

the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.¹⁴⁷ In both cases, there is absence of premeditation. But in Exception 1 there is total deprivation of self-control, in case of Exception there is such heat of passion as clouds sober reason and urges the man to do something which he would not otherwise do. A sudden fight implies mutual provocation and blows on each side. The homicide in such a case is not traceable to unilateral provocation. In such cases, the whole blame cannot be attributed to one side. It may be that a fight was initiated by one side but without aggravating provocation from the other side it might not have taken the serious turn. A situation of mutual provocation and aggravation develops making it difficult to apportion the blame between the two sides.¹⁴⁸

[s 300.35] Exception 5.—Death caused of the person consenting to it.—

The following reasons are given for not punishing homicide by consent so severely as murder:

In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honour, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freed man who in ancient times held out the sword that his master might fall on it, the highborn native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought not to be treated by the law, as assassins.¹⁴⁹

This exception abrogates the rule of English law that a combatant in a fair duel who kills his opponent is guilty of murder. Under this Exception, the person who is killed in a duel "suffers or takes the risk of death by his own choice." In applying the Exception, it should first be considered with reference to the act consented to or authorised, and next with reference to the person or persons authorised, and as to each of those some degree of particularity at least should appear upon the facts proved before the Exception can be said to apply. It must be found that the person killed with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to and existed at the moment of his death.¹⁵⁰ The consent must have been given unconditionally and without any pre-reservation.¹⁵¹

The case supposed in the illustration to Exception 5 is one of the offences expressly made punishable by section 305.

[s 300.36] Death caused by voluntary act of deceased resulting from fear of violence.—

If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result.¹⁵² If, for instance, four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, their act would amount to murder.¹⁵³

[s 300.37] Discovery of body of murdered person not necessary/Absence of *corpus delicti*.—

It is well-settled law that in a murder case, to substantiate the case of the prosecution, it is not required that dead bodies must have been made available for the identification and discovery of dead body is not *sine qua non* for applicability of [section 299 of IPC, 1860](#).¹⁵⁴ The mere fact that the body of a murdered person has not been found is not a ground for refusing to convict the accused of murder. But when the body is not forthcoming, the strongest possible evidence as to the fact of the murder should be insisted on before conviction.¹⁵⁵ Such evidence could come from the testimony of eye-witnesses or from circumstantial evidence or from both.¹⁵⁶ If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of *corpus delicti* will not by itself be fatal to a charge of murder.¹⁵⁷

[s 300.38] Ascertainment of time of death.—

Judging the time of death from the contents of the stomach may not always be the determinative test. It will require due corroboration from other evidence.¹⁵⁸

[s 300.39] Single eye-witness, corroboration needed.—

A child witness (aged 13 years at the time of incident) deposed categorically about the gruesome incident he had witnessed. The Supreme Court held that in such situation, it is considered a safe rule of prudence to generally geneally look for corroboration of the sworn testimony of the witness in Court, as to the identity of the accused, who are strangers to them, in the form of earlier identification proceeding.¹⁵⁹

[s 300.40] Acquittal of co-accused, effect.—

Allegation was that the accused along with the juvenile attacked the deceased. Eye witness deposed that the juvenile was not involved. Acquittal of the juvenile has no effect on the case of others.¹⁶⁰ Benefit of acquittal of co-accused cannot be given to the main accused.¹⁶¹

[s 300.41] Non-production of FIR book.—

The incident involved assault on villagers and causing of multiple deaths. The injured witness gave written complaint in the hospital duly signed by him. The complaint was immediately sent to the police station. On its basis, a printed FIR was registered and a copy sent to the magistrate. These circumstances completely ruled out the suggestion that the FIR was bogus or doctored. Non-production of the book was due to non-availability. This cannot by itself, invite suspicious glance from the Court or be a ground for throwing out the prosecution case.¹⁶²

[s 300.41.1] Ante timed.—

The lodging of a First Information Report within 20 minutes of the incident, on the oral dictation at the police station which was four furlongs from the place of incident creates some doubt about the actual time of lodging of the FIR.^{163.}

[s 300.42] Delay in FIR.—

Whether the delay is so long as to draw a cloud of suspicion on the prosecution case will depend upon a variety of factors, which will vary from case to case.^{164.} Where the occurrence took place in the late night in a remote village and the sufferers of the incident were the widow and her two minor children, apart from the fact that the police station was one and a half kilometres away, the delay in registering FIR on the next day is proper.^{165.}

[s 300.43] Strange behaviour of the complainant.—

Where the incident of murder occurred inside the forest, while some friends of the complainant were participating in a party and the informant/eye-witness instead of going to the police station went to the house of an Advocate. The Supreme Court found that it appeared to be a very strange behaviour on the part of the complainant and so many of his friends who were with him to go to an Advocate, that too 15 kms away, rather than approaching the Police Station to report the matter.^{166.}

