(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as:

(a) the accused knew to be likely to cause death; or

(b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.[635.]

To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some over act in execution thereof.[636.] To bring a case within the ambit of section 307, the prosecution has to make out the facts and circumstances envisaged by section 300. If the ingredients of section 300 are wholly lacking, there can be no conviction under section 307.[637.] The ingredients of the section are (1) intention or knowledge relating to commission of murder; and (2) the doing of an act towards it.[638.] The Supreme Court held in *Pulicherla Nagaraju v State of AP* that:

> The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.[639.]

In a group clash, one person died and several others were injured, some of them seriously. The accused also received injuries. Two of the accused were convicted under section 307 and others under section 324. The Supreme Court held that, though the injuries caused by the two accused were somewhat serious, the offence for attempt to murder was not made out as their case stood on the same footing as that of others and altered their conviction to one under section 324.[640.]

[s 307.1] Attempt.—

Attempt is an intentional preparatory action which fails in its object—which so fails through circumstances independent of the person who seeks its accomplishment.[641.] The mere use of lethal weapons is sufficient to invoke the provisions of section 307.[642.] There was evidence that the accused dealt with not only one blow but two blows successively with an axe on the head of the victim. It was held that the intention to cause death could be gathered from the circumstances.[643.] It is not necessary to constitute the offence that the attack should result in an injury. An attempt is itself sufficient if there is requisite intention. An intention to murder can be gathered from circumstances other than the existence or nature of the injury.[644.]

To attract the offence the injury need not be caused to vital parts.[645.]

[s 307.2] Whether act committed must be capable of causing death.—

The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, an accused charged under section 307 IPC, 1860 cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.[646.] It is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under section 307 be made out. It is enough if there is an intention coupled with some common act in execution thereof.[647.] In *Hari Singh,*[648.] the Supreme Court added that:

> the intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established there can be no offence of attempt to murder … The intention is to be gathered from all the circumstances, and not merely from the consequences that ensue.

The nature of the weapon used, the manner in which it is used, motive for the crime, severity of the blow, and the part of the body where the injury is inflicted, are some of the factors that may be taken into consideration to determine the intention.

[s 307.3] Acting in self-defence.—

The accused alleged that he was attacked by the assailant party. The plea seemed to the Court to be true because there was no explanation from the prosecution side about injuries sustained by the accused. The medical papers of the complainant did not mention the name of the assailant though it was a medico-legal case. The conviction of the accused for attempt to murder was held liable to be set aside.[649.]

[s 307.4] Rape on young girl.—

Where the accused took away a girl of four years to a lonely place near a canal, sexually assaulted her and threw her in the canal, but was saved by a passer-by, his sentence of three years RI with fine of Rs. 500 under section 307 was raised to seven years RI and fine of Rs. 1,000.[650.]

[s 307.5] Simple hurt.—

Intention is an essential ingredient of the offence of attempt to murder. Where the injuries caused were simple in nature and also not on vital parts of the body, the Court said that the intention for attempt to murder could not be inferred. The Court held that no offence under section 324 was made out because injuries were caused with a sharp-cutting weapon.[651.] Where the accused persons had no common intention to kill or have knowledge that death was likely to ensue but only intended to vent their ire against their neighbour for having assaulted their bullocks, when the injuries sustained by the injured persons were simple in nature, the Supreme Court held the accused persons cannot be convicted under section 307 r/w 34.[652.]

[s 307.6] Nature of injuries is not determinative.—

The nature of injuries has been held by the Supreme Court to be not a determinative factor. The framing of charge was challenged in this case on the ground that the injuries inflicted on the victim were simple in nature and no injury was found on any vital part of the body. The determinative factor is intention or knowledge and not the nature of injury.[653.] The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of section 307, IPC, 1860. The determinative question is the intention or knowledge, as the case may be, and not nature of the injury.[654.]

