

IPC, 1860 and the trial Court has rightly held so.³⁷⁹ In another hit and run case,³⁸⁰ which killed seven persons and caused injuries to eight persons, the Court held that the case falls under section 304, Part II and not under section 304A by holding that the person must be presumed to have had the knowledge that, his act of driving the vehicle without a licence in a high speed after consuming liquor beyond the permissible limit, is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the road.

[s 304.14] Alteration of Charge from section 304A to section 304, Part II.— Permissibility.—

Neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under section 304A or section 304, Part II, IPC, 1860 except for the fact that the forum trying the charge might have been different, which by itself, in our opinion, would not cause any prejudice. This is because at any stage of the trial, it would have been open to the concerned Court to have altered the charge appropriately depending on the material that is brought before it in the form of evidence.³⁸¹

Permissibility to try and convict a person for the offence punishable under section 304, Part II, IPC, 1860 and the offence punishable under section 338, IPC, 1860 for a single act of the same transaction. There is no incongruity, if simultaneous with the offence under section 304, Part II, a person who has done an act so rashly or negligently endangering human life or the personal safety of the others and causes grievous hurt to any person is tried for the offence under section 338, IPC, 1860. In view of the above, the Court opined that, there is no impediment in law for an offender being charged for the offence under section 304, Part II IPC, 1860 and also under sections 337 and 338, IPC, 1860. The two charges under section 304, Part II, IPC, 1860 and section 338, IPC, 1860 can legally co-exist in a case of single rash or negligent act where a rash or negligent act is done with the knowledge of likelihood of its dangerous consequences.³⁸²

³¹⁹. Subs. by Act 26 of 1955, section 117 and Sch, for transportation for life (w.e.f. 1-1-1956).

³²⁰. *Afrhim Sheikh*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : (1964) 2 Cr LJ 350 .

³²¹. *SJ Vaghela v State of Gujarat*, AIR 2013 SC 571 [LNIND 2012 SC 1562] : 2013 Cr LJ 390 (SC).

³²². *Rampal Singh v State of UP*, 2012 Cr LJ 3765 : (2012) 8 SCC 289 [LNIND 2012 SC 425] relied on *Mohinder Pal Jolly v State of Punjab*, 1979 AIR SC 577.

³²³. *Harendra Mandal's case*, JT 1993 (3) SC 650 [LNIND 1993 SC 177] : 1993 (1) Crimes 984 [LNIND 1993 SC 177] .

³²⁴. *Ruli Ram v State of Haryana*, AIR 2002 SC 3360 [LNIND 2002 SC 585] : (2002) 7 SCC 691 [LNIND 2002 SC 585] .

³²⁵. *Jagriti Devi v State of HP*, (2009) 14 SCC 771 [LNIND 2009 SC 1376] ; *Surajit Sarkar v State of WB*, AIR 2013 SC 807 [LNIND 2012 SC 361] : 2013 (2) Cr LJ 1137 , when the accused had knowledge that hitting with iron rod is likely to cause death, he is liable to be convicted under

section 304, Part II; *Ranjitham v Basavaraj*, (2012) 1 SCC 414 [LNIND 2011 SC 1185] : 2012 Cr LJ 2135 : AIR 2012 SC 1856 [LNIND 2011 SC 1185] .

326. *Ajit Singh v State of Punjab*, 2011 (10) Scale 127 [LNIND 2011 SC 844] : (2011) 9 SCC 462 [LNIND 2011 SC 844] : (2011) 3 SCC (Cr) 712; on facts, when Justice Gyan Sudha Mishra concluded that the case falls under section 304, Part II, Justice Bedi held it as a clear case of murder punishable under section 302. The question referred to the larger bench.

327. *Rampal Singh v State of UP*, 2012 AIR (SCW) 4211 : 2012 Cr LJ 3765 : (2012) 8 SCC 289 [LNIND 2012 SC 425] .

328. *Gandi Doddabasappa v State of Karnataka*, AIR 2017 SC 1208 [LNIND 2017 SC 103] .

329. *Santosh v State of Maharashtra*, 2015 Cr LJ 4880 : (2015) 7 SCC 641 [LNIND 2015 SC 275] .

330. *Gandi Doddabasappa v State of Karnataka*, AIR 2017 SC 1208 [LNIND 2017 SC 103] .

331. *Ujagar Singh*, (1917) PR No 45 of 1917.

