

### **[s 300.13] Medical Evidence.—**

Medical evidence that the death was homicidal, cannot alone be made the basis to connect the accused person with crime. The accused persons are entitled to the benefit of doubt.<sup>74.</sup>

### **[s 300.14] "Secondly" and "Thirdly" distinguished.—**

The two clauses are disjunctive and separate. Clause "Secondly" is subjective to the offender. It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present. First part of clause "Thirdly" envisages infliction of bodily injury with the intention to inflict it, i.e., it must be proved that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proven facts about the nature of the injury and has nothing to do with the question of intention.<sup>75.</sup>

### **[s 300.15] Clause 4.—'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'.—**

Where it is clear that the act by which the death is caused is so imminently dangerous that the accused must be presumed to have known that it would, in all probability, cause death or such bodily injury as is likely to cause death, then unless he can meet this presumption his offence will be culpable homicide, and it would be murder unless he can bring it under one of the Exceptions.<sup>76.</sup> Thus, a man who strikes at the back of another a violent blow with a formidable weapon<sup>77.</sup> or who strikes another in the throat with a knife<sup>78.</sup> must be taken to know that he is doing an act imminently dangerous to the life of the person at whom he strikes and that a probable result of his act will be to cause that person's death.<sup>79.</sup>

This clause also provides for that class of cases where the acts resulting in death are calculated to put the lives of many persons in jeopardy without being aimed at any one in particular, and are perpetrated with a full consciousness of the probable consequences, e.g., where death is caused by firing a loaded gun into a crowd [vide Illustration (d)], or by poisoning a well from which people are accustomed to draw water.

The Supreme Court has held that although this clause is usually invoked in those cases where there is no intention to cause the death of any particular person, the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death.<sup>80.</sup>

Where it was shown that the spurious liquor was sold from the local vends belonging to the accused persons coupled with the fact that after the tragedy struck, the accused persons even tried to destroy remaining bottles, it was held that the accused had full

knowledge of the fact that the bottles contained substance methyl and also about the disastrous consequences thereof, thus bringing their case within the four corners of section 300 fourthly.<sup>81.</sup>

#### **[s 300.16] As to dying declarations.—**

In spite of all the importance attached and the sanctity given to the piece of dying declaration, Courts have to be very careful while analysing the truthfulness and, genuineness of the dying declaration and should come to a proper conclusion that the dying declaration is not a product of prompting or tutoring.<sup>82.</sup>

#### **[s 300.16.1] Benefit of doubt.—**

An accused person cannot be given the benefit of doubt only on the ground that injuries on his person were not explained particularly when the injuries are of simple and superficial nature.<sup>83.</sup>

#### **[s 300.16.2] Death in custody.—**

In *State of TN v Balkrishna*,<sup>84.</sup> it was held that merely because the death of the person occurred in police custody, an immediate inference of murder could not be drawn against the police.

#### **[s 300.17] Non-explanation of injuries.—**

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. However, there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries.<sup>85.</sup>

#### **[s 300.18] Exception 1.—Provocation.—**

Anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity ought not to be punished equally with ferocity or other evil feelings.

The act must be done *whilst the person doing it is deprived of self-control* by grave and sudden provocation. That is, it must be done under the immediate impulse of provocation.<sup>86.</sup>

#### **[s 300.19] Meaning of the words "grave" and "sudden".—**

The expression 'grave' indicates that provocation be of such a nature so as to give cause for alarm to the accused. 'Sudden' means an action which must be quick and unexpected so far as to provoke the accused. The question of whether provocation was grave and sudden is a question of fact and not one of law. Each case is to be considered according to its own facts.<sup>87.</sup>

The mode of resentment should bear some proper and reasonable relationship to the sort of provocation that has been given. The test to be applied is that of the effect of the provocation on a reasonable man, so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. It is important to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable person time to cool, and account must be taken of the instrument with which the homicide had been effected.<sup>88.</sup> The mode of resentment must bear a reasonable relationship to the provocation.<sup>89.</sup>

*Principles relating to "grave and sudden provocation" summarised by the Supreme Court*

(1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to [section 300 of the Indian Penal Code](#).

