away in house. The acts cannot be related to the discharge of his official duties and hence sanction for prosecution under section 197 Cr PC, 1973 not required.[172.]

[s 201.15] Acquittal for main offence, conviction under section 201.—

One *Palvinder Kaur* was tried for offence under sections 302 and 201 Penal Code and was convicted under section 302 IPC, 1860 but no verdict was recorded regarding the charge under section 201 Penal Code. In appeal, High Court acquitted her of the charge of murder, but convicted under section 201 of Penal Code. In the appeal before Supreme Court, it was held that in order to establish the charge under section 201 IPC, 1860 it is essential to prove that substantive offence has been committed and the accused knew or had reason to believe that such offence has been committed with requisite knowledge and intention of screening the offender from such legal punishment, caused any evidence of the commission of that offence to disappear or gave any information respecting such offence or having such knowledge or believed to be false. She is acquitted under section 201 IPC, 1860.[173.] Conviction for causing disappearance of evidence is possible even if nobody has been convicted for the main offence.[174.] Where the allegation was that the appellant killed his wife with a bamboo stick and buried her dead body in dry portion of pond located in his compound and there was no mark of injury found on the dead body; Court held that the possibility that deceased committed suicide by consuming poison cannot be ruled out. Though he was acquitted under section 302, but was convicted under section 201 IPC, 1860.[175.]

[s 201.16] Main accused died during pendency of trial.—

Where main accused died during pendency of trial, conviction of co-accused for causing disappearance of evidence is held not proper.[176.]

[s 201.17] CASES.—

however, submitted with respect that having regard to the decisions of the Supreme Court in the cases of *Om Prakash*,[177.] and *Abhayanand*,[178.] where it has been held that to constitute an attempt to commit an offence it is not essential that the last proximate act must be done by the accused, in the instant case too the accused could perhaps be held guilty of an attempt to cause disappearance of the evidence of murder under sections 201/511, IPC, 1860, as they, in fact, did all that lay within their power to do towards causing disappearance of the evidence of murder but the plot failed as the police intervened in the matter. Where the members of an unlawful assembly indiscriminately killed five persons, dragged the dead bodies over a distance, beheaded the victims and threw their limbs and bodies in the raging fire, they not only committed an offence under section 201, IPC, 1860, but were also liable under sections 302/149, IPC, 1860.[179.] If murder of an illegitimate child remains unproved, mere secreting of the dead body of the child does not constitute an offence under section 201 IPC, 1860.[180.] Where the complaint filed under section 201, IPC, 1860, besides mentioning the section did not contain a single word as to how the evidence of the crime was destroyed, it was held that no cognizance could be taken on such a complaint as it did not even contain allegations to constitute the offence under section 201, IPC, 1860.[181.] Mere removal of dead body from one place to another does not by itself amount to causing disappearance of evidence under section 201, IPC, 1860.[182.] Where the dead bodies were disposed of by some of the members of the unlawful assembly, all of them could

be convicted under section 201 read with section 149, IPC, 1860.[183] Where the accused cremated the dead body of his wife who had committed suicide without informing the police, the accused was held liable under section 201 in spite of he being acquitted under sections 304-B and 498-A.[184]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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

133. *Kalawati*, (1953) SCR 546 [LNIND 1953 SC 5] , at p 557. **Followed** in *VL Tresa v State of Kerala*, AIR 2001 SC 953 [LNIND 2001 SC 364] , wife of the deceased concealing the real circumstances of death. *Ram Singh v State of HP*, 1997 Cr LJ 1829 : 1997 SCC (Cr) 729, for notes see under section 120-B.

134. *Nebti Mandal*, (1939) 19 Pat 369.

135. *Public Prosecutor v Venkatamma*, (1932) 56 Mad 63.

136. *Bakhora Chowdhary v State of Bihar*, 1991 Cr LJ 91 (Pat). A father-in-law convicted for lodging report of suicide of his daughter-in-law when he knew it was murder. *Brij Kishore v State of UP*, 1989 Cr LJ 616 (All).

137. *Asar Mohammad v State of UP*, AIR 2018 SC 5264 .

138. *Deepak v State of Maharashtra*, (1995) 2 Cr LJ 2219 (Bom).

139. *Markose*, (1962) 1 Cr LJ 610 .

140. *Rathinam v State of TN*, (2011) 3 SCC (Cr) 111 : (2011) 11 SCC 140 [LNIND 2009 SC 1873] : 2010 (11) Scale 6 [LNINDORD 2009 SC 542]

141. *Palvinder Kaur*, (1953) SCR 94 [LNIND 1952 SC 54] : 1953 Cr LJ 154 : AIR 1952 SC 354 [LNIND 1952 SC 54] . See *Bhupendra Singh v State of UP*, AIR 1991 SC 1083 [LNIND 1991 SC 151] : 1991 Cr LJ 1337 : 1991 All LJ 379 : (1991) 2 SCC 750 [LNIND 1991 SC 151] . See also *State of UP v Kapil Deo*, AIR 1991 SC 2257 [LNIND 1991 SC 397] : 1991 Cr LJ 3321 : 1991 Supp (2) SCC 170 ; *Suleman Rahiman v State of Maharashtra*, AIR 1968 SC 829 [LNIND 1967 SC 354] : 1968 Cr LJ 1013 ; *Roshan Lal v State of Punjab*, AIR 1965 SC 1413 [LNIND 1964 SC 339] : 1965 (2) Cr LJ 426 ; *Batapa Bada Seth v State of Orissa*, 1987 Cr LJ 1976 (Ori); *Sardar Singh v State (Delhi Admn.)*, AIR 1993 SC 1696 [LNIND 1993 SC 153] : 1993 Cr LJ 1489 : 1993 Supp (2) SCC 393 . *Ram Saran Mahto v State of Bihar*, 1999 Cr LJ 4311 : AIR 1999 SC 3435 [LNIND 1999 SC 782] ; *Gati Bahera v State of Orissa*, 1997 Cr LJ 4331 (Ori).

142. *Basanti v State of HP*, AIR 1987 SC 1572 : 1987 Cr LJ 1869 : (1987) 3 SCC 227 . For other examples of acquittals under benefit of doubt, see *Kedar Nath v State of UP*, AIR 1991 SC 1224 : 1991 Cr LJ 989 ; *Kishore Chand v State of HP*, AIR 1990 SC 2140 [LNIND 1990 SC 468] : 1990 Cr LJ 2289 . *Sudhir Mondal v State of WB*, 1988 Cr LJ 569 (Cal); *State of Rajasthan v Kamla*, AIR 1991 SC 967 : 1991 Cr LJ 602 .

143. *Dinesh Kumar Kalidas Patel v State of Gujarat*, AIR 2018 SC 951 .

144. *Suresh v State of Karnataka*, 2002 Cr LJ 3273 (Kant).

145. *K Purnachandra Rao*, 1975 Cr LJ 1671 : AIR 1975 SC 1925 [LNIND 1975 SC 316] . *Sukhram v State of Maharashtra*, (2007) 7 SCC 502 [LNIND 2007 SC 969] : AIR 2007 SC 3050 [LNIND 2007 SC 969] , the Supreme Court restated the ingredients of the offence.

146. *Abdul Kadir v State*, (1880) 3 All 279 (FB).

147. *Matuki Misser*, (1885) 11 Cal 619 . *Hanuman v State of Rajasthan*, AIR 1994 SC 1307 [LNIND 1993 SC 992] : (1994) 2 Cr LJ 2092 : 1994 Supp (2) SCC 39 , where it was not proved that the dead body in question was that of the victim of murder or that the accused persons were themselves the assailants or knew the assailants, the Supreme Court held that it was not safe to convict them only on the ground that they performed the ceremonies for cremation of the body and took part in cremation. *Arbind Singh v State of Bihar*, AIR 1994 SC 1068 : 1994 Cr LJ 1227 (SC), another case where the participants in a cremation were acquitted because they had no knowledge or reason to believe that the death was homicidal.

148. *Dinesh Kumar Kalidas Patel v* State of Gujarat, AIR 2018 SC 951 .

149. *Samir Bhowmik v State of Tripura*, 200 Cr LJ 3018 (Gau).

150. *Vijaya v State of Maharashtra*, (2003) 8 SCC 296 [LNIND 2003 SC 739] : AIR 2003 SC 3787 [LNIND 2003 SC 739] .

151. *Ghuraiyaa v State of MP*, 1990 Cr LJ 1129 . *Naba Kumar Das v State of Assam*, 2002 Cr LJ 1950 (Gau).

152. *Dinesh Kumar Kalidas Patel v State of Gujarat*, AIR 2018 SC 951 .

153. *Jamnadas*, (1963) 1 Cr LJ 433 ; *Dr. Ravindra Kumar v State of Bihar*, 1991 Cr LJ 3052 (Pat).

154. *Prakash Dhawal Khairnar v State of Maharashtra*, AIR 2002 SC 340 [LNIND 2001 SC 2841] at 348.

155. *Bhanu Pratap Tewari v State of UP*, 2002 Cr LJ 1243 (All).

156. *Vithal Thukaram More v State of Maharashtra*, AIR 2002 SC 2715 [LNIND 2002 SC 449] ; *Hargovindas Devrajbhai Patel v State of Gujarat*, 1998 Cr LJ 662 : AIR 1998 SC 370 [LNIND 1997 SC 1443] . In *Rabin Mallick v State of West Bengal*, 2011 Cr LJ 3801 (Cal) the body of the deceased boy was concealed in a place in the exclusive knowledge of accused. Conviction was held proper but in *Udaimanik Jamatia v The State of Tripura*, 2011 Cr LJ 4167 (Gau) accused was acquitted though there was recovery of skeleton at the instance of accused.

157. *Sidhartha Vashisht v State (NCT of Delhi)*, AIR 2010 SC 2352 [LNIND 2010 SC 367] : (2010) 2 SCC (Cr) 1385.

158. *Channaraja v State of Karnataka*, 2012 Cr LJ 159 (Kar) *Sk Waheed v State of Bihar*, 2010 Cr LJ 1870 (Pat).

159. *Diwan Singh v State of Uttaranchal*, 2012 Cr LJ 3256 (Utt) But in *Ramakanta Patel v State of Orissa*, 2011 Cr LJ 600 (Ori). See also *Netrananda Naik v State of Orissa*, 2011 Cr LJ 813 (Ori).

160. *Mulakh Raj v Satish Kumar*, AIR 1992 SC 1175 [LNIND 1992 SC 322] : 1992 Cr LJ 1529 . *Turuku Budha Karkaria v State of Orissa*, 1994 Cr LJ 552 (Ori), killing a woman, removing her ornaments, concealing her body in a bush in deep forest, killers guilty under the section, sentenced under section 302.

161. *Goburdhun Bera*, (1866) 6 WR (Cr) 80.

162. *Autar*, (1924) 47 All 306 ; *Begu*, (1925) 52 IA 191 , 6 Lah 226, 27 Bom LR 707, **followed** in *Mata Din v State*, (1929) 5 Luck 255 . *Raveendran v State of Kerala*, 1994 Cr LJ 3562 (Ker), the accused offered a helping hand to the main accused in disposing of the dead body, conviction under section 201.

163. *Public Prosecutor v Munisami*, (1941) Mad 503.

164. *Vinod Bhalla v State of MP*, 1992 Cr LJ 3527 (MP). See also *Sankarapandian v State of TN*, 1992 Cr LJ 3662 (Mad); *Budhan Singh v State of Bihar*, 2006 Cr LJ 2451 SC : AIR 2006 SC 1959 [LNIND 2006 SC 300] .

165. *Bhagwan Singh v State of Punjab*, AIR 1992 SC 1689 [LNIND 1992 SC 396] : 1992 Cr LJ 3144 .

166. *Sarojini v State of MP*, 1993 AIR SCW 817 : 1993 Cr LJ 1648 (SC). See also *Bhuneshwar Pd Chaurasia v Bhuneshwar Chaurasia*, 2001 Cr LJ 3541 (Pat), a married woman died of poisoning, she was cremated hurriedly during the same night without informing police or her relatives. Those who participated in the activity were held guilty under the section; *Shambir Gowada v State of WB*, 2000 Cr LJ 1602 (Cal); *SK Usman v State of Maharashtra*, 2000 Cr LJ 3301 (Bom).

167. *VL Tresa v State of Kerala*, AIR 2001 SC 953 [LNIND 2001 SC 364] .

168. *Damodar v State of Karnataka*, AIR 2000 SC 50 [LNIND 1999 SC 884] : 2000 Cr LJ 175 .

169. *State of West Bengal v Rakesh Singh*, (2016)1 CALLT 178 (HC) : 2015 Cr LJ 3847 .

170. *KK Patnayak (Dr) v State of MP*, 1999 Cr LJ 4911 (MP).

171. *Sri Jayendra Saraswathy Swamigal v State of TN*, AIR 2006 SC 6 [LNIND 2005 SC 815] : (2005) 8 SCC 771 [LNIND 2005 SC 815] : 2005 Cr LJ 4626 .

172. *State of Maharashtra v Devahari Devasingh Pawar*, AIR 2008 SC 1375 [LNIND 2008 SC 103] : (2008) 2 SCC 540 [LNIND 2008 SC 103] : 2008 AIR (SCW) 815 : 2008 Cr LJ 1593 .

173. *Palvinder Kaur v State of Punjab*, AIR 1952 SC 354 [LNIND 1952 SC 54] .

174. *State of Karnataka v Madesha*, (2007) 7 SCC 35 [LNIND 2007 SC 918] : AIR 2007 SC 2917 [LNIND 2007 SC 921] ; *Sukhram v State of Maharashtra*, (2007) 7 SCC 502 [LNIND 2007 SC 969] : AIR 2007 SC 3050 [LNIND 2007 SC 969] , conviction under section 201 possible despite acquittal from the main offence.

175. *Suman Rajowar v State of Assam*, 2011 Cr LJ 2984 (Gau).

176. *Keshave Kishore Sinha v State of Bihar*, 2013 Cr LJ (NOC)7 (Pat).

177. *Om Prakash*, 1961 (2) Cr LJ 848 : AIR 1961 SC 1782 [LNIND 1961 SC 201] .

178. *Abhayanand*, 1961 (2) Cr LJ 822 .

179. *State of UP v Mahendra Singh*, 1975 Cr LJ 425 : AIR 1975 SC 455 [LNIND 1974 SC 320] .

180. Re *Sumitra Sherpani*, 1975 Cr LJ 169 (Gau), See also *Mazahar Ali*, 1976 Cr LJ 1629 (J&K).

181. *Chandrapal Singh*, 1982 Cr LJ 1731 : AIR 1982 SC 1238 : (1982) 1 SCC 466 .

182. *Bhagaban Kirshani*, 1985 Cr LJ 868 (Ori).

183. *Ram Avtar*, 1985 Cr LJ 1865 (SC) : AIR 1985 SC 880 [LNIND 1985 SC 4] .

184. *Sunkara Suri Babu v State of AP*, 1996 Cr LJ 1480 (AP).

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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[s 202] Intentional omission to give information of offence by person bound to inform.

Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.—

This section punishes the illegal omission to give information of those who are by some law bound to give information, when such omission is intentional. It is similar to section 176. See sections 39 and 40, Criminal Procedure Code, as to the persons legally bound to give information. The word "whoever" in section 202, IPC, 1860, refers to persons other than the offender.[185.] Moreover to compel a criminal to incriminate himself would violate the spirit of Article 20(3) of the Constitution. Where the duty to inform arises first and is not performed, the liability under this section would arise and it would be no defence that subsequent to the breach of duty there was involvement of

the accused person in some crimes. The person who knew or had reason to believe that death was not natural was obliged under the section to give information.[186.]

[s 202.1] Essential Ingredients.—

To sustain a conviction under the above quoted section 202 of the Penal Code, it is necessary for the prosecution to prove:

(1) that the accused had knowledge or reason to believe that some offence had been committed,

(2) that the accused had intentionally omitted to give information respecting that offence and

(3) that the accused was legally bound to give that information.[187.]

[s 202.2] CASES.—

The accused persons who raped a girl of 11 years and caused her death by thrusting a stick into her private part were under no obligation to file information of their own criminality, they became liable under this section because by falsely telling the mother of the victim that they had already reported the matter, they prevented her from lodging report with the police.[188.]

This section has also no application where the principal offence has not been established.[189.]

[s 202.3] Failure of doctor to give information.—

The allegation was the Accused, a dentist treated one of the injured assailants by suturing (stitching) his wound on the back after applying local anaesthesia pursuance of a previous plan that if and when any of the assailants got injured in the attack then immediate medical treatment would be given by the accused to the injured. The accused stitched the back of an assailant, which is not the job of a dentist. Offence under section 201 *prima facie* made out.[190.] The failure on the part of the doctor to give information to the police (in this case information was given after a gap of six days) has been held not to constitute any offence under section 202. It would have to be shown that doctors were duty bound to give such information that there was knowledge that in the burning of the lady some offence was involved. Even where this would be so, it would be a separate offence. The doctors cannot be prosecuted jointly with the main accused.[191.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

185. *HS Rathod*, 1979 Cr LJ 1025 : AIR 1979 SC 1232 [LNIND 1979 SC 43] .

186. *Bhagwan Swarup v State of Rajasthan*, AIR 1991 SC 2062 [LNIND 1991 SC 416] : 1991 Cr LJ 3123 .

187. *HS Rathod*, (*supra*).

188. *Ghuraiyaa v State of MP*, 1990 Cr LJ 1129 . *State of Rajasthan v Chhote Lal*, 2012 Cr LJ 1214 (SC) : 2011 (6) Scale 526 : 2012 AIR (SCW) 1159.

189. *HS Rathod, supra.*

190. *State of Kerala v Raneef*, (2011) 1 SCC 784 [LNIND 2011 SC 3] : AIR 2011 SC 340 [LNIND 2011 SC 3] : 2011 Cr LJ 982 : (2011) 1 SCC (Cr) 409.

191. *KK Patnayak (Dr) v State of MP*, 1999 Cr LJ 4911 (MP).

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[s 203] Giving false information respecting an offence committed.

Whoever knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[192.]**[*Explanation*.—In sections 201 and 202 and in this section the word "offence", includes any act committed at any place out of** [193.]**[India], which, if committed in** [194.] **[India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.]**

COMMENT.—

The liability under this section attaches to anyone who gives false information whether he is legally bound to furnish such information or not. The object of the Legislature is to discourage and punish the giving of false information to the police concerning offences which are actually committed and which the person charged with knows, or

has reason to believe, have been actually committed. The section contemplates information volunteered by some person.

[s 203.1] Ingredients.—

To secure a conviction under section 203, IPC, 1860, the prosecution must prove,

(1) that an offence has been committed;

(2) that the accused knew or had reason to believe that such offence had been committed;

(3) that he gave the information with respect to that offence;

(4) that the information so given was false;

(5) that when he gave such information he knew or believed it to be false.[195.]

A complaint against the petitioners/accused for committing an offence under section 203 of the IPC, 1860 would lie only in a case where such accused had voluntarily given false information in respect of an offence committed knowing or believing it to be false. Statements given by them to police during investigation of the crime and recorded under section 161 of the Code even if it is false, will not constitute an offence under section 203 of the IPC, 1860.[196.] Where two nuns died due to fall of bricks lifted by hoist lift without protective measures at construction site. Deed of settlement purportedly made in the name of a fictitious person so as to save the culpability of the contractor. Offence made out.[197.] Where the accused were prosecuted for throttling a man to death and also for giving for the purpose of screening murder wrong information that he died of excessive drinking, there being no direct evidence for the offence of murder, the accused were acquitted of the offence of murder and their conviction under section 201 was modified into one under section 203 for giving false information.[198.] Where petitioners were charged under section 203 and section 211, IPC, 1860 by the police only to cover up their mishandling of the investigation and their having falsely charged the petitioners of a crime which never took place, Court ordered compensation to the petitioners.[199.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

192. Added by Act 3 of 1894, section 6.

193. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

194. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

195. *Bhagguram*, 1982 Cr LJ 106 (MP).

196. *Jiji joseph v Tomy Ignatius*, 2013 Cr LJ 828 (Ker).

197. *Kumar v State of Kerala*, 2012 Cr LJ 3193 (Ker).

198. *Nagireddi Siva v State of AP*, 1992 Cr LJ 1339 (AP).

199. *Peruboyina Satyanarayana v State of AP*, 2006 Cr LJ 3027 (AP).

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[s 204] Destruction of document to prevent its production as evidence.

Whoever secretes or destroys any [200.][document or electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such [201.][document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

Section 175 deals with omission to produce or deliver up any document to any public servant, this section deals with secretion or destruction of a document which a person may lawfully be compelled to produce in a Court. A person may secrete a document not only when the existence of the document is unknown to other persons and for the

purpose of preventing the existence of the document coming to the knowledge of anybody, but also when the existence of the document is known to others.[202.]

The offence under this section is an aggravated form of the offence punishable under section 175. The section applies whether the proceeding is of a civil or criminal nature.

[s 204.1] CASES.—Secreting document.—

Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond, snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it, it was held that he had committed this offence.[203.]

[s 204.2] Destroying document.—

Where a police-officer took down at first the report of the commission of a dacoity made to him, but subsequently destroyed that report and framed another and a false report of the commission of a totally different offence, he was held guilty of this offence.[204.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

200. Subs. by The Information Technology Act, 2000 (Act 21 of 2000), section 91 and First Sch, w.e.f. 17 October 2000, for the word "document". The words "electronic record" have been defined in section 29A.

201. Subs. by The Information Technology Act, 2000 (Act 21 of 2000), section 91 and First Sch., w.e.f. 17 October 2000, for the word "document". The words "electronic record" have been defined in section 29A.

202. *Susenbihari Ray*, (1930) 58 Cal 1051 (SB).

203. *Subramania Ghanapati*, (1881) 3 Mad 261.

204. *Muhammad Shah Khan*, (1898) 20 All 307 . See also *Jagdish v State of Rajasthan*, 2002 Cr LJ 2171 .

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[s 205] False personation for purpose of act or proceeding in suit or prosecution.

Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, [1] or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—

The offence punishable under this section is not merely cheating by using a fictitious name, but by falsely assuming to be some other real person and in that character making an admission, confessing judgment, or causing any process to be issued, etc.

Any fraudulent gain or a benefit to the offender is not an essential element of this offence.[205.] Where A personated B at a trial with B's consent, which was given to save himself from the trouble of making an appearance in person before a Magistrate, it was held that A was guilty of an offence under this section, and B was guilty of abetment of

the offence.[206.] Act of impersonating another for purpose of giving evidence in Court falls under section 205 IPC, 1860. Section 205, IPC, 1860 is squarely covered under section 195(b)(i) of the Code of Criminal Procedure and cognizance could be taken only by a Court on the complaint in writing of that Court in which such offence was committed.[207.]

1. 'Confesses judgment'.—Allows a decree to be passed against himself.

[s 205.1] Personation of imaginary person.—

There is a conflict of opinion on the point whether a person commits an offence under this section by personating a purely imaginary person. The Calcutta High Court has held that a person by such personation commits an offence under this section.[208.] The Madras High Court, dissenting from the above ruling, has held that it is not enough to show the assumption of a fictitious name; it must also appear that the assumed name was used as a means of falsely representing some other individual.[209.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

205. *Suppakon*, (1863) 3 MHC 450 ; *Kalya*, (1903) 5 Bom LR 138 .

206. *Suppakon, supra.*

207. *Jawahar Yadav v State of Chhattisgarh*, 2006 Cr LJ 2078 (Chh).

208. *Bhitto Kahar*, (1862) 1 Ind Jur OS 128. See also *K M Chitharanjan v P M Kunhunni*, 2005 Cr LJ 4434 (Ker).

209. *Kadar Ravuttan*, (1868) 4 MHC 18 . By virtue of the provision in section 195 Cr PC, 1973, cognizance of an offence under this section is barred except on a complaint by the court where the offence is committed. *Sardul Singh v State of Haryana*, 1992 Cr LJ 354 (P&H).

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[s 206] Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The concealment or removal of property contemplated in this section must be to prevent the property from being taken. Where the property is already taken and the removal is subsequent, the offence under this section is not committed.[210.] The word 'taken' has been used in the sense of 'seized' or 'taken possession of'.[211.] Where the

removal was open and without any element of secrecy or deception, it was held that the removal was not "fraudulent removal" and hence this section could not apply.[212.]

A creditor commits no fraud who anticipates other creditors and obtains a discharge of his debt by the assignment of any property which has not already been attached by another creditor.[213.]

Sections 206, 207 and 208 have the effect of rendering criminal all collusive modes by which creditors, or lawful claimants may be defeated of their just remedies. Sections 421–424 deal with fraudulent transfers.

Under this and the next section a civil suit must be actually pending before a Court, and not merely intended to be filed.[214.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

210. *Murli v State*, (1888) 8 AWN 237.

211. *Sahebrao Baburao*, (1936) 38 Bom LR 1192 .

212. *Kudumban v Dinakaran*, 1962 Cr LJ 555 .

213. *Appa Mallya*, (1876) Unrep CrC 110.

214. *MS Ponuswami*, (1930) 8 Ran 268.

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[s 207] Fraudulent claim to property to prevent its seizure as forfeited or in execution.

Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section deals with the receiver, acceptor, or claimer of property who tries to prevent its seizure as a forfeiture. It punishes the accomplice just as the preceding section punishes the principal offender.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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[s 208] Fraudulently suffering decree for sum not due.

Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ILLUSTRATION

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

COMMENT.—

This section prevents the abuse of getting someone to file a collusive suit for recovery of the whole property and suffering a decree to be passed. It punishes persons making fictitious claims in order to secure the property of the defendant against person to whom he may become indebted in future.

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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[s 209] Dishonestly making false claim in Court.

Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

COMMENT.—

This section relates to false and fraudulent claims in a Court of Justice. It is much wider than the last section as it applies to a person who is acting fraudulently or dishonestly. Not only must the claim be false to the knowledge of the person making it, but the object of it must be to defraud, to cause wrongful loss or wrongful gain, to injure or to annoy. The section punishes the making of a false claim. The offence will be complete as soon as a suit is filed. If a person applies for the execution of a decree which has already been executed his act will be an offence under the next section.[215.]

Where the Court took cognizance of a complaint against dishonestly making a false claim in a Court without complaint of the concerned civil judge, the cognizance was held to be not justified by reason of section 195(b)(ii), Cr PC, 1973 that covers such

offences.[216] The Court had no jurisdiction to take cognizance of offence under sections 193/ 209/34 IPC, 1860 without having received any complaint under section 195 from the concerned civil Court.[217]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

215. *Beegum Mahtoon*, (1869) 12 WR (Cr) 37; *Bismilla Khan v Rambhau*, (1946) Nag 686. Cognizance of an offence under this section can be taken on a complaint by the court concerned. See section 195 Cr PC, 1973. *Sardul Singh v State of Haryana*, 1992 Cr LJ 354 P&H.

216. *Babu Lal v State*, 1998 Cr LJ 3595 (Raj). See also *Vinod Kumar v State*, 1997 Cr LJ 2893 (P&H).

217. *Kusum Sandhu v Sh Ved Prakash Narang*, 2009 Cr LJ 1078 (Chh); *Babu Lal v State of Rajasthan*, 2009 Cr LJ 3595 (Raj).

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[s 210] Fraudulently obtaining decree for sum not due.

Whoever fraudulently obtains [1] a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied [2] or for anything in respect of which it has been satisfied or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section is the counterpart to section 208 in respect of fraudulent decrees, just as section 207 is the counterpart to section 206 in respect of fraudulent transfers and conveyances, the object of the Code being to strike both parties alike with the same penalty. This section, taken together with section 208, will enable both plaintiff and defendant to a fraudulent or collusive suit or execution to be dealt with alike.

1. 'Obtains'.—The offence is committed when the decree is fraudulently obtained and the fact that the decree has not been set aside, though admissible to prove that there

was no fraud, is not a bar to a prosecution under the section.[218.]

2. 'Causes a decree or order to be executed...after it has been satisfied'.—The mere presentation of an application for the execution of a decree already executed will not be sufficient. The accused must have caused the decree to be executed against the opposite party after it had been satisfied;[219.] or obtained an order for attachment for a sum already paid.[220.] Where the decree-holder does not want to proceed with the execution and gets his execution application dismissed he cannot be convicted of an offence under this section.[221.]

The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it does not prevent the decree-holder from being convicted of an offence under this section.[222.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

218. *Molla Fuzla Karim*, (1905) 33 Cal 193 .

219. *Shama Charan Das v Kasi Naik*, (1896) 23 Cal 971 .

220. *Hikmat-ullah Khan v Sakina Begam*, (1930) 53 All 416 .

221. *Bismilla Khan v Rambhau*, (1946) Nag 686.

222. *Madhub Chunder Mozumdar v Novodeep Chunder Pandit*, (1888) 16 Cal 126 ; *Mutturaman Chetti*, (1881) 4 Mad 325; *Pillala*, (1885) 9 Mad 101.

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[s 211] False charge of offence made with intent to injure.

Whoever, with intent to cause injury[1] to any person, institutes or causes to be instituted any criminal proceedings[2] against that person, or falsely charges[3] any person with having committed an offence, knowing that there is no just or lawful ground[4] for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted[5] on a false charge of an offence punishable with death, [223.][imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section includes two distinct offences:—

(1) Actually instituting or causing to be instituted false criminal proceeding against a person.[224.]

(2) Preferring a false charge against a person.

The first assumes the second, but the second may be committed where no criminal proceedings follow.

The necessary ingredients to constitute either of the above offences are—

(1) the criminal proceedings must be instituted, or the false charge made with intent to injure;

(2) the criminal proceedings must be instituted, or the false charge must be made, without just or lawful ground, in other words, it must be made maliciously.

Difference is made in punishment according as the charge relates to offences punishable with imprisonment which may extend to seven years or more or otherwise.

The mere making of a false charge is punishable under the first part of the section. If a case gets no further than a police inquiry, it falls within that part. But under the second part there should be an actual institution of criminal proceedings on a false charge.[225.] Two conditions are necessary before the enhanced punishment provided in the second paragraph could be inflicted: (1) proceedings on the false charge should have been actually instituted, and (2) the false charge must be in respect of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards.

[s 211.1] Sections 182 and 211.—

According to the Bombay High Court there is a clear distinction between a false charge that falls under section 211 and false information given to the police, in which latter case the offence falls under section 182. A person prosecuting another under section 182 need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to be false, with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under section 211, on the other hand, proof of the absence of just and lawful ground for making the charge is an important element.[226.] If the information conveyed to the police amounts to the institution of criminal proceedings against a defined person or amounts to the falsely charging of a defined person with an offence, then the person giving such information is guilty of an offence under section 211. In such a case, section 211 is, and section 182 is not, the appropriate section under which to frame a charge. Section 182, when read with section 211, must be understood as referring to cases where the information given to the public servant falls short of amounting to institution of criminal proceedings against a defined person and falls short of amounting to the falsely charging of a defined person with an offence as defined in the Penal Code.[227.]

The Calcutta, the Madras, the Allahabad and the Patna High Courts differ from this view of the Bombay High Court. The Calcutta High Court has ruled that a prosecution for a false charge may be under section 182 or section 211, but if the false charge was a serious one, the graver section 211 should be applied and the trial should be full and fair.[228.] Where a false charge is made to the police of a cognizable offence the offence committed by the person making the charge falls within the meaning of section 211 and not section 182.[229.]

The Madras High Court has held that there is no error in a conviction under section 182, when the false charge made before the police was punishable under the final clause of section 211. The High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver offence.

Whether it will do so, or not, is a question, not of law, but of expediency on the facts of the particular case.[230.]

The Allahabad High Court had held that where a specific false charge is made, the proper section, for proceedings to be adopted under section 211.[231.] Although it is difficult to see what case would arise under section 211 to which section 182 could not be applied yet section 182 would apply to a case that might not fall under section 211. The offence under section 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no steps towards the institution of such criminal proceedings. There is no restriction imposed by the Penal Code or by the Criminal Procedure Code upon the prosecution of an offence either under section 182 or section 211. It appears that it has been left to the discretion of the Court to determine when and under what circumstances prosecution should be proceeded with under sections 182 and 211.[232.] The soundness of this view is doubted in subsequent cases.[233.]

The Patna High Court has followed the view of the Calcutta High Court.[234.]

The Lahore High Court has held that an offence under section 182 is included in the more serious offence under section 211 and a prosecution for a false charge may be either under section 182 or section 211, though clearly if section 211 does apply and the false charge is serious, the prosecution should be under section 211.[235.]

1. 'Intent to cause injury'.—This is an essential part of the offence.[236.]

2. 'Institutes or causes to be instituted any criminal proceedings'.—The word "proceedings" is used in this section in the ordinary sense of a prescribed mode of action for prosecuting a right or redressing a wrong. It is not used in the technical sense of a proceeding taken in a Court of law.[237.] Neither the proceedings before the Disciplinary Committee of the Bar Council of India, is a criminal proceeding nor was the charge in the Disciplinary Proceedings in relation to an offence. Charge in the Disciplinary Proceedings before the Bar Council of India is only in respect of professional misconduct and not offence as such.[238.] Under this section 'instituting a criminal proceeding' may be treated as an offence in itself apart from 'falsely charging' a person with having committed an offence. There are two modes in which a person aggrieved may seek to put the criminal law in motion: (1) by giving information to the police (Criminal Procedure Code, section 154) and (2) by lodging a complaint before a Magistrate (Criminal Procedure Code, sections 190, 200). A person who sets the criminal law in motion by making to the police a false charge in respect of a *cognizable offence* institutes criminal proceedings.[239.] But as the police have no power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence, made to the police, is not an institution of criminal proceedings, but merely a false charge.[240.] The distinction between cognizable and non-cognizable offences relates to the powers of the police only, and it will, therefore, seem that the false charge of any offence, whether cognizable or non-cognizable, before a Magistrate is an institution of criminal proceedings.

3. 'Falsely charges'.—The word 'charges' means something different from 'gives information'. The true test seems to be, does the person who makes the statement that is alleged to constitute the 'charge' do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made.[241.] The false charge must be made to a Court, or to an officer who has power to investigate and send it up for trial.[242.] Where the tribunal

before whom the complaint is made is not competent to take any action direct or indirect to punish the persons complained against, it cannot be said that the accused 'charged' such persons with any offence or that his intention necessarily was that action should be taken against them.[243.] A false petition to the Superintendent of Police, praying for the protection of the petitioners from the oppression of a Sub-Inspector, which may be effected by some departmental action, does not amount to such a false charge.[244.] It is enough that a false charge is made though no prosecution is instituted thereon.[245.] Where a person who gives false information as to the commission of an offence merely states that he suspected a certain other person to be the offender, it may be that he would not be liable under this section, but where it is clear that the informant's intention was not merely that the police should follow up a clue but that they should put the alleged offender on trial, the informant is guilty of an offence under this section.[246.] The Calcutta High Court has held that the meaning of the expression 'falsely charges' is simply 'falsely accuses' and as the section stands there is no necessity of this false accusation being made in connection with a criminal proceeding.[247.]

[s 211.2] Giving false Evidence: No false charge.—

The words "falsely charges" in this section cannot mean giving false evidence against the accused as a prosecution witness during the course of a trial. To "falsely charge" must refer to the criminal or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words "falsely charges" have to be read along with the expression "institution of criminal proceedings". The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words it must be embodied either in a complaint or in a report of a cognizable offence to the police-officer or to an officer having authority over the person against whom the allegations are made. Giving false evidence in course of a trial amounts to an offence under sections 193 and 195 and not under section 211, IPC, 1860.[248.]

[s 211.3] Bare statement is not false charge.—

A statement to the police of a suspicion that a particular person has committed an offence is not a charge within the meaning of this section, nor does it amount to institution of criminal proceedings; and a conviction cannot be had on proof that the suspicion was unfounded.[249.] The accused made a report to the police that his buffalo had been poisoned and that he suspected two persons whom he named of having administered the poison. The police made an inquiry and reported that there was no case of poisoning and the charge was struck off. One of the persons then brought a complaint under this section against the accused. It was held that the report to the police did not amount to a charge of a criminal offence.[250.]

[s 211.4] Statement under section 162, Criminal Procedure Code.—

A statement under section 162, Criminal Procedure Code, in answer to questions put by a police-officer making an investigation under section 161 of the Code, cannot be made

the basis of a prosecution under this section.[251.] False identification in a Test Identification Parade is not falsely charging.[252.]

4. 'Knowing that there is no just or lawful ground'.—This expression is the equivalent of the English technical phrase "without reasonable or probable cause," which means an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be:

First, an honest belief of the accuser in the guilt of the accused;

Second, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion;

Third, such belief must be based upon reasonable grounds; that is, such grounds as would lead any fairly cautious man in the defendant's situation so to believe;

Fourth, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.[253.]

A person may, in good faith, institute a charge that is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them but in neither case has he committed an offence under this section. To constitute this offence it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings.[254.]

In the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the complainant affords very strong evidence of reasonable and probable cause.[255.]

5. 'If such criminal proceeding be instituted'.—There is a divergence of views between the Calcutta, the Madras and the Patna High Courts on the one hand, and the Allahabad and the Lahore High Courts on the other, on the question whether the latter part of the section applies to such cases of complaints to the police which are disposed of without a formal magisterial inquiry. A Full Bench of the Calcutta High Court has held that the latter part would apply to such cases where the charge related to the more serious offence.[256.] This case is followed by the Madras[257.] and the Patna[258.] High Courts. The test to apply is,—did the person who made the charge intend to set the criminal law in motion against the person on whom the charge is made.[259.]

The Allahabad High Court has, on the other hand, held that to constitute the offence defined in the second paragraph of this section, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the police, the making of such charge does not amount to institution of criminal proceedings, and the offence committed will fall within the first paragraph, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph.[260.] The former Chief Court of the Punjab held likewise.[261.]

[s 211.5] Complaint by Court: when.—

A complaint alleging commission of an offence punishable under section 211 IPC, 1860, "in or in relation to any proceedings in any Court", is maintainable only at the instance of that Court or by an officer of that Court authorized in writing for that purpose or some other Court to which that Court is subordinate, is abundantly clear from the language employed in the provision.[262.] When the offence under section 211, IPC, 1860, is committed in relation to Court proceedings, cognizance without Court's complaint is barred by section 195 (1)(b)(i), Cr PC, 1973.[263.] Since an order of a Magistrate discharging an accused on submission of a police report under section 173, Cr PC, 1973, is a judicial and not administrative order, a complaint by the Magistrate or his superior Court under section 195(1)(b)(i), Cr PC, 1973, would be necessary to take cognizance of an offence under section 211, IPC, 1860.[264.] Similarly, remand and bail proceedings too have been held to be Court proceedings and as such a complaint by the Court would be necessary to take cognizance of the offence under section 211, IPC, 1860.[265.] This view of the law has now been affirmed by the Supreme Court as well.[266.]

[s 211.6] Proceedings in any Court.—

There are three situations that are likely to emerge while examining the question whether there is any proceedings in any Court, namely,

(a) there might not be any proceeding in any Court at all,

(b) proceeding in a Court might actually be pending at the relevant time when cognizance is sought to be taken of the offence punishable under section 211, IPC, 1860 and

(c) there might have been proceedings which had already been concluded though there might not be any proceedings pending in any Court when cognizance of offence under section 211, IPC, 1860 is taken. It is only in second and third situation that section 195(1), Cr PC, 1973 would apply. The fact that proceedings had been concluded would not be material because section 195(1) does not require that proceedings in any Court must actually be pending at the time when the question of applying the bar arises if the offence under section 211, IPC, 1860 is alleged to have been committed in relation to those proceedings.[267.] A complaint by the concerned Executive Magistrate could be necessary under section 195(1)(a)(i), and there could be no sufficient reason for dispensing with the necessity for a complaint by him for prosecution of an offence under section 211, IPC, 1860 committed in relation to a proceeding before him under section 144, Cr PC, 1973.[268.]

[s 211.7] Sections 211 and 500 IPC, 1860.—

If we read sections 211 and 500 of IPC, 1860 together, we would find a clear distinction. Section 211 imposes a punishment in case of a false charge or offence made with the intent to injure someone before any Court of law, whereas section 500 provides for punishment in case of a defamation of a person by any one. Defamation has been defined under section 499 which provides inter alia whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Making a false complaint before a Court of law would amount to committing fraud on Court. It is for

the Court to proceed against the erring person. The provision has been made to preserve the sanctity of the Court. Section 500 gives right to sue to a person who is defamed within the meaning of section 499 by the conduct of the accused. These two provisions are totally distinct and can be tried in absence of each other.[269.]

[s 211.8] Civil remedy.—

A person aggrieved by a false charge may, if he chooses, sue in a civil Court for damages for malicious prosecution, instead of taking criminal proceedings under this section.

[s 211.9] CASES.—

It was alleged that petitioner's son was kidnapped by opposite party, petitioner's son himself appeared and made his statement that he was not kidnapped, rather he had himself voluntarily gone to marry with a girl. The girl also had appeared and made her statement that petitioner's son and herself have married and for that reason the petitioner threatening to kill them. It was held that the order, taking cognizance of offences against petitioner for falsely implicating the opposite party, is proper.[270.]

[s 211.10] False charge should be made to Court or officer having jurisdiction to investigate.—

A woman appeared before the Station Staff Officer and accused a non-commissioned officer of rape, and, after a military inquiry, the military authority held that the charge was false and directed the complainant to be prosecuted under this section. The conviction was set aside, as the false charge was not made to a Court having jurisdiction.[271.] Where the accused laid a charge of mischief by fire at a police station, which was reported to be false, and the District Magistrate, upon the receipt of a report to the same effect from the Deputy Magistrate, to whom he had sent the case for a judicial inquiry, passed an order to prosecute the accused, it was held that the order of the District Magistrate was bad, as the matter of the false charge had not come before him in the course of judicial proceedings.[272.]

Where a letter falsely charging a person with having committed an offence was written and posted at Kumbakonam and was addressed to the Inspector-General of Police, Madras, an offence under this section could be said to be completed only when the letter reached the destination, i.e., the office of the Inspector-General of Police, Madras. The communication of the false accusation was, in fact, the laying of the false charge and, unless the matter was actually communicated to the superior officer, it could not be said that a false charge had been made. So, the Magistrate at Kumbakonam would have no territorial jurisdiction to try the case.[273.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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

224. *Jitendra v State of UP*, 2000 Cr LJ 3087 (All), the accused was falsely implicated and convicted for offences under IPC. The court directed the authorities to register case against the prosecutrix and take necessary action; *AN Gupta v State of Rajasthan*, 1999 Cr LJ 4932 (Raj), FIR lodged containing false and baseless allegations, intending *prima facie* to injure the reputation of the complainant. Falsity was proved by the statements of the accused under section 313, Cr PC, 1973. The order acquitting the accused under sections 500 and 211 was set aside; *Rubin Roy Chaudhury v State of WB*, 1998 Cr LJ 1699 (Cal), order taking cognizance of offence was held to be proper. The office bearers of an Institute hatched a plot to bring about expulsion of the complainant and his wife, *prima facie* on false basis.

225. *Karsan Jesang*, (1941) 43 Bom LR 858 , (1942) Bom 22.

226. Per Ranade, J, in *Raghavendra v Kashinathbhat*, (1894) 19 Bom 717, 725.

227. *Apaya*, (1913) 15 Bom LR 574 [LNIND 1913 BOM 44] .

228. *Sarada Prosad Chatterjee*, (1904) 32 Cal 180 , **followed** in *Gati Mandal*, (1905) 4 CLJ 88.

229. *Giridhari Naik*, (1901) 5 Cal WN 727.

230. (1872) 7 MHC (Appx) 5.

231. *Jugal Kishore*, (1886) 8 All 382 .

232. Per Edge, CJ in *Raghu Tiwari*, (1893) 15 All 336 , 338.

233. *Kashi Ram*, (1924) 22 ALJR 829; *Samokhan*, (1924) 26 Cr LJ 594 .

234. *Daroga Gope*, (1925) 5 Pat 33.

235. *Nota Ram*, (1941) 23 Lah 675. See *Muthra v Roora*, (1870) PR No. 16 of 1870; *Todur Mal v Mussammat Bholi*, (1882) PR No. 14 of 1882.

236. *Gopal Dhanuk*, (1881) 7 Cal 96 .

237. *Albert*, AIR 1966 Kerala 11 [LNIND 1965 KER 172] (FB).

238. *Rajkumar Malpani v Akella Sreenivasa Rao*, 2011 Cr LJ 2997 (AP).

239. *Jijibhai Govind*, (1896) 22 Bom. 596; *Karim Buksh*, (1888) 17 Cal 574 , FB; *Parahu*, (1883) 5 All 598 ; *Nanjunda Rau*, (1896) 20 Mad 79; *Mst Binia*, (1937) Nag 338; *Albert*, AIR 1966 Kerala 11 [LNIND 1965 KER 172] (FB).

240. *Karim Buksh, supra*.

241. *Rayan Kutti*, (1903) 26 Mad 640, 643; *Nihala*, (1872) PR No. 14 of 1872.

242. *Jamoona*, (1881) 6 Cal 620 ; *Sivan Chetti*, (1909) 32 Mad 258, **overruling** *Ramana Gowd*, (1908) 31 Mad 506; *Mathura Prasad*, (1917) 39 All 715 .

243. *Bhawani Sahai*, (1932) 13 Lah 568.

244. *Abdul Hakim Khan Chaudhuri*, (1931) 59 Cal 334 .

245. *Abdul Hasan*, (1877) 1 All 497 ; *Chenna Malli Gowda*, (1903) 27 Mad 129.

246. *Parmeshwar Lal*, (1925) 4 Pat 472.

247. *Dasarathi Mondal v Hari Das*, AIR 1959 Cal 293 [LNIND 1959 CAL 1] . On appeal *sub. nom. Hari Das*, AIR 1964 SC 1773 [LNIND 1964 SC 84] : 1964 (2) Cr LJ 737 .

248. *Santokh Singh*, 1973 Cr LJ 1176 : AIR 1976 SC 1489 .

249. *Bramanund Bhuttacharjee*, (1881) 8 CLR 233 ; *Karigowda*, (1894) 19 Bom 51; *Ganpatram v Rambai*, (1950) Nag 208.

250. *Abdul Ghafur*, (1924) 6 Lah 28.

251. *Ramana Gowd*, (1908) 31 Mad 506.

252. *Ibid.*

253. *Hicks v Faulkner*, (1878) 8 QBD 167 , 171; *Kapoor v Kairon*, 1966 Cr LJ 115 .

254. *Chidda*, (1871) 3 NWP 327; *Murad*, (1893) PR No. 29 of 1894.

255. *Parimi Bapirazu v Venkayya*, (1866) 3 MHC 238 .

256. *Karim Buksh*, (1888) 17 Cal 574 (FB).

257. *Nanjunda Rau*, (1896) 20 Mad 79.

258. *Parmeshwar Lal*, (1925) 4 Pat 472.

259. *Mallappa Reddi*, (1903) 27 Mad 127, 128.

260. *Bisheshar*, (1893) 16 All 124 ; *Pitam Rai v State*, (1882) 5 All 215 .

261. *Sultan*, (1887) PR No. 3 of 1888; *Khan Bahadar*, (1888) PR No. 26 of 1888; *Humayun*, (1907) PR No. 26 of 1908.

262. *Abdul Rehman v K M Anees-Ul-Haq*, 2012 Cr LJ 1060 (SC) : 2011 (10)SCC 696 [LNIND 2011 SC 1156] . See also *Harish Chandra Pathak v Anil Vats*, 2008 Cr LJ 2965 (All).

263. *M Devasenapathi*, 1984 Cr LJ NOC 34 (Mad); *K Ramakrishnan*, 1986 Cr LJ 392 (Ker).

264. *Narayan*, 1972 Cr LJ 1446 (Del—FB).

265. *PC Gupta v State*, 1974 Cr LJ 945 (All-FB).

266. *Kamalapati*, 1979 Cr LJ 679 : AIR 1979 SC 777 [LNIND 1978 SC 383] .

267. *Geetika Batra v OP Batra*, 2009 Cr LJ 2687 (Del). A private complaint cannot be filed for an offence under section 211-See *Subhash Ramchandra Durge v Deepak Annasaheb Gat*, 2000 Cr LJ 4774 (Bom).

268. *Rabin Roy Choudhury v State*, 1997 Cr LJ 1699 (Cal); *Dongari Venkatram v M Tirpathanna S I of Police, Kodad* 2006 Cr LJ 2697 (AP).

269. *Bir Chandra Das v Anil Kumar Sarkar*, 2011 Cr LJ 3422 (Cal).

270. *Chintamani Paul (Kumhar) v State of Jharkhand*, 2009 Cr LJ 2283 (Jhar).

271. *Jamoona*, (1881) 6 Cal 620 ; See also *Santokh Singh*, 1973 Cr LJ 1176 : AIR 1973 SC 2190 [LNIND 1973 SC 160] .

272. *Haibat Khan*, (1905) 33 Cal 30 .

273. *Sivaprakasam Pillai*, (1948) Mad 893.

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the Indian Penal Code, 1860 offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). Section 195 of Code of Criminal Procedure provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.[1.]

[s 212] Harbouring offender—.

Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment;

> **If a Capital Offence;**
>
> **shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;**
>
> **if punishable with imprisonment for life, or with imprisonment.**
>
> **and if the offence is punishable with [274.][imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;**
>
> **and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description**

provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

[275.]["Offence" in this section includes any act committed at any place out of [276.] [India], which, if committed in [277.][India], would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in [278.][India].]

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

ILLUSTRATION

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to [279.][**imprisonment for life**], A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

COMMENT.—

Ingredients.—(i) the offence must have been committed, i.e., completed and there must be an 'offender';

(ii) there must be harbouring or concealment of a person by the accused;

(iii) the accused knows or has reason to believe that such harboured or concealed person is the offender;

(iv) there must be an intention on the part of the accused to screen the offender from legal punishment.[280.]

[s 212.1] Offender.—

The word used is 'offender' and not 'accused' or a person convicted for that offence. The person who is sheltering, harbouring or concealing that person must have knowledge or has reason to believe that he is the 'offender'. The word "offender" is not defined under IPC, 1860. "Offender" as per the Dictionary, means "a person who has committed a crime or offence." Hence, a person who is convicted or acquitted may be an offender, for the purpose of section 212. An "offender" for the purpose of section 212 is neither a convict nor an accused, but he is a person who has actually committed the offence. The failure of the prosecution to prove the identity of the person who committed the offence does not render the person, who committed the offence, not an offender. He can be said to be an offender whose guilt has not been proved in Court. Yet, he is an offender, if he has committed an offence.[281.]

This section applies to the harbouring of persons who have actually committed some offence under the Penal Code or an offence under some special or local law, when the thing punishable under such special or local law is punishable with imprisonment for a term of six months or upwards. It does not apply to the harbouring of persons, not being criminals, who merely abscond to avoid or delay a judicial investigation.[282.] Where there was no material to show that the accused had the knowledge or that he reasonably believed that he was harbouring or concealing a person who was an

offender and the essential feature of secrecy was totally absent, it was held that no offence under section 212 was made out.[283.] It is the knowledge or the reasonable belief of the accused under section.212 that the person whom, he has harboured or concealed to be the offender, which is relevant. But, such knowledge or belief must be entertained by the accused, on the date on which he commits the offence by harbouring or concealing him.[284.]

In the conspiracy for assassination of the former Prime Minister of India (Mr. Rajiv Gandhi), some of the accused persons appeared at the scene after achievement of the object. They played the role of harbouring and sheltering the main accused persons with full knowledge of their involvement in the assassination. They also made efforts to destroy evidence. Their conviction under section 212 was held to be proper.[285.]

[s 212.2] Exception.—

The Exception only extends to cases where harbour is afforded by a wife or husband. No other relationship can excuse the wilful receipt or assistance of felons; a father cannot assist his child, a child his parent, a brother his brother, a master his servant, a servant his master.

[s 212.3] Section 212 IPC, 1860 and section 39 of Code of Criminal Procedure 1973.—

It is the duty of every citizen who is aware of commission of or of the intention of any other person to commit any offence punishable under sections 302, 304, 449, etc., to forthwith give information to the nearest Magistrate or police-officer of such commission of offence or intention. This provision is mandatory unless there is a reasonable excuse for omission or failure to inform. Section 39 of the Code of Criminal Procedure specifically provides that public "shall" give information to the police or the nearest Magistrate regarding commission of certain offences referred to in the said section. Section 39 is only a procedural section, violation of which is not made punishable under any penal statute, but, if a person who has knowledge or reasonable belief that a person is the offender can be treated as a person who is aware of the commission of the offence and even if he is not punishable for violating section 39 of the Code of Criminal Procedure when he harbours or conceals such an offender, he must certainly be guilty for offence under section 212.[286.]

[s 212.4] Conviction of the person concealed–whether mandatory.—

Nowhere in section 212 it is stated that the person concealed should be convicted for an offence. Even if the main offender leaves unpunished by the Court, the object of the provision under section 212 requires that the person who has concealed or harboured the offender whom he believes and knows has committed the offence shall not leave unpunished if the other ingredients are established. The criminality lies in the act of concealment committed with the knowledge or belief that the person who is harboured or concealed is the offender and also with the criminal intention of screening him from legal punishment.[287.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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

275. Ins. by Act 3 of 1894, section 7.

276. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

277. *Ibid*.

278. *Ibid*.

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

280. *Sujith v State of Kerala*, 2008 Cr LJ 824 (Ker), *Aleem v State of AP*, (1995) 1 Cr LJ 866 (AP). See also *State v Siddarth Vashisth, (alias Manu Sharma)*, 2001 Cr LJ 2404 (Del), the co-accused had knowledge that the accused had committed murder, both of them were fellow directors in a company. He sent the car to pick up the accused from the place of occurrence to facilitate his escape. Liable to be punished under the section.

281. *Sujith v State of Kerala*, 2008 Cr LJ 824 (Ker).

282. *Ramraj Choudhury*, (1945) 24 Pat 604; *Mir Faiz Ali v State of Maharashtra*, 1992 Cr LJ 1034 (Bom).

283. *State v Sushil Sharma*, 2007 Cr LJ 4008 (Del); *Niranjan Ojha v State of Orissa*, 1992 Cr LJ 1863 (Ori); Also *see Durga Shankar v State of Madhya Pradesh*, 2006 Cr LJ 2494 (MP).

284. *Sujith v State of Kerala*, 2008 Cr LJ 824 (Ker).

285. *State of TN v Nalini*, AIR 1999 Cr LJ 3124 : AIR 1999 SC 2640 [LNIND 1999 SC 1584] .

286. *Sujith v State of Kerala*, 2008 Cr LJ 824 (Ker).

287. *Sujith v State of Kerala*, 2008 Cr LJ 824 (Ker).

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[s 213] Taking gift, etc., to screen an offender from punishment—.

Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

COMMENT.—

The compounding of a crime, by some agreement not to bring the criminal to justice if the property is restored or a pecuniary or other gratification is given, is the offence punished by this and the following sections. It is the duty of every State to punish criminals. No individual has, therefore, a right to compound a crime because he himself is injured and no one else.

[s 213.1] Ingredients.—

The section has two essentials:

1. A person accepting or attempting to obtain any gratification or restitution of property for himself or any other person.

2. Such gratification must have been obtained in consideration of (a) concealing an offence, or (b) screening any person from legal punishment for an offence, or (c) not proceeding against a person for the purpose of bringing him to legal punishment. The most important ingredient of the charge, under section 213, *viz*., is that the payment was in relation to the interference with the course of a judicial proceeding and the tampering with the evidence.[288.]

[s 213.2] Scope.—

According to the Calcutta High Court this section applies only where there has been an actual concealment of an offence, or screening of a person from legal punishment, or abstention from proceeding criminally against a person, and, as consideration for the same, there has been an acceptance of, or attempt to obtain, or agreement to accept, any gratification or restitution of property. It has no application where only an acceptance of or attempt to obtain, or agreement to accept, any gratification or restitution on a promise to conceal, screen or abstain, is proved and nothing more.[289.] The Bombay High Court has dissented from this view and has held that this section does not require the actual concealment of an offence or the screening of any person from legal punishment or the actual forbearing of taking any proceedings. It is sufficient if an illegal gratification is received in consideration of a promise to conceal an offence or screen any person from legal punishment or desist from taking any proceedings.[290.]

The section does not apply where the compounding of an offence is legal.

[s 213.3] Mere suspicion.—

This section is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence.[291.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

288. *Mir Faizali Shaheen v The State of Maharashtra*, 1991 Cr LJ 1034 (Bom).

289. *Hemachandra Mukherjee*, (1924) 52 Cal 151 .

290. *Biharilal Kalacharan*, (1949) 51 Bom LR 564 .

291. *Girish Myte*, (1896) 23 Cal 420 ; *Sanalal; Gordhandas*, (1913) 15 Bom LR 694 [LNIND 1913 BOM 68] , 37 Bom 658, there must be knowledge that such person was an offender; *Sumativijay Jain v State of MP*, 1992 Cr LJ 97 (MP)

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[s 214] Offering gift or restoration of property in consideration of screening offender—.

Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or [292.][restores or causes the restoration of] any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment;

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

and if the offence is punishable with [293.][imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

[294.][Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.]

Illustrations. [Rep. by Act 10 of 1882, section 2 and Sch I.]

COMMENT.—

The preceding section punishes the receiver of a gift in consideration of compromising an offence, whereas this section punishes the offerer of the gift.