332. *Putti Lal*, 1969 Cr LJ 531 . Death by single hammer blow falling on head, knowledge but no intention, conviction under Part II, *Swarup Singh v State of Haryana*, AIR 1995 SC 2452 : 1995 Cr LJ 4168 . Injury inflicted by the accused was sufficient in the ordinary course of nature to cause death but he had no intention to cause such injury to the victim who came in between, it was held that section 300, Thirdly, could not be invoked and conviction of the accused was converted to one under section 304, Part II, *Sebastian v State of Kerala*, 1992 Cr LJ 3642 (Ker).

333. *Jayaraj*, 1976 Cr LJ 1186 : AIR 1976 SC 1519 . *Public v State of AP*, (1995) 2 Cr LJ 1738 (AP), murder without motive, conviction based on appreciation of evidence, punished under Part I. *Bhua Singh v State of Punjab*, (1995) 2 Cr LJ 1531 , 1531 (P&H), in a sudden occurrence and without pre-meditation, the accused gave a single blow with a blunt weapon which fell upon head causing death, the accused was held to be punishable under Part I. His sentence of eight-year term was reduced to four years. *Pandurang v State of Maharashtra*, (1995) 1 Cr LJ 762 (Bom), in an altercation and fight, one taking out pen-knife from his pocket and inflicting a chest blow, punished under Part I, section 304. *Karnail Singh v State of Punjab*, AIR 1995 SC 1972 : 1995 Cr LJ 3625 : 1997 SCC (Cri) 749 , the accused causing a number of injuries to the deceased, his conviction under Part I not disturbed. *State of Punjab v Karnail Singh*, AIR 1995 SC 1970 : 1995 Cr LJ 3624 , unarmed victims, fired at, one fired at while running away, no danger from them, conviction under section 300 and section 304, Part I. *Devku Bhika v State of Gujarat*, AIR 1995 SC 2171 : 1995 Cr LJ 3975 (SC). Where the accused infuriated by the refusal of the deceased to send his daughter to spend one night with him, picked up a stick lying nearby and assaulted him with it without any prior enmity causing injuries on the vital parts of the body but simple in nature, it was held he could be convicted under section 304, Part II and not under section 302. In the case of *Bonda Devesu v State of AP*, 1996 (7) SCC 115 , the accused belonged to a tribal community and the deceased had behaved in an obscene way with wife of the accused. Having regard to the socio-economic background of the accused, the Court held it to be an offence punishable under section 304, Part I and not section 302, IPC, 1860.

334. *Randhir Singh*, 1982 Cr LJ 195 (SC) : AIR 1982 SC 55 : (1981) 4 SCC 484 . See also *Gurdip Singh v State of Punjab*, AIR 1987 SC 1151 : 1987 Cr LJ 987 : (1987) 2 SCC 14 , where there was no intention to cause death, but death nevertheless resulted, conviction under section 302 was converted to one under this section with seven-year RI; *Ramesh Laxman Pardesi v State of Maharashtra*, 1987 SCC (Cr) 615 : 1987 Supp SCC 1 , single blow under heated exchange of words resulting in death, seven-year RI already undergone, held sufficient.

335. *Dhyaneshwar*, 1982 Cr LJ 1870 (SC).

336. *Rupinder Singh Sandhu v State of Punjab*, AIR 2018 SC 2395 [LNIND 2018 SC 276] .

337. *Sarabjeet*, 1983 Cr LJ 961 (SC) : AIR 1983 SC 529 [LNIND 1982 SC 173] : (1984) 1 SCC 673 [LNIND 1982 SC 173] . Assault by several persons, injuries, none sufficient to cause death

individually, conviction under sections 326/34 and not 302/34, *Ram Meru v State of Gujarat*, [AIR 1992 SC 969](#) : [1992 Cr LJ 1265](#) . A woman protested against construction on the adjoining land. The accused abused her, snatched her six-year-old daughter from her hand and threw her away in order to give a good thrashing to the woman. The baby died, held, no intention, nor knowledge, punishable under section 325 and not 299, *Ram Pal Singh v State of UP*, [1993 Cr LJ 2715](#) (All). *Shankar Kondiba Gore v State of Maharashtra*, [\(1995\) 1 Cr LJ 93](#) (Bom), single stab injury on abdomen puncturing artery at ilium, death, knowledge attributed, conviction under Part II. *NK Khakre v State of Maharashtra*, [1996 Cr LJ 562](#) (Bom), striking at the head of eight-year-old child resulting in death, knowledge but not intention, conviction under Part II. *Balaur Singh v State of Punjab*, [AIR 1995 SC 1956](#) : [1995 Cr LJ 3611](#) , in a free-fight between two parties, the accused caused a single injury by means of a gandasa on the head of the deceased and he died after six days because of complications of coma and asphyxia, caused by the injury, the dimension of the injury or situs thereof was not found to be calculated or targeted intentionally, besides the blow was not repeated, conviction of the accused was altered from section 302 to section 304, Part II.

