Q-1 Define wrongful restraint and wrongful confinement what are the essential elements and what is the difference between them?

accident has resulted due to such lack of caution on the part of the driver that amounted to reckless act was due to his negligence that the accident had resulted. His going on the wrong side the road with a high speed through the city precincts are enough to prove that he was not caring about the unwanted consequences, his act must accordingly be deemed to be also a rash act. As grievous hurt had been caused due to rashness and negligence in driving the truck, it was an offence under Section 338, 1LP.C.

Allegation under Section 339 of I.P.C. for wrongful restraint by co-sharer preventing him from enjoying his property. It was held that right of a co-sharer to enjoy the joint family property is a civil right, criminal proceedings cannot be taken recourse to for enforcing such a civil right.

Acts endangering life or the personal safety of others are punishable even when no hurt is caused by such acts with imprisonment upto 3 months or fine upto Rs. 250 or both (Section 325).

Wrongful Restraint and Wrongful Confinement (Sections 339-340) Restraint means the cutting short of a person's liberty. The slightest obstructure may amount to restraint, while confinement denotes total restraint. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person (Section 339). The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct is not an offence within the meaning of this section(Exception).

Section 339. Wrongful restraint. - Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. *Exception* - The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section. Illustration

Illustrations

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A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to obstruct. Z is thereby prevented from passing.

A wrongfully restrains Z.

The following illustrations from the original draft of the Code further elucidate the definition of wrongful restraint:

Illustrations

(a) A builds a wall across a path along which Z has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.

(b) A illegally omits to take proper care with a furious buffalo, which is in his possession and thus voluntarily deters Z from passing along a road, along which Z has a right to pass. A wrongfully restrains Z. (c) A threatens to set a savage dog at Z, if Z goes along a path, along which Z has a right to go. Z is thus prevented from going along that path. A wrongfully restrains Z.

(d) In the last illustration, if the dog is not really savage, but if A voluntarily causes Z to think that it is savage and thereby prevents Z from going along the path, A wrongfully restrains Z.

Wrongful restraint is keeping a man out of place where he wishes to go and has right to be. A person may obstruct another by causing it to appear that other that it is impossible, difficult or dangerous to proceed as well as by causing it actually to be impossible, difficult or dangerous for that other person to proceed. The obstruction must be physical. The slightest unlawful obstruction created to the liberty of a person to go whenever and wherever he likes to provided such a person does so in a lawful manner, cannot be justified and punishable under LP.C. But if a person who *bona fide* believing in his right to property asserts his claims thereto cannot be convicted of this offence Again the obstruction of a private way over land and water which a person in good faith believed himself to have a lawful right to obstruct, is not an offence

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Section 339. Exception- Applicability. -The passage in question was the common path both for the complainant as well as the accused. The Exception to Section 339 is a clear provision that where a person believes in good faith that he has a lawful right to obstruct a private way over land or water, the obstruction of such a way will not be a wrongful restraint. Section 339 occurs in Chapter XVI dealing with offences against the human body. Where a human body is not obstructed, the keeping of the car on the pathway so as to obstruct the complainant in bringing out his car would not amount to an offence of wrongful restraint as defined in Section 339, IPC.

To constitute the wrongful restraint physical presence is not necessary. For example, where A with his wife and daughter has gone to market and among their temporary absence B put a lock on the outer door and thereby obstructed them from getting into the house, B, would be guilty of wrongful restraint,

There can be no reason for a person to believe that he has a lawful right to obstruct the passage of a person so as to force him to remain confined in the house in which he lives. A person cannot be deemed to believe in good faith that he has a lawful right to obstruct the passage by closing the door which is necessary for the occupants egress and ingress. The exception cannot, therefore be accepted. The gist of the offence is that there must be a restraint when there is a desire to proceed in a particular direction.

Section 340. Wrongful restraint -- Ingredients. – Following the language of the action one would find that firstly there must be an obstruction placed by the accused voluntarily. Secondly, the obstruction must be such as to prevent anybody from going in a direction. Thirdly, the person so prevented must have a right to proceed in that direction

Wrongful confinement - Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding within certain circumscribing limits, is said to "wrongfully confine that person.

Illustrations

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(a) A causes Z to go within a four-walled space and locks Z in. Z is thereby prevented from proceeding in any direction beyond the circumscribing line. A wrongfully confines Z.

(b) A places men with firearms at entrance of a building and tells Z, that they are under instructions to fire at him, if he attempts to leave the building. A wrongfully confines Z. A takes away a ladder by which B and C were to get down from a room on the first floor. A has committed an offence of wrongful confinement.

Wrong confinement-ingredients:- The chief ingredient of the offence is the placing of a person in such wrongful restraint that he cannot go beyond the circumscribing limits. Once the door is locked the persons living on the upper floor are confined to that flat and cannot come out. This will amount to wrongful confinement. No person has a right to commit an offence under the garb of protecting his property from theft. The right to protect the property from apprehended theft cannot go to the extent of interfering with the rights of others or to include the right to put the neighbour in wrongful confinement.

If one man merely obstructs the passage of another in a particular direction whether by threat of personal violence or otherwise, leaving him at liberty to stay where he is or to go in any other direction if he pleases is not confinement. But it would be restraint. There can be no wrongful confinement when a desire to proceed has never existed, nor can confinement be wrongful if the person confined chooses to remain where he is Detention of person wrongfully confined must be against his will. A person may have its boundary large or narrow, visible, and tangible, or though real still in the conception only: it may have itself be movable or fixed, but a boundary it must have and that boundary the party imprisoned must be prevented from passing: he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, accept by prison on breach.

An accused who forcibly brings back the searching officer after he had conducted the search in the premises and threatens him with lathi to write and give a memo that he

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had searched the premises, commits offences under Sections 352 and 353, LP.C., even if the search was in violation of Section 165, Cr. P.C.

In *Ravindra Narayan Das v. State*, the High Court upheld that for the application of wrongful confinement (Section 340), it is necessary that complainant should be confined at a place where he is not permitted to move any side If any person is prevented not to move from one side, the offence will not be completed. The prevented person should be totally deprived of movement on any side.

"Wrongful restraint" and "wrongful confinement".-In wrongful restraint the person in restraint can proceed in other direction than the one in which he claims that he has a right to proceed, ie there is only a partial restraint, while In wrongful confinement the person confined cannot proceed beyond certain limits in all directions: the restraint is as such of a graver degree than in wrongful restraint. The restraint may be caused physically as well as by oral threats.

A places men with firearms at the outlet of a building and tells X that these N will fire if you attempt to leave the building. A commits the offence of wrongful confinement

The offences under this group are :-

(1) Wrongfully restraining any person; Punishment-Simple imprisonment upto one month or fine upto Rs. 500 or both (Section 341)

(2) Wrongfully confining a person; Punishment-Imprisonment of either description upto one year or fine upto Rs. 1,000 or both (Section 342).

(3) Wrongfully confining a person for 3 days or more; Punishment Imprisonment of either description upto 2 years or fine cent- (Section 343).

(4) Wrongfully confining a person for 10 days or more; Punishment Imprisonment, of either description upto 3 years and fine (Section 344).

(5) Keeping any person in wrongful confinement knowing that a writ for liberation of that person has been duly issued; (Punishment Imprisonment of either description upto 2

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years in addition to any term of imprisonment provided by any other section of this Chapter (Section 345).

(6) Wrongfully confining any person in such manner as to indicate an intention that confinement of such person may not be known to any person interested in the person so confined or to any public servant or that the place of such confinement may not be known to ar discovered by any such person or public servant as hereinbefore mentioned; [Punishment- Imprisonment of either description upto 2 years in addition to any punishment provided for such wrongful confinement] (Section 346).

(7) Wrongfully confining any person for the purpose of extorting from the person confined or from any person interested in the person confined, any property or valuable security or for the purpose of constraining the person confined or any person interested in such person to do anything illegal or to give information which may facilitate the commission of an offence; [*Punishment*-Imprisonment of either description upto 3 years andfine] (Section 347).