(3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

(4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

*KM Nanavati v State of Maharashtra.*<sup>90.</sup>

An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury.<sup>91.</sup>

The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. Words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the Exception. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.<sup>92.</sup>

**[s 300.20] Self-control.—**

This term as it appears in section 300, Exception 1 is a subjective phenomenon and can be inferred from the surrounding circumstances in a given case. In order to find out whether the last act of provocation on which the offender caused the death was

sufficiently grave to deprive the accused of the power of self-control, the previous acts of provocation caused by the person can always be taken into consideration.<sup>93.</sup>

### **[s 300.21] Grave and Sudden: Cases.—**

Where there is sufficient time for cooling down, there would be no sudden provocation and the act of the accused would be a deliberate one. Thus, where the accused after receiving the provocation in a school committee meeting went to his house, brought a gun and thereafter shot chasing fleeing men, his action did not fall within this exception but was an act of murder.<sup>94.</sup>

What is critical for a case to fall under Exception 1 to [section 300, IPC, 1860](#) is that the provocation must not only be grave but sudden as well. It is only where the following ingredients of Exception 1 are satisfied that an accused can claim mitigation of the offence committed by him from murder to culpable homicide not amounting to murder:

- (1) The deceased must have given provocation to the accused.
- (2) The provocation so given must have been grave.
- (3) The provocation given by the deceased must have been sudden.
- (4) The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and
- (5) The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of self-control.<sup>95.</sup>

### **[s 300.22] Doctrine of, and acts amounting to, sustained provocation.—**

What Exception 1 of section 300 contemplates is a grave and sudden provocation whereas the ingredient of sustained provocation is a series of acts more or less grave spread over a certain period of time, the last of which acting as the last straw breaking a camel's back may even be a very trifling one. Where the accused had killed an innocent woman and an infant of a family merely on the suspicion of illicit intimacy between his wife and the father of the deceased infant and his suspicion appeared to be more imaginary than real, it was held that there was practically no ground to invoke this doctrine. Besides, as there was nothing to support his suspicion and there was no enmity between the accused and the deceased either, the plea of sustained provocation was not tenable under section 300, Exception 1.<sup>96.</sup>

### **[s 300.23] Adulterous intercourse.—**

A man in love with a woman who had repulsed his suit might be so angry as to lose control of himself at the sight of her engaged in sexual intercourse with another, but if he kills one or both of them, he cannot plead grave provocation in mitigation of his offence. The law that, when a husband discovers his wife in the act of adultery and thereupon kills her, he is guilty of manslaughter and not murder, has no application where the woman concerned is not the wife of the accused.<sup>97.</sup>

### **[s 300.24] CASES.—**

Adulterous intercourse has been held, in several cases, to give grave and sudden provocation.<sup>98</sup> It is not necessary for the husband to plead seeing of actual intercourse between his wife and the paramour.<sup>99</sup> Where the accused killed the deceased as he saw the deceased committing sodomy on his son, the case undoubtedly fell within this Exception and he was liable to be convicted only under section 304, Part II and not under [section 302, IPC, 1860](#).<sup>100</sup>

However, if the death of the adulterer is caused not in a fit of passion but with subsequent deliberation, this Exception does not apply.

### **[s 300.25] Quarrel.—**

Where two friends happened to quarrel suddenly and one inflicted a single knife injury to the other which was not aimed at any vital part and the doctor verified that the injury should not have ordinarily caused death, he was punished under section 304, Part II.<sup>101</sup>

### **[s 300.26] Exception 2.—Exceeding right of private defence.—**

This Exception provides for the case of a person who exceeds the right of private defence. The authors of the Code observed:

Wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and... voluntary culpable homicide in defence.

The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed; but it authorizes acts which lie very near to such homicide; and this circumstance, we think, greatly mitigates the guilt of such homicide.

That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing; but we cannot think that the law ought to punish such killing as murder; for the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage; to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg; and it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the same assailant; that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment, seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death.<sup>102</sup>

### **[s 300.27] When the offender is not entitled to get the benefit of this exception.**

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A fortiori in cases where an accused sets up right of private defence, the first and the foremost question that would fall for determination by the Court would be whether the accused had the right of private defence in the situation in which death or other harm was caused by him. If the answer to that question is in the negative, Exception 2 to section 300 of the Code would be of no assistance. Exception 2 presupposes that the

offender had the right of private defence of person or property but he had exceeded such right by causing death. It is only in case answer to the first question is in the affirmative, viz., that the offender had the right of defence of person or property, that the next question, viz., whether he had exercised that right in good faith and without premeditation and without any intention of doing more harm than was necessary for the purpose of such defence would arise. Should answer to any one of these questions be in the negative, the offender will not be entitled to the benefit of Exception 2 to section 300 of the Code. <sup>103</sup>.

### **[s 300.28] CASES.—No right of private defence.—**

Where both sides can be convicted for their individual acts and normally no right of private defence is available to either party and they will be guilty of their respective acts. <sup>104</sup>. There was no premeditation and the act was committed in a heat of passion and the appellant had not taken any undue advantage or acted in a cruel manner. There was a fight between the parties. The case falls under the fourth exception to [section 300, IPC, 1860](#). <sup>105</sup> The accused were, in fact, aggressors and being members of the aggressors' party none of the accused can claim right of self-defence. <sup>106</sup>. Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death. It has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. Right of private defence has been rightly discarded. <sup>107</sup>. After an altercation and exchange of abuses, two persons aimed rifles at each other. After one of them had lowered his rifle, the other fired at him killing him. It was held that the accused was not entitled to the right of private defence and was convicted under section 300. <sup>108</sup>.

### **[s 300.29] Exceeding Right of Private Defence.—**

While exercising his right of private defence of property, the accused exceeded his right of private defence and killed a man. It was held that the case fell within Exception 2 of section 300 and as such he was liable to be punished under section 304, Part I and not under [section 302, IPC, 1860](#). <sup>109</sup>. To ward off an attack with a stick, a stab wound puncturing the heart is not justified. It is a clear case of offence under section 304, Part I, [IPC, 1860](#). <sup>110</sup>. So also is the case of killing an unarmed trespasser with *chhura* blows which punctured both the heart and the lung. <sup>111</sup>.

A dispute over lease of agricultural land led to murder. The accused appeared armed with deadly weapons. Two persons were killed in separate incidents. The Court said that this indicated that there was pre-meditation. The acts done showed that there was intention to do more harm than was necessary for the purposes of self-defence. Hence, the offences were not in the category of culpable homicide not amounting to murder. <sup>112</sup>.

The Court found that at some point of time, the accused (appellant) was exercising his right of private defence, but that had ceased to exist long before the time when the deadly blow was administered. His conviction was altered to section 304, Part I. <sup>113</sup>.

### **[s 300.30] Causing injury after private defence ceased to be available.—**

There was a scuffle between the accused persons and the complainant party. One of the accused persons fired a gunshot of which one member of the complainant party died. The injury was caused when members of the complainant party were fleeing away. There was the right of private defence before the retreat. Thus, he exceeded the right of private defence. The Court said that his act was covered by Exception 2 to section 300. He was liable to be punished under section 304, Part II.<sup>114.</sup>

### **[s 300.31] Exception 3.—Public servant exceeding his power.—**

This Exception protects a public servant, or a person aiding a public servant acting for the advancement of public justice, if either of them exceeds the powers given to them by law and causes death. It gives protection so long as the public servant acts in good faith, but if his act is illegal and unauthorised by law, or if he glaringly exceeds the powers entrusted to him by law, the Exception will not protect him. Where death was caused by a constable under orders of a superior, it being found that neither he nor his superior believed that it was necessary for public security to disperse certain reapers by firing on them, it was held that he was guilty of murder since he was "not protected in that he obeyed the orders of his superior officer."<sup>115.</sup> Exception 3 to [section 300, IPC, 1860](#) pre-supposes that a public servant who causes death must do so in good faith and in due discharge of his duty as a public servant and without ill-will towards the person whose death is caused. The positive case set up by the defence that firing was in self-defence has been rejected by the trial court, High Court as well by the Supreme Court, the question of any good faith does not arise. The appellants had fired without provocation at the car killing two innocent persons and injuring one. The obligation to prove an exception is on the preponderance of probabilities but it nevertheless lies on the defence.<sup>116.</sup>

### **[s 300.32] Exception 4.—Death caused in sudden fight.—**

A perusal of the provision would reveal that four conditions must be satisfied to bring the matter within Exception 4:

- (i) it was a sudden fight;
- (ii) there was no premeditation;
- (iii) the act was done in the heat of passion; and that
- (iv) the assailant had not taken any undue advantage or acted in a cruel manner.<sup>117.</sup>

### **[s 300.33] "Fight": meaning of.—**

The 'fight' occurring in Exception 4 to [section 300, IPC, 1860](#) is not defined in [IPC, 1860](#). It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case.<sup>118.</sup>



The language of Exception 4 to section 300 is, thus, clear 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 provided the offender has not taken undue advantage or acted in a cruel or unusual manner. In order to bring a case under Exception (4) to [section 300, IPC, 1860](#), the evidence must show that the accused without any premeditation and in a heat of passion and without having undue advantage had not acted in cruel manner. Every one of these circumstances is required to be proved to attract Exception (4) to [section 300, IPC, 1860](#) and it is not sufficient to prove only some of them. None of the ingredients have been proved in evidence to bring the case under Exception (4) to [section 300, IPC, 1860](#).<sup>119</sup> Case comes under Exception 4 where the prosecution evidence sufficiently suggested that a scuffle had taken place on the dingy where the appellant and his companions were trying to recover the dingy while the deceased was preventing them from doing so, and in the course of this sudden fight and in the heat of passion, the appellant assaulted the deceased and pushed him in the sea eventually resulting in his death.<sup>120</sup> Where there was no pre-meditation and the act was committed in a heat of passion and the appellant had not taken any undue advantage or acted in a cruel manner and there was a fight between the parties, the Supreme Court found that the case falls under the fourth exception to [section 300, IPC, 1860](#) and the conviction altered from [section 302, IPC, 1860](#) to section 304, Part I, [IPC, 1860](#).<sup>121</sup> Heat of passion requires that there must be no time for the passions to cool down and in this case the parties have worked themselves into a fury on account of the verbal altercation in the beginning.<sup>122</sup>

This Exception was held not to apply to a case where two bodies of men, for the most part armed with deadly weapons, deliberately entered into an unlawful fight, each being prepared to cause the death of the other, and aware that his own might follow, but determined to do his best in self-defence, and in the course of the struggle death ensued.<sup>123</sup> An unpremeditated assault (in which death is caused) committed in the heat of passion upon a sudden quarrel comes within the Exception.<sup>124</sup>

Exception 4 is attracted only when there is a fight or quarrel which requires mutual provocation and blows by both sides in which the offender does not take undue advantage.<sup>125</sup>

A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1.<sup>126</sup>

The word 'fight' conveys something more than a verbal quarrel.<sup>127</sup> It takes two to make a fight. It is not necessary that weapons should be used in a fight. In order to constitute fight, it is necessary that blows should be exchanged even if they do not all find their target.<sup>128</sup> The fight must be with the person who is killed and not with another person.<sup>129</sup> The words "undue advantage" in this Exception means "unfair advantage".<sup>130</sup> Where a wordy quarrel had taken place and the quarrel had led to the use of weapons by both the parties against each other, the Supreme Court said that it could not be held to be a kind of case in which the accused had deliberately attacked the deceased with an intention to kill them. It is a case which would fall under the Exception 4 to [section 300, IPC, 1860](#).<sup>131</sup> Where on account of a sudden impulse and without any intention or knowledge of the impending consequences, the accused squeezed the testicles of the other causing shock, cardiac arrest and instant death, the Supreme Court held that the offence in question amounted to grievous hurt punishable under section 325 and not under this section.<sup>132</sup> Where two cultivating parties working in their respective fields picked up a sudden quarrel over the dividing line and death ensued, there was no previous ill-will between them and, therefore, no pre-meditation,



conviction was altered from under section 302 to one under section 304, Part I read with section 34.<sup>133</sup> Where, on the other hand, the incident did take place at the spur of the moment and evidence showed that the accused persons intentionally assaulted the deceased and his family in a brutal manner, their conviction under section 300 was held to be proper.<sup>134</sup> The accused persons cannot argue successfully that the incident occurred at the spur of the moment where they came to the place of occurrence armed with deadly weapons. In this case, the evidence established that it was a pre-meditated act, thus their conviction for the offence punishable under [section 302, IPC, 1860](#) was held proper.<sup>135</sup> In a sudden fight in heat of passion and without pre-meditation the accused armed with deadly weapon inflicted fatal blows on the unarmed deceased even when he fell on the ground. It was held that Exception 4 of section 300 was not attracted and the conviction of the accused for murder was proper.<sup>136</sup>

