

“REVISITING THE CORRELATION BETWEEN CULPABLE HOMICIDE & MURDER”

**(A COMPARATIVE STUDY OF THE JUDICIAL TREND IN THE LIGHT
OF RECENT CASES 2015-2017)**

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ABSTRACT

In the first place, it may be premised that the two offences of Culpable Homicide and Murder are neither mutually exhaustive nor exclusive, nor do they, between themselves, provide that every case of killing must be either the one or the other. The question of offence depends upon the degree of criminality and that again depends upon the offender's knowledge and intention. That knowledge and intention may, again, be of the kind specified. If it is, then alone would the question arise, whether the offence is murder or Culpable homicide?

Murder under Indian Penal Code, 1860 is defined as an aggravated form of culpable homicide under Section 299. In this view, it can be inferred that all murder must necessarily be culpable homicide, but not vice versa. But an offence may possess all the essential ingredients of murder, and yet be only culpable homicide, if it possesses the additional mitigating elements set out in the exceptions. The degree of the offence in some cases also varies by reason of alleviating circumstances reducing the primary heinousness of crime. Apart from this, an offence may still be culpable homicide, in the first instance, if it does not possess the attributes of the offence of murder. Though the two class of offences looks different, when seen by the naked eyes, and Indian judiciary has dealt with the subject extensively to explain the interlink between the two, yet to understand the inter-link and difference between the two, the key lies in the fact that knowledge and intention must not be confused.

On a precise reading of the case laws, it is easy to observe that the most common reason on which the judgment given in a murder cases is reversed is because on a significant examination of the evidence and circumstances of the case, the judge of the upper court realises that the case falls under the category of culpable homicide and not murder as a result of which the sentence is changed from that of murder to culpable homicide.

The purpose of this paper is to find out the factors on which Judiciary faces lack of certainty resulting into reversal of judgment. For this purpose, the recent judgement of last two years of the Supreme Court of India and various High Courts will be analysed and will be presented in the form of data to procure the reason behind the reversal of judgment and the shaky stand of Indian Judiciary in the cases related to Murder and Culpable Homicide.

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INTRODUCTION

The first and foremost concern of criminal law is to protect and preserve certain fundamental social values and institutions. With this dictum, it gives a set of norms for the conduct of human behaviour it also puts certain penalty for the disrespect or threatens substantial harm which are related to individual interest, public interest and fundamental social values. Going through the 'Offences Related to Human Body', one can understand that it exhibits a deep understanding of social culture of the classic Indian Society.

In the first place, it may be premised that the two offences of Culpable Homicide and Murder are neither mutually exhaustive nor exclusive, nor do they, between themselves, provide that every case of killing must be either the one or the other. Murder under Indian Penal Code, 1860 is defined as an aggravated form of culpable homicide under Section 299. In this view, it can be inferred that all murder must necessarily be culpable homicide, but not vice versa. But an offence may possess all the essential ingredients of murder, and yet be only culpable homicide, if it possesses the additional mitigating elements set out in the exceptions. The degree of the offence in some cases also varies by reason of alleviating circumstances reducing the primary heinousness of crime. Apart from this, an offence may still be culpable homicide, in the first instance, if it does not possess the attributes of the offence of murder. Though the two class of offences looks different, when seen by the naked eyes, though they are so closely interlinked with each other because of which in many instances, it becomes difficult to evaluate the degree of intensity of the crime and to provide a suitable punishment for it.

It is easy to observe that the most common reason on which the judgment given in a murder cases is reversed is because on a significant examination of the evidence and circumstances of the case, the judge of the upper court realises that the case falls under the category of culpable homicide and not murder as a result of which the sentence is changed from that of murder to culpable homicide.

The purpose of this paper is understanding the law related to the offences of 'Murder' and 'Culpable Homicide' and to find out the factors on which Judiciary faces lack of certainty resulting into reversal of judgement. For the purpose of this, the paper is divided into four sections. The first section will deal with law related to Murder and Culpable Homicide in India, it will also deal with the concepts of knowledge and intention and how these two comes into picture in this two class of offences. The second chapter will deal with the sentencing policy in India related to Culpable Homicide and Murder and what are the circumstances and factors which are taken into consideration by the judiciary while awarding the punishment for culpable homicide and murder. In the third section, the recent judgement of last two years of the Supreme Court of India and various High Courts will be analysed and will be presented in the form of data to procure the reason behind the reversal of judgment and the shaky stand of Indian Judiciary in

the cases related to Murder and Culpable Homicide and the last section will deal with the conclusion and recommendations as to what should be stand of Indian judiciary in the matters related to murder and culpable homicide.

Kinds of Culpable Homicide and Its essential elements

Homicide is the killing of a human being by a human being. It is either lawful or unlawful. 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. It must be noted that this Section defines culpable homicide *simpliciter*. The scheme of the code is that first the genus, “culpable homicide” is defined and then “murder”, which is a species of culpable homicide, is defined.² Culpable homicide is genus murder is species. All murders are culpable homicide but all culpable homicides are not murders.³ What is left out of culpable homicide after the special characteristics of murder have been taken away from it is culpable homicide not amounting to murder.⁴

Essential Elements of Culpable Homicide

The main qualifiers for the culpable homicide is causing of death by doing an act with the intention, or with the intention⁵ of causing such bodily injury as is likely to cause death or with the knowledge that it was likely to cause death. Without one or other of those elements, an act, though it may be in criminal nature, will not amount to the offence of culpable homicide.⁶

The essential elements of Culpable Homicide are:

1. Causing Death
2. Death must be done by:
 - Doing an Act With The Intention Of Causing Death
 - With The Intention Of Causing Such Bodily Injury as is likely to cause death
 - With the knowledge that he is likely by such act to cause death.