[s 214.1] Ingredients.—

This section has two essentials—

1. Offering any gratification or restoration of property to some person.

2. Such offer must have been in consideration of the person's (a) concealing an offence, or (b) of his screening any person from legal punishment for an offence, or (c) of his not proceeding against a person, for the purpose of bringing him to legal punishment. The section presupposes the actual commission of an offence or the guilt of the person screened from punishment. Where the accused, an overseer who was charged with preparing false muster rolls and misappropriating Government money allegedly tried to bribe someone with a view to prevent action being taken against him and was thus prosecuted under sections 165A and 214, IPC, 1860, but was acquitted of the offence under section 165A, IPC, 1860, for want of evidence, he could not also be convicted in view of infirmities of the case of an offence under section 214, IPC, 1860.[295.]

Section 320(1) of the Criminal Procedure Code enumerates the offences that can be lawfully compounded.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

292. Subs. by Act 42 of 1953, section 4 and Sch III, for "to restore or cause the restoration of" (w.e.f. 23 December 1953).

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

294. Subs. by Act 8 of 1882, section 6, for *Exception*.

295. *Mohd Aslam*, 1981 Cr LJ 1285 : AIR 1981 SC 1735 .

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[s 215] Taking gift to help to recover stolen property, etc.

Whoever takes or agrees or consents to take [1] any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended [2] and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

Scope.—This section is intended to apply to someone who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence. There is nothing in this section that should exclude an actual thief from liability under it if in addition to committing theft he also tried to realise money by a promise to return the stolen article. An actual thief or a person suspected to be the thief can be convicted under this section.[296.]

[s 215.1] Ingredients.—

This section has three essentials—

1. Taking or agreeing or consenting to take any gratification under pretence or on account of helping any person to recover any movable property.
2. The owner of such property must have been deprived of it by an offence punishable under the Penal Code.
3. The person taking the gratification must not have used all means in his power to cause the offender to be apprehended and convicted of the offence.

[s 215.2] Object.—

The primary aim of this section is to punish all trafficking by which a person, knowing that property has been obtained by crime, and knowing the criminal, makes a profit out of the crime while screening the offender from justice. The clear meaning of the section is that it is an offence to receive money for helping any person to recover property stolen or misappropriated and that there is an exception only in favour of the man who can show that he used all means in his power to cause the apprehension of the offender.[297.]

1. 'Takes or agrees or consents to take'.—These words imply that the person taking the gratification and the person giving it have agreed not only as to the object for which the gratification is to be given, but also as to the shape or form the gratification is to take.[298.]

2. 'Unless he uses all means in his power to cause the offender to be apprehended'.— It is not for the prosecution to prove the negative that the accused did not use all his power to cause the offender to be apprehended. It is for the defence to establish that the accused did all in his power to cause the offender to be apprehended.[299.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

296. *Mukhtara*, (1924) 46 All 915 ; *Deo Suchit Rai*, (1947) ALJ 48 (FB); **overruling** *Muhammad Ali*, (1900) 23 All 81 and *Mangu*, (1927) 50 All 186 .

297. *Yusuf Mian v State*, (1938) All 681 .

298. *Hargayan v State*, (1922) 45 All 159 .

299. *Deo Suchit Rai*, 1947 All LJ 48 (FB); *DK Balai*, 1959 Cr LJ 1438 .

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[s 216] Harbouring offender who has escaped from custody or whose apprehension has been ordered—.

Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody;

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours of conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following that is to say,—

if a capital offence;

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life, or with imprisonment.

if the offence is punishable with [300][imprisonment for life], or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

[301]**["Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of [302][India], which, if he had been guilty of it in [303][India], would have been punishable as an offence, and for which he is, under any law relating to extradition, [304][***] or otherwise, liable to be apprehended or detained in custody in [305][India]; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in [306][India].]**

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

COMMENT.—

To establish an offence under this section it must be shown, (1) that there has been an order for the apprehension of a certain person as being guilty of an offence; (2) knowledge by the accused party of that order, and (3) the harbouring or concealing by the accused of the person with the intention of preventing him from being apprehended.[307] It would not be safe to convict the appellant for the offence punishable under section 216 IPC, 1860 in absence of evidence in this regard.[308]

This section may be compared with section 212. The latter deals with the offence of harbouring an offender who having committed an offence absconds. This section deals with harbouring an offender who has escaped from custody after being actually convicted or charged with the offence, or whose apprehension has been ordered; the latter offence is in the eye of the law more aggravated, and a heavier punishment is, therefore, awarded for it. It is thus an aggravated form of the offence punishable under section 212.

The section only takes into consideration cases where the man who is harboured is wanted for an offence for which a maximum sentence of at least one year's imprisonment is provided. No provision is made for cases where he is wanted for offences for which the maximum sentence is less than one year.[309] Where certain persons were apprehended for gaming and they escaped from police custody, it was held by the Supreme Court that this section was not applicable because they were neither charged nor convicted of any offence and that the conviction should have been under section 224.[310]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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

301. Ins. by Act 10 of 1886, section 23.

302. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

303. *Ibid*.

304. The words "or under the Fugitive Offenders Act, 1881," omitted by Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951).

305. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

306. *Ibid*.

307. *Easwaramurthi*, (1944) 71 IA 83 , 46 Bom LR 844, (1945) Mad 237.

308. *Anadharaj v State of TN*, (2000) 9 SCC 45 : JT 2000 (3) SC 368 : 2000 AIR (SCW) 4957; (2000) 1 SCC (Cr) 1154.

309. *Deo Baksh Singh*, (1942) 18 Luck 617 .

310. *Ajab v State of Maharashtra*, AIR 1989 SC 827 : 1989 Cr LJ 954 : 1989 Supp (1) SCC 601 .

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[311.] [s 216A] Penalty for harbouring robbers or dacoits.

Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—**For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without [312.] [India].**

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.]

COMMENT.—

This section enables the Court to inflict enhanced punishment, where the persons harboured are robbers or dacoits or where they intended to commit robbery or dacoity.

Where a person charged with the substantive offence of dacoity or robbery has been acquitted of that offence, another person who is said to have intended to screen him from legal punishment in respect of that offence cannot be held guilty of harbouring the alleged offender under this section.[313.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

311. Ins. by Act 3 of 1894, section 8.

312. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

313. *Subramanya Ayyar*, (1947) Mad 793.See for acquittal under section 216A, acquitted on fact, *State of Madhya Pradesh v Veeru Singh*, 2010Cr LJ 2896 (MP)

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[s 216B] *[Repealed]*

[314.] **[***] Definition of "harbour" in sections 212, 216 and 216A. [Repealed by Indian Penal Co de (Amendment) Act, 1942 (VIII of 1942), section 3].**

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

314. Ins. by Act 3 of 1894, section 8.

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[s 217] Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section and the three following sections deal with disobedience on the part of public servants in respect of official duty.

This section punishes intentional disobedience of any direction of law on the part of a public servant to save a person from punishment. It is not necessary to show that, in point of fact, the person so intended to be saved had committed an offence, or was

justly liable to legal punishment. A public servant charged under this section is equally liable to be punished, although the intention, which he had of saving any person from legal punishment, was founded upon a mistaken belief as to that person's liability to punishment.[315.]

[s 217.1] 'Legal punishment'

does not include departmental punishment.[316.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

315. *Amiruddeen v State*, (1878) 3 Cal 412 , 413.See *Anup Singh v State of HP*, AIR 1995 SC 1941 ; 1995 Cr LJ 3223 (SC) in which conviction under the section upheld by SC

316. *Jungle v State*, (1873) 19 WR (Cr) 40.

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[s 218] Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—

This section deals with intentional preparation by a public servant of a false record with the object of saving or injuring any person or property. The correctness of the record is of the highest importance to both the State and the public. The intention with which the public servant does the act mentioned in the section is an essential ingredient of the offence punishable under it.

[s 218.1] Ingredients.—

1. Accused was a public servant;
2. He was entrusted with preparation of any record or writing in his capacity as public servant;
3. He framed the record and writing incorrectly,
4. He did it intentionally,
5. He did so with the intention or knowledge that it will—
    (i) cause loss or injury to someone,
    (ii) Save any person from legal punishment and,
    (iii) Save from property from forfeiture or other charges.[317.]

In order to sustain the conviction for making an incorrect entry in a record it is not sufficient that the entries are incorrect but it is essential that the entry should have been made with the intention to cause injury.[318.]

It is not necessary that the incorrect document should be submitted to another person, or otherwise used by the writer.

A public servant commits the offence punishable under this section even if the person whom he intends to save from legal punishment is himself.[319.]

[s 218.2] Actual commission of offence not necessary.—

The actual guilt or innocence of the alleged offender is immaterial if the accused believes him guilty and intends to screen him.[320.]

The Supreme Court has held that if a police-officer has made a false entry in his diary and manipulated other records with a view to save the accused from legal punishment that might be inflicted upon him, the mere fact that the accused was subsequently acquitted of the offence cannot make it any the less an offence under this section.[321.]

[s 218.3] CASES.—

Where the accused increased the marks of particular persons for pecuniary benefits during the course of preparing final record for appointment of physical education teacher, it is held that the offence alleged is clearly made out.[322.]

[s 218.4] Public servant framing incorrect record to save any person from legal punishment.—

A Superintendent of Police gave a warrant under the Gambling Act, 1867 to D, a Sub-Inspector, to arrest persons found gambling in a certain house. In order to save the persons from the legal punishment for having committed an offence under the Gambling Act, 1867 in that house, D framed a first information and a special diary incorrectly. It was held that he was properly charged with, and found guilty of, having

committed an offence under this section.[323.] A report of the commission of a dacoity was made at a police station. The police-officer in charge of the station took down the report which was made to him, but subsequently destroyed the report and framed another and a false report of the commission of a totally different offence to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant. It was held that the police-officer was guilty of offences punishable under sections 204 and 218.[324.] Where it was proved that the accused's intention in making a false report was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, it was held that he was guilty of this offence.[325.] Under this section, substitution of one leaf by another so as to omit a given entry from the page substituted is penal.[326.] Where a Sub-Inspector in his capacity as public servant wrongly prepared certain notes in order to concoct a false defence for himself and his colleagues, he was to be convicted under section 218, IPC, 1860.[327.] Where, however, the main offence remains unproved the accused is entitled to have the benefit of doubt in regard to the offence under section 218, IPC, 1860.[328.]

[s 218.5] Section 218 and section 192—Difference.—

The offence of section 218 IPC, 1860 is not a minor offence included within section 192. There is some resemblance between sections 192 and 218 IPC, 1860, because both deal with the preparation of a false record. There the resemblance ceases. Whereas in section 192 the record is prepared for use in a judicial proceeding with the intention that an erroneous opinion be formed regarding a material point, the offence in section 218 is the preparation of a false record by a public servant with the intention of saving or injuring any person or property.[329.]

[s 218.6] Bar under section 195 Cr PC, 1973 not applicable, private complaint can be filed.—

Section 218 is a distinct offence which can be proceeded against without the bar of section 195 of the Code of Criminal Procedure. There could be a private complaint in respect of an offence under section 218 IPC, 1860.[330.]

[s 218.7] Sanction under section 197 Cr PC, 1973.—

Issuing false certificate by the Deputy Civil Surgeon cannot be an official act and as such no sanction under section 197 of the Code of Criminal Procedure is required.[331.] But in a particular case[332.] the Calcutta High Court took an opposite view and quashed the proceedings under section 218 IPC, 1860 holding that in the absence of sanction, the proceeding cannot be continued.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

317. *Jayanta Mukherjee v State of West Bengal, 2009* Cr LJ 4178 (Cal).

318. *Raghubansh Lal*, (1957) 1 All 368 : AIR 1957 SC 486 [LNIND 1957 SC 21] : 1957 Cr LJ 595

319. *Nand Kishore v State*, (1897) 19 All 305 , **overruling** *Gauri Shankar*, (1883) 6 All 42 .

320. *Hurdut Surma*, (1967) 8 WR (Cr) 68.

321. *Maulud Ahmad*, (1964) 2 Cr LJ 71 : 1963 Supp (2) SCR 38 .

322. *Rakesh Kumar Chhabra v State of H P*, 2012 Cr LJ 354 (HP).

323. *Deodhar Singh*, (1899) 27 Cal 144 .

324. *Muhammad Shah Khan*, (1898) 20 All 307 .

325. *Girdhari Lal*, (1886) 8 All 633 .

326. *Madan Lal v Inderjit*, AIR 1970 P&H 200 .

327. *Sarju Singh*, 1978 Cr LJ NOC 286 (All).

328. *Natarajan Narayan Kurup*, 1982 Cr LJ NOC 69 (Ker). See also *DV Venkateswara Rao v State of AP*, 1997 Cr LJ 919 (AP).

329. *Kamla Prasad Singh v Hari Nath Singh*, AIR 1968 SC 19 [LNIND 1967 SC 170] : 1967 (3) SCR 828 [LNIND 1967 SC 170] : 1968 Cr LJ 86 .

330. *Kamla Prasad Singh v Hari Nath Singh*, AIR 1968 SC 19 [LNIND 1967 SC 170] : 1967 (3) SCR 828 [LNIND 1967 SC 170] : 1968 Cr LJ 86 .

331. *D V Venkateswara Rao v State of AP*, 1997 Cr LJ 919 ; *Dr Z U Ahmad v State of UP*, 1998 Cr LJ 2100 (All).

332. *Jayanta Mukherjee v State of West Bengal*, 2009 Cr LJ 4178 (Cal).

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[s 219] Public servant in judicial proceeding corruptly making report etc. contrary to law.

Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.—

This section should be read in conjunction with section 77. It contemplates some wilful excess of authority, in other words, a guilty knowledge superadded to an illegal act. This section and the following one deal with corrupt or malicious exercise of the power vested in a public servant for a particular purpose. From the language of section 219 IPC, 1860, it is clear that when any public servant corruptly or maliciously makes or pronounces in any stage of judicial proceeding any report, order, verdict or decision which he knows to be contrary to law, shall be punished.[333.]

[s 219.1] Case against judicial officers.—

In the present case, there was no allegation that any of the three respondents had passed concerned orders corruptly or maliciously or knowing that they were contrary to law. Merely because the first order passed by the respondent No. 1 was set aside in the revision filed by the petitioner, it cannot be inferred that respondent No. 1 had acted corruptly or maliciously and that too knowing that it was contrary to law.[334.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

333. *Pravin Niwritti Sawant v Hon'ble Shri J B Anandgaonkar Saheb*, 2008 Cr LJ 984 (Bom).

334. *Pravin Niwritti Sawant v Hon'ble Shri J B Anandgaonkar Saheb*, 2008 Cr LJ 984 (Bom).

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[s 220] Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.—

This section is a further extension of the principle laid down in the preceding section. It is general in its application, whereas the last section applies to judicial officers. In order to bring home the charge under the section it must next be shown that the accused corruptly or maliciously committed such person for trial or to confinement or kept him in confinement in exercise of that authority knowing that in so doing he was acting contrary to law. This analysis of the section by the Supreme Court occurs in a case in which a police constable made the victims to alight from a bus and took them to a nearby street. The Court said that at best it could amount to wrongful restraint but not

to wrongful confinement.[335.] Under section 220 IPC, 1860 it is necessary to establish that the officer, who committed any person for trial or to confinement, must have acted corruptly or malicious and knowing that he was doing that act contrary to law.[336.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

335. *Suryamoorthy v Govindaswamy*, 1989 Cr LJ 1451 : AIR 1989 SC 1410 [LNIND 1989 SC 232] at p 1415 : (1989) 3 SCC 24 [LNIND 1989 SC 232] .

336. *Pravin Niwritti Sawant v Hon'ble Shri J B Anandgaonkar Saheb*, 2008 Cr LJ 984 (Bom).

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[s 221] Intentional omission to apprehend on the part of public servant bound to apprehend.

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with [337.][imprisonment for life] or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been

apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

COMMENT.—

Sections 221, 222 and 223 provide for intentional omission to apprehend, or negligently suffering the escape of, offenders on the part of public servant bound to apprehend or to keep in confinement.

[s 221.1] CASE.—

Where a constable acting as a Court *Moharrir* instead of sending the accused to jail custody as ordered by the Magistrate directed his release and thus allowed him to escape, it was held that the release being in violation of his legal obligation to have the accused detained in jail custody, the *Moharrir* was clearly liable under section 221, IPC, 1860.[338] Accused was entrusted with escort duty for the convict to the Hospital. Convict was the younger brother of accused's wife. Accused allowed him to escape from Custody. The Karnataka High Court upheld the conviction under sections 221, 222 and 223.[339]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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

338. *Rampal*, 1979 Cr LJ 711 : AIR 1979 SC 1184 .

339. *Younus Khan v State of Karnataka*, 2013 Cr LJ 1040 (Kar)

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[s 222] Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence [340.][or lawfully committed to custody], intentionally omits to apprehend such person, or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:—

with [341.][imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to [342.][imprisonment for life] [343.][***] [344.][***] [345.][***] [346.][***] or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been

apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not exceeding to ten years [or if the person was lawfully committed to custody].

COMMENT.—

This section is similar to the last section with the exception that the person to be apprehended has already been convicted or committed for an offence. It is thus an aggravated form of the offence made punishable by the last section.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

340. Ins. by Act 27 of 1870, section 8.

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

342. *Ibid*.

343. The words "or penal servitude for life" omitted by Act 17 of 1949, section 2 (w.e.f. 6 April 1949).

344. The words "or to" omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17 September 1957).

345. The word "transportation" omitted by Act 26 of 1955, section 117 and Sch (w.e.f. 1 January 1956).

346. The words "or penal servitude" omitted by Act 17 of 1949, section 2 (w.e.f. 6 April 1949).

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[s 223] Escape from confinement or custody negligently suffered by public servant.

Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with [347.][or convicted of any offence or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section further extends the principle laid down in the two preceding sections. It punishes a public servant who *negligently* suffers any person charged with an offence to escape from confinement. The last two sections deal *with intentional omission* to apprehend such person.

[s 223.1] Ingredients.—

In order to establish the charge under section 223, IPC, 1860 the following facts have to be established:—

(i) The accused was a public servant.

(ii) As such public servant he was bound to keep in confinement any person.

(iii) Such person was charged with or convicted of an offence or lawfully committed to custody.

(iv) The accused suffered such person to escape.

(v) The escape was due to the negligence of the public servant.[348.]

[s 223.2] Lawful custody.—

Unless the custody is lawful no offence under this section is committed. If a public servant has no right to keep a person in custody, he is not guilty of allowing that person to escape.[349.] Since the check post officer appointed under section 41(2) Bihar Sales Tax Act had no power to detain personnel or driver of a truck which contravened the provisions of the Act, he could not be prosecuted for an offence under section 223, IPC, 1860, for allowing detained person to escape especially because section 223 speaks of "confinement of persons charged with or convicted of any offence or lawfully committed to custody". Even assuming that such a check post officer could detain a person, still he could not be prosecuted as detention was not synonymous with confinement nor the persons escaping were charged or convicted of any offence.[350.] A constable who moved about in a market place with the prisoner whom he was supposed to bring to the Court and he escaped, the case was held to be fit one for imposing substantive punishment.[351.]

This section applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under a civil process.[352.] The latter case would come under section 225A. Due to the negligence and carelessness of the police constable one accused escaped from police lock-up. It is proved that the petitioner was on duty at lock-up room when the accused escaped. Conviction is held proper.[353.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

347. Ins. by Act 27 of 1870, section 8.

348. *Banshidhar Swain v State of Orissa*, 1987 Cr LJ 1819 (Ori).

349. *Debi*, (1907) 29 All 377 .

350. *Girja Shankar Sahay*, 1972 Cr LJ 988 (Pat).

351. *Banshidhar Swain v State of Orissa*, 1987 Cr LJ 1819 (Ori).

352. *Tafaullah v State*, (1885) 12 Cal 190 .

353. *Gurdeep Singh v State of Punjab*, 2009 Cr LJ 3745 (PH).

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[s 224] Resistance or obstruction by a person to his lawful apprehension.

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, [1] shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

COMMENT.—

This and the section following relate to resistance or illegal obstruction offered to the lawful apprehension of any person. Sections 221–223 punish public servants who fail to apprehend or confine persons liable to be apprehended or confined.

Section 224, IPC, 1860 has two distinct parts. The first relates to resistance to apprehension and the second part relates to escape from custody. In order to bring

home the guilt of the accused under first part, the prosecution is to prove the following ingredients:—

(1) that the accused was charged or convicted;

(2) that he offered resistance or obstruction to his apprehension;

(3) that such resistance or obstruction was illegal; and

(4) that the accused offered such resistance or obstruction illegally.

When the offence charged is that of escape or attempt to escape from custody, the prosecution is to prove the following:

(1) that the accused was taken into custody for commission of an offence;

(2) that such detention in custody was lawful;

(3) that the accused escaped from such custody or made an attempt to do so; and

(4) that the accused did so intentionally.[354.]

1. 'Escapes...from any custody in which he is lawfully detained for any such offence'.— Escape must be from the custody in which the person escaping has been detained legally. A person of the same name as the offender was arrested, tried and acquitted. Whilst under arrest he escaped from custody. It was held that he was not liable to be convicted under this section because he was not lawfully detained for any offence.[355.] It is only after a person has been arrested that the question of custody arises merely because the person was brought to the *thana* for the purpose of interrogation it could not be said that he was under lawful custody, even though two constables might be sitting by his side.[356.] Where certain persons were apprehended for gaming and they escaped from police custody, it was pointed out by the Supreme Court that they could have been convicted under this section.[357.] Where the accused attacked the police personnel and rescued a person from the legal custody of the police but the person rescued neither resisted the arrest nor joined in the attack, he could only be convicted under section 224 for taking advantage of his release.[358.] Where an accused lawfully arrested escaped after causing a knife injury to the Head Constable, he was guilty under section 224 and his friends who pelted stones at the police party with a view to rescue him were guilty under section 225, IPC, 1860.[359.]

[s 224.1] Explanation.—

The Explanation does not require that a sentence of imprisonment must be made to run consecutively to a sentence imposed for the main offence of which the accused has been convicted.[360.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

354. *State of Orissa v Purna Chandra Jena*, 2005 Cr LJ 505 (Ori).

355. *Ganga Charan Singh*, (1893) 21 Cal 337 ; *People's Union for Civil Liberties v State of Maharashtra*, 1998 Cr LJ 2138 (Bom).

356. *Maheswar v State of UP*, (1953) Cut 751.; 2003 Cr LJ 3663 (Bom).

357. *Ajab v State of Maharashtra*, AIR 1989 SC 827 : 1989 Cr LJ 954 : 1989 Supp (1) 601 .

358. *Prithvi Nath Pandey v State of UP*, 1994 Cr LJ 3623 (All).

359. *Vaghari Kala Bhikha*, 1985 Cr LJ 237 (Guj).

360. *Chokhu*, (1934) 36 Bom LR 963 .

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[s 225] Resistance or obstruction to lawful apprehension of another person.

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with [361.] [imprisonment for life] or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

or, if the person to be apprehended or the person attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to [362.][imprisonment for life] [363.][***] [364.][***] [365.][***]or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

COMMENT.—

Persons who offer resistance or illegal obstruction to the apprehension of other persons who have committed offences are punishable under this section. The preceding section punishes the offenders themselves. Section 130 deals with rescuing a prisoner of State or war and section 186, with rescuing in any other case.

'Rescue' is the act of forcibly freeing a person from custody against the will of those who have him in custody.[366.] It has no application to a person who is in lawful custody and who has offered no resistance or obstruction.[367.] It is also not necessary that the rescuing should be done intentionally for in the second part of this section the word "intentionally" has been deliberately omitted. Thus where a person even in order to pacify a situation released an accused from the lawful custody of the *chowkidar* by untying the turban with which the accused had been tied, it was held that the person so releasing the accused was clearly guilty of an offence under section 225, IPC, 1860, for rescuing an offender from lawful custody.[368.]

One can be held guilty for an offence under section 225 if he rescues a person who was detained lawfully. Here the word 'rescue' though not defined in the Code, will always mean an act of getting a person free forcibly from custody against the will of person in whose lawful custody he was. Therefore, some overt act needs to be there, if one is said to have rescued a person from the lawful custody.[369.]

Where the accused obstructed the lawful apprehension of a person and wrongfully confined two police personnel and the evidence of the prosecution was amply corroborated and supported by medical evidence, conviction and sentence of the accused under sections 225, 332 and 342 was upheld.[370.] The act for which the person rescued is detained must amount to an offence under the Code. Thus an escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour,[371.] or an escape from arrest under section 41(2), Criminal Procedure Code,[372.] will not fall under this section. If the apprehension is not lawful the person resisting it will not be guilty of any offence.[373.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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

362. *Ibid*.

363. The words "or to" omitted by Act 36 of 1957, section 3 and Sch II (w.e.f. 17 September 1957).

364. The word "transportation" omitted by Act 26 of 1955, section 117 and Sch (w.e.f. 1 January 1956).

365. The words "penal servitude" omitted by Act 17 of 1949, section 2 (w.e.f. 6 April 1949).

366. *Vaghari Kala Bhikha*, 1985 Cr LJ 237 (Guj).

367. *Salim*, 1972 Cr LJ 1454 (Guj).

368. *Awadhesh Mahato*, 1979 Cr LJ 1275 (Pat).

369. *Radha Sah v State of Jharkhand*, 2007 Cr LJ 2805 (Jha).

370. *Prithvi Nath Pandey v State of UP*, 1994 Cr LJ 3623 (All).

371. *Shasti Churn Napit*, (1882) 8 Cal 331 .

372. *Kandhaia*, (1884) 7 All 67 .

373. *PB Gosain v State*, (1962) 1 Cr LJ 91 ; *Kunju Kunju*, (1962) 2 Cr LJ 437 . *Matha Yadav v State of Bihar*, 2002 Cr LJ 2819 : AIR 2002 SC 2137 [LNIND 2002 SC 359] , the accused was caught red-handed when he was uprooting the crops of the victim's family. They refused to release him till he was brought before the village *panchayat*, They were not intending to hand him over to police. It was held that their conviction under section 225 was not possible.

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[s 225A] Omission to apprehend or sufferance of escape, on part of public servant, in cases not otherwise provided for.

[Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished —

(a) **if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and**

(b) **if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.]**

COMMENT.—

This section punishes intentional or negligent omission to apprehend on the part of a public servant not coming within the purview of sections 221, 222 or 223.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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[s 225B] Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.

[Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues [1] **or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.]**

COMMENT.—

This section is intended to meet cases not covered by section 224 or section 225. Under section 225 a person, escaping from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour, or escaping from a jail in which he is confined by reason of his having failed to furnish security to be of good behaviour,[374.] cannot be punished; under this section he can.

There must be an overt act of resistance or obstruction. If a person runs away to avoid an arrest, his act does not amount to resistance or obstruction.[375.]

The apprehension or detention must be lawful. If the warrant is defective the rescue of the person arrested under such warrant is no offence under this section. The liberty of the subject cannot be trifled with, and every person can require by right that the Court ordering his arrest shall observe the law.[376.]

1. 'Rescues'.—Rescuing indicates some positive overt act on the part of the accused by which the liberation of the person arrested is effected.[377.]

[s 225B.1] CASES.—

Resistance to arrest without warrant justifiable.—An arrest by a police-officer, without notifying the substance of the warrant to the person against whom the warrant is issued, as required by section 80 of the Criminal Procedure Code, is not a lawful arrest, and resistance to such an arrest is no offence under this section.[378.] A person, about to be arrested, is entitled to know under what power the constable is arresting him and, if he specifies a certain power which the person knows the constable has not got, he is entitled to object to such arrest and escape from custody, such custody not being a lawful one. For a charge of escaping from lawful custody the prosecution must first establish that the constable who arrested the man had power to act under the specific authority that he claimed to have.[379.]

[s 225B.2] Resistance to improper warrant justifiable.—

A person cannot be arrested under sections 225B and 353 when the warrant attempted to be executed was addressed to the person with a wrong description to which he did not answer,[380.] or when it was illegal owing to want of the seal of the Court,[381.] or when it did not contain the name of the person to be arrested,[382.] or for any other defect.[383.] But even if a Court has wrongly exercised its discretion in issuing a warrant, an accused escaping from the custody of the peon apprehending him or obstructing his apprehension would be guilty under this section.[384.] This is, however, not to say that an outright illegality in issuing the warrant too would have no consequence. Thus, where the warrant was signed by a *sheristadar* who had no authority to sign the warrant, it was held by offering resistance to arrest under such an illegal warrant the accused did not come under the mischief of this section.[385.]

[s 225B.3] Escape must be from lawful custody.—

The accused was arrested by a Process-Server, and after the arrest he managed to escape from custody, went inside his house, shut himself up there, and refused to come out. It was held that an offence under section 186 was not established, but that the accused was guilty of the offence of escaping from lawful custody under this section.[386.] But when the accused was merely requested by the *Amin* of the Civil Court to accompany him to the Court and the accused was not informed that he was being put under arrest, it was held that the accused committed no offence under this section by refusing to accompany the *Amin*.[387.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

374. *Muli v State*, (1920) 43 All 185 .

375. *Annaudin*, (1923) 1 Ran 218.

376. *Fattu*, (1932) 55 All 109 , 111, 112.

377. *Thangal*, AIR 1961 Ker 331 [LNIND 1960 KER 261] .

378. *Satish Chandra Rai v Jodu Nandan Singh*, (1899) 26 Cal 748 .

379. *Appasami Mudaliar*, (1924) 47 Mad 442.

380. *Debi Singh*, (1901) 28 Cal 399 .

381. *Mahajan Sheikh*, (1914) 42 Cal 708 .

382. *Jogendra Nath Laskar v Hiralal*, (1924) 51 Cal 902 .

383. *Gokal v State*, (1922) 45 All 142 ; *Gaman*, (1913) PR No. 16 of 1913; *Muhammad Baksh*, (1904) PR No. 16 of 1904.

384. *Puna Mahton*, (1932) 11 Pat 743.

385. *I Venkayya v State*, 1973 Cr LJ 245 (AP). See also *Subbramaniah*, AIR 1934 Mad 206 [LNIND 1934 MAD 4] .

386. *Jamna Das*, (1927) 9 Lah 214.

387. *Heer Singh*, AIR 1961 Raj 156 [LNIND 1960 RAJ 162] .

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[s 226] *[Omitted]*

[* * *] [Omitted]. [by Act XXVI of 1955, section 117 and Sch.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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[s 227] Violation of condition of remission of punishment.

Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

COMMENT.—

This section deals with those cases in which remission of punishment is made conditional by Government under section 432 of the Code of Criminal Procedure. Section 227 of the IPC, 1860 makes it a specific offence on the part of any person who has accepted any conditional remission of punishment if he knowingly violates any condition on which such remission was granted. In other words while the Code of Criminal Procedure envisages arrest of a person who violates the conditions of remission and remand straightway to jail, section 227 of the IPC, 1860 envisages for the same act of violation of conditions, prosecution and the punishment, if the prosecution succeeds, is the same, as the consequence contemplated under section 432 (3), namely, remanding of the person concerned for the rest of his term.[388.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

388. *Krishnan Nair v State*, 1983 Cr LJ 87 .

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[s 228] Intentional insult or interruption to public servant sitting in judicial proceeding.

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

STATE AMENDMENT

Andhra Pradesh.— *Offence under section 228 is cognizable. [Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].*

COMMENT.—

The object of this section is to punish a person who intentionally insults in any way the Court administering justice. It lays down the highest sentence that can be inflicted for contempt of Court. By a notification under section 10(1) of The Criminal Law Amendment Act, 1932 the State Government can make an offence under section 228, IPC, 1860, a cognizable offence for a specified area for such time as the notification

remains in force. No Court shall take cognizance of the offence under section 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is sub-ordinate.[389.]

[s 228.1] Ingredients.—

The essential ingredients of the offence under this section are— (1) intention, (2) insult or interruption to a public servant and (3) the public servant insulted or interrupted must be sitting in any stage of a judicial proceeding.[390.] The fact that the Court feels insulted is no reason for holding that any insult is intended.[391.]

The whole sitting of a Court for the disposal of judicial work from the opening to the rising of the Court is a judicial proceeding, and the necessary interval between the conclusion of one case and the opening of another is a stage in a judicial proceeding.[392.]

Acts, such as rude and contumelious behaviour, obstinacy, perverseness, prevarication, or refusal to answer any lawful question, breach of the peace or any wilful disturbance whatever, will amount to contempt of Court.

If the offence of contempt of Court is summarily dealt with under section 345 of the Criminal Procedure Code, the maximum punishment that can be imposed is fine not exceeding Rs. 200.

The offence under the section is not punishable as contempt of Court. The definition of "criminal contempt" in section 2(c) of The Contempt of Courts Act, 1971 includes acts which constitute an offence under section 228, IPC, 1860 and also goes beyond such acts, being wider than section 228.[393.]

[s 228.2] CASES.—Contempt.—

A person persisting in putting irrelevant and vexatious questions to a witness after warning;[394.] a person making an impertinent threat to a witness in the box,[395.] a person sentenced to two hours' imprisonment and ordered to be kept in custody insulting the Judge in the grossest manner;[396.] a person calling the trial Judge as "a prejudiced judge;"[397.] a person stating in an application for transfer of a case that the Court had become hostile to him;[398.] and a person insisting upon staying in the Court room after the presiding officer of the Court had asked him to leave the Court and after he had been warned that action for contempt of Court would be taken against him,[399.] were all held guilty of contempt of Court under this section. A Commissioner appointed by the Court being a public servant a person who intentionally insults or interrupts him while he is sitting in a judicial proceeding commits an offence under section 228, IPC, 1860, and should be punished under that section and not under section 345, Cr PC, 1973.[400.] Hurling of shoes by an Advocate at the presiding officer of the Court was contempt. Where the party to a case shouted inside a Court room in offensive language as the presiding officer told that after filing of the rejoinder by the opposite party arguments were closed, summary contempt proceedings under section 480 (now section 345) Cr PC, 1973, read with section 228, IPC, 1860, were fully justified though in view of the written apology tendered then and there the party should not be convicted under section 228, IPC, 1860.[401.]

[s 228.3] Refusal to answer question.—

Prevarication by a witness and refusal to answer a question amount to intentional interruption within the meaning of the section.[402.]

[s 228.4] No contempt.—

A person leaving the Court when ordered to remain;[403.] or making signs from outside to a prisoner on his trial;[404.] a person listening to evidence after being told to leave the Court;[405.] a person using vulgar language for the purpose of emphasis;[406.] a person walking out of the Court without answering the question whether he had any witness;[407.] a person giving away in marriage a minor girl while she was in the custody of a guardian appointed by the Court;[408.] a person appearing as an assessor in Court dressed in a shirt and a cap;[409.] a person writing a letter to a Judge imputing an unlawful act causing loss to him,[410.] and a pleader saying that he 'resented' the remark of the Court and that another remark was 'improper', and that a certain action of the Court was 'strange',[411.] were held to have committed no offence under this section.

[s 228.5] Allocation of sitting accommodation in Court room.—

A litigant, conducting his case without the aid of counsel, was occupying the seat in the Court room meant for the advocates while senior advocates were standing. He refused to vacate the seat when asked to do so by the presiding officer. His conviction under section 228 was upheld.[412.]

[s 228.6] Free legal assistance.—

It was held in *Shrichand v State of MP that* the right to free legal assistance has to be confined to the offences that are punishable with substantive sentence of imprisonment. The right to free legal assistance at the State cost could not be extended to an offence under section 228, IPC, 1860 of which the accused was being tried summarily because on conviction he could not have been visited with any substantive imprisonment.[413.]

[s 228.7] Insult to Court.—

Several accused persons faced a trial and were found guilty of various offences. One of them, on hearing the judgment, addressed to the Court and uttered filthy abuses and made contemptuous statements. The Court said that it amounted to an insult of the Court. The Court had jurisdiction under the section to punish the accused.[414.] Where an accused wrote a letter to the Magistrate asking him for the reasons as to why he had returned the petition filed by him and also requested him, to give a copy of the document connected with the case, Magistrate found him to be guilty of offence under section 228, IPC, 1860. But the Madras High Court set aside the judgment by holding that it may not be said that the letter has been received by the judicial officer when he was in any stage of the proceedings in Court and, therefore, the offence under section 228, IPC, 1860 is not be made out.[415.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

389. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] : JT 2009 (12) SC 485 [LNIND 2009 SC 1659] : 2009 (11) Scale 658 [LNIND 2009 SC 1659] .

390. *Revashankar*, AIR 1959 SC 102 [LNIND 1958 SC 110] : (1958) Cr LJ 251 .

391. *Pranlal*, 1966 Cr LJ 1087 .

392. *Salig Ram v State*, (1898) PR No. 16 of 1897.

393. *Daroga Singh v BK Pandey*, (2004) 5 SCC 26 [LNIND 2004 SC 485] : 2004 Cr LJ 2084 : AIR 2004 SC 2579 [LNIND 2004 SC 485] .

394. *Azeemoola*, (1867) PR No. 44 of 1867.

395. *Allu*, (1922) 45 All 272 .

396. *Venkatasami*, (1891) 15 Mad 131.

397. *Venkatrao v State*, (1922) 24 Bom LR 386 [LNIND 1922 BOM 43] , 46 Bom 973.

398. *Narotam Das*, (1943) All 186 .

399. *Rameshwar*, 1960 Cr LJ 976 .

400. *CK Nanavati*, 1978 Cr LJ 1040 (Guj).

401. *State of UP v Pateswari Prasad*, 1980 Cr LJ NOC 1 (All).

402. *Jaimal Shravan*, (1873) 10 BHC 69; *Gopi Chand*, (1917) PR No. 14 of 1918.

403. (1870) 1 Weir 215.

404. (1870) 1 Weir 214.

405. *Papa Naiken*, (1882) 1 Weir 217.

406. (1880) 1 Weir 216.

407. *Abdul Rahiman*, (1899) 1 Weir 218.

408. *Kaulashia*, (1932) 12 Pat 1, the offence committed was disobedience of a lawful order.

409. *Chhaganlal Ishwardas*, (1933) 35 Bom LR 1025 .

410. *Subordinate Judge, Hoshangabad v Jawaharlal*, (1941) Nag 304.

411. *Hakumat Rai*, (1942) 24 Lah 791.

412. *Omana v State of Kerala*, 1994 Cr LJ 687 (Ker). Another **similar ruling** is *PC Jose v Nandakumar*, AIR 1997 Ker 243 [LNIND 1993 KER 251] .

413. 1993 Cr LJ 495 (MP).

414. *Ram Vishal Re*, 1997 Cr LJ 3736 (MP).

415. *C R Rajasekaran, v Judicial Magistrate, Nagapattinam*, 2003 Cr LJ 4024 (Mad).

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the Indian Penal Code, 1860 offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). Section 195 of Code of Criminal Procedure provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.[1.]

[416.][s 228A]— Disclosure of identity of the victim of certain offences, etc.

(1) **Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an [417.][offence under section 376, [418.] [section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.**

(2) **Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—**

- (a) **by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or**
- (b) **by, or with the authorisation in writing of, the victim; or**
- (c) **where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:**

Provided **that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.**

Explanation.—For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) **Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.**

Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

COMMENT.—

This section has been introduced by The Criminal Law Amendment Act, 1983, section 2 (43 of 1983) to prevent social victimisation or ostracism of the victim of a sexual offence.

[s 228A.1] Exemption from prosecution.—

A complaint was filed against the accused (petitioners) for the alleged disclosure of identity of the victim of a rape in their newspaper. The reply notice showed that the publication was made at the instance of a recognised welfare association. It was held that the petitioners were exempt from prosecution.[419.] Publishing the photographs of rape victims in newspapers, journals and magazines would certainly fall under the category of making disclosure of identity of victim and such act would fall under section 228-A of IPC, 1860.[420.]

[s 228A.2] Judgments.—

Section 228A IPC, 1860 makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under sections 376, 376A, 376B, 376C or 376D is alleged or found to have been committed can be punished. Keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which section 228A has been enacted, it would be appropriate that in the judgments, be it of the Supreme Court, High Court or lower Court, the name of the victim should not be indicated.[421.]

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

416. Ins. by Act 43 of 1983, section 2 (w.e.f. 25 December 1983).

417. Subs. by the Criminal Law (Amendment) Act, 2013 (13 of 2013), section 4 (w.e.f. 3 February 2013) for "offence under section 376, section 376A, section 376B, section 376C or section 376D".

418. Subs. by Act 22 of 2018, section 3, for "section 376A, section 376B, section 376C, section 376D" (w.r.e.f. 21 April 2018).

419. *R Lakshmipathi v Ramalingam*, 1998 Cr LJ 3683 (Mad).

420. *National Federation of Indian Women v Government of Tamil Nadu*, 2007 Cr LJ 3385 (Mad).

421. *S Ramakrishna v State*, (2009) 1 SCC 133 [LNIND 2008 SC 2066] : (2009) 1 SCC Cri 487 : AIR 2009 SC 885 [LNIND 2008 SC 2066] . See also *Om Prakash v State of UP*, 2006 Cr LJ 2913 : AIR 2006 SC 2214 [LNIND 2006 SC 382] : (2006) 9 SCC 787 [LNIND 2006 SC 382] , it would be appropriate that the name of victim of rape should not be disclosed be it a judgment of the Supreme Court, High Court or lower court. This is necessary to prevent victimisation or ostracism of the victim. To the **same effect** is *Dinesh v State of Rajasthan*, 2006 Cr LJ 1679 (SC), *Bhupinder Sharma v State of HP*, (2003) 8 SCC 551 . *State of Karnataka v Puttaraja*, (2004 (1) SCC 475) [LNIND 2003 SC 1033] .

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CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

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[s 229] Personation of a Juror or Assessor.

Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

This section was intended to punish personation of a juror or an assessor. It has now become obsolete with the abolition of assessor or jury system of trial.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

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422.[s 229-A] Failure by person released on bail or bond to appear in Court.

[Whoever, having been charged with an offence and released on bail or on bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.—**The punishment under this section is—**

(*a*) **in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and**

(*b*) **without prejudice to the power of the Court to order forfeiture of the bond].**

COMMENT.—

Cr PC, 1973 (Amendment) Act 2005—***clause 44***.—This clause amends the IPC, 1860 as follows, namely:—

Under clause 37 an obligation is cast on the person released on bail or on bond to appear and surrender to custody. In order to enforce this obligation, a new section 229-A is being inserted in the IPC, 1860 to prescribe punishment for those who fail to do so. [*Notes on clauses*.]

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1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

422. Ins. by Cr PC, 1973. (Amendment) Act, 2005 (25 of 2005), section 44(c) (w.e.f. 23 June 2006 *vide* Notfn. No. SO 923(E), dated 21 June 2006.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 230] "Coin" defined.

[1]·**[Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.]**

Indian coin.

[2]·**[Indian coin is metal stamped and issued by the authority of the Government of India in order to be used as money; and metal which has been so stamped and issued shall continue to be Indian coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.]**

ILLUSTRATIONS

(a) Cowries are not coin.

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, in as much as they are not intended to be used as money.

(d) The coin denominated as the Company's rupee is [3]·[Indian coin].

[4]·[(e) The "Farukhabad rupee" which was formerly used as money under the authority of the Government of India is [5]·[Indian coin] although it is no longer so used].

COMMENT.—

In view of the definition of "Indian coin" in this section, it is immaterial whether the coins are still current or they have ceased to be used as money.[6]·

1. Subs. by Act 19 of 1872, section 1, for the original first paragraph.
2. Subs. by A.O. 1950, for the former paragraph.
3. Subs. by the A.O. 1950, for "the Queen's coin".
4. Ins. by Act 6 of 1896, section 1.
5. Subs. by the A.O. 1950, for "the Queen's coin".
6. *Ranchhod Mula v State*, (1961) 2 Cr LJ 472 .

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    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 231] Counterfeiting coin.

Whoever counterfeits or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

COMMENT.—

It is not necessary under this section that the counterfeit coin should be made with the primary intention of its being passed as genuine; it is sufficient if the resemblance to genuine coin is so close that it is capable of being passed as such.[7] It is not essential for coins to be counterfeit that they should be of exact resemblances to genuine coins. It is sufficient that they are such as to cause deception and may be passed as genuine.[8] But where the alleged counterfeit coins are such that none would be deceived, these cannot be counterfeit coins within the meaning of this section.[9]

7. *Qadir Bakhsh*, (1907) 30 All 93 ; *Premsookh Dass*, (1870) PR 38 of 1870.
8. *Amrit Sonar*, (1919) 4 PLJ 525 , 20 Cr LJ 439.
9. *Ranchhod Mula v State*, (1961) 2 Cr LJ 472 .

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 232] Counterfeiting Indian coin.

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting [10].[Indian coin], shall be punished with [11].[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

The Code provides heavier punishment in cases of offences relating to Indian coin than those relating to foreign coins.[12.]

The basic requirement for the prosecution to succeed against the accused in respect of counterfeiting coins is that the witnesses examined by the prosecution must speak of the manufacture of one coin resembling a genuine one. A presumption can also be drawn under Explanation 2 of section 28 that a person is counterfeiting coins when he causes one coin to resemble another so closely that the person intended to practice deception or knew it would be likely to cause deception. Section 232 prescribes the punishment for counterfeiting Indian coins. Section 235 prescribes the punishment for a person who is in possession of any instrument or material used for counterfeiting coins. Thus, a conviction under sections 232 or 235 would be maintained only if the prosecution satisfactorily proves the ingredients of section 28. The prosecution must establish that the coins manufactured resemble the original. It must also establish that there is an intention to deceive, or the knowledge that deception would be caused by such resemblance.[13.]

'Counterfeiting' means causing one thing to resemble another.[14.]

10. Subs. by the A.O. 1950, for "the Queen's coin".

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

12. Note I, p 134.
13. *Shahid Sultan Khan v State of Maharashtra*, 2007 Cr LJ 568 (Bom).
14. *Muhammad Husain*, (1901) 23 All 420 .

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    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

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(3) Making or selling an instrument for counterfeiting a stamp (section 257).

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(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 233] Making or selling instrument for counterfeiting coin.

Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

In this as well as in the following sections mere acts of preparation towards the offence of coining are made substantive offences, such as the making of dies or other instruments used in the manufacture of coin.

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    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 234] Making or selling instrument for counterfeiting Indian coin.

Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting [15.][Indian coin], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

15. Subs. by the A.O. 1950, for "the Queen's coin".

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 235] Possession of instrument, or material for the purpose of using the same for counterfeiting coin.

Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If Indian coin.

and if the coin to be counterfeited is [16.][Indian coin], shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

'Possession' connotes the intention to exercise power or control over the object possessed and therefore necessarily implies that the possessor has been conscious of the possibility of exercising that power or control. Mere possession of instruments and materials capable of counterfeiting coins is no offence. Possession of such instruments should be with the intention of counterfeiting coins and the intention must be proved. The onus of proving the fitness of the materials for the purpose of counterfeiting coins was upon the prosecution.[17.] The minimum that would be required for prosecution to establish a charge under sections 232 and 235 is that it establishes that the coins seized resembled the original and that the resemblance is such that it would deceive a person or that the accused knew that if the coin is used it would be likely to deceive a person. Unless there is intrinsic evidence on record to show that the coins indeed resemble genuine coins, it is difficult to accept the case of the prosecution.[18.]

16. Subs. by the A.O. 1950, for "the Queen's coin".
17. *Khadim Hussain*, (1924) 5 Lah 392.
18. *Shahid Sultan Khan v State of Maharashtra*, 2007 Cr LJ 568 (Bom).

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 236] Abetting in India the counterfeiting out of India of coin.

Whoever, being within [19][India], abets the counterfeiting of coin out of [20][India], shall be punished in the same manner as if he abetted the counterfeiting of such coin within [21][India].

COMMENT.—

Any person in India, whether an Indian or a foreigner, who supplied instruments or materials for the purpose of counterfeiting any coin, or assists in any other way, is punishable under this section. Abetment in India must be complete.

19. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

20. *Ibid.*

21. *Ibid.*

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 237] Import or export of counterfeit coin.

Whoever imports into [22] [India], or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

The offence under this and the following section consists in an import or export, of any coin known by the importer, or which he has reason to believe, to be counterfeit.

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22. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1-4-1951), to read as above.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 238] Import or export of counterfeits of Indian coin.

Whoever imports into [23][India], or exports therefrom, any counterfeit coin, which he knows or has reason to believe to be a counterfeit of [24][Indian coin], shall be punished with [25][imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

23. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

24. Subs. by the A.O. 1950, for "the Queen's coin".

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

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 239] Delivery of coin, possessed with knowledge that it is counterfeit.

Whoever, having any counterfeit coin, which at the time when he became possessed of it knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

COMMENT.—

This section is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.

Three classes of offences are created by sections 239–243:

(1) Delivery to another of coin, possessed with the knowledge that it is counterfeit (sections 239, 240).

(2) Delivery to another of coin as genuine, which when *first* possessed, the deliverer did not know to be counterfeit (section 241).

(3) Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof (sections 242, 243).

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The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 240] Delivery of Indian coin, possessed with knowledge that it is counterfeit.

Whoever, having any counterfeit coin which is a counterfeit of [26.][Indian coin], and which, at the time when he became possessed of it, he knew to be a counterfeit of [27.] [Indian coin], fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

The offence under this section is an aggravated form of the offence described in the last section. This section does not apply to the actual coiner.[28.] It must be established that the accused knew that the coins were counterfeit when he became possessed of them.[29.]

26. Subs. by the A.O. 1950, for "Queen's coin".

27. *Ibid*.

28. *Ahmad Shah*, (1892) PR No. 10 of 1892.

29. *Dost Mohammad*, (1937) Nag 133.

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The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 241] Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

ILLUSTRATION

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

COMMENT.—

This section applies to a casual utterer of base coins. Section 239 deals with professional utterers.

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(I) Coins.—

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1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 242] Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

Mere possession of a counterfeit coin is an offence under this and the following section, even though no attempt is made to pass it off, provided it was kept for a fraudulent purpose and was originally obtained with guilty knowledge.

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The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 243] Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.

Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of [30][Indian coin], having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

For an offence under section 243, IPC, 1860, it has to be established by the prosecution that accused fraudulently or with intent that fraud may be committed, came into possession of counterfeit coins which were counterfeit of Indian coins, having known at the time he became possessed of them that they were counterfeit.[31] Where the coins were not counterfeit coins but were in the process of being made counterfeit coins, section 243 has no application.[32]

30. Subs. by the A.O. 1950, for "Queen's coin".

31. *Mohd Ibrahim v State*, 1968 Cr LJ 1377 (Del).

32. *Ranchhod Mula v State*, 1960 Cr LJ 472 (Guj).

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 244] Person employed in mint causing coin to be of different weight or composition from that fixed by law.

Whoever, being employed in any mint lawfully established in [33][India], does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

The object of this section is to secure purity of coinage and its exact conformity to the legal standard against the act or omission of person employed in mints. The law has fixed the weight and composition of various coins and has declared in what cases they shall be a legal tender.

33. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

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(I) Coins.—

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    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 245] Unlawfully taking coining instrument from mint.

Whoever, without lawful authority, takes out of any mint, lawfully established in [34] [India], any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

34. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch. (w.e.f. 1 April 1951), to read as above.

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(I) Coins.—

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    (1) Counterfeiting coins (sections 231, 232).
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    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 246] Fraudulently or dishonestly diminishing weight or altering composition of coin.

Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin.

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The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

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(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 247] Fraudulently or dishonestly diminishing weight or altering composition of Indian coin.

Whoever fraudulently or dishonestly performs on any [35][Indian coin] any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

35. Subs. by the A.O. 1950, for "any of the Queen's coin".

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

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1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 248] Altering appearance of coin with intent that it shall pass as coin of different description.

Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

This section refers to any operation which alters the appearance of a coin with the intention that the said coin shall pass as a coin of a different description, e.g., gilding, silvering. If the weight of the coin is diminished, either section 246 or section 247 applies.

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    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 249] Altering appearance of Indian coin with intent that it shall pass as coin of different description.

Whoever performs on any [36][Indian coin] any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

36. Subs. by the A.O. 1950, for "any of the Queen's coin".

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    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 250] Delivery of coin possessed with knowledge that it is altered.

Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

COMMENT.—

This and the following section are intended to punish persons who are traders in spurious or altered coins. They correspond to sections 239 and 240. There must be both possession with knowledge and fraudulent delivery.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

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    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 251] Delivery of Indian coin possessed with knowledge that it is altered.

Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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    (3) Possession of instrument for counterfeiting (section 235).
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    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 252] Possession of coin by person who knew it to be altered when he became possessed thereof.

Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

COMMENT.—

Possession of debased or altered coin by the professional dealer, with fraudulent intention is made punishable by this section. This and the next section resemble sections 242 and 243. Under sections 250 and 251 the accused is punished for uttering, under this section and the next he is punished for possessing a coin in respect of which the offence defined either in section 246 or section 247 has been committed.

THE INDIAN PENAL CODE

CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 253] Possession of Indian coin by person who knew it to be altered when he became possessed thereof.

Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the section 247 or 249 has been committed, having known at the time of becoming possessed thereof, that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

THE INDIAN PENAL CODE

CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 254] Delivery of coin as genuine which, when first possessed, the deliverer did not know to be altered.

Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

COMMENT.—

Section 241 corresponds to this section. Where possession is acquired innocently but on subsequent knowledge that the coin is counterfeit if a person passes it off or attempts to pass it off as a genuine coin, he will be punished under this section.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 255] Counterfeiting Government stamp.

Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with [37].[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—**A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.**

COMMENT.—

This and the remaining sections of the Chapter deal with offences relating to Government stamps. These stamps are impressions upon paper, parchment, or any material used for writing, made by the Government mostly for the purpose of revenue.

A stamp does not cease to be a stamp because it is cancelled. A person selling a forged stamp, although it bears a cancellation mark commits an offence of selling forged stamps.[38].

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

38. *Lowden*, (1914) 1 KB 144 .

THE INDIAN PENAL CODE

CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 256] Having possession of instrument or material for counterfeiting Government stamp.

Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section resembles section 235.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 257] Making or selling instrument for counterfeiting Government stamp.

Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section corresponds to section 234.

THE INDIAN PENAL CODE

CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 258] Sale of counterfeit Government stamp.

Whoever, sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 259] Having possession of counterfeit Government stamp.

Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use, or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT.—

This section corresponds to section 243.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 260] Using as genuine a Government stamp known to be counterfeit.

Whoever uses as genuine any stamp, knowing it to be counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.—

This section corresponds to section 254.

THE INDIAN PENAL CODE

CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 261] Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government.

Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance, bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—

This section may be compared with sections 246 and 248. It punishes (1) the effacing of a writing from a stamp, and (2) removing of a stamp from a document.

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CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 262] Using Government stamp known to have been before used.

Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

Under this section the fraudulent use of a stamp already used is made punishable.

THE INDIAN PENAL CODE

CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 263] Erasure of mark denoting that stamp has been used.

Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by the Government for the purpose of revenue, any mark, put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

COMMENT.—

This section punishes (1) erasure or removal of a mark denoting that a stamp has been used, (2) knowingly possessing any such stamp, and (3) selling or disposing of any such stamp.

THE INDIAN PENAL CODE

CHAPTER XII OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in this Chapter relate to (I) Coins and (II) Government Stamps.

(I) Coins.—

The offences relating to coins may be classified into three divisions:—

(1) Counterfeiting, (2) alteration, and (3) acts of mint employees.

1. Counterfeiting—
    (1) Counterfeiting coins (sections 231, 232).
    (2) Making or selling instrument for counterfeiting (sections 233, 234).
    (3) Possession of instrument for counterfeiting (section 235).
    (4) Abetting in India the counterfeiting of coin out of India (section 236).
    (5) Importing or exporting of counterfeit coin (sections 237, 238).
    (6) Delivering counterfeit coin knowing it to be so (sections 239, 240).
    (7) Delivering counterfeit coin not known to be so when first possessed (section 241).
    (8) Possession of counterfeit coin knowing it to be so (sections 242, 243).
2. Alteration—
    (1) Diminishing the weight or altering the composition of any coin (sections 246, 247).
    (2) Altering appearance of any coin to pass it off as a different coin (sections 248, 249).
    (3) Delivering coin possessed with the knowledge that it is altered (sections 250, 251).
    (4) Possessing altered coin knowing it to be so (sections 252, 253).
    (5) Delivering altered coin which the deliverer did not know to be altered when first possessed (section 254).
3. Acts of mint employees—
    (1) Persons employed in a mint causing coin to be of a different weight or composition from that fixed by law (section 244).
    (2) Unlawful taking from a mint any coining instrument (section 245).

(II) **Government Stamps.**—

(1) Counterfeiting a stamp (section 255).

(2) Possession of an instrument for counterfeiting a stamp (section 256).

(3) Making or selling an instrument for counterfeiting a stamp (section 257).

(4) Sale of a counterfeit stamp (section 258).

(5) Possession of a counterfeit stamp (section 259).

(6) Using as genuine a stamp known to be counterfeit (section 260).

(7) Effacing any writing from a substance bearing a stamp or removing from a document a stamp used for it, with intent to cause loss to Government (section 261).

(8) Using a stamp known to have been before used (section 262).

(9) Erasure of mark denoting that a stamp has been used (section 263).

(10) Making, uttering, or dealing in, or selling or using for postal purpose, any fictitious stamp; or possessing any fictitious stamp; or making or possessing any instrument for manufacturing fictitious stamps (section 263A).

[s 263A] Prohibition of fictitious stamps.