[s 307.7] Section 307 and Section 326.—

A bare perusal of these two provisions clearly reveals that while section 307 IPC, 1860 uses the words "under such circumstances", these words are conspicuously missing from section 326 IPC, 1860. Therefore, while deciding whether the case falls under section 307 IPC, 1860 or under section 326 IPC, 1860 the Court must necessarily examine the circumstances in which the assault was made. Considering the fact that the assault was made after some premeditation and pre-planning, considering the fact that assault was carried out in the dead of the night, considering the nature of the weapon, used, nature of the injuries caused, obviously, the present case falls under the ambit of section 307 IPC, 1860 and not under section 326 IPC, 1860. Therefore, the learned trial Court was certainly justified in acquitting the appellant for offence under section 326 IPC, 1860 and in convicting him for offence under section 307 IPC, 1860.[655.]

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

631. Ins. by Act 27 of 1870, section 11.

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

633. Ins. by Act 12 of 1891, section 2 and Sch II.

634. M&M 274; *Rawal Arab*, (1898) Unrep Cr C 964. *Lugga Singh v State of Punjab*, (2008) Cr LJ 90 (P&H), two accused had altercation with a worker because of offering his labour at low wage, one of them struck the victim with *gandasi* at head, there being no such common intention, the

non-attacking accused was acquitted. *Asharam v State of MP,* (2007) 11 SCC 164 [LNIND 2007 SC 534] : AIR 2007 SC 2594 [LNIND 2007 SC 534] , accused fled from the scene taking the victim to be dead, testimony of injured witness corroborated by medical evidence, conviction upheld.

635. *Chimanbhai Jagabhai Patel v State of Gujarat,* AIR 2009 SC 3223 [LNIND 2009 SC 568] : (2009) 11 SCC 273 [LNIND 2009 SC 568] .

636. *State of MP v Kedar Yadav,* 2011 (1) SCC (Cr) 1008.

637. *Arjun Thakur v State of Orissa,* 1994 Cr LJ 3526 (Ori). *Hemant Kumar Mondal v State of WB,* 1993 Cr LJ 82 (Cal), the accused instigated three persons for committing the offence of murder; he was guilty of abetment, convicted under sections 307/109. Cr LJ 1340 (Gau), militants, engaged police in an encounter, presumption of intention to kill. *Chhota Master v State of Orissa,* 1998 Cr LJ 3185 (Ori), accused persons stabbed the victim in the stomach, intestines came out, threw him into river from bridge and pelted stones, conviction under sections 307/34 not interfered with. *Balakrishna Tripathy v State of Orissa,* 1998 Cr LJ 3591 (Ori), only one accused allowed to be charged, there was no evidence against others; *Hingu v State of UP,* 1998 Cr LJ 365 : AIR 1998 SC 198 [LNIND 1997 SC 1528] . *Santosh Kumar v State of UP,* 1997 under section 307 was held to be made out. *Raja v State,* 1997 Cr LJ 1863 (Del), injuries with dagger, serologist's report on blood on dagger not necessary where there was sufficient evidence otherwise to connect the accused with the attempt.; *Achhaibar Pd v State of UP,* 1997 Cr LJ 2666 : 1997 All LJ 705, the accused fired at police constable at close range, the bullet pierced the chest through and through, dying declaration, section 307 attracted. Another ruling on the same facts, *Ranveer Singh v State of UP,* 1997 Cr LJ 2266 (All), no leniency in punishment. *Pulkit Purbey v State of Bihar,* 1997 Cr LJ 2371 (Pat), several injuries of simple nature on non-vital parts, only one on head, no intention to cause death, conviction under section 326. *Sirish Chandra Paul v State of Assam,* 1997 Cr LJ 2617 (Gau), injury on vital part, intention to cause death, conviction under section 307.

638. *Sumersimbh Umedsinh Rajput v State of Gujarat,* (2007) 13 SCC 83 [LNIND 2007 SC 1450] : AIR 2008 SC 904 [LNIND 2007 SC 1450] : 2008 Cr LJ 1388 .

639. *Pulicherla Nagaraju v State of AP,* (2006) 11 SCC 444 [LNIND 2006 SC 621] : AIR 2006 SC 3010 [LNIND 2006 SC 621] : 2006 Cr LJ 3899 ; *Mangesh v State of Maharashtra,* (2011) 2 SCC 123 [LNIND 2011 SC 20] : AIR 2011 SC 637 [LNIND 2011 SC 20] : 2011 Cr LJ 1166 .