338. *Jagtar Singh*, [1983 Cr LJ 852](#) (SC) : [AIR 1983 SC 463](#) [[LNIND 1996 SC 826](#)] : [\(1983\) 2 SCC 342](#) ; see also *Hari Ram*, [1983 Cr LJ 346](#) (SC) : [AIR 1983 SC 185](#) ; *Jawaharlal*, [1983 Cr LJ 429](#) (SC) : [AIR 1983 SC 284](#) ; *Tholan*, [1984 Cr LJ 478](#) : [AIR 1984 SC 759](#) : [\(1984\) 2 SCC 133](#) ; *Bhabagrahi*, [1985 Cr LJ 1847](#) (Ori). The conviction of an accused who did not come under section 302 and who had no intention to kill converted by the Supreme Court in *Gurdip Singh v State of Punjab*, [\(1987\) 2 SCC 14](#) : [AIR 1987 SC 1151](#) : [1987 Cr LJ 987](#) into one under section 304, Part I; *State of UP v Ram Swarup*, 1988 SCC (Cr) 552 : [AIR 1988 SC 1028](#) : 1988 All LJ 555 : 1988 Supp SCC 262 ; *Manibhai Vithalbai v State of Gujarat*, [1988 BLJR 464](#) : (1988) 25 All CC 223 : 1988 Supp SCC 791; *Babu Khan v State of MP*, [1988 Cr LJ 1441](#) MP, single blow falling on heart, conviction under section 304 II, setting aside under section 302; *State of UP v Jodha Singh*, [1989 Cr LJ 2113](#) : [AIR 1989 SC 1822](#) : [\(1989\) 3 SCC 465](#) : 1989 SCC (Cr) 591, punishment for death caused in sudden fight restricted to the period already spent in jail. Sudden heated exchange of words between two fellow-hunters resulting in death of one by gun fire, held punishable under Part I; *Radha Kishan v State of Haryana*, [AIR 1987 SC 768](#) : [1987 Cr LJ 713](#) : [\(1987\) 2 SCC 652](#) ; another case of single blow in a state of drunkenness, *Tarsen Singh v State of Punjab*, 1987 Supp. SCC 600 : [AIR 1987 SC 806](#) [[LNIND 1987 SC 112](#)] ; *Kartar Singh v State of Punjab*, [\(1988\) 1 SCC 690](#) : [AIR 1988 SC 2122](#) , accused contended that he acted in self-defence, prosecution case weak, held punishable under Part II. *Kailash Kaur v State of Punjab*, [AIR 1987 SC 1368](#) [[LNIND 1987 SC 434](#)] : [1987 Cr LJ 1127](#) : [\(1987\) 2 SCC 631](#) [[LNIND 1987 SC 434](#)] , life term for wife burning : *Ram Lal v State of Punjab*, 1989 Supp (1) SCC 21 : 1989 SCC (Cr) 123 : [AIR 1989 SC 1985](#) [[LNIND 1989 SC 471](#)] , conviction for death caused in a sudden fight by one coming to a shop bare-handed for collection of dues, and sentence under section 302 converted to one under section 304, Part I, i.e., eight years' RI; *Dharam Pal Singh v State (Delhi Administration)*, 1989 Supp (1) SCC 165 : 1989 SCC (Cr) 319, a matter of the same kind and Supreme Court holding that death sentence was not called for and also *RN Agarwal v Dharam Pal*, 1989 Supp (1) SCC 386 : 1988 SCC (Cr) 451.

339. *Gauri Shanker Sharma v State of UP*, [AIR 1990 SC 709](#) [[LNIND 1990 SC 8](#)] : 1990 Supp SCC 182 .

340. *Shanmugham v IP Marina Police*, [1996 Cr LJ 3702](#) (Mad).

341. *Hem Raj v State (Delhi Admn)*, [AIR 1990 SC 2252](#) : 1990 Supp SCC 291 : [1990 Cr LJ 2655](#) . *Anil Ruidas v State*, [1988 Cr LJ 1610](#) , son-in-law struck father-in-law in quarrel, conviction under section 304, Part II.

