

# [Section 1860 – murder: except in the](https://assignbuster.com/section-1860-murder-except-in-the/)

Section 300 of the Indian Penal Code, 1860 – 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— 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. 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, which 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 Jagpal 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 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 Rant 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. Exception I: 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, causes the death of a person who gave the provocation or of any other person by mistake or accident. 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.

(a) 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 grave and sudden provocation shall 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 exercise of the right of private defence lays hold to A to prevent him from doing so. 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.

(iii) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of /4’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 K. M.

Nanavati v. State of Maharashtratheir Lordships of the Supreme Court held : The test of ‘ grave and sudden provocation’ is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. In India, words and gestures may also, under certain circumstances cause grave and sudden provocation to an accused so as to bring his act within the first exception to Section 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 down by lapse of time, or otherwise giving room and scope for premeditation and calculation. In the case of Ajit Singh v. State of Punjab, the Supreme Court observed that in a case where a wife is seen to have an adultery with her neighbour, husband in grave and sudden provocation at once killed the neighbour by gun.

Husband will be convicted for culpable homicide not for murder.