

292. *Bachan Singh v State of Punjab*, AIR 1980 SC 898 [LNIND 1980 SC 260] : (1980) 2 SCC 684 [LNIND 1980 SC 261] .
293. *Santosh Kumar SatishBhushan Bariyar v State of Maharashtra*, (2009) 6 SCC 498 [LNIND 2009 SC 1278] : (2009) 2 SCC (Cr) 1149.
294. *Ibid.*
295. *Ibid.*
296. *Shivaji v State of Maharashtra*, (2008) 15 SCC 269 [LNIND 2008 SC 1785] : AIR 2009 SC 56 [LNIND 2008 SC 1785] .
297. *Ayyub v State of UP*, AIR 2002 SC 1192 [LNIND 2002 SC 156] ; *MA Antony v State of Kerala*, (2009) 6 SCC 220 [LNIND 2009 SC 961] : AIR 2009 SC 2549 [LNIND 2009 SC 961] : (2009) 2 SCC (Cr) 959, murder of all the six members of a family at their residence at night, motive of money was proved, accused present in the house during the night till next morning and his absence from his home established, important recoveries, judicial and extra-judicial confession, complete chain of circumstances, death sentence confirmed.
298. *Sattan v State of UP*, 2001 Cr LJ 676 (All).
299. *Ram Deo Chauhan v Raj Nath Chauhan*, 2001 Cr LJ 2902 (SC).
300. *Bidhan Nagh v State of Assam*, 2000 Cr LJ 1144 (Gau).
301. *State of Maharashtra v Sanjay*, 2003 SCC (Cr) 231. *State of Punjab v Ajaib Singh*, AIR 2004 SC 2466 [LNIND 2004 SC 478] : 2004 Cr LJ 2547 .
302. *State of UP v Garibuddi*, 2012 AIR (SCW) 92 : 2012 Cr LJ 772 ; *Kailash Gour v State of Assam*, (2012) 2 SCC 34 : AIR 2012 SC 786 : 2012 Cr LJ 1050 .
303. *Dinesh Borthakar v State of Assam*, (2008) 3 SCC 6967 : AIR 2008 SC 2205 [LNIND 2008 SC 675] .
304. *Ghurey Lal v State of UP*, (2008) 10 SCC 450 [LNIND 2008 SC 1535] .
305. *Chaman v State of Uttarakhand*, AIR 2016 SC 1912 [LNIND 2016 SC 167] : 2016 Cr LJ 2330 .
306. *Gajanan Dashrath Kharate v State of Maharashtra*, 2016 Cr LJ 1900 : 2016 (3) SCJ 176 .
307. *Paramsivam v State through Inspector of Police*, 2014 Cr LJ 4085 : AIR 2014 SC 2936 [LNIND 2014 SC 617] .
308. *Dilip Mallick v State of WB*, 2017 (1) Crimes 328 (SC) : 2017 (3) Scale 71 [LNINDU 2017 SC 56] .
309. *Ganpat Singh v State of MP*, AIR 2017 SC 4839 [LNIND 2017 SC 2956] .
310. *Tomaso Bruno v State of UP*, (2015) 7 SCC 178 [LNIND 2015 SC 40] : 2015 Cr LJ 1690 .
311. *Jose v The Sub-Inspector of Police, Koyilandy*, (2016) 10 SCC 519 [LNIND 2016 SC 403] : AIR 2016 SC 4581 [LNIND 2016 SC 403] .
312. *Ram Chander v State of Haryana*, 2017 (1) Scale 73 [LNIND 2017 SC 7] : (2017) 2 SCC 321 [LNIND 2017 SC 7] .
313. *Raj Kumar v State (NCT of Delhi)*, AIR 2017 SC 614 [LNIND 2017 SC 30] : (2017) 237 DLT 173 .
314. *Rafiq Ahmed v State of UP*, (2011) 8 SCC 300 [LNIND 2011 SC 726] : AIR 2011 SC 3114 [LNIND 2011 SC 726] : 2011 Cr LJ 4399 .
315. *R Rachaiah v Home Secretary, Bangalore*, AIR 2016 SC 2447 [LNIND 2016 SC 203] : 2016 Cr LJ 2943 .