[s 300.44] Motive.—

It is fairly well settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence.^{167.} Where other circumstances lead to the only hypothesis that the accused has committed the offence, the Court cannot acquit the accused of the offence merely because the motive for committing the offence has not been established in the case.^{168.} If depositions giving the eye-witness account of incident that led to death of deceased are reliable, absence of a motive would make little difference.^{169.} When there is an eye-witness account on record, the absence of motive pales into insignificance.^{170.}

[s 300.45] Last seen together.—

It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased.^{171.} There may however be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.^{172.} But in *Arabindra Mukherjee v State of WB*,^{173.}^{174.} it was held that once the accused was last seen with the deceased, the onus is upon him to show that either he was not involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequences in law, the onus was upon the accused to lead

evidence in order to prove his innocence. In *C Perumal v Rajasekaran*,^{175, 176} there was a time lag of two days in last seen together of A2– A5 with the deceased and Court found it difficult to connect them with the incident. Where the accused was last seen together with the deceased by his wife, but the prosecution could not establish the cause of death, the accused was not convicted based on the last seen theory.¹⁷⁷

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. Mere non-explanation on the part of the accused by itself, cannot lead to proof of guilt against the appellant.¹⁷⁸ Where it was found that the deceased was in the company of the accused prior to one week of the *post-mortem* of the deceased and it was also found through the *post-mortem* that the murder was about one week ago, the Court held that the last seen theory applies.¹⁷⁹

Where there was a clear gap of 51 hours and 45 minutes between the time when the victim was last seen in the company of the accused and the time of his death, it was held that this time gap was too wide to act upon the last seen theory.¹⁸⁰

[s 300.45.1] Co-accused.—

Merely because two persons have been acquitted that benefit cannot be extended to others in view of the direct evidence establishing their presence and participation in the crime.¹⁸¹

[s 300.46] Plea of *alibi*.—

While weighing the plea of '*alibi*', the same has to be weighed against the positive evidence led by the prosecution.¹⁸²

31. *Santosh v State*, 1975 Cr LJ 602 : AIR 1975 SC 654 [LNIND 1975 SC 50] ; See also *Sehaj Ram*, 1983 Cr LJ 993 (SC) : AIR 1983 SC 614 [LNIND 1983 SC 90] : (1983) 3 SCC 280 [LNIND 1983 SC 90] . There should be causal connection between death and injury, not proved where death ensued 13 days after the alleged injury by the deceased woman's husband, *Imran Khan v State of MP*, (1995) 1 Cr LJ 17 (MP).

32. *Govinda*, (1876) 1 Bom 342; *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1666 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 , **distinguish** between culpable homicide and murder restated, nature of *mens rea* required in two provisions also explained.

33. *State of AP v R Punnayya*, 1977 Cr LJ 1 : AIR 1977 SC 45 [LNIND 1976 SC 331] ; *Kalaguru Padma Rao v State of AP*, (2007) 12 SCC 48 [LNIND 2007 SC 179] : AIR 2007 SC 1299 [LNIND 2007 SC 179] , **distinction** between sections 299 and 300 restated. *Sunder Lal v State of Rajasthan*, (2007) 10 SCC 371 [LNIND 2007 SC 599] ; *Abbas Ali v State of Rajasthan*, (2007) 2 SCC 129 : AIR 2007 SC 1239 [LNIND 2007 SC 165] : 2007 Cr LJ 1667 , **distinction** restated.

34. *Laxminath v State of Chhattisgarh*, AIR 2009 SC 1383 [LNIND 2009 SC 58] : (2009) 3 SCC 519 [LNIND 2009 SC 58] ; *Budhi Lal v State of Uttarakhand*, AIR 2009 SC 87 [LNIND 2008 SC 1928] : (2008) 14 SCC 647 [LNIND 2008 SC 1928] ; *Abdul Waheed Khan Waheed v State of Andhra Pradesh*, JT 2002 (6) SC 274 [LNIND 2002 SC 530] ; *Augustine Saldanha v State of Karnataka*, 2003 (10) SCC 472 [LNIND 2003 SC 709] ; *Thangaiya v State of TN*, 2005 (9) SCC 650 [LNIND 2004 SC 1221] and *Sunder Lal v State of Rajasthan*, 2007 (10) SCC 371 [LNIND 2007 SC 599] .

35. *Ajit Singh v State of Punjab*, (2011) 9 SCC 462 [LNIND 2011 SC 844] .

36. *Rampal Singh v State of UP*, 2012 Cr LJ 3765 : (2012) 8 SCC 289 [LNIND 2012 SC 425] .