(8) Wrongful confinement for the purpose of extorting confession or information which may lead to the detection of an offence, or compelling restoration of any property or valuable security or the satisfaction of any claim or demand or information which may lead to the restoration of any property or valuable security. [Punishment-Imprisonment of either description upto 3 years and fine] (Section 348)

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Q:- Every murder is culpable homicide but every culpable homicide is not murder. "Explain in what circumastances culpable Homicide does not amount to murder?

Section 299. Culpable homicide. -Whoever causes death by doing an act with the intention of causing death, with the intention of causing such bodily injury as is likely to cause death, or with the knowledge, that he is likely by de cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with intention of thereby causing 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 be likely to cause Z's death, induces B to fire at the bush fires and kills Z. Here B may be guilty of no offence, but A has committed the offence of culpable homicide

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 a 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.

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(ii) Culpable Homicide.-Culpable homicide means death through human agency punishable at law. All murder is culpable homicide but all culpable homicide is not murder. There are two branches of culpable homicide; culpable homicide amounting to murder known as simply 'murder' [Sections 300, clauses (1), (2), (3) and (4)]: and (ii) culpable homicide not murder (Section 299 and exceptions to Section 300). The not amounting common to both the branches, and there is necessarily a criminal intention causing of death is or knowledge in both. The difference does not lie in the quantity, it lies in the quantity of degree of criminality disclosed by the act. In murder there is greater Intention or knowledge than in culpable homicide. Before dealing with these two tranches, let us see how the law defines culpable homicide the generic class itself of which these two are species. Whoever causes death by doing an act (i) with the intention of causing death, or (i) 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 (Section 299). Culpable homicide presupposes an intention, or knowledge of likelihood of causing death. *In the absence of such intention or knowledge* even if the death be caused, the offence may be that of hurt or grivous hurt, e.g., death caused by kicking a person suffering from a diseased spleen.

Illustration

A, by shooting at a fowl with intent to kill and steal it, kills B; who is behind a bush, such presence of B being not known to A Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or cause death by doing an act that he knew was likely to death. Now if A shot at the bird at the instance of C who knows that B is behind the bush and who intends to cause B's death or knows that B's den thereby likely, while A is innocent, C is guilty of culpable homicide. A lava s and turf over a pit, with the intention thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

Death may be caused in a variety of ways mediate as well as immediate It may be caused by causing injury to a person labouring under a disease or infirmity thereby accelerating

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the death of the person. *(Explanation Section 299).* It may take time for the injury caused to end in death and it may be possible to prevent such death by resort to proper remedies or skilful treatment of the injury; responsibility of the person who has caused such Injury shall not the of however, abate because such treatment was not resorted to and he shall still be deemed to have caused such death (*Explanation* II) even though death takes place long after the injury. There is no such thing as contributory negligence and it is culpable homicide. Death may result from the act itself or from the natural consequences of the act but it should not be too remote. These explanations do not explain the offence of culpable homicide they explain what it meant by 'causing death which is one of the ingredients of the offence of culpable homicide.

Elements of culpable homicide. - The essential element in culpable homicide is the intention of causing death or of such bodily injury as is likely to cause death or knowledge that the act is likely to cause death. The elements necessary to constitute the offence of culpable homicide are

(i)the causing of death,

(ii) the doing of an act and

(iii) the act must have been done-

(a) with the intention to cause death

(b) with the intention to cause bodily injury as is likely to Cause death

(c) with the knowledge that act is likely as such which is enough to cause death

(i)Causing of death.- It is the death and death alone which is first required to bring a case within the purview of Section 299. The death must be of a human being The causing of death of a child in the mother's womb is homicide but it may amount to culpable homicide if any part of that child been brought forth though the child may not have

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breathed or even completely born. Human foetus is excluded from the category of human being.

It is not necessary that the offender should intend to kill (or know himself likely to kill) any particular person. It is enough if he causes the death of any one by doing an act. The word "causes" has been used in relation to man and as such cause must mean exerting his power into action. In this respect, attention is invited to Explanation 2 where it is said that 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 ! I points out that person who causes bodily injury to another who is labouring under a disease, disorder or bodily infirmity, and accelerates the death of that other shall be deemed to have caused the death In view of Explanation 2 to Section 299 it be no defence at all to a charge of murder to plead that there was no proper medical treatment.

Any act is said to cause death within the meaning of Section 299 when death results either from the act itself or from some consequences necessarily or naturally flowing from that act and reasonably contemplated as its result. Where without the intervention of any considerable change of circumstances the death is connected with the act of violence by a chain of causes and effects, the death must be regarded as a proximate and not too remote a consequence of the act of violence.

No doubt when the death is so caused, by what the medical books often call remote or indirect causes, it might be difficult to establish the *mens rea* necessary for the offence of murder, since the more remote that cause the less possible would be to show that the accused intended or realised the result. But where the intention to cause death clearly made out, it does not matter that death was caused, not in the language of the the medical books directly, but by a chain of con consequences not being and not each following upon the other in the process of nature and not being an enexpected complication causing a new mischief.

(ii) The doing of an act.-The word "act" has been used in a wider sense and it connotes the doing of a thing by the exercise of power or otherwise. The word “act” has been defined in Section 33 which says that it denotes as well a series of acts as a single

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act. Section 32 says that the words which refer to acts done extend also to illegal omissions. The effect of both these sections is that the term "act" comprises one or more acts or one or more illegal omissions. The authors of the Code considered speaking as an act and as such if death of a person is caused by an act, the accused is guilty of culpable homicide but in England law takes no cognizance of homicide unless death results from bodily injury, caused by some act or omission.

(iii) **Mental Element.--** The prosecution shall have to prove either the element of intention to cause death or the intention to cause such bodily injury as is likely to cause death or the knowledge that he is likely by such act to cause death.

Motive-Relevance. The prosecution need not to ensure a conviction of the accused, establish a motive for the crime. If motive is established it would strengthen the case of the prosecution. But if motive is not brought to the surface and yet there is unimpeachable evidence of the crime itself, absence of motive will not entail an acquittal of the accused."

(a) **Intention to cause death**.- Intention means the expectation of the

consequences in question and it therefore does not necessarily involve premeditated or thinking. Intention is always internal unless expressed in the form of some overt act. That is why it is often said that it is difficult for the Judges and Juries to look into the breasts of the criminals. Intention is only gathered from the facts and circumstances of the case. There is also one of the fundamental rules of criminal jurisprudence that the act and the intent both must concur in order to constitute constitute a crime.

Intention is different from motive and object. The Court does not take into consideration the object but it is the intention of the accused that is all in all Intention does not imply or assume the existence of some previous design or forethought. It means an actual intention, the existing intention at the moment, and is proved by or inferred from the acts of the accused and the circumstances of the case. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.' Causing serious injury on a

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vital part of the body of the deceased with a dangerous weapon must necessarily lead to the inference that the accused intended to kill.?

The accused set fire to the single room in which the deceased was sleeping The accused took care to lock the door from outside so that his old servant who was sleeping in front of the cottage outside the room occupied by the deceased could be of no help to the deceased who had thus been trapped in his own cottage. Furthermore when the villagers were aroused from their sleep, they Furth prevented from going to the rescue of the helpless inmates of the cottage were prevented by use of force force against them by the accused. In the case of *Prabhu v. State of M.P.* the Supreme Court observed that the act of accused may be considered for the determination of intention of the accused. If the act is serious in nature which commits murder is enough to prove the intention of the accused that he did the work to commit culpable homicide or murder.