² Alister Anthony Pareira v. State of Maharashtra AIR 2013 SC 3802.

³ Rampal Singh v. State of U.P., 2013(1)Crimes407(SC).

⁴ Rampal Singh v. State of U.P., 2013(1)Crimes407(SC); Behari v. State, AIR 1953 All. 203; Sukhdeo v. State AIR 1968 Act. 151 at p. 152.

⁵ Mirza Ghani Baig v. State of Andhra Pradesh, (1997) 2 Crimes 19 (AP).

⁶ State v. Ram Swarup, 1988Cr.LJ 1067 All.

The fact that the death of a human being is caused is not enough. Unless one of the mental states mentioned in ingredient is present, an act causing death cannot amount to Culpable Homicide.⁷ Thus where a constable who had loaded but defective gun with him wanted to arrest an accused who was going on a bullock cart by climbing on the cart and there was a scuffle between him and the accused and in course of which the gun went off and killed the constable, it was held that accused could not be held guilty of Culpable Homicide.

Understanding Murder and its elements

“Culpable homicide” is genus and “Murder” its species wherein all murder is culpable homicide but not vice versa so. Every act which falls within one or more of the four clauses of Section 300 is murder, and also falls within the definition of culpable homicide in Section 299 of *Indian Penal Code*. Exceptions 1 to 5 to Section 300 indicate circumstances where culpable homicide is not murder.⁸ Murder is defined under Section 300 of *Indian Penal Code*, 1860. The essential elements of murder are:

1. The intention to cause death
2. Intention to cause such bodily injury knowing that the injury caused is likely to cause death.
3. Intention of causing bodily injury sufficient in the ordinary course of nature to cause death
4. Knowledge about the act that it is so imminently dangerous and in all probability it will cause death.

From the bare perusal of the Section discussed above, the four clauses under the Section provide the essential ingredients wherein culpable homicide amounts to murder. But the Section also provides five exceptional situations. We can say that if the cases fall under these exceptions then it will be considered as culpable homicide not amounting to murder. Any of the exception qualifies then the murder converts into culpable homicide. These exceptions provided under Section 300 are:

1. Grave and sudden provocation
2. Private defense
3. Act of public servant
4. Sudden fight
5. Consent

⁷ Alister Anthony Pareira Vs. State of Maharashtra AIR2013SC3802.

⁸ Verran v. State of M. P. (2011) 11 SCC 367.

The Distinction between Knowledge and Intention

We must keep in mind the distinction between knowledge and intention. Knowledge in the context of Section 299 would, mean notice or realization or understanding. The distinction between the terms 'knowledge' and 'intention' again is a difference of degrees. An inference of knowledge that it is likely to cause death must be arrived at keeping in view the fact situation obtaining in each case. The accused must be aware of the consequences of his act.

In the case of *Kesar Singh vs. State of Haryana*⁹, it was observed that 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.

Kenny defines 'Intention' as to intend is to have in mind a fixed purpose to reach a desired objective, the noun 'intention' in the present connection is used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. So, there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee, that to which his express purpose is directed. Whereas *Russell* on Crime has observed "In the present analysis of the mental element in crime the word 'intention' is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims."

It can thus be seen that the 'knowledge' as contrasted with 'intention' signifies a state of mental realization with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive.

This was discussed extensively in *Jai Prakash v. State (Delhi Administration)*¹⁰ stating: "We may note at this state that 'intention' is different from 'motive' or 'ignorance' or 'negligence'. It is the 'knowledge' or 'intention' with which the act is done that makes difference, in arriving at a conclusion whether the offence is culpable homicide or murder. Therefore, it is necessary to know the meaning of these expressions as used in these provisions.

The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the, weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge

⁹ *Kesar Singh v. State of Haryana*, 2008 15 SCC 753.

¹⁰ *Jai Prakash v. State (Delhi Administration)*, (1991) 2 SCC 32.

of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to ‘knowledge’, ‘intention’ requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.”

Detailed Comparison of Section 299 and Section 300 of the IPC

- a. Clause (a) of Section 299 corresponds with Clause (1) of Section 300.
- b. Clause (b) of Section 299 corresponds with Clause (2) and (3) of Section 300, and
- c. Clause (c) of Section 299 corresponds with Clause (4) of Section 300.

The words italicized mark the differences between culpable homicide and murder. Thus “*Except in the cases hereinafter expected*” – Section 300 begins with the words “except in the cases hereinafter expected, culpable homicide is not murder if the case falls within any of the exceptions mentioned in Section 300.”¹¹

1) *Intention to kill:* Clause (a) of Section 299 and Clause (1) of Section 300 – The causing of death by doing an act with the intention of causing death is culpable homicide. It is also murder, unless the case falls within one of the exceptions in Section 300.¹²

2) *Intention to cause bodily injury likely to cause death:* Clause (b) of Section 299 and Clause (2) of Section 300 – The essence of Clause (2) of Section 300 is to be found in the knowledge that the person harmed is likely to die. “The offence is murder if the offender knows that the particular person injured is likely either from peculiarity of Constitution or immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death”¹³. The Section illustrates this¹⁴ by supposing the case of a person striking a blow is likely to cause his death of which the former has knowledge. The clause is intended to meet cases of enlarged liver and spleen, which may be easily ruptured by a blow of no great violence, in which case the

¹¹ Reg v. Gorabehand Gope. 5 W. R. 45 (F.B.). per Peacock, C.J.