(1) **Whoever—**

(a) makes, knowingly utters, deals in or sells any fictitious stamps, or knowingly uses for any postal purpose any fictitious stamp, or

(b) has in his possession, without lawful excuse, any fictitious stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) **Any such stamps, die, plate, instrument or materials in the possession of any person for making any fictitious stamp [39].[may be seized and, if seized] shall be forfeited.**

(3) **In this section "fictitious stamp" means any stamp falsely purporting to be issued by the Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government, for that purpose.**

(4) **In this section and also in sections 255 to 263, both inclusive, the word "Government", when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive Government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country.**

COMMENT.—

This section makes it an offence to manufacture fictitious stamps, which are defined to be stamps purporting to be used for purposes of postage by any foreign Government. It

was enacted for the purpose of stopping the use of fictitious stamps on letters coming from abroad.

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39. Subs. by Act 42 of 1953, sec. 4 and Sch. III, for "may be seized and" (w.e.f. 23-12-1953).

THE INDIAN PENAL CODE

CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

[s 264] Fraudulent use of false instrument for weighing.

Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

Intention is an essential part of the offence under this section. The section requires two things: (1) fraudulent use of any false instrument for weighing, and (2) knowledge that it is false. The word 'false' in this and the following sections means different from the instrument, weight, or measure, which the offender and the person defrauded have fixed upon, expressly or by implication, with reference to their mutual dealings. Where it was agreed between the seller and purchaser that a particular measure was to be used in measuring the commodity sold, it was held that, even though the measure was not of the standard requirement, it was not 'false' and there was no fraudulent intent within the meaning of this section.[1.]

1. *Kanayalal*, (1939) 41 Bom LR 977 .

THE INDIAN PENAL CODE

CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

[s 265] Fraudulent use of false weight or measure.

Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

It is clear from the above definition that the prosecution must prove three essential ingredients amongst others as

(1) a weight or measure is a false one,

(2) that the accused used such a weight or measure, and

(3) that he did so fraudulently.[2.]

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2. *Suwalal v State*, 1962 (2) Cr LJ 693.

THE INDIAN PENAL CODE

CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

[s 266] Being in possession of false weight or measure.

Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, [3] intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

This section punishes a person who is in possession of a false weight or measure just as sections 235, 239 and 240 punish a person who is in possession of a counterfeit coin, and section 259 punishes a person who is in possession of a counterfeit stamp.

A measure is false if it is something other than what it purports to be. If both the purchaser and seller are aware of the actual measure being used, there is no fraudulent intent as required by this section. It is only when the seller purports to sell according to a certain standard, and sells below that standard, that he can be said to be guilty of fraud.[4]

The mere possession of false weights or measures will not in itself raise any strong presumption of fraud. It is necessary to show that the accused knew the scales to be false and intended to use them fraudulently.[5]

3. The word and omitted by Act 42 of 1953, section 4 and Sch. III (w.e.f. 23-12-1953).
4. *Kanayalal*, (1939) 41 Bom LR 977 .
5. *Hamirmal*, (1890) Unrep Cr C 514.

THE INDIAN PENAL CODE

CHAPTER XIII OF OFFENCES RELATING TO WEIGHTS AND MEASURES

[s 267] Making or selling false weight or measure.

Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

The object of this section is to prevent the circulation of false scales, weights or measures. It punishes a person who makes, sells, or disposes of a false balance, weight or measure.

THE INDIAN PENAL CODE

CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 268] Public nuisance.

A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

COMMENT.—

Nuisance is an inconvenience that materially interferes with the ordinary physical comfort of human existence. It may be public or private nuisance. As defined in section 268 Indian Penal Code, 1860 (IPC, 1860) public nuisance is an offence against public either by doing a thing which tends to the annoyance of the whole community in general or by neglect to do anything which the common good requires. On the alternative it causes injury, obstruction, danger or annoyance to persons who may have

occasion to use public right. It is the quantum of annoyance or discomfort in contra distinction to private nuisance which affects an individual is the decisive factor.[1.]

Nuisance is of two kinds: (1) public and (2) private.

(1) Public nuisance or common nuisance is an offence against the public either by doing a thing, which tends to the annoyance of the whole community in general, or by neglecting to do anything that the common good requires. It is an act affecting the public at large, or some considerable portion of them and it must interfere with rights, which members of the community might otherwise enjoy.

It is not a *sine qua non* that the annoyance should injuriously affect every member of the public within its range of operation. It is sufficient that it should affect people in general who dwell in the vicinity.[2.]

As to when an individual can bring a civil action in respect of a public nuisance, see the authors' *Law of Torts*, 19th Edn, chapter XXI.

(2) Private nuisance is defined to be anything done to the hurt or annoyance of the lands, tenements or hereditaments of another, and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large. It is in the quantum of annoyance that private nuisance differs from public. It cannot be the subject of an indictment, but may be the ground of a civil action for damages or an injunction or both.[3.]

[s 268.1] Liability of owner.—

Where the use of premises gives rise to a public nuisance it is generally the occupier for the time being who is liable for it, and not the absent proprietor.[4.]

[s 268.2] Civil Remedy.—

'Private nuisance' affects some individuals as distinguished from the public at large. The remedies are of two kinds–civil and criminal. The remedies under the civil law are of two kinds. One is under section 91 of the Code of Civil Procedure, 1908. Under it, a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him.[5.]

[s 268.3] Criminal remedy.—

There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of IPC, 1860. The second provides for summary proceedings under sections 133–144 of the Code of Criminal Procedure, 1973 (Cr PC, 1973) and the third relates to remedies under special or local laws. Sub-sections (2) of section 133 of Cr PC, 1973 postulates that no order duly made by a Magistrate under this section shall be called in question in any civil court. The provisions of Chapter X of the Cr PC, 1973 should be so worked as not to become themselves, a nuisance to the community at large. A lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community.[6.]

[s 268.4] Noise.—

Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered with reference to its degree and the surrounding circumstances, the place and the time.[7.]

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1. *Vasant Manga Nikumba v Baburao Bhikanna Naidu*, (1995) Supp4 SCC 54 : (1996) 1 SCC (Cr) 27.
2. *Ibid*.
3. *vide THE LAW OF TORTS*, 19th Edn chapter XXI, by the author of this book.
4. *Bibhuti Bhusan v Bhuban Ram*, (1918) 46 Cal 515 .
5. *Kachrulal Bhagirath Agrawal v State of Maharashtra*, AIR 2004 SC 4818 [LNIND 2004 SC 960] : (2005) 9 SCC 36 [LNIND 2004 SC 960] .
6. *Kachrulal Bhagirath Agrawal v State of Maharashtra*, AIR 2004 SC 4818 [LNIND 2004 SC 960] : (2005) 9 SCC 36 [LNIND 2004 SC 960] .
7. Noise Pollution (V), *Re v.* (2005) 5 SCC 733 : JT 2005 (6) SC 210 : AIR 2005 SC 3136 .

THE INDIAN PENAL CODE

CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 269] Negligent act likely to spread infection of disease dangerous to life.

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.—

This section is framed in order to prevent people from doing acts which are likely to spread infectious diseases. Welfare of the society is the primary duty of every civilised State. Section 269, IPC, 1860 makes the negligent act likely to spread infection or disease dangerous to life as an offence. The essential ingredients are:

(1) that the accused does any act unlawfully or negligently; that such act is likely to spread infection of any disease dangerous to life; and

(2) that he knows or had reasons to believe that the act is likely to cause such infection.

Thus causing infection of the disease, which is dangerous to life, is covered by this section.[8] The expression "reason to believe" has been defined under section 26 IPC, 1860 and it lays down that a person said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise. A person can be supposed to know where there is a direct appeal to his senses. Suspicion or doubt cannot be raised to the level of "reason to believe".[9]

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8. *Dr. Meeru Bhatia Prasad v State*, 2001 Cr LJ 1674 (Del).
9. *Dr. Prabha Malhotra v State*, 1999 Cr LJ 549 (All).

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CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

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4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 270] Malignant act likely to spread infection of disease dangerous to life.

Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The offence under this section is an aggravated form of the offence punishable under the preceding section.

In this section, the use of the word 'malignantly' indicates that the person spreading infection should be actuated by malice.[10.]

There is no provision in the Prevention of Food Adulteration Act, 1954 which nullifies sections 270–273 of the IPC, 1860 or which make them dormant and non-applicable.[11.]

[s 270.1] Confrontation with Special Law.—

Even if section 270 of IPC, 1860 is invoked for supply of substandard food articles the special procedure laid down under Food Safety and Standards Act, 2006 for testing and declaring the product as substandard should have been followed.[12.]

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10. 2nd Rep section 226.
11. *Mahesh Ramchandra Jadhav v State of Maharashtra*, 1999 Cr LJ 2310 (Bom).
12. *Christy Fried Gram Industry v State of Karnataka*, 2016 Cr LJ 482 (Kant) : 2016 (1) KCCR 83 .

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CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

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3. Adulteration of drugs (sections 274–276).
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5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 271] Disobedience to quarantine rule.

Whoever knowingly disobeys any rule made and promulgated [13.][by the [14.][***] Government [15.][***] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

COMMENT.—

The motive for disobeying any rule is quite immaterial. The disobedience is punishable whether any injurious consequence flows from it or not.

13. Subs. by the A.O. 1937, for by the Government of India or by any Government.
14. The words Central or any Provincial omitted by the A.O. 1950.
15. The words or the Crown Representative omitted by the A.O. 1948.

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CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

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8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 272] Adulteration of food or drink intended for sale.

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

State Amendments

Orissa.—1. The following amendments were made by Orissa Act No. 3 of 1999, s. 2.

In its application to the State of Orissa, in sections 272, 273, 274, 275 and 276, for the words "shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following, namely:—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."—Orissa Act 3 of 1999, section 2.

2. The offence is cognizable, non-bailable and triable by Court of Session *vide* Orissa Act No. 3 of 1999, s. 2.

Uttar Pradesh.—1. The following amendments were made by U.P. Act No. 47 of 1975, s. 3(1) (w.e.f. 15-9-1975).

In its application to the State of Uttar Pradesh, in s. 272, for the words "shall be punished with imprisonment of either description, for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both"

substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life".

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* U.P. Act No. 47 of 1975.

West Bengal.—1. The following amendments were made by W.B. Act No. 42 of 1973, s. 3(i), (w.e.f. 29-4-1973).

In its application to the State of West Bengal in s. 272, for the words "of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following words—

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life".

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* W.B. Act No. 34 of 1974.

COMMENT.—

The mixing of noxious ingredients in food or drink or otherwise rendering it unwholesome by adulteration is punishable under this section. Mere adulteration with harmless ingredients for the purpose of getting more profit is not punishable under it, e.g., mixing water with milk[16.] or *ghee* (clarified butter) with vegetable oil.[17.]

'Adulteration' means mixing with any other substance whether wholly different or of the same kind but of inferior quality.

The expression 'noxious as food' means unwholesome as food or injurious to health and not repugnant to one's feelings.[18.] It is essential to show that an article of food or drink has been adulterated and that it was intended to sell such article or that it was known that it would be likely to be sold as food or drink.[19.]

[s 272.1] Adulteration of liquor.—

In order to establish that the offence under section 272, IPC, 1860 has been committed, the prosecution has to prove that the article involved was food or drink meant to be

consumed by live persons, that the accused adulterated it, that such adulteration rendered it noxious as food or drink and that the accused at the time of such adulteration intended to sell such article as food or drink or knew it to be likely that such article would be sold as food or drink. Now noxious rendering is making it poisonous or harmful or both. As is plain the offence is complete on introduction of the adulterant in the food or drink, provided it is meant for the purposes of sale, actual or likely.[20.]

[s 272.2] Local Amendments.—

In West Bengal, sections 272, 273, 274, 275 and 276 of the Penal Code have been amended by section 3 of West Bengal Act XLII of 1973 so as to provide life imprisonment with or without fine for the aforesaid offences. By section 5 of West Bengal Act XXXIV of 1974, all these offences have been made cognizable, non-bailable and triable by Court of Sessions. The State of Uttar Pradesh too has similarly made all these offences punishable with life imprisonment and fine with similar discretion of Court to award lesser imprisonment by virtue of Uttar Pradesh Act 47 of 1975.

There is no bar under the Prevention of Food Adulteration Act, 1954 and the said Rules made thereunder that the concerned authorities under Prevention of Food Adulteration Act have no jurisdiction and/or authority to prosecute the guilty person for the offences under the IPC based on the same averments along with the provisions of the special statutes. All such authorities have jurisdiction to launch a prosecution by invoking various provisions of the IPC, along with the special statutes.[21.]

[s 272.3] *Gutka* and *Pan Masala*.—

In order to find out whether the food is unsafe, due to an adulterant, the sample is to be sent to an analyst. Violation of the order of the Food Safety Commissioner is not an offence, under section 272 IPC, 1860.[22.]

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16. *Chinniah*, (1897) 1 Weir 228.
17. *Chokraj Marwari*, (1908) 12 Cal WN 608.
18. *Ram Dayal v State*, (1923) 46 All 94 .
19. *Suleman Shamji*, (1943) 45 Bom LR 895 . *Joseph Kurian v State of Kerala*, (1995) 1 Cr LJ 502 : AIR 1995 SC 4 [LNIND 1994 SC 927] : (1994) 6 SCC 535 [LNIND 1994 SC 927] , conviction for sale of adulterated arrack, sentence of six months' RI converted to simple imprisonment.
20. *Joseph Kurian v State of Kerala*, AIR 1995 SC 4 [LNIND 1994 SC 927] : (1994) 6 SCC 535 [LNIND 1994 SC 927] Also see *EK Chandrasenan v State of Kerala*, AIR 1995 SC 1066 [LNIND 1995 SC 88] : (1995) 2 SCC 99 [LNIND 1995 SC 88] .
21. *Rajiv Kumar Gupta v The State of Maharashtra*, 2005 Cr LJ 581 (Bom).
22. *Ganesh Pandurang Jadhao v The State of Maharashtra*, 2016 Cr LJ 2401 : 2016 (2) Bom CR (Cr) 4 .

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1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 273] Sale of noxious food or drink.

Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

State Amendments

Orissa.—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2*.

Uttar Pradesh.—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 3(ii), (w.e.f. 15-9- 1975)*.

In its application to the State of Uttar Pradesh in S. 273, for the words, "shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to one thousand rupees or with both, substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide U.P. Act No. 47 of 1975.*

West Bengal.—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(ii) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal in s. 273, for the words "of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following,—

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

COMMENT.—

It is not an offence to sell inferior food cheap if it is not noxious.

[s 273.1] Ingredients.—

This section requires three things—

(1) Selling or offering for sale as food or drink some article.

(2) Such article must have become noxious or must be in a state unfit for food or drink.

(3) The sale or exposure must have been made with a knowledge or reasonable belief that the article is noxious as food or drink. The word "noxious" as stated in Advanced Law Lexicon by *P Ramanatha Aiyar* (3rd Edition Reprint 2009), when used in relation to article of food is to mean that the article is poisonous, harmful to health or repugnant to human use. Having regard to language used in section 273, noxious food or drink, literally would mean article of food or drink which earlier was not noxious, but should have become noxious or had been rendered noxious by lapse of time or by not taking proper precaution or for not adding preservatives or the like.[23.]

What is punishable under this section is the sale of noxious articles as food or drink and not the mere sale of noxious article. Where the owner of a grain pit sold the contents of it before it was opened at a certain sum per *maund* whether the grain was good or bad, and on the pit being opened it was found that a large proportion of the grain was unfit for human consumption, it was held that the vendor could not be convicted under this section.[24.] Similarly, the selling of wheat containing a large admixture of extraneous matter, such as dirt, wood, matches, charcoal, was held to constitute no offence.[25.]

For local amendments see comment under section 272 *ante*.

23. *Dilipsinh Ramsinh Bhatia v State of Maharashtra*, 2010 Cr LJ 2014 (Bom).
24. *Salig Ram v State*, (1906) 28 All 312 .
25. *Narumal*, (1904) 6 Bom LR 520 ; *Gunesha v State*, (1873) PR No. 15 of 1873.

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2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 274] Adulteration of drugs.

Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

State Amendments

Orissa.—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2.*

Uttar Pradesh.—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 3(ii), (w.e.f. 15-9-1975).*

In its application to the State of Uttar Pradesh in S. 274, for the words, "shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to one thousand rupees or with both, substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide U.P. Act No. 47 of 1975.*

West Bengal.—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(iii) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal, in s. 274, for the words "of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both", substitute the following.—

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

COMMENT.—

To preserve the purity of drugs for medicinal purposes this section is enacted. It is sufficient if the efficacy of a drug is lessened, it need not necessarily become noxious to life.

For local amendment see comment under section 272 *ante*.

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2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 275] Sale of adulterated drugs.

Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

State Amendments

Orissa.—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2.*

Uttar Pradesh.—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 2(iv), (w.e.f. 15-9-1975).*

In its application to the State of Uttar Pradesh in S. 275, for the words, "shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both, substitute the following words.—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide U.P. Act No. 47 of 1975.*

West Bengal.—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(iv) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal in s. 275, for the words "of either description for a term which may extend to one thousand rupees or with both", substitute the words "for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* W.B. Act No. 34 of 1974.

COMMENT.—

The offence under this section consists in selling, or offering, or exposing for sale, or issuing from any dispensary, an adulterated drug as unadulterated. This section not only prohibits the sale of an adulterated drug but also its issue from any dispensary.

For local amendment, see comment under section 272 *ante*.

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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 276] Sale of drug as a different drug or preparation.

Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

State Amendments

Orissa.—1. *Same as in section 272, the amendments were made by Orissa Act No. 3 of 1999, s. 2.*

Uttar Pradesh.—1. *The following amendments were made by U.P. Act No. 47 of 1975, s. 3(v), (w.e.f. 15-9-1975).*

In its application to the State of Uttar Pradesh in S. 276, for the words, "shall be punished with imprisonment of either description for a term which may extend to one thousand rupees, or with both, substitute the following:—

"shall be punished with imprisonment for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. The offence is cognizable, non-bailable and triable by Court of Session, *vide* U.P. Act No. 47 of 1975.

West Bengal.—1. *The following amendments were made by W.B. Act No. 42 of 1973, s. 3(v) (w.e.f. 29-4-1973).*

In its application to the State of West Bengal in s. 276, for the words "of either description for a term which may extend to, "six months, or with fine which may extend to one thousand rupees, or with both", substitute the following:

"for life with or without fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life."

2. *The offence is cognizable, non-bailable and triable by Court of Session, vide W.B. Act No. 34 of 1974.*

COMMENT.—

The offence constituted by this section does not involve the idea of any adulteration or inferiority in the substituted medicine. It is sufficient that it is not in fact what it purports to be; for e.g., supplying savin instead of saffron.[26.]

This section is connected with section 275 in the same way as section 274 is connected with section 273.

[s 276.1] Possession as evidence of intention.—

Dealing with an Act for prevention of drug trafficking, the Privy Council observed in a case in which the accused was found in possession of the banned drug and there was nothing in the Act to exclude the common law rule that facts could be established by inference from proven facts; therefore, the judge had applied the appropriate standard of proof. The accused had given no evidence to explain his possession.[27.]

For local amendment, see Comment under section 272 *ante*.

26. *Knight v Bowers*, (1885) 14 QBD 845 .

27. *Sabapathee v State (Mauritius)*, (1999) 1 WLR 1836 (PC).

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7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 277] Fouling water of public spring or reservoir.

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

COMMENT.—

The water of a public spring or reservoir belongs to every member of the public in common, and if a person voluntarily fouls it he commits a public nuisance.

[s 277.1] Ingredients.—

The section requires—

(1) voluntary corruption or fouling of water;

(2) the water must be of a public spring or reservoir; and

(3) the water must be rendered less fit for the purpose for which it is ordinarily used.

As a general rule, a place is a public place if people are allowed access to it, though they may have no legal right to it.

[s 277.2] Section 277 and Water (Prevention and Control of Pollution) Act, 1974.—

The contention that the provisions contained in the Water Act take away the effect of section 277 cannot readily be assumed especially when there is nothing in the Water Act to hold that the provisions therein are intended to nullify section 277 from the Penal Code. The argument that the non-obstante clause in section 60 has the effect of repealing section 277 of IPC, 1860, also is unsustainable. The non-obstante clause in section 60 cannot be assumed to supersede or extinguish such provisions in the General Law. If the non-obstante clause in section 60 was intended to exclude or nullify section 277 of IPC, 1860, then there would have been strong indication available in the specific provision itself.[28.]

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28. *Prasad v State*, 2012 (1) Ker LT 861 .

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7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 278] Making atmosphere noxious to health.

Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

COMMENT.—

Though concepts of air and ecological pollution are rather new, it must be said to the credit of the first Law Commission that they too, drafting the code as they did in the first half of the nineteenth century, were not oblivious of these social needs.

[s 278.1] Smoking in public places.—

There can be no doubt that smoking in a public place will vitiate the atmosphere to make it noxious to the health of persons who happened to be there. Therefore, smoking in a public place is an offence punishable under section 278 IPC, 1860.[29.]

29. *Ramakrishnan v State*, AIR 1999 Ker 385 [LNIND 1999 KER 234] .

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7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
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10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 279] Rash driving or riding on a public way.

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent [1] as to endanger human life, [2] or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Under this section the effect of driving or riding must be either that human life was in fact endangered or that hurt or injury was likely to be caused.

[s 279.1] Ingredients.—

The section requires two things—

1. Driving of a vehicle or riding on a public way.

2. Such driving or riding must be so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person.

1. 'Rash or negligent'.—Rash and negligent driving has to be examined in light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. The preliminary conditions, thus, are that

(a) it is the manner in which the vehicle is driven;

(b) it be driven either rashly or negligently; and

(c) such rash or negligent driving should be such as to endanger human life.[30.] The criminality lies in running the risk of doing such an act with recklessness and indifference to the consequences. The words "rashly and negligently" are distinguishable and one is exclusive of the other. The same act cannot be "rash" as well as "negligent".[31.] Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. Simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law, a very high degree of negligence is required to be proved.[32.]

There is a distinction between a rash act and a negligent act. A reckless act has to be understood in two different senses—subjective and objective. In the subjective sense, it means deliberate or conscious taking of an unjustified risk, which could be easily foreseen and in the circumstances of the case was unreasonable to take. In the objective sense, the accused is not conscious of the result though he ought to be aware that it might follow and in this sense, it is almost equivalent to negligence. In other words, negligence involves blameworthy heedlessness on the part of the accused which a normal prudent man exercising reasonable care and caution ought to avoid. Negligence is an omission to do something, which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. Culpable negligence is acting without the consciousness, that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had he would have had the consciousness. As between rashness and negligence, rashness is a graver offence.[33.] Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence, or lack of it, can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.[34.] Absence of high speed itself cannot absolve the petitioner from the culpability.[35.]

There are several offences in the Code in which the element of criminal rashness or negligence occurs, viz.,—sections 279, 280, 283–289, 304A, 336, 337, 338.

2. 'Endanger human life'.—It must be proved that the accused was driving the vehicle on a public way in a manner which endangered human life or was likely to cause hurt or injury to any other person.[36.] It is not necessary that the rash or negligent act should result in injury to life or property.[37.]

[s 279.2] Reasonable care.—

The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for e.g., a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others.[38.]

[s 279.3] *Mens rea.*—

The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal Court consists of criminal negligence.[39.]

[s 279.4] *Res ipsa Loquitur*.—

This doctrine serves two purposes–one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is prima facie evidence of such negligence. Second, to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The Courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. Elements of this doctrine may be stated as:

(a) The event would not have occurred but for someone's negligence.

(b) The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

(c) Accused was negligent and owed a duty of care towards the victim.[40.] The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence.[41.] This doctrine operates in the domain of civil law especially in the cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed 'in service for determining per se the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.[42.] Where a vehicle was being driven on a wrong side, accident resulting in the death of two persons, the principle of *res ipsa loquitur* should have been applied.[43.] In the case of *Thakur Singh v State of Punjab*,[44.] the accused drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of *res ipsa loquitur* since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down.

[s 279.5] Abetment.—

The mere fact that petitioner was the owner of the offending vehicle at the relevant time, *ipso facto* is not a cogent ground to array him as an accused under section 109

IPC, 1860. In this manner, no offence of abetment is made out against the petitioner.[45.]

[s 279.6] Difference between civil and criminal liability.—

There can be no civil action for negligence if the negligent act or omission has not been attended by an injury to any person; but bare negligence involving the risk of injury is punishable criminally, though nobody is actually hurt by it.

If actual hurt is caused the case would come under sections 337 or 338, and if death is caused, under section 304A.[46.]

In a case of collision or injury arising out of rash driving, the actual driver and not the owner of the carriage is liable under this section;[47.] whereas, in a civil suit, the injured party has an option to sue either or both of them. In a criminal case, every man is responsible for his own act; there must be some personal act.[48.]

[s 279.7] Mechanical failure.—

Poor maintenance of vehicle is itself a negligent act.[49.] In cases where the prosecution alleges that the brakes were defective, it must establish by evidence that the brakes were so defective that the driving of the vehicle endangered human life or was likely to cause hurt or injury to any other person. Merely because the vehicle swerved to the right when its brakes were pulled up, it could not be said that there was danger to human life or it was likely to cause hurt or injury to others.[50.] Failure to apply brakes at relevant time does not by itself constitute rash and negligent act for it may as well be due to error of judgment.[51.] A vehicle of which handbrake and speedometer were not in working order is a very serious hazard to the public as the driver would never know his speed. It is a danger to the traffic in general.[52.]

[s 279.8] Contributory negligence.—

The doctrine of contributory negligence does not apply to criminal actions.[53.] The deceased stood protruding his body out of the vehicle that too having his back towards the driver, which fact suggests that he himself was quite negligent and responsible for the accident.[54.]

[s 279.9] CASES.—

In a case the allegation was that the accused, car driver, drove car in a rash and negligent manner and caused injury to a child who was playing on side of road. But the evidence showed that vehicle was going in middle of road and child was also playing on road. Brake skid marks on road were duly depicted in site plan, acquittal was held proper by the High Court.[55.] Where a tractor driver was driving the tractor at a speed of six miles per hour at night and a man who was sitting on it in a careless fashion unmindful of bumps and jolts fell down and died, it was held that the driver was not guilty of any rash or negligent act within the meaning of sections 279 and 304A, IPC, 1860.[56.] Where a truck dashed against a cyclist and a cart resulting in injuries to both the cyclist and the cartman but there was no evidence to the actual dashing of the

truck against the cyclist and the cart and no evidence was either available about the mechanical fitness or otherwise of the truck as the same had been set on fire by an angry mob, it could not be presumed that the truck must have been driven rashly and negligently merely because two persons were injured. In the circumstances, the conviction of the accused under sections 279 and 304A, IPC, 1860 was set aside.[57.] Merely because the driver ran away from the spot immediately after the incident, it could not be said that he must have been driving rashly and negligently.[58.] Driving at a high speed or non-sounding of horn by itself does not mean that the driver is rash or negligent. Place, time, traffic and crowd are important factors to determine rashness or negligence.[59.] High speed at a crowded road and pressing a person against a wall in order to save accident was held to be negligence within the meaning of this section.[60.] To drive at a high speed on an empty road or at a lonely place is not the same thing as driving in a crowded city street.[61.] Crushing a school child while driving past a school was held to be *ipso facto* rashness. Everybody is expected to slow down and take extra precautions near the vicinity of an educational institution.[62.] The mere fact that there are more than two persons in a two-wheeled vehicle will not make out an offence under section 279, IPC, 1860 as it by itself does not amount to so rash and negligent an act as to endanger human life, section 279, IPC, 1860 is not attracted where the driving is ordinarily rash or negligent. Moreover, if an offence is really made out, then driver alone is responsible and not the pillion rider or riders. Therefore, the police practice of apprehending all occupants of the vehicle is deprecated.[63.]

[s 279.10] Site plan.—

Where in a case of rash and negligent driving, the site plan, recovery memo, inspection report of the offending vehicle were not proved by the prosecution and the investigating officer was also not examined, conviction of the accused was set aside.[64.] However, Supreme Court in a case held that the site plan only indicates the place where the accident happened and nothing more can be read into it.[65.]

[s 279.11] Hitting from behind.—

Where the truck of the accused, driven rashly and negligently, hit a bullock-cart from behind killing the buffalo and the cartman, the accused could not be convicted under section 429 as the *mens rea* of causing loss was absent. However, his conviction under sections 279 and 304-A was upheld.[66.] Where the accused, bus driver when attempted to overtake a lorry, on seeing one other bus coming in opposite direction swerved the bus towards the left and came in a violent contact with the victim, a cyclist, the Madras High Court held that the very act of the accused in driving the bus and dashing from behind the cyclist clearly constitutes the rashness and negligence on his part.[67.]

[s 279.12] Section 279 is not a petty offence.—

'Petty offence' within the meaning of section 206 Cr PC, 1973 is an offence which is punishable only with fine not exceeding Rs1,000 but does not include any offence so punishable under the Motor Vehicles Act. If so, section 279 IPC, 1860 which is a cognizable offence and which is not an offence punishable only with fine is not a 'petty offences'.[68.]

[s 279.13] Compounding.—

Though the Supreme Court held in *Manish Jalan v State of Karnataka*,[69.] that offences punishable under section 279 and section 304A, IPC, 1860 are not compoundable, in *Puttuswamy v State of Karnataka*,[70.] the Supreme Court while maintaining the conviction under section 304A IPC, 1860 notwithstanding the agreement arrived at between the parties, increased the amount of fine from Rs 2,000 to Rs 20,000 to be paid to the parents of the deceased and reduced the sentence to the period already undergone, subject to payment of the fine.

[s 279.14] Sentence.—

One of the most effective ways of keeping drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.[71.] For lessening the high rate of motor accidents due to careless and callous driving of vehicles, the Courts are expected to consider all the relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence if the prosecution is able to establish the guilt beyond reasonable doubt.[72.] Where the accused dashed the jeep against a tree, as a result of which one person, who was travelling in the jeep got injured and died, and another person, who was also in the same vehicle received injuries, the Supreme Court held that the High Court, without proper appreciation of the evidence and consideration of the gravity of the offence, showed undue sympathy by reducing the sentence.[73.]

[s 279.15] Whether a Court can convict a person under sections 279 and 337, IPC for commission of the same act of offence and accordingly pass sentence under both the Sections.—

In this case, as the offence having been outcome of the same act, the Court should punish the accused for one offence and at the same time, while passing the order of sentence, the Court should also consider that when the sentence prescribed under section 279, IPC, 1860 is a more severe offence than the offence prescribed under section 337, IPC, 1860 the accused could be punished under section 279, IPC, 1860 only.[74.] However, in another case, Madras High Court held that simply because accused are found guilty under section 304-A IPC, 1860 and sentence is imposed, there is no embargo for Court to impose separate sentence under section 279 IPC, 1860.[75.]

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30. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 .

31. *State of HP v Manohar Singh*, 2011 Cr LJ 3402 (HP).

32. *Kuldeep Singh v State*, AIR 2008 SC 3062 [LNIND 2008 SC 1436] : (2008) 14 SCC 795 [LNIND 2008 SC 1436] **relied** on *Syed Akbar v State of Kamataka*, 1980 (1) SCC 30 [LNIND 1979 SC 297]

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33. *Bhalchandra*, (1967) 71 Bom LR 634 , SC **approving** *Idu Beg v State*, (1881) ILR 3 All 766 and *Nidamarti Nagabhushanam*, (1872) 7 Mad HCR 119 .

34. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 .

35. *Mehnga Singh v State*, 2012 Cr LJ 4930 (Del).

36. *Braham Das v State of HP*, (2009) 7 SCC 353 [LNIND 2009 SC 1130] : (2009) 3 SCC (Cr) 406 : (2009) 81 AIC 265 .

37. (1871) 6 Mad HCR (Appx) xxxii. *State of Karnataka v Sadanand Parshuram*, 2000 Cr LJ 2426 (Kant).

38. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 .

39. *Dr. PB Desai v State of Maharashtra*, 2013 (11) Scale 429 [LNIND 2013 SC 815] ; In *Saroja Dharmapal Patil v State of Maharashtra*, 2011 Cr LJ 1060 (Bom), Bombay High Court held that section 304-A or section 279 of the IPC do not require any mens rea. But in view of the Supreme Court Judgment, in Desai's case, it is not relevant.

40. *Ravi Kapur v State of Rajasthan*, AIR 2012 SC 2986 [LNIND 2012 SC 474] : (2012) 9 SCC 284 [LNIND 2012 SC 474] : 2012 Cr LJ 4403 ; *Syad Akbar v State of Kamataka*, 1980 SCC (Cr) 59 : (AIR 1979 SC 1848 [LNIND 1979 SC 297]).

41. *Mohd. Aynuddin alias Miyam v State of AP*, 2000 (7) SCC 72 [LNIND 2000 SC 1014] : AIR 2000 SC 2511 [LNIND 2000 SC 1014] : 2000 SCC (Cr) 1281 : 2000 Cr LJ 3508 .

42. *Jacob Mathew v State of Punjab*, AIR 2005 SCW 3685 : AIR 2005 SC 3180 [LNIND 2005 SC 587] .

43. *Francis Xavier Rodriguez v State of Maharashtra*, 1997 Cr LJ 1374 (Bom); *Dwarka Das v State of Rajasthan*, 1997 Cr LJ 4601 (Raj).

44. *Thakur Singh v State of Punjab*, 2003 (9) SCC 208 .

45. *Ranjit Singh v State of Punjab*, 2012 (4) Crimes 315 .

46. No separate sentence would be necessary under this section if the act is punished under section 304A. *Nanne Khan v State of MP*, 1987 Cr LJ 1403 (MP).

47. *AW Larrymore v Pernendoo Deo Rai*, (1870) 14 WR (Cr) 32.

48. *Allen*, (1835) 7 C & p 153.

49. *Binoda Bihari Sharma v State of Orissa*, 2011 Cr LJ 1989 (Ori).

50. *Ajit Singh v State*, 1975 Cr LJ 77 (HP).

51. *Padmacharan Naik*, 1982 Cr LJ NOC 192 (Ori).

52. *Amar Lal v State of Rajasthan*, 1988 Cr LJ 1 (Raj).

53. *Kew*, (1872) 12 Cox 355; *Blenkinsop v Ogden*, (1898) 1 QB 783 ; *Fagu Moharana*, AIR 1961 Ori 71 [LNIND 1959 ORI 42] .

54. *Bhupinder Sharma v State of HP*, 2016 Cr LJ 3832 : IV (2016) ACC 461 (HP).

55. *State of HP v Jawahar Lal Jindal*, 2011 Cr LJ 3827 (HP). See also *Aleem Pasha v State of Karnataka*, 2013 Cr LJ 174 (Kant); *Ponnusamy v State*, 2010 Cr LJ 2656 (Mad); *State of HP v Baljit Singh*, 2012 Cr LJ 237 (HP).

56. *Penu*, 1980 Cr LJ NOC 132 (Ori).

57. *Bijuli Swain*, 1981 Cr LJ 583 (Ori).

58. *Padmacharan Naik, supra.*

59. *P Rajappan*, 1986 Cr LJ 511 (Ker).

60. *State of HP v Man Singh*, (1995) 1 Cr LJ 299 (HP). The court also found that the brakes of the vehicle were in poor state of maintenance and, therefore, the principle of *res ipsa loquitur*

applied. The court **followed** *Thomas v State of Kerala*, ILR (1971) 1 Ker 318 ; *Duli Chand v Delhi Admn*, 1975 Cr LJ 1732 : AIR 1975 SC 1960 [LNIND 1975 SC 258] and *Usman Gani Mohd. v State of Maharashtra*, (1979) 3 SCC 362 : 1979 SCC Cr 675, which was a case where a girl was knocked down and the version of the driver was that he did not notice how the impact took place and how the girl came under his lorry, it was, therefore, held that he was inattentive and this would establish negligence on his part.

61. *Padmacharan, supra; Mahommed Saffique*, 1983 Cr LJ 535 (Ori).

62. *Praffulla Kumar Rout v State of Orissa*, (1995) 2 Cr LJ 1277 (Ori).

63. *Prabhudas*, 1986 Cr LJ 390 (Guj). In *State of Karnataka v Krishna*, (1987) 1 SCC 538 [LNIND 1987 SC 701] : 1987 Cr LJ 776 : AIR 1987 SC 861 [LNIND 1987 SC 701] the Supreme Court enhanced the punishment from two months' simple imprisonment being unconscionably low to six months' R. I. for causing death by rash and negligent driving. *NP Ganesan Re*, 1989 Cr LJ 1160 (Mad). Bus hitting a pedestrian and dragging him for about 76 feet before stopping, the sentence of imprisonment was converted into fine in view of his 55 years of age having sole child (daughter) suffering from paralysis but no order about his disability for re-employment. *State of Karnataka v SB Marigowda*, 1999 Cr LJ 2171 (Kant), the accused, driving a matador suddenly turning to right in order to overtake a vehicle and hitting a person to death who was standing at that side, held guilty under the section *Malleshi v State of Karnataka*, 1999 Cr LJ 2617 (Kant), the accused car driver hit bullocks and two persons on road and then dashed against a house 40 feet away from the road. Conviction proper. *Ram Singh v State of Rajasthan*, 1999 Cr LJ 2622 (Raj) death of a lady caused by rash and negligent driving, no leniency was shown to the accused because the whole family of the victim was upset. *Bhagirath Singh v State of Rajasthan*, 1999 Cr LJ 4237 (Raj), a pedestrian suddenly attempted to cross the road and was hit by a vehicle. It could not be known whether the driver was able to spot him. Negligence on the part of the driver not proved. *State v Santanam*, 1998 Cr LJ 3045 (Kant), accused, a military personnel, under influence of alcohol, drove his military truck in a zig zag manner, made three accidents in one sequence. A moped driver, who was hit, died but it was not known whether death was due to fatal injury. Others were only injured. Held, liable under section 279, but not under section 337 or section 304A, IPC, 1860 nor under section 117 of MV Act. *Bharat Amratlal Kothari v Dosukhan Samadkhan Sindhi*, (2010) 1 SCC 234 [LNIND 2009 SC 1949] : 2010 Cr LJ 379 , FIR under section 279 for an order to prevent filling of animals in trucks in a cruel manner and carrying them for slaughter contrary to statutory requirements.

64. *Thana Ram v State of Haryana*, 1996 Cr LJ 2020 (P&H), **relying** on *Nageshwar Sh Krishna Ghobe v State of Maharashtra*, AIR 1973 SC 165 [LNIND 1972 SC 450] : 1973 Cr LJ 235 .

65. *Shivanna v State*, (2010) 15 SCC 9 : 2010 (9) Scale 87 [LNIND 2010 SC 775] .

66. *Pawan Kumar Sharma v State of UP*, 1996 Cr LJ 369 (All).

67. *K K Mani v State*, 2010 Cr LJ 4595 (Mad).

68. *Ramesan v State*, 2010 Cr LJ 4423 .

69. *Manish Jalan v State of Karnataka*, AIR 2008 SC 3074 [LNIND 2008 SC 1396] : (2008) 8 SCC 225 [LNIND 2008 SC 1396] .

70. *Puttuswamy v State of Karnataka*, (2009) 1 SCC 711 [LNIND 2008 SC 2398] : 2008 (15) Scale 483 [LNIND 2008 SC 2398] .

71. *Dalbir Singh v State of Harayana*, 2000 (5) SCC 82 [LNIND 2000 SC 810] : AIR 2000 SC 1677 [LNIND 2000 SC 810] : 2000 Cr LJ 2283 ; *B Nagabhushanam v State of Karnataka*, 2008 (5) SCC 730 [LNIND 2008 SC 1172] : 2008 (7) Scale 716 [LNIND 2008 SC 1172] : AIR 2008 SC 2557 [LNIND 2008 SC 1172] .

72. *State of Punjab v Balwinder Singh*, 2012 (2) SCC 182 [LNIND 2012 SC 8] : 2012 (1) Scale 62 [LNIND 2012 SC 8] : AIR 2012 SC 861 [LNIND 2012 SC 8] .

73. *State of MP v Surendra Singh*, 2015 Cr LJ 600 : AIR 2015 SC 398 [LNIND 2014 SC 933] .

74. *Hiran Mia v State of Tripura*, 2010 Cr LJ 189 (Gau) section 279 is punishable with imprisonment of either description of a term which may extend to six months, or with fine which may extend to **Rs 1,000,** or with both, while section 337 is punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to **Rs 500**, or with both.

75. *Rajaram v State*, 2010 Cr LJ 1644 (Mad).

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1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 280] Rash navigation of vessel.

Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

The last section deals with public ways on land: this section deals with waterways. It deals with the case of inland navigation. Rash or negligent navigation on the high seas is not punished under the Code but under certain special statutes.

[s 280.1] CASES.—

Petitioners, 33 in number were the distressed and marooned seamen belonging to different nationalities who were the crew of "ISABELL-III", wrecked at the reefs of the sea near the Islet of Suheli Par, part of the Lakshadweep group of Islands. The accident happened when the vessel was passing through the Indian territorial waters by way of

innocent passage; and immediately the matter was informed to the Indian Coast Guard. The Merchant Shipping (Distressed Seamen) Rules, 1960 prescribes that the derelict seamen should be saved at any cost and repatriated to their return port at the cost of the owner of the vessel. The petitioners were forced to enter the Lakshadweep Island and hence they were held protected under the Merchant Shipping Act, 1958 the Merchant Shipping (Distressed Seamen) Rules, 1960 and the U.N. Conventions On the Law Of the Sea (UNCLOS). It was held that at best the offence under section 280 IPC, 1860, i.e., rash navigation of the vessel, would lie only against the first accused, who was the Master of the vessel. Proceedings against the crew was quashed.[76.]

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76. *Hisa A Sheng v Administrator, Union Territory of Lakshadweep*, 2007 Cr LJ 821 .

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8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 281] Exhibition of false light, mark or buoy.

Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

COMMENT.—

Intentional exhibition of a false light, mark or buoy, with a view to mislead any navigator is punishable under this section.

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 282] Conveying person by water for hire in unsafe or overloaded vessel.

Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

This section provides against the negligence of common carriers by water. Where a person, with the assistance of two others, plied a ferryboat, which was out of order and had a crack, and he took in one hundred passengers, and consequently the boat was upset, and seven persons were drowned, it was held that the accused had committed an offence under this section.[77.] Where the lessee of a public ferry knew that boats were usually overloaded but took no steps against it and allowed his boatmen to overload them as they liked and in consequence, a boat sank with some passengers, it was held that the lessee was guilty of criminal negligence and liable under this

section.[78] Where a launch, which was overloaded with passengers, capsized at the jetty owing to the onrush of persons waiting at the jetty to get on deck and the passengers on the launch wanting to get down at the jetty, resulting in displacement of balance of the launch, it was held that the capsizing of the launch was not because of any negligence of the owners or the master and, therefore, their conviction under this section could not be sustained.[79] The owner who knowingly or negligently allows overloading of his boat so as to endanger the life of the persons therein will be liable under section 282, Penal Code.[80]

There is no provision in the Code for the negligence of a common carrier by land.

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77. *Khoda Jagta*, (1864) 1 BHC (Cr C) 137.
78. *Tofel Ahmad Miya*, (1933) 61 Cal 253 .
79. *VR Bhate*, AIR 1970 SC 1362 : 1970 Cr LJ 1261 .
80. *Re K S M Mohammad Abdul Kadar Marakayar*, 1950 Cr LJ 729 (Mad).

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8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 283] Danger or obstruction in public way or line of navigation.

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way [1] or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

COMMENT.—

The offence punishable under this section is the nuisance of causing obstruction, in a public way or navigable river or canal:

[s 283.1] Ingredients.—

The section requires two things—

1. A person must do an act or omit to take order with any property in his possession or under his charge.

2. Such act or omission must cause danger, obstruction or injury to any person in any public way or line of navigation.

It is not necessary to prove that any specific individual was actually obstructed.[81.]

1. 'Public way'.—Where the privilege of a right of way is enjoyed only by a particular section of the community or by the inhabitants of two or three villages and not by others, the way is not a public way within the meaning of this section.[82.] The section cannot be extended to a case where a party prohibits strangers from passing through its fields, even though they may have been allowed access on earlier occasion.[83.]

[s 283.2] CASES.—

A tractor trolley duly loaded with fertilizers was negligently parked in the middle of the road by its driver without there being any signal of its being stationary and as such three persons who were proceeding on a motor-cycle collided with the stationary trolley and sustained severe injuries. The Rajasthan High Court declined to quash the proceedings.[84.]

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81. *Venkappa v State*, (1913) 38 Mad 305.
82. *Prannath Kundu*, (1929) 57 Cal 526 .
83. *Nand Ram v State*, (1969) Cr LJ 77 .
84. *Jai Ram v State of Rajasthan*, 2001 Cr LJ 3915 (Raj).

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12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 284] Negligent conduct with respect to poisonous substance.

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Under the second part of this section, a person in possession of a poisonous substance should have negligently omitted to take such order with it as is sufficient to guard against any probable danger to human life from such substance. It is not

necessary that the negligent omission should be followed by any disastrous consequences.[85.]

85. *Hosein Beg*, (1882) PR No. 16 of 1882.

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2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 285] Negligent conduct with respect to fire or combustible matter.

Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

This section extends the provisions of the preceding section to fire or any other combustible matter.

[s 285.1] Cases.—

A factory worker allegedly died due to rash and negligent act of occupier or manager. It was argued that section 92 of Factories Act, 1948 prescribes punishment to occupier or manager of factory for contravention of any of the provisions of Factories Act or any rules made thereunder. It was held that there is nothing in Factories Act (Special Law) which prescribes punishment for rash and negligent act of occupier or manager of factory which resulted into the death of any worker or any other person. Hence, offences under IPC, 1860 including section 285 will apply.[86.] Where a factory manager, in breach of conditions in the licence kept naked fire in proximity of stores of turpentine and vanish and the fire caused death of seven workers, the court found that he is guilty under sections 285 and 304A IPC, 1860.[87.] The acts of accused in setting fire to the Tobacco Stock inside the house after pouring petrol and further act of throwing petrol on the deceased when he tried to pacify, cannot be held as either rash or negligent act so as to attract the offence under section 285 of IPC, 1860.[88.]

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86. *Ejaj Ahmad v State of Jharkhand*, 2010 Cr LJ 1953 (Jha).

87. *Kurban Hussein Mohamedalli Bangawalla v State of Maharashtra*, AIR 1965 SC 1616 [LNIND 1964 SC 355] : 1965 (2) SCR 622 [LNIND 1964 SC 355] .

88. *Madhusudan v State of Karnataka*, 2011 Cr LJ 215 (Kant).

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3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 286] Negligent conduct with respect to explosive substance.

Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

The foregoing section deals with 'fire or combustible matter', this with 'explosive substance'; otherwise, the provisions of both the sections are alike.

The word 'knowingly' is evidently used in this section advisedly.

[s 286.1] Limitation.—

In a case, the occurrence took place as far back as in the year 1995 and the challan was presented in the year 2006. The prosecution was launched against the petitioners beyond the period of limitation as prescribed under the statute. Proceedings under sections 286 and 9-B and 9-C of the Explosive Substances Act, 1908, were quashed.[89.]

89. *T Amudha Sidhanathan v Union Territory, Chandigarh*, 2008 Cr LJ 937 (P&H).

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7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 287] Negligent conduct with respect to machinery.

Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person,

or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

Machinery is dangerous to human life if proper precaution is not taken in its working. This section renders any rash or negligent conduct in respect of machinery punishable. Section 284 deals with poison; section 285, with fire or combustible matter, section 286, with explosive substance; and this section, with machinery.

Death of the victim occurred when his hand got crushed in conveyor belt while repairing it. There is no evidence to prove that the accused knowingly or negligently failed to take precautions against probable danger. It is held that no offence under section 287 or section 304A is made out.[90.]

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90. *Raj Kumar Bansal v State of Jharkhand*, 2012 Cr LJ (NOC) 554 (Jha).

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6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 288] Negligent conduct with respect to pulling down or repairing buildings.

Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

This section deals with negligent conduct with respect to pulling down or repairing buildings. The injury complained of must be the direct consequence of such negligent conduct.[91.] section 288, IPC, 1860, concerns itself with a situation where a person, in pulling down or repairing and building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or any part thereof.[92.]

91. *Manohar Shriniwas v Avtarsingh*, (1969) 72 Bom LR 629 .
92. *Abdul Kalam v State*, 2006 Cr LJ 3071 (Del).

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10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 289] Negligent conduct with respect to animal.

Whoever knowingly or negligently omits to take such order with any animal in his possession [1] as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, [2] shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

This section deals with improper or careless management of animals. It does not refer to savage animals alone, but to any 'animal', wild or domestic, e.g., a pony.[93.]

In the case of wild and savage animals, a savage or mischievous temper is presumed to be known to their owner and to all men as a usual accompaniment of such animals; and hence a positive duty is cast on the owner to protect the public against the mischief resulting from such animals being at large. Anyone who keeps such a wild

animal as a tiger or bear, which escapes and does damage, is liable without any proof of notice of the animal's ferocity; in such a case it may be said '*res ipsa loquitur*'.

In the case of animals, which are tame and mild in their general temper, no mischievous disposition is presumed. It must be shown that the defendant knew that the animal was accustomed to do mischief. Some evidence must be given of the existence of an abnormally vicious disposition. A single instance of ferocity, even a knowledge that it has evinced a savage disposition, is held to be sufficient notice.[94.]

1. 'Animal in his possession'. Where the owner knowing that his buffalo was of a savage and vicious disposition *vis-a-vis* human beings, negligently omitted to take such order with the animal as was sufficient to guard against probable danger to human life or any probable danger of grievous hurt, and the animal attacked the complainant in a jungle and wounded him with her horn, it was held that he was guilty of an offence under this section.[95.]

2. 'As is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal'.—Where a pony, which was tied negligently, got loose and ran through a crowded bazar, it was held that the conviction under this section was good, because the pony on such an occasion might create danger to the lives or limbs of men, women and children walking in the bazar.[96.] The accused, a horse-keeper, harnessed his master's horse, put him into his carriage, and then went away, leaving the horse and carriage standing in the road of the compound of his master's house without any justification; it was held that the accused had committed an offence under this section, since the horse was not the less in the actual possession of the servant, because it was for some purpose in the constructive possession of his master.[97.]

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93. *Chand Manal*, (1872) 19 WR (Cr) 1.
94. See the authors' *LAW OF TORTS*, 19th Edn, chapter XX.
95. *Moti*, (1954) Nag 585.
96. *Chand Manal*, (1872) 19 WR (Cr) 1.
97. *Natha Reva*, (1881) Unrep Cr C 163.

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 290] Punishment for public nuisance in cases not otherwise provided for.

Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

COMMENT.—

This section provides for the punishment of a nuisance falling within the four corners of the definition given in section 268 but not punishable under any other section.

[s 290.1] CASES.—

The display of unauthorized hoardings / banners / posters not only result in defacement of public property and any place open to public view, but is an eyesore to the viewers thereby causing public nuisance. In a given case, it may also result in obstructing the free flow of traffic on the public roads. The same would not only be unlawful but unjust and unreasonable, irrespective of whether it has the effect of advertisement or otherwise. Suffice it to observe that the Authorities have a bounden duty to prevent and regulate display of illegal hoardings / banners / posters in the

interests of amity and public safety.[98] Though corporate bodies act through their agents, there is no reason to exempt such bodies when their agents or servants, while purporting to act on their behalf commit an offence like public nuisance, which is punishable with fine only. So a Municipality could be convicted for not maintaining the cleanliness of the town under section 290, IPC, 1860.[99] But in deciding cases of nuisance the rigid standards of urban society cannot be applied to Indian villages.[100] Where a Coal Depot had been in existence for seven or eight years and only two neighbours complained against its continuance at that site, it could not be said that it constituted a public nuisance. At best, it was a private nuisance.[101] Playing the radio loud at a particular time did not constitute public nuisance and it was too trivial a matter for the Court to take notice of it.[102]

98. *SP Jadhav v State of Maharashtra*, AIR 2010 (4) Bom section 548.
99. *Kurnool Municipality*, 1973 Cr LJ 1227 (AP).
100. *Chakra Behera*, 1974 Cr LJ 423 (Ori).
101. *Berhampore Municipality v Oruganti Kondaya*, 1977 Cr LJ NOC 279 (Ori).
102. *Ivor Heyden v State*, 1984 Cr LJ NOC 16 (AP).

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 291] Continuance of nuisance after injunction to discontinue.

Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

COMMENT.—

This section punishes a person repeating or continuing a nuisance after he is enjoined by a public servant not to repeat or continue it. Sections 142 and 143 of the Cr PC, 1973 empower a Magistrate to forbid an act causing public nuisance.

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[103][s 292] Sale, of obscene book,

[104][(1) **For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]**

[105][(2)] **Whoever—**

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that

such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section,

shall be punished [106.][on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees].

[107.][Exception.—This section does not extend to—

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used *bona fide* for religious purposes;

(a) any representation sculptured, engraved, painted or otherwise represented on or in—

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.]]

State Amendments

Orissa.— *The following amendments were made by Orissa Act No. 13 of 1962, s. 2 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, in Section 292, for the words, "which may extend to three months", substitute the words "which may extend to two years" and insert the following proviso before the Exception, namely:—

"*Provided* that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine".

Tamil Nadu.— *The following amendments were made by Tamil Nadu Act No. 25 of 1960, s. 2 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, in Section 292, for the words "shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both", substitute the following, namely:—

"shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine".

COMMENT.—

section 292 IPC, 1860, was enacted by the Obscene Publications Act to give effect to Article I of the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications to which India is a signatory. By Act 36 of 1969, section 292 was amended to give more precise meaning to the word 'obscene' as used in the section in addition to creating an exception for publication of matter which is proved to be justified as being for the public good, being in the interest of science, literature, art or learning or other objects of general concern. Prior to its amendment, section 292 contained no definition of obscenity. The amendment also literally does not provide for a definition of 'obscenity' in as much as it introduces a deeming provision.[108.] In order to make the law relating to the publication of obscene matters or objects deterrent, the section provides for enhanced punishment. The Exception to the original section, which is now redrafted, exempts from the provisions of the section any representation, sculptured, engraved or painted on or in any ancient monument. The possession referred to in this section connotes conscious possession.[109.] By Act 25 of 1960, the State of Tamil Nadu has added a new section as section 292A for dealing with printing, of grossly indecent or scurrilous matter or matter intended for blackmail. The State of Orissa has followed suit by Act 13 of 1962. The intention of the Legislature while amending the provision is to deal with this type of offences which corrupt the mind of the people to whom objectionable things can easily reach and need not be emphasized that corrupting influence is more likely to be upon the younger generation who has got to be protected from being easy prey.[110.] This section was amended by Act XXXVI when apart from enlarging the scope of the exceptions, the penalty was enhanced which was earlier up to three months or with fine or with both. By the amendment a dichotomy of penal treatment was introduced for dealing with the first offenders and the subsequent offenders. In the case of even a first conviction, the accused shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend to Rs 2,000.[111.]

1. 'Obscene'.—The word obscenity is not defined in the IPC, 1860. The word 'obscene' was originally used to describe anything disgusting, repulsive, filthy or foul. The use of the word is now said to be somewhat archaic or poetic; and it is ordinarily restricted to something offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas, or being impure, indecent, or lewd.[112.] The obscene matter in a book must be considered by itself and separately to find out whether it is so gross and its obscenity, so decided, that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall. In this connection, the interests of our contemporary society and particularly the influence of the book on it must not be overlooked.[113.] It was further observed in this case that

merely treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. It was held that where obscenity and art are mixed, art must be so preponderating as to throw the obscenity into the shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. When treatment of sex becomes offensive to public decency and morality as judged by the prevailing standards of morality in the society, then only the work may be regarded as an obscene production.[114.] In considering the question of obscenity of a publication what the Court has to see is that whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds.[115.] It was also observed in this case that the question of obscenity may have to be judged in the light of the claim that the work has a predominant literary merit. Referring to the impact on the mind of the youth, the Court said:[116.]

> We do not think that it can be said with any assurance that merely because the adolescent youth read situations of the type presented in the book, they would become deprived, debased and encouraged to lasciviousness. It is possible that they may come across such situations in life and may have to face them. But if a narration or description of a similar situation is given in a setting emphasising a strong moral to be drawn from it and condemns the conduct of the erring party as wrong and loathsome, it cannot be said that they have a likelihood of corrupting the morals of, those in whose hands it is likely to fall—particularly the adolescent.

In *KA Abbas v UOI*,[117.] the Supreme Court has called the test laid down in *Mishkin's case*[118.] as 'selective audience obscenity test' and observed as:

> our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read ….
>
> The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth.

In the case of *Samaresh Bose v Amal Mitra*[119.] wherein the Supreme Court provided the following guidance:[120.]

> In our opinion, in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the view point of the author the judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. The judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of the section by an objective assessment of the book as a whole and also of the passages complained of as obscene separately.

It is no defence to a charge of obscenity merely to urge that the information has been copied from similar works.[121.]

In *Promilla Kapur (Dr) v Yash Pal Bhasin, Promilla Kapur (Dr) v Yash Pal Bhasin*,[122.] the Delhi High Court felt[123.] that there was nothing wrong if a sociologist made a research on the subject of call-girls in order to know the reasons as to why and how the young girls fall in this profession and what society could do in order to eradicate or at least minimise the possibility of young budding girls joining the flesh trade. The book was in the form of interviews with the girls in the profession. The portion marked by the Magistrate as obscene was a description of their encounters with unscrupulous males

including a description by some girls of their first experience with sex. But by far the bulk of the book dealt with the ways and means of running the profession and the methods of encountering them. Thus, the book was within the scope of clause (a) of the first exception. In *Bobby Art International v Om Pal Singh Hoon*,[124.] while examining the validity of certificate of exhibition awarded to the film "Bandit Queen" it was held that nakedness does not always arouse the baser instinct. In *Director General, Directorate General of Doordarshan v Anand Patwardhan*,[125.] the Supreme Court again referred to the Hicklin test and observed that the relevant questions are:

(a) whether the average person applying contemporary community standards would find that the work, taken as a whole appeal to the prurient interest.