Intention to cause such bodily injury as likely to cause death. - Where death was not the immediate result of the injuries with intention to cause death under Section 299(a), whereas in clause (b) of Section 299 intention is not to cause death but to cause dangerous hurt. The expression "intention to cause such bodily injury as is likely to cause death" merely means an intention to cause particular injury, which is likely to cause death. In this way it is not the death itself which is intended. As for example, if A stuffed cloth into the mouth of B in order to silence him, not with intention to kill him, it would only be presumed that A knew that in so doing he was likely to cause the death of B and so guilty for his death, and the accused could not believe that death would result there from, therefore the offence fell within the ambit of Section 326, I.P.C. The connection between the act and the death caused thereby must be direct and distinct; and though not immediate but it must not be too remote. It is indispensable that the death should be clearly connected with the act of violence, "not merely by a chain of causes and effects, but by such direct any influence as is calculated to produce the effect without the intervention considerable change of circumstances"

The Supreme Court, in *State of U.P. v. Virendra Prasad*, has held that under clause third of Section 300 of the Indian Penal Code, culpable homicide is murder if both the following conditions are satisfied *i.e*, (a) that the act which causes death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is

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sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury, which in the ordinary course of nature was sufficient to cause death *viz*., that the injury found to be present was the injury intended to be inflicted. Thus even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in ordinary of nature, and did not extend to the intention of causing death, the Course would be murder. Illustration (c) appended to Section 300 clearly brings offenceout this Point.

between intention to cause death' and 'intention to cause such bodily Difference to cause death',-The main difference between these two sury as likely expressions is one of degrees of criminality. The latter is a degree lower in the criminality than the former. But in both cases, the intention is there and therefore the law does not make any distinction in punishment under Section the Part L. Secondly in the former the accused has the intention to cause death 304,s in the latter he has no intention to cause death but only to cause such bodily injury as is likely to cause death.

(c)Knowledge that he is likely to cause death by such an act. - Knowledge is a strong word and imports a certainty. It implies consciousness. That consciousness is necessarily of a which may future contingency the happening of depend upon a variety of circumstances all of which cannot possibly be present in the mind of the accused. It is the personal knowledge of the accused that matters. The phrase with the knowledge that he is likely, by such an act, to cause death" includes all cases of rash acts by which the death is caused, because rashness imports a knowledge of the likely result of an act which the accused does in spite of the risk. The word "likely means probable. It is different from "possible" when the chances of a thing happening are even with, or greater than, is not happening, we call it "likely".

In the altercation that arose between the parties A fired his gun in the air to scare away the opposite party and in that act one stray pellet caused gun shot wound to B, which proved fatal. A had no motive to cause death of B or any other person. It was held that in these circumstances there was no doubt that A caused the death of B without any intention to cause death but with the knowledge that it was likely to cause death.

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Therefore, the offence was of culpable homicide. Accused, two in number, attacked the deceased with kicks and fist blows. The death resulted due to shock, haemorrhage and strangulation. The accused did not use *lathi*, knife or firearm which they possessed at the time of incident. In these circumstances it was held that the accused had knowledge dhal by their acts they were likely to cause the death of the deceased though without any intention to cause death. Bitter enmity was there between the accused and the deceased. The accused inflicted 17 injuries on the deceased out of which 8 were on the head. Though the accused was armed with a hatchet, he only used the blunt side of it. None of the injuries individually was fatal, in fact all of them technically speaking were simple. Death was due to shock and intracranial haemorrhage. It was held that the offence committed was culpable homicide and not of murder.' In the historic case of R. v. *Govinda*, the accused knocked his wife, put one knee on her chest, struck her two or three violent blows on the face with a closed fist causing extravasation of blood resulting in her death. It was held by *Melvill*, J. that the accused was guilty of culpable homicide and not of murder.

Sometimes even gross negligence may amount to knowledge. - If a person acts negligently or without exercising due care and caution he will be presumed to have knowledge of the consequences arising from the act Knowledge is to be gathered from the act of the accused and the circumstances of the case. The gross negligence which is committed by the accused, resulted in death of a person. The death should be the direct consequence of the act of the accused.

Distinction between "Knowledge" and "Intention".-Knowledge as contrasted with intention would more properly signify a state of mental realisation in which the mind is a passive recipient of certain ideas and impressions arising in it or passive before it. It would refer to a bare state of conscious awareness of certain facts in which human mind might itself remain supine or inactive. On the other hand, intention connotes a conscious state in which mental faculties are roused into activity and summoned into action for the deliberate purpose of being directed towards a particular and specified end which the human mind conceives and perceives before itself. Mental faculties which might be dispersed in the case of knowledge are in the case of intention concentrated, and

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converged on a particular point and projected in a set direction. The difference between the shades of the meaning of the two words is fine but clear, and the use of the one in place of the other by the Legislature cannot be without purpose.

In a case the evidence disclosed that the injuries inflicted on the person the deceased was a single one. The eye witness did not speak about the weapon of but she only said that the accused hit the victim with a weapon and ran away Though the injury was a serious one in that it had cut the auxiliary artery and veins but it was not on the vital part of the chest and had not reached the lungs The incident itself took place, presumably, as a result of a quarrel over the subject as to when the accused could take his wife back home. It was held by the Supreme Court that the case did not satisfy the requirements of Section 300 since it could not be said that the death was intended. The case also could not come under the first and the second parts of Section 299 for the same reasone The matter fell under the third part of Section 299 since the accused had theknowledge that his act was likely to cause death of the victim.

Victim running away from the scene of occurrence towards field. A and B chasing him. Victim jumping in a well in order to save himself. Victim's head hit a hard substance with the result that he lost consciousness and thereafter died of asphyxia. Death of victim not caused by any act of A and B with intention or knowledge specified in Section 299. A and B were not liable to be convicted for offence of murder.

Section 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

2ndly. -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

3rdly.- 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

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4thly. -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.

(iii) Murder.-Culpable homicide is murder in the following four cases: (1) If the act by which death is done with the intention of causing death

Illustration

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

Ingredients.--In order to attract the provisions of clause (1) of Section 300, the prosecution has to prove that the very act, that was done by the accused, was done with the intention to cause death of the victim. The intention also includes the foresight of certainty. A consequence is deemed to be intended though it is not desired when it is foreseen as substantially certain. It is not correct to say that the intention of an accused is a subjective state of mind which cannot be positively proved in every case except by the accused himself stating either in evidence or in his explanation that such and such was his intention when he performed the act and that unless such an explanation is forthcoming from the accused and accepted by the Court, he must be presumed to intend the natural consequences of his act. 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 all the facts and circumstances of each given case. Thus, with reference to the circumstances of the case, the Supreme Court observed in *Jaspal Singh v. State of Punjab*, that the fact that the accused had intended to cause injury to vital parts of the deceased is clear from the fact that he had administered a stab wound on the chest of the deceased on back side. It is also significant that the knife blow

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dealt by the accused in the groin of the deceased had caused a wound 8 cm deep piercing both the femoral blood vessels, Moreover, when the prosecution witness tried to intervene, the accused inflicted two stab wounds on him, which were of identical pattern, namely, one on the back of the chest and one in the groin region but fortunately those injuries did not prove fatal. Taking into account all these circumstances the accused was clearly guilty of the offence of murder as he had wilfully caused the vital injuries to the deceased. In a case after an altercation four accused persons battered the deceased into pieces and killed causing 24 injuries, The Supreme Court held that it was the clear case of intentional murder.

In *Mahendra Raut v. State of Bihar (Now Jharkhand)*, the facts were that the accused gave a single blow on the head of the deceased with a wooden bar which resulted into his death. There was no pre-meditation or pre-plan and the incident occurred at once. The High Court of Jharkhand held that conviction of the accused under Section 302, I.P.C. for murder is not proper.

Tests regarding proof by circumstantial evidence. - The Supreme Court in a line of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of guilt of the accused but should be inconsistent with his innocence.