¹² Ibid.

¹³ Per Melvill J, in Reg. v. Govinda. 1..L.R. 1 Bom. 342.

¹⁴ Illustration (b)

degree of criminality depends upon its knowledge. Clause (b) above of Section 299 postulates no such knowledge.¹⁵

3) Intention to cause bodily Injury likely to cause death: Clause (b) of Section 299 and Clause (3) of Section 300- The offence is culpable homicide if the bodily injury intended to be inflicted is likely to cause death: it is murder, if such injury is *sufficient in the ordinary course of nature* to cause death. The distinction is fine, but appreciable.¹⁶ The word “likely” means “probably”, it is distinguished from “possibly”. When the chances of a thing happening are even with or greater than, its not happening, we say that the thing will “probably happen. When the chances of its happening are very high, we say that it will ‘most probably’ happen. An injury “sufficient in the ordinary course of nature to cause death” merely means that death will be the ‘most probable’ result of the injury having regard to ordinary course of nature. The expression does not mean that death must result in which such an injury is caused.¹⁷ Clause (b) of Section 299 and Clause (3) of Section 300 thus appear to be correlated, and the question whether the causing of an injury is culpable homicide or murder depends upon the degree of the likelihood or probabilities of death in consequence of the injury. “Practically”, observed Melvill. J., “it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or stick on a vital part may be likely to cause death: a wound from a sword in a vital part is sufficient, in the ordinary course of nature, to cause death.”¹⁸ It may be pointed out however, that it is not so much the nature of the weapon used as the nature of the injury inflicted that would determine the difference here made. The weapon may be same, but it may cause injuries of different proportions. It depends upon the constitution of the man, the part of the body injured and the degree of violence used.

In the instant case the question was whether the appellant could be said to have caused the death, when the immediate cause of death was some pulmonary embolism in left lung, infection and shock and obstruction in circulation of blood in artery. The Court observed in most cases, even if the fatal wounds are inflicted, the wounds themselves are not the immediate cause of death in the medical sense. But, even in such cases death must be attributed to the fatal injuries which lead to death. In order that a person should be held responsible for having caused the death, it is not necessary that this cause is the immediate cause of death, in the medical sense. If P causes to Q injuries likely to cause death, and as a result of such injuries it is necessary to perform an operation on Q, the injured man, and the injured man dies as a cumulative result of the original injuries as well as the operation. P must be deemed to have caused death of Q, because the

¹⁵Supra note 47, Reg. v. Govinda, 1.L.R. 1 Born. 342: see also King v. Aung Nyun, AIR. 1940 Rang 259: 42 Cr.L.J. 124.

¹⁶ Supra note 53.

¹⁷ Supra note 47.

¹⁸ Supra note 53.

operation itself was necessitated by what he had done, and therefore he must be held to be the cause of the operation itself and the consequential death.¹⁹

The doctor's statement to the effect that the death was caused on account of shock and hemorrhage on account of the injuries noticed on the person of the deceased cannot be considered equivalent to the statement that "the injuries by themselves were in the ordinary course of nature likely to cause death." In the absence of the proper opinion by the doctor, it is difficult to arrive at a positive conclusion that the injuries should be considered as likely to cause death.²⁰

4) Difference between Clauses (2) and (3) of Section 300 – Clause (3) of Section 300 contemplates an injury caused to a normal grown-up human being and does not take account of the special physical condition of the person harmed accelerating his death. On the other hand, Clause (2) of the Section refers to the case of a person with a peculiar physical condition and to the accused having knowledge of that peculiarity.²¹

5) Knowledge, homicidal and murderous: Clause (c) of Section 299 and Clause (4) of Section 300- Clause (c) of Section 299 and Cl. (4) of Section 300 both require knowledge of the probability of the act causing death. Clause (4) of Section 300 requires the knowledge in a very high degree of probability. The following factors are necessary:

1. That the act is imminently dangerous
2. That in all probability it will cause death or such bodily injury as is likely to cause death; and
3. That the act is done without any excuse for incurring the risk.

Clause (4) of Section 300 is not intended to apply to cases in which a person intends to inflict an injury likely to cause death because the Section speaks of knowledge and not the intention of an injury likely to cause death. Usually it applies to cases in which there was no intention of causing death or of causing any bodily injury.²²

¹⁹ Kumbhar Narsi Bechar v. State, AIR 1962 Guj. 77 at p. 78

²⁰ Jiwa Ram v. State. 1964 Raj L.W. 554 at p. 555: AIR 1965 Raj. 32. Waheed and Others v. State of A.P. (2002) 7 SCC 175, Rajwant and Anr. v. State of Kerala, AIR 1966 SC 1874.

²¹ Supra note 47.

²² Supra note 53.

SENTNCING IN INDIAN JUSTICE DELIVERY SYSTEM

Sentencing in India: General Provisions and Procedures

Sentencing is that stage of criminal justice system where the actual punishment of the convict is decided by the judge. It follows the stage of conviction and the pronouncement of this penalty imposed on the convict is the ultimate goal of any justice delivery system. *The sentencing procedure as under Criminal Procedure Code, 1973*. The Code provides for wide discretionary powers to the judge once the conviction is determined. The Code talks about sentencing chiefly in S.235, S.248, S.325, S.360 and S.361. S.235 is a part of Chapter 18 dealing with a proceeding in the Court of Session. It directs the judge to pass a judgement of acquittal or conviction and in case conviction to follow clause 2 of the section. Clause 2 of the section gives the procedure to be followed in cases of sentencing a person convicted of a crime.