THE INDIAN PENAL CODE

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

[s 303] Punishment for murder by life convict.

Whoever, being under sentence of ³¹⁶[imprisonment for life], commits murder, shall be punished with death.

COMMENT.—

This section has been struck down by the Supreme Court as void and unconstitutional being violative of both [Articles 14](#) and [21](#) of the [Constitution](#). It regards life convict to be a dangerous class without any scientific basis and, thus, violates [Article 14](#) and similarly by completely cutting out judicial discretion it becomes a law which is not just, fair and reasonable within the meaning of [Article 21](#).³¹⁷ So all murders are punishable under [section 302, IPC, 1860](#). For the same reasons, Supreme Court declared [section 27\(3\) of Arms Act 1959](#), *ultra vires* the [Constitution](#). It was held that by imposing mandatory death penalty, [section 27\(3\) of the Arms Act, 1959](#) runs contrary to those statutory safeguards which give judiciary the discretion in the matter imposing death penalty. Section 27(3) of the Act is thus *ultra vires* the concept of judicial review which is one of the basic features of our [Constitution](#).³¹⁸

³¹⁶. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1-1-1956).

³¹⁷. *Mithu*, [1983 Cr LJ 811](#) (SC) : [AIR 1983 SC 473](#) [[LNIND 1983 SC 105](#)] : 1983 Mad LJ (Cr) 485 : [\(1983\) 2 SCC 277](#) [[LNIND 1983 SC 105](#)] : 1983 SCC (Cr) 405 : [\(1983\) 1 SCJ 327](#) [[LNIND 1983 SC 105](#)] . See *Balkar Singh v State of Punjab*, [AIR 1991 SC 1225](#) : [1991 Cr LJ 1712](#) , sentence of participating co-accused found guilty by virtue of section 34 converted into life imprisonment. A prosecution under section 302 for causing death by a motor vehicle is not a bar to a civil claim arising out of the same accident. The civil proceeding is not likely to prejudice the position of the accused in the criminal proceeding. *Raja Ram Garg v Chhanga Singh*, [AIR 1992 All 28](#) [[LNIND 1991 ALL 397](#)] . See also *Bhagwan Bax Singh*, [1984 Cr LJ 928](#) (SC) : [AIR 1984 SC 1120](#) : [\(1984\) 1 SCC 278](#) .

³¹⁸. *State of Punjab v Dalbir Singh*, [AIR 2012 SC 1040](#) [[LNIND 2012 SC 93](#)] : [2012 \(3\) SCC 346](#) [[LNIND 2012 SC 93](#)] . See also *State of Rajasthan v Manoj Yadav*, [2012 Cr LJ 456](#) (Raj).

THE INDIAN PENAL CODE

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

[s 304] Punishment for culpable homicide not amounting to murder.

Whoever commits culpable homicide not amounting to murder shall be punished with ³¹⁹[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

COMMENT.—

This section provides punishment for culpable homicide not amounting to murder. Under it, there are two kinds of punishments applying to two different circumstances:

(1) If the act by which death is caused is done with *intention* of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to 10 years and fine.

(2) If the act is done with *knowledge* that it is likely to cause death but *without any intention* to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to 10 years, or with fine, or with both.