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In this connection special reference may be made to Ashok Kumar v. State of M.P., and *Gambhir v. State of Maharashtra*. According to the fact situation involved in the former case the deceased had been brutally cut into pieces and all the cut pieces had been thrown at different parts of the city where the murder was committed. Though the headless body and the various limbs were seen and recovered on the same day the decapitated head was seen and recovered only on the subsequent day. The photograph of the head was taken. As the features of the head could not be deciphered, the Judges of the High Court reached the conclusion that it was impossible for any person to identify the deceased from the photograph and as such, they were reluctant to place reliance on the identification by the mother of the deceased. However, the High Court relying on other facts of the case concurring with the Trial Court came to the conclusion that the deceased was the person for the murder of whom the accused was convicted. The complexion and the age of the deceased as per post-mortem certificate tallied with the evidence as to the age and complexion of the deceased. The Medical Officer had further stated that the decapitated head was that of the body recovered on the earlier day. The scrappings of the wall of the kitchen portion of the scene house were proved to have been stained with human blood. The pillow recovered from the house also was proved to have been stained with human blood. In the number of letters inclusive of the have addressed by the accused to his father the accused himself had unequivocally confessed that the deceased was the person for the murder of the accused was convicted. The prosecution rests its case on a number of attending circumstances for establishing the guilt of the accused. Gross and indecent behaviour of the accused towards one Supriya who was none other the sister of the deceased was referred to as motive. It was but natural that the deceased should have taken a strong objection to the conduct of the accused and this had resulted in the murder. There was evidence of the landlord of the one house to the effect that at the time when the victim was murdered except the accused and the deceased, there was none in the scene house. The High Court came to the conclusion that the date on the letter addressed by the accused to his father in which the accused confessed his guilt was written by mistake as contents thereof supported such conclusion.

In *Shivraj B. Jadhav v. State of Karnataka*, it was held that where the accused assaulting the deceased put blows by sticks, axe and iron pipes and the result was the

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death. The High Court has correctly convicted them under Section 302 read with Section 34, IPC.

The Supreme Court held that "there are number of impelling circumstances attending this case leading to an irresistible and inescapable conclusion that it was the accused and the accused) alone who caused the death of the deceased, ... in a very ghastly manner by cutting him into pieces and throwing his various parts of body at different parts of the city and there cannot be any dispute that this cold blooded murder is diabolical in conception and extremly cruel in execution. The evaluation of the findings of the High Court does not suffer from any illegality, or manifest error or perversity nor it has overlooked or wrongly discarded any vital piece of evidence. Hence, we hold that the findings of facts recorded by the Courts below do not call for any interference",

Intent to murder.-Where the accused started beating his wife continually for one or two hours and left her only when she was silenced, the only inference that could be drawn from his act was that he deliberately intended the murder of the deceased.

Where some of the accused attacked deceased with 'ballam' (spear) and caused number of fatal injuries the conviction under Section 302 for murder was confirmed as the intention of the accused was to commit murder.

The accused set fire to the single room hut in which the deceased was sleeping. The accused took care to lock the door from outside so that his old event who was sleeping in front of the cottage outside the room occupied by the deceased could be of no help to the deceased who had thus been trapped in his own cottage. Furthermore, when the villagers were roused from their sleep. they were prevented from going to the rescue of the helpless inmates of the cottage by use of force against them by the accused. It was held by the Supreme Court that the intention of the accused to kill the deceased was clear.

(2) f the act 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 injury is caused.

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

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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.

Ingredients. - Here both the elements of intention and knowledge are required to be proved the intention to injure and the knowledge about the consequence of injury relating to a particular victim. The word knowledge imparts ascertaining and not merely a probability.

Clause (2) of Section 300 requires not the intention to cause death but only the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused Thus, offender has foresight to know that injury would cause death. Such a case would arise where offender, having knowledge that a person was suffering from an enlarged spleen causes hurt in that region which may not have been sufficient in the ordinary course of nature to cause death, but which with the special knowledge of the enlarged spleen of the deceased, offender must have known it to be likely to cause his death. Under those circumstances 'knowledge of the particular fact due to which death is likely to be caused makes the offender liable for murder. But if offender had no such knowledge of enlarged spleen of which deceased was suffering, offender would be liable for culpable homicide.

(3) If the act done with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death.

Illustration

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.

Ingredients. The prosecution must prove the following before it can bring a case under clause (3) of Section 300 :

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(i) It must establish that a bodily injury is present.

(ii) (ii) The nature of the injury must be proved.

(iii) It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended.

(iv) The injury was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and has nothing to do with the intention of the offender.

Where the fourth element has not been objectively and clearly established there is no escape from the conclusion that the prosecution has failed to pro beyond all manner of doubt that the injury on the abdomen was sufficient to cause death in the ordinary course of nature. The act of the accused would amount to culpable homicide not amounting to murder.' This, for the applicability of clause third following two tests are necessary :-

(i)The injury must be sufficient in the ordinary course of nature to cause death.

(ii) Such injury must have been intended to have been caused by the culprit.

It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature. It does not even matter that knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is Do the rest of the injury is purely objective, and the only question is Father as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. Thus, where no evidence or explanation is given about why the accused thrust a spear into the abdomen of the deceased with such force that it penetrated the bowels and three coils of the intestines came out of the wound and that digested food oozed out from cuts in three places, it would be perverse to conclude that he did not intend to inflict injury that he did.

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A intentionally gives Z a club wound sufficient to cause the death of a man in the ordinary course of nature, but he does not intend to cause Z's death, Z however dies in consequence of the wound. A is guilty of murder according to clause 3rd of Section 300.

Where injuries are inflicted on vital parts of the body it cannot be said that they are not sufficient in the ordinary course of nature to cause death. Once the existence of the injuries is proved the intention to cause the injuries will be presumed unless evidence or circumstances warrant an opposite conclusion. Where sufficiency exists, death follows and causing of such injuries, is intended, the offence is murder.

Where the injury was inflicted with a 12 bore gun fired from a short range, it was not accidental but was intentionally caused and if, according to medical opinion it was sufficient in the ordinary course of nature to cause death, the case falls within clause 'third of Section 300, IPC., and is distinctly murder.

The accused duri the course of the struggle whipped out a knife and stabbed the deceased twice, causing rupture of the liver to a depth of half an nch. The blow must have been given with sufficient force. The dominant idea of the accused may have been to get himself released but in doing so, he caused this serious injury to the deceased on her vital part and it proved fatal. The injury, in the circumstances, cannot be said to be unintentional or an accidental Therefore, clause (3) of Section 300, 1.P.C., is fully applicable so that the offence is murder.

The medical evidence was that death was due to injury to the heart and was sufficient in the ordinary course of nature to cause death. The injury w on a very vital part of the body and was inflicted with a deadly weapon. It was not accidental or unintentional. It was not possible to hold that the accused intended to inflict some other kind of injury. In this view of the matter, the case must fall under Section 300, "thirdly",

Where it is clear from medical evidence that it was a case of contact file with a pistol and the injury was inflicted on a very vital and vulnerable part of the body, the accused is clearly guilty of murder.? It is not necessary for the commission of the offence of murder that the accused should have the intention to cause death, It is now well settled that if it is proved that the accused had the intention to inflict the injury actually suffered

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by the victim and such injuries are found to be sufficient in the ordinary course of nature to cause death, the ingredients of clause third of Section 300 of the Indian Penal Code are fulfilled and the accused must be held guilty of murder punishable under Section 302 of the Code.

In cases where the case of the prosecution rests purely on circumstantial evidence, motive undoubtedly plays an important part in order to tilt the scale against the accused. It is also well settled that the accused can be convicted on circumstantial evidence only if the circumstances are wholly inconsistent with innocence of the accused.

Intention to kill whether necessary in every case of murder.-- An intention to kill is not required in every case. A knowledge of the nature and probable consequences of an act will suffice for a conviction under Section 302, L.P.C.