A sentence not in compliance with S.235 (2) might be struck down as violative of natural justice. However this procedure is not required in cases where the sentencing is done according to S.360.

S.248²³ comes under Chapter 19 of the Code dealing with warrants case. The provisions contained in this section are very similar to the provisions under S.235. However this section ensures that there is no prejudice against the accused. For this purpose it provides in clause 3 that in case where the convict refuses previous conviction then the judge can based on the evidence provided determine if there was any previous conviction.

The judge at any point cannot exceed his powers as provided under the code in the name of discretion. In cases where the magistrate feels that the crime proved to have been Having understood the procedure in the Criminal Procedure Code, its efficiency can be understood only by seeing its application in practice. The discretion provided for under the existing procedure is guided by vague terms such as '*circumstances of the crime*' and '*mental state and age*'. Agreeably these can be determined but at what point will they have an effect on the sentence is

²³ Supra n.6 at pp.522-524

the question left unanswered by the legislature. For instance, every crime has accompanying circumstances but which ones qualify as mitigating and which once act as aggravating circumstances is something which is left for the judge to decide. Therefore if one judge decides a particular circumstance as mitigating this would not (except for a meagre precedential value) prevent another judge from ignoring that aspect as irrelevant.²⁴ This lack of consistency has encouraged a few judges to misuse the discretion on the basis of their personal prejudices and biases.

Apart from the personal biases and prejudice the idea of what constitutes justice and what is the purpose of punishment varies from person to person. For instance, in the case of *Gentela Vijayavardhan Rao v. State of Andhra Pradesh*²⁵, the appellant had with the motive to rob burnt a bus full of passengers, resulting in the death of 23 passengers. The sentence provided by the judges of the lower court was death penalty for convict A and 10 years of rigorous imprisonment for convict B. This was challenged by the convict. The apex court quoted from the judgment *Dhananjay Chatterjee v. State of West Bengal*²⁶ to support its view to uphold the judgment:

“Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.”

This judgement reflects the principles of deterrence and retribution. But this cannot be categorised as wrong or as right for this is a product of the belief of the judges constituting the bench.²⁷ Similarly in the case of *Gurdev Singh v. State of Punjab*²⁸ the court confirmed the death penalty imposed on the appellant keeping in mind the aggravating circumstances.²⁹ Though on the face of it this might be nothing but a brutal revenge for the crime done by the convicts, on a deeper study one can realize from the judgment that the act was absolutely unforgivable for the

²⁴ Suresh Chandra Bahri v. State of Bihar AIR1994SC2420 - “This sentencing variation is bound to occur because of the varying degrees of seriousness in the offence and/or varying characteristics of the offender himself. Moreover, since no two offences or offenders can be identical the charge or label of variation as disparity in sentencing necessarily involves a value based judgment. i.e., disparity to one person may be a simply justified variation to another. It is only when such a variation takes the form of different sentences for similar offenders committing similar offences that it can be said to desperate sentencing.”

²⁵ AIR1996SC2791

²⁶ (1994)2SCC220

²⁷ The rationale of the judges was that though their ultimate motive was wealth, the convicts had chosen a highly vicious means to attain it. Therefore the amount of cruelty demands such a punishment.

²⁸ AIR2003SC4187

²⁹ “The aggravating circumstances of the case, however, are that the appellants, having known that on the next day a marriage was to take place in the house of the complainant and there would be lot of relatives present in her house, came there on the evening of 21.11.1991 when a feast was going on and started firing on the innocent persons. Thirteen persons were killed on the spot and eight others were seriously injured. The appellants thereafter went to another place and killed the father and brother of PW-15. Out of the thirteen persons, one of them was seven year old child, three others were at the threshold of their lives. The post-mortem reports show their age ranged between 15 to 17 years.”

judges. This cannot be stated to be the inability of the judges to feel sympathy. This is just a reflection of their values.

On the other hand, *Mohd Chaman v. State*³⁰ the courts have shockingly reduced the sentence of death penalty to rigorous imprisonment of life due to the belief that the accused is not a danger to the society and hence his life need not be taken. The accused in this case had gruesomely raped and murdered a one and a half year old child. The lower courts having seen the situation as the *rarest of the rarest*³¹ cases imposed death penalty. This was reversed by the apex Court as it was not convinced that the act was sufficiently deserving of capital punishment.

Sentencing in Murder and Culpable Homicide

All murder is culpable homicide, but all culpable homicide is not murder.³² For the purpose of fixing punishment proportionate to the gravity of this generic offence, the code has recognized three degrees of culpable homicide.

Degrees of Culpable Homicide

Culpable Homicide of the first degree is the gravest form of culpable homicide and is termed 'murder'. It is defined in section 300 and punishable under section 302 with death or imprisonment for life to either of which fine may be added.

Culpable Homicide of the second degree that is Culpable Homicide not amounting to murder, as defined in section 300. Exceptions 1 to 5 and section 299, clauses (i) and (ii) is punishable under Section 304 (First Part) with imprisonment for life or imprisonment of either description for a term which may extend to 10 years, to either of which fine may be added.

Culpable Homicide of the Third Degree, which is defined under section 299, clause (iii) and is punishable under the latter part of section 304 with fine only or with imprisonment upto a limit of ten years or with both.³³

³⁰ 2001CriLJ725

³¹ The Indian Judiciary had strongly felt the need to have a sentencing guideline at least to the extent of imposition of death penalty. Therefore in the cases of Bachan Singh v. State of Punjab and subsequently in the case Machhi Singh v. State of Punjab, the Court laid down the 'rarest of the rarest test' by which death penalty should be imposed in only exceptional situations and such exceptional reasons must be recorded. This was followed in numerous cases both to save the life of the accused and to validate the imposition of the death penalty.