Where the offender took an undue advantage or acted in a cruel and unusual manner, it was held that the benefit of Exception 4 could not be given to him. The Supreme Court observed that the weapon used or the manner of attack is out of all proportion, that fact must be taken into consideration for deciding whether undue advantage was taken.<sup>137</sup>

A person opened the door on the call of his uncle who was under assault. He was unarmed and came out to see what was happening. He received a gunshot at his chest causing death. The Court said that the appellant had taken undue advantage of his position at the time. He could not claim the benefit of Exception 4.<sup>138</sup>

Where though there was a sudden quarrel between the accused and the deceased, there was absolutely no fight between the two as there was no exchange of blows, nor any attack from the side of the deceased who was totally unarmed but nevertheless the accused attacked the deceased with an axe causing his death, it was held that his case did not fall either within Exception 4 or Exception 2 and he was squarely liable under [section 302, IPC, 1860](#).<sup>139</sup> A sudden fight developed between the accused and the deceased while the former was telling the latter that he should not carry his cattle by the side of the field of the accused. Three brothers of the accused rushed to his rescue and belaboured the deceased with whatever weapons they had in their hands. The deceased died of multiple injuries and broken bones. The ferocious cruelty established intention to cause death and took the case out of the exception.<sup>140</sup>

The accused abused a road sweeper who happened to throw mud on him. The father of the sweeper slapped the accused. The infuriated accused went away and came back with others. He alone, however, inflicted the fatal blow. The occurrence was of sudden origin because the gap between the injury and quarrel was that of only a few minutes. There was no previous enmity and blows were not repeated as the deceased fell down helpless. There was no unusual cruelty. The benefit of Exception 4 was allowed.<sup>141</sup> In a quarrel between the accused and his father, the accused attacked his father with a dagger causing death and also attacked the intervener who were his stepmother and sisters. No injury was caused to the accused because all others were unarmed. The accused took undue advantage of that fact. He acted in a cruel manner. The exception was not attracted. He was guilty of murder.<sup>142</sup> It cannot be said in all cases of a single blow that section 302 would not be attracted. A single blow in some cases may entail conviction under section 302 in some cases or under section 304 and in some cases under section 326. Acting on this principle in a case where the victim was invited to a particular place and there three associates of the accused caught hold of him and the accused delivered a single knife blow on the chest, about which it could not be said that it was not inflicted without premeditation, the Court said that it could not be said that the accused had not taken undue advantage. Exception 4 was not attracted.<sup>143</sup>

Where the accused, who had gone along with the deceased and others, picked up a quarrel with the deceased, entered his house, and came back with a knife and gave blows to the deceased and others who tried to stop them and then ran away, it was held that Exception 4 to section 300 was not applicable. Conviction under section 302 was proper.<sup>144</sup> A quarrel took place between a son and his father just outside the son's house. The son dragged the father into the Courtyard. His other sons came out to his rescue. The son retreated into the room, bolted it from inside and shot at them from the window. One of his brothers received a bullet at his chest and died. The plea of self-defence was not accepted. His father and brothers were the eye-witnesses who were naturally there for saving the skin of their father. The accused shot at them from the bolted security of his room.<sup>145</sup>

A previous quarrel triggered off because of sarcastic remarks made during the occasion of a marriage. Three accused started shooting with their respective guns at unarmed victims from close range on vital parts of their bodies. The victims had merely indulged in verbal duel with them. The accused acted in cruel and unusual manner. Conviction for the offence of murder was held to be proper, Exception 4 being not applicable.<sup>146</sup>

### **[s 300.34] Comparison of Exception 1 (provocation) with Exception 4 (sudden fight).—**

Exception 4 of [section 300, IPC, 1860](#) covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1, there is total deprivation of self-control, in the case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct, it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4, all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to [section 300, IPC, 1860](#) is not defined in the [IPC, 1860](#). It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that