A conviction under Part II of this section read with section 34 is legal and valid. Part II of this section can be read together with section 34, notwithstanding that Part II speaks only of knowledge while section 34 deals with intention.³²⁰

Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Allegations of not carrying out a prompt search of the missing children; of delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river, which are the principal allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under [section 304, IPC, 1860](#).³²¹

[s 304.1] Distinction between the provisions of section 304, Part I and Part II.—

Linguistic distinction between the two Parts of section 304 is evident from the very language of this section. There are two apparent distinctions, one in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. It is neither advisable nor possible to state any straight-jacket formula that would be universally

applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.^{322.}

[s 304.2] Is section 304, Part II applicable only when exceptions to section 300 cover a case?.—

The plea that section 304, Part II applies only when exceptions to section 300 cover a case is misconceived. The decision in *Harendra Mandal's* case,^{323.} was rendered in a different context and observations in the same case cannot be read out of context. That was a case where death itself had not been caused and therefore, question of applying [section 304, IPC, 1860](#) did not arise.^{324.} Section 304, Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.^{325.}

[s 304.3] Section 302 or section 304.—Judicial dilemma.—

The [Indian Penal Code](#) was enacted in the year 1860 under which the offences within the territory of India have been tried ever since it was enacted dealing with countless number of cases leading either to acquittal or conviction. Yet, the task of the decision-making authorities/Courts of whether an offence of culpable homicide is murder or culpable homicide does not amount to murder in the prevailing facts and circumstances of the case is a perennial question with which the Courts are often confronted. When the evidence discloses a clear case of murder or makes out a finding of culpable homicide not amounting to murder, the task of the Courts to record conviction or acquittal is generally an easy one. But this task surely becomes an undaunted one when the accused commits culpable homicide/murder but the circumstances disclose many a times that it is done without premeditation or pre-planning, may be to cause grievous hurt, yet it is so grave in nature that it results into death and the role of the *factum* causing death without premeditation becomes a secondary consideration due to which the decision of the Courts in such cases often hinges on discretion while considering whether the case would fall under [section 302, IPC, 1860](#) or it would be under section 304, Part I or even Part II, [IPC, 1860](#). On a plain reading of section 299, section 300, [section 302](#) and [section 304](#) of [IPC, 1860](#), it appears that given cases can be conveniently classified into two categories, viz., culpable homicide amounting to murder which is [section 302, IPC, 1860](#) or culpable homicide not amounting to murder which is [section 304 IPC, 1860](#). But when it comes to the actual application of these two sections in a given case, the Courts are often confronted with a dilemma as to whether a case would fall under [section 302, IPC, 1860](#) or would fall under [section 304, IPC, 1860](#). Many a time, this gives rise to conflicting decisions of one Court or the other giving rise to the popular perception among litigants and members of the Bar that a particular Court is an acquitting Court or is a convicting one. This confusion or dilemma often emerges in a case when the question for consideration is whether a given case would fall under [section 302, IPC, 1860](#) or [section 304, IPC, 1860](#) when it is difficult to decipher from the evidence whether the intention was to cause merely bodily injury which would not make out an offence of murder or there was clear intention to kill the victim making out a clear case of an offence of murder.^{326.} Section 300 states both, what is murder and what is not. First finds place in section 300 in its four stated categories, while the second finds detailed mention in the stated five exceptions to section 300. The legislature in its

wisdom, thus, covered the entire gamut of culpable homicide that 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in section 300 of the Code. It is neither advisable nor possible to state any straightjacket formula that would be universally applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.³²⁷ It has been held that unless the case falls under one of the specified exception in section 300, it cannot be brought under Part I or Part II of [section 304 of IPC, 1860](#).³²⁸