640. *Dharam Pal v State of Punjab,* AIR 1993 SC 2484 : 1993 Cr LJ 2856 (SC). *Parsuram Pandey v State of Bihar,* AIR 2004 SC 5068 [LNIND 2004 SC 1075] : (2004) 13 SCC 189 [LNIND 2004 SC 1075] , the Supreme Court explained the ingredients of the offence. *State of UP v Virendra Prasad,* (2004) 9 SCC 37 [LNIND 2004 SC 138] : AIR 2004 SC 1517 [LNIND 2004 SC 138] , firing at police from close range, intention clear conviction.

641. *Luxman,* (1899) 2 Bom LR 286 . *Sagayam v State of Karnataka,* AIR 2000 SC 2161 [LNIND 2000 SC 740] : 2000 Cr LJ 3182 , police search of the house of the accused. The latter tried to assault the police officer and his staff but they escaped. The accused threatened that he would kill them. The court said that it was only a threat. The *overt act* attributed to him did not amount to attempt to murder. *Parveen v State of Haryana,* AIR 1997 SC 310 [LNIND 1996 SC 1723] : 1997 Cr LJ 252 , the victim of attack testified that the accused on being refused glasses for taking liquor, went to his tractor and came to the hotel with a gun, fired at him, but he was saved as he stretched to the ground, convicted. *Pratap Singh v State,* 2001 Cr LJ 3154 (Uttaranchal), conviction for attempt to murder, injury caused on death with sharp-edged weapon, injury grievous but short of death. *Shankar Lal v State of Haryana,* 1998 Cr LJ 4595 : AIR 1998 SC 3271 [LNIND 1998 SC 632] , evidence of victim alone is sufficient. *Parveen v State of Haryana,* AIR 1997 SC 310 [LNIND 1996 SC 1723] : 1997 Cr LJ 252 , offence proved.

642. *Narayan v State of Karnataka,* 1998 Cr LJ 1549 (Kant). The accused was also held guilty of murder because his attack on the son succeeding in killing him, the mother survived in injured state and became witness. *Prakash Chandra Yadav v State of Bihar,* (2007) 13 SCC 134 [LNIND 2007 SC 1232] : 2008 Cr LJ 438 , doing of an act with intention or knowledge to cause death is a necessary ingredient. Receipt of injury by the victim is not a prerequisite for conviction under the first part. The second part is attracted when the victim receives an injury. In a rivalry between tenderers, two bombs were hurled on the rival, one did not explode, the other exploded, but victim escaped unhurt. Trial Court convicted the accused. High Court acquitted him because of no injury. Validity of the judgment on evidence was not considered. Case relegated to HC for reconsideration. *Balmiki Singh v Ramchandra Singh,* (2008) 10 SCC 218 [LNIND 2008 SC 1866] : AIR 2009 SC 377 [LNIND 2008 SC 1866] , Supreme Court did not interfere in the order of acquittal by the HC because of discrepancies in evidence. *Jagdish Murar v State of UP,* (2006) 12 SCC 626 [LNIND 2006 SC 648] , allegation of firing a shot not properly investigated, benefit of doubt given to accused.

643. *Bansidhar Mallick v State of Orissa,* 1998 Cr LJ 897 (Ori).

644. *Manik Bandu Gawali v State of Maharashtra,* 1998 Cr LJ 2246 (Bom). In *Joginder Singh v State of Punjab,* 1998 Cr LJ 2255 (SC), the Supreme Court set aside a conviction which did not seem to have been based upon a fair investigation. *Bir Singh v State of HP,* 2006 Cr LJ 2456 : AIR 2006 SC 1944 [LNIND 2006 SC 305] : (2006) 9 SCC 579 [LNIND 2006 SC 305] , incident of attempted murder took place in police post, information given immediately, injuries corroborated medical evidence and constable on duty, could not be disbelieved only because the village Pradhan had turned hostile. *Jagdish v State of Haryana,* 2005 Cr LJ 3073 : AIR 2005 SC 2576 [LNIND 2005 SC 507] , land dispute, attack on victim with *lathi* and *gandasa*, amputation of arms, conviction under section 307, reducing sentence from 10 years to eight years RI and fine of Rs. 1 lac.