Although, the medical evidence does not say that any one of the injuries on the body of the deceased was sufficient to cause death in the ordinary course of nature, it is open to the court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailants intended to cause death of the deceased. Even if none of the injuries by themselves was sufficient in the ordinary course of nature to cause the death of the deceased, cumulatively they may be sufficient in the ordinary course of nature to cause his death.

In a case single knife blow above the left clavicle had cut the superior venacava resulting into an injury sufficient in the ordinary course of nature to cause death. It was held' that even medical men may not be able to judge precisely the location of superior vanacava hence the injury cannot be termed as intentional and the case cannot fall in clause third.

In the case of *Keeker Singh v. State of Rajasthan*, the Supreme Court observed that if injury caused by a person to another is fatal which is enough to cause death, the person causing death will be responsible for death. If injury is not fatal but the person to whom injury is caused died, person who has Caused injury will not be responsible for death.

In determining whether the bodily injury is sufficient in the ordinary course of nature to cause death, the enquiry is not confined to the intention of the accused, Once the

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intention of the accused to cause the injuries has been established, the Court will have to judge objectively from the nature of the injuries and other evidence, including the medical opinion as to whether the injury intentionally caused were sufficient in the ordinary course of nature to cause death. The possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant. In view of the hesitant medical opinion about the cause of death and the further fact that the deceased died a after the occurrence, the ingredients of this clause have been established beyond reasonable doubt. The evidence fulfill one of the ingredients of Section 299, namely, that death was caused with the intention of causing such bodily injury as is likely to cause death. The distinction between the expression "likely to cause death" and "sufficient in the ordinary course of nature to cause death 1omificant although rather fine, and sometimes rather deceptive. The case falls under Section 304 (Part I), I.P.C.

The assailants had conspired together to burgle the seal of naval office on the eve of the pay day and they had collected various articles, eg, Naval officers dress, a bottle of chloroform, a hackshaw with sware blades, etc. etc. On the night in question they decoyed the Lt. Commander from his house on some pretext and in a lonely place caught hold of him. They covered his mouth with adhesive plaster and tied a handkerchief over the plaster and plugged his nostrils with cotton wool soaked in chloroform. They tied his hands and legs with rope and deposited him in shallow drain with own shirt put under his head as a pillow. Next morning the dead body of the deceased was discovered in the drain where he had been left by the assailants. It was admitted that closing of the mouth with adhesive plaster and the handkerchief was complete and it must have been impossible for the deceased to breathe through his mouth. According to the doctor the death was due to asphyxiation. It was held by their Lordships of the Supreme Court that the case was covered by Section 300, Clause (3) and the accused were guilty of murder. Accused went armed with dagger to village of his in-laws to fetch his wife (victim). Accused inflicting through and through penetrating wound seriously injuring lever and colon. Injury inflicted without slightest provocation. Whole affair appeared to be preplanned. According to doctor, injury was sufficient in the ordinary course of nature to cause death. It has been held that the case squarely fell within the ambit of Clause (3) of Section 300.

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(4) If the act is done with the knowledge 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 the offender commits such act without any excuse for incurring the risk of causing death or such injury.

Illustration

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

Fourth clause of Section 300 can only apply when the case is not covered by any of the first three clauses of that section. The earlier part of Clause (4) of Section 300 refers to cases where the act of the accused is itself so imminently dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death. The emphasis in the preceding para (4)is on the imminently dangerous nature of the act itself. It cannot be said that the attack by fists or by the wooden end of a scythe is by itself of such a nature as must, in all probability cause death.

Clause (4) of Section 300 is usually to apply to cases where the act of offender is not direct against particular person. There may even be no intention to cause harm or injury to any particular individual. The act proceeds not from any malicious intention towards any particular individual but is the result of general disregard for human life and safety. There may, however, be rare cases in which the target of attack even under Clause (4) may be simply individual.

In any case, the degree of knowledge required under Clause (4) is vn strong as to make it impossible to believe that the peril of the act ensuring in fatal consequences, had not irresistibly forced itself on the mind of the offender and yet he had deliberately chosen to disregard this danger signal. Under this clause, the degree of the probability or likelihood of the act resulting in fatal harm is of the highest level.

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Although, Clause (4) is usually invoked in those cases where there is no intention to cause death of any particular person (as the illustration shows) 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.

Since no special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person, it is obvious that the accused must have known that he was running the risk of causing the death of the victim or such bodily injury as was likely to cause death. As he had no excuse for incurring that risk, the offence must be taken to fall within Clause (4) of Section 300

Exception 1.-When culpable homicide is not murder. --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

(iv) The circumstances which reduce the offence of murder to that of culpable homicide not amounting to murder are

(i) Provocation.

(ii) Right of private defence.

(iii) Public servant exceeding his power.

(iv) Sudden fight.

(v) Consent.

Exceptions-(1) Grave and sudden provocation. If the offender, whilst deprived of the power of self-control by grave and sudden provocation, ca by the death of a person who gave the provocation or of any other person mistake or accident.

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Grave and sudden provocation-Necessary conditions.-The following conditions are necessary before grave and sudden provocation can reduce an offence of murder into that of culpable homicide not amounting to murder. The provocation must not be voluntarily sought or voluntarily provoked by the offender as an excuse. Thus, A called B a coward in the presence of several persons and challenged him to strike him if he could. B then struck him. A drew a pistol and fired at B and thereby caused B's death. Here provocation being voluntarily sought A is guilty of murder and the plea of and sudden provocation shall grave cease to be effective.

(b) Provocation must not be caused by anything done in obedience to the law or by a public servant in the lawful exercise of his powers. A is arrested by Z a bailiff in the lawful exercise of his powers. A is excited to sudden and violent passion by the arrest and kills Z. Such sudden provocation shall not be allowed to mitigate the offence at all.

(c) Provocation must not be caused by anything done in the lawful exercise of the right of private defence, e.g. A attempts to cut Z's nose. Z in the rise of the right of private defence lays hold to A to prevent him from doing A is moved of sudden and violent passion and in consequence kills Z. This is murder inasmuch as provocation was given by a thing done in the exercise of the right of private defence.

Illustrations

(i) 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.

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

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(iii) A appears as a 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.

(iv) Z strikes B. B is by this provocation excited to violent rage. A, a by-stander 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. A is guilty of murder.

In KM Nanavati v. State of Maharashtra, their Lordships of the Supreme Court held: The test of 'grave and sudden provocation' is whether a reasonable 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. In India, words and gestures may also, under certain circumstances Cause grave and sudden provocation to an accused so a to bring his act within Prst exception to Section 100. 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 the provocation and not after the passion had cooled.

Ingredients of grave and sudden provocation. - For an exception on the ground of "grave and sudden provocation" the following facts must be proved –

(1) that the accused received provocation;

(2) that the provocation was (a) grave, and (b) sudden;

(3) that he was deprived by the provocation of his power of self-control;

(4) that while thus deprived of his power of self-control and before he could cool down he caused the death of the person who gave him the provocation.

No grave and sudden provocation.–The wife of the accused was not being sent on one pretext or the other. The accused heard rumours that his wife and his mother-in-law were selling their flesh (i.e., honour) for monetary gains and despite repeated efforts,

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his wife was not sent. These circumstances cannot constitute such sudden and grave provocation as to justify a murderous assault on the wife by the accused.

SECTION 299	SECTION 300
A person commits culpable homicide, if the act by which the death is caused is done (a) with the intention of causing death; (b) with the intention of causing such bodily injury as is likely to cause death;	Subject to certain exceptions culpable homicide is murder, if the act by which the death is caused is done (1) with the intention of causing death; (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; (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
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.

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Q:-distinguish between any two of following:-

(i)kidnapping and advetion

Section 359. Kidnapping. - Kidnapping is of two kinds; kidnapping from India and kidnapping from lawful guardianship

Kidnapping from lawful guardianship.- The expression kidnapping from lawful guardianship' is same as out of the keeping of custody of the lawful guardianship.