342. *State of Karnataka v Siddappa B Patil*, [AIR 1990 SC 1047](#) : [1990 Cr LJ 1116](#) : 1990 Supp SCC 257 . See *Jayaram Shiva Tagore v State of Maharashtra*, [AIR 1991 SC 1735](#) : [1991 Cr LJ 2192](#) , a plea of earlier release can be considered only when more than 14 years already served. See further, *Abdul Hamid v State of UP*, [AIR 1991 SC 339](#) [[LNIND 1990 SC 637](#)] : [1991 Cr LJ 431](#) , where there was no proof who out of the four who were present administered lathi blow, acquittal of all under this section as well as section 149. The court **relied** upon its own earlier decision in *Gajanand v State of UP*, [AIR 1954 SC 695](#) : [1954 Cr LJ 1746](#) . For another case of acquittal by the Supreme Court on reappraisal of evidence, see *Nain Singh v State of UP*, [\(1991\) 2 SCC 432](#) [[LNIND 1991 SC 119](#)] ; *State of UP v Suresh Chand Shukla*, [AIR 1991 SC 968](#) : [1991 Cr LJ 604](#) . Another similar conviction on direct evidence, *Munir Ahmed v State of Rajasthan*, [1989 Cr LJ 845](#) : [AIR 1989 SC 705](#) : 1989 Supp (1) SCC 377 .

343. *Tota v State of MP*, [\(1995\) 2 Cr LJ 1515](#) (MP), sentence was reduced to that already undergone, **following** *Karam Singh v State of Punjab*, [1993 Cr LJ 3673](#) : (1994) SCC (Cr) 64. Where the accused continued to inflict injuries even after the deceased fell down, he exceeded private defence, conviction under this section.

344. *Krupasindhu v State of Orissa*, [\(1995\) 2 Cr LJ 1488](#) (Ori).

345. *Lalya Dharma v State of Maharashtra*, [\(1995\) 1 Cr LJ 556](#) (Bom), conviction on the basis of the sole evidence of the wife. *Sukhram v State of MP*, [\(1995\) 1 Cr LJ 595](#) (MP), a child of tender years testifying that her father struck her mother's head by a grinding stone, not relied upon, *alibi* also proved. *Phani Bhushan v State of WB*, [AIR 1991 SC 317](#) : [1991 Cr LJ 551](#) , death by blunt weapon, conviction for dowry death quashed which was 21 years ago.

346. *Sundaramurthy v State of TN*, [1990 Cr LJ 2198](#) : [AIR 1990 SC 2007](#) : 1990 Supp SCC 267 ; *BV Danny Mao v State of Nagaland*, [1989 Cr LJ 226](#) (Gau), scuffle. *Hanumantappa v State of Karnataka*, [AIR 1992 SC 599](#) : [1992 Cr LJ 405](#) , the owner of a crop tried to prevent a person who came there with his son to cut his crop and bit at his finger. This provoked his son who struck with the back side of the axe which he was carrying, convicted under this Part. *State v Harisingh*, [1998 Cr LJ 2815](#) (MP), dispute as to right to cultivable land, right of private defence exceeded, punishment under Part I. *Baburam v State*, [1998 Cr LJ 3212](#) (Raj), single blow on head causing death, conviction under Part I. *Harahari Naik v State of Orissa*, [1998 Cr LJ 3948](#) (Ori), no previous meeting between accused persons, each responsible for his own act under section 304, Part I. See also *Vijai Bahadur Singh v State of UP*, [1998 Cr LJ 2358](#) (All); *Jaya Madhavan v State of Kerala*, [1998 Cr LJ 2666](#) (Ker); *Ramanna Ku v State of AP*, [1998 Cr LJ 2716](#) (AP); *Sukhlal v State of MP*, [1998 Cr LJ 3187](#) (MP); *Malkiat Singh v State*, [1998 Cr LJ 4724](#) (P&H).

347. *Kusha Laxman Waghmare v State of Maharashtra*, [2014 Cr LJ 4394](#) : [2014 \(10\) Scale 49](#) [[LNIND 2014 SC 777](#)] .

348. *Shailesh v State of Maharashtra*, [\(1995\) 1 Cr LJ 914](#) (Bom).

349. *SD Soni v State of Gujarat*, [AIR 1991 SC 917](#) [[LNIND 1990 SC 807](#)] : [1991 Cr LJ 330](#) . Another case which had resulted in five years RI, the Supreme Court reduced the sentence to one year which was already undergone and maintained the sentence of fine, *Kuldeep Singh v State of Haryana*, [1996 Cr LJ 1884](#) : [AIR 1996 SC 2988](#) [[LNIND 1996 SC 317](#)] . The accused religious teacher killed one of his woman disciples with his trishul, held, ought to be punished under section 302 and not under Part I of this section. *State of Maharashtra v Vishwas Baburao Desai*, [1989 Cr LJ 677](#) (Bom). Bride died of burns in matrimonial home within seven years of marriage, there was evidence of cruelty and harassment for dowry, husband convicted under Part II, *Prakash Chander v State*, [\(1995\) 1 Cr LJ 368](#) (Del). A man struck his mother with the blunt side of an axe all of a sudden because she hurled abuses on him, resulting in death, punishment under Part I to be proper, *Malkami v State of Orissa*, [1995 Cr LJ 1484](#) (Ori). Two persons armed with sharp weapons assaulted a man with the blunt side of their weapons till he fell down, they