³² Reaz-ud-din-Shaikh v. Emperor, (1910) 11 Cr. LJ 295

³³ State of A.P. v. Rayavarapu Pannayya, (1976) 4 SCC 382; AIR Vineet Kumar Chauhan v. State of U.P. (2007) 14 SCC 660. 1977 SC 45; 1976 Cr LR 485 (SC);

Having noticed the distinction between ‘murder’ and ‘culpable homicide not amounting to murder’, now it is required to explain the distinction between the application of Section 302 of the Code on the one hand and Section 304 of the Code on the other.

In *Ajit Singh v. State of Punjab*³⁴, the Court held that in order to hold whether an offence would fall under Section 302 or Section 304 Part I of the Code, the courts have to be extremely cautious in examining whether the same falls under Section 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 that ‘amounting to murder’ as well as that ‘amounting to murder’ in a composite manner in Section 300 of the Code. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences.

An analysis of these two Sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. This Section deals with cases not covered by that Section and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of this section includes only those cases in which offence is really ‘murder’, but mitigated by the presence of circumstances recognized in the exceptions to section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular.³⁵

Thus, where the act committed is done with the clear intention to kill the other person, it will be a murder within the meaning of Section 300 of the Code and punishable under Section 302 of the Code but where the act is done on grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the offence would fall under the exceptions to Section 300 of the Code and is punishable under Section 304 of the Code. Another fine tool which would help in determining such matters is the extent of brutality or cruelty with which such an offence is committed.

³⁴ *Ajit Singh v. State of Punjab*, (2011) 9 SCC 462.

³⁵ *Fatta v. Emperor*, 1151. C.J 476. *Ravi Kapur v. State of Rajasthan*, AIR 2012 SC 2986; *N. Chellaiah v. State by the Inspector of Police, Murrapanadu Police Station*, MANU/TN/0127/2013; *Buddhi Singh v. State of H.P.*, 2012(12)SCALE393.

An important corollary to this discussion is the marked distinction between the provisions of Section 304 Part I and Part II of the Code. 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.

A question arises whether the appellant was guilty under Part I of Section 304 or Part II. If the accused commits an act while exceeding the right of private defence by which the death is caused either with the intention of causing death or with the intention of causing such bodily injury as was likely to cause death then he would be guilty under Part I.³⁶ On the other hand if before the application of any of the Exceptions of Section 300 it is found that he was guilty of murder within the meaning of clause (4), then no question of such intention arises and only the knowledge is to be fastened on him that he did indulge in an act with the knowledge that it was likely to cause death but without any intention to cause it or without any intention to cause such bodily injuries as was likely to cause death. There does not seem to be any escape from the position, therefore, that the appellant could be convicted only under Part II of Section 304 and not Part I.³⁷

As we have already discussed, classification of an offence into either Part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of pre-meditated mind, and the persons participating in the commission of the crime and to some extent the motive for commission of the crime. 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.³⁸

Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, 'culpable homicide amounting to murder'. Then secondly, it may proceed to examine if the case fell in any of the exceptions detailed in Section 300 of the Code. This would doubly ensure that the

³⁶ Rampal Singh v. State of Uttar Pradesh , (2012) 8 SCC 289; Antony Pereira v. State of Maharashtra , 2012 (2) SCC 648.

³⁷ Mohinder Pal Jolly v. State of Punjab ,1979 AIR SC 577.

³⁸ Satpal v. State , 195 (2012) DLT 452.

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. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused.³⁹

THE JUDICIAL TREND CONCERNING CULPABLE HOMICIDE AND MURDER **(Through cases from January 2015 to 15 March 2017)**

This chapter analyzes the judicial trend concerning the cases related to Culpable Homicide and murder. For the purpose of this study, cases of last two years are taken from Supreme Court of India, Calcutta High Court and Rajasthan High Court. The time frame taken in this study is from January 2015 to March 2017.

SUPREME COURT CASES

S.No	Name of Case	Trial Court ⁴⁰	High Court		Supreme Court	
			Judgement	Offence ⁴¹	Judgement	Offence ⁴²
1.	Arjun vs State of Chattisgarh	Section 302	Affirmed	Section 302	Reversed	Section 304 Part I
2.	Vijay vs State of Maharashtra	Section 302	Affirmed	Section 302	Reversed	Section 304 Part II
3.	Gurpal vs State of Punjab	Sections 302 and 307	Affirmed	Section 302	Reversed	Section 304 Part I
4.	Vijender vs State of Delhi	Section 302	Affirmed	Section 302	Reversed	Section 304 Part II
5.	Saddik vs State of Gujrat	Section 302	Affirmed	Section 302	Affirmed	Section 302
6.	Veeranki vs State of Andhra Pradesh	Section 302	Affirmed	Section 302	Reversed	Section 304
7.	State of Rajasthan vs Poonam	Section 302	Reversed	Section 304 Part II	Reversed	Section 304 Part I

³⁹ Retrieved from <http://www.advocatekhaj.com/library/judgments/announcement.php?WID=2317> on 22 October, 2013.

⁴⁰ Offences under Indian Penal Code, 1860 charged by Trial Court.

⁴¹ Offences under Indian Penal Code, 1860 charged by High Court.