(b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically, defined by the applicable state law,

(c) whether the work taken as a whole, lacks serious literary, artistic, political or scientific value.

In the case of *Ajay Goswami v UOI*,[126.] the Supreme Court, while recognizing the right of adult entertainment, reviewed the position of law on obscenity and summarized the various tests laid down regarding obscenity.

[s 292.1] A picture of a woman in the nude is not *per se* obscene.—

Unless the picture of a nude/semi-nude female is an incentive to sensuality or impure or excite the thoughts in the mind of an ordinary person of normal temperament, the pictures cannot be regarded as obscene within the meaning of section 292 IPC, 1860. But where repetitive photographs without any backdrop content are published in a magazine and nearly l/4th of the magazine consists of nothing but repetitive photographs of semi-nude women, prominence being to display their breast, there being hardly any literary contents in the magazine, the matter loses any literary content and therefore the broad social outlook penned in *Ranjit Udeshi's case*[127.] may not be available as a defence.[128.] To fall within the scope of 'obscene' under sections 292 and 294 IPC, the ingredients of the impugned matter/art must lie at the extreme end of the spectrum of the offensive matter. The legal test of obscenity is satisfied only when the impugned art/matter can be said to appeal to an unhealthy, inordinate person having perverted interest in sexual matters or having a tendency to morally corrupt and debase persons likely to come in contact with the impugned art.[129.]

[s 292.2] Hicklin Test and Community Standard Test.—

One of the tests to be applied to find whether an article possesses the standard of obscenity is the Hicklin Test.[130.] As per this, *the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.* The other test is *Community Standard Test, whereby the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards*. In *Aveek Sarkar v State of WB*,[131.] the Supreme Court was of the view that Hicklin test is not the correct test to be applied to determine "what is obscenity".

When the name of Mahatma Gandhi is alluded or used as a symbol, speaking or using obscene words, the concept of "degree" comes in. To elaborate, the "contemporary

community standards test" becomes applicable with more vigour, in a greater degree and in an accentuated manner.[132.]

[s 292.3] Khushboo Case.—

In *Khushboo v Kanniammal*,[133.] the appellant, a popular actress expressed her personal opinion wherein she had noted the increasing incidence of pre-marital sex, especially in the context of live-in relationships and called for the societal acceptance of the same. However, appellant had also qualified her remarks by observing that girls should take adequate precautions to prevent unwanted pregnancies and the transmission of venereal diseases. The Supreme Court said it failed to see how the appellant's remarks amount to 'obscenity' in the context of section 292 IPC, 1860. It was difficult to appreciate the claim that the statements published as part of the survey were in the nature of obscene communications.

[s 292.4] Meaning of the word obscene in sections 292, 293 and section 294(b).—

The word 'obscene' is not defined differently in these sections but the punishments were prescribed differently in other sections depending upon the effect of 'obscenity' that causes on the viewer or hearer as the case may be. That also would sufficiently indicate that the said word is to be understood as understood for the purpose of section 292.[134.]

[s 292.5] Certificate of Censor Board.—

Once the film is given a particular certification, no doubt the case of obscenity under section 292 of the IPC, 1860, cannot be made out when the said film is shown to the particular category for which the certificate is granted. Again, the pre-condition is that there has to be a certification by the Board of Film Censors. In the absence of any such certificate, the petitioners cannot claim immunity from prosecution under section 292 of the IPC.[135.] In *GP Lamba v Tarun Mehta*,[136.] explaining the role of the Censor Board certificate,[137.] the Court said:

> The law presumes the regular performance of official acts. This is not to suggest that the grant of a certificate debars the court from judging the obscenity of a film..... or that the certificate is conclusive.... such a certificate is the opinion of a high powered Board especially entrusted with power to screen off the silver screen pictures which offensively invade or deprave public morale through over-sex... The rebuttable presumption, which arises in favour of the statutory certificate, can be negatived by positive evidence. No such evidence was before the court.[138.]

In the matter of sex knowledge, the Court said:

> In the present day society in India, a book, picture or a publication which deals with such matter cannot *per se* be said to be obscene.[139.]

The Court further added that in order to satisfy the requirement of *mens rea* there must be a distinct finding that the matter complained of was inserted by the order or owing to the negligence of the proprietor.[140.]

[s 292.6] Public interest.—

An obscene advertisement was published in a daily. The advertiser said that the publication was intended in good faith to promote sale of condoms. The advertisement was withdrawn because of social objections. The advertiser also apologised. The complaint filed by a social worker was no doubt maintainable but it was quashed because the complainant's interest should give way to the larger public interest as to whether prosecution would be proper in the circumstances of the case.[141.]

[s 292.7] For sale.—

Possession of obscene objects is punishable if the possession is for the purpose of sale, hire, distribution, public exhibition or circulation. Persons who were found viewing obscene films on television with the help of VCR could not be charged for the offence punishable under section 292.[142.]

[s 292.8] Effect upon children.—

The accused could not be convicted of possessing an indecent photograph unless he knew that he had the photograph in his possession. The "making" of an indecent photograph included copying, downloading or storing it on a computer, provided that it was done knowingly.[143.]

[s 292.9] Pornography, incitement for supply of material.—

Act of accused, privately viewing obscene film does not constitute on offence under section 292 of IPC, 1860.[144.] Mere possession of an obscene cassette by itself does not amount to an offence punishable under section 292(2) IPC. In the case on hand, the accused was found managing a video shop wherein obscene cassette containing a blue-film evidently kept for hire to the potential customers, was found. In such circumstances, it cannot be said that the possession of the cassette was without the requisite *mens rea* or that it and does not attract the ingredients of the offence punishable under section 292 IPC.[145.] In another case, it was proved that the accused showed pornographic film on the handicam to the prosecutrix. Though the charge of rape failed, conviction under sections 292 and 506 was upheld.[146.]

Generally, evidence of expert is inadmissible whether an article or book has a tendency to deprave and corrupt persons who are likely to read, hear or see the matter in question.[147.] The only exception is where the likely readers belong to a special class such as young children,[148.] In *Samaresh Base's* case[149.] the Supreme Court of India considered the evidence of two eminent Bengali novelists to determine whether the book 'Prajapati', a Bengali novel, has a tendency to deprave and corrupt youth, who are likely to read it and having regard to their evidence decided the case in favour of the accused. It was however held that, though a Court of law may consider the views of reputed authors or leading literatures, the ultimate duty to make a proper assessment regarding obscenity or otherwise of a book rests only with the Court.[150.] The prosecution need not prove something which the law does not burden it with. As regards the second part of the guilty act (*actus reus*), i.e. the selling or keeping for sale an object which is found to be obscene, here of course the ordinary *mens rea* is required to be shown before the offence can be said to be complete. Even so, it was

held in this case that in criminal prosecution *mens rea* must necessarily be proved by circumstantial evidence alone unless the accused confesses. Thus, it is not required that prosecution must prove guilty intention to possess or possess for sale, by positive evidence. The Court will presume that the owner of the shop is guilty if the book is sold on his behalf and later found to be obscene unless he can establish that the sale was without his knowledge or consent. Thus to escape liability he has to prove his lack of knowledge.[151.] In India, it is also a defence to plead a certificate given by the Board of Censors. Thus, a certificate granted by the Board of Censors under section 5A of the Cinematograph Act 1952, certifying a film to be fit for public exhibition, circulation or distribution would by virtue of section 79, IPC, 1860, make prosecution under section 292, IPC, unsustainable even if the film be obscene, lascivious or tending to deprave or corrupt public morale. This is so as section 79, IPC, (justification on ground of *bona fide* mistake of fact) is exculpatory when read with section 5A of the Cinematograph Act and the certificate issued thereunder.[152.]

[s 292.10] Obscenity in the internet and other electronic mediums.—

section 67 of the Information Technology Act 2000 is the first statutory provisions dealing with obscenity on the Internet in India. Sections 67, 67A and 67B of the Information Technology Act 2000 deal with obscenity in electronic sphere.

It must be noted that the both under IPC, 1860, and the Information Technology Act, 2000, the test to determine obscenity is similar.[153.]

A special law shall prevail over the general and prior laws. Electronic forms of transmission is covered by the IT Act, which is a special law. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under section 292 IPC, 1860. Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of the IPC and in this case, section 292 IPC, 1860. Though charge has not been made out under section 67 of the IT Act, yet the accused-appellant could not be proceeded under section 292 IPC.[154.]

State Amendments

(Section 292-A insertion)

Orissa.— *The following amendments were made by Orissa Act No. 13 of 1962, s. 3 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, after Section 292, insert the following new section, namely:—

292-A. Printing, etc. of grossly indecent or scurrilous matter or matter intended for blackmail.— Whoever—

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in any manner puts into circulation any picture or any printed or written document which is grossly indecent, or is scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such

picture or document will be printed, sold, let for hire, distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from any business in the course of which he knows, or has reason to believe that any such newspaper, periodical, circular, picture, or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such newspaper, periodical, circular, picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail can be procured from or through any person; or

(f) offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:

Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine.

Explanation I.—For the purposes of this section, the word "scurrilous" shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

Provided that it is not scurrilous to express in good faith anything whatever respecting the conduct of—

(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

Explanation II.—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations:—

(a) the general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section".

Tamil Nadu.— *The following amendments were made by T.N. Act No. 25 of 1960, s. 2 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, after Section 292, insert the following new section, namely:—

"292-A.Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail.— Whoever—

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in

any manner puts into circulation any picture or any printed or written document which is grossly indecent, or is scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in his possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such picture or document will be printed, sold, let for hire, distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from, any business in the course of which he knows or has reason to believe that any such newspaper, periodical, circular, picture or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such newspaper, periodical, circular, picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail can be procured from or through any person; or

(f) offers or attempts to do any act which is an offence under this section, [155.][shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both].

Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months [156.][and not more than two years] and with fine.

Explanation I.—For the purposes of this section, the word 'scurrilous' shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

Provided that it is not scurrilous to express in good faith anything whatever respecting the conduct of—

(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

Explanation II.—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations:—

(a) the general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section".

103. Subs. by Act 8 of 1925, section 2, for section 292.

104. Ins. by Act 36 of 1969, section 2 (w.e.f. 7-9-1969).

105. Section 292 renumbered as sub-section (2) thereof by Act 36 of 1969, section 2 (w.e.f. 7-9-1969).

106. Subs. by Act 36 of 1969, section 2, for certain words (w.e.f. 7-9-1969).

107. Subs. by Act 36 of 1969, section 2, for *Exception* (w.e.f. 7-9-1969).

108. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).

109. *CT Prim*, AIR 1961 Cal 177 [LNIND 1959 CAL 81] .

110. *Gita Ram v State of HP*, AIR 2013 SC 641 [LNINDORD 2013 SC 18666] : (2013) 2 SCC 694 [LNIND 2013 SC 82] .

111. *Uttam Singh v The State (Delhi Administration)*, (1974) 4 SCC 590 [LNIND 1974 SC 113] : 1974 SCC (Cr) 626 : AIR 1974 SC 1230 [LNIND 1974 SC 113] : 1974 (3) SCR 722 [LNIND 1974 SC 113] : 1974 Cr LJ 423 .

112. *Devidas Ramachandra Tuljapurkar v State of Maharashtra*, AIR 2015 SC 2612 [LNIND 2015 SC 338] : 2015 (6) Scale 356 [LNIND 2015 SC 338] .

113. *Ranjit D Udeshi*, (1965) 1 SCR 65 [LNIND 1964 SC 205] SC : (1964) 67 Bom LR 506 : AIR 1965 SC 881 [LNIND 1964 SC 205] : 1965 (2) Cr LJ 8 .

114. *Ibid.*

115. *Chandrakant Kalyandas Kakodkar*, (1969) 72 Bom LR 917 SC : AIR 1970 SC 1390 [LNIND 1969 SC 293] : 1970 Cr LJ 1273 .

116. AIR 1970 SC 1390 [LNIND 1969 SC 293] at p 1394 : 1970 Cr LJ 1273 .

117. *KA Abbas v UOI*, 1970 (2) SCC 780 [LNIND 1970 SC 388] : AIR 1971 SC 481 [LNIND 1970 SC 388] : 1971 (2) SCR 446 [LNIND 1970 SC 388] .

118. *Mishkin v New York*, 383 US 502.

119. *Samaresh Bose v Amal Mitra*, AIR 1986 SC 967 [LNIND 1985 SC 296] : 1986 Cr LJ 24 : (1985) 4 SCC 289 [LNIND 1985 SC 296] .

120. 1986 Cr LJ 24 , at p 38.

121. *Thakur Prasad*, AIR 1959 All 49 [LNIND 1958 ALL 94] .

122. *Promilla Kapur (Dr) v Yash Pal Bhasin, Promilla Kapur (Dr) v Yash Pal Bhasin*, 1989 Cr LJ 1241 (Del).

123. At p 1245 per PK Bahri J.

124. *Bobby Art International v Om Pal Singh Hoon*, 1996 (4) SCC 1 [LNIND 1996 SC 2602] : AIR 1996 SC 1846 [LNIND 1996 SC 2602] .

125. *Director General, Directorate General of Doordarshan v Anand Patwardhan*, 2006 (8) SC 255 .

126. *Ajay Goswami v UOI*, 2007 (1) SCC 143 [LNIND 2006 SC 1133] : AIR 2007 SC 493 [LNIND 2006 SC 1133] .

127. *Supra.*

128. *Vinay Mohan Sharma v Administration*, 2008 Cr LJ 1672 (Del); *Sree Ram Saksena*, (1940) 1 Cal 581 .

129. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).

130. *R v Hicklin*, 1868 L.R. 2 Q.B. 360.

131. *Aveek Sarkar v State of WB*, 2014 Cr LJ 1560 : (2014) 4 SCC 257 [LNIND 2014 SC 84] .

132. *Devidas Ramachandra Tuljapurkar v State of Maharashtra*, 2015 Cr LJ 3492 .

133. *Khushboo v Kanniammal*, 2010 (5) SCC 600 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 Cr LJ 2828 .

134. *Dhanisha v Rakhi N Raj*, 2012 Cr LJ 3225 .

135. *R Basu and Etc v National Capital Territory of Delhi*, 2007 Cr LJ 4254 (Del). See other SC cases relating to censorship *KA Abbas*, AIR 1971 SC 481 [LNIND 1970 SC 388] ; *Raj Kapoor*, 1980 Cr LJ 436 ; *Bobby Art International v Om Pal Singh*, AIR 1996 SC 1846 [LNIND 1996 SC 2602] ; *S Rangarajan's case*, (1989) 2 SCC 574 [LNIND 1986 SC 198] : 1989 (2) JT (SC) 170; *Ramesh v UOI*, (1988) 1 SCC 668 [LNIND 1988 SC 74] : 1988 SCC (Cr) 266; *Director General, Directorate General of Doordarshan v Anand Patwardhan*, AIR 2006 SC 3346 [LNIND 2006 SC 661] .

136. *GP Lamba v Tarun Mehta*, 1988 Cr LJ 610 (P&H).

137. Issued under the Cinematographic Act, 1952. See also *PK Somnath v State of Kerala*, 1990 Cr LJ 542 (Ker), Violation of Indecent Representation of Woman (Prohibition) Act, 1986 proceedings not quashed and points of difference between obscenity and pornography explained.

138. *GP Lamba v Tarun Mehta*, 1988 Cr LJ 610 (P&H).

139. Issued under the Cinematographic Act, 1952. See also *PK Somnath v State of Kerala*, 1990 Cr LJ 542 (Ker), Violation of Indecent Representation of Woman (Prohibition) Act, 1986 proceedings not quashed and points of difference between obscenity and pornography explained.

140. *Ibid*, see at p 613.

141. *Chairman & MD, Hindustan Latex Ltd v State of Kerala*, 1999 Cr LJ 808 (Ker).

142. *Jagdish Chawla v State of Rajasthan*, 1999 Cr LJ 2562 (Raj). *Damodar Sarma v State of Assam* 2007 Cr LJ 1526 (Gau) - Obscene books.

143. *Atkins v DPP; Goodland v DPP*, (2000) 1 WLR 1427 (QBD).

144. *Deepankar Chowdari v State of Karnataka*, 2008 Cr LJ 3408 (Kar); *Jagdish Chawla v State of Rajasthan*, 1999 Cr LJ 2562 (Raj).

145. *Abdul Rasheed v State of Kerala*, 2008 Cr LJ 3480 (Ker).

146. *Vijay Sood v State of HP*, 2009 Cr LJ 4530 (HP).

147. *Ibid*.

148. *Ibid; Director of Public Prosecutions v A & BC Chewing*, (1967) 2 All ER 504 .

149. *Samaresh Bose v Amal Mitra*, 1986 Cr LJ 24 : AIR 1986 SC 967 [LNIND 1985 SC 296] : (1985) 4 SCC 289 [LNIND 1985 SC 296] .

150. *Ibid.*

151. *Ibid*; See also *State of Karnataka v Basheer*, 1979 Cr LJ 1183 (Kar).

152. *Raj kapoor v Laxman*, 1980 Cr LJ 436 : AIR 1980 SC 605 [LNIND 1979 SC 492] .

153. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).

154. *Sharat Babu Digumarti v Govt of NCT of Delhi*, AIR 2017 SC 150 [LNIND 2016 SC 616] .

155. Subs. for the words "shall be punished on first conviction with imprisonment of either description for a term which may extend to two years or with fine or with both, and, in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and with fine" by the T.N. Act 30 of 1984, section 2 (w.e.f. 28-6-1984).

156. Ins. by T.N. Act 30 of 1984, section 2 (w.e.f. 28-6-1984).

THE INDIAN PENAL CODE

CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

157.[s 293] Sale, of obscene objects to young person.

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished [2] [on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees].]

State Amendments

Orissa.—*The following amendments were made by Orissa Act No. 13 of 1962, s. 4 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, in Section 293:—

In section 293 of the said Code—

(i) for the words "any such obscene object as is referred to in the last preceding section", the words, figures and letter "any such obscene object as is referred to in

section 292 or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in section 292-A" shall be substituted;

(ii) for the words "which may extend to six months", the words "which may extend to three years" shall be substituted;

(iii) in the marginal note, after the words "obscene objects" the words "and grossly indecent or scurrilous matter or matter intended for blackmail", shall be inserted.

Tamil Nadu.— *The following amendments were made by T.N. Act No. 25 of 1960, s. 4 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, in Section 293,—

Amendment of section 293, Central Act XLV of 1860.—In section 293 of the said Code—

(i) for the words 'any such obscene object as is referred to in the last preceding section', the words, figures and letter "any such obscene object as is referred to in Section 292 or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in Section 292A", shall be substituted;

(ii) for the words 'which may extend to six months', the words 'which may extend to three years" shall be substituted; and

(iii) in the marginal note, after the words "obscene objects" the words "and grossly indecent or scurrilous matter or matter intended for blackmail", shall be inserted.

COMMENT.—

This section provides for enhanced sentence where the obscene objects are sold, to persons under the age of 20 years. By Act 36 of 1969 the punishment for the offence is further enhanced. On going through section 293, it is clear that a separate penal provision was made with regard to the sale, exhibition, of such obscene object to any person under the age of 20 years where as section 292 (1) deals with sale, exhibition, of such obscene object to any person. Therefore, in order to make the provision more stringent and grave insofar as it relates to the sale, of obscene objects to younger persons–aged less than 20 years, a separate penal provision, made applicable in section 293, was introduced. It is in that context, the word 'obscene' occurring in section 292(1) is made applicable to section 293 also.[158.] In a trial for the offences under sections 292 and 293 of the IPC, 1860, a certificate granted under section 6 of the Cinematograph Act by the Board of Censors does not provide an irrebuttable defence to accused who have been granted such a certificate, but it is certainly a relevant fact of some weight to be taken into consideration by the criminal Court in deciding whether the offence charged is established. The Court must have regard to the fact that the certificate represents the judgment of a body of persons particularly selected under the statute for the specific purpose of adjudging the suitability of films for public exhibition, and that judgment extends to a consideration of the principal ingredients which go to constitute the offences under sections 292 and 293 of the IPC, 1860. At the same time, the Court must remind itself that the function of deciding whether the ingredients are established is primarily and essentially its own function, and it cannot abdicate that function in favour of another, no matter how august and qualified be the statutory authority.[159.]

[s 293.1] CASE.—

The allegation is that the petitioner was a spectator of the blue-film and therefore an abettor of the offences under sections 292, 293 and 294 IPC, 1860. This interposition as a mere spectator to the exhibition of a blue-film without any further complicity, in view of the above Supreme Court decision, cannot be taken to be amounting to abetment of the main offence.[160.]

[s 293.2] Benefit of Probation.—

Exhibiting a blue-film in which man and woman were shown in the act of sexual intercourse to young boys would definitely deprave and corrupt their morals. Their minds are impressionable. On their impressionable minds, anything can be imprinted. Things would have been different if that blue-film had been exhibited to mature minds. Showing a man and a woman in the act of sexual intercourse tends to appeal to the carnal side of the human nature. Even if he is the first offender, he cannot be given the benefit of Probation of Offenders Act, 1958.[161.]

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157. Subs. by Act 8 of 1925, section 2, for section 293.

158. *Dhanisha v Rakhi N Raj*, 2012 Cr LJ 3225 .

159. *Raj Kapoor v State (Delhi Administration)*, AIR 1980 SC 258 [LNIND 1979 SC 428] : (1980) 1 SCC 43 [LNIND 1979 SC 428] .

160. *Dr B Rosaiah v State of AP*, 1990 Cr LJ 189 (AP).

161. *Gita Ram v State of HP*, AIR 2013 SC 641 [LNINDORD 2013 SC 18666] : (2013) 2 SCC 694 [LNIND 2013 SC 82] ; *Uttam Singh v The State (Delhi Administration*, (1974) 4 SCC 590 [LNIND 1974 SC 113] : 1974 SCC (Cr) 626 : AIR 1974 SC 1230 [LNIND 1974 SC 113] : 1974 (3) SCR 722 [LNIND 1974 SC 113] : 1974 Cr LJ 423 ; *Bharat Bhushan v State of Punjab*, reported in 1999 (2) RCR (Cr) 148.

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5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[162.] [s 294] Obscene acts and songs.

[Whoever, to the annoyance of others—

(a) **does any obscene act in any public place, or**

(b) **sings, recites or utters any obscene songs, ballad or words, in or near any public place,**

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

COMMENT.—

Ingredients.—(i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited

or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.[163.] To fall within the scope of 'obscene' under sections 292 and 294 IPC, 1860, the ingredients of the impugned matter/art must lie at the extreme end of the spectrum of the offensive matter. The legal test of obscenity is satisfied only when the impugned art/matter can be said to appeal to an unhealthy, inordinate person having perverted interest in sexual matters or having a tendency to morally corrupt and debase persons likely to come in contact with the impugned art. It must also be remembered that a piece of art may be vulgar but not obscene. In order to arrive at a dispassionate conclusion where it is crucial to understand that art from the perspective of the painter, it is also important to picture the same from a spectator's point of view who is likely to see it.[164.] The obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with mental condition, has often to be inferred from proved facts. Thus, where a Doctor was filthily abused in a public place by dragging the name of his wife and he and some members of the public were impelled to complain to the police, it was held that there was sufficient indication of the fact that they were all annoyed even though it was not stated or spoken to by them in their evidence.[165.]

[s 294.1] Public Place.—

Hotels like the one where cabaret dances are performed and entry is restricted by purchase of the tickets, would still be the public places within the meaning of section 294 of the IPC, 1860.[166.] An offence under the section could not be made out by uttering words in a private garden which was not a public place.[167.]

[s 294.2] CASES.—

Where the accused addressed openly two respectable girls who were strangers to him, in amorous words suggestive of illicit sex relations with them and asked them to go along with him on his rickshaw, he was held to have committed an obscene act.[168.] Performance of cabaret dance devoid of nudity and obscenity according to Indian social standards in hotels and restaurants is not liable to be banned or prevented.[169.]

[s 294.3] MF Husain's case.—

The renowned artist MF Husain challenged the summoning orders against him which arose from a contemporary painting celebrating nudity made by petitioner. Subsequently in the year 2006, the said painting entitled 'Bharat Mata' was advertised as part of an online auction for charity for Kashmir earthquake victims organised by a non-governmental organisation with which the petitioner claimed to have no involvement. It was stated that the petitioner at no point in time had given a title to the said painting. There can be no exasperation caused by viewing such painting on the website for the reason that a person would first access such a website only if he has some interest in art and that too contemporary art, and in case he does view such a website, he always would have the option to not to view or close the said web page. It appeared that the complainants are not the types who would go to art galleries or have an interest in contemporary art, because if they did, they would know that there are many other artists who embrace nudity as part of their contemporary art. Hence, the offence alleged under section 294 IPC, 1860, could not be made out.[170.]

[s 294.4] Cabaret dance.—

In *Narendra H Khurana v Commissioner*,[171.] a division bench of Bombay High Court examined the question whether the nude cabaret dances which are *per se* indecent and obscene, held in a restaurant on purchase of tickets would warrant prosecution under section 294 of the IPC, 1860, in the absence of express evidence of annoyance by any of the persons who attend such shows. It was held that cabaret dances where indecent and obscene act *per se* is involved would not attract the provision of section 294 of the IPC without fulfilment of its essential ingredients, i.e. Evidence pertaining to "annoyance to others". In *State of Maharashtra v Indian Hotel & Restaurants Association*,[172.] the Supreme Court lifted the ban on dance bars holding that "we fail to see how exactly the same dances can be said to be morally acceptable in the exempted establishments and lead to depravity if performed in the prohibited establishments. Rather it is evident that the same dancer can perform the same dance in the high-class hotels, clubs, and gymkhanas but is prohibited of doing so in the establishments covered under section 33A of Bombay Police Act, 1951. We see no rationale which would justify the conclusion that a dance that leads to depravity in one place would get converted to an acceptable performance by a mere change of venue".

[s 294.5] Moral turpitude.—

Offence under section 294 does not involve moral turpitude.[173.]

[s 294.6] Section 294(b).—

To make out an offence under section 294(b) of IPC, 1860, the alleged obscene act must have been committed by the accused in or near a public place. Writing obscene letters and sending them to the victim on her personal address and which were expected to be read by her privately does not constitute the offence.[174.]

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162. Subs. by Act 3 of 1895, section 3, for section 294.

163. *Pawan Kumar v State of Haryana*, AIR 1996 SC 3300 [LNIND 1996 SC 2868] : (1996) 4 SCC 17 [LNIND 1996 SC 2868] .

164. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).

165. *Patel HM v Malle Gowda*, 1973 Cr LJ 1047 (Mys).

166. *Narendra H Khurana v Commissioner*, 2004 Cr LJ 3393 (Bom).

167. *Saraswathi v State of TN*, 2002 Cr LJ 1420 (Mad); *K Jayaramanuja v Kanakraj*, 1997 Cr LJ 1623 (Mad), words complained of did not show annoyance to others. Acquittal, no interference in revision.

168. *Zafar Ahmad*, AIR 1963 All 105 [LNIND 1962 ALL 125] ; *Sadar Prasad*, 1970 Cr LJ 1323 (Pat).

169. *KP Mohammad*, 1984 Cr LJ 745 (Ker). See also *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] : 1985 SCC (Cr) 491, where the offence was proved with cogent evidence.

170. *MF Husain v Raj Kumar Pandey*, 2008 Cal LJ 4107 (Del).

171. *Narendra H Khurana v Commissioner*, 2004 Cr LJ 3393 (Bom),

172. *State of Maharashtra v Indian Hotel & Restaurants Association*, AIR 2013 SC 2582 [LNIND 2013 SC 665] : (2013) 8 SCC 519 [LNIND 2013 SC 665] .

173. *Pawan Kumar v State of Haryana*, AIR 1996 SC 3300 [LNIND 1996 SC 2868] : (1996) 4 SCC 17 [LNIND 1996 SC 2868] .

174. *MM Haris v State*, 2005 Cr LJ 3314 .

THE INDIAN PENAL CODE

CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280-282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[175.][s 294A] Keeping lottery office.

[Whoever keeps any office or place for the purpose of drawing any lottery [1] [176.] [not being [177.] [a State lottery] or a lottery authorised by the [178.] [State] Government], shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes [2] any proposal to pay any sum, or to deliver any goods, [3] or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.]

State Amendments

Andhra Pradesh.—*This amendment was made by A.P. Act No. 16 of 1968, s. 27, (w.e.f. 1-2-1969).*

In its application to the State of Andhra Pradesh, the provisions of section 294-A are repealed.

Gujarat.— *The following amendments were made by Bombay Act No. 82 of 1958, s. 33 read with Bom.*

Act No. 11 of 1960, s. 87.

In its application to the State of Gujarat, the provisions of section 294A are repealed.

Karnataka (Mysore).— *The following amendments were made by Mys. Act 27 of 1951, s. 33.*

In its application to the whole of the Mysore area except Bellary district, the provisions of section 294A are repealed.

Maharashtra.— *The following amendments were made by Bom. Act No. 82 of 1958, s. 33 (w.e.f.1-5-1959).*

In its application to the State of Maharashtra, the provisions of section 294A are repealed.

Uttar Pradesh.— *Section 294A of Indian Penal Code shall be omitted, vide U.P. Act No. 24 of 1995.*

COMMENT.—

Lottery stands on the same footing as gambling because both of them are games of chance. The section does not touch authorized lotteries, but intends to save people from the effects of those not authorised by prohibiting (1) the keeping of offices or places for drawing them, and (2) the publication of any advertisement relating to them.

Bombay Lotteries (Control and Tax) and Prize Competitions (Tax) Act 1958, Bombay Act No. LXXXII of 1958, by section 33 repeals the operation of this section in the State of Maharashtra.

State Governments can authorise lotteries in any way. No procedure is prescribed.[179.]

[s 294A.1] Ingredients.—

This section requires two things—

1. Keeping of any office or place for the purpose of drawing any lottery.
2. Such lottery must not be authorized by Government.

1. 'Drawing any lottery'.—A lottery is a distribution of prizes by lot or chance without the use of any skill.[180.] It makes no difference that the distribution is part of a genuine mercantile transaction.[181.]

2. 'Publishers'.—This word includes both the persons who sends a proposal as well as proprietor of a newspaper who prints the proposal as an advertisement.[182.] The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was held to be guilty under this section.[183.]

3. 'Goods'.—The term 'goods' includes both movable and immovable property. The publication of an advertisement of a lottery by which the lucky winner would get a factory for less than its real value is an offence under this section.[184.]

[s 294A.2] CASES.—

Agreement for contributions to be paid by lot is not lottery.— An agreement whereby a number of persons subscribe, each a certain sum, by a periodical instalment, with the object that each in his turn, (to be decided by lot), shall take the whole subscription for each instalment, all such persons being returned the amount of their contributions, the common fund being lent to each subscriber in turn, was held to be not illegal.[185.]

[s 294A.3] Prize chit.—

A prize chit was started with the object of creating a fund for a temple. It consisted of 625 subscribers, the monthly subscription being Rs 3. The subscription was to be paid for 50 months. A drawing was to take place every month, one ticket was to be drawn out of 625 tickets and the subscriber who drew the ticket was to be paid Rs 150 without any liability to pay future instalments. That process was to be repeated every month till the 50th month. After the 50th month the remaining 575 subscribers were to be each paid in a particular order Rs 150, and the chit fund was to be closed. It was held that the chit fund was a lottery.[186.]

[s 294A.4] Transaction in which prizes are decided by chance amounts to lottery.—

It has, been held by the High Court of Kerala that lucky draw prize schemes organised by manufacturers as part of promotion of sale of manufactured goods come within the ambit of this section. Government, however, has a discretion to select firms by rotation and such a *bona fide* selection cannot be attacked as discriminatory under Article 14 of the Constitution.[187.]

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175. Ins. by Act 27 of 1870, section 10.

176. Ins. by Act 27 of 1870, section 10.

177. Subs. by Act 3 of 1951, section 3 and Sch., for "a lottery organised by the Central Government or the Government of a Part A State or a Part B State" (w.e.f. 1-4-1951).

178. Subs. by the A.O. 1950, for "Provincial".

179. *Rama Nava Nirman Samithi v State of TN*, 1990 Cr LJ 2620 (TN).

180. *Sesha Ayyar v Krishna Ayyar*, (1935) 59 Mad 562 : 566 (FB); *Taylor v Smetten*, (1883) 11 QBD 207 ; *Mukandi Lal*, (1917) PR No. 35 of 1917.

181. *GC Chakrabatty*, (1915) 9 BLT 124 , 17 Cr LJ 143.

182. *Mancherji Kavasji*, (1885) 10 Bom 97.

183. *Ibid.*

184. *Malla Reddi v State*, (1926) 50 Mad 479.

185. *Vasudevan Namburi v Mammod*, (1898) 22 Mad 212.

186. *Sesha Ayyar v Krishna Ayyar*, (1935) 59 Mad 562 (FB).

187. *Tata Oil Mills Co Ltd*, 1982 Cr LJ NOC 171 (Ker).

THE INDIAN PENAL CODE

CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.[1.]

[s 295] Injuring or defiling place of worship with intent to insult the religion of any class.

Whoever destroys, damages or defiles [1] any place of worship, or any object[2.] held sacred by any class of persons[3.] with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishble with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The object of this section is to punish those persons who intentionally wound the religious feelings of others by injuring or defiling a place of worship. This section is intended to prevent wanton insult to the religious notions of a class of persons.[2]

[s 295.1] Ingredients.—

This section requires two things—

1. Destruction, damage or defilement of (a) any place of worship or (b) any object held sacred by a class of persons.
2. Such destruction, etc., must have been done (i) with the intention of insulting the religion of a class of persons, or (ii) with the knowledge that a class of persons is likely to consider such destruction, etc., as an insult to their religion.

1. 'Defiles'.—This word is not to be restricted in meaning to acts that would make an object of worship unclean as a material object, but extends to acts done in relation to the object of worship which would render such object ritually impure.[3]

2. 'Object'.—The word 'object' does not include animate objects. It refers only to inanimate objects such as churches, mosques, temples, and marble or stone figures representing gods.[4.] Killing of a cow by a Mohammedan, within the sight of a public road frequented by Hindus, is not punishable under this section.[5.] Similarly, where a bull dedicated and set at large on a ceremonial occasion of Hindus in accordance with a religious usage was killed by certain Mohammedans secretly and at night in the presence of none but Mohammedans; it was held that no offence was committed.[6.] Any object, however trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of this section nor is it absolutely

necessary that the object, in order to be held sacred, should have been actually worshipped.[7.]

3. 'Class of persons'.—In order that a body of persons may form a class there must be a principle of classification.[8.]

[s 295.2] CASES.—

The damaging or destroying of a sacred thread worn by a person, who is not entitled under the Hindu custom to wear it or for whom the wearing of the sacred thread was not part of his ceremonial observance under the Hindu religion, in assertion of a mere claim to higher rank, was held to be not an insult to his religion.[9.] Where a pastor of the church who himself was a Christian was running a nursery school and a charitable dispensary in a portion of the Church, it could not be said that by using a portion of the Church property for such secular and non-religious purposes he was insulting the religion of a class of persons within the meaning of section 295, Indian Penal Code, 1860 (IPC, 1860).[10.]

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1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.
2. *Gopinath v Ramchandra*, (1958) Cut 485.
3. *Sivakoti Swami*, (1885) 1 Weir 253.
4. *Imam Ali v State*, (1887) 10 All 150 (FB); *Romesh Chunder Sannyal v Hiru Mondal*, (1890) 17 Cal 852 .
5. *Imam Ali*, *sup; Ali Muhammad*, (1917) PR No. 10 of 1918 (FB).
6. *Romesh Chunder Sannyal v Hiru Mondal*, *supra.*
7. *Veerabadran v Ramaswami*, AIR 1958 SC 1032 [LNIND 1958 SC 95] : 1958 Cr LJ 1565 . See also *Zac Poonen v Hidden Treasure Literature Incorporated In Canada*, 2002 Cr LJ 481 (Kant).
8. *Benarashi Lal*, (1956) 98 CLJ 139.
9. *Sheo Shankar*, (1940) 15 Luck 696 .
10. *DP Titus v LW Lyall*, 1981 Cr LJ 68 (All).

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[11.][s 295A] Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs.

[Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [12.][citizens of India], [13.][by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [14.][three years], or with fine, or with both.]

State Amendment

Andhra Pradesh.—*In Andhra Pradesh the offence is cognizable vide A.P. G.O. Ms. No. 732, dated 5 December 1991*.

COMMENT.—

This section was brought into IPC, 1860 by the Criminal Law Amendment Act, 1927 (25 of 1927) following the wide spread agitations erupting from the decision in *Rajpaul v Emperor*,[15.] commonly called as "Rangila Rasul's case", rendered by the Lahore High Court. Interpreting section 153A of IPC, 1860, which alone was there in the Statute then, it was held that no offence would lie thereunder however indecent be the comments made against a deceased religious leader. In fact a few months before *Rangila Rasul's* case was decided by the Lahore High Court, a totally dissenting view over the application of section 153A of IPC, 1860 had been rendered by the Allahabad High Court in *Kali Charan Sharma v Emperor*,[16.] holding that scurrilous and bad taste remarks against a religion or its founder promoting ill feelings between sects of different faith could be proceeded under section 153A of IPC, 1860. It was at that stage; the Legislature stepped in and brought in a new penal provision under section 295A in IPC, 1860. Section 295A of IPC, 1860 does not penalise every act of insult but penalises only deliberate acts of insult, so that even if by any expression insult is in fact caused, that expression is not an offence if the insult offered is unwilling or unintended.[17.] In order to attract the mischief of the provision of section 295A, the following ingredients are to be satisfied, *viz*., a person (1) by written words (2) with deliberate and malicious intention (3) of outraging the religious feelings (4) of any class of citizens of India, (5) insults or attempts to insult the religion or the religious beliefs of that class. In other words, (1) the intention has to be deliberate and malicious both and (2) for outraging the religious feelings (3) of a class of citizens of India (4) in order to insult or attempt to insult the religious or religious belief of that class, i.e., in India (5) by written words.[18.] Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that

class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.[19.]

The essence of the offence under this section is that the insult to religion or the outrage to religious feelings must be the sole, or primary, or at least the deliberate and conscious intention. In order to bring the case within this section it is not so much the matter of discourse as the manner of it. The words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feeling of any class of citizens of India. It is no defence to a charge under this section for anyone to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion.[20.] In order to establish malice as contemplated by this section, it is not necessary for the prosecution to prove that, the applicant bore ill will or enmity against specific persons. If the injurious act was done voluntarily without a lawful excuse, malice may be presumed.[21.] Malice is often not capable of direct and tangible proof and in almost all cases has to be inferred from the surrounding circumstances having regard to the setting, background and connected facts in relation to the offending article.[22.] The truth of the allegation is not a good defence to a charge under this section.[23.]

The Supreme Court, while quashing a complaint observed that section 295A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. Further the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.[24.]

[s 295A.1] Constitutional validity.—

This section is well within the protection of clause (2) of Article 19 of the Constitution and its validity neither is beyond question,[25.] nor is it inconsistent with the right guaranteed by Article 25(1) of the Constitution.[26.]

Where the arrangement of the scenes and the script of the drama outraged the religious feelings of the Christian community, an offence under this section was held to have been committed irrespective of the fact whether the beliefs which were made the subject-matter of the attack were rational or irrational. An attack on even an incredible belief may be capable of causing hurt to feelings.[27.] Where the articles published by the accused highlighted the ideological differences that existed between the members of a Christian group and the members of the Christian fellowship centre, it was held that an expression of opinion by a person who is having a different religious belief did not amount to defamation.[28.] An offence under this section has been made a cognizable and non-bailable one under new Code of Criminal Procedure, 1973 (Cr PC, 1973).

[s 295A.2] Sanction.—

No Court can take cognizance of an offence under this section except with the previous sanction of the concerned Government under section 196(1), Cr PC, 1973.[29.]

In the matter of the publication of a book outraging the religious feelings of a section of the society, a Notification was issued directing forfeiture of the book under section 95, Cr PC, 1973. It was held that the order contained in the Notification was not violative of Article 19(1)(a) or 19(1)(g) of the Constitution.[30.]

[s 295A.3] CASES.—

It is well settled that the offending publication has to be viewed as a whole and the malicious intent of the author has to be gathered from a broader perspective and not merely from a few solitary lines or quotations.[31.] The same view of the law was taken in *Chandanmal's* case by the High Court of Calcutta to say that section 295A, IPC, 1860, does not punish every act of insult to religion. It punishes only aggravated acts of insult, etc., which are deliberate and malicious. And in judging if a publication falls within the mischief of this section the publication has to be judged as a whole. "Isolated passages picked out from here and there and read out of context cannot change the position".[32.]

A petition was filed to protest against the practice of printing and pasting photographs of Gods and Goddesses of Hindu religion on fire crackers. The practice in question had been going on since long without any objections. The Court viewed it as a whimsical petition and dismissed it.[33.]

In this connection see also sub-para entitled "Cases" under section 153A *ante*.

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1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

11. Ins. by Act 25 of 1927, section 2.

12. Subs. by the A.O. 1950, for "His Majesty's subjects".

13. Subs. by Act 41 of 1961, section 3, for "by words, either written or spoken, or by visiblerepresentations" (w.e.f. 12-9-1961).

14. Subs. by Act 41 of 1961, section 3, for "two years" (w.e.f. 12-9-1961)

15. *Rajpaul v Emperor*, AIR 1927 Lahore 590 .

16. *Kali Charan Sharma v Emperor*, AIR 1927 Allahabad 649 .

17. *Jayamala v State*, 2013 Cr LJ 622 .

18. *Sujato Bhadra v State of WB*, 2006 Cr LJ 368 (Cal).

19. *R V Bhasin v State of Maharashtra*, 2012 Cr LJ 1375 (Bom) (FB); *Ramji Lal Modi*, AIR 1957 SC 620 [LNIND 1957 SC 36] : (1957) SCR 860 [LNIND 1957 SC 36] .

20. *Shiv Ram Dass v Udasi Chakarvarti*, (1954) Pun 1020 (FB).

21. *Khalil Ahamad*, AIR 1960 All 715 [LNIND 1960 ALL 96] (SB). *Trustees of Safdar Hashmi Memorial Trust v Govt. of NCT of Delhi*, 2001 Cr LJ 3689 (Del), the basic requirement of the

section is that of deliberate and malicious act. Malice is a negation of *bona fides* and one who alleges it has to prove it.

22. *Sujato Bhadra v State of WB*, 2005 Cr LJ 368 (Cal): 2005 (4) CHN 601 [LNIND 2005 CAL 620] The *Trustees of Safdar Hashmi Memorial Trust v Govt. of NCT of Delhi*, 2001 Cr LJ 3869 (Del) (FB).
23. *Henry Rodrigues*, (1962) 2 Cr LJ 564 .
24. *Mahendra Singh Dhoni v Yerraguntla Shyamsundar*, AIR 2017 SC 2392 [LNIND 2017 SC 217] : 2017 (2) RCR (Criminal) 746 : 2017 (5) Scale 83 .
25. *Ramji Lal Modi*, (1957) SCR 860 [LNIND 1957 SC 36] .
26. *Henry Rodrigues*, *supra*.
27. *T Parameswaran v Distt. Collector*, AIR 1988 Ker 175 [LNIND 1987 KER 607] .
28. *Zac Poonen v Hidden Treasure Literature Incorporated in Canada*, 2002 Cr LJ 481 (Kant).
29. *Shalibhadra Shah*, 1981 Cr LJ 113 (Guj). *Acharya Rajneesh v Naval Thakur*, 1990 Cr LJ 2511 (HP). *Manoj Rai v State of MP*, AIR 1999 SC 300 : 1999 Cr LJ 470 , proceedings quashed because of no sanction.
30. *Baragur Ramchandrappa v State of Karnataka*, 1998 Cr LJ 3639 (Kant—FB).
31. *Nand Kishore Singh*, 1985 Cr LJ 797 (Pat—SB).
32. *Chandanmal Chopra*, 1986 Cr LJ 182 (Cal).
33. *Bhau v State of Maharashtra*, 1999 Cr LJ 1230 (Bom).

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CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.[1.]

[s 296] Disturbing religious assembly.

Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

Assemblies held for religious worship, or for the performance of religious ceremonies, are hereby protected from intentional disturbance.

The object of this section is to secure freedom from molestation when people meet for the performance of acts in a quiet spot vested for the time in the assembly exclusively, and not when they engage in worship in an unquiet place, open to all the public as a thoroughfare.[34.]

[s 296.1] Ingredients.—

To constitute an offence under this section—

(1) There must be a voluntary disturbance caused.

(2) The disturbance must be caused to an assembly engaged in religious worship or religious ceremonies.

(3) The assembly must be lawfully engaged in such worship or ceremonies, i.e., it must be doing what it has a right to do.

[s 296.2] CASES.—Disturbance caused by saying 'amin'.—

A mosque is a place where all sects of Mohammedans are entitled to go and perform their devotion as of right, according to their conscience; and a Mohammedan of one sect pronouncing the word "amin" loudly, in the honest exercise of conscience, commits no offence or civil wrong,[35.] though he may by such conduct cause annoyance in the mosque to other worshippers of another sect who do not pronounce that word loudly.[36.] But any person, Mohammedan or not, who goes into a mosque not *bona fide* for a religious purpose, but *mala fide*, for the purpose of disturbing others engaged in their devotions, will render himself criminally liable.[37.]

[s 296.3] Religious procession.—

Persons of every sect are entitled to take out religious processions with music through public streets provided that they do not interfere with the ordinary use of the streets by the public or contravene any traffic regulation or lawful directions issued by the Magistrate. A religious procession does not change its character merely because the music is temporarily stopped in front of a mosque.[38.]

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1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

34. *Vijiaraghava Chariar*, (1903) 26 Mad 554, 574 (FB).

35. *Ata-Ullah v Azim-Ullah*, (1889) 12 All 494 (FB).

36. *Jangu v Ahmadullah*, (1889) 13 All 419 (FB).

37. *Ibid.*

38. *Mohamud khan*, (1948) Nag 657.

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CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.[1.]

[s 297] Trespassing on burial places, etc.

Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship [1] or on any place of sepulchre, or any place set apart from the performance of funeral rites [2] or as a depository for the remains of the dead, or offers any indignity to any human corpse, [3] or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

COMMENT.—

This section deals more especially with trespasses on places of sepulchre and places set apart for the performance of funeral rites and as depositories for the remains of the dead. It extends the principle laid down in section 295 to places which are treated as sacred. The essence of the section is an intention, or knowledge of likelihood, to wound feelings or insult religion and when with that intention or knowledge trespass on a place of sepulchre, indignity to a corpse, or disturbance to persons assembled for funeral ceremonies is committed, the offence is complete.[39.]

1. 'Trespass in any place of worship'.—'Trespass' here implies not only criminal trespass but also an ordinary act of trespass, i.e., an entry on another's land without lawful authority with the intention specified in section 441.[40.] The term 'trespass' means any violent or injurious act, committed in such place and with such knowledge or intention as is defined in this section.[41.]

The trespass must be in a place of worship with the knowledge that the religious feelings of persons would be wounded thereby. Where some persons had sexual connection inside a mosque, it was held that they were guilty of an offence under this section.[42.]

2. 'Funeral rites'.—The section contemplates disturbance of persons engaged in performing funeral ceremonies. But a *moharram* procession is not a funeral ceremony within the meaning of this section.[43.] Obstruction to the performance of obsequies comes under this section.[44.]

3. Indignity to corpse.—What is indignity to corpse is not defined anywhere. Indignity is generally synonymous to humiliation or disgrace. A conduct to be criminal in the sense

of section 297, IPC, 1860 should be spiteful to become humiliating or disgraceful. In a particular situation, an act may not cause disgrace or may not humiliate, but, in other situations that very act may cause disgrace or humiliation. So the intentions of the person concerned as well as surrounding circumstances are important factors.[45.]

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1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

39. *Burhan Shah*, (1887) PR No. 26 of 1887.

40. *Subhan*, (1896) 18 All 395 ; *Jhulan Saib*, (1913) 40 Cal 548 ; *Ratna Mudali*, (1886) 10 Mad 126; *Umar Din*, (1915) PR No. 23 of 1915.

41. *Mustan*, (1923) 1 Ran 690; *Sanoo v State*, (1941) Kant 316.

42. *Maqsud Husain*, (1923) 45 All 529 .

43. *Ghosita v Kalka*, (1885) 5 AWN 49.

44. *Subramania v Venkata*, (1883) 6 Mad 254 : 257. *Sudarshan Kumar v Gangacharan Dubey*, 2000 Cr LJ 1618 (MP), killing of a criminal in police encounter. His body was roped to a tower for a few minutes in order to show to the public the results of a life in crime. This being not an indignity to the body, no offence under the section was made out.

45. *Surdarshan Kumar v Gangacharan Dubey*, 1999 Cr LJ 1618 (MP).

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CHAPTER XV OF OFFENCES RELATING TO RELIGION

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[s 298] Uttering words, etc., with deliberate intent to wound religious feelings.

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

State Amendment

Andhra Pradesh.— *In Andhra Pradesh the offence is cognizable vide A.P. G.O. Ms. No. 732, dated 5-12-1991.*

COMMENT.—

The authors of the Code observe: "In framing this clause we had two objects in view: we wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gestures or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own will not fall under the definition contained in this clause."[46.] This section does not apply to a written article.[47.]

This section can be made cognizable by the State Government by a notification in the official Gazette under section 10 of the Criminal Law Amendment Act, 1932.

The malicious intention should either be shown to exist or should be apparent from the nature of the act alleged to constitute an offense.[48.]

[s 298.1] CASES.—

Interpolation of forbidden chant.— Interpolation of a forbidden chant in an authorised ritual is an offence under this section.[49.]

[s 298.2] Exhibiting cow's flesh.—

Exhibiting cow's flesh by carrying it in an uncovered state round a village with the deliberate intention of wounding the religious feelings of Hindus was held to be an offence under this section.[50.]

[s 298.3] Killing of cow.—

Where on the occasion of Bakr-i-Id, the accused killed a cow at dawn in a semi-private place and the killing was seen by some Hindus walking along the village pathway 50 feet away, it was held that no offence under this section was committed.[51.] The sacrifice of a cow on the Bakr-i-Id day is not an obligatory religious act for a Muslim and the protection of Article 25 of the Constitution cannot be claimed for such an act.[52.]

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1. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

46. The Works of Lord Macaulay, Notes on the chapter of offences relating to religion and caste. Note j.

47. *Shalibhadra Shah*, 1981 Cr LJ 113 (Guj).

48. *Mudassir Ullah Khan v State of UP*, 2013 (81) ALLCC 152 : 2013 Cr LJ 3741.

49. *Narasimha v Shree Krishna*, (1892) 2 Mad Jur 236.

50. *Rahman v State*, (1893) 13 AWN 144.

51. *Sheikh Amjad v State*, (1942) 21 Pat 315.

52. *Kitab Ali v Santi Ranjan*, AIR 1965 Tripura 22 .

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

[s 299] Culpable homicide.

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

ILLUSTRATIONS

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

***Explanation 1.*—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.**

***Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.**

***Explanation 3.*—The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.**

COMMENT.—

Homicide is the killing of a human being by a human being. It is either (A) lawful, or (B) unlawful.

(A) Lawful homicide, or simple homicide, includes several cases falling under the General Exceptions (Chapter IV).

(B) Unlawful homicide includes—

(1) Culpable homicide not amounting to murder (section 299).

(2) Murder (section 300).

(3) Rash or negligent homicide (section 304A).

(4) Suicide (sections 305, 306).

(A) Lawful or simple homicide.—This is committed where death is caused in one of the following ways:—

1. Where death is caused by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act, in a lawful manner, by lawful means, and with proper care and caution (section 80).
2. Where death is caused justifiably, that is to say,
    (i) By a person, who is bound, or by mistake of fact in good faith believes himself bound, by law (section 76).
    (ii) By a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law (section 77).
    (iii) By a person acting in pursuance of the judgment or order of a Court of Justice (section 78).
    (iv) By a person who is justified or who by reason of a mistake of fact, in good faith, believes himself to be justified by law (section 79).
    (v) By a person acting without any criminal intention to cause harm and in good faith, for the purpose of preventing or avoiding other harm to person or property (section 81).
    (vi) Where death is caused in the exercise of the right of private defence of person or property (sections 100, 103).
3. Where death is caused by a child, or a person of unsound mind, or an intoxicated person as will come under sections 82, 83, 84 and 85.
4. Where death is caused unintentionally by an act done in good faith for the benefit of the person killed, when—
    (i) he or, if a minor or lunatic, his guardian, has expressly or impliedly consented to such an act (sections 87, 88); or
    (ii) where it is impossible for the person killed to signify his consent or where he is incapable of giving consent, and has no guardian from whom it is possible to obtain consent, in time for the thing to be done with benefit (section 92).

(B) **Unlawful homicide.—**Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing:

(i) an act with the intention of causing death;

(ii) an act with the intention of causing such bodily injury as is likely to cause death; or

(iii) an act with the knowledge that it was likely to cause death.

Without one or other of those elements, an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide.[1.]

Culpable homicide may be classified in three categories—(1) in which death is caused by the doing of an act with the intention of causing death; (2) when it is committed by causing death with the intention of causing such bodily injury as is likely to cause death; and (3) where the death is caused by an act done with the knowledge that such act is likely to cause death. Knowledge and intention should not be confused. Section 299 in defining first two categories does not deal with the knowledge whereas it does in relation to the third category. It would also be relevant to bear in mind the import of the terms "likely by such act to cause death". Herein again lies a distinction as "likely" would mean probably and not possibly. When an intended injury is likely to cause death, the same would mean an injury which is sufficient in the ordinary course of nature to cause death which in turn would mean that death will be the most probable result.[2.]

[s 299.1] Ingredients.—

The section has the following essentials:

1. Causing of death of a human being.
2. Such death must have been caused by doing an act
    (i) with the intention of causing death; or
    (ii) with the intention of causing such bodily injury as is likely to cause death; or
    (iii) with the knowledge that the doer is likely by such act to cause death.

The fact that the death of a human being is caused is not enough. Unless one of the mental states mentioned in ingredient[3.] is present, an act causing death cannot amount to culpable homicide.

[s 299.2] 'Causes death'.—

Death means the death of a human being (section 46). But this word does not include the death of an unborn child (*vide* Explanation 3). It is immaterial if the person whose death has been caused is not the very person whom the accused intended to kill: see Illustration (a) and section 301.[4.] The offence is complete as soon as any person is killed. Death occurs when brain dies completely. A person cannot be said dead if some brain activity is present.[5.]

[s 299.3] Five-step enquiry.—

According to the Supreme Court, in case where death is alleged to have been caused by a person, there shall be a five-step inquiry:

> (i) Is there a homicide? (ii) If yes, is it a culpable homicide or a 'not culpable homicide'? (iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder (s. 300 of the Indian Penal Code) or is it a culpable homicide not amounting to murder (s. 304 of the Indian Penal Code)? (iv) If it is a 'not culpable homicide' then a case u/s. 304-A of the Indian Penal Code is made out. (v) If it is not possible to identify the person who has committed the homicide, the provisions of s. 72 of the Indian Penal Code may be invoked.[6.]

[s 299.4] 'By doing an act with the intention of causing death'.—

None of the endless variety of modes by which human life may be cut short before it becomes in the course of nature extinct, is excluded. Death may be caused by poisoning, starving, striking, drowning, and by a hundred different ways.

Under section 32, words which refer to acts done extend also to illegal omissions, and the word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action (section 43). Therefore, death caused by illegal omission will amount to culpable homicide.[7.]

[s 299.5] Need for *viscera* report.—

Having noticed that, in several cases, where poisoning is suspected, the prosecuting agencies are not taking steps to obtain *viscera* report, the Supreme Court, in *Joshinder Yadav v State of Bihar*[8.] issued certain directions in this behalf. It was held:

We direct that in cases where poisoning is suspected, immediately after the *post-mortem*, the *viscera* should be sent to the FSL. The prosecuting agencies should ensure that the *viscera* is, in fact, sent to the FSL for examination and the FSL should ensure that the *viscera* is examined immediately and report is sent to the investigating agencies/Courts post-*haste*. If the *viscera* report is not received, the concerned Court must ask for explanation and must summon the concerned officer of the FSL to give an explanation as to why the *viscera* report is not forwarded to the investigating agency/Court. The criminal Court must ensure that it is brought on record.

[s 299.6] Death caused by effect of words on imagination or passions.

This may sometimes require a complete study of the person of the deceased, her psychology, nature and disposition. Going by these considerations in a case before it, the Supreme Court came to the conclusion that the death of the young married woman in her matrimonial home was a case of suicide and not that of murder. A letter of hers sensing some foul play against her was neither sufficient for conviction for murder nor to dispel the presumption of suicide generated by the type of person she was and her mental make-up.[9.]

