

**LAWXPERTSMV****TEST 18 OF MPJS [FULL IPC]****1. Explain the core principles of Section 34 of Indian Penal Code.**

Section 34, LP.C. says: 34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

**ESSENTIALS TO ATTRACT THIS SECTION :**

- (a) there must be a common intention to commit a crime;
- (b) such act must be committed in furtherance of the common intention;
- (c) such act must result in the commission of a crime;
- (d) such common intention must be common to two or more persons;
- (e) such persons (more than two or more) must have done the act or must have participated in the commission of that act.

**PRINCIPLES :**

1. Section 34 is an interpretative provision which lays down the common-sense principle that *if two or more persons do a thing jointly it is just the same as if each of them had done it individually.*
2. COLONIAL LEGACY ! *Reg. v. Cruse* in which a constable was beaten up by a few people when he had gone to arrest one of their friends. **It was held that each person was equally responsible for the attack whether he actually struck the constable or not.**

S. 34 can easily be understood by subdividing its essentials into three basic ingredients:

- (1) A criminal act must be done by several persons;
- (2) The criminal act must be to further the common intention of all;
- (3) There must be participation of all the persons in furthering the common intention.

**FIRST ELEMENT : A criminal act must be done by several persons :**

The act in S. 34 includes series of previous acts as a single act in order to determine the criminal intention of the participants.

**Section 33. 'Act', 'Omission'. – the word 'act' denotes as well a series of acts as a single act; the word 'omission' denotes as well a series of omissions as a single omission.**

It is clear from s.34 and s.33 that the term criminal act refers to more than a single act and would cover an entire series of acts.

Section 34 to section 38 in chapter II of IPC dealing with 'General Explanation' state the conditions in which a person may be held constructively liable for the acts committed by the other members of group.

### **SECOND ELEMENT : COMMON INTENTION :**

Beginning with the decision of the Privy Council in *Mahboob Shah v. Emperor* considerable emphasis is laid on proof of a prearranged plan or premeditated concert as being necessary to infer a common intention under S. 34.

SOLUTION : Nevertheless, it has also been pointed out that a common intention may arise in the course of the act and not necessarily exist before the act. **It may develop on the spot.**

In *Amrik Singh v. State of Punjab* : the court has also opined that for establishing common intention in every case **it is not required for the prosecution to prove a pre-arranged plot or prior concert.**

Likewise it is observed "what is meant by common intention is the *community of purpose or common design or common intent...*"

The section does not say "the common intention of all", nor does it say "and **intention common to all**".

STEP 1 : Finding intention common to all.

STEP 2 : Having ascertained the common intention in the above sense from the conduct of all the parties, the next step taken is to find out **whether the particular offence committed is in furtherance of the common intention.**

STEP 3: Something done by a member of the group on his own initiative - a fresh and independent product of the mind of the wrongdoer.

STEP 4 :To analyse facts carefully and to examine the inter-connection between them in order to find out as to what was done in furtherance of the common intention and what was not done in furtherance of it.

FINDING MENS REA IN ONE PERSON = IMPUTED TO ALL. To determine what offence is actually committed, a further investigation of the *mens rea* of the person committing the particular act or acts is necessary, but this *mens rea* need not be shared by others, as it is automatically imputed to them.



**Guiding principles of 'common intention':**

In **Mahboob Shah v. Emperor, 721 IA 148 (PC): AIR 1945 PC 118** the following principles were laid down by the court:

(i) Under section 34 of the Penal Code, essence of liability is to be found in the existence of a common intention, animating the accused, leading to the doing of a criminal act in furtherance of such intention.

(ii) one of the accused persons in furtherance of the common intention; **Mahboob Shah v. Emperor, 721 IA 148 (PC): AIR 1945 PC 118**,

(iii) Common intention within the meaning of section 34 implies a prearranged plan.

(iv) If not, it has to be inferred from his act or conduct or other relevant circumstances of the case. **Jai Bhagwan v. State of Haryana, 1999 Cr U 1634 (SC)**

(v) Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial and if overlooked will result in miscarriage of justice.

(vi) The inference of common intention within the meaning of the term under section 34 should never be reached unless it is a necessary inference deductible from the circumstances of the case.

**2. Write a short note on the difference between Knowledge, Intention and Motive.****INTENTION**

To intend is to have in mind a fixed purpose to reach a desired objective; it is used to denote the state of mind of a man who not only *foresees* but also *desires* the possible consequences of his conduct. Mere intention to commit an offence not followed by any act, cannot constitute an offence.