37. *State of Orissa v Raja Parida*, 1972 Cr LJ 193 199 (Ori). *Gurmej Singh v State of Punjab*, AIR 1992 SC 214 [LNIND 1991 SC 301] : 1992 Cr LJ 293 : 1991 Supp (2) SCC 75 , discussing how evidence in criminal cases is to be appreciated. Other cases giving guidelines for appreciation of evidence for purposes of section 300 are *State of UP v Ram Chandra*, 1992 Cr LJ 418 All (doubtful evidence); *Anokh Singh v State of Punjab*, AIR 1992 SC 598 : 1992 Cr LJ 525 : 1992 Supp (1) SCC 426 (improbable evidence, delay in lodging FIR); *State of Karnataka v Venkatesh*, AIR 1992 SC 674 : 1992 Cr LJ 707 (prosecution witness not inspiring confidence). See also *Sakharam v State of MP*, AIR 1992 SC 758 [LNIND 1992 SC 157] : 1992 Cr LJ 861 , a boy of 16–17 years of age lived alone with the deceased woman in a single-room house some eight days before the incident, woman killed by gun-shot injuries, the boy acquitted because there was no other evidence than that of living together; *Peddireddy Subbareddi v State of AP*, 1991 Cr LJ 1391 : AIR 1991 SC 1356 , gap of 15 hours in lodging FIR, the sole eye-witness not telling the fact to any of the villagers. Acquittal on benefit of doubt. *Gangotri Singh v State of UP*, AIR 1992 SC 948 : 1992 Cr LJ 1290 , where the dying declaration was clear in reference, but did not even mention the names of the other accused with whom the deceased was on enmity, conviction of the named accused alone was held to be proper.

Acquittals.—*Varun Chaudhary v State of Rajasthan*, 2011 Cr LJ 675 : AIR 2011 SC 72 [LNIND 2010 SC 1067] : (2011) 12 SCC 545 [LNIND 2010 SC 1067] ; the recovered knife was never produced before the court and was never shown to the accused; scanty evidence; conviction set aside; *State Through CBI v Mahender Singh Dahiya*, (2011) 3 SCC 109 [LNIND 2011 SC 114] : AIR 2011 SC 1017 [LNIND 2011 SC 114] : 2011 Cr LJ 2177 , circumstances relied on do not connect the accused, accused acquitted. *Allarakha K Mansuri v State of Gujarat*, AIR 2002 SC 1051 [LNIND 2002 SC 119] , defective investigation should not be made a ground of acquittal by itself. The setting aside of acquittal by the High Court was held to be proper. *Chander Pal v State of Haryana*, AIR 2002 SC 989 [LNIND 2002 SC 105] , acquittal because of unsatisfactory evidence, *State of Haryana v Ram Singh*, AIR 2002 SC 620 [LNIND 2002 SC 32] , largely on matters of evidence, such as gap between medical and eye-witness account, relative witness not to be rejected for that reason alone, defence witnesses are entitled to equal treatment with those of the prosecution. *Panchdeo Singh v State of Bihar*, AIR 2002 SC 526 [LNIND 2001 SC 3070] , acquittal because of unreliable dying declaration. *Surendra Singh v State of Bihar*, AIR 2002 SC 260 [LNIND 2001 SC 2701] , firing at the inmates of a car, one killed, one injured. The injured eye-witness identified the assailant at the test identification parade but had stated at the stage of the FIR that could not recognise him. Conviction of the accused was set aside. *Thanedar Singh v State of MP*, AIR 2002 SC 175 [LNIND 2001 SC 2451] , killing at night, no moonlight, no identification of killers, High Court not justified in reversing acquittal. *RV Chacko v State of Kerala*, AIR 2001 SC 537 [LNIND 2000 SC 1797] , acquittal because no proper proof. *Durbal v State of UP*, (2011) 2 SCC 676 [LNIND 2011 SC 100] : AIR 2011 SC 795 [LNIND 2011 SC 100] : 2011 Cr LJ 1106 ; presence of eyewitness doubtful, acquitted; *Prahlad Singh v State of MP*, 2011 (8) Scale 105 [LNIND 2011 SC 1086] : 2011 Cr LJ 4366 , possibility that these three accused

roped in on account of animosity cannot be ruled out and given them the benefit of doubt on that score. *Surendra Pratap Chauhan v Ram Naik*, AIR 2001 SC 164 [LNIND 2000 SC 1521] : 2001 Cr LJ 98 , murder in village groupism real killers could not be identified and other failures of proof, acquittal, *Jagdish v State of MP*, AIR 2000 SC 2059 [LNIND 2000 SC 842] : 2000 Cr LJ 2955 , acquittal of one accused because of uncertainty in technical as well as general evidence, conviction of the other because of the case proved against him.