[s 299.7] 'With the intention of causing such bodily injury as is likely to cause death'.—

The connection between the 'act' and the death caused thereby must be direct and distinct; and though not immediate, it must not be too remote.[10.] Where bodily injury sufficient to cause death is actually caused, it is immaterial to go into the question as to whether the accused had intention to cause death or knowledge that the act will cause death.[11.] In finding out whether there was the requisite intention or not, the Court has not to go merely by the part of the body where the blow fell, but also the circumstances and the background of the offence and also the ferocity of the attack.

[s 299.8] 'With the knowledge that he is likely by such act to cause death'.—

'Knowledge' is a strong word and imports a certainty and not merely a probability.[12.]

[s 299.9] Beating for exorcising evil spirit.—

Where the accused, in exorcising the spirit of a girl whom they believed to be possessed, subjected her to a beating which resulted in her death, it was held that they were guilty of culpable homicide.[13.]

[s 299.10] Clauses 1 and 2.—'Intention of causing such bodily injury as is likely to cause death'.—'Knowledge that he is likely by such act to cause death'.—

The practical difference between these two phrases is expressed in the punishment provided in section 304. But the phrase 'with the knowledge that he is likely by such act to cause death' includes all cases of rash acts by which death is caused, for rashness imports a knowledge of the likely result of an act which the actor does in spite of the risk.

Both the expressions "intent" and "knowledge" occurring in section 299 postulate existence of a positive mental attitude which is of different degrees. Further, such mental attitude towards consequences of conduct is one of intention and knowledge. If death is caused in any of the circumstances envisaged in section 299, offence of culpable homicide is said to have been committed.[14.]

[s 299.11] Distinction between knowledge and intention.—

Knowledge denotes a bare state of conscious awareness of certain facts in which the human mind might itself remain supine or inactive whereas intention connotes a conscious state in which mental faculties are roused into activity and summed up into action for the deliberate purpose of being directed towards a particular and specific end which the human mind conceives and perceives before itself. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact.[15.]

[s 299.12] Death caused without 'requisite intention' or 'knowledge' not culpable homicide.—

If the death is caused under circumstances specified in section 80, the person causing the death will be exonerated under that section. But, if it is caused in doing an unlawful act, the question arises whether he should be punished for causing it. The Code says that when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence, without any addition on account of such accidental death. See Illustration (c) to this section. The offence of culpable homicide supposes an intention, or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt,[16.] or simple hurt.[17.] It is only where death is attributed to an injury which the offender did not know would endanger life or would be likely to cause death and which in normal conditions would not do so notwithstanding death being caused, that the offence will not be culpable homicide but grievous or simple hurt. Every such case depends upon the existence of abnormal conditions unknown to the person who

inflicts the injury.[18.] A person who voluntarily inflicts injury such as to endanger life must always, except in the most extraordinary and exceptional circumstances, be taken to know that he is likely to cause death. If the victim is actually killed, the conviction in such cases ought ordinarily to be of the offence of culpable homicide.[19.] Once it is established that an act was a deliberate act and was not the result of accident or rashness or negligence, it is obvious that the offence would be culpable homicide.[20.]

[s 299.13] Death due to diseased spleen.—

Where the accused gave a blow with a light bamboo stick, not more than an inch in diameter, to the deceased who was suffering from diseased spleen on the region of that organ, it was held that he was guilty of causing grievous hurt.[21.]

[s 299.14] CASES.—Knowledge of probable consequence of act.—Beating.—

Where a person struck with a heavy stick and killed a man, being at the time under the *bona fide* belief that the object at which he struck was not a human being but something supernatural, but through terror, having taken no steps to satisfy himself that it was not a human being, he was held to have committed culpable homicide.[22.]

[s 299.15] *Explanation 1.*—

A person causing bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerating the death of that other, is deemed to have 'caused his death'. But one of the elements of the offence of culpable homicide must be present.[23.]

[s 299.16] *Explanation 2.*—'By resorting to proper remedies death might have been prevented'.—

This Explanation is explicit and gives no room for discussion. The reason for this provision is obvious that it is not always that proper remedies and skilful treatment are within the reach of a wounded man.[24.]

> Although proof be given that the wound or other bodily injury if skilfully treated might not have resulted in death, yet, if in fact death is the result, the wound 'causes' death. And it does not avail the offender to prove that the first cause might have been removed or rendered inoperative by the application of proper remedies and that death might have been prevented. 'Proper remedies and skilful treatment' may not be within the reach of the wounded man; or if they are at hand, he may be unable or unwilling to resort to them. But this is immaterial so far as it relates to the due interpretation of the words 'cause of death'. The primary cause which sets in motion some other cause,—as the severe wound which induces gangrene or fever, and the ultimate effect, death, are sufficiently connected as cause and effect, notwithstanding that the supervening sickness or disease might have been cured by medical skill. All that it is essential to establish is that the death has been caused by the bodily injury and, if there be any intervening cause, that it is connected with a sufficient degree of probability with the primary one.[25.]

If death results from an injury voluntarily caused, the person who causes that injury is deemed to have caused death although the life of the victim might have been saved if proper medical attention had been given, and even if medical treatment was given but

was not the proper treatment, provided that it was administered in good faith by a competent physician or surgeon.[26.]

[s 299.17] CASES.—

Where the deceased did not actually die from the injuries but died from the gangrene which set in inconsequence of some dirty substance, such as a bandage or the *da* with which the injuries were caused, coming into contact with one injury, although the injuries were not the direct cause of death, the person causing the injuries was held to have caused death.[27.] Where the facts were that the acts of the accused were in the category of a rash act which brought about dashing against the victim leading to his death. There appeared to be no intention or knowledge of bringing about a fatal consequence. The liability was under section 304A.[28.]

[s 299.18] *Explanation 3.*—

The causing of death of a child in the mother's womb is not homicide; such an offence is punishable under section 315. But it is homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born. The former Chief Court of Punjab has observed that "if it is not homicide to kill a child in its mother's womb, it can hardly be urged that it is homicide to kill a child that has breathed in the womb and died while yet in the womb and has been brought forth still-born".[29.]

[s 299.19] Applicability of section 299 whether conviction under section 304 Part I or Part II.—

A plain reading of section 299 will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause it is the knowledge of the offender which is relevant and is the dominant factor. Analysing section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done.

"(i) with the intention of causing death; or

(ii) with the intention of causing such bodily injury as is likely to cause death; or

(iii) with the knowledge that the act is likely to cause death."

If the offence is such which is covered by any one of the clauses, but does not fall within the ambit of clauses, Firstly–Fourthly of section 300 IPC, 1860, it will not be murder and the offender would not be liable to be convicted under section 302. In such a case, if the offence is such which is covered by clause (i) or (ii), the offender would be liable to be convicted under section 304 Part I IPC, 1860 as it uses the expression "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" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii), the offender would be liable to be convicted under section 304, Part II, IPC, 1860 because of the use of the expression "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" where knowledge is the dominant factor.[30.]

1. *Rahee*, (1866) Unrep Cr C 6. *State v Ram Swarup*, 1998 Cr LJ 1067 (All).
2. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] .
3. *Nirbhai Singh*, 1972 Cr LJ 1474 (MP).
4. *Ballan*, 1955 Cr LJ 1448 .
5. *Aruna Ramchandra Shanbaug v UOI*, (2011) 4 SCC 454 [LNIND 2011 SC 265] : AIR 2011 SC 1290 [LNIND 2011 SC 265] .
6. *Richhpal Singh Meena v Ghasi*, 2014 Cr LJ 4339 : AIR 2014 SC 3595 [LNIND 2014 SC 691] .
7. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] , the enquiry is broad-based without going into every detail, whether there was the intention to strike at a vital part of the body with sufficient force to cause the kind of injury found on the body. *Mohd Asif v State of Uttaranchal*, (2009) 11 SCC 497 [LNIND 2009 SC 558] : 2009 Cr LJ 2789 , no hard and fast rule can be laid down for determining the existence of intention. *Sellappan v State of TN*, (2007) 15 SCC 327 [LNIND 2007 SC 91] , death caused by head injury, despite hospitalisation, plea that proper treatment could have saved, not tenable in view of Explanation 2, section 299.
8. *Joshinder Yadav v State of Bihar,* 2014 Cr LJ 1175 : (2014) 4 SCC 42 [LNIND 2014 SC 34] .
9. *Sharad Birdichand Sarda v State of Maharashtra*, AIR 1984 SC 1622 [LNIND 1984 SC 359] : 1984 Cr LJ 1738 : (1984) 4 SCC 116 [LNIND 1984 SC 359] : 1984 SCC (Cr) 487. See also *Bijoy Kumar Sen v State*, 1988 Cr LJ 1818 (Cal); *Prabhu v State of MP*, 1991 Cr LJ 1373 : AIR 1991 SC 1069 .
10. *Laxman*, 1974 Cr LJ 1271 : AIR 1974 SC 1803 .
11. *Re Thangavelu*, 1972 Cr LJ 390 (Mad); *State of Bihar v Pasupati Singh*, 1973 Cr LJ 1832 : AIR 1973 SC 2699 [LNIND 1973 SC 284] ; *Nishan Singh v State of Punjab*, (2008) 17 SCC 505 [LNIND 2008 SC 2718] : AIR 2008 SC 1661 [LNIND 2008 SC 2718] : (2008) 65 AIC 172 .
12. *Shankar Kondiba Gore v State of Maharashtra*, 1995 Cr LJ 93 (Bom), where a stab injury was inflicted on abdomen but death was caused because the right artery was punctured at ilium, it was held that the accused could only be saddled with knowledge of causing death and could be convicted under section 304, Part II and not under section 302. See also *Dharamvir v State of Haryana*, (1994) 2 Cr LJ 1281 (P&H), sudden and unpremeditated fight, there being no previous enmity, single blow death of one, culpable homicide, not murder. *Muniappan v State of TN*, 1994 Cr LJ 1309 (Mad), in a fight between brother and sister, the brother hit her and her son with a crow-bar, the sister died and the son was injured who in anger attacked the accused in reply, the accused was held to be guilty of culpable homicide and not entitled to the plea of private defence. *Nizamuddin v State of MP*, AIR 1994 SC 1041 : 1994 Cr LJ 1386 : 1995 SCC (Cr) 699, fatal injury caused in exceeding the right of private defence.
13. *Jamaludin*, (1892) Unrep Cr C 603; *Haku*, (1928) 10 Lah 555; *State of MP v Godhe Faguwa*, 1974 Jab LJ 302 : 1974 MPLJ 203 [LNIND 1973 MP 3] : ILR [1976] MP 361 [LNIND 1973 MP 3] .
14. *Jagriti Devi v State of HP*, (2009) 14 SCC 771 [LNIND 2009 SC 1376] : AIR 2009 SC 2869 [LNIND 2009 SC 1376] : (2009) 80 AIC 225 (SC) : (2009) 3 AP LJ 52 (SC).
15. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] ; *Daya Nand v State of Haryana*, (2008) 15 SCC 717 [LNIND 2008 SC 827] : AIR 2008 SC 1823 [LNIND 2008 SC 827] : 2008 Cr LJ 2975 , murder and culpable homicide not amounting to murder, distinction

explained and restatement of interpretation of sections 299 and 300. A similar explanation is to be seen in *Ghelabhai Jagmalbhai Bhawad v State of Gujarat*, (2008) 17 SCC 651 ; *Harendra Nath Borah v State of Assam*, (2007) 15 SCC 249 [LNIND 2007 SC 84] and *Raj Kumar v State of Maharashtra*, (2009) 15 SCC 292 [LNIND 2009 SC 1504] , ingredients and **distinction** restated.

16. *O'Brien*, (1880) 2 All 766 ; *Idu Beg*, (1881) 3 All 776 .
17. *Safatulla*, (1879) 4 Cal 815 ; Fox, (1879) 2 All 522 ; *Randhir Singh*, (1881) 3 All 597 .
18. *Bai Jiba*, (1967) 19 Bom LR 823 .
19. *Mana*, (1930) 32 Bom LR 1143 , 1144.
20. *Afrahim Sheikh*, AIR 1964 SC 1263 [LNIND 1964 SC 1] : (1964) 2 Cr LJ 350 .
21. *Megha Meeah*, (1865) 2 WR (Cr) 39; *O'Brien*, (1880) 2 All 766 .
22. *Kangla v State*, (1898) 18 AWN 163.
23. *Fox*, (1879) 2 All 522 .
24. *Krishnaswami*, AIR 1965 Mad 261 .
25. M&M 228. [This is Morgan & Macpherson's Indian Penal Code. Please see 'Explanation of Abbreviations' in the Prelim pages]
26. *Sah Pai,* (1936) 14 Ran 643, as explained in *Abor Ahmed v State*, (1937) Ran 384 (FB). *Pappachan v State of Kerala*, 1994 Cr LJ 1765 (Ker), defence that proper medical attendance was not there was not allowed to be raised.
27. *Nga Paw v State*, AIR 1936 Ran 526
28. *Satpal v State of Haryana*, (2004) 10 SCC 794 .
29. *Mussammat Budho*, AIR 1916 Lah 184 .
30. *Arun Nivalaji More v State of Maharashtra*, (2006) 12 SCC 613 [LNIND 2006 SC 591] : (2007) 2 SCC (Cr) 221 : AIR 2006 SC 2886 [LNIND 2006 SC 591] : 2006 Cr LJ 4057 .

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.]

[s 300.13] Medical Evidence.—

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

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

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

[s 300.15] Clause 4.—'Person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death'.—

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

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

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

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

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

[s 300.16] As to dying declarations.—

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

[s 300.16.1] *Benefit of doubt.*—

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

[s 300.16.2] *Death in custody.*—

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

[s 300.17] Non-explanation of injuries.—

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

[s 300.18] Exception 1.—Provocation.—

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

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

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

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

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

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

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

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

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

KM Nanavati v State of Maharashtra.[90.]

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

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

[s 300.20] Self-control.—

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

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

[s 300.21] Grave and Sudden: Cases.—

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

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

(1) The deceased must have given provocation to the accused.

(2) The provocation so given must have been grave.

(3) The provocation given by the deceased must have been sudden.

(4) The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and

(5) The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of self-control.[95.]

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

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

[s 300.23] Adulterous intercourse.—

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

[s 300.24] CASES.—

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

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

[s 300.25] Quarrel.—

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

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

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

> Wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and... voluntary culpable homicide in defence.
>
> The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed; but it authorizes acts which lie very near to such homicide; and this circumstance, we think, greatly mitigates the guilt of such homicide.
>
> That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing; but we cannot think that the law ought to punish such killing as murder; for the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage; to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg; and it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the same assailant; that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment, seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death.[102.]

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

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

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

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

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

[s 300.29] Exceeding Right of Private Defence.—

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

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

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

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

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

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

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

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

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

(i) it was a sudden fight;

(ii) there was no premeditation;

(iii) the act was done in the heat of passion; and that

(iv) the assailant had not taken any undue advantage or acted in a cruel manner.[117.]

[s 300.33] "Fight": meaning of.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.[147.] In both cases, there is absence of premeditation. But in Exception 1 there is total deprivation of self-control, in case of Exception there is such heat of passion as clouds sober reason and urges the man to do something which he would not otherwise do. A sudden fight implies mutual provocation and blows on each side. The homicide in such a case is not traceable to unilateral provocation. In such cases, the whole blame cannot be attributed to one side. It may be that a fight was initiated by one side but without aggravating provocation from the other side it might not have taken the serious turn. A situation of mutual provocation and aggravation develops making it difficult to apportion the blame between the two sides.[148.]

[s 300.35] Exception 5.—Death caused of the person consenting to it.—

The following reasons are given for not punishing homicide by consent so severely as murder:

> In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honour, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freed man who in ancient times held out the sword that his master might fall on it, the highborn native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought not to be treated by the law, as assassins.[149.]

This exception abrogates the rule of English law that a combatant in a fair duel who kills his opponent is guilty of murder. Under this Exception, the person who is killed in a duel "suffers or takes the risk of death by his own choice." In applying the Exception, it should first be considered with reference to the act consented to or authorised, and next with reference to the person or persons authorised, and as to each of those some degree of particularity at least should appear upon the facts proved before the Exception can be said to apply. It must be found that the person killed with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to and existed at the moment of his death.[150.] The consent must have been given unconditionally and without any pre-reservation.[151.]

The case supposed in the illustration to Exception 5 is one of the offences expressly made punishable by section 305.

[s 300.36] Death caused by voluntary act of deceased resulting from fear of violence.—

If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result.[152.] If, for instance, four or five persons were to stand round a man, and so threaten him and frighten him as to make him believe that his life was in danger, and he were to back away from them and tumble over a precipice to avoid them, their act would amount to murder.[153.]

[s 300.37] Discovery of body of murdered person not necessary/Absence of *corpus delicti*.—

It is well-settled law that in a murder case, to substantiate the case of the prosecution, it is not required that dead bodies must have been made available for the identification and discovery of dead body is not *sine qua non* for applicability of section 299 of IPC, 1860.[154.] The mere fact that the body of a murdered person has not been found is not a ground for refusing to convict the accused of murder. But when the body is not forthcoming, the strongest possible evidence as to the fact of the murder should be insisted on before conviction.[155.] Such evidence could come from the testimony of eye-witnesses or from circumstantial evidence or from both.[156.] If the prosecution is successful in providing cogent and satisfactory proof of the victim having met a homicidal death, absence of *corpus delicti* will not by itself be fatal to a charge of murder.[157.]

[s 300.38] Ascertainment of time of death.—

Judging the time of death from the contents of the stomach may not always be the determinative test. It will require due corroboration from other evidence.[158.]

[s 300.39] Single eye-witness, corroboration needed.—

A child witness (aged 13 years at the time of incident) deposed categorically about the gruesome incident he had witnessed. The Supreme Court held that in such situation, it is considered a safe rule of prudence to generally geneally look for corroboration of the sworn testimony of the witness in Court, as to the identity of the accused, who are strangers to them, in the form of earlier identification proceeding.[159.]

[s 300.40] Acquittal of co-accused, effect.—

Allegation was that the accused along with the juvenile attacked the deceased. Eye witness deposed that the juvenile was not involved. Acquittal of the juvenile has no effect on the case of others.[160.] Benefit of acquittal of co-accused cannot be given to the main accused.[161.]

[s 300.41] Non-production of FIR book.—

The incident involved assault on villagers and causing of multiple deaths. The injured witness gave written complaint in the hospital duly signed by him. The complaint was immediately sent to the police station. On its basis, a printed FIR was registered and a copy sent to the magistrate. These circumstances completely ruled out the suggestion that the FIR was bogus or doctored. Non-production of the book was due to non-availability. This cannot by itself, invite suspicious glance from the Court or be a ground for throwing out the prosecution case.[162.]

[s 300.41.1] *Ante timed*.—

The lodging of a First Information Report within 20 minutes of the incident, on the oral dictation at the police station which was four furlongs from the place of incident creates some doubt about the actual time of lodging of the FIR.[163.]

[s 300.42] Delay in FIR.—

Whether the delay is so long as to draw a cloud of suspicion on the prosecution case will depend upon a variety of factors, which will vary from case to case.[164.] Where the occurrence took place in the late night in a remote village and the sufferers of the incident were the widow and her two minor children, apart from the fact that the police station was one and a half kilometres away, the delay in registering FIR on the next day is proper.[165.]

[s 300.43] Strange behaviour of the complainant.—

Where the incident of murder occurred inside the forest, while some friends of the complainant were participating in a party and the informant/eye-witness instead of going to the police station went to the house of an Advocate. The Supreme Court found that it appeared to be a very strange behaviour on the part of the complainant and so many of his friends who were with him to go to an Advocate, that too 15 kms away, rather than approaching the Police Station to report the matter.[166.]

[s 300.44] Motive.—

It is fairly well settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence.[167.] Where other circumstances lead to the only hypothesis that the accused has committed the offence, the Court cannot acquit the accused of the offence merely because the motive for committing the offence has not been established in the case.[168.] If depositions giving the eye-witness account of incident that led to death of deceased are reliable, absence of a motive would make little difference.[169.] When there is an eye-witness account on record, the absence of motive pales into insignificance.[170.]

[s 300.45] Last seen together.—

It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased.[171.] There may however be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.[172.] But in *Arabindra Mukherjee v State of WB*,[173.],[174.] it was held that once the accused was last seen with the deceased, the onus is upon him to show that either he was not involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequences in law, the onus was upon the accused to lead

evidence in order to prove his innocence. In *C Perumal v Rajasekaran*,[175.],[176.] there was a time lag of two days in last seen together of A2– A5 with the deceased and Court found it difficult to connect them with the incident. Where the accused was last seen together with the deceased by his wife, but the prosecution could not establish the cause of death, the accused was not convicted based on the last seen theory.[177.]

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing the connectivity between the accused and the crime. Mere non-explanation on the part of the accused by itself, cannot lead to proof of guilt against the appellant.[178.] Where it was found that the deceased was in the company of the accused prior to one week of the *post-mortem* of the deceased and it was also found through the *post-mortem* that the murder was about one week ago, the Court held that the last seen theory applies.[179.]

Where there was a clear gap of 51 hours and 45 minutes between the time when the victim was last seen in the company of the accused and the time of his death, it was held that this time gap was too wide to act upon the last seen theory.[180.]

[s 300.45.1] *Co-accused*.—

Merely because two persons have been acquitted that benefit cannot be extended to others in view of the direct evidence establishing their presence and participation in the crime.[181.]

[s 300.46] Plea of *alibi*.—

While weighing the plea of '*alibi*', the same has to be weighed against the positive evidence led by the prosecution.[182.]

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31. *Santosh v State*, 1975 Cr LJ 602 : AIR 1975 SC 654 [LNIND 1975 SC 50] ; See also *Sehaj Ram*, 1983 Cr LJ 993 (SC) : AIR 1983 SC 614 [LNIND 1983 SC 90] : (1983) 3 SCC 280 [LNIND 1983 SC 90] . There should be causal connection between death and injury, not proved where death ensued 13 days after the alleged injury by the deceased woman's husband, *Imran Khan v State of MP*, (1995) 1 Cr LJ 17 (MP).

32. *Govinda*, (1876) 1 Bom 342; *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 , **distinguish** between culpable homicide and murder restated, nature of *mens rea* required in two provisions also explained.

33. *State of AP v R Punnayya*, 1977 Cr LJ 1 : AIR 1977 SC 45 [LNIND 1976 SC 331] ; *Kalaguru Padma Rao v State of AP*, (2007) 12 SCC 48 [LNIND 2007 SC 179] : AIR 2007 SC 1299 [LNIND 2007 SC 179] , **distinction** between sections 299 and 300 restated. *Sunder Lal v State of Rajasthan*, (2007) 10 SCC 371 [LNIND 2007 SC 599] ; *Abbas Ali v State of Rajasthan*, (2007) 2 SCC 129 : AIR 2007 SC 1239 [LNIND 2007 SC 165] : 2007 Cr LJ 1667 , **distinction** restated.

34. *Laxminath v State of Chhattisgarh*, AIR 2009 SC 1383 [LNIND 2009 SC 58] : (2009) 3 SCC 519 [LNIND 2009 SC 58] ; *Budhi Lal v State of Uttarakhand*, AIR 2009 SC 87 [LNIND 2008 SC 1928] : (2008) 14 SCC 647 [LNIND 2008 SC 1928] ; *Abdul Waheed Khan Waheed v State of Andhra Pradesh*, JT 2002 (6) SC 274 [LNIND 2002 SC 530] ; *Augustine Saldanha v State of Karnataka*, 2003 (10) SCC 472 [LNIND 2003 SC 709] ; *Thangaiya v State of TN*, 2005 (9) SCC 650 [LNIND 2004 SC 1221] and *Sunder Lal v State of Rajasthan*, 2007 (10) SCC 371 [LNIND 2007 SC 599] .

35. *Ajit Singh v State of Punjab*, (2011) 9 SCC 462 [LNIND 2011 SC 844] .

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

37. *State of Orissa v Raja Parida*, 1972 Cr LJ 193 199 (Ori). *Gurmej Singh v State of Punjab*, AIR 1992 SC 214 [LNIND 1991 SC 301] : 1992 Cr LJ 293 : 1991 Supp (2) SCC 75 , discussing how evidence in criminal cases is to be appreciated. Other cases giving guidelines for appreciation of evidence for purposes of section 300 are *State of UP v Ram Chandra*, 1992 Cr LJ 418 All (doubtful evidence); *Anokh Singh v State of Punjab*, AIR 1992 SC 598 : 1992 Cr LJ 525 : 1992 Supp (1) SCC 426 (improbable evidence, delay in lodging FIR); *State of Karnataka v Venkatesh*, AIR 1992 SC 674 : 1992 Cr LJ 707 (prosecution witness not inspiring confidence). See also *Sakharam v State of MP*, AIR 1992 SC 758 [LNIND 1992 SC 157] : 1992 Cr LJ 861 , a boy of 16–17 years of age lived alone with the deceased woman in a single-room house some eight days before the incident, woman killed by gun-shot injuries, the boy acquitted because there was no other evidence than that of living together; *Peddireddy Subbareddi v State of AP*, 1991 Cr LJ 1391 : AIR 1991 SC 1356 , gap of 15 hours in lodging FIR, the sole eye-witness not telling the fact to any of the villagers. Acquittal on benefit of doubt. *Gangotri Singh v State of UP*, AIR 1992 SC 948 : 1992 Cr LJ 1290 , where the dying declaration was clear in reference, but did not even mention the names of the other accused with whom the deceased was on enmity, conviction of the named accused alone was held to be proper.

Acquittals.—*Varun Chaudhary v State of Rajasthan,* 2011 Cr LJ 675 : AIR 2011 SC 72 [LNIND 2010 SC 1067] : (2011) 12 SCC 545 [LNIND 2010 SC 1067] ; the recovered knife was never produced before the court and was never shown to the accused; scanty evidence; conviction set aside; *State Through CBI v Mahender Singh Dahiya*, (2011) 3 SCC 109 [LNIND 2011 SC 114] : AIR 2011 SC 1017 [LNIND 2011 SC 114] : 2011 Cr LJ 2177 , circumstances relied on do not connect the accused, accused acquitted. *Allarakha K Mansuri v State of Gujarat*, AIR 2002 SC 1051 [LNIND 2002 SC 119] , defective investigation should not be made a ground of acquittal by itself. The setting aside of acquittal by the High Court was held to be proper. *Chander Pal v State of Haryana*, AIR 2002 SC 989 [LNIND 2002 SC 105] , acquittal because of unsatisfactory evidence, *State of Haryana v Ram Singh*, AIR 2002 SC 620 [LNIND 2002 SC 32] , largely on matters of evidence, such as gap between medical and eye-witness account, relative witness not to be rejected for that reason alone, defence witnesses are entitled to equal treatment with those of the prosecution. *Panchdeo Singh v State of Bihar*, AIR 2002 SC 526 [LNIND 2001 SC 3070] , acquittal because of unreliable dying declaration. *Surendra Singh v State of Bihar*, AIR 2002 SC 260 [LNIND 2001 SC 2701] , firing at the inmates of a car, one killed, one injured. The injured eye-witness identified the assailant at the test identification parade but had stated at the stage of the FIR that could not recognise him. Conviction of the accused was set aside. *Thanedar Singh v State of MP*, AIR 2002 SC 175 [LNIND 2001 SC 2451] , killing at night, no moonlight, no identification of killers, High Court not justified in reversing acquittal. *RV Chacko v State of Kerala*, AIR 2001 SC 537 [LNIND 2000 SC 1797] , acquittal because no proper proof. *Durbal v State of UP*, (2011) 2 SCC 676 [LNIND 2011 SC 100] : AIR 2011 SC 795 [LNIND 2011 SC 100] : 2011 Cr LJ 1106 ; presence of eyewitness doubtful, acquitted; *Prahlad Singh v State of MP,* 2011 (8) Scale 105 [LNIND 2011 SC 1086] : 2011 Cr LJ 4366 , possibility that these three accused

roped in on account of animosity cannot be ruled out and given them the benefit of doubt on that score. *Surendra Pratap Chauhan v Ram Naik*, AIR 2001 SC 164 [LNIND 2000 SC 1521] : 2001 Cr LJ 98 , murder in village groupism real killers could not be identified and other failures of proof, acquittal, *Jagdish v State of MP*, AIR 2000 SC 2059 [LNIND 2000 SC 842] : 2000 Cr LJ 2955 , acquittal of one accused because of uncertainty in technical as well as general evidence, conviction of the other because of the case proved against him.

Shaikh Umar Ahmed Shaikh v State of Maharashtra, AIR 1998 SC 1922 [LNIND 1998 SC 498] : 1998 Cr LJ 2534 , strong possibility of the accused being shown to the witnesses before identification in court, conviction set aside because the identification was the basis of the conviction. *Bhola Singh v State of Punjab*, AIR 1999 SC 767 [LNIND 1998 SC 1050] : 1999 Cr LJ 1132 , acquittal because the presence of the witnesses on the spot became doubtful, their testimony seemed to have been tailored in accordance with the *post-mortem* report. Delayed test identification parade. Accused acquitted: *State of Maharashtra v Syed Umar Sayed Abbas*, 2016 Cr LJ 1445 : 2016 (3) SCJ 77 . *Vijayan v State of Kerala*, AIR 1999 SC 1086 [LNIND 1999 SC 159] : 1999 Cr LJ 1638 , acquittal, because photographs were published and, therefore, identification evidence became useless and dying declaration was also unreliable. *Mohd. Zahid v State of TN*, AIR 1999 SC 2416 [LNIND 1999 SC 593] : 1999 Cr LJ 2699 , acquittal because eye-witnesses and the doctor both found to be not reliable. *Hargovandas Devrajbhai Patel v State of Gujarat*, AIR 1998 SC 370 [LNIND 1997 SC 1443] : 1998 Cr LJ 662 (SC), no proof that the police officer caused death of the deceased in police custody. Acquittal *Omwati v Mahendra Singh*, AIR 1998 SC 249 [LNIND 1997 SC 91] , 250 : 1998 Cr LJ 401 , acquittal because no proper investigation and evidence. *Daljit Singh v State of Punjab*, AIR 1999 SC 324 : 1999 Cr LJ 454 , acquittal because of false witnesses. *Din Dayal v Raj Kumar*, AIR 1999 SC 537 : 1999 Cr LJ 487 , accused acquitted because witnesses not truthful. *Tanviben Pankaj Kumar Divetia v State of Gujarat*, AIR 1997 SC 2193 [LNIND 1997 SC 803] : 1997 Cr LJ 2535 , no evidence to lead to irresistible conclusion about complicity of the accused in causing murder, conviction on surmises and conjectures set aside. *Mohd Aman v State of Rajasthan*, AIR 1997 SC 2960 : 1997 Cr LJ 3567 , not proper handling of finger-print evidence, conviction not proper. *Shahbad Pall Reddy v State of AP*, AIR 1997 SC 3087 [LNIND 1997 SC 1096] : 1997 Cr LJ 3753 , murder alleged to be by 26 persons, no proper investigation, acquittal. *Harkirat Singh v State of Punjab*, AIR 1997 SC 3231 [LNIND 1997 SC 988] : 1997 Cr LJ 3954 , material contradictions in statements of witnesses, other irregularities, acquittal. *Sahib Singh v State of Haryana*, AIR 1997 SC 3247 [LNIND 1997 SC 1005] : 1997 Cr LJ 3956 , delayed FIR, highly interested witnesses, confession not truthful, conviction liable to be set aside. *State of UP v Bhagwan*, AIR 1997 SC 3292 : (1997) 11 SCC 19 , acquittal because of unreliable eye-witnesses. *B Subba Rao v Public Prosecutor*, AIR 1997 SC 3427 [LNIND 1997 SC 1065] : 1997 Cr LJ 4072 , because the source of light through which identification was possible not proved *Rambilas v State of MP*, AIR 1997 SC 3954 [LNIND 1997 SC 1302] : 1997 Cr LJ 4649 , a notorious person murdered on the day of a festival and body thrown into a tank, eye-witnesses not likely because of the festival, that is why were not real there could be other possible killers, acquittal. *Paramjit Singh v State of Punjab*, AIR 1997 SC 1614 [LNIND 1996 SC 2101] : (1997) 4 SCC 156 [LNIND 1996 SC 2101] , two types of evidence, last seen together and dying declaration, both found not reliable. Acquittal, *Jaspal Singh v State of Punjab*, AIR 1997 SC 332 [LNIND 1996 SC 1648] : 1997 Cr LJ 370 , confession and identification evidence week, acquittal. *Devinder v State of Haryana*, AIR 1997 Sc 454 [LNIND 1996 SC 1460] : 1996 Cr LJ 4461 , acquittal because of benefit of doubt. *Chander Pal v State of Haryana*, 2002 Cr LJ 1481 (SC), quarrel in the course of playing game of ludo, murder, no proper evidence, acquittal. *Bijoy Singh v State of Bihar*, 2002 Cr LJ 2623 : AIR 2002 SC 1949 [LNIND 2002 SC 300] , prosecution for murder and attempt to murder, 12 persons were convicted, but

there was no proper investigation, acquittal. *State of AP v Kowthalam Chinna Narasimhulu*, 2001 Cr LJ 722 (SC), political rivalry, murder, unreliable witnesses, acquittal. *State of MP v Surpa*, 2001 Cr LJ 3290 (SC), contradictions in evidence, wife of the victim not disclosing the incident to any one till the next day, acquittal.

Kanhai Mishra v State of Bihar, 2001 Cr LJ 1258 (SC), rape and murder, acquittal, *Dhanjibhai v State of Gujarat*, 2001 Cr LJ 1587 (Guj), another case of being killed by burns, but no proof of involvement of the accused husband. *Sohan v State of Haryana*, 2001 Cr LJ 1707 (SC), only interested witness examined, no independent witness examined though available, conviction set aside. *State of Rajasthan v Teja Singh*, 2001 Cr LJ 1176 (SC), no corroboration of evidence of interested eye-witness, acquittal proper. *Kalyan v State of UP*, 2001 Cr LJ 4677 (SC), acquittal because of poor state of evidence. *State of Delhi*, 2001 Cr LJ 61 (Del) acquittal from the charge of raping and killing one's daughter poor evidence. *Sudama Pandey v State of Bihar*, 2002 Cr LJ 582 (SC), acquittal because of no proper evidence. *Gurucharan v State of UP*, 2000 Cr LJ 4560 (All), accused persons alleged to have entered a bus, fired at passengers and used knives, death of two caused, acquitted under benefit of doubt. *Ajab Singh v State of UP*, 2000 Cr LJ 1809 : (2000) 3 SCC 521 [LNIND 2000 SC 2011] , order by Supreme Court of investigation by CBI. *Chhannoo Lal v State of UP*, 2000 Cr LJ 2787 (All), killing of wife and children, but prosecution could prove nothing, husband acquitted. *Referring Officer v Tiringhly*, 2000 Cr LJ 2569 (AP), murder of a priest of a temple, and throwing away the body into a pond. The court found it to be a case of no evidence. Conviction of the accused and sentence of death set aside. *State of Punjab v Kulwant Singh*, 2000 Cr LJ 2692 (P&H), triple murder, accused acquitted because of prosecution failures. *Dinesh v State of Haryana*, AIR 2002 SC 3474 : 2002 Cr LJ 2970 (SC), acquittal because of inconsistent evidence and weapons not produced. *Mahabir Singh v State of Haryana*, 2001 Cr LJ 3945 (SC), sole eye-witness contradicting himself acquittal. *State of Rajasthan v Chhote Lal*, 2012 AIR (SCW) 1159 : 2012 Cr LJ 1214 , sole eye witness turned hostile, acquittal confirmed; *Javed Masood v State of Rajasthan*, AIR 2010 SC 979 [LNIND 2010 SC 214] : (2010) 3 SCC 538 [LNIND 2010 SC 214] : (2010) 3 SCR 236 [LNIND 2010 SC 214] : 2010 Cr LJ 2020 , presence of eye witness doubtful, conviction set aside. *Jiten Besra v State of WB,* AIR 2010 SC 1294 [LNIND 2010 SC 224] : (2010) 3 SCC 675 [LNIND 2010 SC 224] : 2010 Cr LJ 2032 , all the alleged incriminating circumstances could not be said to have been established; accused is entitled to benefit of doubt. *Gajula Surya Prakasarao v State of AP*, (2010) 1 SCC 88 [LNIND 2009 SC 1973] : 2010 Cr LJ 2102 : AIR 2010 SC (Supp) 181, eye witness did not name the accused in the statement, accused acquitted; *Jaipal v State*, 1998 Cr LJ 4085 : AIR 1998 SC 2787 [LNIND 1999 PNH 698] , murder, persons accused not shown to be guilty, acquittal. *State of HP v Dhani Ram*, 1997 Cr LJ 214 : 1997 SCC (Cr) 244 (SC), the only proof was that of motive, but there was no other evidence, acquittal. *Gurprit Singh v State of Punjab*, AIR 2002 SC 2390 , TADA offender, murder, charged, not proved, acquittal. *Nasim v State of UP*, 2000 Cr LJ 3329 (All), arsenic poison mixed in pulse drink, six persons lost life, but who mixed not clear, act of persons other than cook not ruled out, acquittal. *Deva v State of Rajasthan*, 1999 Cr LJ 265 : AIR 1999 SC 214 [LNIND 1998 SC 1402] , murder by accused not proved, acquittal. *Surinder Kumar v State of Punjab*, 1999 Cr LJ 267 : AIR 1999 SC 215 [LNIND 2012 SC 879] , veterinary surgeon killed, accused acquitted because his guilt could not be proved. *Bhupinder Singh v State of Punjab*, 1999 Cr LJ 396 (SC), death probably in encounter firing, constable acquitted. *State of HP v Rakesh Kumar*, 1999 Cr LJ 564 (HP), acquittal. *Ashok Kumar v State of Bihar*, 1999 Cr LJ 599 (SC), murder of morning walker, dying declaration, not reliable, no other evidence, acquittal. *Paras Yadav v State of Bihar*, 1999 Cr LJ 1122 : AIR 1999 SC 644 [LNIND 1999 SC 17] , participation of accused in murder not proved, acquittal. *Chandregowda v State of Karnataka*, 1999 Cr LJ 1719 (Kant), child sacrificed to death by throttling for the purpose of learning black

magic, doctor's certificate of schizophrenia, only evidence was admission of guilt under section 313, Cr PC, 1973. Held, conviction not possible on that basis alone. *Ahmed Bin Salam v State of AP*, 1999 Cr LJ 2281 : AIR 1999 SC 1617 , conviction set aside because of failure of evidence; *State of UP v Kapildeo Singh*, 1999 Cr LJ 2594 : AIR 1999 SC 1783 [LNIND 1999 SC 140] , accused, alleged to have entered *Kutia* of their victim at mid night to settle land dispute and assaulted him with sharp instruments to death, but no proof, acquittal. *Balbir Singh v State of Punjab*, 1999 Cr LJ 4076 : AIR 1999 SC 3227 [LNIND 1999 SC 718] , acquittal because of no proof. *Vithal Tukaram More v State of Maharashtra*, AIR 2002 SC 2715 [LNIND 2002 SC 449] : 2002 Cr LJ 3546 , acquittal because of unreliable evidence. *Mathura Yadav v State of Bihar*, AIR 2002 SC 2707 [LNIND 2002 SC 447] : 2002 Cr LJ 3538 , glaring discrepancies in evidence of eye-witnesses, acquittal; *BL Satish v State of Karnataka*, 2002 Cr LJ 3508 (SC), grandson was charged of strangulating his grandmother to death. The only circumstance against him was his statement that ornaments were kept in his maternal grand father's house, acquittal; *Thangavelu v State of TN*, 2002 Cr LJ 3558 (SC), false evidence case demolished by medical report as to time of death.

Pandit Ram Prakash Sharma v Khairati Lal, 1998 Cr LJ 1410 : AIR 1998 SC 2820 , unreliable witnesses, acquittal. *Prem Prakash Mundra v State of Rajasthan*, 1998 Cr LJ 1620 : AIR 1998 SC 1189 [LNIND 1998 SC 133] , murder of child, accused could not be connected with it. *State of Rajasthan v Mahaveer*, 1998 Cr LJ 2275 (SC), enmity between parties, but nothing could be proved. *Kochu Maitheen Kannu Salim v State of Kerala*, 1998 Cr LJ 2277 (SC), conduct of eye-witnesses did not inspire confidence, acquittal. *State of Punjab v Karnail Singh*, 1998 Cr LJ 2556 : AIR 1998 SC 1936 [LNIND 1998 SC 307] , death of five persons by gun shots, no evidence as to who caused whose death, defence version that the accused acted in self-defence was supported by evidence, acquittal. *Jaipal v State (UT of Chandigarh)*, 1998 Cr LJ 4085 : AIR 1998 SC 2787 [LNIND 1999 PNH 698] , considered acquittal by the trial judge, setting aside by the High Court merely because a different view of the evidence was also possible was not proper; *Kaptan Singh v State of MP*, acquittal solely on the basis of investigation, held patently wrong; *State of HP v Dhani Ram*, 1997 Cr LJ 214 : AIR 1996 SCW 4055 , acquittal upheld; *Roshan Singh v State of UP*, 1997 Cr LJ 256 (All), acquittal because of benefit of doubt; *Darshan Singh v State of Punjab*, 1997 Cr LJ 370 : AIR 1970 SC 332 , accused not properly identified, confession of guilt not found reliable, acquittal.

Kuldip Singh v State of Punjab, 2002 Cr LJ 3944 : AIR 2002 SC 3023 [LNIND 2002 SC 498] , murder of the wife and daughter of informant, but the accused could not be connected with it, acquittal; *Dhananjay Shanker Shetty v State of Maharashtra*, 2002 Cr LJ 3729 (SC), circumstantial evidence of murder by history sheeter. But no proof. The accused was arrested in injured condition. No explanation, acquittal. *Toran Singh v State of MP*, 2002 Cr LJ 3732 (SC), material contradictions and omissions in statements of witness. *Muthu v State of Karnataka*, 2002 Cr LJ 3782 (SC), no evidence to connect the accused with the murder, close scrutiny of evidence disclosed hollowness of prosecution case. Accused entitled to benefit of doubt. *Balu Sonba Shinde v State of Maharashtra*, AIR 2002 SC 3137 [LNIND 2002 SC 552] , deposition of a witness on whom the prosecution story hinged was found partly improbable, the evidence of hostile witness was rather found more normal and natural. Accused entitled to benefit of doubt.

Ashish Batham v State of MP, AIR 2002 SC 3206 [LNIND 2002 SC 556] , failure in love affair alleged to be motive for murder, acquitted because of lack of credibility in evidence. *Raghunath v State of Haryana*, AIR 2003 SC 165 [LNIND 2002 SC 703] : 2003 Cr LJ 401 , group rivalry, accused persons entered the house of their victim and caused death, but evidence doubtful, the witnesses, while taking the injured to hospital, did not file report even when they crossed two

police stations, acquittal. *Jasbir v State of Haryana*, AIR 2003 SC 554 [LNIND 2002 SC 805] : 2003 Cr LJ 826 , there were *lathi* injuries on the person of the deceased, lathi wielding accused were acquitted. *State of Karnataka v AB Nagaraj*, AIR 2003 SC 666 [LNIND 2002 SC 783] : 2003 Cr LJ 848 , allegation that the daughter was killed by her father and step-mother. Witnesses who saw them in the national park could not be believed because they were working behind bushes. The theory of the accused parents that they were looking for their daughter seemed to be probable. There was no history of bad treatment, acquittal; *Kantilal v State of Gujarat*, AIR 2003 SC 684 [LNIND 2002 SC 789] : 2003 Cr LJ 850 , prosecution case was that the accused stole gold ornaments of the victim woman and murdered her. The facts that he had given the ornaments and ingot to a jeweller for melting were not established. Link in the chain of circumstances missing, acquittal. *Bhim Singh v State of Haryana*, AIR 2003 SC 693 [LNIND 2002 SC 793] : 2003 Cr LJ 857 , acquittal because of uncorroborated and controverted evidence. *State of UP v Arun Kumar Gupta*, AIR 2003 SC 801 [LNIND 2003 SC 9] : 2003 Cr LJ 894 , except for being indebted to the deceased, other evidence to connect the accused with the murder was nullity, acquittal. *Lallu Manjhi v State of Jharkhand*, AIR 2003 SC 854 [LNIND 2003 SC 3] : 2003 Cr LJ 914 , land dispute, but who was in possession not properly proved, interested eye-witness not corroborated. No conviction on sole testimony. *Zafar v State of UP*, AIR 2003 SC 931 [LNIND 2003 SC 41] : 2003 Cr LJ 1218 , sole child witness, examined after four to five days probably because another eye-witness had backed out. Not reliable. No conviction. *Jai Pal v State of UP*, AIR 2003 SC 1012 [LNIND 2003 SC 134] : 2003 Cr LJ 1243 eye-witness in examination-in-chief did not name the accused, in cross-examination he named him among so many others, but no *overt act* attributed, delay in examining witnesses not explained, identification of dead body doubtful, acquittal. *Bhagwan Singh v State of MP*, AIR 2003 SC 1088 [LNIND 2003 SC 82] : 2003 Cr LJ 1262 , mother killed by assailants, six-year-old child sleeping with her, testified that after seeing his mother being assaulted, he went to sleep again, no TI parade held, the conduct of the father was also unnatural, he did not enquire anything from the child before lodging the FIR, sending civil disputes between the accused and the deceased was found to be weak cause, acquittal. *Shailendra Pratap v State of UP*, AIR 2003 SC 1104 [LNIND 2003 SC 6] : 2003 Cr LJ 1270 , another case of acquittal because of weak links in evidence. *Kanwarlal v State of MP*, 2003 Cr LJ 82 (SC), the allegation that the victim was assaulted by several accused persons in free fight with axes and spears. But no cut injuries except one on head, conviction of one accused for murder not sustainable. *Mohan Singh v Prem Singh*, 2003 Cr LJ 11 : AIR 2003 SC 3582 , failure of evidence on all points in the trial for murder, defence version more probable, acquittal. *Nabab Khan v State of MP*, 2003 Cr LJ 94 (MP), sole eye-witness, other factors of evidence not reliable, casting doubt upon sole-witness account, acquittal. This was an attack on the whole family. Four members were killed. The sole eye-witness who survived with injuries was not medically examined and false explanations were submitted for the same. *Jai Narain v State of UP*, 2000 Cr LJ 168 (All), evidence of homemates of the deceased contradictory, no independent witness, motive that they were working as police informers not proved, unexplained delay in medical examination of deceased, defence version more probable, acquittal. *Narendra Singh v State of UP*, 2003 Cr LJ 205 (All), killing of man's wife, his son and nephew, proof against the alleged killers not substantiated, acquittal. *Moti v State of UP*, 2003 Cr LJ 1694 : AIR 2003 SC 1897 [LNIND 2003 SC 302] , serious difference in family evidence and medical evidence, uncertainty benefit of doubt. *Suresh Chaudhary v State of Bihar*, 2003 Cr LJ 1717 : AIR 2003 SC 1981 [LNIND 2003 SC 289] , presence of eye-witness at the site of three murders, time of death, time of lodging FIR doubtful, medical evidence showing use of explosive bomb, eye-witness did not mention it, acquittal. *State of Punjab v Sucha Singh*, 2003 Cr LJ 1210 : AIR 2003 SC 1471 [LNIND 2003 SC 177] , murder in revenge, eye-witness father of the deceased, but rendered no help at rescue, his presence at the spot became doubtful, other witnesses also not reliable,

conviction set aside. *Bharat v State of MP*, 2003 Cr LJ 1297 (SC), circumstantial evidence, chain not complete, murder for robbery, recovery of doubtful value, extra-judicial confession, not reliable, acquittal. *State of UP v Dharamraj*, 2003 Cr LJ 1522 : AIR 2003 SC 1589 [LNIND 2003 SC 206] , eye-witnesses gave different version of the weapons used, acquittal. *Rajeevan v State of Kerala*, 2003 Cr LJ 1572 : AIR 2003 SC 1813 , accusation due to political bitterness, acquittal. *Baldev Singh v State of MP*, 2003 Cr LJ 880 : AIR 2003 SC 2098 [LNIND 2003 SC 2] , improbability of murder by accused, acquittal. *Sambhunath v State of WB*, 2003 Cr LJ 975 (Cal), conviction set aside because the chain of circumstances was not complete. *Shankar Singh v State of UP*, 2003 Cr LJ 1095 (All), killed with gunshot injury, delay in lodging FIR, conduct of eye-witnesses unnatural, acquittal. *State of UP v Krishna Pal*, 2003 Cr LJ 1115 (All), a man and his son killed, evidence of his wife and daughter found to be self-contradictory, acquittal. *Suresh B Nair v State of Kerala*, 2003 Cr LJ 1152 (Ker), the accused killed his victim with a piece of stone, the eye-witness did not know him before, identification parade not held, the identification by the witnesses was not corroborated, acquittal. *Raghunath v State of Haryana*, 2003 Cr LJ 401 (SC), failure of the prosecution case. *Ganga Singh v State of UP*, 2003 Cr LJ 653 (All), failure of prosecution to connect points. *Brijpal Singh v State of MP*, AIR 2003 SC 2460 [LNIND 2003 SC 485] , confusion caused by witnesses as to killing by gunshots, ballistic opinion contradicted eye-witnesses, benefit of doubt. *State of UP v Dharamraj*, AIR 2003 SC 1589 [LNIND 2003 SC 206] , witnesses spoke of different instruments of murder, FIR ante-timed, acquittal. *Moti v State of UP*, AIR 2003 SC 1897 [LNIND 2003 SC 302] , time of occurrence of murder, *post-mortem* report as to state of food in the stomach contradicted by the statements of family members as to time of food intake, time of killing became uncertain and resulted in acquittal. *State of MP v Mishrilal*, 2003 Cr LJ 2312 (SC), the prosecution suppressed the true genesis of the incident, in fact the prosecution party were the aggressors, they did not explain anything about injuries received by three accused persons, one of whom was seriously injured, every detail of the prosecution case was found to be doubtful. Acquittal of accused persons. *Khima Vikamshi v State of Gujarat*, 2003 Cr LJ 2025 (SC), allegation that the accused killed the deceased in the presence of his pardanashin daughter in law, which was itself a doubtful fact and her statements were also not reliable, there were no blood stains on her clothes, acquittal. *Sadhu Ram v State of Rajasthan*, 2003 Cr LJ 2331 (SC), death of woman alongwith her eight-month-old daughter, two versions possible, accidental burning or intentionally set on fire, witness not clear, no reliance on such witness, acquittal. *State of UP v Bhagwani*, 2003 Cr LJ 2337 (SC), blood-stained earth not collected, independent witnesses not called, doubt about place of happening, acquittal.

Appeal against acquittal.—Acquittal on the charge of murder of child because of denial of inheritance, conviction by High Court, upheld by Supreme Court; *Swami Prasad v State of MP*, (2007) 13 SCC 25 [LNIND 2007 SC 293] ; *Shaik China Brahmam v State of AP*, (2007) 14 SCC 457 [LNIND 2007 SC 1388] : AIR 2008 SC 610 [LNIND 2007 SC 1388] , acquittal by the trial court **reversed** by the High Court, conviction by High Court upheld by Supreme Court; *Malleshappa v State of Karnataka*, (2007) 13 SCC 399 [LNIND 2007 SC 1112] : AIR 2008 SC 69 [LNIND 2007 SC 1112] , conviction found to be unsustainable in the circumstances of the case; *Sunny Kapoor v State (UT of Chandigarh)*, 2006 Cr LJ 2920 (SC), circumstantial evidence with glaring discrepancies, conviction not upheld.

Convictions.—*State of Punjab v Jugraj Singh*, AIR 2002 SC 1083 [LNIND 2002 SC 118] , acquittal set aside, minor irregularities in evidence not to be over weighed. *Prakash Dhawal Khairnar v State of Maharashtra*, AIR 2002 SC 340 [LNIND 2001 SC 2841] , the accused wiped out his brother with family in order to prevent partition, the confessional statement of his son who had

seen multiple murders, alongwith other circumstances, established guilt, conviction. *Rama Mangaruji Chacherkar v State of Maharashtra*, AIR 2002 SC 283 [LNIND 2001 SC 2771] , dispute between brothers over distribution of agricultural produce, death of the brother caused by hurling a hand grenade at him. The wife of the deceased testified that she did not see throwing of bomb but her evidence showed that she had seen the whole incident. Conviction not interfered with. *Brij Lal v State of Haryana*, (2002) SC 291 : 2002 Cr LJ 581 , minor difference in the eye-witness version and medical evidence as to in which part of the head the bullet struck, conviction maintained. *Meharban Singh v State of MP*, AIR 2002 MP 299 : 2002 Cr LJ 586 (SC) villagers taking injured in bullock cart to hospital, death on the way, the injured person before his death told them about his assailant, reliable, conviction, no interference. *Majid v State of Haryana*, AIR 2002 SC 382 [LNIND 2001 SC 2827] , minor son of the deceased found to be natural and reliable witness, conviction upheld. *Sewaka v State of MP*, AIR 2002 MP 50 : 2002 Cr LJ 205 , murder of husband, wife grappled with killers but they escaped, moonlight identification, conviction maintained. *Majju v State of MP*, AIR 2001 SC 2930 [LNIND 2001 SC 2409] : 2001 Cr LJ 4762 , eye-witness account of the way in which the accused gave *farsa* (axe) blows to the deceased found to be wholly trustworthy, *post-mortem* report that there were no incised wounds was not allowed to overthrow the genuine eye-witness account. Conviction maintained. *Harisingh M Vasava v State of Gujarat*, 2002 Cr LJ 1771 (SC), another case of conviction because of good evidence. *Rajesh v State of Gujarat*, 2002 Cr LJ 1821 (SC), conviction on the strength of technical evidence finger prints expert. *Ram Kumar Laharia v State of MP*, AIR 2001 SC 556 [LNIND 2001 SC 76] : 2001 Cr LJ 712 , 11-year-old boy put into touch with live electric wire and then threw into water alongwith the wire, conviction for murder. *Sambasivan v State of Kerala*, AIR 1998 SC 2107 [LNIND 1998 SC 556] : 1998 Cr LJ 2924 , rival trade unionists, one of them threw bombs on the members of the other, evidence of the members of the victim union acceptable, conviction. *Umesh Singh v State of Bihar*, AIR 2000 SC 2111 [LNIND 2000 SC 871] : 2000 Cr LJ 6167 , the accused tried to take away paddy from the thrashing floor. On resistance, came out with lathi blows and gun shots, killing one person, convicted for murder. *Swaran Singh v State of Punjab*, AIR 2000 SC 2017 [LNIND 2000 SC 734] : 2000 Cr LJ 2780 , enmity between the accused and deceased, eye-witnesses, conviction. *Paramjit v State of Haryana*, AIR 2000 SC 2038 [LNIND 2000 SC 878] : 2000 Cr LJ 2966 , both the accused and deceased were armed with double barrel guns, yet it could not be said that the accused was acting in self-defence, conviction. *Manjeet Singh v State (NCT) of Delhi*, AIR 2000 SC 1062 [LNIND 2000 SC 305] : 2000 Cr LJ 1439 , murder, natural family witnesses, conviction. *SN Dube v NB Bhoir*, AIR 2000 SC 776 [LNIND 2000 SC 73] : 2000 Cr LJ 830 , conviction under section 300 read with sections 120 and 149, eye-witnesses reliable. *State of Karnataka v R Yarappa Reddy*, AIR 2000 SC 185 [LNIND 1999 SC 894] : 2000 Cr LJ 400 , conviction because of clear evidence. In reference to the evidence of eye-witnesses, the court said that criminal courts should not expect set reaction from eye-witnesses who see an incident like murder. *State of Maharashtra v Manohar*, AIR 1998 SC 166 : 1998 Cr LJ 335 , re-appreciation of evidence, acquittal of the accused by the High Court set-aside. *Surendra Narain v State of UP*, AIR 1998 SC 192 [LNIND 1997 SC 1689] : 1998 Cr LJ 359 (SC), a person shot to death while on rickshaw, co-sitter on the rickshaw, witness, reliable, conviction, rickshaw puller not examined, not material, evidence has to be weighed, not counted. Proof of motive is not necessary when the accused being guilty is amply proved by evidence. Another ruling to the same effect, *State of UP v Nahar Singh*, AIR 1998 SC 1328 [LNIND 1998 SC 215] : 1998 Cr LJ 2006 , motive proved in reference to the main accused, also identification evidence and dying declaration, convicted, others acquitted. *Jinnat Mia v State of Assam*, AIR 1998 SC 533 [LNIND 1997 SC 1618] : 1998 Cr LJ 851 , killing a man while in bed, his wife being also injured. Her testimony led to conviction. *Jagdish v State of Haryana*, AIR 1998 Sc 732 : 1998 Cr LJ 1099 , shooting down with gun, conviction, no

interference called for. *Atmendra v State of Karnataka*, AIR 1998 SC 1985 [LNIND 1998 SC 386] : 1998 Cr LJ 2838 , killing by intentional shooting not accidental. *Ram Gopal v State of Rajasthan*, AIR 1998 SC 2598 : 1998 Cr LJ 4066 , death by gunshot injury before home inmates, who being natural witnesses, conviction.