If the girl is kept by her father at the house of her relatives, she still continues to be in the lawful guardianship of the father

Section 360. Kidnapping from India.-Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.

Section 361. Kidnapping from lawful guardianship. - Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Ingredients. – To constitute the offence of kidnapping the ingredients to be fulfilled are :

(1) There must be taking or enticing of a minor-(a) minor, or (b) a person of unsound mind;

(2) that the person kidnapped must be

(a) under 16 years of age, if male, and

(b) under 18 years of age, if a female; or

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(c) a person of unsound mind;

(3) that taking or enticing must be out of of the minor or person of unsound mind; and

(4)that the taking or enticing was without the consent of the legal guardian.

Section 362. Abduction.- Whoever by force compels or by deceitful meabis induces, any person to go from any place, is said to abduct that person.

Scope. - Abduction is not an act which is in itself an offence. It is a means of subsidiary act. It is an offence only when done with a certain intention as is laid down under Sections 364, 365 and 366. Abduction is an auxiliary act and not punishable by itself.

Ingredients. -The following following essentials are required to constitute abduction

(1) forcible compulsion or inducement by deceitful means, and

(2) the object of such compulsion or inducement must be the going of a person from any place.

distinction between

Kidnapping from lawful guardianship	**Abduction**
(1) Only a minor or person of unsound mind can be kidnapped from lawful guardianship.	(1) Any person may be abducted.
(2) Removal guardianship is essential. (3) Use of force or deceit is from lawful immaterial.	(2) Removal from lawful guardianship is not necessary. (3) Force or deceit is essential to the commission of the offence.
(4) Consent of the kidnapped person is no consideration.	(4) Consent of person abducted if freely and voluntarily given will excuse.
(5) No specific intention is required to constitute the offence and kidnapping from lawful guardianship may not involve even	(5) The intention to compel or induce a person to go from any place is essential to

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going from any place as in the case of kidnapped person willingly overstaying with the kidnapper, ega minor Hindu wife overstaying with her father, the latter onticing her to keep away from her husband's guardianship (6) Complete offence and not a continuing offence, because the moment a person is deprived of his lawful guardianship it is complete. (7) Kidnapping is a substantive offence.	constitute the offence. (6) A continuing offence. (7) Abduction is not punishable by itself, but made criminal only when it is done with or the other of the intents specified in Section 364 and the following ones.

The aggravated forms of kidnapping or abduction are as follows:

(1) Kidnapping or abduction in order to murder-Imprisonment for life or rigorous imprisonment upto 10 years and fine (Section 364)

Illustration

(i) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(ii) A forcibly takes or entices B away from his home in order that may be murdered. A has committed the offence defined in this section.

Ingredients. - To establish a charge of abduction in order to murder, when the case is one of abduction by deceitful means, it is not enough merely to pro the circumstances under which the abducted person was induced to go, non even to prove a representation. The prosecution has to prove firstly that there was a misrepresentation, secondly that particular misrepresentation was a plan to murder and thirdly that it was the plan by which the abducted person was himself deceived and was induced to go.

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Where it is manifest from the circumstances that all the six injuries must have been caused in the course of the occurrence on the spot before the body was put into the jeep and in all probability the deceased must have died at the spot, the charge under Section 364, LPC, must necessarily fail, because there was no question of kidnapping the deceasd who had died before he could be kidnapped.

(2) Kidnapping for ransom, etc. punishable with death, or imprisonment for life, and shall also be liable to fine.

Nature of offence.- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign stade or international or inter-governmental organisation or any other person te der or abstain from doing any act or to pay a ransom, commits an offence under Section 364-A.

Ingredients

(i) Kidnapping or abduction or detention after such kidnapping abduction.

(ii) Threat to cause death or hurt to person so kidnapped, abducted or detained. Such threat may either be express or it can be inferred by the conduct of the accused.

(iii) Person so kidnapped or abducted or detained may be killed or injured, by the accused. (iv) Aforementioned acts are done to compel the Government or any other person or agency to do or abstain from doing any act or to pay ransom.

If these things are proved, the accused will be punished with death or imprisonment for life and shall also be liable to fine.

(3) Kidnapping or abduction with intent to secretly and wrongfully confine person - Imprisonment upto seven years and fine (Section 365).

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It is true, an offence of kidnapping under Section 361, IPC. will be complete as soon as a minor is removed from the custody of his guardian, but it is nevertheless a case of abduction as defined in Section 362, I.P.C. whenever a person by force is compelled to go from any place he is abducted and when the abduction is accompanied with the requisite intention as mentioned in Section 365, I.P.C., even person who joins at a subsequent stage while the victim is being so taken from place to place, will be guilty. Where the victim was kept in a jungle under the thumb of his captors, it cannot be said that he was a free person; he was secretly and wrongfully confined by his captors within the meaning of Section 365, I.P.C.'

(4) Kidnapping or abduction of a woman to compel her to marry any person against her will, or to force or seduce her to illicit intercourse or knowing it to be likely that she will be forced or seduced imprisonment upto ten years and fine.

(ii) Simple hurt and grivious hurt

Section 319. Hurt. - Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

The pain caused must be to the body, not to the mind; and the hurt caused must be the direct result of the act. The position is different however in regard to the causing of disease or infirmity; these may be caused indirectly. Infirmity has been held to mean inability of an organ to perform its normal functions temporarily or permanently.

Taking of blood for blood grouping is a procedure neither warranted nor prohibited by law. So far as the question of causing hurt is concerned, even causing of some pain may technically amount to hurt as defined by Section 319 I.P.C. But pain might be caused even if the accused is subject to a forcible medical examination, e.g., in case of rape it may be necessary to examine the private parts of the culprit. If a culprit is suspected to have swallowed some stolen article, an emetic may be used and X-ray

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examination may also be necessary. For such purposes, necessary force is permissible and it does not amount to an offence.

Hurt may be simple or grievous. What offence, if any, does A commit ?

A said to B, pay me 100 rupees you owe me' and thereupon knocked him down. In fact the money was owed not by B but by B's father, and was owed not to A but B's friend.

[Ans. : It may be hurt under Section 319 or grievous hurt under Section 320 according to nature of injury received].

Section 320. Grievous Hurt. The following kinds of hurt only are designated as grievous hurt-

(i) emasculation;

(ii), (iii) permanent privation of sight of either eye or hearing of either ear;

(iv)privation of any member or joint

(v) destruction or permanent impairing of powers of any member of joint;

(vi) permanent disfiguration of the head or face;

(vii) fracture or dislocation of a bone or tooth;

(viii) any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

It is not necessary that a bone should be out through and through or that ack must extend from the outer to the inner surface or that there should the displacement or any fragment of the bone. If there is a break by cutting of splintering of the bone or there is a rupture or fissure in it, it would amount to within the meaning of clause (7) of Section

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320. What Court has to see arthur the cuts in the bones noticed in the injury report are only superficial do they effect a break in them.

This view has been reaffirmed by the Supreme Court in *Naib Singh v. State of Punjab*, wherein it has been pointed out that it is not correct to say that a partial cut of the skull vault is seldom so prominent except when excessive force is used in inflecting the injury. In the instant case it appeared from the evidence that the victim was putting on a turban when assaulted with the *gandasa*. What saved him was the turban and it took away the force of the impact leaving a head injury. In the circumstances, it was held that there was a fracture within the meaning of clause (7) of Section 320 and the accused could be convicted under Section 326 and not under Section 324.

Merely being treated as indoor patient for more than 30 days cannot be taken up as equivalent to proof of grievous hurt.

Sections 321 and 322 define what is meant by the expression "*voluntarily causing hurt" and "voluntarily causing grievous hurt"*. Whoever does any act with the intention to cause or knowledge that he is thereby likely to cause simple or grimus hurt to any person and causes the hurt so intended or known to be likely is said to voluntarily cause hurt or grievous hurt, as the case may be (Sections 321-322). A person is not said voluntarily to cause grievous hurt if both the hurt intended or known to be likely and the hurt caused are not grievous, ie, for the offence of voluntarily causing grievous hurt it is necessary that (i) the hurt caused should be grievous; and (ii) the hurt intended should also be grievous. The offence shall not be constituted if any of the two is simple. It does not matter or make any difference in case of grievous hurt if the grievous hurt caused is of a kind different from the grievous hurt intended to be caused. Punishment for voluntarily causing hurt, i.e., simple hurt is imprisonment of either description upto one year, or fine upto Rs. 1,000 or both (Section 323) and for voluntarily gausing grievous hurt imprisonment upto 7 years and fine Section 325)

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In the case of *Darshan Singh v. State of Punjab*, the Supreme Court has held for convicting a person under Section 323 the age group shall also be a enal factor. In the instant case the Court, in the circumstances, disbelieved said charge against an accused aged 80 years.

According to Section 325, I.P.C., a person is guilty of causing grievous hurt if he does so voluntarily. Section 39 defines that a person is said to cause or effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which at the time of employing the means, he knew or had reason to believe to be likely to cause it. It can be said that when the accused delivered a *lathi* blow, he could know that it was likely to fall on the child which was being carried by D on his shoulder, but it cannot be said that he knew he had reason to believe that it was likely to cause grievous hurt. According to Explanation to Section 322, a person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. The act was such that nothing more than a simple hurt could reasonably be thought to be likely to ensue though a grievous hurt may have been the unexpected result. The accused can be convicted of simple hurt only,

It was contended that while inflicting injuries the accused had no intention or knowledge that he was likely to cause a grievous hurt during the assault on the victim. It was urged that unless there was a clear finding regarding such intention or knowledge, the accused could not be held guilty of an offence under Section 325, LPC The contention could not be upheld. The weapon was an iron rod which was hit on the left fore-arm causing fracture of shaft of left ulna (inner bone of the fore-arm). Fracture of bone finds place in the category of grievous injuries. This strike was sufficient to cause fracture of that part of the bone. The accused hit with the weapon after taking it out from inside his house On a consideration of these facts, he can well be attributed with the knowledge that by doing so he was likely to cause grievous hurt.

In case of *FanibhushandasDas v. State of West Bengal*, the Supreme Court reduced the punishment of two accused who have been convicted under Section 304(ii) by the Session Court. The Supreme Court did this act due to discrepancy in the evidence though 21 years have passed after awarding the punishment by Session Court. The accused with 14 other members were a member of an unlawful assembly. The accused with certain

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other members, caused injury to the deceased with lathi and iron rods consequently the person died. Two accused were convicted by Session Court under Section 304(ii) of LP.C. who were actual wrongdoer. The remaining accused were acquitted because they were only the member of unlawful assembly but did nothing

The offences under Sections 324 and 325 are compoundable with the permission of the Court even before the Appellate Court. In many cases before the Supreme Court it was stated that the parties have amicably settled the matter, it would be in the fitness of things if permission to compound e offence is granted. As such the necessary permission was granted by the Court and the conviction was set aside.

The deceased received only two injuries which were not grievous. The injuries were only remoter cause of death and so the accused could be convicted under Section 323 and not under Section 304

The accused pulled the deceased out of a cot, kicked him and struck Wan on the side or on the ribs with a stick, whereby the deceased, whose spleen was diseased already, died. The Court held that he was guilty of voluntarily causing grievous hurt. Sudden quarrel after hot exchange of abuses. No evidence to how which accused assaulted deceased with sticks. Intention to cause death not proved but common intention to cause grievous hurt was apparent. Offence falls under Section 325/34, I.P.C.2

In *State of Haryana v. Prabhu and others,* common object of assembly to give me beating to the member of complainant party, the main target being one M. No common object to commit the murder of the deceased. Nature of injuries clearly showing that neither the common object was to kill nor was it possible to infer that any member had the knowledge that death was likely to be caused in prosecution of common object of assault. It has been held that they were guilty under Section 325 read with Section 149, LP.C.

Aggravated Forms. There are five aggravated forms of these two offences as shown below:

(1) Voluntarily causing, by an instrument used for shooting, stabbing, or cutting or which as a weapon of offence is likely to cause death or by fire or any heated

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substance or poison, explosive deleterious substance, or by means of an animal hurt (Section 324), or grievous hurt (Section 326) [punishment-imprisonment upto 3 years or fine or both in case of hurt and imprisonment upto 10 years and fine in case of grievous hurt. In a case due to young age of the accused and due to absence of overt act Supreme Court considered a sentence of two years rigorous imprisonment to be sufficient." These offences may, in brief, be designated as voluntarily causing hurt or grievous hurt by dangerous weapons or means).

In a case the accused exceeded the right of private defence by giving at least 28 injuries causing death of the victim. In the circumstances, Supreme Court held that the accused was guilty of offence under Section 326 and notunder Section 302, LP.C. To attract Section 326 injury alleged to have been inflicted must not be fatal.

There was a mutual fight between two parties in which one person of the complainant's party died. Accused were tried and convicted for offences under Section 304/149, I.P.C. It was held that the accused could be convicted only under Section 324, IPC. It is quite possible to find contusions where two persons are giving blows with *cantas* which have also blunt sides. Unless definite suggestions are made and the impossibility of finding any such injuries with *kantoo* blows is elected, Court will not be justified merely on a submission from the bar to accept it and discard the evidence of the eye-witnesses. Tooth is an instrument for cutting and serves as a weapon of offence and defence -Injury by tooth bite is an offence under Section 324 or Section 326 depending upon whether injury is simple or grievous." Medical evidence disclosing no serious injury on any vital part and doctor admitting absence of fracture of serious nature. Conviction under Section 326, held, was liable altered to one under Section 324, LP.C. in view of the facts.

Defining a dangerous weapon used in committing the offence of hurt under Section 326, 1.P.C. the right Court of Kerala in case of Sreenivasan State of Kerala, held that a knife which could cause the muscle to be cut is a dangerous weapon for Section 326, LPC.

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(2) Voluntarily causing hurt (Section 327) or grievous hurt (Section 329 grievous to extort from the sufferer or anyone interested in him, property or valuable security or to constrain him to do anything illegal or helpful to the commission of an offence [punishment for hurt, imprisonment upto 10 years and fine, for grievous hurt, imprsionment for life or imprisonment upto 10 years and fine).

(3) Causing hurt by means of poison or stupefying, intoxicating or unwholesome drug with intent or commit an offence or facilitate the commission of an offence punishable with imprisonment upto 10 years and fine (Section 328)

(4) Voluntarily causing hurt (Section 330) or grievous hurt (Section 331) to extort from the sufferer or anyone interested in him a confession or any information leading to the detention of an offence or to constrain restoration of property or the satisfaction of any claim, punishable under Section 330 with imprisonment upto seven years and fine and under Section 331 with imprisonment upto 10 years and fine

(5) Voluntarily causing hurt (Section 332) or grievous hurt (Section 333) to a public servant in the discharge of his duty or to prevent or deter him from so discharging it, punishable under Section 332 with imprisonment upto 3 years or fine or both and under Section 333 with imprisonment upto 10 years and fine.

The police and the forest officers were not discharging any official duty as public servants and if there they were prevented in any way by any person it cannot be said that these persons thereby became liable (Section 332, LP.C.)

The lighter forms of these two offences are

(i) causing hurt (Section 334) or grievous hurt (Section 335) on grave and sudden provocation punishable with imprisonment upto one month or fine upto Rs. 500 or both; and imprisonment upto 4 years or ie upto Rs. 2,000 or both under each section respectively;

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(iii) causing hurt (Section 337) or grievous hurt (Section 338) by an act rash and negligent as to endanger human life or safety of othe punishable for hurt with imprisonment upto 6 months or fine u Rs. 500 or both and for grievous hurt with imprisonment upto 2 years or fine upto Rs. 1,000 or both.

