCC (Cr) 56 : 1992 CrLR (SC) 50

Section 299 and 300—Homicide—Knowledge of death—Lack of intention to cause death but knowledge that act in question was likely to cause death—Accused is liable for conviction under Section 304 Part II.

S.D. Soni v. State of Gujarat, 1991 CrLJ 330 : 1991 AIR (SC) 917 : 1992 SCC (Cr) 331 : 1991 CAR 102 : 1991 CrLR (SC) 114 : 1991(2) Crimes 4

Section 299 and 300—Homicide—Mens rea—Failure of accused to prove exercise of right of private defence—Yet the circumstances may give rise to a reasonable doubt about intention to cause death so as to be entitled to benefit of doubt.

Notwithstanding the failure of the accused to establish positively the existence of circumstances which would bring his case within an Exception, the circumstances proved by him may raise a reasonable doubt with regard to one or more of the necessary ingredients of the offence itself with which the accused stands charged. Thus, there may be cases where, despite the failure of the accused to discharge his burden under Section 105, the material brought on the record may, in the totality of the

facts and circumstances of the case, be enough to induce in the mind of the Court a reasonable doubt with regard to the mens rea requisite for an offence under Section 299 of the Code.

Yogendra Morarji v. The State of Gujarat, 1980 CrLJ 459 : 1980 AIR (SC) 660 : 1980 Cr LR (SC) 219 : 1980 SCC (Cr) 394 : 1980 Biha CrC 68

Section 299 and 300—Homicide—Motive—Doubt about the motive to murder —Conviction modified to Section 304 Part I.

The materials available create considerable doubt in our mind as to whether the appellants really intended to kill Kishore Singh or whether his misconduct pushed them to wreak revenge against the deceased and in this pursuit attacked him. We are not unmindful of the fact that the 7th injury noted in the post-mortem certificate is in the ordinary course sufficient to cause the death of the deceased. But we are not fully satisfied that the appellants intended to kill the deceased. The correct approach on the evidence and other circumstances in this case would, according to us, be to find the accused guilty under Section 304, Part I, and to sentence them under that section.

Gurdip Singh and another v. State of Punjab, 1987 CrLJ 987 : 1987 AIR (SC) 1151 : 1987 CrLR (SC) 182 : 1987 CAR 143 : 1987 SCC (Cr) 267

Section 299 and 300—Homicide—Murder—Death of wife by asphyxia due to drowning—Suspicion against husband cannot substitute proof—Probable explanation of accused about this conduct — Conviction set aside.

The appellant comes with an explanation stating that the deceased left his company with a broken heart while both of them were at the Railway Station; that he did not know as to what had happened afterwards; that he stayed overnight in a Dharmashala and then returned back and informed his brother and that, thereafter, coming to know that a dead body was in the hospital, he went there and saw the dead body of the deceased, but after having become panicky returned to the village. Whether this explanation is totally acceptable or not, it cannot be completely ruled out from consideration. However, the prosecution case, in our view, suffers for want of adequate and sufficient evidence to substantiate the charge of murder.

Mahavir Prasad v. State of Rajasthan, 1991 CrLJ 368 : 1991 AIR (SC) 272

Section 299 and 300—Homicide—Murder—Incident taking place at the spur of moment without any motive for committing the offence—Single blow reflected in sudden quarrel—Conviction under Section 304 Part I instead of 302 of IPC, affirmed.

State of Punjab v. Gurcharan Singh, 1998 CrLJ 4560 : 1998 AIR (SC) 3115 : 1998(3) Crimes 229 : 1998(3) Curr CrR 249 : 1998(37) All CrC 636

Section 299 and 300—Homicide—Murder—Nature of injury—Intentional causing of injuries which were found to be sufficient to result in death—Conviction for murder affirmed.

Very serious injuries were inflicted on a highly vulnerable part of the body like the skull, and the intensity of the blows can be easily appreciated from the fact that as a result of the fracture over the left temporal and parietal region, a big piece of bone measuring 4" x 2 1/2" was depressed under the temporal muscle.

It is nobody's case, and has not even been urged before us, that the injuries which were influcted on him were unintentional or accidental. The prosecution has therefore proved the facts that severe bodily injuries were present on the body of the deceased, and that those injuries were not unintentional or accidental. Then, as has been stated, it has also been proved that those injuries were sufficient to cause death in the ordinary course of nature.

All the necessary elements have been proved to bring the case under Section 300, thirdly, of the Penal Code.

Mahadeo Ganpat Badawans and others v. State of Maharashtra, 1977 CrLJ 1148 : 1977 AIR (SC) 1756 : 1977 CrLR (SC) 303 : 1977 CAR 392 : 1977 SCC (Cr) 470

Section 299 and 300—Homicide—Murder—No sudden flare up or quarrel —Dispute over property continuing for long time—Conviction and sentence life imprisonment affirmed.

Ram Kishan v. The State of Punjab, 1977 CrLJ 603 : 1977 AIR (SC) 820 : 1976 (4) SCC 337

Section 299 and 300—Homicide—Murder—Poison—Possibility of procure- ment by accused—Administration of Potassium Cyanide—Eye-witness, a goldsmith, deposing that the accused obtained poison from him—The evidence cannot be discarded merely because the witness had no licence to possess the Cyanide and that he did not disclose to any person that he had given the cyanide.

Ammini and others v. State of Kerala, 1998 CrLJ 481 : 1998 AIR (SC) 260 : 1998 SCC (Cr) 618 : 1997 (4) Crimes 131 : 1998(1) Rec CrR 429 : 1998 CrLR (SC) 61

Section 299 and 300—Homicide—Murder—Poisoning—Child witness stating that accused gave him tea which was consumed by the deceased without any biscuit—No evidence to prove that tea contained poison—Chain of circumstance not complete—Conviction set aside.