Ram Khilari v State of Rajasthan, AIR 1999 SC 1002 [LNIND 1999 SC 1347] : 1999 Cr LJ 1450 , conviction possible on the basis of a confession. *Bhaskaran v State of Kerala*, AIR 1998 Sc 476 [LNIND 1997 SC 1562] : 1998 Cr LJ 684 , death caused by stabbing, conviction because of reliable witnesses. *Bharat Singh v State of UP*, AIR 1999 SC 717 [LNIND 1998 SC 1112] : 1999 Cr LJ 829 , accused convicted on the evidence of eye-witnesses, it was immaterial that the personal body guards of the deceased were not examined. *Daleep Singh v State of UP*, AIR 1997 SC 2245 : 1997 Cr LJ 2760 , evidence of eye-witnesses supported by FIR and also by medical evidence, conviction proper, *Baitullah v State of UP*, AIR 1997 SC 3946 [LNIND 1997 SC 1322] : 1997 Cr LJ 4644 , outspoken murder, proof of motive not necessary. *State of Gujarat v Anirudhsingh*, AIR 1997 SC 2780 [LNIND 1997 SCDRCHYD 22] : 1997 Cr LJ 3397 , flag-hoisting ceremony, hitting the deceased from behind with unlicenced firearm, conviction for murder, *Kailash v State of UP*, AIR 1997 SC 2835 [LNIND 1997 SC 1686] : 1997 Cr LJ 3511 , conviction for murder of three members of family, reliable witnesses. *Dalip Singh v State of Punjab*, AIR 1997 SC 2985 [LNIND 1997 SC 882] : 1997 Cr LJ 3647 , presence of eye-witnesses, not doubtful, supported by medical evidence, defence version found false, conviction. *Baleshwar Mandal v State of Bihar*, AIR 1997 SC 3471 [LNIND 1997 SC 1067] : 1997 Cr LJ 4084 , conviction because of reliable eye-witnesses, inspite of irregularities by investigating officer. *Nikka Singh v State of Punjab*, AIR 1997 SC 3676 [LNIND 1996 SC 1644] : 1977 Cr LJ 4651 , conviction confirmed, reliable child eye-witness. *Sanjeev Kumar v State of Punjab*, AIR 1997 SC 3717 [LNIND 1997 SC 811] : 1997 Cr LJ 3178 , reliable prosecution witnesses, conviction. *Shabir Mohmad Syed v State of Maharashtra*, AIR 1997 SC 3808 [LNIND 1997 SC 820] : 1997 Cr LJ 4416 , one of the accused persons could not be identified and, therefore, acquitted, others convicted.

Murarilal Jivram Sharma v State of Maharashtra, AIR 1997 SC 1593 : 1997 Cr LJ 782 , death caused with country made pistol, proved by medical, technical and eye-witness account, conviction. *Balbir Singh v State of Rajasthan*, AIR 1997 SC 1704 [LNIND 1997 SC 51] : 1997 Cr LJ 1179 , death caused by inflicting injuries, evidence of approver corroborated by prosecution witnesses, conviction. *Nathuni Yadav v State of Bihar*, AIR 1997 SC 1808 : (1998) 9 SCC 238 , though moonless night, but witnesses identified the assailants because they were known persons, conviction.

Kanta Ramudu v State of AP, AIR 1997 SC 2428 [LNINDORD 1997 SC 122] : 1997 SCC (Cr) 573, causing death by piercing sharp-edged weapon into the heart of the deceased, the accused declaring his intention to do away with him. *Rohtas v State of UP*, AIR 1997 SC 2444 [LNIND 1997 SC 772] : 1997 Cr LJ 2981 , accused persons came with a determination to kill their victims and they did kill them with spears, convicted. *Mithilesh Upadhyay v State of Bihar*, AIR 1997 SC 2457 [LNIND 1997 SC 714] : 1997 SCC (Cr) 716, eye-witness account that each of the three accused fired at their victim and each shot hit him, not to be disregarded for the fact that only bullet wounds were found, one shot could have missed the target, conviction. *Manmohan Singh v State of Punjab*, AIR 1997 Sc 1773 : 1997 Cr LJ 1632 , concurrent finding of guilt by the trial court and High Court. No interference by the Supreme Court. *Bhartu v State of Haryana*, AIR 1997 SC 281 [LNIND 1996 SC 1727] : 1997 Cr LJ 242 , conviction for murder. *Navakoti Veera Raghavalu v State of AP*, AIR 1997 SC 727 [LNIND 1997 SC 61] : 1997 Cr LJ 841 , disabled son killed by father by setting him on fire, clear dying declaration, motive to grab property gifted to him by grandfather.

Raghbir Singh v State of Haryana, AIR 2000 SC 3395 [LNIND 2000 SC 678] : 2000 Cr LJ 2463 , gunshot injury gave risk to complications of intervening discussion, conviction for murder, enhancement of fine from Rs. 2,000 to Rs. 10,000 was set aside because there was no apparent justification for the enhancement. *Geeta v State of Karnataka*, AIR 2000 SC 3475 [LNIND 1999 SC 1091] : 2000 Cr LJ 3187 , killer of a lady guest found guilty of murder and theft of ornaments. *Kothakulava Naga Subba Reddy v Public Prosecutor, AP High Court*, AIR 2000 SC 3480 [LNIND 2000 SC 523] : 2000 Cr LJ 3452 , a relative who had come from another village, testified to the assault on the deceased. His testimony became the basis of conviction. *Lal Ji Singh v State of UP*, AIR 2000 SC 3594 , the accused party indiscriminately fired and assaulted the prosecutor, killing four, dying declaration of woman deceased, relied upon to convict. *Ajay Singh v State of Bihar*, AIR 2000 SC 3538 [LNIND 2000 SC 757] , two motor cycle borne persons shot at the deceased with their respective weapons, testimony of two eye-witnesses which was unimpeachable was relied upon for conviction, irrespective of the fact that one pistol was examined by ballistic expert or that medical evidence was different from the eye-witness account. *Dharmendra Singh v State of Gujarat*, AIR 2002 SC 1937 [LNIND 2002 SC 302] (Supp) : 2002 Cr LJ 2631 (SC), the accused fatally assaulted his two sons after sending his wife away but she returned home and witnessed the incident. Conviction for murder confirmed. *Sukhdev Yadav v State of Bihar*, 2002 Cr LJ 80 (SC), no interference in conviction. *Munna v State of Rajasthan*, 2001 Cr LJ 4127 (Raj), murder by hitting and running over by station wagon. *State of TN v Kutty*, 2001 Cr LJ 4169 (SC), killer of two women for whom he worked, all the details of the incident captured, conviction. *Firozuddin Basheeruddin v State of Kerala*, 2001 Cr LJ 4215 (SC), conspiracy and murder, conviction. *Nelabothu v State of AP*, 2001 Cr LJ 509 , murder by accused proved no interference in conviction. *Gura Singh v State of Rajasthan*, 2001 Cr LJ 487 (SC), the killer of his father, sufficiently connected by evidence, conviction. *State (NCT) of Delhi v Sunil*, 2001 Cr LJ 604 (SC), medical report of death by bruises all over the body, murder, conviction. *Suryanarayana v State of Karnataka*, 2001 Cr LJ 705 (SC), murder witnessed by child, trustworthy, conviction sustained. *Vijay Pal Singh v State (NCT) of Delhi*, 2001 Cr LJ 3294 (SC) murder, eye-witnesses, acquittal not to be set aside. *Gade Lakshmi Mangraju v State of AP*, 2001 Cr LJ 3317 (SC), complete chain of events formed by circumstances, conviction. *Bibhachha v State of Orissa*, 2001 Cr LJ 2895 (SC) : 1998 Cr LJ 1553 (Ori), connection of the accused with murder proved. *Sandeep v State of Haryana*, 2001 Cr LJ 1456 : AIR 2001 SC 1103 [LNIND 2001 SC 552] , recoveries, reports and witnesses showed the accused to be the culprit, conviction.

Pradeep Kumar v State of HP, 2001 Cr LJ 1517 (HP), causing death of the victim woman by throwing kerosene and setting her on fire. *Dhananjaya Reddy v State of Karnataka*, 2001 Cr LJ 1712 (SC), killing husband with the help of paramour, wife given benefit of doubt, paramour convicted. *Munshi Prasad v State of Bihar*, 2001 Cr LJ 4708 (SC), the fact of 400 to 500 yards away from the place of occurrence, not a good *alibi*. One could come back after causing death. *Manish Dixit v State of Rajasthan*, 2001 Cr LJ 133 (SC), conviction for abduction and murder of a jeweler. *Surendra Singh Rautela v State of Bihar*, 2002 Cr LJ 555 (SC), firing at inmates of a car, one killed, another injured, identification of the assailants by the injured person could not be discussed only because still another inmate in the car did not support the prosecution case. *Rama Mangaruji v State of Maharashtra*, 2002 Cr LJ 573 (SC), accused threw crude bomb on his brother, murder, and not coming under section 304.

State of UP v Babu Ram, 2000 Cr LJ 2457 : AIR 2000 SC 1735 [LNIND 2000 SC 647] , the accused caused death of his father, mother and brother, bodies etc. recovered at his instance, not entitled to acquittal. *Bahadur Naik v State of Bihar*, 2000 Cr LJ 2466 : AIR 2000 SC 1582 [LNIND 2000 SC 884] , meditation can develop on the spot. Two accused caught hold of their victim,

another accused inflicted five to six dagger blows, conviction was not converted from murder to culpable homicide.

Ammini v State of Kerala, 1998 Cr LJ 481 (SC), killing a woman and her two children by administering potassium cyanide, conviction. *Darshan v State of Haryana*, AIR 2002 SC 2344 , murderous assault, plea of self-defence found to be false, conviction. *Koli Lakhmanbhai Chanabhai v State of Gujarat*, 2000 Cr LJ 408 : AIR 2000 SC 210 [LNIND 1999 SC 1023] , injuries caused to death, conviction. *Jagdish v State of MP*, 2000 Cr LJ 2955 : AIR 2000 SC 2059 [LNIND 2000 SC 842] , injuries inflicted with intention to cause death, conviction. *Paramjit Singh v State of Haryana*, 2000 Cr LJ 2966 : AIR 2000 Sc 2038 [LNIND 2000 SC 878] , murder with gun shots proved, conviction. *State of WB v Mir Mohd Omar*, 2000 Cr LJ 4047 : AIR 2000 SC 2988 [LNIND 2000 SC 1163] , the victim abducted and killed, conviction for murder. The court said that when abductors are not able to explain anything about the victim, the court could presume that he must have been killed. *Md Mohiruddin v State of Punjab*, 1999 Cr LJ 461 : AIR 1999 Sc 307 [LNIND 1998 SC 645] , incriminatory circumstances proved guilt of accused, rightly convicted. *Amrik Singh v State of Punjab*, 1999 Cr LJ 463 : 1998 SCC (Cr) 944, conviction for murder. *State of Rajasthan v Major Singh*, 1999 Cr LJ 1631 : AIR 1999 SC 1073 [LNIND 1999 SC 168] , conviction for deliberate murder by several persons. *Nirmal Singh v State of Haryana*, 1999 Cr LJ 1836 : AIR 1999 SC 1221 [LNIND 1999 SC 1228] , earlier rape convict, killed five members of the family of victim, conviction for murder, proper. *Siddique v State of UP*, 1999 Cr LJ 2521 : AIR 1999 SC 1690 [LNIND 1999 SC 416] , no interference in conviction of accused because of proper evidence. *Ram Singh v State of UP*, 1999 Cr LJ 2581 : AIR 1999 Sc 1754 [LNIND 1999 SC 1260] , shooting down the victim, conviction despite conflict between ocular and medical evidence. *State of Rajasthan v Teja Ram*, 1999 Cr LJ 2588 : AIR 1999 SC 1776 [LNIND 1999 SC 279] , blows to death caused with axes, which were recovered at the instance of the accused, other evidence, conviction. *Surjit Singh v State of Punjab*, 1999 Cr LJ 3485 : AIR 1999 SC 2855 [LNIND 1999 SC 499] , murder by accused proved, conviction. *State of UP v Hem Raj*, 1999 Cr LJ 3489 : AIR 1999 Sc 2147 [LNIND 1999 SC 1254] , assault by three, eye-witnesses deposed fatal blow only by accused, convicted, rest acquitted. *State of TN v Rajendran*, 1999 Cr LJ 4552 : AIR 1999 SC 3535 [LNIND 1999 SC 857] , burnt two children and their mother alive by putting their hut on fire, conviction. *Ramesh Laxman Gavli v State of MP*, 1999 Cr LJ 4603 : AIR 1999 Sc 3759 [LNIND 1999 SC 825] , conviction not interfered with as the incident was witnessed by reliable persons. *Ramanbhai Naranbhai v State of Gujarat*, 1999 Cr LJ 5013 : (2000) 1 SCC 358 [LNIND 1999 SC 1067] , killing by unlawful assembly, conviction. *Rachpal Singh v State of Punjab*, AIR 2002 Sc 2710 [LNIND 2002 SC 451] : 2000 Cr LJ 2710 , conviction, medical as well as ocular evidence. *Rakesh v State of UP*, AIR 2002 Sc 2721 [LNIND 2002 SC 442] : 2002 Cr LJ 3551 , conviction, findings of Sessions Judge were described as clearly perverse and unreasonable. *Podapati v State of AP*, AIR 2002 SC 2724 [LNIND 2002 SC 869] : 2002 Cr LJ 3555 , killed one's uncle, witnessed by four persons, conviction. *Gajula v State of AP*, 2002 Cr LJ 3565 (SC), faction fights among villagers, murders, conviction.

Bhupendra Singh v State of Gujarat, 1998 Cr LJ 57 : AIR 1997 SC 3790 [LNIND 1997 SC 1378] , police constable shooting down head constable, defence of accident not allowed, conviction. For details, see discussion under section 80. *Harcharan Singh v State of Rajasthan*, 1998 Cr LJ 398 : AIR 1998 SC 244 [LNIND 1997 SC 1350] , murder of bus-conductor, witness a bus passenger, his testimony not distrusted for the fact that he named a wrong commodity than that which he had gone to buy. *Saudagar Singh v State of Haryana*, 1998 Cr LJ 62 : AIR 1998 SC 28 [LNIND 1997 SC 890] , a witness about it was proved that he was won over by the accused, no adverse presumption was drawn against the prosecution. Conviction of the accused who fired

the shot, others acquitted. *Pakkirisamy v State of TN*, 1998 Cr LJ 89 : AIR 1998 SC 107 [LNIND 1997 SC 1291] , said person caused death and took away jewellery and other items, confessions, conviction. *Malkhan v State of UP*, 1998 Cr LJ 96 (All), gun-shot injury leading to peritonitis, which became cause of death, the liability of the accused not lessened by reason of intervention of deceased. *Ratnakar Dandasena v State of Orissa*, 1998 Cr LJ 295 (Ori), misunderstanding over partition of land, hitting with axe causing death of victim, conviction.

Charan Singh v State of Punjab, 1998 Cr LJ 657 (SC); *Lakha Singh v State of Punjab*, 1998 Cr LJ 657 (SC), death caused by gandasa blows, both accused rightly convicted. *Bhaskaran v State of Kerala*, 1998 Cr LJ 684 : AIR 1998 SC 476 [LNIND 1997 SC 1562] , death by stabbing, reliable eye-witnesses, conviction. *Subhash Bassi v State*, 1998 Cr LJ 719 (Del), single witness reliable, conviction. *Vasant v State of Maharashtra*, 1998 Cr LJ 844 : AIR 1998 SC 699 [LNIND 1997 SC 1599] , running over by jeep, conviction for murder. *Elkur Jameesu v State of AP*, 1998 Cr LJ 846 : AIR 1998 SC 1492 [LNIND 1997 SC 1513] , entry into house and stabbing a person there who died. His son and wife saw the intruder running away, being told by the injured that the person seen running away injured him. Conviction. *Jagdish v State of Haryana*, 1998 Cr LJ 1099 : AIR 1998 SC 732 , murder, accused connected with it by eye-witnesses and medical evidence, conviction not interfered with. *Bhola Turha v State of Bihar*, 1998 Cr LJ 1102 : AIR 1998 SC 1515 [LNIND 1997 SC 1500] , conviction only on the basis of dying declaration, held proper. *Kamlesh Rani v State of Haryana*, 1998 Cr LJ 1251 : AIR 1998 SC 1534 [LNIND 1997 SC 1645] , conviction on the basis of dying declaration of deceased wife. *Rajendra Mahton v State of Bihar*, 1998 Cr LJ 1254 : AIR 1998 SC 1546 [LNIND 1997 SC 1589] , shopkeeper killed at his shop, killers identified by home people, conviction. *Mahipal v State of Rajasthan*, 1998 Cr LJ 1257 : AIR 1998 SC 864 [LNIND 1998 SC 25] , recovery of instrument of murder at the instance of the accused, conviction. *Vinayak Shivajirao Pol v State of Maharashtra*, 1998 Cr LJ 1558 : AIR 1998 SC 1096 [LNIND 1998 SC 96] , extra-judicial confession, recoveries also at the instance of the accused, conviction. *George v State of Kerala*, 1998 Cr LJ 2034 : AIR 1988 1376, main accused convicted, others not identified acquitted. *Dharmendra Singh v State of UP*, 1998 Cr LJ 2064 (SC), conviction for multiple murders. *Mukut Singh v State*, 1998 Cr LJ 2084 (All), murder, two eye-witnesses naturally at the spot, conviction. *Sankara Nagarmalleswara v State of AP*, 1998 Cr LJ 2270 (SC), dying declaration, eye-witnesses to murder reliable, conviction; *GS Walia v State of Punjab*, 1998 Cr LJ 2524 (SC), murder with axes and lathi blows, conviction. *Rewa Ram v Teja*, 1998 Cr LJ 2558 : AIR 1998 SC 2883 [LNIND 1998 SC 283] , accused persons assaulted deceased with a variety of weapons. Accused suffered about 8-10 injuries, whereas the deceased suffered 51 injuries. No evidence to show who caused final fatal injury. Conviction under section 326. *Nachhattar Singh v State of Punjab*, 1998 Cr LJ 2560 : AIR 1998 SC 2884 [LNIND 1998 SC 282] , intentional killing of a woman in her house, conviction. *Velan Kutty v State of Kerala*, 1998 Cr LJ : AIR 1998 SC 2888 [LNIND 1998 SC 250] , assault on victim with chopper, conviction. *State of Rajasthan v Satyanaranyan*, 1998 Cr LJ 2911 : AIR 1998 SC 2060 [LNIND 1998 SC 88] , murderous attack, brother of the victim intervened, attack fell on him, death, conviction under section 304, Part I. *Govindsami v State of TN*, 1998 Cr LJ 2913 : AIR 1998 SC 2889 [LNIND 1998 SC 471] , boundary dispute, five murders, recoveries, conviction. *Sambasivan v State of Kerala*, 1998 Cr LJ 2924 : AIR 1998 SC 2017 , trade union rivalry, bombs thrown on rival union members while they were relaxing, conviction. *Rajendra Kumar v State of UP*, 1998 Cr LJ 1293 (SC), no adverse inference against prosecution for failure to examine another witness.

Gajjan Singh v State of Punjab, 1998 Cr LJ 3609 : AIR 1998 SC 2417 [LNIND 1998 SC 508] , two accused, both fired, one fire hitting head, the other chest, conviction of both for murder. *Brijlala Pd Sinha v State of Bihar*, 1998 Cr LJ 3611 : AIR 1998 SC 2443 [LNIND 1998 SC 598] , police

party firing at a running car, killing inmates, their defence of counter-fire failed because there were no marks on their vehicle, conviction. Death sentence reduced to life imprisonment because no aggravating circumstances were shown than the mere fact that they were police people. *State of HP v Manohar Singh Thakur*, 1998 Cr LJ 3630 : AIR 1998 SC 2941 [LNIND 1998 SC 660] , killing for greed, wife witness, conviction. *National Commission for Women v State of UP*, 1998 Cr LJ 4044 : AIR 1998 SC 2726 [LNIND 1998 SC 776] , deaths in a hostility between two neighbouring families, conviction. *Adya Singh v State of Bihar*, 1998 Cr LJ 4052 : AIR 1998 SC 3011 [LNIND 1998 SC 667] , evidence of eye-witnesses accepted, it seemed that the doctor was trying to help the accused-compounder. *Dule v State of MP*, 1998 Cr LJ 4073 : AIR 1998 SC 2756 [LNIND 1998 SC 839] , assault on head with sword, conviction for murder. *Jangeer Singh v State of Rajasthan*, 1998 Cr LJ 4087 : AIR 1998 SC 2787 [LNIND 1999 PNH 698] , intentional murder, conviction. *Uday Kumar v State of Karnataka*, 1998 Cr LJ 4622 : AIR 1998 SC 3317 [LNIND 1998 SC 908] , murder of child of four years, complete chain of circumstances, conviction. *Kommu Vinja Rao v State of AP*, 1998 Cr LJ 2523 : AIR 1998 SC 2856 [LNIND 1998 SC 385] , conviction for murder. *Bhagirath v State of Haryana*, AIR 1997 SC 234 [LNIND 1996 SC 1769] : 1997 Cr LJ 81 , statement taken by head constable for filing report, the woman died, the statement regarded as a dying declaration. *Meharban Singh v State of MP*, AIR 1997 SC 1538 : 1997 Cr LJ 766 , dying declaration, recoveries, conviction. *Krishan v State of Haryana*, AIR 1997 SC 2598 [LNIND 1997 SC 770] : 1997 Cr LJ 3180 , killing jail inmate, conviction. *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3508 , eye-witnesses friends of the victim, could not be discredited for that reason alone. They gave details of the assault and the part played by each of the assailants. *Shyam v State*, 1997 Cr LJ 35 (Del), murder by poisoning, possession of poison need not be proved in all cases. The accused was seen by witnesses administering poison, inference could be drawn that he was in possession of poison. *Ramkishore Patel v State of MP*, 1997 Cr LJ 207 (SC) : 1996 AIR SCW 3939, conviction upheld. *Godaharish Mishra v Kuntalal Mishra*, AIR 1997 SC 286 [LNIND 1996 SC 1719] : 1997 Cr LJ 246 , circumstantial evidence was absolutely clinching in establishing complicity of the accused in murder. Acquittal set aside. *Suba Singh v Harbhej Singh*, 1997 Cr LJ 727 : AIR 1997 SC 1487 [LNIND 1996 SC 1929] , accused formed unlawful assembly and assaulted the victim, the latter's relatives and other eye-witnesses did not intervene to protect him. It could not be a ground for acquittal. Finding of the High Court that because of the dark the accused could not have been identified was held to be totally imaginary. *Naresh Mohanlal Jaiswal v State of Maharashtra*, 1997 Cr LJ 761 : AIR 1997 SC 1523 [LNIND 1996 SC 1658] , witnesses did not disclose for fear, the courts below found that there was sufficient light from the lamp post. *State of AP v Gangula Satya Murthy*, AIR 1997 SC 1588 [LNIND 1996 SC 2665] : 1997 Cr LJ 774 , finding of dead body, showing homicidal death, on a cot in the accused's house. In the absence of any explanation by the accused, an adverse presumption was drawn against him.

Mavila Thamban Nambiar v State of Kerala, AIR 1997 SC 687 [LNIND 1997 SC 24] : 1997 Cr LJ 831 , conviction. *Prem v Daula*, AIR 1997 SC 715 [LNIND 1997 SC 64] : 1997 Cr LJ 838 , conviction for murder, two accused held the victim, the third struck him dead. *Lalit Kumar v State*, 1997 Cr LJ 848 (Del), prosecution evidence consistently and conclusively established guilt of the accused. *Nagoor Naifa v State of TN*, 1997 Cr LJ 880 (Mad), sub-tenant set the landlord family on fire in their room, because they had locked his room, conviction. *Rataniya Bhima Bhil v State of Gujarat*, 1997 Cr LJ 891 (Guj), murder, conviction. *Rabloo Das v State of WB*, 1997 Cr LJ 1025 (Cal), conviction for intentional murder. *Sukhadeo v State of Maharashtra*, 1997 Cr LJ 1059 (Bom), prosecution not bound to explain injuries of minor nature on the person of the accused. Conviction proper. *Pyara v State of Rajasthan*, 1997 Cr LJ 1065 (Raj), intentional murder, conviction sustained though recoveries of incriminating articles not proved. *Sunil Kumar v State*

of Rajasthan, 1997 Cr LJ 1081 (Raj), conviction for intentional murder properly proved. *State of UP v Dan Singh*, 1997 Cr LJ 1150 : AIR 1997 SC 1654 [LNIND 1997 SC 162] , murder of marriage party of Scheduled Caste, for details see discussion under section 149. *Teja Singh v State Punjab*, AIR 1997 SC 921 : 1997 Cr LJ 1175 , conviction, multiple injuries, theory of accident ruled out. *Yashin v State of Rajasthan*, AIR 1997 SC 869 [LNIND 1997 SC 68] : 1997 Cr LJ 1179 , intentional murder, properly proved. *D Venkatasan v State of TN*, 1997 Cr LJ 1287 (Mad), conviction for murder. *Subramaniam v State of TN*, 1997 Cr LJ 1359 (Mad), conviction for murder of wife. *Shanker v State of Rajasthan*, 1997 Cr LJ 1388 (Raj), murder with gunshot, conviction, non-recovery of empty cartridge not material. *Jiya Ram v State of Rajasthan*, 1997 Cr LJ 1423 (Raj), connection of accused with murder established. *State of Rajasthan v Ali (Hanif)*, 1997 Cr LJ 1529 : AIR 1997 SC 1023 [LNIND 1997 SC 35] , accused persons, variously armed, killed two and attempted to kill another, conviction proper, two acquitted because eye-witnesses did not say anything against them. *Narain Singh v State of Rajasthan*, 1997 Cr LJ 1562 (Raj), main accused persons convicted, others acquitted. *Baijnath v State of UP*, 1997 Cr LJ 1691 (All), conviction on the basis of dying declaration. *Baijnath v State of UP*, 1997 Cr LJ 1691 (All), non-explanation of injury on deceased, not fatal. *Satnamsingh v State of Rajasthan*, 1997 Cr LJ 1778 (Raj), killing by crushing under wheels of truck, conviction. *Mouruddin Choudhury v State of Assam*, 1997 Cr LJ 1801 (Gau), conviction for intentional murder, *Laxman v State of Karnataka*, 1997 Cr LJ 1806 (Kant), conviction, not mentioning to accused the statement under section 313, Cr PC, 1973 while recording his statement, not material because no prejudice caused. *Gobind Singh v State of Rajasthan*, 1997 Cr LJ 1825 (Raj), main accused convicted, co-accused acquitted. *Balachandra v State of Karnataka*, 1997 Cr LJ 1883 (Kant), murder of husband witnessed by wife, sole witness, conviction. *Som Nath v State*, 1997 Cr LJ 1897 (P&H), murder by accused proved beyond doubt, in view of clear evidence of time of incident, medical evidence of *rigor mortis*, not considered for determining time. *State of Haryana v Mewa Singh*, 1997 Cr LJ 1906 : AIR 1997 SC 1407 , murder in protest against love affair, injuries on persons of accused could be self-inflicted, no right of private defence. *Gayadhar Naik v State of Orissa*, 1997 Cr LJ (Ori) two-three blows on head, both were in a drunken state, no undue advantage, no cruel manner, conviction altered to section 304. *Pandappa Hanumappa Hanamar v State of Karnataka*, AIR 1997 SC 3663 [LNIND 1997 SC 363] : 1997 Cr LJ 2493 , ghastly murder, order of acquittal set aside, eye-witnesses, minor discrepancies not damaging their testimony, injuries on person of accused, superficial. *Jit Singh v State of Punjab*, AIR 1997 SC 3676 [LNIND 1996 SC 1644] : 1997 Cr LJ 2500 , evidence of child witness, conviction.

Amit v State of UP, (2012) 4 SCC 107 [LNIND 2012 SC 138] : AIR 2012 SC 1433 [LNIND 2012 SC 138] and *State of UP v Iqram,* AIR 2011 SC 2296 [LNIND 2011 SC 556] : 2011 8 SCC 80 [LNIND 2011 SC 556] : 2011 Cr LJ 3931 , Non-recovery of weapon insignificant. *Katta Kumudu v State of AP*, AIR 1997 SC 2428 [LNINDORD 1997 SC 122] : 1997 Cr LJ 2979 , soon before the incident, the accused uttered words saying what he would do with him (the deceased). The court said that intention to kill him could be inferred from these words. *Dwarkanath Tiwary v State of Bihar*, AIR 1997 SC 2457 [LNIND 1997 SC 714] : 1997 Cr LJ 2983 , each of the accused persons fired at deceased in quick succession and hit, conviction of all though medical evidence was of only two bullet injuries. *State of UP v Abdul*, AIR 1997 SC 2512 [LNIND 1997 SC 790] : 1997 Cr LJ 2997 (SC), High Court erred in ordering acquittal, set aside. *Razakali Khureshi v State of Gujarat*, AIR 1999 SC 2538 : 1997 Cr LJ 3119 , conviction did not suffer from any infirmity. *Pratapaneni Ravi Kumar v State of AP*, AIR 1997 SC 2810 [LNIND 1997 SC 892] : 1997 Cr LJ 3505 , murder caused in furtherance of common object, all members guilty, it being immaterial whether all of them had beaten the deceased. *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3508 , three motor-cycle borne accused persons, two of them threw acid on

victim, and caused injuries, their conviction proper. *Mangat Rai v State of Punjab*, AIR 1997 SC 2838 : 1997 Cr LJ 3514 , murder of wife, conviction. *Madru Singh v State of MP*, 1997 Cr LJ 4398 : AIR 1997 SC 3527 [LNIND 1997 SC 1182] , presence and evidence of eye-witnesses could not be doubted on the basis of some trivial contradictions. *State of Punjab v Jaswant Singh*, 1997 Cr LJ 4428 : AIR 1997 SC 3821 [LNIND 1997 SC 1200] , private defence not available because simple injuries on the person of the accused found to be self-inflicted, conviction under section 302. *Rukma v Jala*, AIR 1997 SC 3907 [LNIND 1997 SC 1069] : 1997 Cr LJ 4651 , complaint about investigation not sustained, the complainant party suffering greater number of injuries than the accused could not be entitled to private defence. *Baimullah v State of UP*, 1997 Cr LJ 4644 : AIR 1997 SC 3946 [LNIND 1997 SC 1322] , injury caused on vital part of body of an unarmed person, plea of private defence negatived. *Gopal Madadeo v State of Maharashtra*, 1997 Cr LJ 2425 (Bom), the fact that the accused was of 76 years of age was no reason for his not serving his term of life imprisonment when he was squarely guilty of the offence. *Amar Malla v State of Tripura*, AIR 2002 SC 3052 [LNIND 2002 SC 517] , armed attack at a meeting by accused persons who were also invited to attend, killings, conviction, non-explanation of injuries on accused persons cannot by itself be a ground for throwing out the prosecution case. *Mohibur Rahman v State of Assam*, AIR 2002 SC 3064 , accused last seen in the company of deceased, he gave false explanations about the whereabouts of the deceased, dead body cut into pieces recovered from different places pointed out by the accused. Conviction of the accused was not interfered with. *Mahadeo Sahni v State of Bihar*, AIR 2002 SC 3032 [LNIND 2002 SC 492] , injuries caused to deceased by sharp-edged and blunt weapons, concurrent finding that the accused persons inflicted injuries in prosecution of their common object of doing away with the lives of the deceased persons. Conviction under section 302 not interfered with.

Lakshmi v State of UP, AIR 2002 SC 3119 [LNIND 2002 SC 534] , a charge of murder can be substantiated even in the absence of identification and cause of death. *Bodh Raj v State of J&K*, AIR 2002 SC 3164 [LNIND 2002 SC 539] , conviction for murder, elimination of creditor by person indebted. *Sahadevan v State*, AIR 2003 SC 215 [LNIND 2002 SC 688] : 2003 Cr LJ 424 , conviction for murder under sections 300, 346, 302 read with section 34. *Alamgir v State (NCT, Delhi)*, AIR 2003 SC 282 [LNIND 2002 SC 693] : 2003 Cr LJ 456 , staying with wife in guest house and causing her death, circumstantial evidence been proved the case, conviction. *P Venkateswarlu v State of AP*, 2003 Cr LJ 837 : AIR 2003 SC 574 [LNIND 2002 SC 782] , whole village divided on political lines. Death caused by one faction of a person belonging to the other, conviction because of good evidence. *State of UP v Jagdeo*, AIR 2003 SC 660 [LNIND 2002 SC 781] : 2003 Cr LJ 844 , ghastly crime, all the eight accused persons, armed with deadly weapons, attacked unarmed members of the victim's family sleeping in the open at night. The accused could not be acquitted only because the investigation was faulty. *Suraj Bhan v State of Haryana*, AIR 2003 SC 785 [LNIND 2002 SC 826] , the evidence of the injured eye-witness that the accused administered total blow on head of his victim, it was corroborated by medical evidence, the finding of the High Court that the accused was responsible for the death was held to be proper. *State of Karnataka v Panchakshari Gurupadayya Hiranath*, AIR 2003 SC 825 [LNIND 2002 SC 856] , land dispute leading to attack on deceased with a murderous weapon established by evidence. Conviction. *State of UP v Man Singh*, 2003 Cr LJ 82 , reversal of conviction held improper, good evidence was there. *Amarsingh v Balwinder Singh*, 2003 Cr LJ 1282 (SC), conviction for murder was based upon direct testimony of eye-witnesses under the finding of the trial court that the prosecution case was fully established, the Supreme Court held that acquittal by the High Court by reversing conviction was not proper. *State of UP v Premi*, 2003 Cr LJ 1554 : AIR 2003 SC 1750 [LNIND 2003 SC 232] , the accused persons entered the house of the deceased at midnight armed with country made pistol, inflicted injury on the head

with great force and caused death. The court said that the mere fact that only one injury was caused was not enough to alter the conviction from section 302 to section 304. *Gaya Yadav v State of Bihar*, 2003 Cr LJ 1564 : AIR 2003 SC 1759 [LNIND 2003 SC 215] , proper evidence for conviction. *Kanaksingh v State of Gujarat*, 2003 Cr LJ 855 (SC), killing of wife, conviction.

Ajitsingh Andubha Parmal v State of Gujarat, AIR 2002 SC 3469 [LNIND 2002 SC 609] , there was specific and clear evidence that the accused gave the first two knife blows and further serious injuries by chasing him. Concurrent finding of fact as to guilt, no interference. *Mohar v State of UP*, AIR 2003 SC 3279 , conviction because of eye-witnesses. *State of Karnataka v David Razario*, AIR 2002 SC 3272 [LNIND 2002 SC 583] , conviction for robbery and murder. *Shyam Sunder v State of Chhatisgarh*, AIR 2002 SC 3292 [LNIND 2002 SC 1866] , conviction for murder, eye-witnesses. *Dana Yadav v State of Bihar*, AIR 2002 SC 3325 [LNIND 2002 SC 574] , conviction on the basis of eye-witnesses. *Gyasiram v State of MP*, AIR 2003 SC 2097 [LNIND 2003 SC 1] , the accused party waited for their victim, fired at him, killing witnessed, eye-witnesses reliable, conviction. *State of UP v Ram Sewak*, AIR 2003 SC 2141 [LNIND 2002 SC 828] , properly witnessed case, acquittal was held to be not proper. *Rambai v State of Chhatisgarh*, AIR 2002 SC 3492 [LNIND 2002 SC 635] , conviction on the basis of dying declaration. *Shamsher Singh v State of Haryana*, AIR 2002 SC 3480 [LNIND 2002 SC 605] , eye-witnesses, recoveries of weapons, etc, conviction. *Swaran Singh v State of Punjab*, AIR 2002 SC 3652 [LNIND 2002 SC 639] , credit of eye-witnesses could not be shaken, conviction. *G Laxmanna v State of AP*, AIR 2002 SC 3685 , relative witnesses, outstanding enmity, conviction. *Thaman Kumar v State, UT of Chandigarh*, 2003 Cr LJ 3070 (SC), murder charge proved by direct evidence, not allowed to be shaken by hypothetical medical evidence. *State of UP v Rasid*, 2003 Cr LJ 2011 (SC), time of killing, if it were after day-break, identification of the assailants was possible, this was the stand of the eye-witnesses, but the High Court went by the medical evidence of presence of semi-digested food in the stomach of the deceased which showed that the occurrence must belong to the night. The Supreme Court said that medical evidence was not clear and, therefore, the eye-witness account had to be preferred. *Rajendra Prabhu Chikane v State of Maharashtra*, (2007) 13 SCC 511 [LNIND 2007 SC 515] : 2007 Cr LJ 3410 , murder by accused proved beyond reasonable doubt, conviction upheld. *MA Sattar v State of AP*, (2008) 11 SCC 201 [LNIND 2008 SC 754] , clear proof of murder by accused. *Umar Md v State of Rajasthan*, (2007) 14 SCC 711 [LNIND 2007 SC 1459] : 2008 Cr LJ 816 .

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

39. *Arjun v State of Rajasthan*, (1995) 1 Cr LJ 410 : AIR 1994 SC 2507 [LNIND 1994 SC 604] , concurrent finding of courts below as to intentional murder, not interfered with in appeal. *Ram Kumar v State of Haryana*, 1995 Supp (1) SCC 248 : 1994 Cr LJ 3836 (SC), conviction on the evidence of injured eye-witness. Sarbir *Singh v State of Punjab*, 1993 AIR SCW 807 : 1993 Cr LJ 1395 (SC), circumstantial evidence, conviction; *Surjit Singh v State of Punjab*, AIR 1992 SC 1389 [LNIND 1992 SC 361] : 1992 Cr LJ 1952 ; *Lakhwinder Singh v State of Punjab*, AIR 1993 SC 87 : 1992 Cr LJ 3958 , testimony of eye-witnesses convincing, conviction upheld. Other such cases are: *Prakash v State of MP*, AIR 1993 SC 70 : 1992 Cr LJ 3703 (SC); *Mafabhai N Raval v State of Gujarat*, AIR 1992 SC 2186 [LNIND 1992 SC 509] : 1992 Cr LJ 3710 and *Bir Singh v State of Haryana*, AIR 1992 SC 2211 : 1992 Cr LJ 3845 : 1993 Supp (1) SCC 334 ; *Ram Kumar v State of UP*, AIR 1992 SC 1602 : 1992 Cr LJ 2421 , acquittal set aside because circumstantial evidence reliable. *Baboo v State of MP*, AIR 1994 SC 1712 : 1994 Cr LJ 2249 , several persons attacked and killed a man in the presence of his wife, whose evidence found support in the testimony of other witnesses, conviction upheld though no FIR lodged. *Ch Madhusudana Reddy v State of AP*, 1994 Cr LJ 2203 : AIR 1994 SCW 1453 , only those convicted who actually participated, others

acquitted. *PP Karpe v State of Maharashtra*, 1993 Cr LJ 2302 (Bom), revengeful killing, conviction for murder. *Balak Ram v State of Rajasthan*, 1994 Cr LJ 2451 (Raj), killer of his two daughters, eye-witnesses, medical evidence, conviction under section 300. *Prem Raj v State of Maharashtra*, 1996 Cr LJ 2876 : AIR 1996 SC 3294 [LNIND 1996 SC 940] , all the accused constituting an unlawful assembly came to the shop of the deceased, assaulted him and continued to do so after dragging him out, conviction under sections 300/149 held proper. *Bhagubhai v State of Gujarat*, AIR 1996 SC 2555 [LNIND 1996 SC 1143] : 1996 Cr LJ 3581 , the deceased forcibly taken from field to Panchayat office and set on fire after pouring kerosene, 75% burns and other injuries sufficient to cause death, conviction for intention to murder proper.

40. *Gunga Singh*, (1873) 5 NWP 44. *Raju Das v State of Rajasthan*, 1995 Cr LJ 25 (Raj), a case of proved intentional murder.

41. *Shakti Vahini v UOI,* AIR 2018 SC 1601 [LNIND 2018 SC 136] : 2018 (7) SCC 192 [LNIND 2018 SC 136] .

42. *Arumugam Servai v State of TN*, (2011) 6 SCC 405 [LNIND 2011 SC 435] . See *Dandu Jaggaraju v State of AP*, AIR 2011 SC 3387 [LNINDORD 2011 SC 217] : 2011 Cr LJ 4956 , honour killing, not proved, acquitted the accused.

43. *Bhagwan Dass v State (NCT) of Delhi*, AIR 2011 SC 1863 [LNIND 2011 SC 502] : 2011 Cr LJ 2903 : (2011) 6 SCC 396 [LNIND 2011 SC 502] . In the 242nd report, the Law Commission of India opined that "we are constrained to say that such a blanket direction given by the Supreme Court making death sentence a rule in 'honour killings' cases, makes a departure from the principles firmly entrenched in our criminal jurisprudence by virtue of a series of Supreme Court Judgments."; In *State of UP v Krishna Master*, AIR 2010 SC 3071 [LNIND 2010 SC 699] : 2010 Cr LJ 3889 : (2010) 12 SCC 324 [LNIND 2010 SC 699] , though the killing of six persons and wiping out almost the whole family on flimsy ground of honour saving of the family would fall within the rarest of rare case, keeping in view that the incident took place 20 years ago and High Court acquitted them in the year 2002 accused sentenced to RI for life.

44. Law of Commission of India, 242nd Report, *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework*, available at : http://lawcommissionofindia.nic.in/reports/report242.pdf (last accessed in July 2019).

45. *Shakti Vahini v UOI,* AIR 2018 SC 1601 [LNIND 2018 SC 136] : 2018 (7) SCC 192 [LNIND 2018 SC 136] .

46. *AG Bhagwat (Dr) v UT Chandigarh*, 1989 Cr LJ 214 (P&H), convicted for grievous hurt. *Jabbar Suleman v State of Gujarat*, 1988 Cr LJ 515 (Guj), knife injury on thigh of deceased, knowledge but not intention to cause death attributed, punishable under section 304 Part II not I. *Sudam Kisan Dhurjad v State of Maharashtra*, 1995 Cr LJ 4029 (Bom), the accused assaulted a bed-ridden aged lady of 65 years with an axe on her forehead causing three injuries resulting in fracture of the frontal bone and she died within a couple of hours, his act was held to fall under section 300, clauses 2, 3 and 4 and not under section 304, Part II. *Patel Hiralal Tottaram v State of Gujarat*, (2002) 1 SCC 22 [LNIND 2001 SC 2382] , the woman was set ablaze after soaking her clothes with an inflammable substance. She died 14 days after the incident. The accused was not heard to say that the death might have been due to some intervening causes. The act of the accused showed his intention to cause death or to cause such bodily injury as was likely to cause death. *Sajjan Singh v State of MP*, 1998 Cr LJ 4073 : AIR 1998 SC 2756 [LNIND 1998 SC 839] , head injury caused, sufficient in the ordinary course of nature. *Ram Bihari Yadav v State of Bihar*, 1998 Cr LJ 2515 : AIR 1999 SC 1850 , the husband set his wife ablaze, conduct showed guilt, no sign of accident, conviction. *Arun Nivalaji More v State of Maharashtra*, (2006) 12 SCC 613 [LNIND 2006 SC 591] : AIR 2006 SC 2886 [LNIND 2006 SC 591] : 2006 Cr LJ 4057 , the

clause imports some kind of certainty and not mere probability, there was no such certain knowledge on the facts of this case.

47. *Anant Chintaman Lagu*, (1959) 62 Bom LR 371 (SC); *Mohan v State*, AIR 1960 SC 659 ; *Kaushalya Devi*, AIR 1965 Ori 38 [LNIND 1964 ORI 72] . *Swinder Singh v State of Punjab*, AIR 1952 SC 669 : 1960 Cr LJ 1011 , proof on these points being not available, acquittal.

48. Also *Chandra Kant Nyalchand v State of Bombay*, Criminal Appeal No 120 of 1957, decided, Feb 19, 1958.

49. *Anant Chintaman Lagu v State of Bombay,* AIR 1960 SC 500 [LNIND 1959 SC 223] : 1960 Cr LJ 682 .

50. *Bhupinder Singh v State of Punjab*, 1988 Cr LJ 1097 : AIR 1988 SC 1011 [LNIND 1988 SC 211] : (1988) 3 SCC 513 [LNIND 1988 SC 211] : 1988 SCC (Cr) 694.

51. *Ramgopal*, 1972 Cr LJ 473 (SC) : AIR 1972 SC 656 . **Followed** in *Sher Singh v State*, (1995) 2 Cr LJ 2187 (Del), alleged poisoning by mixing in liquor not proved. *Abdul Gani v State of Karnataka*, (1995) 2 Cr LJ 2248 (Kant), presence of the husband in the room where his wife was strangulated not proved, conviction on the basis of suspicion was held to be not proper. *Mal Singh v State of Rajasthan*, (1995) 2 Cr LJ 2279 , acquitted because of no evidence.

52. *Arundhati*, 1968 Cr LJ 848 . Murder by poisoning, the victim found vomitting even two days before the date of purchase of poison and other evidence did not inspire confidence. The accused were given benefit of doubt, acquitted of the charge of murder, *Rattni v State of HP*, 1993 Cr LJ 1811 (SC). *Sanjiv Kumar v State of HP*, AIR 1999 SC 782 [LNIND 1999 SC 55] : 1999 Cr LJ 1138 , intentional killing by poisoning proved by circumstantial evidence. *State of Bihar v Ramnath Prasad*, AIR 1998 SC 466 [LNIND 1997 SC 1581] : 1998 Cr LJ 679 , poison served as prasad, the accused had only knowledge that he was administering a poisonous substance which was likely to cause grievous hurt or even death. Liable to be convicted under section 304, Part II and section 326.

53. *Joydeb Patra v State of WB*, 2013 Cr LJ 2729 (SC) : AIR 2013 SCW 2744 .

54. *Nanhar v State of Haryana*, 2010 Cr LJ 3450 : (2010) 11 SCC 423 [LNINDORD 2010 SC 229] .

55. *State of Rajasthan v Dhool Singh*, (2004) 12 SCC 546 [LNIND 2003 SC 1120] : AIR 2004 SC 1264 [LNIND 2003 SC 1120] : 2004 Cr LJ 931 .

56. *Abbas Ali v State of Rajasthan*, (2007) 9 SCC 129 [LNIND 2007 SC 165] : AIR 2007 SC 1239 [LNIND 2007 SC 165] : 2007 Cr LJ 1667 , the ingredients of clause thirdly restated.

57. *Mangesh v State of Maharashtra*, (2011) 2 SCC 123 [LNIND 2011 SC 20] .

58. *Brij Bhukhan*, AIR 1957 SC 474 : 1957 Cr LJ 591 .

59. *Atmaram v State of MP*, (2012) 5 SCC 738 [LNINDORD 2012 SC 403] : 2012 Cr LJ 2882 : 2012 (5) Scale 300 [LNIND 2012 SC 309] relied on *Anda v State of Rajasthan*, AIR 1996 SC 148 [LNIND 1965 SC 75] ; *State of Andhra Pradesh v Rayavarapu Punnayya*, (1976) 4 SCC 382 [LNIND 1976 SC 331] .

60. *Virsa Singh v State*, AIR 1958 SC 465 [LNIND 1958 SC 19] , (1958) SCR 1495 [LNIND 1958 SC 19] ; *Rajwant Singh*, AIR 1966 SC 1874 [LNIND 1966 SC 125] : 1966 Cr LJ 1509 . *Khachar Dipu v State of Gujarat*, 2013 (4) SCC 322 [LNIND 2013 SC 278] .

61. *Jaspal Singh v State of Punjab*, (1986) 2 SCC 100 at p 103 : AIR 1986 SC 683 : 1986 Cr LJ 488 , per Balakrishna Eradi, J. For an example of circumstantial evidence alone failing to prove an intention, see *Padala Veera Reddy v State of AP*, 1990 Cr LJ 605 : AIR 1990 SC 79 : 1989 Supp (2) SCC 706 . In *Jagtar Singh v State of Punjab*, (1988) 1 SCC 712 [LNIND 1988 SC 65] : AIR 1988 SC 628 [LNIND 1988 SC 65] : 1988 Cr LJ 866 , which was a case of intentional murder, the Supreme Court ignored the fact that FIR did not mention the crucial fact of the accused running away leaving behind his vehicle. In *Narendra Singh v State of UP*, AIR 1987 SC 1268 : 1987 Cr LJ 1070 : (1987) 2 SCC 236 , repeated blows were inflicted on vital parts of the body. This was held

to be intentional murder. *Vinod Kumar v State of UP*, AIR 1991 SC 300 : 1991 Cr LJ 360 , defence of accidental shooting ruled out.

62. *Jai Prakash v State (Delhi Admn)*, (1991) 2 SCC 32 : (1991) 1 Crimes 474 : 1991 SCC (Cri) 299 . **Reiterated** in *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] , it does not matter that there was no intention to cause death, or even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two), or that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury is actually found to be 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. *Namdeo v State of Maharashtra*, (2007) 14 SCC 150 [LNIND 2007 SC 316] : 2007 Cr LJ 1819 , head injury caused with axe sufficient in the ordinary course of nature to cause death, hence intention was to cause death. *Sheikh Rafi v State of AP*, (2007) 13 SCC 76 [LNIND 2007 SC 522] : 2007 Cr LJ 2746 , 19 injuries caused in a quick succession and also in a cruel manner, deceased being unarmed and helpless. Clause (3) applied, punishable under section 302. *Settu v State of TN*, 2006 Cr LJ 3889 , no intention to cause death, but injury caused with a knife on a vital part and which was sufficient to cause death, amounted to murder. One companion was convicted under section 304, Part I and the other under section 326, because minor injuries on non-vital parts.

63. *Rampal Singh v State of UP*, 2012 (8) SCC 289 [LNIND 2012 SC 425] .

64. *Vineet Kumar Chauhan v State of UP*, 2007 (14) SCC 660 [LNIND 2007 SC 1509] .

65. *Ajit Singh v State of Punjab*, 2011 (9) SCC 462 [LNIND 2011 SC 844] .

66. *Mohinder Pal Jolly v State of Punjab*, 1979 (3) SCC 30 [LNIND 1978 SC 389] .

67. *Khachar Dipu v State of Gujarat*, 2013 (4) SCC 322 [LNIND 2013 SC 278] .

68. *Anda*, AIR 1966 SC 148 [LNIND 1965 SC 75] : 1966 Cr LJ 171 .

69. *Rajwant Singh, supra*. Seven-year-old child held by the legs and dashed against the ground three times in quick succession, held covered by this clause. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 : (2005) 9 SCC 71 [LNIND 2004 SC 1370] , a restatement of the basic approach of the clause. The court also made a comparison between the statement in clause 2 of section 299 "bodily injury likely to cause death" with "bodily injury sufficient in the ordinary course of nature to cause death" in clause 3 in section 300.

70. *Umesh Singh v State of Bihar*, 2013 (4) SCC 360 [LNIND 2013 SC 227] : 2013 Cr LJ 2116 ; AIR 2013 SC 1743 [LNIND 2013 SC 227] ; *Gajoo v State of Uttarakhand*, 2013 Cr LJ 88 ; 2012 (9) SCC; *Kuria v State of Rajasthan*, 2012 Cr LJ 4707 : (2012) 10 SCC 433 [LNIND 2012 SC 678] ; *Darbara Singh v State of Punjab*, 2012 Cr LJ 4757 ; 2012 (8) Scale 649 [LNIND 2012 SC 545] ; (2012) 10 SCC 476 [LNIND 2012 SC 545] .

71. *Abdul Sayeed v State of MP*, (2010) 10 SCC 259 [LNIND 2010 SC 872] : (2010) 3 SCC (Cri) 1262 [LNIND 2010 SC 872] , *Ram Narain Singh v State of Punjab*, AIR 1975 SC 1727 [LNIND 1975 SC 210] ; *State of Haryana v Bhagirath*, (1999) 5 SCC 96 [LNIND 1999 SC 541] ; *Thaman Kumar v State of Union Territory of Chandigarh*, (2003) 6 SCC 380 [LNIND 2003 SC 507] ; and *Krishnan v State*, (2003) 7 SCC 56 [LNIND 2003 SC 587] ; *Solanki Chimanbhai Ukabhai v State of Gujarat*, AIR 1983 SC 484 [LNIND 1983 SC 69] ; *Mani Ram v State of UP*, 1994 Supp (2) SCC 289 ; *Khambam Raja Reddy v Public Prosecutor, High Court of AP*, (2006) 11 SCC 239 [LNIND 2006 SC 753] ; and *State of UP v Dinesh*, (2009) 11 SCC 566 [LNIND 2009 SC 454] . *State of UP v Hari Chand*, (2009) 13 SCC 542 [LNIND 2009 SC 1039] ; In *Sayed Darain Ahsan v State of WB*, (2012) 4 SCC 352 [LNIND 2012 SC 197] : AIR 2012 SC 1286 [LNIND 2012 SC 197] : 2012 Cr LJ 1980 , it is found

that the medical evidence does not go so far as to rule out all possibility of the ocular evidence being true and hence the ocular evidence cannot be disbelieved.

72. *Sunil Kundu v State of Jharkhand*, (2013) 4 SCC 422 [LNIND 2013 SC 1135] : 2013 Cr LJ 2339 (SC) In *Anjani Chaudhary*, (2011) 2 SCC 747 [LNIND 2010 SC 1048] , where the medical evidence did not support the appellant's presence as there was no injury on the deceased which could be caused by a lathi and the appellant was stated to be carrying a lathi. Since the eye-witnesses therein were not found to be reliable, Supreme Court acquitted the appellant therein. In *Kapildeo Mandal*, (2008) 16 SCC 99 [LNIND 2007 SC 1390] , all the eye-witnesses had categorically stated that the deceased was injured by the use of firearm, whereas the medical evidence specifically indicated that no firearm injury was found on the deceased. Court held that, when the evidence of the eye-witnesses is totally inconsistent with the evidence given by the medical experts, then evidence is appreciated in a different perspective by the courts. It was observed that when medical evidence specifically rules out the injury claimed to have been inflicted as per the eye-witnesses' version, then the court can draw adverse inference that the prosecution version is not trustworthy.

73. *Bhagwati Prasad v State of MP*, (2010) 1 SCC 697 [LNIND 2009 SC 2058] : 2009 (14) Scale 314 [LNIND 2009 SC 2058] : AIR 2010 SC 349 [LNIND 2009 SC 2058] : 2010 Cr LJ 528 .

74. *Kuna v State of Odisha*, AIR 2017 SC 5364 [LNIND 2017 SC 2864] .

75. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] .

76. *Lakshman*, (1888) Unrep Cr C 411.

77. *Nga Maung*, (1907) 13 Burma LR 330.

78. *Judagi Mallah*, (1929) 8 Pat 911.

79. *Shankar Narayan Bhadolkar v State of Maharashtra*, AIR 2004 SC 1966 [LNIND 2004 SC 1370] : 2004 Cr LJ 1778 , explanation of importance of knowledge in the context of the clause.

80. *Ram Prasad*, AIR 1968 SC 881 [LNIND 1967 SC 358] : 1968 Cr LJ 1025 . See *Dev Raj v State of Punjab*, AIR 1992 SC 950 : 1992 Cr LJ 1292 : 1992 Supp (2) SCC 81 , gun-shot injuries, death occurring one and a half months later, in between surgery and amputation, held accused guilty of grievous hurt. *State of Karnataka v Venkatesh*, AIR 1992 SC 674 : 1992 Cr LJ 707 : 1992 (1) Crimes 625 SC : JT 1992 (1) SC 99 : 1992 (1) Scale 31 : 1992 Supp (1) SCC 539 .

81. *State of Haryana v Krishan*, AIR 2017 SC 3125 [LNIND 2017 SC 294] .

82. *Umakant v State of Chhatisgarh*, 2014 Cr LJ 4078 : 2014 (8) Scale 141 [LNIND 2014 SC 374] .

83. *DV Shanmugham v State of AP*, AIR 1997 SC 2583 [LNIND 1997 SC 720] : 1997 Cr LJ 3129 , some of the accused persons were, however, given the benefit of doubt because there was no clear evidence against them. *State of UP v Shri Krishan*, 2005 Cr LJ 892 : AIR 2005 SC 762 [LNIND 2004 SC 1252] : (2005) 10 SCC 399 [LNIND 2004 SC 1252] , the wife was with the man at the time when the husband alone was killed by the assailants. Her FIR was recorded after 13 days, this fact alongwith some other details created a doubt about the prosecution case of which the benefit went to the assailants. *State of AP v Patnam Anandam*, 2005 Cr LJ 894 : AIR 2005 SC 764 [LNIND 2004 SC 1241] : (2005) 9 SCC 237 [LNIND 2004 SC 1241] , another similar case of benefit of doubt. *Jagjit Singh v State of Punjab*, 2005 Cr LJ 955 : AIR 2005 SC 913 : (2005) 3 SCC 689 , accused alleged to have killed three persons at the tubewell sight coming there by motor cycle. A girl child of seven years was supposed to be the eye-witness. She had never seen the accused before, her statement was recorded after three days, not reliable, acquittal on benefit of doubt. *Puran Singh v State of Uttaranchal*, (2008) 3 SCC 725 : 2008 Cr LJ 1058 : (2008) 1 Ker LJ 875 , benefit of doubt allowed on the basis of technical evidence.

84. *State of TN v Balkrishna*, 1992 Cr LJ 1872 (Mad).

85. *Mohammad Khalil Chisti (Dr) v State of Rajasthan*, 2013 Cr LJ 637 (SC), 2013 (1) Mad LJ (Cr) 198, (2013) 2 SCC 541 [LNIND 2012 SC 801] ; *Waman v State of Maharashtra*, 2011 (7) SCC 295 [LNIND 2011 SC 564] : AIR 2011 SC 3327 [LNIND 2011 SC 564] : 2011 Cr LJ 4827 ; *Lakshmi Singh v State of Bihar*, 1976 SCC (Cr) 671 : AIR 1976 SC 2263 : 1976 Cr LJ 1736 , non-explanation of simple injuries of the nature suffered by the accused would not be fatal; *Ram Vishambhar v State of UP*, 2013 Cr LJ 1131 : (2013) 2 SCC 71 [LNINDU 2013 SC 5] ; *Hari v State of Maharashtra*, (2009) 11 SCC 96 [LNIND 2009 SC 642] : (2009) 3 SCC (Cr) 1254.