(iii) Criminal force and Assault crimal force and Assault

Criminal Force and Assault (Section 349–358).

Section 349. Force.- A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling :

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :

First.-By his own bodily power.

Secondly. --By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

thirdly.-by inducing any animal to move to change its motion, or to cease to move.

Section 350. Criminal force.- Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, e intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

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*Criminal Force.-(*i) Intentionally using force to any person without the latter's consent in order to the committing of any offence, or (ii) intending to cause, by use of such force, or knowledge that he is likely by such use to cause injury, fear or annoyance to the person to whom force is used (Section 350). Criminal force thus consists intentional use of force to any person. Such force must be without such other's consent. The object of such force must be (1) to cause injury, fear or annoyance to such other or (ii) to enable the commission of an offence.

Force here means force against a human being and not against an inanimate object. It has been held that in dispossessing a person from immovable property by means of an offence, the offence must be attended by criminal force to the person.!

Illustrations

(i):-Z is sitting in a moored boat in a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here, A uses force to Z; and if he does so without Z's consent, intending or knowing it to be likely that he will thereby cause any injury, annoyance or fear to Z, A has used criminal force to Z, (ii) A throws stone in water which splashes against Z's clothes, or with something Z carries. Here, A uses force to Z which will be criminal force if (a) used without Z's consent and (b) with the intention to injure, annoy or frighten Z. (iii) Pouring boiling water in a bathing tub while a person is taking bath at the time is intentional use of force which may be criminal force if used without such person's consent in order to the committing of any offence or to injure, annoy or frighten such person. (iv) intentionally pulls up a woman's veil. Here. A intentionally uses force to her which could be criminal force if he does so without her consent to annoy her. (v) A incites a dog to spring upon z without Z's consent. Here, if A intends to cause injury, annoyance or fear to Z he uses criminal force.

(ii) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here, A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent; intending or knowing it to be likely that he may thereby injure, frighten or annoy Z. A has used criminal force to Z.

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bodily power moved his own person so as to bring it into contact with Z. He A intentionally pushes against Z in the street. Where, A has by his own has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy 2, he has used criminal force to Z.

(iv) Z is riding in a palanquin. A intending to rob Z, seizes the pole and stops the palanquin, Here, A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally without Z's consent in order to the commission of an offence. A has used criminal force to 2

Section 351. Assault.-Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture, or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault

Explanation. --- Mere words do not amount to an assault. But the words which a person uses may give to his gesture or preparation such a meaning as may make those gestures or preparations amount to an assault.

In other words whoever makes (1) any gesture or preparation (ii) intending or knowing it to be likely (lit) that such gesture or preparation will cause any person present to apprehend (iv) that he is about to use criminal force to tha person, is said to commit an assault (Section 351). Mere words do not amount to an assault, but a person may give to his gestures and preparations the necessary meaning and significance. Criminal force includes an assault. An assault is something less than criminal force, the force being cut short before the blow is struck. An assault is nothing more than a threat of violence

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exhibiting an intention to use criminal force. There must be present ability and intention to carry the threat into execution. A conditional threat of force to be used later on in a certain contingency is not assault.

The question whether a certain act amounts to an assault depends upon the reasonable apprehension which a person entertains about criminal force being imminent. A person who lifts a stick to hit another, that gesture is enough to give a reasonable apprehension of the force to be used and hence constitutes the act of assault. The accused raised a lathi to strike at another and aimed a blow which did not take effect. The Court held that it was enough to constitute an assault.

Illustrations

A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault. (ii) A begins to unloose the muzzle of a ferocious dog intending or knowing it to be likely that he may thereby cause IS to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z. (11) A up a stick, saying to Z, 1 will give you a beating : Here the words used by the could in no case amount to an assault and though the mere gestures unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

Ingredients of offence.-The essential ingredients of the offence under Section 351 are as follows: (1) Accused excited a reasonable apprehension that he intends immediately to offer violence:

Accused excited an apprehension that he is about to use criminal force;

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(3) There must be threat coupled with present ability of the accused to carry his intention into effect.

352. Punishment for assault or criminal force otherwise than on grave provocation. --Whoever assaults or uses criminal force to any person otherwise grave and sudden provocation given by that person, 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.

Explanation. -Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily, provoked by the offender as an excuse for the offence, or

if the provocation is 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, or

if the provocation is given by anything done in the lawful exercise of the right of private defence

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Difference between criminal force and assault.-Assault is something less in comparison to the criminal force. Assault is an attempt of a criminal force by any means where criminal force is actual application of the force. In assault the accused must by his action cause an apprehension in the mind of another that he was about to use criminal force where in criminal force actual application of force is necessary. Criminal force includes assault but assault may not be followed with criminal force

Assault or criminal force, otherwise than on grave and sudden provocation from the person assaulted or used criminal force against, is punishable with imprisonment upto three months or fine upto Rs. 500 or both (Section 352) Grave and sudden provocation will not mitigate the punishment it sought or provoked as an excuse for the offence or if it arises from anything done in obedience to the law or in the lawful discharge of his duties

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by a public servant or in the exercise of the right of private defence (*Explanation*). **Aggravated forms**. -Other forms of the offence of using criminal force or assault are as follows-

Assault or criminal force to deter public servant from the discharge of his duty punishable with imprisonment upto two years or fine or both (Section 353). According to a notification, the forest officers could exercise the power to arrest without a warrant if the offence was committed within a distance of five miles of the Tripura border. Therefore, where there was no evidence that the place of the incident was within five miles of the border, the officer had no right to apprehend the accused and if there was any scuffle during which the officer sustained injuries, the accused cannot be said to have committed any offence under Section 353, LP.C.

Section 354. Assault or criminal force to women with intent to outrage to outrage her modesty.-Whoever assault or use criminal force to any woman intending or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Intention or knowledge. -Intention or knowledge being the essential ingredient of the offence, where an accused is tried for an offence under this section, and the prosecution succeeds in proving the assault by the accused next question that falls to be considered is whether he did so with ed, the outrage the woman's modesty or with knowledge that it would be outrage

Modesty of a woman-how and when outraged. -- The essence of a woman's modesty is her sex. Whoever uses criminal force to her with intent to outrage her modesty commits an offence under this section. The culpable intention of the accused is the crux of the matter. The reaction of the woman i relevant but not always decisive. Thus where the accused walked into the room where a female child of seven and half months was sleeping, stripped himself naked below the waist and kneeled over her and fingering her vagina ruptured the hymen causing an injury, it was held that the accused committed an offence under the Section.

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Ingredients.-One of the ingredients of the offence under Section 354 is that the accused assaults or uses criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage the modesty of a woman. If the intention to outrage the modesty is not proved and the victim is a consenting or voluntary party to the affair, the accused cannot be convicted under Section 354, 1.P.C. In order to attract the application of Section 354, apart from the assault, it must be further established that he committed assault with the intent to outrage the modesty of the woman or with the knowledge that it would be outraged. The story of a person trying to outrage modesty of two women in the presence of two gentlemen is unnatural and that there must be clear and unimpeachable evidence before it can be accepted.

In the case of *Vidyadharan v. State of Kerala*, the modesty of the victim was alleged to have been outraged. It was held by the Hon'ble Supreme Court that in order to constitute the offence under the section, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object.

Outrage of modesty - Test - The test of outrage of modesty is whether reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In the instant case the girl was 15 years of age and in the midnight while she was coming back with her mother the sudden appearance of the accused from a lane and dragging her towards that side sufficiently establish the offence under Set 351, IPC.

(3) Assault or criminal force with intent to dishonour person, otherwise than on grave and sudden provocation punishable as above (Section 355).

(4) Assault or criminal force to attempt commit theft of property worn or carried by a person punishable as above (Section 356).

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