645. *Anjani Kumar Chaudhary v State of Bihar,* 2014 Cr LJ 3798 : 2014 (3) AJR 628 .

646. *State of MP v Kedar Yadav,* 2011 (1) SCC (Cri) 1008 [LNIND 2006 SC 1061] ; *Ajay v State of Chattisgarh,* 2013 Cr LJ 13409 (Chh); *State of MP v Kashiram,* (2009) 4 SCC 26 [LNIND 2009 SC 215] : AIR 2009 SC 1642 [LNIND 2009 SC 215] ; *Manoj Kumar Mishra v State of Chhattisgarh,* 2013 Cr LJ 1487 (Chh); *State of Maharashtra v Balram Bama Patil,* 1983 (2) SCC 28 [LNIND 1983 SC 40] ; *Girija Shanker v State of UP,* 2004 (3) SCC 793 [LNIND 2004 SC 154] , *R Parkash v State of Karnataka,* JT 2004 (2) SC 348 [LNIND 2004 SC 189] and *State of MP v Saleem @ Chamaru,* 2005 (5) SCC 554 [LNIND 2005 SC 1070] .

647. *Chhanga v State of MP,* AIR 2017 SC 1415 [LNIND 2017 SC 97] .

648. *Hari Singh*, (1988) 4 SCC 551 [LNIND 1988 SC 411] : AIR 1988 SC 2127 [LNIND 1988 SC 411] . See also *AG Bhagwat v UT Chandigarh,* 1989 Cr LJ 214 (P&H), acid thrown on lady colleague for disfiguring her, not liable under this section. *Ram Kumar v State (NCT) of Delhi,* AIR 1999 SC 2259 [LNIND 1999 SC 1277] : 1999 Cr LJ 3522 , accused fired a shot from country-made pistol. The victim, a near relative, was injured. The act showed the intention of the accused. Hence, convicted. The sentence was reduced from 10 years RI to seven years RI. *Rajan v State of MP,* 2000 Cr LJ 2423 (MP), allegation that accused fired at police party which had gone into jungle to catch him, nobody was aimed at in the group or individually, firing struck no body, acquittal. *Dnyaneshwar v State of Maharashtra,* 2013 Cr LJ 2152 (Bom)— Benefit of doubt given to the accused.

649. *Rehmat v State of Haryana,* AIR 1997 SC 1526 [LNIND 1996 SC 1386] : 1997 Cr LJ 764 . *Nasir Sikander Shaikh v State of Maharashtra,* 2005 Cr LJ 2621 : AIR 2005 SC 2533 [LNIND 2005 SC 474] , burden is heavy on the prosecution to prove every ingredient of the offence, the defence has only to probabilise the material which is there in support of the defence plea. *Karan*

Singh v State of MP, (2003) 12 SCC 587 [LNIND 2003 SC 840] , the plea of self-defence found to be not real.

650. *State of Maharashtra v Umesh Krishna Pawar,* 1994 Cr LJ 774 (Bom).

651. *Sarjug Turi v State of Bihar,* 2003 Cr LJ 2864 (Jhar), conviction was shifted to u/s. 324, the offence and prosecution being of 17 years long standing, the accused was released on probation.

652. *Lakshmi Chand v State of UP,* AIR 2018 SC 3961 .

653. *Ratan Singh v State of MP,* (2009) 12 SCC 585 [LNIND 2009 SC 984] : AIR 2010 SC 597 [LNIND 2009 SC 984] .

654. *State of MP v Kashiram*, AIR 2009 SC 1642 [LNIND 2009 SC 215] . Therefore, whether the injury is simple or grievous in nature hardly matters to invoke the provisions of section 307. *Sk Khaja Sk Dawood v State of Maharashtra,* 2011 Cr LJ 1150 (Bom).

655. *Pooran Singh Seera Alias Pooran Meena v State of Rajasthan,* 2011 Cr LJ 2100 (Raj); *Raghunath v State By Police of Vijayapura Police Station,* 2011 Cr LJ 549 (Kar); *Neelam Bahal v State of Uttarakhand,* AIR 2010 SC 428 [LNIND 2009 SC 2056] : (2010) 2 SCC 229 [LNIND 2009 SC 2056] .