were held liable to be convicted under Part II, *Barkau v State of UP*, [1993 Cr LJ 2954](#) (All). The accused more than once pounced on a lonesome person hitting him with kicks and fist blows intending to assault him severely but not intending to cause death, their conviction under section 302 reduced to one under section 304, Part II, *Ramesh Kumar v State of Bihar*, [AIR 1993 SC 2317](#) [[LNIND 1994 SC 1303](#)] : [1993 Cr LJ 3137](#) .

350. *Pularu v State of MP*, [AIR 1993 SC 1375](#) : [1993 Cr LJ 1809](#) . *Bilai v Orissa*, [1996 Cr LJ 3171](#) (Ori), accused persons attacked the deceased with deadly weapons, no injuries caused after the deceased fell down, conviction under section 304, Part II.

351. *Bawa Singh v State of Punjab*, [1993 Cr LJ 49](#) .

352. *Ramaswamy v State of TN*, 1993 AIR SCW 2683 : [1993 Cr LJ 3253](#) .

353. *Brushava Bartha v State of Orissa*, [1988 Cr LJ 1916](#) (Ori); *Jagbar Singh v State of Punjab*, [AIR 1983 SC 463](#) [[LNIND 1996 SC 826](#)] : [1983 Cr LJ 852](#) , a person passing across the house of the accused was injured by a projecting 'parnala' (drain pipe), he protested resulting in scuffle between the young house inmate (the accused) and him whereupon the accused stabbed with knife causing death because the stab cut the chest, held guilty under section 304, Part II and not section 302. See also *Kulwant Rai v State of Punjab*, [AIR 1982 SC 126](#) and *Re Sundarpandian*, 1988 LW (Cr) 64. *Babrubahan Jal v State of Assam*, [1991 Cr LJ 279](#) . *Ram Kumar v State of UP*, [1990 Cr LJ 1973](#) (All). Accused's wife went away with a friend. Her father brought her from the friend and deposited her for a short while at a relative's. The accused, a boy of 16–17 years of age came there to persuade her for family life and on her point-blank refusal, he lost himself, pulled out knife from his pocket, attempted one blow which the relative ward off but succeeded in piercing the stomach in second blow. This injury proved fatal in course of time. Held guilty under section 304, Part II. *State v Sunil Biswas*, [1990 Cr LJ 2093](#) (Cal), punished under this section the police who arrested and subsequently beat the prisoner to death. Two friends bathing in river water, one putting the other as a matter of sport into fast flowing water. Thereafter, they tried to save but failed. Sentence of five years' RI was reduced to three months' RI and a fine of Rs. 5,000. *Benny Francis v State of Kerala*, [1991 Cr LJ 2411](#) (Ker). *Bishwanath Dusadh v State of Bihar*, [1991 Cr LJ 108](#) , Sudden quarrel, *Maniyan v State of Kerala*, [1990 Cr LJ 2515](#) , poison in toddy mixed on the tree itself. Deceased stealthily consumed from pot, section 304, Part II, not section 304A. *Santa Singh v State*, [1987 Cr LJ 342](#) (Del), the accused living in Gurudwara with his son and daughter, his wife had deserted him and was living with her paramour, he all of a sudden killed his daughter, convicted under section 304, Part I and not section 302. *Chanda Lal v State of Rajasthan*, [AIR 1992 SC 597](#) : [1992 Cr LJ 523](#) , 20-year long history of conviction, acquittal and appeal arising out of an episode involving injuries to both sides but two deaths on one side only, punished under section 304, Part II, sentence reduced to that already undergone. *Sukhdev Singh v State of Punjab*, [AIR 1992 SC 755](#) : [1992 Cr LJ 700](#) , where several attacked, the accused-appellant gave blows even after the victim fell, but it could not be said to be the fatal blow, conviction under Part II of section 304. *Murugan v State of TN*, [1992 Cr LJ 930](#) (Mad), accused ran away after causing single knife wound, no enmity, conviction under this Part.