⁴² Offences under Indian Penal Code, 1860 charged by Supreme Court.

8.	State of Madhya Pradesh vs Goloo	Section 302	Reversed	Section 304 Part I	Reversed	Section 302
9.	State of Rajasthan vs Ram Kailash	Section 302	Reversed	Section 304 Part I	Reversed	Section 302
10.	Nankaunoo vs State of Uttar Pradesh	Section 302	Affirmed	Section 302	Reversed	Section 304 Part I
11.	State of Assam vs Ranua	Section 302	Reversed	Section 304 Part II	Reversed	Section 302
12.	Sanjay vs State of Uttar Pradesh	Section 302	Reversed	Section 302	Reversed	Section 302
13.	State of Rajasthan vs Ramesh	Section 302	Reversed	Section 302	Reversed	Section 304 Part I
14.	Ranjit vs State of Tripura	Section 304	Reversed	Section 302	Reversed	Section 304
15.	State of Rajasthan vs Prakash	Section 302	Reversed	Section 304	Reversed	Section 302
16.	Sunil vs State of Maharashtra	Section 302	Affirmed	Section 302	Affirmed	Section 302
17.	Pura Ram vs State of Rajasthan	Section 302	Affirmed	Section 302	Reversed	Section 304 Part II
18.	Raman vs State of Haryana	Section 302	Affirmed	Section 302	Reversed	Section 304 Part I
19.	Rajesh vs Union of India	Section 302	Affirmed	Section 302	Affirmed	Section 302
20.	Vuter Kumar vs State of AP	Section 302	Affirmed	Section 302	Affirmed	Section 302
21.	Bivash vs State of West Bengal	Section 302	Affirmed	Section 302	Reversed	Section 304 Part I
22.	Tukaram vs State of Maharashtra	Section 302	Reversed	Section 304 Part II	Reversed	Section 302
23.	Badru vs State of Rajasthan	Section 302	Affirmed	Section 302	Affirmed	Section 302
24.	Sanjeev vs State of Haryana	Section 302	Reversed	Section 302	Reversed	Section 304 Part I
25.	Balu vs State of Maharashtra	Section 304 Part I	Reversed	Section 302	Affirmed	Section 302
26.	Rathore vs State of Gujarat	Section 302	Affirmed	Section 302	Reversed	Section 304 Part I
27.	Ahmad vs State of	Section 302	Affirmed	Section 302	Reversed	Section 304

	Rajasthan				
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From 2015 to 2017, Supreme Court dealt with 27 cases related to Culpable Homicide and murder and it seems very evident from looking at the cases that culpable homicide holds the closest relationship with murder as out of 27 cases Supreme Court reversed the decision of High Court 21 times.

CALCUTTA HIGH COURT CASES

S.No	Name of Case	Trial Court ⁴³	High Court	
			Judgement	Offence ⁴⁴
1.	Sanjib vs State of West Bengal	Section 302	Reversed	Section 304 Part I
2.	Panchanan vs State of West Bengal	Section 302	Affirmed	Section 302
3.	Mahadeb vs State of West Bengal	Section 302	Affirmed	Section 302
4.	State of West Bengal vs Binoy	Section 302	Reversed	Section 304 Part II
5.	Senaul vs State of West Bengal	Section 302	Affirmed	Section 302
6.	Anil vs State of West Bengal	Section 302	Reversed	Section 304 Part II
7.	Mauna vs State of West Bengal	Section 302	Reversed	Section 304 Part I
8.	Nirmal vs State of West Bengal	Section 302	Reversed	Section 304 Part I
9.	Mondal vs State of West Bengal	Section 302	Reversed	Section 304 Part II
10.	Dabhi Mal vs State of West Bengal	Section 302	Affirmed	Section 302
11.	Golab Shaw vs State of West Bengal	Section 302	Affirmed	Section 302
12.	Rajesh vs State of West Bengal	Section 302	Reversed	Section 304 Part I
13.	Chandrajit vs State of West Bengal	Section 302	Affirmed	Section 302
14.	Motilal Rana vs State of West Bengal	Section 302	Reversed	Section 304 Part I

⁴³ Offences under Indian Penal Code, 1860 charged by Trial Court.

⁴⁴ Offences under Indian Penal Code, 1860 charged by High Court.

15.	Gurung vs State of West Bengal	Section 302	Reversed	Section 304 Part II
16.	Mummu vs State of West Bengal	Section 302	Affirmed	Section 302
17.	Nakul vs State of West Bengal	Section 302	Affirmed	Section 304
18.	Alambari vs State of West Bengal	Section 302	Affirmed	Section 302
19.	Radhe Kanta vs State of West Bengal	Section 302	Reversed	Section 304 Part II

The Calcutta High Court observes around 50 *per cent* reversal rate in the decision when trial court convicted the accused under section 302 of the IPC and High Court reversed the decision of the lower court and convicted the accused either under section 304 I or 304 II of the IPC. Calcutta High Court is the only High Court which shows some consistency with the decision of the lower court in the cases related to culpable homicide and murder. Though it reversed the decision of lower court in 10 out of 19 cases, it can be considered to be stable figure where other courts have shown high reversal rates in the last two years.

RAJASTHAN HIGH COURT CASES

S. No	Name of Case	Trial Court ⁴⁵	High Court	
			Judgement	Offence ⁴⁶
1.	Ram Kumar vs State of Rajasthan	Section 304 Part II	Affirmed	Section 304 Part II
2.	Jeewan Raul vs State of Rajasthan	Section 302	Reversed	Section 304
3.	Devendra vs State of Rajasthan	Section 302	Affirmed	Section 302
4.	Satya Narayan vs State of Rajasthan	Section 302	Affirmed	Section 302
5.	Mohani Devi vs State of Rajasthan	Section 302	Reversed	Section 304 Part II

⁴⁵ Offences under Indian Penal Code, 1860 charged by Trial Court.