[s 304.4] CASES.—

Where the accused husband suspecting the fidelity of his wife quarrelled with her, poured kerosene on her body and set her on fire and subsequently, when she screamed for help, tried to extinguish fire by pouring water, the Supreme Court held that he was having full knowledge that his act would cause her death and the attempt of extinguishing the fire will not mitigate the offence, hence he was liable under [section 302, IPC, 1860](#) and not under [section 304, IPC, 1860](#).³²⁹ The accused followed his daughter into the women's public toilet of the village and assaulted her. The fatal injuries resulted in her instant death. None of the exceptions in [section 300 of IPC, 1860](#) was attracted. It would necessarily follow that the accused committed murder of his daughter. He was liable to be punished with either imprisonment for life or death under [section 302, IPC, 1860](#) alone.³³⁰ The accused killed his stepfather, who was an infirm old man and an invalid, with the latter's consent, his motive being to get three innocent men (his enemies) hanged. It was held that the offence was covered by Exception 5 to section 300 and was punishable under the first Part of this section.³³¹ Where the deceased, an old man with an enlarged and flabby heart, was lifted by the accused during a quarrel and thrown on the ground from some distance with sufficient force and the deceased got his ribs fractured and died of a rupture of the heart, it was held that the offence fell under section 325 and not under Part II of this section, as the accused had no intention or knowledge to cause death.³³² Accused stabbed the deceased in a sudden incident during an election fever which resulted in his death four days later in hospital where he had been operated upon in a bid to save his life. There was no evidence that the accused intended to cause death or cause such bodily injury as was sufficient in ordinary course of nature to cause death. In the circumstances, it was held that the case fell within clause (b) of section 299 but did not fall within clause 3 of [section 300, IPC, 1860](#), and as such his conviction under section 302 was set aside and he was convicted under section 304, Part I of the Code.³³³ Similarly, where a young lad of 18½ years old gave only one *kassi* blow to the deceased following an altercation between his father and the deceased, which resulted in latter's death six days after, it could not be said that he had intended to cause an injury which was sufficient in ordinary course of nature to cause death within the meaning of clause 3 of [section 300, IPC, 1860](#). He could be at best saddled with knowledge that his act might result in death. His conviction was, therefore, changed from section 302 to section 304, Part II, [IPC, 1860](#).³³⁴ Accused, in a sudden quarrel gave a blow on the head of his friend with a stick weighing only 210 grams which caused his death. It was held that his conviction under section 304, Part II, [IPC, 1860](#), was improper as it could not be said that he had knowledge that such a blow would cause death. His conviction was, therefore, changed to one under [section 323, IPC, 1860](#).³³⁵ In a dispute regarding the right of way, the accused gave a single fist blow on the head of the deceased which resulted into his death. No weapon was used, nor was there any past enmity between them. The accused was not held to be responsible for the death of the deceased and

was sentenced under [section 323, IPC, 1860](#).³³⁶ Where a man lifted a four-year-old child and threw him on the ground and thus caused his death, it was held that knowledge of death under [section 299, IPC, 1860](#), could be safely attributed to him and he was therefore liable under section 304, Part-II, [IPC, 1860](#).³³⁷ In a sudden quarrel, the accused, a young man, administered a single knife blow on the chest of the deceased causing his death, it was held that the case did not fall under clauses 1 and 2 of section 300 but since he had knowledge that death might follow, he was guilty under section 304, Part II, [IPC, 1860](#).³³⁸ A police officer was punished under Part II of this section with seven-year RI for causing death in custody by resorting to third-degree methods.³³⁹ A woman deserted her husband and started living with her paramour six months before the incident. Her fisherman husband, on way back from his work, spotted her sitting among women at outside of a neighbouring house. He approached towards her. On seeing him, she ran inside. He chased and stabbed her to death. His conviction under Part II and sentence of five-year rigorous imprisonment was held to be not excessive.³⁴⁰ A group of persons called out the deceased from his home with a view to lodging a protest but suddenly one of them inflicted a knife wound which falling on the chest killed the deceased. The Supreme Court convicted the single wound-causing accused under this section saying that the heat of passion generated at the spur of the moment and not any intention to cause death was responsible for the incident.³⁴¹ In another case of the same kind before the Supreme Court, the finding was that the wrestler-accused had an altercation with the deceased two or three days before the incident. The prosecution showed that the accused came to the house of the deceased, but suppressed further knowledge about the incident. Drops of blood in the house showed that the deceased was injured there, ran out and fell dead. There was only one major injury. Conviction under Part I of this section was considered to be appropriate.³⁴² Annoyance was caused by the deceased singing a vulgar song. Quarrel and beating in consequence continued for some time. Accused started beating the deceased with a stick not thick enough to cause rupture of the spleen. He might not have had the intention to cause death but had knowledge that death might result. His conviction under section 300 (second) was converted into one under section 304, Part II.³⁴³ Where the victim was dragged for about 120 feet and then struck with a crowbar not using much force, the accused knowing that the assault might cause death but not intending it. Part II was held to be attracted and not Part I.³⁴⁴ A person reaching home in a drunken state started beating his wife. Their son intervened and the accused hurled stones on him twice. The boy succumbed to the head injury then and there. Conviction was shifted from under section 302 to 304, Part II, knowledge that death might be caused.³⁴⁵