354. *State of Karnataka v R Varadraj*, [\(1995\) 2 Cr LJ 1429](#) (Kant). But see *T Anjanamma v State of AP*, [AIR 1995 SC 946](#) : [\(1995\) 2 Cr LJ 1462](#) , here wife killed her husband by burning him down. The same was fully proved. The Supreme Court felt that scaling down conviction for murder to Part I of section 304 was not proper but it was not disturbed because there was no appeal against it by the State. *Vedpal v State of Haryana*, [1995 Cr LJ 3556](#) (P&H), single blow on head with 'Kassi' (spade) without any prior enmity, death caused, knowledge that the act was likely to cause death, conviction under Part I. *State of Punjab v Tejinder Singh*, [AIR 1995 SC 2466](#)

[LNIND 1995 SC 808] : 1995 Cr LJ 4169 , all the injuries caused with a 'gandasa' were on non-vital part, except one head-injury, conviction under Part I.

355. *Ghansham v State of Maharashtra*, 1996 Cr LJ 27 (Bom).

356. *Roop Ram v State of UP*, 1995 Cr LJ 3499 (All).

357. *Naval Kishore Singh v State of Bihar*, (2004) 7 SCC 502 . *Ramu v State of UP*, (2004) 12 SCC 250 [LNIND 2004 SC 146] : AIR 2004 SC 1605 [LNIND 2004 SC 146] : 2004 Cr LJ 1407 , fatal injury by spear, no motive, six persons took part in the melee, conviction under section 326, three years' RI considered appropriate. *Madan v State of Rajasthan*, (2003) 11 SCC 756 , right of private defence exceeded, defence of property, the accused being a sick person, sentence of seven years' imprisonment was considered appropriate. *Bagdi Ram v State of MP*, (2004) 12 SCC 302 [LNIND 2003 SC 1047] : AIR 2004 SC 387 [LNIND 2003 SC 1047] : (2004) 98 Cut LT 225 : 2004 Cr LJ 632, one blow with *gainti* lying nearby in a heat of passion caused by quarrel, no second attack showed no intention to cause death, conviction under section 304, Part I proper. *Bishan Kumar v State of Delhi*, (2003) 12 SCC 771 , one holding the victim, the other stabbing in the abdomen resulting in death, 10 years' RI reduced to seven years' RI, fine of 1000 rupees maintained, *Chanakya Dhibar v State of WB*, (2004) 12 SCC 398 [LNIND 2003 SC 1146] , unlawful assembly, common object, surrounded the victim, assaulted him, acquittal by the High Court set aside, conviction by the trial judge restored. *State of Rajasthan v Maharaj Singh*, AIR 2004 SC 4205 [LNIND 2004 SC 1662] : (2004) 98 Cut LT 686 : 2004 Cr LJ 4195, conviction justified because of overwhelming evidence, sentence reduced from 10 years' RI to five years' RI. *N Somashekar v State of Karnataka*, (2004) 11 SCC 334 [LNIND 2004 SC 625] , police officer at a swimming pool with wife, the victim sniggered at her, the officer administered him three blows on the mouth, neck and shoulder, he fell dead into the swimming pool, the officer tried to cover it up as drowning, but found guilty, convicted by the High Court as upheld by the Supreme Court.

358. *Gulzar Hussain v State of UP*, AIR 1992 SC 2027 : 1992 Cr LJ 3659 .

359. *Uttam Singh v State of UP*, 1992 Cr LJ 708 (All). *Pirthi v State of Haryana*, 1993 Cr LJ 3517 (P&H).

360. *Kedar Prasad v State of MP*, AIR 1992 SC 1629 : 1992 Cr LJ 2520 .

361. *Parasuraman v State of TN*, AIR 1993 SC 141 [LNIND 1991 SC 447] : 1992 Cr LJ 3939 . *Madhusudan Satpathy v State of Orissa*, AIR 1994 SC 474 : 1994 Cr LJ 144 , the sentence of a convict under Part I was reduced because death resulted from a single blow caused with non-deadly weapon, *Mohammed Salam v State of MP*, 1992 Cr LJ 1612 (MP), blow with dagger, but not with much force, conviction under Part I.