⁴⁶ Offences under Indian Penal Code, 1860 charged by High Court.

6.	Binder S vs State of Rajasthan	Section 302	Affirmed	Section 302
7.	Mammu Lal vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
8.	Amar Singh vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
9.	Nemi Chand vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
10.	Ram Pratap vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
11.	Mukesh vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
12.	Darshan Singh vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
13.	Kalu Das vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
14.	Sundar vs State of Rajasthan	Section 304 Part II	Affirmed	Section 304 Part II
15.	Prakash vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
16.	Bhepa Ram vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
17.	Hema Ram vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
18.	Bhanwar S. vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
19.	Ram Niwas vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
20.	Malta Ram vs State of Rajasthan	Section 302	Affirmed	Section 302
21.	Bhala Ram vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
22.	Asha Ram vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
23.	Gulab Ram vs State of Rajasthan	Section 302	Affirmed	Section 302
24.	Chautha Ram vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
25.	Pawan Kumar vs State of Rajasthan	Section 302	Affirmed	Section 302

26.	Ganesh vs State of Rajasthan	Section 302	Affirmed	Section 302
27.	Hadmar Puri vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
28.	Panna Lal vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
29.	Nahar Singal vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
30.	Giri Raj vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
31.	Balram vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
32.	Ramcharan vs State of Rajasthan			
33.	Kapoorra vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
34.	Mangilal vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
35.	Kalua vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
36.	Devilal vs State	Section 302	Reversed	Section 304 Part I
37.	Satish Kumar vs State	Section 302	Reversed	Section 304 Part I
38.	Bajrang Singh vs State	Section 302	Reversed	Section 304 Part I
39.	Laxman Lal vs State	Section 302	Reversed	Section 304 Part II
40.	Meetha Lal vs State	Section 302	Reversed	Section 304 Part I
41.	Vitthala vs State	Section 302	Reversed	Section 304 Part I
42.	State vs Narayan	Section 304 I	Affirmed	Section 304 Part I
43.	Ramdev vs State	Section 302	Reversed	Section 304 Part II
44.	Neetu vs State	Section 302	Reversed	Section 304 Part I
45.	Ram Narain vs State of Rajasthan	Section 302	Reversed	Section 304 Part I

46.	Ram Lal vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
47.	Harimohan vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
48.	Jomdeen vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
49.	Kailash Chandra vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
50.	Mahaveer Prasad vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
51.	Bhagwan vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
52.	Ram Dayal vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
53.	Prabhulal vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
54.	Ramesh vs State of Rajasthan	Section 302	Reversed	Section 304 Part II
55.	Majid vs State of Rajasthan	Section 304 I	Affirmed	Section 304 Part I
56.	Pappu vs State of Rajasthan	Section 302	Reversed	Section 304 Part I
57.	Bharat Lal vs State of Rajasthan	Section 302	Reversed	Section 304 Part I

Rajasthan High Court has dealt with the highest number of cases relating to culpable homicide and murder in 2015-2017 and it has also shown vast reversal rate of the decision of the Trial Court. It is pertinent to mention here that Rajasthan High Court reversed 80 *per cent* of the 57 cases decided by the Trial Court.

Analysing the current judicial trend relating to Culpable Homicide and Murder

Looking at the recent judgement of last two years related to culpable homicide and murder presents a clear picture of the fact there exists a thin line difference between the two category of offences on which Indian courts often face confusion resulting into high rate of judgment reversal. As it is a established fact now that culpable homicide and murder holds the closest

relationship with other, the purpose of this section is to analyze the probable reasons as to why Indian judiciary faces confusion over deciding the cases and even after having plethora of cases related to culpable homicide and murder why judiciary presents a shaky stand in deciding the cases related to the two category of offences.

In the case of State of Rajasthan vs Ram Kailash⁴⁷ the court said that, “whenever a court is confronted with the question 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, Penal Code, 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, Penal Code.

In the recent case of State of Rajasthan vs. Poona Ram and Ors⁴⁸, the Supreme Court on whether the offence comes under 304 Part 1 or section 304 Part 2 stated that, “in the absence of any specific allegation as to who caused fatal injuries, all the accused persons cannot be held guilty of offence under Section 302 Indian Penal Code because it cannot be said with certainty that they shared a common intention of causing death. None of them had uttered any words to disclose such an intention, nor had they come prepared for such offence by carrying fire arms or any lethal weapon. In a case even if it is alleged that the accused persons were under influence of liquor is accepted, it does not aggravate the offence and Section 304-I of the Indian Penal Code would clearly cover such an offence where the accused persons caused indiscriminate assault and were fully aware of their acts which could cause possible death”.

Exception 4 of section 300 of the IPC which specifies an act committed in a sudden fight in the heat of passion, is considered to be the most volatile exception as it has solely resulted into many reversal of judgments in the last two years. In the case of Arjun Singh and ors vs. State of Chattisgarh⁴⁹, the supreme explaining as to what constitutes a ‘fight’ observes that,

⁴⁷ MANU/SC/0085/2016

⁴⁸ MANU/SC/0466/2016

⁴⁹ MANU/SC/0153/2017

“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 Indian Penal Code is not defined in the Penal Code, 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 had 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’”.

Further to clarify the position, the Rajasthan High Court also states that “Considering the fact that there was no premeditation and the act was committed in a heat of passion and that the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties, this case falls under the fourth exception to Section 300 IPC” and on this observation the court altered the judgment from section 302 IPC to Section 304 Part 1 IPC.⁵⁰

Another reason over which judiciary faces confusion is clause ‘thirdly’ of Section 300 of IPC which talks about the ‘bodily injury’ and the ‘intention’ with which such injury is caused. In the recent case of State of MP vs Goloo Raikwar ad ors⁵¹, stating the case of State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. (1976) 4 SCC 382, in which the accused 5 in number beat the victim with sticks on the legs and arms of the deceased and when hospitalized the deceased succumbed to his injuries. The medical officer who conducted the autopsy opined that the cause of death was shock and haemorrhage resulting from multiple injuries and said injuries were cumulatively sufficient to cause death in the ordinary course of nature. Question arose whether in such a case when no significant injury had been inflicted on a vital part of the body, and used were sticks and the accused could not be said to have the intention of causing death the weapons, the offence would be 'murder' or merely 'culpable homicide not amounting to murder'. The Apex Court observed that:

“All these acts of the accused were preplanned and intentional, which, considered objectively in the light of the medical evidence, were sufficient in the ordinary course of nature to cause death. The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the

⁵⁰ Hema Ram vs State of Rajasthan (MANU/RH/0901/2016)

⁵¹ MANU/SC/0255/2016

ordinary course of nature to cause death, will not exclude the application of clause thirdly of Section 300. 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 upto 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'.

The Supreme Court clearly stated that 'intention' holds the key importance which should not be overlooked by the courts while deciding the cases. More clear position of law is presented in the landmark case of Virsa Singh vs. State⁵², "in that case it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words Clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part whether it was sufficient to cause death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of Clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue.

Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.

In the case of State of Assam vs Ramen Dowarah⁵³, the Supreme Court while dealing with the intention of pouring kerosene and causing fire and observed, "Relying on the circumstance that

⁵² MANU/SC/0041/1958

⁵³ MANU/SC/0021/2016

the Appellant tried to put out the fire, observed that the Appellant had no intention to commit the murder of the deceased and cannot therefore be convicted Under Section 302.

In the case of Motilal Rana vs state of West Bengal⁵⁴, “the accused inflicting a single blow on head with an agricultural implement, tabbal which resulted in fracture of bones causing death of deceased it was observed that having regard to the time and the surrounding circumstances it cannot be held that he intended to cause death particularly when he was not armed with any deadly weapon and as such the offence was covered by section 304 Part II and not section 300 1stly or 3rdly”.

In the case of Mohani Devi vs State of Rajasthan⁵⁵, in which though the accused had common intention on their part could be attributed since they had done the over act of grappling with and pinning down the deceased. Seeing his father and brother grappling with the deceased, the accused Buddhu Singh dealt an axe blow which could not be said to be intended towards the head. It could have landed anywhere. However, it landed on the head of the deceased. Therefore, the element of intention is ruled out. The accused did not had the intention to commit the murder of the deceased is justified by the fact that the accused Buddhu Singh did not repeat the assault. Under such circumstances, the guilt of the accused persons is established under Section 304 Part II I.P.C."

Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls Under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters -- plucking of a greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable. Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302.

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several

⁵⁴ MANU/WB/1131/2015

⁵⁵ MANU/RH/0103/2017

blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.⁵⁶

The Hon'ble Supreme Court in a catena of judgments held that "intention" should be gathered upon assessment of facts and entire evidence and if intention/motive for commission of offence of murder is absent then it cannot be said that offence under Section 302 IPC is made out. The facts and evidence of particular case is required to be considered independently at the time of adjudication of case.⁵⁷

The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. 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 to keep in focus the keywords 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.⁵⁸

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	(1) with the intention of death; or 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

⁵⁶ Bivash Chandra Debnath and Ors. Vs. State of West Bengal (MANU/SC/0457/2015)

⁵⁷ Nahar Singh vs State of Rajasthan (MANU/RH/0524/2016)

⁵⁸ Suresh vs State of Rajasthan

	the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
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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 for incurring the risk of causing death or such injury as is mentioned above.
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CONCLUSION

The first and foremost concern of criminal law is to protect and preserve certain fundamental social values and institutions. With this dictum, it gives a set of norms for the conduct of human behavior it also puts certain penalty for the disrespect or threatens substantial harm which are related to individual interest, public interest and fundamental social values. Going through the 'Offences Related to Human Body', one can understand that it exhibits a deep understanding of social culture of the classic Indian Society. The wordings of each and every provision related to offences against human body are clear and the punishments given are appropriate. Dealing with the two points, culpable homicide and murder in detail I understand the aspects and the deep meaning of these two provisions. The offences related to human body is the most important part of Indian Penal Code. The only thing which required is to establish a good society and understand the rules and regulations and punish the offences in the manner prescribed under Indian Penal Code.

There is no radical difference between the offence of culpable homicide and murder. The causing of death is common to both the offences. The act which caused it is the act of the offender in each case. There must necessarily be criminal intention or knowledge in both cases. The true difference, then, lies in the degree there being the greater intention or knowledge of the fatal result in the one case than the other. This difference is attempted to be accentuated by the four clauses describing the offence under this section. But no abstract enunciation of the difference can be an infallible guide in determining the true nature of the crime. All the same, it is very

necessary to see how far the code regards the two offences as distinct and what the criterion for distinguishing them is.