86. *Nokul Nushyo*, (1867) 7 WR (Cr) 27; *Akhila Parida v State of Orissa*, 1987 Cr LJ 609 (Ori), provocation by cutting the crop of accused. See also *Nagar Prasad v State of UP*, 1998 Cr LJ 1580 (All).

87. *Sukhlal Sarkar v UOI*, (2012) 5 SCC 703 [LNIND 2012 SC 364] : 2012 Cr LJ 3032 .

88. *Laikhan*, (1955) Cut 625.

89. *Kundarapu*, (1962) 1 Cr LJ 261 . *Jagjit Singh v State of HP*, 1994 Cr LJ 233 : 1994 SCC (Cr) 176, the accused inflicted a number of serious injuries on the vital parts of the body of his victim causing his death on the spot, held Exception 1 of section 300 not attracted. *Pappachan v State of Kerala*, 1994 Cr LJ 1765 (Ker), the accused delivered a fatal stab wound to the person who tried to pacify him, no evidence of any sudden and grave provocation or a sudden fight. The offence did not fall under Exception 1 or 2 of section 300.

90. *KM Nanavati v State of Maharashtra*, AIR 1962 SC 605 [LNIND 1961 SC 362] : 1962 Cr LJ 521 (SC).

91. *Budhi Singh v State of HP*, 2013 Cr LJ 962 (SC) : AIR 2013 (SCW) 547 .

92. *KM Nanavati*, (1962) Bom LR 488 : AIR 1962 SC 605 [LNIND 1961 SC 362] : 1962 Cr LJ 521 (SC); *Akhtar v State*, AIR 1964 All 262 [LNIND 1963 ALL 180] . *Girja Devi v State of HP*, 2000 Cr LJ 1528 (HP), the accused wife killed her husband being provoked by his perverse sexual habits, punished under section 304, Part I.

93. *Dhandayuthan v State of TN*, 1994 Cr LJ 1587 (Mad).

94. *Gyanendra Kumar v State*, 1972 Cr LJ 308 : AIR 1972 SC 502 [LNIND 1971 SC 601] ; see also *Panchu Kumar Sardar*, 1984 Cr LJ (NOC) 142 (Cal); *Balerian Minji*, 1985 Cr LJ 1394 (MP). Where the accused on being slapped by the deceased ran to his house which was at considerable distance and brought several deadly weapons and inflicted various injuries on the deceased two of which proved fatal, his action was indicative of his intention to kill the victim, he was held to be rightly punished for murder

95. *BD Khunte v UOI*, 2015 Cr LJ 243 .

96. *Dhandayuthan v State*, 1994 Cr LJ 1587 .

97. *Murgi Munda*, (1938) 18 Pat 101.

98. *Balku*, (1938) All 789 ; Hussain, (1938) 20 Lah 278.

99. *Re V Padayachi*, 1972 Cr LJ 1641 (Mad).

100. *Hansa Singh*, 1977 Cr LJ 1448 (SC).

101. *Ram Prakash Singh v State of Bihar*, AIR 1998 SC 1190 [LNIND 1998 SC 137] : 1998 Cr LJ 1622 , conduct of accused in the jail being good, his sentence was reduced to the period already undergone during trial plus jail term. *Bishek Mohandas v State of Orissa*, 1998 Cr LJ 1489 (Ori), quarrel, one picked up an instrument and struck the other, himself also injured, for the ensuing death, conviction under section 304, Part II.

102. Note M p 147. *Kehar Singh v State*, 1997 Cr LJ 1753 (Raj), water diverted from the accused person's field by the victim to his field without justification, the accused had the right to resort to self-defence of property, but the number of injuries caused was so great as to be sure to cause death, right exceeded, conviction under section 304, Part I.

103. *Raj Singh v State of Haryana*, 2015 Cr LJ 2803 .

104. *Mohammad Khalil Chisti (Dr) v State of Rajasthan*, 2013 Cr LJ637 (SC) : 2013 (1) Mad LJ (Cr) 198, (2013) 2 SCC 541 [LNIND 2012 SC 801] ; *Gopal v State of Rajasthan*, (2013) 2 SCC 188 [LNIND 2013 SC 37] : 2013 Cr LJ 1297 .

105. *Arjun v State of Maharashtra*, JT 2012 (4) SC 447 : 2012 (5) Scale 52 [LNIND 2012 SC 283] : AIR 2012 SC 2181 [LNIND 2012 SC 283] : (2012) 5 SCC 530 [LNIND 2012 SC 283] : 2012 Cr LJ 2641 . See also *Mohammad Iqbal v State of MP*, 2012 Cr LJ 337 (Chh).

106. *Sikandar Singh v State of Bihar*, (2010) 7 SCC 477 [LNIND 2010 SC 603] : (2010) 8 SCR 373 : AIR 2010 SC 44023 : 2010 Cr LJ 3854 : (2010) 3 SCC (Cr) 417.

107. *Raj Pal v State of Haryana*, (2006) 9 SCC 678 [LNIND 2006 SC 282] : JT 2006 (11) SC 124 [LNIND 2006 SC 282] : (2006) 4 Scale 456 [LNIND 2006 SC 282] : (2006) 3 SCC (Cri) 361 [LNIND 2006 SC 282] .

108. *Mohd Yusuf v State of UP*, 1994 Cr LJ 1631 , 2181.

109. *PP Sah*, 1977 Cr LJ 346 : AIR 1977 SC 704 .

110. *Rafiq*, 1979 Cr LJ 706 : AIR 1979 SC 1179 .

111. *Ghansham Dass*, 1979 Cr LJ 28 : AIR 1979 SC 44 .

112. *Jassa Singh v State of Haryana*, AIR 2002 SC 520 [LNIND 2002 SC 13] . *Latel v State of Chhatisgarh*, AIR 2001 SC 3474 , possession of the disputed land was with the accused, but the deceased was ploughing it at the relevant time, the accused and his son attacked him and continued to do so even after he had fallen down, held, right of private defence exceeded, punishment under section 304, Part I. *State of Karnataka v Shivappa*, (1993) Cr LJ 1253 : AIR 1998 SC 1536 [LNIND 1997 SC 1597] , the right of private defence exceeded, conviction.

113. *Katta Surendra v State of AP*, (2008) 11 SCC 360 [LNIND 2008 SC 1294] : 2008 Cr LJ 3196 .

114. See also *Thomas George v State of Kerala*, 2000 Cr LJ 3475 : 1999 SCC (Cr) 1308, exceeding the right of private defence, conviction under section 304, Part II.

115. *Subba Naik*, (1898) 21 Mad 249.

116. *Satyavir Singh Rathi v State Thr CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .

117. *Vijender Kumar v State of Delhi*, 2010 Cr LJ 3851 : (2010) 12 SCC 381 [LNIND 2010 SC 413] : (2011) 1 SCC (Cr) 29.

118. *Santokh Singh v State of Punjab*, AIR 2009 SC 1923 [LNIND 2009 SC 328] : (2009) 11 SCC 197 [LNIND 2009 SC 328] ; *Arumugam v State Rep by Inspector of Police TN*, AIR 2009 SC 331 [LNIND 2008 SC 1994] : (2008) 15 SCC 590 [LNIND 2008 SC 1994] .

119. *State of Rajasthan v Islam*, (2011) 6 SCC 343 [LNINDORD 2011 SC 309] : AIR 2011 SC 2317 [LNINDORD 2011 SC 309] : 2011 Cr LJ 3110 , plea that only one injury of small dimension had been caused by appellant to the deceased in the abdomen and he had himself taken the deceased to hospital, an inference be drawn that there was no intention to kill the deceased repelled. The case of the appellant cannot fall within Exception 4 of section 300, IPC, 1860. *Vijender Kumar v State of Delhi*, 2010 Cr LJ 3851 : (2010) 12 SCC 381 [LNIND 2010 SC 413] : (2011) 1 SCC (Cr) 291.

120. *Abdul Nawaz v State of WB*, 2012 Cr LJ 2901 : (2012) 6 SCC 581 [LNIND 2012 SC 307] : 2012 (5) Scale 357 [LNIND 2012 SC 307] ; *Chinnathaman v State*, 2007 (14) SCC 690 [LNIND 2007 SC 1485] , *Muthu v State*, 2009 (17) SCC 433 [LNIND 2007 SC 1303] ; *Arumugam v State*, 2008 (15) SCC 590 [LNIND 2008 SC 1994] ; *Ajit Singh v State of Punjab*, 2011 (9) SCC 462 [LNIND 2011 SC 844] , *Vijay Ramkrishan Gaikwad v State of Maharashtra*, 2012 (2) Scale 631 ; *Sayaji Hanmat Bankar v State of Maharashtra*, 2011 AIR (SCW) 4502 : 2011 (7) Scale 710 [LNIND 2011 SC 653] : 2011 Cr LJ 4338 : (2011) 8 SCR 234 [LNIND 2011 SC 653] ; *State of HP v Ram Pal*, AIR 2005 SC 4058 .

121. *Arjun v State of Maharashtra*, (2012) 5 SCC 530 [LNIND 2012 SC 283] : 2012 Cr LJ 2641 , where the accused appeared and entered the house and had some quarrel with his deceased wife. He threw water pot and thereafter a kerosene lamp. Burning seems to be more because lady was wearing nylon sari. She got burnt to the extent of 70%. The Supreme Court held that it was a case clearly falling under Exception 4 of section 300 of IPC, 1860. *Sayaji Hanmat Bankar v State of Maharashtra*, 2011 (7) Scale 710 [LNIND 2011 SC 653] : 2011 Cr LJ 4338 .

122. *Nanak Ram v State of Rajasthan*, 2014 Cr LJ 1843 : 2014 (I) Supreme 705 .

123. *Nayamuddin*, (1891) 18 Cal 484 (FB). Where there was no evidence of sudden fight or heat of passion and the nature, number and situs of injuries showed that there was cruel manner, conviction for murder, the exception was not attracted, *Malkiat Singh v Punjab*, AIR 1996 SC 2590 [LNIND 1996 SC 1198] : 1996 Cr LJ 3583 .

124. *Zalim Rai*, (1864) 1 WR (Cr) 33; *Ameera v State*, (1866) PR No 12 of 1866. *D Sailu v State of AP*, (2007) 14 SCC 397 [LNIND 2007 SC 1347] : AIR 2008 SC 505 [LNIND 2007 SC 1347] : 2008 Cr LJ 686 , injury to a vital organ in a sudden fight, causing death due to shock and haemorrhage, punishment under section 304, Part I. *Byvarapu Raju v State of AP*, (2007) 11 SCC 218 [LNIND 2007 SC 761] : AIR 2007 SC 1904 [LNIND 2007 SC 761] : 2007 Cr LJ 3204 , the father of the accused came in intoxicated state at night and assaulted the son's wife, a resulting quarrel between father and son in which the son injured his father to death because of the injury to a vital organ, case covered by Exception 4.

125. *State of MP v Shivshankar*, 2015 Cr LJ 155 .

126. *Surain Singh v State of Punjab*, AIR 2017 SC 1904 [LNIND 2017 SC 171] .

127. *Sunnumuduli*, (1946) 25 Pat 335. *Kesar Singh v State of Haryana*, (2008) 15 SCC 753 [LNIND 2008 SC 1001] , it postulates a bilateral transaction in which blows are exchanged even if they all do not find their target. Provocation *per se* is not fight. Asking somebody to do something again may not be a provocation. Expressing a desire to one's neighbour digging foundation that some passage may be left may not be considered to be a demand. In instant case, held, there was no fight, far less sudden fight.

128. *Atma Singh*, AIR 1955 Punj 191 .

129. *Narayanan*, AIR 1956 SC 99 [LNIND 1955 KER 138] : 1956 Cr LJ 278 . *Golla Yelugu Govindu v State of AP*, (2008) 16 SCC 769 [LNIND 2008 SC 751] : AIR 2008 SC 1842 [LNIND 2008 SC 751] : 2008 Cr LJ 2607 : (2008) 2 APLJ 28 , ingredients of the exception restated. *Trimbak v State of Maharashtra*, (2008) 17 SCC 213 [LNIND 2008 SC 571] , ingredients for bringing the exception into operation restated. Similar restatement in *Hawa Singh v State of Haryana*, (2009) 3 SCC 411 [LNIND 2009 SC 77] : (2009) 2 SCC Cri 132 [LNIND 2009 SC 764] : 2009 Cr LJ 1146 . *Imtiaz v State of UP*, (2007) 15 SCC 299 [LNIND 2007 SC 172] , dispute about drainage of latrine, neighbour objected but to no effect, the attackers came fully armed, the court found premeditation, not suddenness. *Iqbal Singh v State of Punjab*, (2008) 11 SCC 698 [LNIND 2008 SC 1671] , sudden fight over access to agricultural land, death caused, 10 years under this exception. *SK Azim v State of Maharashtra*, (2008) 11 SCC 695 [LNIND 2008 SC 1408] , death caused in a sudden fight by a single lathi blow on head, 10 years, section 304, Part I. *Suresh Kumar v State of HP*, (2008) 13 SCC 459 [LNIND 2008 SC 766] : AIR 2008 SC 1973 [LNIND 2008 SC 766] : 2008 Cr LJ 2247 , single knife blow in sudden fight, death, 10 years, section 304, Part I. *Shankar Diwal Wadu v State of Maharashtra*, (2007) 12 SCC 518 [LNIND 2007 SC 363] : AIR 2007 SC 1410 [LNIND 2007 SC 363] : 2007 Cr LJ 1802 , attempt to take away brother's wife by the brother accused to keep her as a mistress, this resulted in killing of the brother in a sudden fit of anger, held appropriate conviction under section 304, Part II and not section 302, the accused was already undergoing imprisonment under sentence for 10 years, sentence reduced to the period already undergone. *Chinnathaman v State*, (2007) 14 SCC 690 [LNIND 2007 SC 1485] :

AIR 2008 SC 784 [LNIND 2007 SC 1485] : 2008 Cr LJ 1372 , no premeditation or preplan to cause death, altercation because of entry into the field, injury caused with sickle lying there, punishment under section 304, Part II. *Phulia Tadu v State of Bihar*, (2007) 14 SCC 588 [LNIND 2007 SC 1071] : AIR 2007 SC 3215 [LNIND 2007 SC 1071] : 2007 Cr LJ 4690 , one blow with a small stick, section 304, Part II attracted.

130. *Sarjug Prasad*, AIR 1959 Pat 66 .

131. *State of UP v Jodha Singh*, AIR 1989 SC 1822 : (1989) 3 SCC 465 : 1989 Cr LJ 2113 . See also *Surender Kumar v Union Territory, Chandigarh*, AIR 1989 SC 1094 [LNIND 1989 SC 140] : 1989 Cr LJ 883 , where there was no evidence of acting with cruelty following a quarrel, sentence under section 304, Part I was considered appropriate; *V Sreedharan v State of Kerala*, AIR 1992 SC 754 : 1992 Cr LJ 1701 , where the sudden impulse was held not to have ended simply because the accused chased the deceased for some distance before giving fatal blow.

132. *State of Karnataka v Shivalingaiah*, AIR 1988 SC 115 [LNIND 2012 DEL 2078] : 1988 Cr LJ 394 : 1988 SCC (Cr) 881. *State of Maharashtra v Suresh*, 1989 Cr LJ 1709 (Bom), heat and passion on cattle grazing leading to one blow on the head with a light stick, the deceased fell down, blow not repeated, death, punished under section 325 with RI for one year and fine of Rs. 2000. *Vadivelu*, 1989 Cr LJ 2248 (Mad), causing injury with wooden frame endangering life and resulting in death, guilty under section 326, not section 302. *Karan Singh v State*, 1988 Cr LJ 315 (Del), death caused in sudden quarrel, conviction under section 304, Part II. *Ramanbhai v State of Gujarat*, 1988 Cr LJ 982 (Guj), quarrel at a bus-stop for Rs. 5/-, moved towards a bridge where as a result of pushing one fell and died, conviction under section 304, Part II.

133. *Pawan Singh v State of Punjab*, (1995) 1 Cr LJ 609 (P&H). *Thankachan v State of Kerala*, (2007) 14 SCC 501 [LNIND 2007 SC 1325] : AIR 2008 SC 406 [LNIND 2007 SC 1325] , one of the accused dragged the victim out of his home, the latter picked up a soda bottle, the accused also lifted a bottle from a shop and struck him on the head, the victim also hit back with the bottle in his hand, on this the accused exhorted his companions to carry further the attack with the result the victim died with multiple injuries. Ten years' imprisonment awarded under section 304, Part I. *Rakesh v State of MP*, (2007) 14 SCC 504 [LNIND 2008 SC 298] : AIR 2008 SC 1229 [LNIND 2008 SC 298] : 2008 Cr LJ 1646 , comparison of requirements of sections 1 and 4.

134. *Balwant Ram v State of Rajasthan*, 1995 Cr LJ 3856 (Raj).

135. *Baleshwar Mahto v State of Bihar,* AIR 2017 SC 873 [LNINDU 2017 SC 8] .

136. *Kikar Singh v State of Rajasthan*, 1993 Cr LJ 3255 : AIR 1993 SC 2426 [LNIND 1993 SC 456] : (1993) 4 SCC 238 [LNIND 1993 SC 456] . *Kudesh Mondal v State of WB*, (2007) 8 SCC 578 [LNIND 2007 SC 1043] : AIR 2007 SC 3228 [LNIND 2007 SC 1043] , a passerby started inquiring into a killing incident originating over a trivial matter. He was dragged by one and struck a fatal blow by the other. The court applied this exception. Conviction under section 304, Part I. *Salim Sahab v State of MP*, (2007) 1 SCC 699 [LNIND 2006 SC 1089] : (2007) 103 Cut LT 531, another similar death caused in a quarrel, conviction under section 304, Part II, seven years RI. *Vadla Chandraiah v State of AP*, (2006) 13 SCC 587 [LNIND 2006 SC 1103] : 2007 Cr LJ 770 , quarrel between fruit vendor and a police constable for not paying for fruits consumed. Constable attacked him with his service weapon to death. Punishment under section 304, Part II. *Pappu v State of MP*, 2006 Cr LJ 3640 , murder as a result of a single lathi blow in a sudden quarrel, the accused was not armed with any weapon. Conviction under section 304, Part II, *Pulicheria Nagaraju v State of AP*, 2006 Cr LJ 3899 , another similar case with this observation that a single blow injury resulting in death is not a ground in itself for holding that the case would come under section 304 and not under section 302. *Khambam Raja Reddy v Public Prosecutor, HC, Andhra,* 2006 Cr LJ 4652 , allegation that on exhortation of the co-accused, the accused picked up a big stone piece and threw it on the head of the deceased. This could not be true because

he was suffering from polio and could not have picked up the stone. His conviction was set aside.

137. *Suresh Kumar v State of HP*, (2008) 13 SCC 459 [LNIND 2008 SC 766] : AIR 2008 SC 1973 [LNIND 2008 SC 766] : 2008 Cr LJ 2247 . *Bengaru Venkata Rao v State of AP*, (2008) 9 SCC 707 [LNIND 2008 SC 1585] : 2008 Cr LJ 4353 .

138. *Anil v State of Haryana*, (2007) 10 SCC 274 [LNIND 2007 SC 629] : 2007 Cr LJ 4294 .

139. *Bhagwan Munjaji*, 1979 Cr LJ 49 (SC).

140. *Prabhu v State of UP*, AIR 1991 SC 1069 : 1991 Cr LJ 1373 . Single assault attributed to each of the accused in the course of sudden quarrel in heat of passion, Exception 4 to section 300 attracted, conviction altered from section 300 to section 304, Part II, *Subodh Behera v State of Orissa*, 1996 Cr LJ 168 (Ori). The accused, seeing his father being beaten by the deceased, caused death of the assailant by inflicting injuries on his head in a heat of passion but the accused did not act in a cruel or unreasonable manner, held Exception 4 to section 300 attracted, the offence covered under section 304, Part I, *State of MP v Mohandas*, 1992 Cr LJ 101 (MP). The accused brother caused a single injury without pre-meditation in a sudden fight and in heat of passion to his brother which proved fatal, he neither took undue advantage nor acted in a cruel manner, held Exception 4 to section 300 attracted, liable to be punished under section 304, Part I and not under section 302. *Suraj Mal v State of Punjab*, AIR 1992 SC 559 : 1992 Cr LJ 520 : 1993 Supp (1) SCC 639 . The accused, over a trivial matter of the next day of Holi festival and without any pre-meditation or any enmity with the victim, suddenly inflicted a single knife blow on his chest which proved fatal, held, the offence fell within Exception 4 of section 300, punishable under section 304, Part I, not under section 302. *Prakash v State of Rajasthan*, 1994 Cr LJ 3019 (Raj). See also *Pitchaimani v State of T.N.*, 1994 Cr LJ 2606 (Mad), wordy duel, sudden quarrel, no pre-meditation, culpable homicide not amounting to murder.

141. *Sukhbir Singh v State of Haryana*, AIR 2002 SC 1168 [LNIND 2002 SC 134] ; *Bajjappa v State of Karnataka*, 1999 Cr LJ 958 (Kant), altercation resulting in violent assault at the spur of moment. The accused was an agriculturist with clean record, had three children, in custody for considerable period, sentence reduced to five years RI, fine Rs. 1000. *Lakhwinder Singh v State of Punjab*, AIR 2003 SC 2577 [LNIND 2002 SC 820] , the accused suffered 19 injuries, two of them grievous, the prosecution could not say that they did not know such extensive injuries or that they were self-accused, explanation by the prosecution was necessary, failure led to the inference that the true genesis and manner of the incident was not disclosed. *Ramesh Krishna Madhusudan Nayar v State of Maharashtra*, (2008) 14 SCC 491 [LNIND 2008 SC 18] : (2009) 2 SCC Cri 759 : AIR 2008 SC 927 [LNIND 2008 SC 18] : 2008 Cr LJ 1023 , two blows with a piece of wood inflicted after quarrel for several hours about putting off the light of the staff room at night. Exception 4 attracted. *Arumugan v State*, (2008) 115 SCC 490 : AIR 2009 SC 331 [LNIND 2008 SC 1994] , fight over panchayat election, the victim dragged out from his home, exchange of hot words, blows inflicted by the accused and his companions. Exception attracted. *Raghbir Singh v State of Haryana*, (2008) 16 SCC 33 [LNIND 2008 SC 2228] : AIR 2009 SC 223 : (2009) 73 AIC 93 , lathi blows in the course of a sudden quarrel, exception applied. *Parkash Chand v State of HP*, (2004) 11 SCC 381 [LNIND 2004 SC 759] : AIR 2004 SC 4496 [LNIND 2004 SC 759] , one brother's dogs entered the kitchen of the other, the latter protested, heated altercation ensued, one went into his room, came out with a gun, shot at the other from a distance of 35 feet, death ensued. Exception applied. *Preetam Singh v State of Rajasthan*, (2003) 12 SCC 594 , there being a background to the struggle, the court did not regard the fight to be sudden. Hence, the exception not attracted. *State of Maharashtra v Manjurrya*, (2003) 12 SCC 787 , the attacking party came fully prepared and caused death as in an organised manner, no feature of a sudden fight. *Sachchey Lal Tiwari v State of UP*, (2004) 11 SCC 410 [LNIND 2004 SC 1041] : AIR 2004 SC

5039 [LNIND 2004 SC 1041] , dividing line between two fields dismissed by the attacking party, fired pistol shots at the opponent killing his two sons. The exception not applicable. *Umesh Jha v State of Bihar*, (2004) 12 SCC 329 , genesis in lands dispute, but murder pre-meditated, Exception 4 not applicable.

142. *Sikandar v State (Delhi) Admn*, AIR 1999 SC 1406 [LNIND 1999 SC 351] : 1999 Cr LJ 2098 . *Hari Shankar v State of Rajasthan*, AIR 1999 SC 2629 : 1999 Cr LJ 2902 , exchange of hard words, burning kerosene stove wick thrown, knowledge of likely death, conviction under section 304.

143. *Mahesh Balmiki v State of MP*, 1999 Cr LJ 4310 : AIR 1999 SC 3338 [LNIND 1999 SC 755] ; *Rameshraya v State of MP*, AIR 2001 SC 1229 : 2001 Cr LJ 1452 (SC). Sudden fight, but murder committed in most brutal manner conviction under section 302. *Abdul Kader v State of Gujarat*, 1999 Cr LJ 5027 (Guj), police on duty during Muslim festivities tried to prevent gambling, the accused, who was friendly with gamblers, gave one knife injury to a police constable resulting in death. The court noted that there was no premeditation, the act was the result of heat of passion, no undue advantage, Exception 4 attracted, conviction under section 304, Part II, seven years' imprisonment. *Resham Singh v State of Punjab*, AIR 2002 SC 2625 : 2002 Cr LJ 3506 , fight from both sides, Exception 4 attracted, conviction under section 304, Part II. *Naresh Janimal Lohana v State*, 1998 Cr LJ 3574 (Guj), domestic quarrel between parties on question of throwing away some mango waste, male members came out and started taking part in the sudden fight, the accused gave one blow in the scuffle by wielding a knife in the sudden heat of passion. No premeditation. Exception 4 attracted. *Pawan Kumar v State*, 1997 Cr LJ 3631 (P&H), sudden quarrel over snatching of newspaper, single knife blow, acting at the spur of moment without premeditation, Exception 4 attracted, conviction under section 304, Part II. *Lekh Raj v State*, 1997 Cr LJ 3663 (HP), accused entered into victim's house and inflicted knife blows on vital parts, conviction under section 302, Exception 4 not attracted. *Surinder Kumar v State*, 1997 Cr LJ 2872 (P&H), during an altercation, the accused pushed the victim, whose head dashed against the wall causing death. The accused given benefit of the exception, conviction under section 304, Part I. *Uday Singh v State of UP*, AIR 2002 SC 3143 [LNIND 2002 SC 545] , sudden fight between the accused persons and their victim, both unarmed, both accused held their victim by his neck with pressure that he died, neither knew about the pressure being put by the other, no common intention to cause death, only knowledge, conviction under section 304, Part II. *Bala Baine Linga Raju v State of AP*, (2009) 6 SCC 706 [LNIND 2009 SC 1104] : (2009) 3 SCC Cr 13 : 2009 Cr LJ 3426 , in the absence of appeal by state, the Supreme Court did not enhance the sentence to that for murder despite the fact that the case was that of murder and not coming under the exception.

144. *Sukhdev v State of Punjab*, (2007) 16 SCC 364 . The court considered cases relating to importance of premeditation and undue or unfair advantage. *Rakesh v State of MP*, (2007) 14 SCC 504 [LNIND 2008 SC 298] : AIR 2008 SC 1229 [LNIND 2008 SC 298] : 2008 Cr LJ 646 , one of them assaulted their victim with knife, three others gave him kicks and fists blows. The trial court convicted the main accused under section 302 and also others under sections 302/34. The High Court maintained the conviction of main accused under section 302 and convicted others under sections 326/34. The Supreme Court convicted and punished all of them under sections 304/34, Part I, 10 years. *Gurdev Raj v State of Punjab*, (2007) 13 SCC 380 [LNIND 2007 SC 1180] : 2008 Cr LJ 382 , conviction altered from section 302 to section 304, Part I. *Shambhao Singh v State of Rajasthan*, (2008) 11 SCC 637 [LNIND 2008 SC 1492] : AIR 2008 SC 3200 [LNIND 2008 SC 1492] , quarrel in land dispute, stabbing, one died, other family members injured, conviction under section 304, Part 1, 10 years, would meet the ends of justice. *Baij Nath v State of UP*, (2008) 11 SCC 738 [LNIND 2008 SC 1374] , one lathi blow on head, causing, fracture and death, seven years under section 304, Part I.

145. *Sada Ram v State of Haryana*, (2006) 13 SCC 528 . *Sandhya Jadhav v State of Maharashtra*, 2006 Cr LJ 2111 SC, landlord demanded rent, the tenant (accused) assaulted him, nephew of landlord, who tried to intervene was given a knife blow causing death, conviction altered to section 304, Part II from section 302.

146. *Suresh Chandra v State of UP*, 2005 Cr LJ 3449 : AIR 2005 SC 9 [LNIND 2004 SC 1110] : (2005) 1 SCC 122 [LNIND 2004 SC 1110] .

147. *Santokh Singh v State of Punjab*, AIR 2009 SC 1923 [LNIND 2009 SC 328] : (2009) 11 SCC 197 [LNIND 2009 SC 328] ; *Arumugam v State Rep by Inspector of Police TN*, AIR 2009 SC 331 [LNIND 2008 SC 1994] : (2008) 15 SCC 590 [LNIND 2008 SC 1994] ; *D Sailu v State of AP*, AIR 2008 SC 505 [LNIND 2007 SC 1347] : (2007) 14 SCC 397 [LNIND 2007 SC 1347] .

148. *Sridhar Bhuyan v State of Orissa*, (2004) 11 SCC 395 [LNIND 2004 SC 758] : AIR 2004 SC 4100 [LNIND 2004 SC 758] : 2004 Cr LJ 3875 .

149. Note M, p 145.

150. *Nayamuddin*, (1891) 18 Cal 484 (FB).

151. *Ambalathil*, AIR 1956 Mad 97 .

152. *Halliday*, (1889) 61 LT 701 , 702.

153. *Towers*, (1874) 12 Cox 530, 533.

154. *Lal Bahadur v State (NCT of Delhi)*, (2013) 4 SCC 557 [LNIND 2014 SC 553] ; 2013 Cr LJ 2205 : 2013 (2) SCC (Cr) 516.

155. *Adu Shikdar*, (1885) 11Cal 635; *Bhairon Lal*, (1952) 2 Raj 669 ; *Ram Chandra v State*, AIR 1957 SC 381 : 1957 Cr LJ 559 .

156. *Rama Nand*, 1981 Cr LJ 298 : AIR 1981 SC 738 [LNIND 1981 SC 5] . See further *Manguli Devi v State of Orissa*, AIR 1989 SC 483 : 1989 Cr LJ 823 : 1989 Supp (1) SCC 161 , where dead body was discovered in decomposed state and no wounds were visible yet the conviction of the widow of the deceased on the basis of her confession was sustained; *Rama Nand v State of UP*, AIR 1981 SC 738 [LNIND 1981 SC 5] : (1981) 2 SCR 444 [LNIND 1981 SC 5] : 1981 Cr LJ 298 : 1981 Mad LJ (Cr) 241. *Amar Layek v State of WB*, 1988 Cr LJ 1293 (Cal), only skeleton of bones and other personal articles recovered on lead given by accused, held guilty of murder. *Hari Kishan v State of Haryana*, 1990 Cr LJ 385 (P&H), good evidence, though corpus delecti not traceable. But see *Bhupendra Singh v State of UP*, AIR 1991 SC 1083 [LNIND 1991 SC 151] : 1991 Cr LJ 1337 : (1991) 2 SCC 750 [LNIND 1991 SC 151] , where the body of the deceased was burnt and pieces of bones which were recovered were not sufficient to establish the age, sex or identity. Conviction even under section 201 was set aside. *Sevaka Perumal v State of TN*, AIR 1991 SC 1463 [LNIND 1991 SC 269] : 1991 Cr LJ 1845 , murder charge can be established by evidence, though dead body may not be traceable. *Arun Kumar v State of UP*, 1989 Cr LJ 1460 : AIR 1989 SC 1445 : 1989 Supp (2) 332 , dead body of victim of rape not traceable, conviction under section 366 justified.

157. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Lakshmi v State of UP*, 2002 (7) SCC 198 [LNIND 2002 SC 534] ; *State of Karnataka v MV Mahesh*, 2003 (3) SCC 353 [LNIND 2003 SC 270] .

158. *Jitender Kumar v State of Haryana*, 2012 Cr LJ 3085 : AIR 2012 SC 2488 [LNIND 2012 SC 331] : (2012) 6 SCC 204 [LNINDORD 2012 SC 412] ; The state of the contents of the stomach found at the time of medical examination is not a safe guide for determining the time of the occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of. *Masjit Tato Rawool v State of Maharashtra*, (1971) SCC (Cr) 732; *Gopal Singh v State of UP*, AIR 1979 SC 1932 ; *Sheo Darshan v State of UP*, (1972) SCC (Cr) 394. [The presence of faecal matter in the intestines is not conclusive, as the deceased might be suffering from constipation. Where

there is positive direct evidence about the time of occurrence, it is not open to the court to speculate about the time of occurrence by the presence of faecal matter in the intestines; *Sheo Dershan v State of UP*, (1972) SCC (Cr) 394. The question of time of death of the victim should not be decided only by taking into consideration the state of food in the stomach. That may be a factor which should be considered along with other evidence, but that fact alone cannot be decisive; *R Prakash v State of UP*, (1969) 1 SCC 48 . Also see *Shivappa v State of Karnataka*, (1995) 2 SCC 76 [LNIND 1994 SC 1111] ; *Jabbar Singh v State of Rajasthan*, (1994) SCC (Cr) 1745. *Bijendra Bhagat v State of Uttarakhand*, 2015 Cr LJ 3150 , the injuries suffered by the deceased are incised wounds and one fire arm injury. However, none of the injuries on the person of the deceased could be attributed to the lathi which was supposedly in the hands of the appellant. Benefit of doubt given.

159. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 : 2014 (9) SCJ 453 [LNINDORD 2014 SC 19031] .

160. *Deepa v State of Haryana*, 2015 Cr LJ 2508 .

161. *Jagtar Singh v State of Haryana*, 2015 Cr LJ 3418 .

162. *Alagarsamy v State by DSP*, 2010 Cr LJ 29 : AIR 2010 SC 849 [LNIND 2009 SC 1914] . See also *Arun Kumar Sharma v State of Bihar*, (2010) 1 SCC 108 [LNIND 2009 SC 1866] : 2010 Cr LJ 428 , where FIR was sent to the Magistrate after five days.

163. *Awadesh Kumar Shukla v State of UP*, 2015 (7) ADJ 530 [LNIND 2015 ALL 190] : 2015 (6) ALJ 665 (All).

164. *Dilawar Singh v State of Haryana*, 2014 Cr LJ 4844 : (2015) 1 SCC 737 [LNIND 2014 SC 823] .

165. *State of Rajasthan v Chandgi Ram*, 2014 Cr LJ 4571 : 2014 (10) Scale 352 [LNIND 2014 SC 811] .

166. *Sudarshan v State of Maharashtra*, 2014 Cr LJ 3232 : 2015 (5) SCJ 358 . See also *State of Karnataka v Sateesh*, 2015 Cr LJ 3427 .

167. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Sukhram v State of Maharashtra*, 2007 (7) SCC 502 [LNIND 2007 SC 969] ; *Sunil Clifford Daniel (Dr) v State of Punjab*, 2012 (8) Scale 670 [LNIND 2012 SC 551] , *Pannayar v State of TN by Inspector of Police*, 2009 (9) SCC 152 [LNIND 2009 SC 1687] .

168. *Sanaulla Khan v State of Bihar*, (2013) 3 SCC 52 [LNIND 2013 SC 120] : 2013 Cr LJ 1527 ; *Ujjagar Singh v State of Punjab*, 2007 (13) SCC 90 [LNIND 2007 SC 1486] .

169. *Gosu Jairami Reddy v State of AP*, AIR 2011 SC 3147 [LNIND 2011 SC 2666] : 2011 Cr LJ 4387 : (2011) 11 SCC 766 [LNIND 2011 SC 2666] ; *Abu Thakir v State*, (2010) 5 SCC 91 [LNIND 2010 SC 366] : AIR 2010 SC 2119 [LNIND 2010 SC 366] : 2010 Cr LJ 2840 .

170. *Ashok Rai v State of UP*, 2014 Cr LJ 3085 : 2014 (10) SCJ 729 [LNINDU 2014 SC 21] .

171. *Rambraksh v State of Chhattisgarh*, 2016 Cr LJ 2939 : 2016 (5) SCJ 600 ; *Dharam Deo Yadav v State of UP*, 2014 Cr LJ 2371 : 2014 (2) ALT (Cr) 322 (SC).

172. *Rishipal v State of Uttarakhand*, 2013 Cr LJ 1534 (SC) : 2013 AIR (SCW) 1167; *Mohibur Rahman v State of Assam*, 2002 (6) SCC 715 ; in *Arjun Marik v State of Bihar*, 1994 Supp (2) SCC 372 , Supreme Court reiterated that the solitary circumstance of the accused and victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v Kuntala Mishra*, 1996 (11) SCC 264 [LNIND 1996 SC 1719] , the Supreme Court declared that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances; *State of Goa v Sanjay Thakran*, 2007 (3) SCC 755 [LNIND 2007 SC 274] ; *Bodh Raj @ Bodha v State of Jammu and Kashmir*, 2002 (8) SCC

45 [LNIND 2002 SC 539] ; *Jaswant Gir v State of Punjab*, 2005 (12) SCC 438 ; see *Manthuri Laxmi Narasaiah v State of AP*, 2012 Cr LJ 2172 : AIR 2011 SC (Supp) 73, in which the evidence of last seen rejected by the Supreme Court.

173. Also see *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Inspector of Police TN v John David*, (2011) 5 SCC 509 [LNIND 2011 SC 441] : 2011 Cr LJ 3366 : (2011) 2 SCC (Cri) 647 , 'last seen alive theory accepted'. See also *Mannan v State of Bihar*, (2011) 5 SCC 317 [LNIND 2011 SC 440] : 2011 Cr LJ 3380 : (2011) 2 SCC (Cri) 626 .

174. *Arabindra Mukherjee v State of WB*, 2012 AIR (SCW) 1032 : 2012 Cr LJ 1207 .

175. *State Through CBI v Mahender Singh Dahiya*, (2011) 3 SCC 109 [LNIND 2011 SC 114] : AIR 2011 SC 1017 [LNIND 2011 SC 114] : 2011 Cr LJ 2177 , last seen evidence would not always mean that the accused had killed the deceased.

176. *C Perumal v Rajasekaran*, 2012 AIR (SCW) 3641 : 2012 Cr LJ 3491 .

177. *Rambraksh v State of Chhattisgarh*, 2016 Cr LJ 2939 : 2016 (5) SCJ 600 .

178. *Kanhaiya Lal v State of Rajasthan*, 2014 Cr LJ 1950 : 2014 (4) WLN 299 (SC).

179. *Mahavir Singh v State of Haryana*, 2014 Cr LJ 3228 : 2014 (7) Scale 477 .

180. *Surender Prashad v State*, (2014) 209 DLT 461 : 2014 VI AD (Del) 234.

181. *Bikau Pandey v State of Bihar*, AIR 2004 SC 997 [LNIND 2003 SC 1027] : (2003) 12 SCC 616 [LNIND 2003 SC 1027] ; *Dalbir Singh v State of Haryana*, AIR 2008 SC 2389 [LNIND 2008 SC 1218] : (2008) 11 SCC 425 [LNIND 2008 SC 1218] ; *Nishan Singh v State of Punjab*, AIR 2008 SC 1661 [LNIND 2008 SC 2718] : (2008) 17 SCC 505 [LNIND 2008 SC 2718] . See also *Balraje v State of Maharashtra*, (2010) 6 SCC 673 [LNIND 2010 SC 487] : 2010 Cr LJ 3443 ; *Satvir v State of UP*, AIR 2009 SC 1741 [LNIND 2009 SC 124] : 2009 Cr LJ 1586 : (2009) 4 SCC 289 [LNIND 2009 SC 124] .

182. *Mukesh v State for NCT of Delhi*, 2017 (5) Scale 506 .

THE INDIAN PENAL CODE

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

[s 301] Culpable homicide by causing death of person other than person whose death was intended.

If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

COMMENT.—

Doctrine of transferred malice.—Section 301 of IPC, 1860 specifies that if a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing death of any person whose death he neither intends, nor knows himself to be likely to cause, culpable homicide committed by the offender is of the description of which it would have been, if he had caused the death of the person, whose death he intended or knew himself to be likely to cause.[183.] Blow aimed at the intended victim, if alights on another, offence is the same as it would have been if the blow had struck the intended victim.[184.] This section lays down that culpable homicide may be committed by causing the death of a person whom the offender neither intended, nor knew himself to be likely, to kill. This section embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under this section, if A intends to kill B but kills C whose death he neither intends nor knows himself to be likely to cause, the intention to kill C is, by law attributed to him.[185.]

If the killing takes place in the course of doing an act which a person intends or knows to be likely to cause death, it ought to be treated as if the real intention of the killer had been actually carried out.

Where a mistake is made in respect of the person, as where the offender shoots at A supposing that he is shooting at B, it is clear that the difference of person can make none in the offence or its consequences; the crime consists in the wilful doing of a prohibited act; the act of shooting at A was wilful, although the offender mistook him for another.

Where the accused was deliberately trying to shoot at a fleeing man who had criticised his father in a School Committee Meeting but unfortunately his own maternal uncle came in between him and the intended victim and thus got killed, it was held that the act of the accused was nothing but murder under section 302 read with section 301, IPC, 1860.[186.] In an altercation between parties, the accused persons fired indiscriminately upon the fleeing party, one shot hit a person and second caused the death of the complainant's 10-year-old son. The episode took place in a commercial locality. The death was held to be intentional murder punishable under sections

300/301.[187.] The accused reached his intended victim's house. The latter hid himself somewhere else. The accused chased him there and standing before that house fired into it. The housewife became prey and fell dead. It was held that under the doctrine of transfer of malice, the accused must be convicted under sections 302 and 307 and sentenced to life imprisonment.[188.] Where the accused intended to kill a particular person by his lorry but another person chanced to come before the lorry and happened to be killed, an offence under this section was committed and the accused was convicted under section 302.[189.]

Similarly, there will be no difference where the injury intended for one falls on another by accident. If A makes a thrust at B, meaning to kill, and C throwing himself between, receives the thrust and dies, A will answer for it as if his mortal purpose had taken place on B.

The same principle is applicable where, through accident or the mistake of a party not privy to the criminal design, the mischief falls either on a person not intended, or on the party intended but in a different manner from that intended.[190.] Accused had entered the house of witness to kill him but due to non-availability of electricity and under the wrong impression he killed the deceased. Death of deceased can be said to be accidental due to mistaken identity rather than any intentional act of accused. Order of conviction of accused under section 302, IPC, 1860 is modified to one under section 304, Part II, IPC, 1860.[191.]

In a scuffle between accused persons and the complainant's party, one member on the accused's side fired a shot at a particular member on the complainant's side but the shot actually hit another person who died. The Court held that the doctrine of transferred malice was attracted. The act of the accused would be covered by section 304 and he was liable to be convicted under Part II of that section, though the deceased was neither aimed at nor intended to be harmed by the accused.[192.]

It is not a disputed fact as to whose fire shot resulted in the death of the deceased. The only question which is to be examined here is whether the offence committed by the respondent is culpable homicide amounting to murder, punishable under section 302 or culpable homicide not amounting to murder, punishable under section 304, Part I. Here, the intention on the part of the respondent-accused in causing bodily injury as is likely to cause death is also not a disputed fact. The only thing which is to be tested is whether the bodily injury is covered under either of the clauses of section 300 of IPC, 1860 (*transfer of malice doctrine applied*).[193.]

[s 301.1] Transfer of malice.—

The accused intended to cause death of his victim. But the stab aimed at him fell on the chest of the deceased resulting in his death. It was held that as per the doctrine of transfer of malice, it must be presumed that the accused intended to cause death of the deceased alone. His act attracted the offence under section 301 read with section 302.[194.]

[s 301.2] CASES.—

Four persons were shooting at R in furtherance of their common intention to kill M, in the *bona fide* belief that R was M. R died as a result of the gunshot wounds. It was held by the Supreme Court that the accuseds were guilty under section 302 read with section 34 and that section 301 had no application.[195.]

183. *Dan Behari v State of UP*, 2003 Cr LJ 4959 .

184. *Viswanath Pillai v State of Kerala*, 1994 Cr LJ 1037 , the court **referred** *Ballan v The State*, AIR 1955 All 626 [LNIND 1955 ALL 71] , wherein the scope of section 301 was discussed and *Suba v Emperor*, AIR 1928 Lah 344 : 1928 (29) Cr LJ 280 .

185. *Shankarlal*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : (1965) 2 Cr LJ 266 .

186. *Gyanendra Kumar v State*, 1972 Cr LJ 308 : AIR 1972 SC 502 [LNIND 1971 SC 601] .

187. *Abdul v State of Gujarat*, (1995) 1 Cr LJ 464 : AIR 1994 SC 1910 [LNIND 1994 SC 209] .

188. *Jagpal Singh v State of Punjab*, AIR 1991 SC 982 : 1991 Cr LJ 597 : 1991 Supp (1) SCC 549 .

189. *Padmanabhan v State of Kerala*, 1988 Cr LJ 591 (Ker).

190. 7th Parl Rep 26; *Jeoli*, (1916) 39 All 161 .

191. *Geja Sabar v State of Orissa*, 2009 Cr LJ 4685 .

192. *Kashi Ram v State of MP*, AIR 2001 SC 2902 [LNIND 2001 SC 2369] . *Rameshwar v State of UP*, 1997 Cr LJ 2677 (All), a minor killed by gunshot injury, the accused wanted to kill the victim's father. Conviction under section 304, Part I.

193. *State of Rajasthan v Ram Kailash*, AIR 2016 SC 634 [LNIND 2016 SC 41] : (2016) 4 SCC 590 [LNIND 2016 SC 41] .

194. *Nagaraj v State*, 2006 Cr LJ 3724 (Mad—DB).

195. *Shankarlal*, AIR 1965 SC 1260 [LNIND 1964 SC 230] . See also *Balwinder v State of Punjab*, (1987) 1 SCC 1 [LNIND 1986 SC 482] : 1987 Cr LJ 330 : AIR 1987 SC 350 [LNIND 1986 SC 482] where a conviction was upheld on the basis of circumstantial evidence only, such as, last seen together, abscondence, recovery of dead body at his instance, and false pleas. But no such conviction was upheld in *Kansa Bahera v State of Orissa*, 1987 Cr LJ 1857 : (1987) 1 SCC 480 : AIR 1987 SC 1507 [LNIND 1987 SC 383] , because the circumstances were not capable of leading to the single point conclusion of the guilt of the accused person. The Supreme Court has **reiterated** that a High Court should not grant anticipatory bail to a person against whom a report of dowry death is under investigation. *Samunder Singh v State of Rajasthan*, (1987) 1 SCC 466 [LNIND 1987 SC 38] : AIR 1987 SC 737 [LNIND 1987 SC 38] . For an example of conviction under the section for bride-burning see *Surinder Kumar v State (Delhi Administration, Delhi)*, (1987) 1 SCC 467 [LNIND 1987 SC 38] : AIR 1987 SC 692 : 1987 Cr LJ 537 . For burning a mistress and conviction on the basis of her dying declaration, see, *Suresh v State of MP*, (1987) 2 SCC 32 : 1987 Cr LJ 775 : AIR 1987 SC 860 . Unless there is infirmity, illegality, failure of justice or question of principle, the court does not interfere in a concurrent sentence and conviction by trial and High Court. *Gopal v State of Tamil Nadu*, (1986) 2 SCC 93 [LNIND 1986 SC 26] : AIR 1986 SC 702 [LNIND 1986 SC 26] . *Ashok Kumar Chatterjee v State of M.P.*, AIR 1989 SC 1890 : 1989 Cr LJ 2124 : 1989 Supp (1) SCC 560 ; Death caused by gunshot injuries, remarkable eye-witness account, conviction, *Bikkar Singh v State of Punjab*, AIR 1989 SC 1440 : 1989 Cr LJ 1457 , but acquittal where eye-witness's account was doubtful, prosecution version different from dying declaration and no explanation of injuries on the person of the accused; *State of U.P. v Madan Mohan*, AIR 1989 SC 1519 : 1989 Cr LJ 1485 : (1989) 3 SCC 390 ; charges of abduction, murder and rape, trial court acquitting because body was not traceable, High Court convicting for abduction, conviction sustained, *Arun Kumar v State of U.P.*, AIR 1989 SC 1445 : 1989 Cr LJ

1460 : 1989 Supp (2) SCC 322 . Re-appreciation of evidence in the absence of the counsel, conviction found justified, *Daya Ram v State (Delhi) Admn)*, (1988) 1 SCC 615 [LNIND 1988 SC 41] : AIR 1988 SC 613 : 1988 Cr LJ 865 .

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

[s 302] Punishment for murder.

Whoever commits murder shall be punished with death, or [196][imprisonment for life], and shall also be liable to fine.

COMMENT.—

Section 302 provides the punishment for murder. It stipulates a punishment of death or imprisonment for life and fine. Once an offender is found by the Court to be guilty of the offence of murder under section 302, then it has to sentence the offender to either death or for imprisonment for life. The Court has no power to impose any lesser sentence.

[s 302.1] Punishment for murder.—Evolution.—

Cr PC, 1898 had section 376(5) which required that if an accused is convicted of an offence punishable with death and the Court sentences him with any punishment other than death, the Court shall, in its judgment, give reasons why death sentence was not passed. The provision of section 367(5) of the 1898 Code reads as follows:

(5) *If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed.*

In 1955, Cr PC (Amendment) Act, 1955 deleted the aforesaid section 367(5) of the 1898 Code. As a result of this amendment, which came into effect from 1 January 1956, it was no longer necessary for a Court to record in its judgment, in case of conviction in connection with an offence punishable with death, any reason for not imposing the death sentence. Thus, in the new Code, the discretion of the judge to impose death sentence has been narrowed, for the Court has to provide special reasons for imposing a sentence of death. It has made imprisonment for life the rule and death sentence an exception, in the matter of awarding punishment for murder.[197.] Reference to extenuating or mitigating circumstances in a case of death penalty was made possibly for the first time by Supreme Court in the case of *Nawab Singh v State of UP*.[198.] The Court held that in the facts of that case, murder was a cruel and deliberate one and there were no extenuating circumstances. After the amendment of 1898 Code, in the year 1955, the first case relating to death sentence, which came before Supreme Court was that of *Vadivelu Thevar v State of Madras*,[199.] in which it was held that the question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime. If the Court is satisfied that there are such mitigating circumstances, only then, it would be justified in imposing the lesser of the two sentences provided by law.

[s 302.2] Constitutionality of Death penalty.—

The constitutionality of death sentence was challenged in the case of *Jagmohan Singh v State of UP*.[200.] The Constitution Bench while upholding the constitutionality of death penalty examined whether total discretion can be conferred on the judges in awarding death sentence, when the statute does not provide any guidelines on how to exercise the same. The decision in Jagmohan Singh (*supra*) was rendered when Cr PC, 1973 was not in existence. However, the aforesaid position substantially changed with the introduction of a changed sentencing structure under Cr PC, 1973. In *Rajendra Prasad v State of UP*,[201.] it was held that the special reasons necessary for imposing a death penalty must relate not to the crime but to the criminal. It could be awarded only if the security of the state and society, public order in the interest of the general public compelled that course.

Proposition laid down by the Constitution Bench in Jagmohan Singh's Case

(i) The general legislative policy that underlines the structure of our criminal law, principally contained in the IPC, 1860 and Cr PC, 1973, is to define an offence with sufficient clarity and to prescribe only the maximum punishment therefore, and to allow a very wide discretion to the Judge in the matter of fixing the degree of punishment.

With the solitary exception of section 303, the same policy permeates section 302 and some other sections of IPC, 1860, where the maximum punishment is the death penalty.

(ii) (a) No exhaustive enumeration of aggravating or mitigating circumstances which should be considered when sentencing an offender, is possible. "The infinite variety of cases and facets to each case would make general standards either meaningless 'boiler plate' or a statement of the obvious that no Jury (Judge) would need." (referred to *McGoutha v California*.[202.]

(b) The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment.

(iii) The view taken by the plurality in *Furman v Georgia*,[203.] decided by the Supreme Court of the United States, to the effect, that a law which gives uncontrolled and unguided discretion to the Jury (or the Judge) to choose arbitrarily between a sentence of death and imprisonment for a capital offence, violates the Eighth Amendment, is not applicable in India. We do not have in our Constitution any provision like the Eighth Amendment, nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. There are grave doubts about the expediency of transplanting western experience in our country. Social conditions are different and so also the general intellectual level. Arguments which would be valid in respect of one area of the world may not hold good in respect of another area.

(iv) (a) This discretion in the matter of sentence is to be exercised by the Judge judicially, after balancing all the aggravating and mitigating circumstances of the crime.

(b) The discretion is liable to be corrected by Superior Courts. The exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguard for the accused. In view of the above, it will be impossible to say that there would be at all any discrimination, since crime as crime may appear to be superficially

the same, but the facts and circumstances of a crime are widely different. Thus considered, the provision in section 302, IPC, 1860 is not violative of Article 14 of the Constitution on the ground that it confers on the Judges an unguided and uncontrolled discretion in the matter of awarding capital punishment or imprisonment for life.

(v) (a) Relevant facts and circumstances impinging on the nature and circumstances of the crime can be brought before the Court at the preconviction stage, notwithstanding the fact that no formal procedure for producing evidence regarding such facts and circumstances had been specifically provided. Where counsel addresses the Court with regard to the character and standing of the accused, they are duly considered by the Court unless there is something in the evidence itself which belies him or the Public Prosecutor challenges the facts.

(b) It is to be emphasised that in exercising its discretion to choose either of the two alternative sentences provided in section 302, IPC, 1860:

> the Court is principally concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under inquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the Indian Evidence Act in a trial regulated by the CrPC. The trial does not come to an end until all the relevant facts are proved and the counsel on both sides have an opportunity to address the Court. The only thing that remains is for the Judge to decide on the guilt and punishment and that is whats. 306(2) and s. 309(2), CrPC purport to provide for. These provisions are part of the procedure established by law and unless it is shown that they are invalid for any other reasons they must be regarded as valid. No reasons are offered to show that they are constitutionally invalid and hence the death sentence imposed after trial in accordance with the procedure established by law is not unconstitutional under Art. 21.

[*Jagmohan Singh v State of UP*.][204.]

[s 302.3] Evolution of Sentencing Policy

Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case.[205.]

[s 302.4] Phase-I (Focus on Crime).—

Jagmohan Singh's Case (*supra*) laid down that discretion in the matter of sentencing is to be exercised by the judge after balancing all the aggravating and mitigating circumstances "of the crime". *Jagmohan Singh* also laid down in proposition that while choosing between the two alternative sentences provided in section 302 of IPC, 1860 (sentence of death and sentence of life imprisonment), the Court is principally concerned with the aggravating or mitigating circumstances connected with the "particular crime under inquiry".

[s 302.5] Legislative Change.—

The 41st Law Commission Report proposed extensive changes in the 1898 Code. In paragraph 23.2 of the said report, the Law Commission recommended a set of new provisions for governing "trials before a Court of sessions". With regard tosection 309 of the 1898 Code, the Law Commission recommended that hearing of the accused was most desirable before passing any sentence against him. This recommendation was accepted and incorporated while enacting section 235, Cr PC in 1973 Code within Chapter XVIII of the same under the heading "Trial before a Court of Sessions". The most significant change brought about by the incorporation of the recommendation of the Law Commission, is the giving of an opportunity of hearing to the accused on the question of sentence. This opportunity of hearing at the post-conviction stage gives the accused an opportunity to raise fundamental issues for adjudication and effective determination by Court of its sentencing discretion in a fair and reasonable manner. In *Santa Singh v State of Punjab*,[206.] the Supreme Court held that this provision is in consonance with the modern trends in penology and sentencing procedures. It was further held that proper exercise of sentencing discretion calls for consideration of various factors like the nature of offence, the circumstances—both extenuating or aggravating, the prior criminal record, if any, of the offender, the age of the offender, his background, his education, his personal life, his social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of his rehabilitation in the life of community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others.

[s 302.6] Phase-II Doctrine of "Rarest of rare" (Shifting the focus from crime to criminal).—

In *Bachan Singh v State of Punjab*,[207.] another Constitution Bench, while upholding the constitutional validity of death sentence observed that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. The principal questions considered in this case were:

> (i) Whether death penalty provided for the offence of murder in Section 302, Penal Code is unconstitutional.
>
> (ii) If the answer to the foregoing question be in the negative, whether the sentencing procedure provided in Section 354(3) of the CrPC, 1973 (Act 2 of 1974) is unconstitutional on the ground that it invests the Court with unguided and untrammelled discretion and allows death sentence to be arbitrarily or freakishly imposed on a person found guilty of murder or any other capital offence punishable under the Indian Penal Code with death or, in the alternative, with imprisonment for life.

The conclusion of the Constitution Bench was that the sentence of death ought to be given only in the **'rarest of rare cases'** [See the Box with '*Supreme Court Guidelines in Bachan Singh*'] and it should be given only when the option of awarding the sentence of life imprisonment is "unquestionably foreclosed". It laid down the framework law on this point. Bachan Singh effectively opened up Phase II of a sentencing policy by shifting the focus from the crime to the crime and the criminal.

Supreme Court Guidelines in Bachan Singh

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty, the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the

'crime';

(iii) Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

[*Bachan Singh v State of Punjab*.[208.]]