In the first instance it is difficult to hold that the deceased died because of drinking of the tea which was served to her by P.W. 12 at the instance of the appellant. Even assuming that version to be true, P.W. 12 does not say anything about the deceased having developed any symptoms after taking the tea. The possibility of her having consumed something later i.e. after P.W. 12 left cannot definitely be ruled out. P.W. 1 the Doctor, who conducted the post-mortem found that the stomach of the deceased contained 6 ozs. of milky fluid. He opined that if a fatal dose is given, the death will occur between 30 minutes to 3 hours. He also admitted that organic phosphorus is an irritant one and gives mild to strong odour of garlic. If that is so, the deceased could not have swallowed the tea without any signs of distaste. P.W. 12 does not say anything about having noticed any such gestures from her mother. As a matter of fact he stated that while her mother was taking tea, he started taking his food and thereafter he left. However, he added that his mother asked him to bring a glass of water as her throat was getting dried. He took the glass and filled it with some water and gave the same to her. One other suspicious feature about his evidence is that it is only after 2-3 days that he has come forward with this version. No doubt, it can be said that at the earlier stages, he being a young boy, would not have suspected any foul play. But when the case rests entirely on circumstantial evidence the Court must be fully satisfied about the veracity of the witnesses and truthfulness of the version. In the cross-examination he admitted that his maternal uncle informed him that his mother died as a result of giving tea to her by him. To a Court question, P.W. 12 answered that he had seen his mother taking tea from the glass and he had not heard her declaring that the tea was bitter. There is yet another big gap in the prosecution case. Admittedly both

A-1 and A-2 were in the kitchen. There is no evidence as to who prepared the tea. It could as well be that A-2 prepared the tea and A-1 innocently put the same in a glass and handed it over to P.W. 12. We are only pointing out these possibilities since this is a case of circumstantial evidence. The Courts have held that all the circumstances in the chain should be independently established and when taken together they must form a complete chain without giving room to any other hypothesis and should be consistent with the guilt and inconsistent with the innocence.

The version as spoken to by P.W. 12, even if accepted, namely that the appellant handed over a glass of tea to him to be given to the deceased and that the deceased took the same, it is difficult to conclude that a deadly dose of poison was mixed in the tea. The deceased would not have consumed the entire tea if poison was present in the same since it would have been bitter and emitting unpleasant smell. That gives scope for a possibility of the deceased having consumed something later. Therefore the cause of death cannot directly be the result of consuming the tea. Thus there are many missing links in the prosecution case seeking to establish that it was a case of murder.

Jasbir Kaur v. State of Punjab, 1992 CrLJ 4043 : 1993 AIR (SC) 151 : Cr LR (SC) 797 : 1992 (3) Crimes 561 : 1993 Supp (2) SCC 654

Section 299 and 300—Homicide—Murder—Unprovoked stabbing—Deceased suffered 40 injuries—Brutal attack and merciless beating—Conviction for murder affirmed.

Jangeer Singh and others v. State of Rajasthan, 1998 CrLJ 4087 : 1998(3) Crimes 209 : 1998(3) Curr CrR 229 : 1998 CrLR (SC) 684

Section 299 and 300—Homicide—Murder of husband of paramour—Acquittal of paramour/accused causing murder—The wife of deceased is also entitled to acquittal.

Smt. Tara Devi v. State of U.P., 1991 CrLJ 434 : 1991 AIR (SC) 342 : 1990 SCC (Cr) 561 : 1991 CAR 254 : 1991 CrLR (SC) 526

Section 299 and 300—Homicide—Nature of injuries—Accused causing injuries on head and the leg resulting in extensive haematoma and fracture—Injuries even if insufficient in ordinary course of nature, act of accused resulting in injuries caused with the knowledge that death may result—Accused liable for conviction under Section 304 Pt. of IPC.

Jayappa Datta Rajage and others v. State of Maharashtra, 1982 CrLJ 1394 : 1982 AIR (SC) 1183 : 1982 CrLR (SC) 282 : 1982 CAR 182 : 1982 SCC (Cr) 476 : 198 Mah LR 192

Section 299 and 300—Homicide—Nature of injuries—Medical opinion that injuries could have been fatal independently but not necessarily—Absence of conclusiveness in opinion—Conviction modified from murder to homicide.

Kaliappan v. State of Tamil Nadu, 1977 CrLJ 341 : 1977 AIR (SC) 699 : 1977 CrLR (SC) 348 : 1976 SCC (Cr) 608

Section 299 and 300—Homicide—Nature of injury—Absence of serious provocation—Injury caused on chest and heart in a most cruel manner with great force—Conviction for murder, affirmed.

There is nothing to show that the altercation was of such a serious nature which could cause sudden provocation. The nature of injury, namely, the stab on the chest which resulted in the fracture of the 6th rib and injured the heart and the lung and which according to the doctor was given with great force showed that it was most cruel and therefore the case squarely falls under Section 302, I.P.C. We are in complete agreement with the High Court that the offence falls under Section 302, I.P.C. and the appellant was therefore, rightly convicted by the High Court.

Vasanta v. State of Maharashtra, 1983 CrLJ 693 : 1983 AIR (SC) 361(1) : 1983 CAR 134 : 1983 CrLR (SC) 174 : 1983 SCC (Cr) 535 : 1983 (1) Crimes 728

Section 299 and 300—Homicide—Nature of injury—Attack by sharp instrument on the head resulting in fracture of skull—Injury proved fatal and found to be sufficient in the ordinary course of nature to cause death—Conviction for murder, affirmed.

Bharwad Bhikha Natha and others v. The State of Gujarat, 1977 CrLJ 1160 : 1960 AIR (SC) 1768 : 1977 SCC (Cr) 492 : 1977 CAR 317 : 1977 CrLR (SC) 307

Section 299 and 300—Homicide—Nature of injury—Difficulty in co-relating blow given by the accused and the internal injury—Conviction modified to Section 325 of IPC.

The evidence as given in the case is indeed of a general type and it is difficult to correlate the blow of Mohinder Singh with the internal injury which according to medical evidence led to death.

We are of the view that the appellant should appropriately be convicted under Section 325, I.P.C. We accordingly set aside the conviction under Section 304, Part II, I.P.C. as given by the High Court and in lieu thereof we convict the appellant under Section 325, I.P.C.

Mohinder Singh v. State (Delhi Administration), 1985 CrLJ 1903 : 1986 AIR (SC) 309 : 1985 CrLR (SC) 488 : 1985 SCC (Cr) 488 : 1985 CAR 343

Section 299 and 300—Homicide—Nature of injury—Incised wounds caused by sharp edged weapon medically opined to be not fatal—Conviction modified to grievous hurt.

Rattan Singh and Ran Singh and another v. State of Punjab, 1989 CrLJ 287 : 1988 AIR (SC) 2147 : 1988 SCC (Cr) 708 : 1988 CrLR (SC) 776 : 1988 BLJR 459

Section 299 and 300—Homicide—Nature of injury—Injuries in the nature of punctured wounds which were chest cavity deep—Left Pleura and left lung found to be punctured—Injury on lung found to be in the entire thickness of lower lobe—Conviction for murder, restored.

State of Uttar Pradesh v. Babboo and others, 1978 CrLJ 997 : 1978 AIR (SC) 1084 : 1978 SCC (Cr) 179 : 1978 CrLR (SC) 112 : 1978 CAR 152

Section 299 and 300—Homicide—Nature of injury—Lathi blows—Injuries opined to have caused by hard blunt object only on the hands and feet of deceased—Conviction modified to causing grievous hurt.

Rattan Singh and Ran Singh and another v. State of Punjab, 1989 CrLJ 287 : 1988 AIR (SC) 2147 : 1988 SCC (Cr) 708 : 1988 CrLR (SC) 776 : 1988 BLJR 459

Section 299 and 300—Homicide—Nature of injury—Left lung pierced by injury on chest—Injury given with great force on most vital part—Both the ventricles punctured—Injury sufficient to cause death—Conviction for murder affirmed.

Rajinder Singh v. State of Punjab, 1978 CrLJ 1413 : 1978 AIR (SC) 1420 : 1978 SCC (Cr) 1576 : 1978 CrLR (SC) 150

Section 299 and 300—Homicide—Nature of injury—Medical opinion that death was caused on account of heavy pressure on pancreatic or splenic region—The accused husband alone could have caused the injury—Accused convicted for homicide not amounting to murder.

The medical evidence reveals that her life should have been put to an end on account of some external pressure on the anterior part of the stomach on the region of pancreas and spleen. External injury No. 3—namely haematoma, surrounding the peritonium—measuring about 4 cm x 4 cm. corresponded to internal injury Nos. 2 and 3 and the posture of the dead body on the cot as noticed by PW 23 unerringly lead to a conclusion that some heavy pressure was used on the pancreatic and splenic region by some other human agency. In our considered view, that agency, in the circumstances of the case, was only the appellant.

S.D. Soni v. State of Gujarat, 1991 CrLJ 330 : 1991 AIR (SC) 917 : 1992 SCC (Cr) 331 : 1991 CAR 102 : 1991 CrLR (SC) 114 : 1991(2) Crimes 4

Section 299 and 300—Homicide—Nature of injury—No proof that fatal injury was caused to the accused—Accused armed with kirpan which was used in assaulting the deceased—Conviction modified to Section 326 for causing grievous hurt.

In view of the acquittal of Zora Singh there is no evidence to show as to what particular injury was caused on the deceased by the appellant although he was armed with Kirpan. In these circumstances, it is not possible to convict the appellant under Section 302 I.P.C. simpliciter. As however it is indisputable that the accused was armed with Kirpan and used the same in assaulting the deceased, the accused must be held to have committed an offence under Section 326, viz., the offence of grievous hurt, because an injury which is caused was dangerous to life, which ultimately resulted in the death of the deceased.

Karnail Singh v. State of Punjab, 1977 CrLJ 550 : 1977 AIR (SC) 893 : 1976(4) SCC 816 : 1977 CrLR (SC) 90

Section 299 and 300—Homicide—Nature of injury—Prosecution failing to establish that the injuries were sufficient to cause death or any other ingredient, the accused cannot be convicted for murder.

Culpable homicide is not murder when the case is brought within the five exceptions to Section 300, I.P.C. But even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300, I.P.C. to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300, I.P.C., namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299, I.P.C.

In judging whether the injuries inflicted are sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant.

Having regard to the entire evidence and the circumstances of the case and in view of the somewhat hesitant medical opinion with regard to the cause of death given by the three doctors and the further fact that the deceased died a month after the occurrence, we think that clause "3rdly" of Section 300, I.P.C. has not been established beyond reasonable doubt in this case. The evidence fulfils one of the ingredients of Section 299, namely, that the appellants caused the death by doing an act with the intention of causing such bodily injury as is likely to cause death.

Kishore Singh and another v. The State of Madhya Pradesh, 1977 CrLJ 1937 : 1977 AIR (SC) 2267 : 1977 CrLR (SC) 436 : 1977 SCC (Cr) 656 : 1977 CAR 363

Section 299 and 300—Homicide—Nature of injury—Single blow—The accused striking only one blow in the heat of moment—Conviction modified to Section 304 Part II.