State of Punjab v Gurcharan Singh, 1998 Cr LJ 4560 : AIR 1998 SC 3115 [LNIND 1998 SC 842] , incident at the spur of moment, no intention, only one blow in sudden quarrel. Order of High Court convicting accused under section 304, Part I was held to be proper. *Malkiat Singh v State of Bihar*, 1998 Cr LJ 4712 (Pat), accused and his victim were under influence of drink, injuries caused at the spur of moment without any previous enmity, no undue advantage was taken. Conviction under section 304, Part I. Another similar ruling is in *Jaya Madhavan v State of Kerala*, 1998 Cr LJ 2666 (Ker). See also *Sita Ram v State of Rajasthan*, 1998 Cr LJ 287 (Raj). *Kasam Abdulla Hafiz v State of Maharashtra*, 1998 Cr LJ 1422 : AIR 1998 SC 1451 [LNIND 1997 SC 1558] , stabbing moved inside intestines, conviction under Part I. *Rameshwar v State of UP*, 1997 Cr LJ 2677 (All), attack in connection with land dispute, unintentional killing, conviction under section 304, Part I. *Gopal v State of TN*, 1997 Cr LJ 105 (Mad), killing wife by inflicting indiscriminate cuts on her neck. His surrender supported the inference of his being the killer, conviction. *Paramasivam v State of TN*, 1997 Cr LJ 165 (Mad), one accused committed the offence and the

others, in order only to save him, gave out a false statement before the Village Administrative Officer, conviction under sections 304, Part I and 201.

362. *Harendra Nath Mandal v State of Bihar*, AIR 1993 SC 177 [LNIND 1993 SC 177] : 1993 Cr LJ 2830 : (1993) 2 SCC 435 [LNIND 1993 SC 177] .

363. *Manphool Singh v State of Haryana*, AIR 2018 SC 3995 .

364. *Bachan Singh v State of Punjab*, AIR 1993 SC 305 : 1993 Cr LJ 66 : 1993 Supp (2) SCC 490 ; *Trilok Singh v State (Delhi Admn.)*, 1994 Cr LJ 639 : 1995 SCC (Cri) 158 : AIR 1994 SC 654 , the accused apprehended danger, seeing two enemies approaching him with arms, he went inside, came back with knife and without move inflicted knife blows on them, one died, the right of private defence exceeded, conviction under Part I. *Savita Kumari v UOI*, 1993 AIR SCW 1174 : 1993 Cr LJ 1590 : (1993) 2 SCC 357 [LNIND 1993 SC 87] , clash between two groups, one causing more than one firearm injuries, right of private defence exceeded, punishable under Part I. *Ranveer Singh v State of MP*, (2009) 3 SCC 384 [LNIND 2009 SC 123] : AIR 2009 SC 1658 [LNIND 2009 SC 123] : (2009) Cr LJ 1534 , exceeding the right of private defence, the High Court rightly punished under Part I.

365. *Khuddu v State of UP*, AIR 1993 SC 1538 : 1993 Cr LJ 2008 : 1993 Supp (3) SCC 15 .

366. *Hari Ram v State of Rajasthan*, 1992 Cr LJ 3168 (Raj).

367. *Bahadur Singh v State of Punjab*, AIR 1993 SC 70 : 1992 Cr LJ 3709 : (1992) 4 SCC 503 . *Pramod v State of UP*, 2001 Cr LJ 925 (All), enmity on account of evidence against the accused, the latter entered the house, the victim lady told him to go away and turned back, the accused struck her at the back with a knife. The court felt that there was no intention to cause death. He was young boy of 17 years old, no criminal record. Life imprisonment was reduced to five years' RI. *Sekar v State of TN*, 2003 Cr LJ 53 (SC), altercation over grazing sheep, owner of sheep struck the other and struck him in the neck again even after he had fallen down. Private defence exceeded conviction under section 302 shifted to section 304, Part I, 10 years' imprisonment instead of life imprisonment.

368. *V Sreedharan v State of Kerala*, AIR 1992 SC 754 : 1992 Cr LJ 701 : 1992 Supp (3) SCC 21 . *Subramaniam v State of Kerala*, 1993 Cr LJ 1387 : 1993 AIR SCW 1014, minor injuries, none on vital part, conviction under Part I. *RC Atodaria v State of Gujarat*, AIR 1994 SC 1060 : 1994 Cr LJ 1425 , sudden quarrel, one stab injury, punished under Part I. *State of Rajasthan v Satyanarayanan*, AIR 1998 SC 2060 [LNIND 1998 SC 88] : 1998 Cr LJ 2911 , sudden quarrel between two neighbours over boundary dispute. One came out with a knife. Other's brother intervened who chanced to receive the knife wound to death. Punishment under Part I.

369. *State of MP v Abdul Latif*, AIR 2018 SC 1409 [LNINDU 2018 SC 19] .

370. *V Subramani v State of TN*, 2005 Cr LJ 1727 : AIR 2005 SC 1983 [LNIND 2005 SC 224] : (2005) 10 SCC 358 [LNIND 2005 SC 224] .

371. *Changdeo v State of Maharashtra*, 1992 Cr LJ 1240 (Bom). See also *Avula Venkateswarlu v State of AP*, 1994 Cr LJ 2232 (AP), quarrel between husband and wife over a petty matter, the husband caused multiple injuries resulting in death, conviction under Part I; *Madaiah v State of Karnataka*, 1992 Cr LJ 502 (Kant).