**TRANSFERRED INTENTION:**

Transferred intent/malice is a legal doctrine refers to a situation where the intention to harm one individual inadvertently causes a second person to be hurt instead, the perpetrator is still held responsible

**INTENTION AND MOTIVE****MOTIVE IS SOMETHING WHICH PROMPTS A MAN TO FORM AN INTENTION.**

- **MOTIVE**- It incites or stimulates action.
- **INTENTION** – It is determination to act in a particular manner

**ANALYSIS :** A crime is generally not committed for the sake of crime itself. There is always an ulterior objective. In the context of a crime, if you ask why it was committed the answer is what may be called as "Motive".<sup>1</sup> It should be agreed that intention is different from motive. Motive is what prompts a person to form an intention.

**ROLE OF MOTIVE IN COMMISSION OF CRIME:** *Motive is not an essential element of an offence but motive helps the court to know the intention of a person.*

**EVIDENTIARY VALUE :** Motive will be taken into account in **determining the nature and quantum of punishment.**

### KNOWLEDGE

Knowledge is the mental cognition of a thing or state of affair. To know a thing means to have a mental cognition of it.

**Section 26 of the Indian Penal Code states that "a person is said to have reason to believe a thing if he has sufficient cause to believe that thing, but not otherwise."**

**INTENTION V. KNOWLEDGE :** A man may be aware of the consequence of an act, though he may not intent to bring them about.

KNOWLEDGE	INTENTION
It is awareness on the part of the person concerned of the consequence of his act of omission or commission, indicating his state of mind.	It is a desire to achieve a certain purpose.
Knowledge is bare awareness.	Intention is to know certain consequences should ensue.
As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end." The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.	

### 3. Explain the offence of 'Abetment' under Indian Penal code.

Section 107. *Abetment of a thing.* —

A person abets the doing of a thing, who —

*First.* — Instigates any person to do that thing; or

*Secondly.* — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

<sup>1</sup> Nankaunoo v. State of U.P



*Thirdly.* — Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.* — A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Illustration :* A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

*Explanation 2.* — Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

### ABETMENT AS DEFINED UNDER IPC:

According to S. 107, IPC, a person abets the doing of a thing when he:

- I. Instigates a person to commit an offence; or (ABETMENT BY INSTIGATION)
- II. Engages with one or more persons in a conspiracy to commit an offence; or (ABETMENT BY CONSPIRACY)
- III. Intentionally aids a person by any act or illegal omission to commit an offence or illegally omits the doing of an act which would prevent the commission of the offence. (ABETMENT BY AID)

### ASPECT OF MENS REA

In order to convict the accused for the offence of abetment, it is not necessary that

- Abetted act is committed or its requisite effect is caused or
- That person abetted should have the same knowledge or intention as the person abetting or
- That abetted person should concert in the commission of the offence or
- That person abetted must be capable of doing the act.

Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.  
Explain.

### KEY ELEMENTS OF SECTION 77

Under this provision, no judicial act performed by a Judge can be an offence. For applicability of Section 77, the following ingredients are necessary:

**KEY ELEMENT 1 :** that the act was done by a Judge

**KEY ELEMENT 2 :** that the said act was done by the Judge when acting judicially and

**KEY ELEMENT 3 :** that it was done in exercise of any power which is given to the Judge by law (or) the said act was done by the Judge in good faith believing that the power was given to him by law.

**ELEMENT 1 : Judge :** Section 77 protects acts done by a judge. Section 19, IPC, defines the word 'judge'. The right to pronounce a definitive judgement is considered the *sine qua non* of a Court.

**ELEMENT 2 : Acting Judicially :** The next important element of Section 77 is that it should not only be an act of a judge, but it should also be done by him in the course of discharging his judicial powers. A judge is protected only for acts done by him 'when acting judicially'. Judicial acts are not confined to acts done in the open court, but also include orders passed in chambers.

**ELEMENT 3 : Exercise of Power Believed In Good Faith to be Given in Law :** The protection under Section 77 extends not only to acts of a judge in exercise of judicial power given to him by law, but also to acts done by him in exercise of judicial power which he believes in good faith was given to him by law. So even if a judge acts beyond his jurisdiction, provided it is under the bona fide belief that he has the jurisdiction, then even such acts are protected by this section.

#### CASE LAWS

*Anowar Hussein v Ajoy Kumar Mukherjee :* Officer acting in his executive capacity is not entitled to protected under this section

*Rachapudi Subba Rao v Advocate General, Andhra Pradesh :* X issued a legal notice in which, *inter alia*, he alleged that the judgment of the judge in the suit was delivered with bad faith. X was convicted for committing gross contempt of court.