Hari Ram v. State of Haryana, 1983 CrLJ 346 : 1983 AIR (SC) 185 : 1983 CrLR (SC) 122 : 1983 CAR 60 : 1983 SCC (Cr) 159

Section 299 and 300—Homicide—Nature of injury—Single blow inflicted with sharp edged weapon—Deceased dying six days after the injury on account of penetrating wound—Dispute over trade rivalry resulting in incident—Conviction for murder modified to homicide.

Gulshan and others v. State of Punjab, 1989 CrLJ 120 : 1988 AIR (SC) 2110 : 1991 SCC (Cr) 218 : 1989 CrLR (SC) 629 : 1988 All CrC 219

Section 299 and 300—Homicide—Nature of injury—Single blow with knife after trivial quarrel—Blow fell on chest and proved fatal—No intention can be attributed to the accused for causing the particular injury—Conviction for murder not permissible.

Jawahar Lal and another v. State of Punjab, 1983 CrLJ 429 : 1983 AIR (SC) 284 : 1983 CrLR (SC) 168 : 1983 SCC (Cr) 805

Section 299 and 300—Homicide—Nature of injury—Single knife blow—Incident after spur of moment without premeditation—Absence of intention to commit murder but wielding a weapon like knife, knowledge could be attributed to the accused that he was likely to cause an injury which was likely to result in death—Conviction modified from Section 302 to Section 304 Part II.

Tholan v. State of Tamil Nadu, 1984 CrLJ 478 : 1984 (2) SCC 133 : 1984 CAR 121 : 1984 SCC (Cr) 164 : 1984 All CrC 93

Section 299 and 300—Homicide—Nature of injury—Stab injury on vital region viz. lung and heart—Accused acting with pre-meditation and not in sudden impulse—Injury sufficient in the ordinary course of nature to cause death—Conviction for murder affirmed.

It is true that the appellant inflicted only one stab wound on the deceased but the facts established in the case viz. that the appellant did not act under any sudden impulse but pursued the deceased after arming himself with a dagger which is a dangerous weapon in execution of a premeditated plan

motivated by ill feelings nurtured for a number of days and inflicted a severe stab injury on the vital region of the body of the deceased which perforated not only his left lung but also penetrated into and impaired the left ventrical of his heart clearly show that the appellant had the intention of causing the death of the deceased and pursuant thereto acted in a manner which brings his offence within the mischief of Section 302 of the Penal Code.

Taking into consideration the deadly character of the weapon used, the dastardly assault made by the accused and the vital organs of the body on which the injury was caused as also the categorical statement of Dr. V.K. Jayapalan, Professor of Forensic Medicine, who conducted the autopsy of the dead body of the deceased that the injury No. 1 was sufficient in the ordinary course to cause death of the deceased, we have no hesitation in holding that the appellant deliberately caused the fatal wound on the person of the deceased and in maintaining the conviction under Section 302 of the Indian penal Code.

The prosecution having successed in establishing that the stab injury inflicted on the person of the deceased was sufficient in the ordinary course of nature to cause the death the offence committed by the accused squarely falls within the purview of clause `thirdly' of Section 300 of the Indian Penal Code according to which culpable homicide is murder if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be caused is sufficient in the ordinary course of nature to cause death of the deceased.

Narayanan Satheesan v. State of Kerala, 1977 CrLJ 1946 : 1977 AIR (SC) 2308 : 1977 SCC (Cr) 578 : 1977 CrLR (SC) 460 : 1977 CAR 337

Section 299 and 300—Homicide—Nature of injury—Two injuries sufficient to cause death—Intention is irrelevant—Clause thirdly applies—Accused is liable to conviction for murder.

Injuries Nos. 11 and 12 were grievous and were sufficient to cause the death of the deceased. For the commission of the offence of murder it is not necessary that the accused should have he intention to cause death. It is now well settled that if it is proved that the accused had the intention to inflict the injuries actually suffered by the victim and such injuries are found to be sufficient in the ordinary course of nature to cause death, the ingredients of clause 3rdly of Section 300 of the Indian penal Code are fulfilled and the accused must be held guilty of murder punishable under Section 302 of the Code.

Bakhtwar and another v. The State of Haryana, 1979 CrLJ 883 : 1979 AIR (SC) 1006 : 1980 SCC (Cr) 150 : 1978 CrLR (SC) 613 : 81 PunLR 499

Section 299 and 300—Homicide—Nature of injury—Use of sharp edge weapon—Difference in punctured wound and incised wound.

Normally a sharp pointed weapon would cause a punctured wound but the weapon like banka or ballam can cause incised wounds provided instead of the pointed end the surface of the weapon is used. In the melee that followed it would have been difficult for the witnesses to say with exactitude that in-injuries were caused by the surface or by the pointed end. The injuries found on the deceased persons would therefore, be sufficient evidence of the nature of the assault.

Sone Lal and others v. The State of Uttar Pradesh, 1978 CrLJ 1122 : 1978 AIR (SC) 1142 : 1978 CrLR (SC) 285 : 1978 SCC (Cr) 587 : 1978 All CrR 273

Section 299 and 300—Homicide—Nature of injury—Use of spear and stick to cause injuries—Each of the injuries opined by Doctor to be sufficient in the ordinary course of nature to cause death—Conviction for murder affirmed.

On the Doctor's evidence, therefore, the injuries caused by accused number 1 with a spear and accused number 9 with a bana-stick were such that each of them was sufficient in the ordinary course of nature to cause death. The conviction of accused numbers 1 and 9, therefore, under Section 302 of the Penal Code simpliciter was justified.