Shaikh Umar Ahmed Shaikh v State of Maharashtra, AIR 1998 SC 1922 [LNIND 1998 SC 498] : 1998 Cr LJ 2534 , strong possibility of the accused being shown to the witnesses before identification in court, conviction set aside because the identification was the basis of the conviction. *Bhola Singh v State of Punjab*, AIR 1999 SC 767 [LNIND 1998 SC 1050] : 1999 Cr LJ 1132 , acquittal because the presence of the witnesses on the spot became doubtful, their testimony seemed to have been tailored in accordance with the *post-mortem* report. Delayed test identification parade. Accused acquitted: *State of Maharashtra v Syed Umar Sayed Abbas*, 2016 Cr LJ 1445 : 2016 (3) SCJ 77 . *Vijayan v State of Kerala*, AIR 1999 SC 1086 [LNIND 1999 SC 159] : 1999 Cr LJ 1638 , acquittal, because photographs were published and, therefore, identification evidence became useless and dying declaration was also unreliable. *Mohd. Zahid v State of TN*, AIR 1999 SC 2416 [LNIND 1999 SC 593] : 1999 Cr LJ 2699 , acquittal because eye-witnesses and the doctor both found to be not reliable. *Hargovandas Devrajbhai Patel v State of Gujarat*, AIR 1998 SC 370 [LNIND 1997 SC 1443] : 1998 Cr LJ 662 (SC), no proof that the police officer caused death of the deceased in police custody. Acquittal *Omwati v Mahendra Singh*, AIR 1998 SC 249 [LNIND 1997 SC 91] , 250 : 1998 Cr LJ 401 , acquittal because no proper investigation and evidence. *Daljit Singh v State of Punjab*, AIR 1999 SC 324 : 1999 Cr LJ 454 , acquittal because of false witnesses. *Din Dayal v Raj Kumar*, AIR 1999 SC 537 : 1999 Cr LJ 487 , accused acquitted because witnesses not truthful. *Tanviben Pankaj Kumar Divetia v State of Gujarat*, AIR 1997 SC 2193 [LNIND 1997 SC 803] : 1997 Cr LJ 2535 , no evidence to lead to irresistible conclusion about complicity of the accused in causing murder, conviction on surmises and conjectures set aside. *Mohd Aman v State of Rajasthan*, AIR 1997 SC 2960 : 1997 Cr LJ 3567 , not proper handling of finger-print evidence, conviction not proper. *Shahbad Pall Reddy v State of AP*, AIR 1997 SC 3087 [LNIND 1997 SC 1096] : 1997 Cr LJ 3753 , murder alleged to be by 26 persons, no proper investigation, acquittal. *Harkirat Singh v State of Punjab*, AIR 1997 SC 3231 [LNIND 1997 SC 988] : 1997 Cr LJ 3954 , material contradictions in statements of witnesses, other irregularities, acquittal. *Sahib Singh v State of Haryana*, AIR 1997 SC 3247 [LNIND 1997 SC 1005] : 1997 Cr LJ 3956 , delayed FIR, highly interested witnesses, confession not truthful, conviction liable to be set aside. *State of UP v Bhagwan*, AIR 1997 SC 3292 : (1997) 11 SCC 19 , acquittal because of unreliable eye-witnesses. *B Subba Rao v Public Prosecutor*, AIR 1997 SC 3427 [LNIND 1997 SC 1065] : 1997 Cr LJ 4072 , because the source of light through which identification was possible not proved *Rambilas v State of MP*, AIR 1997 SC 3954 [LNIND 1997 SC 1302] : 1997 Cr LJ 4649 , a notorious person murdered on the day of a festival and body thrown into a tank, eye-witnesses not likely because of the festival, that is why were not real there could be other possible killers, acquittal. *Paramjit Singh v State of Punjab*, AIR 1997 SC 1614 [LNIND 1996 SC 2101] : (1997) 4 SCC 156 [LNIND 1996 SC 2101] , two types of evidence, last seen together and dying declaration, both found not reliable. Acquittal, *Jaspal Singh v State of Punjab*, AIR 1997 SC 332 [LNIND 1996 SC 1648] : 1997 Cr LJ 370 , confession and identification evidence weak, acquittal. *Devinder v State of Haryana*, AIR 1997 SC 454 [LNIND 1996 SC 1460] : 1996 Cr LJ 4461 , acquittal because of benefit of doubt. *Chander Pal v State of Haryana*, 2002 Cr LJ 1481 (SC), quarrel in the course of playing game of ludo, murder, no proper evidence, acquittal. *Bijoy Singh v State of Bihar*, 2002 Cr LJ 2623 : AIR 2002 SC 1949 [LNIND 2002 SC 300] , prosecution for murder and attempt to murder, 12 persons were convicted, but

there was no proper investigation, acquittal. *State of AP v Kowthalam Chinna Narasimhulu*, 2001 Cr LJ 722 (SC), political rivalry, murder, unreliable witnesses, acquittal. *State of MP v Surpa*, 2001 Cr LJ 3290 (SC), contradictions in evidence, wife of the victim not disclosing the incident to any one till the next day, acquittal.