THE INDIAN PENAL CODE

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

[s 308] Attempt to commit culpable homicide.

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

ILLUSTRATION

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

COMMENT.—

The wording of this section is the same as that of the preceding one except that it deals with an attempt to commit culpable homicide. The punishment provided is, therefore, not so severe. Before an accused can be held to be guilty under section 308 IPC, 1860 it was necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing.[656.] When the accused can be attributed only knowledge that by inflicting such injuries he was likely to cause death and an attempt to commit such an offence would be one punishable under section 308 IPC, 1860.[657.]

[s 308.1] Nature of injury.—

Whether the injury was grievous or simple deserved a back seat in face of the charge under section 308/34 IPC, 1860. Offence punishable under section 308 IPC, 1860 postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under section 308 IPC, 1860 whereas punishment for simple hurts can be meted out under sections 323 and 324 and for grievous hurts under sections 325 and 326 IPC, 1860. Qualitatively, these offences are different.[658.]

[s 308.2] Self-defence.—

Merely because the prosecution witnesses had suffered more injuries than the respondents, would not be sufficient to hold that the respondents were the aggressor party. In other words, the defence version cannot be discarded only on the basis of

lesser number of injuries having been suffered by them. Appeal against acquittal dismissed.[659] On the facts and in the circumstances of the case, the Supreme Court found that plea of self-defence was not made out by the appellant and, therefore, contention that the finding recorded by the High Court that he was guilty under section 304, Part-I IPC, 1860 for causing death of the deceased and under section 308, IPC, 1860 for causing injuries to Rahmat should be sustained cannot be accepted.[660]

[s 308.3] Sentence.—

Trial Court convicted accused under section 308 r/w 149 and sentenced them to three years RI and fine of Rs. 500 each. The High Court confirmed the conviction and sentence. The Supreme Court modified the sentence by reducing the imprisonment to one year and increased the fine amount to Rs. 25,000.[661] Accused was convicted under section 308, IPC, 1860. Offence was committed when the accused was 17 years old. High Court released him under section 4 of Probation of Offenders Act, 1958.[662]

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656. *Bishan Singh v State,* AIR 2008 SC 131 [LNIND 2007 SC 1178] : (2007) 13 SCC 65 [LNIND 2007 SC 1178] ; *Sheetala Prasad v Sri Kant,* (2010) 2 SCC 190 [LNIND 2009 SC 2121] : AIR 2010 SC 1140 [LNIND 2009 SC 2121] .

657. *Tukaram Gundu Naik v State of Maharashtra,* (1994) 1 SCC 465 [LNIND 1993 SC 820] : 1994 Cr LJ 224 .

658. *Sunil Kumar v NCT Delhi,* (1998) 8 SCC 557 : 1998 SCC (Cr) 1522.

659. *State of UP v Munni Ram,* (2011) 3 SCC (Cr) 745 : AIR 2011 SC (Supp) 573.

660. *Shaukat v State of Uttaranchal,* (2010) 5 SCC 68 [LNIND 2010 SC 387] : 2010 Cr LJ 4310 : (2010) 2 SCC (Cr) 1238.

661. *Lakhan v State of MP,* (2013) 1 SCC 363 [LNIND 2012 SC 796] .

662. *State v Ravindra Singh,* 2013 Cr LJ 2874 (Utt). See also *Jameel v State of UP,* (2010) 12 SCC 532 [LNIND 2009 SC 1960] : AIR 2010 SC (Supp) 303.

THE INDIAN PENAL CODE

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

[s 309] Attempt to commit suicide.

Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [663].[or with fine, or with both].

COMMENT.—

Suicide by itself is not an offence under either English or Indian Criminal Law, though at one time it was a felony in England.[664.] It is a unique legal phenomenon in the IPC, 1860 that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under section 309 IPC, 1860 whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed.[665.]