Chilamakur Nagireddy and others v. State of Andhra Pradesh, 1977 CrLJ 1602 : 1977 AIR (SC) 1998 : 1977 CrLR (SC) 313 : 1977 CAR 329 : 1977 (3) SCC 560

Section 299 and 300—Homicide—Poison —No proof of forcible administration of poison to the deceased—Guilt of accused not proved decisively —Suspicion cannot take place of proof.

The presence of the injuries namely semi-circular abrasions resembling that of human nail marks over the upper parts of her lip, nose and chin, the contusions over the front of neck, the congestion of the protruding eye balls and the presence of bluish, black discolouration form the right angle of the mouth extending to right side of neck unequivocally lead to a decisive conclusion that the deceased had been over-powered by the assailants and the poison was administered to her by forcibly opening her mouth and closing the nose and pressing the neck so as to make the victim to gulp the poison and in that process more than one person should have participated. This view is fortified by the final opinion given by the doctors stating that the death might have been caused due to the combined effect of asphexia due to smothering and poisoning democran.

The explanation given by the accused that they were at the marriage house of P.W. 1 throughout the night is nothing but a false explanation and that the culprits whoever they might have been should have administered the poison to the victim and thereby caused her death and that there is very strong suspicion against the accused persons but the prosecution cannot be said to have established the guilt of the accused decisively since the suspicion cannot take the place of legal proof.

There is no evidence that the accused ill-treated the deceased, which observation we have extracted above. Hence, we hold that there is no sufficient material to warrant a conclusion that the accused had any motive to snatch away the life thread of deceased. There is no denying the fact that the deceased did not accompany her husband and in-laws to attend the marriage celebrated in the house of PW-1 and remained in the scene house and that she has been done away with on the intervening night of 6th/7th September, 1985. From this circumstance, the Court will not be justified in drawing any conclusion that the deceased was not leading a happy marital life. As observed by the appellate Court, the explanation offered by accused 1 to 3 that they remained in the house of PW-1 throughout the night is too big a pill to be swallowed. But at the same time, in our view, this unacceptable explanation would not lead to any irresistible inference that the accused alone should have committed this murder and have come forward with this false explanation. We have no hesitation in coming to the conclusion that it is a case of murder but not a suicide as we have pointed out supra. The placing of the tin container with the inscription `Democran' by the side of the dead body is nothing but a planted one so as to give a misleading impression that the deceased had consumed poison and committed suicide. But there is no evidence as to who had placed the tin container by the side of the dead body. Even if we hold that the perpetrators of the crime whoever might have been had placed the tin, that in the absence of any satisfactory evidence against the accused would not lead to any inference that these accused or any of them should have done it.

No one can be convicted on the basis of mere suspicion, however, strong it may be.

Padala Veera Reddy v. State of Andhra Pradesh and others, 1990 CrLJ 605 : 1990 AIR (SC) 79 : 1991 SCC (Cr) 407 : 1990 CAR 36 : 1990 CrLR (SC) 1

Section 299 and 300—Homicide—Poisoning—Accused administering sweets by way of prasad containing poisonous substance to the persons on relay fast—No motive for or intention to kill any person—Conviction modified to causing grievous hurt under Section 326.

State of Bihar v. Ramnath Prasad and others, 1998 CrLJ 679 : 1998 AIR (SC) 466 : 1998 SCC (Cr) 972 : 1997(4) Crimes 424 : 1998(2) BLJ 144 : 1998(1) Curr CrR 39

Section 299 and 300—Homicide—Poisoning—Circumstantial evidence— Proof of murder by poisoning is not be- yond realm of circumstantial evidence.

Murder by poison is invariably committed under the cover and cloak of secrecy. No body will adminiser poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such cases, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The Court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused.

The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the Court may be justified in drawing permissible inference that the accused was in possession of the poison in question. There may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused. The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. We cannot, therefore, accept the contention urged by the learned counsel for the appellant. The accused in a case of murder by poisoning cannot have a better chance of being exempted from sanctions than in other kinds of murders. Murder by poisoning is run like any other murder. In cases where dependence is wholly on circumstantial evidence, and direct evidence not being available, the Court can legitimately draw from the circumstances an inference on any matter one way or the other.

The evidence of the Doctor and the report of the chemical examiner has established beyond doubt that Gian Kaur died of organo phosphorus compound poisoning. Bhupinder Singh had an opportunity to administer that poison. There was nobody else in the house. All the inmates had their common food in the night. All of them slept in the same place. Both the Courts have ruled out the theory of suicide by Gian Kaur. We entirely agree with that finding. She could not have thrown her child to the mercy of others by committing suicide and indeed no mother would venture to do that. The post-mortem report giving the description of injuries found on the body of the deceased would also defy all doubts about the theory of suicide. She had contusion on the front of right leg. Abrasion on the front of the left leg just below the knee joint. Linear abrasion on the back of the right hand. Linear abrasion on the back of the right hand. Linear abrasion on the antero-lateral aspect of left fore-arm in its middle. And contusion on the back of right elbow joint. These injuries, as the Courts below have observed could have been caused while Gian Kaur resisted the poison being administered to her.

The behaviour of Bhupinder Singh in the early hours of that fateful day by going to his field as if nothing had happened to his wife is apparently inconsistent with the normal human behavior. There was no attempt made by him or other inmates of the house to look out for any Doctor to give medical attention to the victim. The movement and disposition of Bhupinder Singh towards the victim and situations are incompatible with his innocence. On the contrary, it gives sustenance to his guilt.

Bhupinder Singh v. State of Punjab, 1988 CrLJ 1097 : 1988 AIR (SC) 1011 : 1988 SCC (Cr) 694 : 1988 CAR 159 : 1988 CrLR (SC) 485 : 1988(2) Crimes 665

Section 299 and 300—Homicide—Private defence—Injury caused on vital part of body viz. the chest resulting in death—Conviction under Section 304 Pt. I for homicide, affirmed.

Prabhu Prasad Sah v. State of Bihar, 1977 CrLJ 346 : 1977 AIR (SC) 704 : 1976 SCC (Cr) 597 : 1977 CrLR (SC) 48

Section 299 and 300—Homicide—Proof of—No evidence as to how deceased met his end—Recovery of empty cartridge near the dead body alone is not sufficient to infer that he was murdered by shooting.

Kedar Nath etc. v. State of M.P., 1991 CrLJ 989 : 1991 AIR (SC) 1224

Section 299 and 300—Homicide—Rash and negligent driving—The deceased run over by the car driven by accused who taking steps to bear the expenses of treatment of the victim—No intention to cause murder—Conviction for homicide affirmed.

Jaspal Singh v. State of Punjab, 1979 CrLJ 1386 : 1979 AIR (SC) 1708 : 1979 SCC (Cr) 920 : 1979 CrLR (SC) 487 : 1979 CAR 345

Section 299 and 300—Homicide—Single blow—Motive of obstructing marriage of the sister of accused—Deceased dying within two hours of suffering the knife blow in abdomen—Absence of intention to cause death—Injury likely to cause death—Conviction modified to Section 304 Part I of IPC.

Guljar Hussain v. State of U.P., 1992 CrLJ 3659 : 1992 AIR (SC) 2027 : 1993 Supp (1) SCC 554

Section 299 and 300—Homicide—Single knife blow—Stab wound caused on abdomen of accused—Injuries found on the person of accused not explained—Defence of scuffle cannot be ruled out—Conviction for murder modified to homicide.

The circumstances that appear are that there is no clear explanation of the injuries on the accused person. The appellant has set up a defence that the scuffle started and it is only in that situation that he took out the knife and inflicted a blow. It is also not in dispute that it was only one blow which was inflicted by the present appellant. In these circumstances, the evidence of the prosecution does not clearly establish the manner in which the incident took place and, therefore, it could not be held that the incident did not take place in the manner suggested by the present appellant accused, and in that situation it could not be held that he inflicted this injury with an intention to cause death. At best, knowledge could be imputed to him that it may result in death. In view of this the conviction of the appellant under Section 302 could not be maintained. The conviction of the appellant is altered to 304

Part II. he has already been in custody for more than five years and, in our opinion, the sentence undergone would meet the ends of justice.

Kartar Singh v. State of Punjab, 1989 CrLJ 115 : 1988 AIR (SC) 2122 : 1988 SCC (Cr) 264 : 1988 CAR 39 : 1988 CrLR (SC) 77

Section 299 and 300—Homicide—Sudden fight—Deceased intervening in the fight—No pre-meditated injury—Accused giving a blow with iron bar with great force received by deceased on his head—The accused did act in a cruel manner—Conviction for murder, affirmed.

This shows that the appellant must have struck the blow on the head of the deceased with the iron bar with very great force. The deceased was an old man and was an innocent intervener who was asking the parties not to quarrel, and there was no justification for the appellant to have given such a serious injury to him resulting in his death. Moreover before the provisions of Section 304 I.P.C. can apply, it must be shown that the act committed by the accused was not a cruel one. In the instant case we are unable to find from the facts narrated above that the injury caused by the appellant was not a cruel one or that the accused did not act in a cruel manner.

Pandurang Narayana Jawalekar v. The State of Maharashtra, 1978 CrLJ 995 : 1978 AIR (SC) 1082 : 1978 CAR 183 : 1978 CrLR (SC) 151 : 1978 SCC (Cr) 573

Section 299 and 300—Homicide—Sudden fight—No pre-meditation—Con- viction for murder modified to conviction for culpable homicide under Section 304 Pt. I of IPC.

Ram Swarup v. The State of Haryana, 1977 CrLJ 252 : 1977 AIR (SC) 664 : 1976 SCc (Cr) 524 : 1977 CrLR (SC) 45 : 79 Pun LR 287

Section 299 and 300—Homicide—Sudden quarrel—Absence of premeditation —No intention to cause particular injury with a dagger on vital part of the body viz. neck—Knowledge that death may be caused by this act can be inferred—Conviction modified to Section 304 Part II.

Shankar v. State of Madhya Pradesh, 1979 CrLJ 1135 : 1979 AIR (SC) 1532 : 1979 SCC (Cr) 632 : 1979 CrLR (SC) 423

Section 299 and 300—Homicide—Sudden quarrel—Pending litigation between two parties—Sudden quarrel between the parties resulting in death of one person—No premeditation or undue advantage taken by offender—Accused entitled to benefit of Exception IV—Conviction modified to culpable homicide.

Suddenly on the spur of the moment there ensued a quarrel. Prakash Chandra and Umesh Chandra on the side of the prosecution died and Chhotelal on the side of the accused died and each of them met a homicidal death. On the side of the prosecution Dinesh Chandra was injured, on the side of accused Ram Karan was injured. From this an irresistible inference ensues that Exception 4 to Section 300, I.P.C. would be attracted. The exception provides that 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 offenders having taken undue advantage or acted in a cruel or unusual manner.

Taking an overall view of the situation, we find no evidence of any intention to kill the two deceased on the part of the accused because the occurrence itself had taken place suddenly when, to begin with, the

entire episode started for the particular purpose of partitioning the land by the Commissioners who had visited the village. In these circumstances we are satisfied that Exception 4 of Section 300, I.P.C. is attracted and the offence of murder would be reduced to culpable homicide in respect of accused Sunil Kumar and Ved Prakash and, therefore, they would be guilty of committing an offence under Section 304 (Para I)/34 I.P.C. and they should be convicted accordingly. To this extent, therefore, we are unable to agree with Brother Varadarajan, J. that the conviction of the appellants Sunil Kumar and Ved Prakash under Section 302 read with Section 34 of the I.P.C. should be confirmed.

The main occurrence had taken place in front of the house of both the deceased and P.W. 11. Before the trial Court it was not submitted that the attack by the accused persons on both the deceased Prakash Chandra and Umesh Chandra and P.W. 11 was without any premeditation in a sudden fight in the heat of passion upon a sudden quarrel. Nor is it a case in which it could be said that the offenders had not taken undue advantage or had not acted in a cruel or unusual manner. No such argument was putt forward even before the High court to bring the main occurrence under Section 304 (Part I) I.P.C. Since I have found that the occurrence, has taken place in front of the house of the two deceased and P.W. 11 in this case and that the accused persons were the aggressors neither Exception 2 nor Exception 4 to Section 300 I.P.C. would apply to the facts of this case and the offence cannot be brought under Section 304 (Part I) I.P.C. In these circumstances, I agree with the learned Sessions Judge that the appellants Sunil Kumar and Ved Prakash were the aggressors and find that they have been rightly convicted under Section 302 read with Section 34 I.P.C. for the offence of murder of those two persons and under Section 307 read with Section 34 I.P.C.

Ram Karan and others v. State of Uttar Pradesh, 1982 CrLJ 1253 : 1982 AIR (SC) 1185 : 1982 CAR 104 : 1982 SCC (Cr) 386 : 1982 All LJ 397

Section 299 and 300—Murder—Accused caught red handed—Independent and disinterested witnesses proving that accused assaulted the deceased with `aravel' resulting in death—No explanation by the accused for being caught red handed—Conviction affirmed.

Seerangam v. State of Tamil Nadu, 1979 CrLJ 1124 : 1979 AIR (SC) 1508 : 1979 SCC (Cr) 716 : 1979 CrLR (SC) 510

Section 299 and 300—Murder—Bride killing—Allegation that bride was considered inauspicious woman and therefore done to death—Constant harassment over the year—Death on account of asphyxia—Presence of other injuries also on the body—No other person present in the house—Conduct of accused persons to unsuccessful screen the evidence—Conviction on the circumstantial evidence affirmed.

Virbhan Singh and another v. State of U.P., 1983 CrLJ 1635 : 1983 AIR (SC) 1002 : 1983 CrLR (SC) 446 : 1986 CAR 89 : 1983 SCC (Cr) 781

Section 299 and 300—Murder—Burden of proof—The prosecution case must stand on its own legs—It cannot derive strength from any weakness of the defence—Infirmity or lacuna in prosecution case cannot be cured or supplied by false defence.

S.D. Soni v. State of Gujarat, 1991 CrLJ 330 : 1991 AIR (SC) 917 : 1992 SCC (Cr) 331 : 1991 CAR 102 : 1991 CrLR (SC) 114 : 1991(2) Crimes 4

Section 299 and 300—Murder—Circumstantial evidence—Opportunity to the accused to kill the wife—Abscondance by accused corroborating the prosecution case—Acquittal set aside.

State of Karnataka v. Lakshmanaiah, 1992 CrLJ 3997 : 1993 AIR (SC) 100 : 1992 SCC (Cr) 755 : 1992 Cr LR (SC) 577 : 1992(2) Crimes 1130

Section 299 and 300—Murder—Homicide—Intention of accused— Grievous injury caused in the abdomen of victim with sharp edged weapon—Accused trying to give second blow also but missed—Intention to cause bodily injuries proved—Conviction under Section 304 Pt. I, affirmed.

The doctor PW-7 who examined the injured Deshmukh immediately after the occurrence and who thought it necessary to undertake an emergency operation clearly indicated in his evidence that the patient had stab wound over the abdomen and probably omentum was also seen in the wound. He further stated that he was of the view that the operation was immediately necessary and the patient would have died if the operation had not been undertaken. He also stated looking at the injury of the deceased, that the instrument of stabbing must have moved inside the intestines and such injury could be inflicted with sharp object like knife and the injuries can be called dangerous. He also opined that the injuries are sufficient in the ordinary course of nature to cause death in ordinary circumstances. From the evidence of Sanjay it is crystal clear that not only the accused gave the stabbing blow on the abdomen of the deceased but even tried to give a second blow which missed and it is on that point of time Sanjay intervened and he was also ultimately injured. Looking at the nature of injuries sustained by the deceased and the circumstances an enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the Ist part of Section 304 IPC. The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed. In that view of the matter we are of the considered opinion that the High Court has rightly convicted the appellant under Section 304 Part I IPC.

Kasam Abdulla Hafiz, etc. v. State of Maharashtra, 1998 CrLJ 1422 : 1998 AIR (SC) 1451 : 1998 SCC (Cr) 427 : 1997(4) Crimes 371 : 1998 CAR 5 : 1998(1) Rec CrR 135

Section 299 and 300—Murder—Identification of accused—Name of accused not mentioned in FIR—Recovery made at the instance of accused from an open place cannot lend much credence—Conviction on the basis of retracted confession not permissible.

Kora Ghasi v. State of Orissa, 1983 CrLJ 692(2) : 1983 AIR (SC) 360 : 1983 CrLR (SC) 188 : 1983 SCC (Cr) 387 : 1983 CAR 135

Section 299 and 300—Murder—Nature of injury—Appreciation of evidence—Accused emerging from their house and beat the deceased with deadly weapon—On head and other vital parts of the body—It must be inferred that attack on vital parts of the body was intended to cause death—It would be murder under Section 300—Judgment of High Court set aside—Accused convicted under Section 302 read with Section 34 IPC.

Clause thirdly of Section 300, I.P.C. envisages that if the act is done with 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, it would be murder coming under Section 300, I.P.C. and that, therefore, it would not be a culpable homicide under Section 299, I.P.C. When the accused emerged from their

house and beat with deadly weapon on the head and other parts of the body and death occurred as a result of the injuries, it must be inferred that the attack on vital parts of the body was intended to be caused with an intention to cause death. Intention is locked up in the heart of the assailant and the inference is to be drawn from acts and attending circumstances.

The judgment of the High Court is set aside and the accused stand convicted under Section 302 read with Section 34, I.P.C.

State of Haryana v. Pala and others, 1996 CrLJ 1872 : 1996 AIR (SC) 2962 : 1996 SCC (Cr) 526 : 1996(1) Crimes 107 (SC) : 1996(1) CCR 205

Section 299 and 300—Murder—Nature of injury—Knife blow given on the neck of victim with the kirpan—Injury opined to be sufficient in the ordinary course of nature to cause death—Conviction affirmed.

Joginder Singh and another v. State of Punjab, 1979 CrLJ 1406 : 1979 AIR (SC) 1876 : 1980 SCC (Cr) 255 : 1979 CrLR (SC) 611

Section 299 and 300—Murder—Nature of injury—Stab injury penetrating to a depth of one and three quarters of an inch on a vital part with left lung cutting through fourth rib of the deceased—Injury sufficient in the ordinary course of nature to cause death covered by clause Thirdly of Section 300—Conviction for murder, affirmed.

Aditya Mohapatra and another v. State of Orissa, 1980 CrLJ 1475 : 1980 AIR (SC) 2110 : 1980 SCC (Cr) 133 : 1978 CrLR (SC) 582

Section 299 and 300—Murder—Nature of injury—The fatal injury on vital part of body whereby a portion of heart was cut—Accused rightly convicted for murder.

One of the injuries caused by A2 was on the chest which cut a part of the thoracic Aorta which was main portion of the heart and also, fractured 8th and 9th ribs on the right side of the chest. According to the doctor this injury was sufficient in the ordinary course of nature to cause death.

Mariadasan and others v. State of Tamil Nadu, 1980 CrLJ 412 : 1980 AIR (SC) 573 : 1980 Cr LR (SC) 177 : 1980 SCC (Cr) 523 : 1980 Cr AR 115 : 1980 Sim LC 279

Section 299 and 300—Murder—Sentence—The father of accused gifting land to the widow of deceased as compensation—Setting aside of acquittal on this ground is not proper.

We can only say that the judgment of the High Court has left us shoked and perplexed. We are at a total loss to understand it. The entire system of administration of criminal justice is reduced to a mockery. If the judgment of the High Court is upheld, it is as if a person who can afford to make gifts of land or money to the heirs of the victim may get away even with a charge of murder. Courts are to dispense justice, not to dispense with justice. And, justice to be dispensed is not palm-tree justice or idiosyncratic justice. The judgment cannot stand a second's scrutiny.

Ramesh Kumar v. Ram Kumar and others, 1984 CrLJ 832 : 1984 AIR (SC) 1029 : 1984 CAR 206 : 1984 CrLR (SC) 268 : 1984 SCC (Cr) 387

Section 299 and 300—Murder—Strangulation—Accused person strangulating old woman by applying considerable force—Death caused by asphyxia inevitable result of deliberate and intentional injury—Accused is guilty of murder.

Kailash and other v. State of U.P., 1979 CrLJ 1322 : 1979 AIR (SC) 1711 : 1978 SCC (Cr) 601 : 1978 CrLR (SC) 417

Section 299(b) and 300(2) and (3)—Homicide—Murder—Intention to cause death is not essential if knowledge of likelihood of such injury resulting in death can be inferred.

Clause (b) of Section 299 corresponds with Clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender 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 clause (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 clause (2) is borne out by Illustration (b) appended to Section 300.

Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under Clause (2) of Section 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 Section 300, instead of the words `likely to cause death' occurring in the corresponding clause (b) of Section 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 in fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadily, 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 clause (b) of Section 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.

State of Andhra Pradesh v. Rayavarapu Punnayya and another, 1977 CrLJ 1 : 1977 AIR (SC) 45 : 1976 CrLR (SC) 485 : 1976 CAR 320 : 1976 SCC (Cr) 659 : 1977 Chad LR 65

Section 106—Burden of proof—Criminal offence—Burden of proving the defence would arise only when the prosecution has discharged its general burden of proving the guilt of accused.
Sawal Das v. State of Bihar, 1974 CrLJ 664 : 1974 AIR (SC) 778 : 1974(4) SCC 193 : 1974(3) SCR 74
Section 106—Burden of proof—Defence of accused—It has to be proved on preponderance of probabilities.

Mahesh Prasad Gupta v. State of Rajasthan, 1974 CrLJ 509 : 1974 AIR (SC) 773 : 1974(3) SCC 591 : 1974 Cr LR (SC) 60

Section 106—Burden of proof—Facts specially within knowledge of accused—Though the burden of proving the guilt is on prosecution, the illustration (b) cannot be extended to offences like murder to call upon the accused to prove that he did not commit the crime.

This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than the whether he did or did not.

Illustration (b) to Section 106 has obvious reference to a very special type of case namely to offences under Sections 112 and 113, Indian Railways Act for travelling or attempting to travel without a pass or ticket or with an insufficient pass or ticket or with an insufficient pass, etc.

Shambhu Nath Mehra v. The State of Ajmer, 1956 AIR (SC) 404 : 1956 CrLJ 794 : 1956 SCR 199 : 1956 All WR (Supp) 79 : 1956 Nag LJ 464 : 1956(2) Mad LJ (SC) 1

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