Kanhai Mishra v State of Bihar, 2001 Cr LJ 1258 (SC), rape and murder, acquittal, *Dhanjibhai v State of Gujarat*, 2001 Cr LJ 1587 (Guj), another case of being killed by burns, but no proof of involvement of the accused husband. *Sohan v State of Haryana*, 2001 Cr LJ 1707 (SC), only interested witness examined, no independent witness examined though available, conviction set aside. *State of Rajasthan v Teja Singh*, 2001 Cr LJ 1176 (SC), no corroboration of evidence of interested eye-witness, acquittal proper. *Kalyan v State of UP*, 2001 Cr LJ 4677 (SC), acquittal because of poor state of evidence. *State of Delhi*, 2001 Cr LJ 61 (Del) acquittal from the charge of raping and killing one's daughter poor evidence. *Sudama Pandey v State of Bihar*, 2002 Cr LJ 582 (SC), acquittal because of no proper evidence. *Gurucharan v State of UP*, 2000 Cr LJ 4560 (All), accused persons alleged to have entered a bus, fired at passengers and used knives, death of two caused, acquitted under benefit of doubt. *Ajab Singh v State of UP*, 2000 Cr LJ 1809 : (2000) 3 SCC 521 [LNIND 2000 SC 2011] , order by Supreme Court of investigation by CBI. *Chhannoo Lal v State of UP*, 2000 Cr LJ 2787 (All), killing of wife and children, but prosecution could prove nothing, husband acquitted. *Referring Officer v Tiringhly*, 2000 Cr LJ 2569 (AP), murder of a priest of a temple, and throwing away the body into a pond. The court found it to be a case of no evidence. Conviction of the accused and sentence of death set aside. *State of Punjab v Kulwant Singh*, 2000 Cr LJ 2692 (P&H), triple murder, accused acquitted because of prosecution failures. *Dinesh v State of Haryana*, AIR 2002 SC 3474 : 2002 Cr LJ 2970 (SC), acquittal because of inconsistent evidence and weapons not produced. *Mahabir Singh v State of Haryana*, 2001 Cr LJ 3945 (SC), sole eye-witness contradicting himself acquittal. *State of Rajasthan v Chhote Lal*, 2012 AIR (SCW) 1159 : 2012 Cr LJ 1214 , sole eye witness turned hostile, acquittal confirmed; *Javed Masood v State of Rajasthan*, AIR 2010 SC 979 [LNIND 2010 SC 214] : (2010) 3 SCC 538 [LNIND 2010 SC 214] : (2010) 3 SCR 236 [LNIND 2010 SC 214] : 2010 Cr LJ 2020 , presence of eye witness doubtful, conviction set aside. *Jiten Besra v State of WB*, AIR 2010 SC 1294 [LNIND 2010 SC 224] : (2010) 3 SCC 675 [LNIND 2010 SC 224] : 2010 Cr LJ 2032 , all the alleged incriminating circumstances could not be said to have been established; accused is entitled to benefit of doubt. *Gajula Surya Prakasarao v State of AP*, (2010) 1 SCC 88 [LNIND 2009 SC 1973] : 2010 Cr LJ 2102 : AIR 2010 SC (Supp) 181, eye witness did not name the accused in the statement, accused acquitted; *Jaipal v State*, 1998 Cr LJ 4085 : AIR 1998 SC 2787 [LNIND 1999 PNH 698] , murder, persons accused not shown to be guilty, acquittal. *State of HP v Dhani Ram*, 1997 Cr LJ 214 : 1997 SCC (Cr) 244 (SC), the only proof was that of motive, but there was no other evidence, acquittal. *Gurprit Singh v State of Punjab*, AIR 2002 SC 2390 , TADA offender, murder, charged, not proved, acquittal. *Nasim v State of UP*, 2000 Cr LJ 3329 (All), arsenic poison mixed in pulse drink, six persons lost life, but who mixed not clear, act of persons other than cook not ruled out, acquittal. *Deva v State of Rajasthan*, 1999 Cr LJ 265 : AIR 1999 SC 214 [LNIND 1998 SC 1402] , murder by accused not proved, acquittal. *Surinder Kumar v State of Punjab*, 1999 Cr LJ 267 : AIR 1999 SC 215 [LNIND 2012 SC 879] , veterinary surgeon killed, accused acquitted because his guilt could not be proved. *Bhupinder Singh v State of Punjab*, 1999 Cr LJ 396 (SC), death probably in encounter firing, constable acquitted. *State of HP v Rakesh Kumar*, 1999 Cr LJ 564 (HP), acquittal. *Ashok Kumar v State of Bihar*, 1999 Cr LJ 599 (SC), murder of morning walker, dying declaration, not reliable, no other evidence, acquittal. *Paras Yadav v State of Bihar*, 1999 Cr LJ 1122 : AIR 1999 SC 644 [LNIND 1999 SC 17] , participation of accused in murder not proved, acquittal. *Chandregowda v State of Karnataka*, 1999 Cr LJ 1719 (Kant), child sacrificed to death by throttling for the purpose of learning black