Persons exceeding the right of private defence are punished under section 304, Part I and not under section 302.³⁴⁶ Where the deceased died due to the negligent firing by a person, who came for celebrating a marriage function with a gun, it was held that though it is not possible to attribute intention, it is equally not possible to hold that the act was done without the knowledge that it is likely to cause death. Everybody, who carries a gun with live cartridges and even others know that firing a gun and that too in the presence of several people is an act, which is likely to cause death. Hence, the liability under section 304, Part II. The appellant caused the death of his wife by beating her with a wooden stick. No intention to cause death was proved. He was convicted under section 304, Part II.³⁴⁷

Where the death of a player was caused by blowing a cricket stump on him in a friendly cricket match and it was found that the accused player did not know that his act would cause an injury which would cause death or which was likely to cause death, it was held that a conviction under section 304, Part II was not proper, but that an offence under section 325 was made out as the injury was caused by a stump which is a blunt weapon.³⁴⁸

A married woman (25 years) met a sudden death in her matrimonial home. Her letters and complaints spoke of harassment. The medical report put the cause of death as rupture of spleen and pancreas caused by external pressure. Her husband, who was attempting to escape by resorting to the theory of death by poisoning, was found guilty and his conviction under Part II of this section and sentence of five years of RI was upheld by the Supreme Court. Though he might not have intended to cause death, he did cause an injury about which he must have known that it might cause death.³⁴⁹ Where one of the accused came forward and delivered a blow on the head of a man which proved fatal, the Apex Court was of the view that his act did not attract clause (1) or (3) of section 300 because the accused was armed with no deadly weapon and the head injury was caused by a farmer with an agricultural instrument which he happened to carry with him. Conviction of the accused causing head injury under section 300 was altered to one under section 304, Part II.³⁵⁰ Several persons surrounded a man. Firstly, he was pushed down on the ground and then two injuries were caused to him one each by two assailants one of whom was acquitted. Opinion of the doctor was that the victim died due to shock and haemorrhage resulting from both the injuries. The one injury alone caused by the accused was not individually sufficient to cause death. His conviction was altered from section 300 to that under section 304, Part II.³⁵¹ Where the accused inflicted a single knife wound in the abdomen of a man which proved fatal and the opinion of the doctor was that, but for complications, the injury was not sufficient to cause death, it was held that the offence did not attract clause (3) of section 300. He was convicted under section 304, Part II.³⁵² A husband, without any history of ill-feeling with his wife, attacked her with the blunt side of an axe and caused a head injury after she fell down of which she died, his conviction under Part I of this section was held to be proper.³⁵³ Where a person killed his wife under grave and sudden provocation, a lenient punishment of two years' imprisonment was awarded to him taking into consideration the welfare of his children.³⁵⁴ Where the accused delivered a single stab blow on the chest of his wife out of sheer frustration, momentary impulse and anger, on her refusal to oblige him with sex without any intention to cause her death, his act was held to be culpable homicide not amounting to murder and his conviction was altered from section 302 to section 304, Part I.³⁵⁵

A pregnant woman went to draw water from a well but she was stopped from doing so by several persons armed with 'lathis' and started abusing her and one of them dealt a 'lathi' blow on her head and another kicked her abdomen, as a result she died on the spot and her son who tried to rescue her was also injured. Looking at the conduct of the accused, it could not be said that they had common object to kill the woman or cause injury to her son. Both the assailants were convicted under section 304, Part II and others were acquitted.³⁵⁶