372. *Sanjay v State of UP*, 2016 Cr LJ 1117 : AIR 2016 SC 282 [LNINDU 2016 SC 8] .

373. *Narendra v State of Rajasthan*, 2014 Cr LJ 4396 : 2014 All MR (Cr) 3760.

374. *Manoj Kumar v State of Himachal Pradesh*, AIR 2018 SC 2693 [LNIND 2018 SC 274] .

375. *State through CBI, v Sanvlo Naik*, AIR 2017 SC 4976 .

376. *Monir Alam v State of Bihar*, AIR 2010 SC 698 [LNIND 2009 SC 2013] : 2010 Cr LJ 1418 : (2010) 12 SCC 26 [LNIND 2009 SC 2013] .

377. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
378. *Naresh Giri v State of MP*, (2008) 1 SCC 791 [LNIND 2007 SC 1313] : 2007 (13) Scale 7 [LNIND 2007 SC 1313] .
379. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .
380. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
381. *State of Maharashtra v Salman Salim Khan*, AIR 2004 SC 1189 [LNIND 2003 SC 1122] : (2004) 1 SCC 525 [LNIND 2003 SC 1122] .
382. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

THE INDIAN PENAL CODE

CHAPTER XVI OF OFFENCES AFFECTING THE HUMAN BODY OF OFFENCES AFFECTING LIFE

383.[[s 304A] Causing death by negligence

Whoever causes the death of any person by doing any rash or negligent act ¹ not amounting to culpable homicide, ² shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

COMMENT.—

Section 304A was inserted in [IPC, 1860](#) by [IPC \(Amendment\) Act, 1870](#) (27 of 1870) to cover those cases wherein a person caused the death of another by such acts as are rash or negligent but there is no intention to cause death and no knowledge that the act will cause death. The case should not be covered by sections 299 and 300 only then it will come under this section. The section provides punishment of either description for a term which may extend to two years or fine or both in case of homicide by rash or negligent act. ^{384.}

Essential ingredients of section 304A are the following:

- (i) Death of a person
- (ii) Death was caused by accused during any rash or negligence act.
- (iii) Act does not amount to culpable homicide.

And to prove negligence under Criminal Law, the prosecution must prove:

- (i) The existence of duty.
- (ii) A breach of the duty causing death.
- (iii) The breach of the duty must be characterised as gross negligence. ^{385.}

[s 304A.1] Scope.—

In order that a person may be guilty under this section, the rash or negligent act must be the direct or proximate cause of the death. ^{386.} The section deals with homicide by negligence.

[s 304A.2] Concept of Negligence in Civil law and Criminal Law.—

The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be of a much higher degree. A negligence which is not of such a high degree may provide a ground for action in civil law but cannot form the basis for prosecution. To prosecute a

medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do.³⁸⁷ For an act of negligence to be culpable in criminal law, the degree of such negligence must be higher than what is sufficient to prove a case of negligence in a civil action. Judicial pronouncements have repeatedly declared that in order to constitute an offence, negligence must be gross in nature.³⁸⁸

1. 'Rash or negligent act'.—The term negligence is not defined in the Code. As per Straight, J, the criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, it was the imperative, duty of the accused person to have adopted.³⁸⁹ It may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.³⁹⁰ The distinction between the "rashness" and "negligence" is that while in the former, the doer knows about the consequences, but in the latter, the doer is unaware of the consequences. A rash act is a negligent act done precipitately. Negligence is the genus, (sic) of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not.³⁹¹ The section explicitly lays down that only that 'act' which is "*so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished...*". Thus, the section itself carves out the standard of criminal negligence intended to distinguish between those whose failure is culpable and those whose conduct, although not up to standard, is not deserving of punishment.³⁹²

Negligence signifies the breach of a duty to do something which a reasonably prudent man would under the circumstances have done or doing something which when judged from reasonably prudent standards should not have been done. The essence of negligence whether arising from an act of commission or omission lies in neglect of care towards a person to whom the Defendant or the accused as the case may be owes a duty of care to prevent damage or injury to the property or the person of the victim. The existence of a duty to care is, thus, the first and most fundamental of ingredients in any civil or criminal action brought on the basis of negligence, breach of such duty and consequences flowing from the same being the other two. It follows that in any forensic exercise aimed at finding out whether there was any negligence on the part of the Defendant/accused, the Courts will have to address the above three aspects to find a correct answer to the charge.³⁹³

Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness (*luxuria*). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts, themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried