THE INDIAN PENAL CODE

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

[s 300] Murder.

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

ILLUSTRATIONS

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

***Explanation.*—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.**

ILLUSTRATIONS

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

ILLUSTRATION

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he

can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

***Explanation.*—It is immaterial in such cases which party offers the provocation or commits the first assault.**

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

ILLUSTRATION

A, by instigation, voluntarily causes, Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

COMMENT.—

In this section, the definition of culpable homicide appears in an expanded form. Each of the four clauses requires that the act which causes death should be done intentionally, or with the knowledge or means of knowing that death is a natural consequence of the act. An intention to kill is not always necessary to make out a case of murder. A knowledge that the natural and probable consequence of an act would be death will suffice for a conviction under section 302, IPC, 1860.[31.]

[s 300.1] Scope.—

An offence cannot amount to murder unless it falls within the definition of culpable homicide; for this section merely points out the cases in which culpable homicide is murder. But an offence may amount to culpable homicide without amounting to murder.

It does not follow that a case of culpable homicide is murder, because it does not fall within any of the Exceptions to section 300. To render culpable homicide murder, the case must come within the provisions of clauses 1, 2, 3, or 4 of section 300 and must not fall within any one of the five Exceptions attached thereto.

[s 300.2] Culpable homicide and murder distinguished.—

The distinction between these two offences is very ably set forth by Melvill, J, in *Govinda*'s case[32.] and by Sarkaria, J, in *Punnayya*'s case.[33.] Since the decision of the

Supreme Court is the law of the land by virtue of Article 141 of the Constitution, relevant passages from *Punnayya*'s case are reproduced below for the guidance of all concerned.

> In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice versa. Speaking generally 'culpable homicide sans 'special characteristics of murder' is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in s. 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the 1st part ofs. 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the Second Part of s. 304.

The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has vexed the Courts for more than a century. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be keeping in focus the key words used in the various clauses of sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions, culpable homicide is murder if the act by which the death is caused is done -
INTENTION	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse or incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of section 299 corresponds with clauses (2) and (3) of section 300. The distinguishing feature of the *mens rea* requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of *causing the bodily injury* coupled with the offender's *knowledge* of the likelihood of such injury causing the death of the particular victim is sufficient to bring

the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to section 300.

Clause (b) of section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

In clause (3) of section 300, instead of the words, 'likely to cause death' occurring in the corresponding clause (b) of section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury *likely* to cause death and a bodily injury *sufficient in the ordinary course* of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of section 299 and clause (3) of section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of section 299 conveys the sense of 'probable' as distinguished from a mere possibility. The words 'bodily injury... sufficient in the ordinary course of nature to cause 'death' mean that death will be the most probable result of the injury, having regard to the ordinary course of nature.

For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature.

Clause (c) of section 299 and clause (4) of section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of section 300 would be applicable where the knowledge of the offender as to the probability of death of a person in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.[34.]

In *Ajit Singh v State of Punjab*,[35.] the Supreme Court observed that:

> In order to hold whether an offence would fall u/s. 302 or s. 304 Part I of the Code, the Courts have to be extremely cautious in examining whether the same falls u/s. 300 of the Code which states whether a culpable homicide is murder, or would it fall under its five exceptions which lay down when culpable homicide is not murder.

In other words, 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 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in section 300 of the Code.[36.]

From the above conspectus, it emerges that whenever a Court is confronted with the question of whether the offence is 'murder' or 'culpable homicide not amounting to murder' on the facts of a case, it will be convenient for it to approach the problem in

three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in section 299. If the answer to this question is *prima facie* found in the affirmative, the stage for considering the operation of section 300, IPC, 1860, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of 'murder' contained in section 300. If the answer to this question is in the negative, the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of section 304, depending, respectively, on whether the second or the third clause of section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the first part of section 304, IPC, 1860.

The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

To sum up:

> Section 299 is divided into three parts. The first part refers to the act by which the death is caused by being done with the intention of causing death. That part corresponds to the first part of the section 300, IPC. The second part of section 299, IPC speaks of the intention to cause such bodily injury as is likely to cause death. This has corresponding provisions in clauses "Secondly" and "Thirdly" of section 300, IPC, section 304, Part I, IPC, covers cases which by reason of the Exceptions under section 300, IPC, are taken out of the purview of cls. (1), (2) and (3) of section 300, IPC, but otherwise would fall within it and also cases which fall within the second part of section 299 but not within section 300 clauses (2) and (3). The third part of section 299 corresponds to "fourthly" of section s. 300. Section 304, Part-II, IPC, covers those cases which fall within the third part of section 299 but do not fall within the fourth clause of section 300.[37.]

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 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in section 300 of the Code.[38.]

[s 300.3] Clause 1.— 'Act by which the death is caused is done with the intention of causing death'.—

The word 'act' includes omission as well (section 33). Any omission by which death is caused will be punishable as if the death is caused directly by an act.[39.] Thus, where a person neglected to provide his child with proper sustenance although repeatedly warned of the consequences and the child died, it was held to be murder.[40.] Intention to cause death may be revealed by the whole circumstances of the story.

[s 300.4] Honour Killing.—

In *Shakti Vahini v UOI*,[41.] the Supreme Court observed that honour killing is not the singular type of offence. It is a grave one but not the lone one. It is a part of honour crime. Honour crime is the genus and honour killing is the species, although a

dangerous facet of it. In *Arumugam Servai v State of TN*,[42.] the Supreme Court strongly deprecated the practice of *khap/katta* panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice.[43.] Law Commission of India studied the matter and submitted the 242nd report to the Government. Some proposals are being mooted proposing amendments to section 300, IPC, 1860 by way of including what is called 'Honour Killing' as murder and shifting the burden of proof to the accused. But the Commission expressed the view that there is no need for introducing a provision in section 300, IPC, 1860 in order to bring the so called 'honour killings' within the ambit of this provision. According to the report, the existing provisions in IPC, 1860 are adequate enough to take care of the situations leading to overt acts of killing or causing bodily harm to the targeted person who allegedly undermined the honour of the caste or community. The commission suggested a new law (instead of amending IPC, 1860) to tackle the problem namely "Prohibition of Interference with the Freedom of Matrimonial Alliances Bill 2011".[44.]

In *Shakti Vahini v UOI*,[45.] the Supreme Court observed that torture or torment or ill-treatment in the name of honour that tantamounts to atrophy of choice of an individual relating to love and marriage by any assembly is illegal and cannot be allowed a moment of existence. In this case, the Supreme Court issued detailed preventive, remedial and punitive directives to prevent honour killings in the country.

[s 300.5] Clause 2.—'With the intention of causing such bodily injury as the offender knows to be likely to cause the death'.—

This clause applies where the act by which death is caused is done with the intention of causing such bodily injury as the offender *knows to be likely to cause the death of the person* to whom the harm is caused. It applies in special cases where the person injured is in such a condition or state of health that his or her death would be likely to be caused by an injury which would not ordinarily cause the death of a person in sound health and where the person inflicting the injury knows that owing to such condition or state of health it is likely to cause the death of the person injured. In a case involving attack with sulphuric acid causing "grievous injury" where the doctor testified that such an attack may also cause death, the Court said that "the word likely means 'probably' and can easily be distinguished from 'possibly'. When the chances of a thing happening are very high, we say that it will most probably happen".[46.]

[s 300.6] Poisoning.—

In a case of murder by poisoning, the prosecution must establish (1) that death took place by poisoning, (2) that the accused had the poison in his possession, and (3) that the accused had an opportunity to administer poison to the deceased.[47.] These propositions were laid down by the Supreme Court in *Dharambir Singh v State of Punjab,* Criminal Appeal No. 98 of 1958, decided, Nov. 4, 1958 SC[48.] and were given anxious consideration by Hidayatullah, J, in *Anant Chintaman Lagu v State of Bombay.*[49.] The learned judge (afterwards CJ) did not consider them as invariable criteria of proof to be established by the prosecution in every case of murder by poisoning. This is so "because", as the learned judge said:

> evidently if after poisoning the victim, the accused destroyed all traces of the body, the first proposition would be incapable of being proved except by circumstantial evidence. Similarly, if the accused gave a victim something to eat and the victim died immediately on the ingestion of that food with symptoms of poisoning and poison, found in the *viscera*, the

> requirement of proving that the accused was possessed of the poison would follow the circumstance that the accused gave the victim something to eat and need not be separately proved.

Following this opinion in the case of *Bhupinder Singh v State of Punjab*[50.] and dispensing with the need for proof of possession of poison, the Supreme Court said that:

> we do not consider it necessary that there should be acquittal on the failure of the prosecution to prove possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison..... will not keep a portion of it for the investigating officer to come and collect it.... [He] would naturally take care to eliminate and destroy the evidence against him.... It would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The Court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of poison with the accused.

Continuing further, Shetty, J said:

> The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be very many obvious facts and circumstances in which the Court may be justified in drawing permissible inference that the accused was in possession of the poison in question.... The insistence on proof of possession of poison... invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning.

Where, therefore, neither motive nor administration of poison nor its possession by the accused could be proved, the accused had to be acquitted.[51.] Where it is proved that the accused administered poison, the accused must be presumed to have knowledge that his act was likely to cause death.[52.] If the prosecution failed to prove the cause of death, the fact that the accused failed to explain the cause of death cannot be the basis of conviction. Accused was acquitted where neither *post-mortem* report nor FSL report showed the administration of poison.[53.] Where the allegation was that the death was caused by poison mixed with alcohol, but no remnants of poisonous substance were found either in the two bottles or in the steel glass but were found only in the earth so collected from the place of occurrence, accused acquitted.[54.]

[s 300.7] Possibility of survival of deceased.—

The Supreme Court has observed that a chance of miraculous survival is not contemplated by section 300. The attacker becomes liable if he knew that his victim would die as a result of the injuries caused by him. The doctor's opinion that the victim could have survived if timely and proper medical aid was provided is a hypothetical proposition.[55.]

[s 300.8] Clause 3.—'With the intention of causing bodily injury to any person ... sufficient in the ordinary course of nature to cause death'.—

The distinction between this clause and clause 2 of section 299 depends upon the degree of probability of death from the act committed. If from the intentional act of injury committed the probability of death resulting is high, the finding will be that the accused intended to cause death, or injury *sufficient* in the ordinary course of nature to cause death; if there was probability in a less degree of death ensuing from the act committed, the finding will be that the accused intended to cause injury *likely* to cause death.[56.] In the case of *Mangesh v State of Maharashtra*,[57.] the Supreme Court stated

the circumstances from which it may be gathered as to whether there was intention to cause death. It included circumstances like nature of the weapon; on what part of the body the blow was given; the amount of force; was it a result of a sudden fight or quarrel; whether the incident occurred by chance or was pre-meditated; prior animosity; grave and sudden provocation; heat of passion; did the accused take any undue advantage; did he act cruelly; number of blows given, etc. Even if none of the injuries by itself was sufficient in the ordinary course of nature to cause death, cumulatively such injuries may be sufficient in the ordinary course of nature to cause death.[58.]

[s 300.9] "Bodily injury".—

The expression "bodily injury" in clause thirdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature, even if none of those injuries individually measures up to such sufficiency. The sufficiency spoken of in this clause, as already noticed, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fall under clause thirdly of section 300. All the conditions which are a prerequisite for the applicability of this clause have been established and the offence committed by the accused, in the instant case was "murder".[59.]

What is required for the prosecution to prove to bring the case under clause thirdly to section 300? First, it must be established, quite objectively, that a bodily injury is present; Second, the nature of the injury must be proved and these are purely objective investigations; third, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and once these three elements are proved to be present, the enquiry proceeds further; and fourth, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under section 300 "thirdly". Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.[60.] On this particular point, there is the following pertinent observation of the Supreme Court:[61.]

> The nature of the offence does not depend merely on the location of the injury caused by the accused. The intention of the person causing the injury has to be gathered from a careful examination of the facts and circumstances of each given case....

The Supreme Court also observed that the intention to cause the requisite type of injury is a subjective inquiry, but that once that type of intention is found in the assailant, the further inquiry whether the injury was sufficient in the ordinary course of nature to cause death is of objective nature.[62.]

[s 300.10] Principle of exclusion.—

In *Rampal Singh v State of UP*,[63.] after referring to the pronouncements in Rayavarapu Punnayya (*supra*), *Vineet Kumar Chauhan v State of UP*,[64.] *Ajit Singh v State of Punjab*,[65.] and *Mohinder Pal Jolly v State of Punjab*,[66.] the Supreme Court opined thus:

> The evidence led by the parties with reference to all these circumstances greatly helps the Court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view i.e. by applying the "principle of exclusion". This principle could be applied while taking recourse to a two- stage process of determination. First, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of s. 302 of the Code, that is, "culpable homicide amounting to murder". Then second, it may proceed to examine if the case fell in any of the Exceptions detailed in s. 300 of the Code. This would doubly ensure that the conclusion arrived at by the Court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery.[67.]

The third clause of section 300 views the matter from a general standpoint. Here, the emphasis is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature. When this sufficiency exists and death follows and the causing of such injury is intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant.[68.] In some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has in fact taken place. In such a case, it may not be open to argue backwards from the death to the blow, to hold that the sufficiency is established because death did result. As death can take place from other causes, the sufficiency is required to be proved by other and separate evidence.[69.]

[s 300.11] Contradiction between ocular and medical evidence.—

Where there is a contradiction between medical evidence and ocular evidence, the position of law can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value *vis-à-vis* medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.[70.] The opinion given by a medical witness need not be the last word on the subject. Such opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, Court is not obliged to go by that opinion. After all, opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent with probability, the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.[71.] Where the testimony of eye-witnesses is totally inconsistent with medical evidence, and suffering from improvements, the rule that ocular evidence has precedence over medical evidence cannot be applied.[72.]

[s 300.12] Discrepancy between the reports of doctor who examined the deceased and the doctor who conducted autopsy.—

Where the medical certificate showed the age of injuries as 24 hours but in *post-mortem* report it was mentioned as six hours, it was held that in *post-mortem* report, the determination of precise duration of the injuries can be possible due to the internal examination of the injuries whereas no such advantage is available to the doctor when he examines the injuries in the nature of contusions.[73.]