The judgment in *Machhi Singh v State of Rajasthan,*[209.] did not only state the above guidelines in some elaboration, but also specified the mitigating circumstances which could be considered by the Court while determining such serious issues.[210.] Despite the legislative change and *Bachan Singh* discarding proposition (iv)(a) of *Jagmohan Singh*, Supreme Court in *Machhi Singh* revived the "balancing" of aggravating and mitigating circumstances through a balance sheet theory. In doing so, it sought to compare aggravating circumstances pertaining to a crime with the mitigating circumstances pertaining to a criminal. It hardly need be stated, with respect, that these are completely distinct and different elements and cannot be compared with one another. A balance sheet cannot be drawn up of two distinct and different constituents of an incident. Nevertheless, the balance sheet theory held the field post *Machhi Singh*.[211.]

Supreme Court Guidelines in Machhi Singh

Factors to be considered while determining the "rarest of rare" case

I. Manner of commission of murder

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance.

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house,

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance, when (a) a hired assassin commits murder for the sake of money or reward; (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust; (c) a murder is committed in the course for betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

(a) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance, when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

35. When the crime is enormous in proportion. For instance, when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

36. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder, (b) a helpless woman or a person rendered helpless by old age or infirmity, (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust, (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

[*Machhi Singh v State of Punjab*.[212.]]

It is always preferred not to fetter the judicial discretion by attempting to make excessive enumeration, in one way or another; and that both aspects namely aggravating and mitigating circumstances have to be given their respective weightage and that the Court has to strike the balance between the two and see towards which side the scale/balance of justice tilts.[213.]

The aggravating and mitigating circumstances required to be taken into consideration while applying the doctrine of "rarest of rare" crime

39. Aggravating circumstances:

1. The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, etc. by the accused with a prior record of conviction for capital felony.
2. The offence was committed while the offender was committing another serious offence.
3. The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
4. The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
5. Hired killings.
6. The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.
7. The offence was committed by a person while in lawful custody.

8. The offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under section 43, Cr PC, 1973.

9. When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

10. When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

11. When murder is committed for a motive which evidences total depravity and meanness.

12. When there is a cold-blooded murder without provocation.

13. The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances:

1. The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

2. The age of the accused is a relevant consideration but not a determinative factor by itself.

3. The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

4. The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

5. The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

6. Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

7. Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

40. While determining the questions relatable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles:

(1) The Court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

Ramnaresh v State of Chhattisgarh;[214.] *Brajendra Singh v State of MP.*[215.]

[s 302.7] Considerations for or against death sentence.—Balance sheet of aggravating and mitigating factors.—

Both in *Bachan Singh and Machhi Singh's* cases, guidelines have been indicated by the Supreme Court as to when this extreme sentence should be awarded and when not. In fine, a balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised to award one sentence or the other.

The cardinal questions to be asked and answered are:—

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

If after taking into consideration all these circumstances, it is felt that death sentence is warranted, the Court would proceed to do so.[216.] Thus, where murder is premeditated[217.] or is committed in an organised manner,[218.] or by a hired assassin[219.] or by a lawyer[220.] or where it is gruesome[221.] or is committed with utmost depravity,[222.] death sentence seems to be the proper sentence in all such cases.

[s 302.8] Need for flexibility.—

The Supreme Court has re-examined the categories after a gap of 25 years in *Swami Shraddananda v State of Karnataka*.[223.] The circumstances and conditions of life have very seriously changed since then and, therefore, even if those categories are to be observed, some scope for flexibility should always be maintained. Giving a brief view of the changed scenario, the Supreme Court noted that a careful reading of the *Machhi Singh* categories makes it clear that the classification was made looking at murder mainly as an act of maladjusted individual criminal(s). In 1983, the country was relatively free from organised and professional crime. Abduction for ransom and gang rape and murders committed in course of those offences were yet to become a menace for the society compelling the legislature to create special slots for those offences in IPC, 1860. At the time of *Machhi Singh*, Delhi had not witnessed the

infamous Sikh carnage. There had been no attack on the country's Parliament. There were no bombs planted by terrorists killing completely innocent people, men, women and children in dozens with sickening frequency. There were no private armies, no mafia cornering huge Government contracts purely by muscle power, no reports of killings of social activists and "whistle-blowers", no reports of custodial deaths and rape and fake encounters by police or even by armed forces. These developments would unquestionably find a more pronounced reflection in any classification if one were to be made today. Relying upon the observations in *Bachan Singh*, therefore, even though the categories framed in *Machhi Singh* provide very useful guidelines, nonetheless those cannot be taken as inflexible, absolute or immutable. Further, even in those categories, there would be scope for flexibility as observed in *Bachan Singh* itself.

[s 302.9] Santosh Bariyar—A landmark.—

In *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*,[224.] while sharing Supreme Court's "unease and sense of disquiet" it was observed that:

> the balance sheet of aggravating and mitigating circumstances approach invoked on a case by case basis has not worked sufficiently well so as to remove the vice of arbitrariness from our capital sentencing system. It can be safely said that the Bachan Singh threshold of "the rarest of rare cases" has been most variedly and inconsistently applied by the various High Courts as also this Court.

The Judgments which are held to be *per incurium* in *Santhosh Bariyar*:

(1) *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*,[225.]

(2) *Mohan Anna Chavan v State of Maharashtra*,[226.]

(3) *Bantu v State of UP*,[227.]

(4) *Surja Ram v State of Rajasthan*,[228.]

(5) *Dayanidhi Bisoi v State of Orissa*,[229.] and

(6) *State of UP v Sattan @ Satyendra*.[230.]

In *Sangeet v State of Haryana*,[231.] in an unprecedented Judgment, a two-judge bench of the Supreme Court held that the Court has not endorsed the approach of aggravating and mitigating circumstances in the Constitution Bench Judgment in *Bachan Singh* and observed that it needs a fresh look. [See the Box with '*Principles summarised in Sangeet's Case by Supreme Court*'.] The bench observed that even though Bachan Singh intended "principled sentencing", sentencing has now really become judge-centric as highlighted in *Swamy Shraddananda* and *Bariyar.* This aspect of the sentencing policy in Phase II as introduced by the Constitution Bench in *Bachan Singh* seems to have been lost in transition.

Principles summarised in Sangeet's Case by Supreme Court

> 80. 1. This Court has not endorsed the approach of aggravating and mitigating circumstances in Bachan Singh. However, this approach has been adopted in several decisions. This needs a fresh look. In any event, there is little or no uniformity in the application of this approach.
>
> 2. Aggravating circumstances relate to the crime while mitigating circumstances relate to the criminal. A balance sheet cannot be drawn up for comparing the two. The considerations for both are distinct and unrelated. The use of the mantra of aggravating and mitigating circumstances needs a review.

> 3. In the sentencing process, both the crime and the criminal are equally important. We have, unfortunately, not taken the sentencing process as seriously as it should be with the result that in capital offences, it has become judge-centric sentencing rather than principled sentencing.
>
> 4. The Constitution Bench of this Court has not encouraged standardization and categorization of crimes and even otherwise it is not possible to standardize and categorize all crimes.
>
> 5. The grant of remissions is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.
>
> 6. Remission can be granted under Section 432 of the CrPC in the case of a definite term of sentence. The power under this Section is available only for granting "additional" remission, that is, for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power under Section 432 of the CrPC can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.
>
> 7. Before actually exercising the power of remission under Section 432 of the CrPC the appropriate Government must obtain the opinion (with reasons) of the presiding judge of the convicting or confirming Court. Remissions can, therefore, be given only on a case-by-case basis and not in a wholesale manner.

[*Sangeet v State of Haryana*.][232.]

In *Mohinder Singh v State of Punjab*,[233.] another two-Judge Bench analysed the various principles laid down in decisions reported in *Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka*,[234.] *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*,[235.] *Mohd Farooq Abdul Gafur v State of Maharashtra*,[236.] *Haresh Mohandas Rajput v State of Maharashtra*,[237.] *State of Maharashtra v Goraksha Ambaji Adsul*,[238.] and the Supreme Court's decision reported in *Mohammed Ajmal Mohammadamir Kasab @ Abu Mujahid v State of Maharashtra*,[239.] and held that a conclusion as to the 'rarest of rare' aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal and the expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.[240.]

Principles summarised in Mohinder Singh's Case by Supreme Court

(i) A conclusion as to the 'rarest of rare' aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal.

(ii) The expression 'special reasons' obviously means ('exceptional reasons') founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal.

(iii) The decision in *Ravji @ Ram Chandra v State of Rajasthan*,[241.] which was subsequently followed in six other cases, namely, *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*,[242.] *Mohan Anna Chavan v State of Maharashtra*,[243.] *Bantu v State of UP*,[244.] *Surja Ram v State of Rajasthan*,[245.] *Dayanidhi Bisoi v State of Orissa*,[246.] and *State of UP v Sattan @ Satyendra and Others*,[247.] wherein it was held that it is only characteristics relating to crime, to the exclusion of the ones relating to criminal, which are relevant to sentencing in criminal trial, was rendered *per incuriam qua* Bachan Singh (*supra*) in the decision reported *in Santosh Kumar Satishbhushan Bariyar* (*supra*) at 529.

(iv) Public opinion is difficult to fit in the 'rarest of rare' matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal.

Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of *Bachan Singh* (*supra*). [2009 (6) SCC 498 [LNIND 2009 SC 1278] at p 535.]

(v) Capital sentencing is one such field where the safeguards continuously take strength from the Constitution. [(2009) 6 SCC 498 [LNIND 2009 SC 1278] at 539.]

(vi) The Apex Court as the final reviewing authority has a far more serious and intensive duty to discharge and the Court not only has to ensure that award of death penalty does not become a perfunctory exercise of discretion under section 302 after an ostensible consideration of 'rarest of rare' doctrine, but also that the decision-making process survives the special rigours of procedural justice applicable in this regard.[248.]

(vii) The 'rarest of rare' case comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of "the rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society.[249.]

(viii) Life sentence is the rule and the death penalty is the exception. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable.

(ix) The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the Court to the extent that the only and inevitable conclusion should be awarding of death penalty.

State of Maharashtra v Goraksha Ambaji Adsul[250.] and *Mohinder Singh v State of Punjab*.[251.]

[s 302.10] Crime Test, Criminal Test and RR Test.—

The tests that we have to apply, while awarding death sentence, are "crime test", "criminal test" and the RR Test and not "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is 100% and "criminal test" 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc., the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (RR Test). RR Test depends upon the perception of the society that is "society centric" and not "Judge centric", that is, whether the society will approve the awarding of death sentence to certainty types of crimes or not. While applying that test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges.[252.]

Some Cases where the Court applied the Criminal test to avoid Death Penalty:

(1) *Kumudi Lal v State of UP*,[253.]

(2) *Raju v State of Haryana*,[254.]

(3) *Bantu @ Naresh Giri v State of MP*,[255.]

(4) *State of Maharashtra v Suresh*,[256.]

(5) *Amrit Singh v State of Punjab*,[257.]

(6) *Rameshbhai Chandubhai Rathod v State of Gujarat*,[258.]

(7) *Surendra Pal Shivbalak v State of Gujarat*,[259.]

(8) *Amit v State of Maharashtra*.[260.]

[s 302.11] *Via media* between Death Sentence and Life Imprisonment.—

It was in *Swamy Shraddananda (2) v State of Karnataka*,[261.] that a three-Judge Bench of the Supreme Court concluded that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of 14 years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be. But a two-Judge Bench in *Sangeet v State of Haryana*,[262.] in which it was held that:

> a reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done in *Swamy Shraddananda* and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason. In this case, though the Division Bench raised a doubt about the decision of a three-Judge Bench in *Swamy Shraddananda* (*supra*), yet the same has not been referred to a larger Bench.

In *Sahib Hussain @ Sahib Jan v State of Rajasthan*,[263.] another two-Judge Bench reiterated the position held in *Swamy Shraddananda* (*supra*) by holding that the observations in *Sangeet* (*supra*) are not warranted. In *Gurvail Singh @ Gala v State of Punjab*,[264.] other two-Judge bench also termed the remarks in *Sangeet* (*supra*) as 'unwarranted' and opined that if the two-judge bench was of the opinion that earlier judgments, even of a larger Bench were not justified, the Bench ought to have referred the matter to the larger Bench. However, in some cases, the Court had also been voicing concern about the statutory basis of such orders.[265.] In a judgment,[266.] Supreme Court opined that:

> We are of the view that it will do well in case a proper amendment u/s. 53 of IPC is provided, introducing one more category of punishment—life imprisonment without commutation or remission. Dr. Justice V. S. Malimath in the Report on "Committee of Reforms of Criminal Justice System", submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.

[s 302.12] Sessions' Court's power.—

The Session Judges do not have the power to impose the harsher variety of life sentence which is recognised by *Swamy Shraddananda* (*2*) *v State of Karnataka*[267.] as an option available in law for the Courts to avoid the harshest, irreversible and *incorrectable* sentence of death. That sentencing option is available only to Constitutional Courts —the High Courts and the Supreme Court.[268.]

[s 302.13] Delay in execution of death sentence.—

It is well-established that exercising of power under Article 72/161 by the President or the Governor is a Constitutional obligation and not a mere prerogative.[269.] Time taken in Court proceedings cannot be taken into account to say that there is a delay which would convert a death sentence into one for life.[270.] In *TV Vatheeswaran*,[271.] **overruled** in *Triveni Ben v State of Gujarat*,[272.] a two-Judge Bench of Supreme Court considered whether the accused, who was convicted for an offence of murder and sentenced to death, kept in solitary confinement for about eight years was entitled to commutation of death sentence. It was held that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Article 21 and demand the quashing of the sentence of death.[273.] But a three-Judge bench in *Sher Singh v State of Punjab*,[274.] held that though prolonged delay in the execution of a death sentence is unquestionably an important consideration for determining whether the sentence should be allowed to be executed, no hard and fast rule that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke Art. 21 and demand the quashing of the sentence of death" can be laid down as has been done in *Vatheeswaran (supra). Javed Ahmed v State of Maharashtra*,[275.] re-iterated the proposition laid down in *Vatheeswaran* (*supra*) case and doubted the competence of the three-judge bench to overrule the *Vatheeswaran* case. The conflicting views are finally settled by the Constitution Bench in *Triveni Ben v State of Gujarat*.[276.] It **overruled** *Vatheeswaran (supra)* holding that undue long delay in execution of the sentence of death will entitle the condemned person to approach the Supreme Court under Article 32 but the Court will only examine the nature of delay caused and circumstances that ensued after sentence will finally be confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in *Vatheeswaran's* case cannot be said to lay down the correct law. In *Madhu Mehta v UOI*,[277.] Supreme Court commuted the death sentence on the ground that the mercy petition was pending for eight years after disposal of the criminal appeal by Supreme Court.

It is well established that exercising of power under Article 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of the Supreme Court to step in and consider this aspect.[278.]

[s 302.13.1] *Nirbhaya Case*[279.].—

In this case, the Supreme Court analysed all the decisions, where the question of imposing the death penalty was discussed and examined the aggravating and mitigating circumstances and opined that the appetite for sex, the hunger for violence, the position of the empowered and the attitude of perversity of the accused, to say the least, are bound to shock the collective conscience which knows not what to do.

The Supreme Court observed that:

> the casual manner with which she was treated and devilish manner in which they played with her identity and dignity is humanly inconceivable. It sounds like a story from different world where humanity has been treated with irreverence. Aggravating circumstances outweigh mitigating circumstances.

The Supreme Court held the accused persons guilty of offences which are brutal, diabolic and barbaric in nature and fall within category of rarest of rare cases. The Supreme Court held that the sentence of death penalty was proper; there was no reason to differ with same.[280.]

[s 302.14] Mitigating factors.

At the material time, the accused was under influence of alcohol and the fact that his mental faculty was not in order, was considered as a relevant mitigating circumstance. It was accordingly held that it was not a fit case for extreme penalty. The sentence for life imprisonment was confirmed.[281.]

There was a conspiracy in the wake of a property dispute in which contract killers were hired and death was caused. Sethi, J, of the Supreme Court said that this was not the rarest of rare case. The accused was a misled youth. He was liable to be sentenced to life imprisonment for the major offence of murder.[282.] In a case arising out of partition between two brothers, one of them (the accused) killed his brother, his wife and children. He was frustrated over his failure to resist partition of joint property. The Court agreed that it was a heinous and brutal crime, but was not in the category of rarest of rare cases. The accused did not have any criminal tendency. He was a State Government employee and not a menace to the society. The Court directed his death sentence to be reduced to 20 years actual imprisonment including the period already undergone.[283.]

In a rape and murder case of an 11-year-old child, there was extra judicial confession made to a senior person to seek his help. He indicated the place where the body of the girl was lying. He struck her in the head twice over with a brick and then in the mouth only when she threatened to disclose. This showed that he had no intention to commit murder and injuries were inflicted only at the spur of the moment. He had no criminal record nor he was in any way a danger to the society. Death sentence was commuted to life imprisonment.[284.]

The Court has to draw a balance between the aggravating and mitigating factors. The accused in this case was the member of a para-military force. He killed seven members of a family in a pre-planned manner. He was 23 at the time and had no criminal record. He and his family members were suffering agony at the hands of the victim family. He had a cause to feel aggrieved for the injustice meted out to his family members. The Court said that it was not the rarest of rare cases. His death sentence was reduced to life imprisonment.[285.]

[s 302.14.1] *Where attribution of exact role not possible.—*

One of the accused persons was the relative of the deceased family. They not only merely robbed the family of valuables but also killed three members of the family who were present at the time. They also raped the only female member in the house. The mitigating factors which the judge took into account in commuting death sentence into life imprisonment were that they were neither too old nor too young to be beyond reformation and rehabilitation. It was difficult also to judge as to what part was played by one or the other and, therefore, who among them would come in the "rarest" category.[286.]

[s 302.14.2] *Killing of wife and children in frustration.—*

Though the accused had some suspicion about the character of his wife, the facts showed that he killed his wife and children because of unhappiness and frustration and not because of any criminal tendency. The penalty of death was set aside and he was sentenced to life imprisonment.[287.] The accused requested his wife to accompany him to his house. She turned it down. This created frustration and anger in his mind. He picked up a sharp-edged weapon and mercilessly struck her and also his mother-in-law repeatedly. Both of them fell dead. The Court said that the case was not of the rarest category. Death sentence was commuted to life imprisonment.[288.]

[s 302.14.3] *Death in custody*.—

The Supreme Court observed as follows:

There is a rise in incidents of custodial deaths but accused cannot be convicted completely *de hors* the evidence and its admissibility according to law. Court cannot act on presumption merely on a strong suspicion or assumption and presumption. A presumption can only be drawn when it is permissible under the law. Rushing into conclusions without there being any proper link with commission of crime is improper. The view taken by the trial Court was just and proper in the given facts and circumstances of the case and it was not proper for the High Court to reverse the finding. Reasons given by the High Court in reversing the order of acquittal of accused persons were not cogent and did not appeal to reason so as to justify conviction of the appellants. Hence, impugned judgment of the High Court was set aside.[289.]

[s 302.14.4] *Restoration of death penalty after acquittal.—*

The trial Court awarded death sentence. The High Court acquitted the accused in 1982. The Supreme Court said that the accused having enjoyed acquittal, death sentence could not be restored even if the case merited the imposition of death penalty.[290.]

[s 302.15] Delay.—

No hard-and-fast rules can be laid down with respect to the delay which could result as a mitigating circumstance, and each case must depend on its own facts. In the present case, there was no delay whatsoever that the circumstances necessitated imposition of life sentence instead of death sentence.[291.]

[s 302.16] Capital (Death) sentence.—

The doctrine of rarest of rare case was enunciated by the Supreme Court in *Bachan Singh v State of Punjab*.[292.] The trial Court, High Courts and even the Supreme Court are duty bound to follow it.[293.] The Court explained in this case some of the relevant factors as follows:

Not only the doctrine of proportionality but also doctrine of rehabilitation should be taken into consideration, particularly in view of section 354(3), Cr PC, 1973, which must be read with Article 21 of the Constitution. Where there was nothing to show that the appellant-accused could not be reformed and rehabilitated, the mere manner of disposal of the dead body, howsoever abhorrent, should not by itself be regarded sufficient to bring the case in the rarest of rare category. In the present case, all the accused including the appellant were unemployed young men in search of job. They were not criminals. In exception of a plan proposed by the appellant and accepted by them, they kidnapped a friend of theirs with the motive of procuring ransom from his family but later murdered him, and after cutting his body into pieces, disposed of the same at different places. One of the accuseds turned approver and prosecution case was based exclusively on his evidence. Appellant-accused contradicted the approver's version in respect of his role. In such a case, statement of approver regarding manner of murder and role of accused and that of approver himself, should be tested on the basis of prudence doctrine taking into consideration *inter alia*, evidence produced by the accused for imposition of lesser punishment. Hence, death penalty awarded by the Courts below, in the absence of any special reasons to support the same was substituted by penalty of rigorous imprisonment for life.

Death punishment stands on a very different footing from other types of punishments. It is unique in its total irrevocability. Incarceration, life or otherwise, potentially serves more than one sentencing aims. Deterrence, incapacitation, rehabilitation and retribution all ends are capable to be furthered in different degrees, by calibrating this punishment in light of the overarching penal policy. But the same does not hold true of death penalty.[294.]

One has to observe the global move away from the death penalty. Latest statistics show that 138 nations have abolished death penalty in either law or practice (no executions for 10 years).

Further, on 18 December 2007, the UN General Assembly adopted Resolution 62/149 calling upon countries that retain death penalty to establish a worldwide moratorium on executions with a view to abolishing the death penalty. India is, however, one of the 59 nations that retain the death penalty.[295.]

The Law Commission of India in its Report No. 262 titled "The Death Penalty" has recommended the abolition of death penalty for all the crimes other than terrorism related offences and waging war (offences affecting National Security).

Where the question of whether death penalty could be imposed in a case which depended upon circumstantial evidence, the Supreme Court said:

If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that form the foundation for conviction and that has nothing to do with the question of sentence. Mitigating circumstances and the aggravating circumstances have to be balanced and in the balance sheet of such circumstances. The fact that the case rests on circumstantial evidence has no role to play. In fact, in most of the cases where death sentences are awarded for rape and murder and the like, there is practically no scope for getting an eyewitness. Such offences are not committed in public view. Only available evidence in such cases is

circumstantial. If such evidence is found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat such evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect. Hence, such plea is unsustainable. Instant case fell in category of the rarest of rare cases. Circumstances proved established the depraved acts of the accused, and they called for only one sentence, that is, death sentence. Judgment of the High Court, confirming the conviction and sentence imposed by the trial Court, does not warrant any interference.[296.]

[s 302.16.1] ***Punishment of terrorists.—***

The prosecution case was that the accused persons came running to a police picket and hurled bombs at security personnel. There was good identification evidence. Injuries on the persons of the accused were scabbed burn injuries caused by handling of explosive substance. The medical evidence showed that abrasions on the body of the deceased could have been caused by splinters from bomb explosions. The case being proved beyond any reasonable doubt, the conviction for murder was fully justified.[297.]

[s 302.16.2] ***Hearing before awarding death sentence.—***

The matter was remitted where death sentence was awarded without hearing the accused.[298.] It is necessary to afford opportunity of hearing to the accused on the question of sentence, where life imprisonment or death sentence is awarded.[299.]

[s 302.17] Fine.—

It has been held that the words "shall also be liable to fine" are not to be understood as a legislative mandate that the Court must invariably impose fine also as a part of the punishment.[300.]

[s 302.18] Appeal against acquittal.—

Where the prosecution case of homicide and the defence version of suicide were both found to be equally probable, the accused was held to be entitled to the benefit of doubt.[301.] Where there was a gross enmity between the parties and the medical evidence did not support the ocular version, accused was given benefit of doubt.[302.]

[s 302.19] Presumption of murder.—

Where the question was whether the death in question was homicidal or suicidal, and the expert who examined the body was not sure either way, the presumption as to murder was held to be something doubtful.[303.] Where a person is not proved to be guilty, the presumption of innocence prevails in reference to him.[304.]

[s 302.20] As to the application of section 106 of the Evidence Act, 1872.—

In cases where mere circumstantial evidence exists, the burden of proof as envisaged under section 106 of the Evidence Act, 1872, i.e., the burden of proving the fact, which is especially within the knowledge of a person, plays an important role in several cases.

Where the dead body of the deceased was found in the river, the knowledge about that incident was within the special knowledge of the accused. As the deceased was in the custody of the accused and disappeared from their house, the accused did not reveal what happened to the deceased. The Supreme Court held that the accused failed to discharge their duty under section 106 of the Evidence Act, 1872. The prosecution is not expected to give the exact manner in which the deceased was killed. Adverse inference needs to be drawn against the accused, as they failed to explain how the deceased was found dead in the river in one-foot deep water.

Referring to section 106 of the Evidence Act, 1872, it was propounded that the said section was not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but would apply to cases where prosecution had succeeded in proving facts from which a reasonable inference could be drawn regarding the existence of certain other facts, unless the accused, by virtue of his special knowledge regarding such facts, succeeds in offering any explanation, to drive the Court to draw a different inference.[305.]

In *Gajanan Dashrath Kharate v State of Maharashtra*,[306.] the deceased was found within the company of the accused and on the next day was found dead. Blood stained dress of the accused with the blood of the deceased was recovered. The Supreme Court held that when an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of section 106 of the Evidence Act, 1872, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed.

When the deceased is shown to be abducted, it is for the abductors to explain how they dealt with the abducted victim. In the absence of an explanation, the Court is to draw inference that the abductors are the murderers.[307.]

In the examination under section 313, Cr PC, 1973, the accused denied any knowledge of the crime and alleged false implication. Section 106 of the Evidence Act, 1872 imposes an obligation on the accused to explain as to what happened after they were last seen together.[308.]

The mere circumstance that the accused was last seen with the deceased is an unsafe hypothesis to find a conviction on a charge of murder. The lapse of time between the point when the accused was last seen with the deceased and the time of death has to be minimal.[309.] When the prosecution mainly relies on section 106 of the Evidence Act,1872, the Supreme Court held, in a case where murder took place in a hotel room, that to invoke that section, the main point to be established by the prosecution is that the accused persons were present in the hotel room at the relevant time. In this case, the prosecution failed to produce the CCTV footages available at the hotel where the murder took place, the Court further observed that the CCTV footage being a crucial piece of evidence, it is for the prosecution to have produced the best evidence, which was missing.[310.]

In the absence of any persuasive evidence to hold that at the relevant time the appellant was present in the house, it would also be impermissible to cast any burden on him as contemplated under section 106 of the Evidence Act, 1872.[311.]

[s 302.21] Expert opinion.—

Merely because no expert opinion was obtained to prove as to whether bones recovered were human or animal bones, it would not weaken the case of prosecution in the light of the overwhelming evidence available on record to prove the complicity of the appellants.[312.]

[s 302.22] Circumstantial evidence.—

The circumstance (*that the accused persons were seen in the vicinity of the neighbourhood of the crime little before the same was committed*), if coupled with the recovery of the ornaments of the deceased from the possession of the accused, at best, create a highly suspicious situation; but beyond a strong suspicion nothing else would follow in the absence of any other circumstance(s) which could suggest the involvement of the accused in the offence/offences alleged. Even with the aid of the presumption under section 114 of the Evidence Act, 1872, the charge of murder cannot be brought home unless there is some evidence to show that the robbery and murder occurred at the same time, i.e., in the course of the same transaction.[313.]

[s 302.23] Section 302 and section 396.—

The law clearly marks a distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder. Another distinction between sections 302 and 396 is that under the latter, wide discretion is vested in the Courts in relation to awarding of punishment. The Court, in exercise of its jurisdiction and judicial discretion in consonance with the established principles of law can award sentence of 10 years with fine or even award sentence of life imprisonment or sentence of death, as the case may be. While under section 302, the Court cannot, in its discretion, award sentence lesser than life imprisonment. The ingredients of both these offences, to some extent, are also different inasmuch as to complete an offence of 'dacoity'. Under section 396, IPC, 1860, five or more persons must conjointly commit the robbery while under section 302 of the IPC, 1860 even one person by himself can commit the offence of murder. But, as already noticed, to attract the provisions of section 396, the offence of 'dacoity' must be coupled with murder. In other words, the ingredients of section 302 becomes an integral part of the offences punishable under section 396 of the IPC, 1860.[314.]

[s 302.24] Additional/alternate charge under section 302, prejudice caused.—

Charges were framed under sections 306 and 364. After examination of all the witnesses (26) except the investigating officer, an alternate charge was framed under section 302 and the accused convicted thereunder. The witnesses were cross-examined as to the allegations related to the offences under sections 306 and 364. Conviction under section 302 set aside as prejudiced.[315.]

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

197. *Ajitsingh Harnamsingh Gujral v State of Maharashtra*, 2011 (10) Scale 394 [LNIND 2011 SC 902] : 2011 AIR (SCW) 5448 : AIR 2011 SC 3690 [LNIND 2011 SC 902] ; *Rajesh Kumar v State*, 2011 (11) Scale 182 [LNIND 2011 SC 2734] : 2011 AIR (SCW) 5997 : (2011) 13 SCC 706 [LNIND 2011 SC 2734] .

198. *Nawab Singh v State of UP*, AIR 1954 SC 278 .

199. *Vadivelu Thevar v State of Madras*, AIR 1957 SC 614 [LNIND 1957 SC 41] .

200. *Jagmohan Singh v State of UP*, (1973) 1 SCC 20 [LNIND 1972 SC 477] .

201. *Rajendra Prasad v State of UP*, (1979) 3 SCR 646 .

202. *McGoutha v California*, (1971) 402 US 183.

203. *Furman v Georgia* (1972) 408 US 238.

204. *Jagmohan Singh v State of UP*, (1973) 1 SCC 20 [LNIND 1972 SC 477] .

205. *Sunder v State*, AIR 2013 SC 777 [LNIND 2013 SC 91] : 2013 (3) SCC 215 [LNIND 2013 SC 91] .

206. *Santa Singh v State of Punjab*, (1976) 4 SCC 190 [LNIND 1976 SC 268] .

207. *Bachan Singh v State of Punjab*, AIR 1980 SC 898 [LNIND 1980 SC 260] : (1980) 2 SCC 684 [LNIND 1980 SC 261] .

208. *Bachan Singh v State of Punjab*, (1980) 2 SCC 684 [LNIND 1980 SC 261] : AIR 1980 SC 898 [LNIND 1980 SC 260] .

209. *Machhi Singh v State of Rajasthan*, 1983 (3) SCC 470 [LNIND 1983 SC 170] : AIR 1983 SC 957 [LNIND 1983 SC 170] .

210. See the Box with '*Supreme Court Guidelines in Machi Singh*'.

211. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] .

212. *Machhi Singh v State of Punjab*, AIR 1983 SC 957 [LNIND 1983 SC 170] : 1983 (3) SCC 470 [LNIND 1983 SC 170] .

213. *Vasanta Sampat Dupare v State of Maharashtra,* AIR 2017 SC 2530 [LNIND 2017 SC 248] .

214. *Ramnaresh v State of Chhattisgarh*, AIR 2012 SC 1357 [LNINDORD 2012 SC 404] .

215. *Brajendra Singh v State of MP*, AIR 2012 SC 1552 [LNIND 2012 SC 159] .

216. *Machhi Singh v State of Punjab*, (1983) 3 SCC 470 [LNIND 1983 SC 170] : AIR 1983 SC 957 [LNIND 1983 SC 170] : 1983 Cr LJ 1457 . See also *State of Punjab v Garmej Shing*, 2002 Cr LJ 3741 (SC), where also the court counted the factors and gave some illustrations. The accused killed his brother and two members of his family. The incident was the result of a mistrust created by a payment made by accused to his brother. The court was of the view that it was not a rarest case and death penalty was improper. The court also said that the likelihood of the accused being released prematurely was not a ground for imposing death penalty. The amount of compensation to the victim should not exceed the fine imposed. The only surviving member was the daughter of the deceased. The amount of fine was enhanced from Rs. 5000 to Rs. 20,000.

217. *Jagmohan Singh*, 1973 Cr LJ 370 : AIR 1973 SC 947 [LNIND 1972 SC 477] ; *Mohinder Singh*, 1973 Cr LJ 610 : AIR 1973 SC 697 ; *Maghar Singh v State*, 1975 Cr LJ 1102 : AIR 1975 SC 1320 .

218. *Gopal Chand Srivastava v State of UP*, 1994 Cr LJ 2863 (All), all the inmates were told to stay away and the victims were then hit by two assailants whom the court awarded death sentence but the confirming court reduced the sentence to life imprisonment in view of their young years.

219. *Ramesh*, 1979 Cr LJ 902 : AIR 1979 SC 871 .

220. *State of UP v Paras Nath*, 1973 Cr LJ 850 : AIR 1973 SC 1073 [LNIND 1973 SC 14] .

221. *Munawar Harun Shah*, 1983 Cr LJ 971 : AIR 1983 SC 585 [LNIND 1983 SC 113] : (1983) 3 SCC 254 . **Followed** in *State v Ashok Kumar*, (1995) 2 Cr LJ 1789 (Del), where the accused killed the husband of the woman with whom he was in love; the killing was done when he was taken away with the help of his wife and was struck while asleep, both convicted and sentenced to death; fine of one lakh rupees imposed on the lady accused for expenses of prosecution she had gained anything from the offence nor had any means. *Suresh Kumar v State of Rajasthan*, 1995 Cr LJ 1853 (Raj), a boy of 20 years old, caused death of his wife and daughter, faced prosecution for seven years, life imprisonment not enhanced to death sentence. *James v State of Kerala*, (1995) 1 Cr LJ 55 (Ker), money-lender entered the home of the borrower and killed him, his wife and his mother, entry could have been for the lawful purpose of seeking repayment, death sentence reduced to life imprisonment, not rarest of rare case.

222. *Shankaria*, 1978 Cr LJ 1251 : AIR 1978 SC 1248 [LNIND 1978 SC 138] . *Raghunathan v State of Kerala*, (1995) 2 Cr LJ 1880 (Ker), death of old woman caused by strangulation and robbed of ornaments, life imprisonment upheld. *Sheikh Ayyub v State of Maharashtra*, (1995) 1 Cr LJ 420 : (1994) 2 Supp SCC 269 , accused killed two police officers while they were arresting him, he snatched police pistol and handled it in confused manner, injuring his companion co-accused also, death sentence reduced to life imprisonment. *Deoraj Deju Suvarna v State of Maharashtra*, 1994 Cr LJ 3602 (Bom), it would be most shocking for a judge to hear the accused on the quantum of sentence after awarding him death sentence.

223. (2008) 13 SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 . The Court also observed that decision would go by comparison of one case with the other, comparison both quantitative and qualitative. The application of the sentencing policy through aggravating and mitigating circumstances came up for consideration in *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 . On a review, it was concluded in paragraph 48 of the Report that there is a lack of evenness in the sentencing process. The rarest of rare principle has not been followed uniformly or consistently. **Reference** in this context was made to *Aloke Nath Dutta v State of WB*, 2007 (12) SCC 230 [LNIND 2006 SC 1131] : 2007 (51) AIC 429 (SC) : 2008 (2) SCC (Cri) 264 [LNIND 2006 SC 1131] , which in turn referred to several earlier decisions to bring home the point.

224. *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*, 2009 (6) SCC 498 [LNIND 2009 SC 1278] : 2009 (2) SCC (Cr) 1149 : 2009 (79) AIC 26 : 2009 (7) Scale 341 [LNIND 2009 SC 1278] .

225. *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*, 2008 (15) SCC 269 [LNIND 2008 SC 1785] .

226. *Mohan Anna Chavan v State of Maharashtra*, 2008 (7) SCC 561 [LNIND 2008 SC 1265] .

227. *Bantu v State of UP*, 2008 (11) SCC 113 [LNIND 2008 SC 1496] .

228. *Surja Ram v State of Rajasthan*, 1996 (6) SCC 271 [LNIND 1996 SC 1548] .

229. *Dayanidhi Bisoi v State of Orissa*, 2003 (9) SCC 310 [LNIND 2003 SC 571] .

230. *State of UP v Sattan @ Satyendra*, 2009 (4) SCC 736 [LNIND 2009 SC 485] .

231. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] .

232. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] .

233. *Mohinder Singh v State of Punjab*, (2013) 3 SCC 294 [LNIND 2013 SC 71] : 2013 Cr LJ 1559 (SC).

234. *Swamy Shraddananda @ Murali Manohar Mishra v State of Karnataka*, (2008) 13 SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .

235. *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*, 2009 (6) SCC 498 [LNIND 2009 SC 1278] : 2009 (2) SCC (Cr) 1149 : 2009 (79) AIC 26 : 2009 (7) Scale 341 [LNIND 2009 SC 1278] .

236. *Mohd Farooq Abdul Gafur v State of Maharashtra*, 2010 (14) SCC 641 [LNIND 2009 SC 1641] .

237. *Haresh Mohandas Rajput v State of Maharashtra*, 2011 (12) SCC 56 [LNIND 2011 SC 928] .

238. *State of Maharashtra v Goraksha Ambaji Adsul*, AIR 2011 SC 2689 [LNIND 2011 SC 627] .

239. *Mohammed Ajmal Mohammadamir Kasab @ Abu Mujahid v State of Maharashtra*, JT 2012 (8) SC 4 [LNIND 2012 SC 1215] .

240. See the Box with '*Principles summarised in Mohinder Singh's Case by Supreme Court*'.

241. *Ravji @ Ram Chandra v State of Rajasthan*, 1996 (2) SCC 175 [LNIND 1995 SC 1247] .

242. *Shivaji @ Dadya Shankar Alhat v State of Maharashtra*, 2008 (15) SCC 269 [LNIND 2008 SC 1785] .

243. *Mohan Anna Chavan v State of Maharashtra*, 2008 (7) SCC 561 [LNIND 2008 SC 1265] .

244. *Bantu v State of UP*, 2008 (11) SCC 113 [LNIND 2008 SC 1496] .

245. *Surja Ram v State of Rajasthan*, 1996 (6) SCC 271 [LNIND 1996 SC 1548] .

246. *Dayanidhi Bisoi v State of Orissa*,246 2003 (9) SCC 310 [LNIND 2003 SC 571] .

247. *State of UP v Sattan @ Satyendra and Others*, 2009 (4) SCC 736 [LNIND 2009 SC 485] .

248. *Mohd Farooq Abdul Gafur v State of Maharashtra*, 2010 (14) SCC 641 [LNIND 2009 SC 1641] , 692.

249. *Haresh Mohandas Rajput v State of Maharashtra*, 2011 (12) SCC 56 [LNIND 2011 SC 928] at p 63, para 20.

250. *State of Maharashtra v Goraksha Ambaji Adsul*, AIR 2011 SC 2689 [LNIND 2011 SC 627] .

251. *Mohinder Singh v State of Punjab*, (2013) 3 SCC 294 [LNIND 2013 SC 71] : 2013 Cr LJ 1559 (SC).

252. *Shankar Kisanrao Khade v State of Maharashtra*, 2013 Cr LJ 2595 (SC) : (2013) 5 SCC 546 [LNIND 2013 SC 429] . *Gurvail Singh @ Gala v State of Punjab*, AIR 2013 SC 1177 [LNIND 2013 SC 94] .

253. *Kumudi Lal v State of UP*, (1994) 4 SCC 108 .

254. *Raju v State of Haryana*, (2001) 9 SCC 50 [LNIND 2001 SC 1147] .

255. *Bantu @ Naresh Giri v State of MP*, (2001) 9 SCC 615 [LNIND 2001 SC 2372] .

256. *State of Maharashtra v Suresh*, (2000) 1 SCC 471 [LNIND 1999 SC 1126] .

257. *Amrit Singh v State of Punjab*, AIR 2007 SC 132 [LNIND 2006 SC 944] .

258. *Rameshbhai Chandubhai Rathod v State of Gujarat*, (2011) 2 SCC 764 [LNIND 2011 SC 96] .

259. *Surendra Pal Shivbalak v State of Gujarat*, (2005) 3 SCC 127 .

260. *Amit v State of Maharashtra*, (2003) 8 SCC 93 [LNIND 2003 SC 642] .

261. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 ; also see *State of UP v Sanjay Kumar*, (2012) 8 SCC 537 [LNINDORD 2012 SC 416] .

262. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .

263. *Sahib Hussain @ Sahib Jan v State of Rajasthan*, 2013 Cr LJ 2359 : 2013 (6) Scale 219 [LNIND 2013 SC 474] .

264. *Gurvail Singh @ Gala v State of Punjab*, 2013 (10) Scale 671 [LNINDORD 2013 SC 1147] .

265. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .

266. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883] .

267. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .

268. *Unni v State of Kerala*, 2013 Cr LJ 2819 (SC).

269. *Shatrughan Chauhan v UOI*, 2014 Cr LJ 1327 : [2014] 1 SCR 609 [LNIND 2014 SC 40] .

270. *Mohd Arif v The Registrar, Supreme Court of India*, 2014 Cr LJ 4598 : 2014 (87) All CC 939.

271. *TV Vatheeswaran*, AIR 1983 SC 361 [LNIND 1983 SC 43] , 1983 SCR (2) 348 .

272. *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] .

273. In *Ediga Annamma's* case (1974 (3) SCR 329) [LNIND 1974 SC 34] , two years was considered sufficient to justify interference with the sentence of death. In *Bhagwan Baux's* case (AI R 1978 SC 34), two and a half years and in *Sadhu Singh's* case (AIR 1978 SC 1506), three and a half years were taken as sufficient to justify altering the sentence of death into one of imprisonment for life; see also *KP Mohammed v State of Kerala*, (1985) 1 SCC (Cr) 142 : 1984 Supp SCC 684.

274. *Sher Singh v State of Punjab*, AIR 1983 SC 465 [LNIND 1983 SC 89] : (1983) 2 SCC 344 [LNIND 1983 SC 89] .

275. *Javed Ahmed v State of Maharashtra*, AIR 1985 SC 231 [LNIND 1984 SC 310] : (1985) 1 SCC 275 [LNIND 1984 SC 310] .

276. *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] .

277. *Madhu Mehta v UOI*, (1989) 3 SCR 775 [LNIND 1989 SC 390] .

278. *Shatrughan Chauhan v UOI*, 2014 Cr LJ 1327 : [2014] 1 SCR 609 [LNIND 2014 SC 40] .

279. *Mukesh v State for NCT of Delhi*, 2017 (5) Scale 506 .

280. *Mukesh v State for NCT of Delhi*, AIR 2017 SC 2161 [LNIND 2017 SC 252] .

281. *Siraj Khan v State of Gujarat*, 1994 Cr LJ 1502 (Guj). *Kurale Pullaiah v State*, 2003 Cr LJ 1060 (AP), the accused stabbed the victim with knife, snatching the knife from the victim himself, inflicted only one stab injury, not a cold-blooded or heartless homicide, death sentence converted into life imprisonment.

282. *State of Maharashtra v Bharat Chaganlal Raghani*, AIR 2002 SC 409 [LNIND 2001 SC 1312] at 432.

283. *Prakash Dhawal Khairnar v State of Maharashtra*, AIR 2002 SC 340 [LNIND 2001 SC 2841] at 350, **relying** on *Bhagwan v State of Rajasthan*, 2001 AIR SCW 2189 : AIR 2001 SC 2342 [LNIND 2001 SC 1234] : (2001) Cr LJ 2925 : (2001) 6 SCC 2961 , wherein while reducing the death sentence to imprisonment for life, the court considered section 57, IPC, 1860 and referred to the following observation in *Dalbir Singh v State of Punjab*, (1979) 3 SCC 745 [LNIND 1979 SC 281] : AIR 1979 SC 1384 [LNIND 1979 SC 281] : 1979 Cr LJ 1058 .

"The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in *Rajendra Prasad v. State of U.P.*, (1979) 3 SCC 646 [LNIND 1979 SC 107] .Taking the clue from the English Legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the man's life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting Court, be subject to the conditions that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder." This should be contrasted with *Surja Ram v State of Rajasthan*, AIR 1997 SC 18 [LNIND 1996 SC 1548] : 1997 Cr LJ 51 , the accused killed his real brother, his two minor sons, and aunt

while asleep, also attempted to murder the brother's wife and daughter, deaths caused in cool and calculated manner, rarest, death sentence justified. *Bantu v State of MP*, AIR 2002 SC 70 [LNIND 2001 SC 2372] : 2002 Cr LJ 211 , the accused was sentenced to death for rape and murder of six-year-old child. He was of 22 years. There was no criminal record. He was not likely to be a grave danger to the society. His act, though heinous and condemnable, did not come in the category of rarest of rare cases. Death sentence was commuted to imprisonment for life. This should be contrasted with *Jai Kumar v State of MP*, AIR 1999 SC 1860 [LNIND 1999 SC 524] : 1999 Cr LJ 2569 . The accused committed a cold-blooded and gruesome and brutal murder of his sister-in-law and her eight-year-old daughter without any provocation. The Court did not regard his age of 22 years as any relevant factor. Death penalty was confirmed. *Deepak Kumar v Ravi Virmani*, 2002 Cr LJ 1781 (SC) : AIR 2002 SC 1320 [LNIND 2002 SC 1] , death sentence reduced to life imprisonment in a case in which there was heinous killing of four family members. The accused spared a child which showed humane conduct.

284. *Raju v State of Haryana*, AIR 2001 SC 2043 [LNIND 2001 SC 1147] .

285. *Om Prakash v State of Haryana*, AIR 1999 SC 1332 [LNIND 1999 SC 1282] : 1999 Cr LJ 2044 . Another case stressing the need for balancing process is *Anil v State of UP*, 2002 Cr LJ 2694 (All), the accused had his shop opposite a house. The house owner had the shop closed because of customer nuisance. The accused in revenge got him killed. Taking all the factors into account, the court said that he would not pose any danger to the society if his life was spared. The death sentence awarded to him was reduced to life imprisonment.

286. *Ronny v State of Maharashtra*, AIR 1998 SC 1251 [LNIND 1998 SC 302] : 1998 Cr LJ 1638 . *State of UP v Mutahir Mian*, (2008) 10 SCC 223 [LNIND 2008 SC 1922] : AIR 2009 SC 839 [LNIND 2008 SC 1922] , acquittal because of irreconciliable facts. *State of MP v Chamru*, (2007) 12 SCC 423 [LNIND 2007 SC 802] : AIR 2007 SC 2400 [LNIND 2007 SC 802] : 2007 Cr LJ 3509 , four murders, nobody could be punished because witnesses not natural. *State of MP v Basodi*, (2007) 14 SCC 548 [LNIND 2007 SC 919] , killing alleged by uncle by gunshot, extra-judicial confession found to be myth, acquittal. *Ramappa Halappa Pujar v State of Karnataka*, (2007) 13 SCC 31 [LNIND 2007 SC 561] , High Court reversed acquittal, Supreme Court upheld conviction. *State of UP v Atar Singh*, (2007) 14 SCC 193 [LNIND 2007 SC 1316] : AIR 2008 SC 411 [LNIND 2007 SC 1316] : (2008) 1 All LJ 227, acquittal justified because of weakness of circumstantial evidence. *Jagdish v State of MP*, (2007) 13 SCC 12 [LNIND 2007 SC 1091] : 2008 Cr LJ 350 , acquittal justified on appreciation of evidence. *Bhagga v State of MP*, (2007) 13 SCC 442 [LNIND 2007 SC 1208] : AIR 2008 SC 175 [LNIND 2007 SC 1208] , accused to whom no overt act could be attributed, acquitted, no common object. *Ajay Singh v State of Maharashtra*, (2007) 12 SCC 341 [LNIND 2007 SC 438] : AIR 2007 SC 2188 [LNIND 2007 SC 438] , bride burning, prosecution failed to establish charge.

287. *Shaikh Ayub v State of Maharashtra*, AIR 1999 SC 1285 : 1998 Cr LJ 1656 ; *Heera Lal (Dr) v State of UP*, 2001 Cr LJ 2849 (All), killed wife and three children because of debt burden and attempted suicide. He was in great stress, frustration and mentally disturbed. Death sentence reduced to life imprisonment.

288. *Mani Ram v State of Uttaranchal*, 2001 Cr LJ 3403 (Uttaranchal).

289. *Sadashio Mundaji Bhalerao v State of Maharashtra*, (2007) 15 SCC 421 [LNIND 2006 SC 1047] .

290. *State of MP v Dhirendra Kumar*, AIR 1997 SC 318 [LNIND 1996 SC 1830] : (1997) 1 SCC 93 [LNIND 1996 SC 1830] ; *Subhash Chander v Krishanlal*, 2001 Cr LJ 1825 (SC), refusal to interfere in the commutation of death sentence into life imprisonment by High Court.

291. *Jagdish v State of MP*, (2009) 9 SCC 495 [LNINDORD 2009 SC 210] : (2009) 4 AP LJ 1 .

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

351. *Bawa Singh v State of Punjab*, 1993 Cr LJ 49 .

352. *Ramaswamy v State of TN*, 1993 AIR SCW 2683 : 1993 Cr LJ 3253 .

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

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

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

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

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

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

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

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

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

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

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

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

362. *Harendra Nath Mandal v State of Bihar*, AIR 1993 SC 1977 [LNIND 1993 SC 177] : 1993 Cr LJ 2830 : (1993) 2 SCC 435 [LNIND 1993 SC 177] .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

377. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

378. *Naresh Giri v State of MP*, (2008) 1 SCC 791 [LNIND 2007 SC 1313] : 2007 (13) Scale 7 [LNIND 2007 SC 1313] .

379. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .

380. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

381. *State of Maharashtra v Salman Salim Khan*, AIR 2004 SC 1189 [LNIND 2003 SC 1122] : (2004) 1 SCC 525 [LNIND 2003 SC 1122] .

382. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 (SC) : (2012) 2 SCC 648 [LNIND 2012 SC 15] : AIR 2012 SC 3802 [LNIND 2012 SC 15] .

THE INDIAN PENAL CODE

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

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

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

COMMENT.—

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

Essential ingredients of section 304A are the following:

(i) Death of a person

(ii) Death was caused by accused during any rash or negligence act.

(iii) Act does not amount to culpable homicide.

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

(i) The existence of duty.

(ii) A breach of the duty causing death.

(iii) The breach of the duty must be characterised as gross negligence.[385.]

[s 304A.1] **Scope.—**

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

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

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

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

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

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

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

the experiment too far results from an obvious and dangerous misconception...It is clear, however, that if the words, 'not amounting to culpable homicide,' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death.[394.]

A rash act is primarily an overhasty act and is opposed to a deliberate act; even if it is partly deliberate, it is done without due thought and caution.[395.] Illegal omission is "act" under this section and may constitute an offence if it is negligent.[396.] In this connection, see also sub-para entitled "Rash or Negligent" under section 279, IPC, 1860, *ante*.

Death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*, it is not enough that it may have been the *causa sine qua non*.[397.] This view has been approved by the Supreme Court.[398.] The Bombay High Court has said that in cases falling under this section, it is dangerous to attempt to distinguish between the approximate and ultimate cause of death.[399.] Where the accused, a motor driver, ran over and killed a woman, but there was no rashness or negligence on the part of the driver so far as his use of the road or manner of driving was concerned, it was held that the accused could not be convicted under this section on the ground that the brakes of the lorry were not in perfect order and that the lorry carried no horn. The "rash or negligent act" referred to in the section means the act which is the immediate cause of death and not any act or omission, which can at most be said to be a remote cause of death.[400.] Negligence on the part of a motorist cannot be presumed under this section by the mere fact that a man is knocked down and killed by him.[401.] To render a person liable for neglect of duty, there must be such a degree of culpability as to amount to *gross* negligence on his part. It is not every little slip or mistake that will make a man so liable.[402.] A passenger was standing on the footboard of a bus to the knowledge of the driver and even so the driver negotiated a sharp turn without slowing down. The passenger fell off to his death. The driver was held to be guilty under the section.[403.] A woman was boarding the bus from the front entrance. The conductor whistled and the driver took off speedily. Either of them could have known whether she had come in or not, but neither cared to do so. She fell off and was crushed by the rear wheel. No doubt remained in the mind that the driver and the conductor were guilty of a rash and negligent act.[404.] Intentional shooting at a fleeing person and hitting someone else to death would come under section 300 read with section 301. It is not a negligent act so as to come under section 304A.[405.]

2. 'Not amounting to culpable homicide'.—

> Section 304A is directed at offences outside the range of ss. 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge enters. For the rash or negligent act which is declared to be a crime is one 'not amounting to culpable homicide', and it must therefore be taken that intentionally or knowingly inflicted violence, directly and wilfully caused, is excluded. Section 304A does not say that every unjustifiable or inexcusable act of killing not hereinbefore mentioned shall be punishable under the provisions of this section, but it specifically and in terms limits itself to those rash or negligent acts which cause death but fall short of culpable homicide of either description.[406.]

[s 304A.3] **Doctrine of reasonable care.—**

The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when pedestrians happen

to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, maybe either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others. 'Negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence *per se* or the course of conduct amounts to negligence, will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence.[407.]

[s 304A.4] **Contributory negligence.—**

The doctrine of contributory negligence does not apply to criminal liability, that is, where the death of a person is caused partly by the negligence of the accused and partly by his own negligence. If the accused is charged with contributing to the death of the deceased by his negligence, it matters not whether the deceased was deaf, or drunk, or negligent, or in part contributed to his own death.[408.] In this connection, see also sub-para entitled "Contributory negligence" under section 279, IPC, 1860, *ante*.

[s 304A.5] **Laying trap by live wire.—**

The accused had connected live wire with his bicycle with a view to ward off mischief making children. A child touched the bicycle and got shock and ultimately died. It was held that the act of the accused amounted to negligence as he placed no sign board, caution or warning for not touching the bicycle and was liable to be punished under section 304A and under section 304, Part II.[409.]

[s 304A.6] **Degree and nature of care expected of an occupier of a cinema building.—**

The Supreme Court, in *Sushil Ansal v State Through CBI*,[410.] (Uphaar Cinema building tragedy case) opined that:

> Reverting back to the degree and nature of care expected of an occupier of a cinema hall, we must at the outset say that the nature and degree of care is expected to be such as would ensure the safety of the visitors against all foreseeable dangers and harm. That is the essence of the duty which an occupier owes to the invitees whether contractual or otherwise. The nature of care that the occupier must, therefore, take would depend upon the fact situation in which duty to care arises. For instance, in the case of a hotel which offers to its clients the facility of a swimming pool, the nature of the care that the occupier of the hotel would be expected to take would be different from what is expected of an occupier of a cinema hall.
>
> An occupier of a cinema would be expected to take all those steps which are a part of his duty to care for the safety and security of all those visiting the cinema for watching a cinematograph exhibition. What is important is that the duty to care is not a onetime affair. It is a continuing obligation which the occupier owes towards every invitee contractual or otherwise every time an exhibition of the cinematograph takes place. What is equally important is that not only under the common law but even under the statutory regimen, the obligation to ensure safety of the invitees is undeniable, and any neglect of the duty is actionable both as a civil and criminal wrong, depending upon whether the negligence is simple or gross.

[s 304A.6.1] ***Mens rea***.—

The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal Court consists of criminal negligence.[411.]

[s 304A.6.2] ***Res ipsa Loquitur***.—

This doctrine serves two purposes—one that an accident may by its nature be more consistent with its being caused by negligence for which the opposite party is responsible than by any other causes and that in such a case, the mere fact of the accident is *prima facie* evidence of such negligence. Second, it is to avoid hardship in cases where the claimant is able to prove the accident but cannot prove how the accident occurred. The Courts have also applied the principle of *res ipsa loquitur* in cases where no direct evidence was brought on record. Elements of this doctrine may be stated as:

(a) The event would not have occurred but for someone's negligence.

(b) The evidence on record rules out the possibility that actions of the victim or some third party could be the reason behind the event.

(c) Accused was negligent and owed a duty of care towards the victim.[412.] In our current conditions, the law under section 304A, IPC, 1860 and under the rubric of negligence, must have due regard to the fatal frequency of rash driving of heavy duty vehicles and of speeding menaces. Thus viewed, it is fair to apply the rule of *res ipsa loquitur*, of course, with care. Conventional defences, except under compelling evidence, must break down before the pragmatic Court and must be given short shrift. Looked at from this angle, the Court held that the present case deserved no consideration on the question of conviction.[413.] The principle of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principle has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.[414.] *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.[415.] Where a vehicle was being driven on a wrong side and an accident took place resulting in the death of two persons, the principle of *res ipsa loquitur* should have been applied.[416.] In the case of *Thakur Singh v State of Punjab*,[417.] the accused drove a bus rashly and negligently with 41 passengers and while crossing a bridge, the bus fell into the nearby canal resulting in death of all the passengers. The Court applied the doctrine of *res ipsa loquitur* since admittedly the petitioner was driving the bus at the relevant time and it was going over the bridge when it fell down. Evidence on record discloses that the bus had gone and dashed into a standing tree situated on the right side of the road. Unless, the vehicle had been driven rashly and/or negligently, the vehicle which had no mechanical defect would not have dashed to a standing tree, that too, on the right side of the road. The factum of accident having been admitted in section 313, Cr PC, 1973 statement, the legal doctrine *res ipsa loquitur* gets attracted.[418.]

Where a vehicle driven at a high speed knocked down the deceased who was walking on the left side of the road and breaking the roadside fencing got stuck up in a ditch, it was held that the maxim *res ipsa loquitur* was applicable and the accused driver could be held guilty of rash and negligent driving.[419.]

The Supreme Court explained the principle in the following words.[420.]

> The principle of *res ipsa loquitor* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The principle has application only when the nature of the accident and attending circumstances would reasonably lead to the belief that in the