magic, doctor's certificate of schizophrenia, only evidence was admission of guilt under [section 313, Cr PC, 1973](#). Held, conviction not possible on that basis alone. *Ahmed Bin Salam v State of AP*, [1999 Cr LJ 2281](#) : [AIR 1999 SC 1617](#) , conviction set aside because of failure of evidence; *State of UP v Kapildeo Singh*, [1999 Cr LJ 2594](#) : [AIR 1999 SC 1783](#) [[LNIND 1999 SC 140](#)] , accused, alleged to have entered *Kutia* of their victim at mid night to settle land dispute and assaulted him with sharp instruments to death, but no proof, acquittal. *Balbir Singh v State of Punjab*, [1999 Cr LJ 4076](#) : [AIR 1999 SC 3227](#) [[LNIND 1999 SC 718](#)] , acquittal because of no proof. *Vithal Tukaram More v State of Maharashtra*, [AIR 2002 SC 2715](#) [[LNIND 2002 SC 449](#)] : [2002 Cr LJ 3546](#) , acquittal because of unreliable evidence. *Mathura Yadav v State of Bihar*, [AIR 2002 SC 2707](#) [[LNIND 2002 SC 447](#)] : [2002 Cr LJ 3538](#) , glaring discrepancies in evidence of eye-witnesses, acquittal; *BL Satish v State of Karnataka*, [2002 Cr LJ 3508](#) (SC), grandson was charged of strangulating his grandmother to death. The only circumstance against him was his statement that ornaments were kept in his maternal grand father's house, acquittal; *Thangavelu v State of TN*, [2002 Cr LJ 3558](#) (SC), false evidence case demolished by medical report as to time of death.

Pandit Ram Prakash Sharma v Khairati Lal, [1998 Cr LJ 1410](#) : [AIR 1998 SC 2820](#) , unreliable witnesses, acquittal. *Prem Prakash Mundra v State of Rajasthan*, [1998 Cr LJ 1620](#) : [AIR 1998 SC 1189](#) [[LNIND 1998 SC 133](#)] , murder of child, accused could not be connected with it. *State of Rajasthan v Mahaveer*, [1998 Cr LJ 2275](#) (SC), enmity between parties, but nothing could be proved. *Kochu Maitheen Kannu Salim v State of Kerala*, [1998 Cr LJ 2277](#) (SC), conduct of eye-witnesses did not inspire confidence, acquittal. *State of Punjab v Karnail Singh*, [1998 Cr LJ 2556](#) : [AIR 1998 SC 1936](#) [[LNIND 1998 SC 307](#)] , death of five persons by gun shots, no evidence as to who caused whose death, defence version that the accused acted in self-defence was supported by evidence, acquittal. *Jaipal v State (UT of Chandigarh)*, [1998 Cr LJ 4085](#) : [AIR 1998 SC 2787](#) [[LNIND 1999 PNH 698](#)] , considered acquittal by the trial judge, setting aside by the High Court merely because a different view of the evidence was also possible was not proper; *Kaptan Singh v State of MP*, acquittal solely on the basis of investigation, held patently wrong; *State of HP v Dhani Ram*, [1997 Cr LJ 214](#) : [AIR 1996 SCW 4055](#) , acquittal upheld; *Roshan Singh v State of UP*, [1997 Cr LJ 256](#) (All), acquittal because of benefit of doubt; *Darshan Singh v State of Punjab*, [1997 Cr LJ 370](#) : [AIR 1970 SC 332](#) , accused not properly identified, confession of guilt not found reliable, acquittal.

Kuldip Singh v State of Punjab, [2002 Cr LJ 3944](#) : [AIR 2002 SC 3023](#) [[LNIND 2002 SC 498](#)] , murder of the wife and daughter of informant, but the accused could not be connected with it, acquittal; *Dhananjay Shanker Shetty v State of Maharashtra*, [2002 Cr LJ 3729](#) (SC), circumstantial evidence of murder by history sheet. But no proof. The accused was arrested in injured condition. No explanation, acquittal. *Toran Singh v State of MP*, [2002 Cr LJ 3732](#) (SC), material contradictions and omissions in statements of witness. *Muthu v State of Karnataka*, [2002 Cr LJ 3782](#) (SC), no evidence to connect the accused with the murder, close scrutiny of evidence disclosed hollowness of prosecution case. Accused entitled to benefit of doubt. *Balu Sonba Shinde v State of Maharashtra*, [AIR 2002 SC 3137](#) [[LNIND 2002 SC 552](#)] , deposition of a witness on whom the prosecution story hinged was found partly improbable, the evidence of hostile witness was rather found more normal and natural. Accused entitled to benefit of doubt.

Ashish Batham v State of MP, [AIR 2002 SC 3206](#) [[LNIND 2002 SC 556](#)] , failure in love affair alleged to be motive for murder, acquitted because of lack of credibility in evidence. *Raghunath v State of Haryana*, [AIR 2003 SC 165](#) [[LNIND 2002 SC 703](#)] : [2003 Cr LJ 401](#) , group rivalry, accused persons entered the house of their victim and caused death, but evidence doubtful, the witnesses, while taking the injured to hospital, did not file report even when they crossed two

police stations, acquittal. *Jasbir v State of Haryana*, AIR 2003 SC 554 [LNIND 2002 SC 805] : 2003 Cr LJ 826 , there were lathi injuries on the person of the deceased, lathi wielding accused were acquitted. *State of Karnataka v AB Nagaraj*, AIR 2003 SC 666 [LNIND 2002 SC 783] : 2003 Cr LJ 848 , allegation that the daughter was killed by her father and step-mother. Witnesses who saw them in the national park could not be believed because they were working behind bushes. The theory of the accused parents that they were looking for their daughter seemed to be probable. There was no history of bad treatment, acquittal; *Kantilal v State of Gujarat*, AIR 2003 SC 684 [LNIND 2002 SC 789] : 2003 Cr LJ 850 , prosecution case was that the accused stole gold ornaments of the victim woman and murdered her. The facts that he had given the ornaments and ingot to a jeweller for melting were not established. Link in the chain of circumstances missing, acquittal. *Bhim Singh v State of Haryana*, AIR 2003 SC 693 [LNIND 2002 SC 793] : 2003 Cr LJ 857 , acquittal because of uncorroborated and controverted evidence. *State of UP v Arun Kumar Gupta*, AIR 2003 SC 801 [LNIND 2003 SC 9] : 2003 Cr LJ 894 , except for being indebted to the deceased, other evidence to connect the accused with the murder was nullity, acquittal. *Lallu Manjhi v State of Jharkhand*, AIR 2003 SC 854 [LNIND 2003 SC 3] : 2003 Cr LJ 914 , land dispute, but who was in possession not properly proved, interested eye-witness not corroborated. No conviction on sole testimony. *Zafar v State of UP*, AIR 2003 SC 931 [LNIND 2003 SC 41] : 2003 Cr LJ 1218 , sole child witness, examined after four to five days probably because another eye-witness had backed out. Not reliable. No conviction. *Jai Pal v State of UP*, AIR 2003 SC 1012 [LNIND 2003 SC 134] : 2003 Cr LJ 1243 eye-witness in examination-in-chief did not name the accused, in cross-examination he named him among so many others, but no overt act attributed, delay in examining witnesses not explained, identification of dead body doubtful, acquittal. *Bhagwan Singh v State of MP*, AIR 2003 SC 1088 [LNIND 2003 SC 82] : 2003 Cr LJ 1262 , mother killed by assailants, six-year-old child sleeping with her, testified that after seeing his mother being assaulted, he went to sleep again, no TI parade held, the conduct of the father was also unnatural, he did not enquire anything from the child before lodging the FIR, sending civil disputes between the accused and the deceased was found to be weak cause, acquittal. *Shailendra Pratap v State of UP*, AIR 2003 SC 1104 [LNIND 2003 SC 6] : 2003 Cr LJ 1270 , another case of acquittal because of weak links in evidence. *Kanwarlal v State of MP*, 2003 Cr LJ 82 (SC), the allegation that the victim was assaulted by several accused persons in free fight with axes and spears. But no cut injuries except one on head, conviction of one accused for murder not sustainable. *Mohan Singh v Prem Singh*, 2003 Cr LJ 11 : AIR 2003 SC 3582 , failure of evidence on all points in the trial for murder, defence version more probable, acquittal. *Nabab Khan v State of MP*, 2003 Cr LJ 94 (MP), sole eye-witness, other factors of evidence not reliable, casting doubt upon sole-witness account, acquittal. This was an attack on the whole family. Four members were killed. The sole eye-witness who survived with injuries was not medically examined and false explanations were submitted for the same. *Jai Narain v State of UP*, 2000 Cr LJ 168 (All), evidence of homemates of the deceased contradictory, no independent witness, motive that they were working as police informers not proved, unexplained delay in medical examination of deceased, defence version more probable, acquittal. *Narendra Singh v State of UP*, 2003 Cr LJ 205 (All), killing of man's wife, his son and nephew, proof against the alleged killers not substantiated, acquittal. *Moti v State of UP*, 2003 Cr LJ 1694 : AIR 2003 SC 1897 [LNIND 2003 SC 302] , serious difference in family evidence and medical evidence, uncertainty benefit of doubt. *Suresh Chaudhary v State of Bihar*, 2003 Cr LJ 1717 : AIR 2003 SC 1981 [LNIND 2003 SC 289] , presence of eye-witness at the site of three murders, time of death, time of lodging FIR doubtful, medical evidence showing use of explosive bomb, eye-witness did not mention it, acquittal. *State of Punjab v Sucha Singh*, 2003 Cr LJ 1210 : AIR 2003 SC 1471 [LNIND 2003 SC 177] , murder in revenge, eye-witness father of the deceased, but rendered no help at rescue, his presence at the spot became doubtful, other witnesses also not reliable,