The act done must be in the course of the attempt, otherwise no offence is committed. Where a woman with the intention of committing suicide by throwing herself in a well, actually ran towards it, when she was seized by a person, it was held that she might have changed her mind, and she was caught before she did anything which might have been regarded as the commencement of the offence.[666.] Her act simply amounted to *preparation*. The pounding of oleander roots with an intention to poison oneself with the same was held not to constitute this offence.[667.] Where the accused jumped into a well to avoid and escape from police, and when rescued he came out of the well of his own accord, it was held that, in the absence of evidence that he jumped into the well to commit suicide, he could not be convicted of this offence.[668.] A village woman of 20 years old was ill-treated by her husband. There was a quarrel between the two, and the husband threatened that he would beat her. Late that night the woman, taking her six months' old baby in her arms, slipped away from the house. After she had gone some distance she heard somebody coming up behind her, and when she turned round and saw her husband pursuing her, she got into a panic and jumped down a well nearby with the baby in her arms. The result was that the baby died but the woman recovered. One of the charges against her was attempt to commit suicide. It was held that she should not be convicted under this section of an attempt to commit suicide, for the word "attempt" connotes some conscious endeavour to accomplish the act, and the accused in jumping down the well was not thinking at all of taking her own life but only of escaping from her husband.[669.] If a person openly declares that he will fast to death and then proceeds to refuse all nourishment until the stage is reached when there is imminent danger of death ensuing, he can be held guilty under this section but when the evidence falls short of this, it cannot be said to be sufficient to sustain the charge.[670.] A woman who had been suffering from chronic incurable disease retired to bed with her one and a half-year-old child but was found with the child inside a well about 200 feet away from her house in the early morning of the next day when they were both taken out of the well, it was found that though the woman was alive the child had died. On being prosecuted under sections 302 and 309 IPC, 1860, she denied

having jumped into the well. She further pleaded that she was too ill and there was something wrong with her brain. The trial Judge did not give her the benefit of section 84 IPC, 1860 and convicted her of both the offences charged. In acquitting her the High Court of Bombay held that in the absence of any evidence that she deliberately jumped into the well along with the child, she could not be convicted merely on the basis of imagination or denied the benefit of section 84 IPC, 1860. In any case, the Judge should have given her the benefit of doubt.[671.] Moreover, suspicion however strong is not proof.[672.] Where a desolate woman jumped into a well with her two children and was released with admonition for the offence under section 309 but was sentenced to imprisonment for three months for the offence under section 307 IPC, 1860, the Supreme Court directed that she should also be released with admonition for the offence under section 307 IPC, 1860.[673.] Witness clearly stated that deceased was shouting, pleading with the accused to not kill her, when accused gave sword blows to her. There is no material available to establish that deceased volunteered herself for death — Exception 5 to section 300 could not be invoked. Conviction and sentence, as recorded by trial Court under sections 302 and 309 of IPC, 1860 against appellant was held proper.[674.]

[s 309.1] Voluntary termination of life.—

A person cannot claim his own life by saying that he had led a successful life and the mission of his life was fulfilled. It would amount to suicide as it would attract the provisions of sections 306 and 309. The Court said that no distinction could be made between suicide as ordinarily understood and the right to voluntarily put an end to one's life.[675.]

[s 309.2] Fast-unto-death.—

Where a person commenced fast-unto-death for certain demands but even before his demands were conceded, he chose to get himself treated medically without protest, it was held that the *mens rea* to destroy himself was absent and it could not be said that he attempted to commit suicide.[676.]

[s 309.3] Constitutional validity of section 309.—

In *P Rathinam v UOI*,[677.],[678.] the constitutional validity of section 309 was challenged and the Supreme Court observed that the provision punishing attempt to commit suicide is cruel and irrational and is violative of Article 21 of the Constitution and it deserves to be effaced from the statute book to humanalise penal laws. It added that the act of attempted suicide has no baneful effect on society and it is also not against religion, morality or public policy, besides suicide or attempt to commit it causes no harm to others.

This decision was subsequently reversed and it has been held again that the provision for penalising attempt to commit suicide and abetment of suicide is not unconstitutional.[679.]

The Constitution Bench in a subsequent decision in *Gian Kaur v State of Punjab*[680.] and other connected matters has overruled the view taken in the case of *P Rathinam*[681.] that section 309 IPC, 1860 is constitutionally invalid. It was held that, on the facts which are not only proved but are also admitted by A1 the acquittal of A1 under section