The death of a young boy was caused in a brutal and cruel manner. The trial Court convicted under sections 302/304. The High Court converted it to section 304 without specifying whether the case fell within Part I or II. Sentence of seven years' imprisonment was imposed. The Supreme Court did not interfere.³⁵⁷

[s 304.5] CASES under Part I.—

Where the accused with the intention of obstructing the marriage of his sister with the deceased, gave only one blow which proved fatal and the accused did not repeat the blow though there was nothing to stop him, conviction and sentence of the accused under section 302 was altered to one under section 304, Part I.³⁵⁸ Where the accused under misapprehension that the deceased came to abduct his daughter attacked the deceased with a sharp-edged weapon, without pre-meditation, causing only one injury and he died after three days, conviction of the accused was altered from under section

300 to one under section 304, Part I.³⁵⁹ Where three accused persons assaulted the deceased, one of the accused gave the fatal blow on the victim's head, the second accused caused simple injuries on the knee and arm with spear, and the third gave simple blows, it was held that the first accused was liable to be convicted under section 304, Part I, and as section 34 was not applicable, the second was convicted under section 324 and the conviction of the third accused under section 323 was upheld.³⁶⁰

Where most of the injuries found on the body of the deceased were external and on lower legs and on arms, it was held that intention of the accused was to cause grievous hurt and not murder. Conviction of the accused was altered from sections 304/34, Part I to sections 325/34.³⁶¹

[s 304.5.1] *Death essential to attract section 304.*—

In *Harendra Nath Mandal v State of Bihar* the accused caused injury on the head of a man with back portion of his weapon. The injured survived the injury. Still the accused was convicted under section 304, Part I. It was held by the Supreme Court that the accused could not be convicted under section 304 because for the application of section 304, death must have been caused under any of the circumstances mentioned in five Exceptions of section 300.³⁶²

[s 304.5.2] *Exceeding right of private defence.*—

Whenever accused sustains injuries in the same occurrence and when the injuries are grievous in nature, it is incumbent upon the prosecution to explain the injuries on the person of the accused. The non-explanation of injuries sustained by the accused may give rise to a possibility that the accused has acted in self-defence.³⁶³ In a murder case, both the parties sustained injuries in a free fight. The accused received a stab wound on his right shoulder. No explanation of this injury was given by the prosecution. It was held that the accused had caused injuries to the deceased in right of private defence, but that he exceeded his right. He was punished under section 304, Part I and not under section 302.³⁶⁴ In a dispute over possession of land, persons belong to both the sides were injured. The accused were in actual possession at the relevant time. Two of the accused received gunshot injuries. They were held to be entitled to the right of private defence but they exceeded their right. Conviction of the accused under sections 302/149 was altered to one under section 304 Part I.³⁶⁵ In a fight between two groups, the accused fired from a distance killing one person of the other group. Fighting groups were not close enough so as to apprehend immediate danger to anybody's life, when the firing took place. It was held that the accused had exceeded the right of private defence. He was convicted under section 304, Part I.³⁶⁶ Where the accused received injuries at the hands of the deceased and his party, it was held that the accused were entitled to the right of private defence but by using heavy cutting weapons like 'gandasas' and causing serious injuries to the deceased, they had exceeded the right of private defence and were liable to be punished under section 304, Part I but not for murder.³⁶⁷

[s 304.5.3] *Sudden quarrel.*—

Where as a result of provocation caused in a heat of passion upon a sudden quarrel, the accused chased the deceased to some distance and then gave the single fatal blow, it was held that the whole incident was a continuous sequence. Hence, the

conviction of the accused was shifted from under section 300 to under section 304, Part I.³⁶⁸ Where the accused came to the house at midnight, went to sleep with the deceased but suddenly a quarrel took place and the death occurred on account of asphyxia, the incident occurred all of a sudden, without any premeditation, the accused had not taken undue advantage or acted in a cruel or unusual manner; therefore, his conviction under section 304, Part I of [IPC, 1860](#) was held proper.³⁶⁹

[s 304.6] Single blow.—

Where a solitary blow was given with a small wooden yoke on the head of the deceased, conviction under section 300 was altered to one under section 304, Part I.³⁷⁰

[s 304.6.1] Provocation.—

The accused suspected the fidelity of his wife who in turn labelled him as impotent. In the resulting quarrel, the husband picked up a sharp weapon and struck on her vital parts causing death. It was held that Exception I to section 300 was attracted and the accused was punishable under section 304, Part I.³⁷¹

[s 304.7] Death after discharging from the hospital.—

The victim received gunshot injury on head. On the condition of the victim becoming better, he was discharged from the hospital. After two months of the incident, he died due to septicaemia. It was held that having regard to the fact that the victim survived for 62 days and that his condition was stable when he was discharged from the hospital, the Court cannot draw an inference that the intended injury caused was sufficient in the ordinary course of nature to cause death so as to attract clause (3) of [section 300 of IPC, 1860](#). But as the accused used firearms and fired at the victim on his head and he had the intention of causing such bodily injury as is likely to cause death, the conviction was altered to section 304, Part I.³⁷²

[s 304.8] Suicide pact.—

The death of the deceased was not premeditated and the act of the accused causing death of his wife appeared to be in furtherance of the understanding between them to commit suicide and the consent of the deceased and the act of the accused falls under Exception 5 of [section 300, IPC, 1860](#).³⁷³

[s 304.9] Civil Disputes.—

In view of the civil disputes between the families, there was a sudden minor verbal exchange bloated into a sudden physical attack. Several persons of the accused group wielding weapons attacked the deceased and inflicted two simple injuries; one such simple injury turned out to be fatal sometime later. There was no intention to cause death, though the accused had knowledge that the weapon used by him to inflict injury on the scalp of the deceased might cause death. As there was absence of intention to cause death or to cause such bodily injury as was likely to cause death, the accused

persons were held guilty for an offence punishable under section 304, Part II, [IPC, 1860](#) and not for the offence under [section 300, IPC, 1860](#).³⁷⁴

[s 304.10] Maximum punishment.—

The maximum punishment that is awardable in case of offence under section 304, Part II, [IPC, 1860](#) is 10 years. In a case, the accused persons were Police Personnel whose duty was to act in accordance with law and caused death when the deceased was in police custody. The accused fudged the General Diary Register of the Police Station to put up their defence and put up a false *plea of alibi*. The accused-in-charge of police station prepared a false memo sending the deceased to the hospital when he was already dead. The accused persons were found guilty of commission of the offence under section 304, Part II read with [section 34, IPC, 1860](#) and were convicted under section 304, Part II read with [section 34, IPC, 1860](#) and were sentenced to suffer RI for a period of 10 years.³⁷⁵

[s 304.11] Probation.—

Accused was convicted under sections 304(II)/149, [IPC, 1860](#) and sentenced to three years' RI. He secured a Doctorate and got employed as Senior Assistant Professor in the Department of Strategic and Regional Studies, University of Jammu. Keeping in view his conduct and attainments after his involvement in the matter, justified his release on probation.³⁷⁶

[s 304.12] Section 304, Part II when attracted in cases of death caused by driving.—

In a case where negligence or rashness is the cause of death and nothing more, section 304A may be attracted, but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, section 304, Part II, [IPC, 1860](#) may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrong doer to cause death, offence may be punishable under [section 302, IPC, 1860](#).³⁷⁷ If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When intent or knowledge is the direct motivating force of the act, section 304A has to make room for the graver and more serious charge of culpable homicide.³⁷⁸

[s 304.13] BMW CASE.—

The accused in an inebriated state, after consuming excessive alcohol, was driving the vehicle without license, in a rash and negligent manner in a high speed which resulted in the death of six persons. Trial Court convicted the accused under section 304, Part II, but High Court altered the conviction to section 304A. The Supreme Court held that the accused had sufficient knowledge that his action was likely to cause death and such action would, in the facts and circumstances of the case fall under section 304, Part II,