conviction set aside. *Bharat v State of MP*, 2003 Cr LJ 1297 (SC), circumstantial evidence, chain not complete, murder for robbery, recovery of doubtful value, extra-judicial confession, not reliable, acquittal. *State of UP v Dharamraj*, 2003 Cr LJ 1522 : AIR 2003 SC 1589 [LNIND 2003 SC 206] , eye-witnesses gave different version of the weapons used, acquittal. *Rajeevan v State of Kerala*, 2003 Cr LJ 1572 : AIR 2003 SC 1813 , accusation due to political bitterness, acquittal. *Baldev Singh v State of MP*, 2003 Cr LJ 880 : AIR 2003 SC 2098 [LNIND 2003 SC 2] , improbability of murder by accused, acquittal. *Sambhunath v State of WB*, 2003 Cr LJ 975 (Cal), conviction set aside because the chain of circumstances was not complete. *Shankar Singh v State of UP*, 2003 Cr LJ 1095 (All), killed with gunshot injury, delay in lodging FIR, conduct of eye-witnesses unnatural, acquittal. *State of UP v Krishna Pal*, 2003 Cr LJ 1115 (All), a man and his son killed, evidence of his wife and daughter found to be self-contradictory, acquittal. *Suresh B Nair v State of Kerala*, 2003 Cr LJ 1152 (Ker), the accused killed his victim with a piece of stone, the eye-witness did not know him before, identification parade not held, the identification by the witnesses was not corroborated, acquittal. *Raghunath v State of Haryana*, 2003 Cr LJ 401 (SC), failure of the prosecution case. *Ganga Singh v State of UP*, 2003 Cr LJ 653 (All), failure of prosecution to connect points. *Brijpal Singh v State of MP*, AIR 2003 SC 2460 [LNIND 2003 SC 485] , confusion caused by witnesses as to killing by gunshots, ballistic opinion contradicted eye-witnesses, benefit of doubt. *State of UP v Dharamraj*, AIR 2003 SC 1589 [LNIND 2003 SC 206] , witnesses spoke of different instruments of murder, FIR ante-timed, acquittal. *Moti v State of UP*, AIR 2003 SC 1897 [LNIND 2003 SC 302] , time of occurrence of murder, *post-mortem* report as to state of food in the stomach contradicted by the statements of family members as to time of food intake, time of killing became uncertain and resulted in acquittal. *State of MP v Mishrilal*, 2003 Cr LJ 2312 (SC), the prosecution suppressed the true genesis of the incident, in fact the prosecution party were the aggressors, they did not explain anything about injuries received by three accused persons, one of whom was seriously injured, every detail of the prosecution case was found to be doubtful. Acquittal of accused persons. *Khima Vikamshi v State of Gujarat*, 2003 Cr LJ 2025 (SC), allegation that the accused killed the deceased in the presence of his *pardanashin* daughter in law, which was itself a doubtful fact and her statements were also not reliable, there were no blood stains on her clothes, acquittal. *Sadhu Ram v State of Rajasthan*, 2003 Cr LJ 2331 (SC), death of woman alongwith her eight-month-old daughter, two versions possible, accidental burning or intentionally set on fire, witness not clear, no reliance on such witness, acquittal. *State of UP v Bhagwani*, 2003 Cr LJ 2337 (SC), blood-stained earth not collected, independent witnesses not called, doubt about place of happening, acquittal.

Appeal against acquittal.—Acquittal on the charge of murder of child because of denial of inheritance, conviction by High Court, upheld by Supreme Court; *Swami Prasad v State of MP*, (2007) 13 SCC 25 [LNIND 2007 SC 293] ; *Shaik China Brahman v State of AP*, (2007) 14 SCC 457 [LNIND 2007 SC 1388] : AIR 2008 SC 610 [LNIND 2007 SC 1388] , acquittal by the trial court **reversed** by the High Court, conviction by High Court upheld by Supreme Court; *Mallesappa v State of Karnataka*, (2007) 13 SCC 399 [LNIND 2007 SC 1112] : AIR 2008 SC 69 [LNIND 2007 SC 1112] , conviction found to be unsustainable in the circumstances of the case; *Sunny Kapoor v State (UT of Chandigarh)*, 2006 Cr LJ 2920 (SC), circumstantial evidence with glaring discrepancies, conviction not upheld.

Convictions.—*State of Punjab v Jugraj Singh*, AIR 2002 SC 1083 [LNIND 2002 SC 118] , acquittal set aside, minor irregularities in evidence not to be over weighed. *Prakash Dhawal Khairnar v State of Maharashtra*, AIR 2002 SC 340 [LNIND 2001 SC 2841] , the accused wiped out his brother with family in order to prevent partition, the confessional statement of his son who had