The supreme court held that : The question of 'good faith' arises only in cases where the acts may not be within his jurisdiction, but it was done by the judicial officer where he, in good faith, believed that he had jurisdiction. In respect of acts done which are within his jurisdiction, no enquiry will be entertained as to whether the act done or ordered to be done was erroneous or even illegal or was done or ordered without believing in good faith



*Ram Paratap Sharma v Dayanand* : If any judge addresses on political problems or controversies, he cannot take shelter behind his office. This section held not applicable.

*Daya Shankar v High Court of Allahabad* : Judicial officer was found to be copying in the LLM examination. He cannot apply this section to get protection from criminal liability.

**4. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law. Explain.**

Section 81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.—

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.— It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

**Illustrations**

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

### ESSENTIAL ELEMENTS OF SECTION 81

Nothing is an offence:

- (i) merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and
- (ii) in good faith for the purpose of preventing or avoiding other harm to person or property.

**BASIS OF SECTION 81 :** This section is based on

- *quod necessitas non habet leegem* - necessity knows no law
- *necessitas vincit legem* - necessity overcomes the law.
- When, on a sudden and extreme emergency one or the other of two evils is inevitable, it is lawful so to direct events that the **smaller only shall occur**.

**ELEMENT 1 :** It is to be borne in mind that the defence of necessity can be pleaded only where the accused has acted in good faith and without criminal intention.

*Bishambher v. Roomal :* X, an alleged molester of a girl was given blackened face and shoe-beating. Panchayat members who had asked the X go through the same were held to not to have criminal intention and was done to prevent beating of the mob.

**DOCTRINE OF NECESSITY :** This doctrine allows the law has to be broken to achieve a greater good. See Illustration (a) and (b).

**ELEMENT 2 :** it should be shown that the act complained of was done in good faith in order to prevent or avoid greater harm to the person or property of others.

Explanation attached to section 81 clarifies that whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse is a **question of fact** that the risk of doing the act with the knowledge that it was likely to cause harm.

**CASE LAWS :**

- X was threatening to commit breach of peace and Y, village magistrate –put an restraint on him. Y is protected by Section 81. (*Re Ramaswamy Ayyar*)
- Drunken man with revolver was neutralized by the police. (*Gopal Naidu v Emperor*)

### KILLING OF ANOTHER HUMAN

X, thrown 16 male passengers into sea to prevent sinking of the ship after shipwreck. X was held for manslaughter, not for murder. (*United States v Holmes*)

**R v Dudley and Stephens :** In the yacht, 'Mignonette', Dudley and Stephens killed the cabin boy, who was weak and likely to die, so that they could eat his flesh and end their starvation which lasted 8 days and the fact that land was 1000 miles away. They were



held liable for murder after been rescued.

Principles held :

- No person has a right to take another's life to preserve his own.
- Self-preservation is not absolute necessity
- Because no necessity justifies homicide.

## 5. When is an act considered as an accident so as to be covered under Section 80 of IPC?

### Section 80. Accident in doing a lawful act.—

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration : A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and no an offence

### ESSENTIAL ELEMENTS OF SECTION 80

Nothing is an offence which is done by:

1. accident or misfortune, and
2. without any criminal intention or knowledge in doing of:
  - (a) a lawful act,
  - (b) in a lawful manner,
  - (c) by lawful means, and
  - (d) with proper care and caution.

**ELEMENT 1 :** This defence is said to be equivalent to '*inadvertence without culpability*'. event. The idea of something fortuitous and unexpected is involved in the word "accident"

MEANING OF ACCIDENT : an unintentional, an unexpected act.

MEANING OF MISFORTUNE : unexpected + unwelcome act.

**ELEMENT 2 : WITHOUT CRIMINAL INTENTION/KNOWLEDGE :** Act/Omissions is said to be done without criminal intention or knowledge.

*Tunda V. Rex*

Death in a wrestling match between friends was said to be accidental and unintentional. S.80 IPC applied

<i>State Government of Madhya Pradesh v Rangaswamy</i>	It was raining. X, wanted to shoot hyena in 152 feet, instead shot a human being. It is said to be accidental.
State of Orissa v Khora Ghasi	X thought that <i>bear</i> entered into maize field, and shoot an arrow which resulted in the death of Y, who wanted to commit theft of maize. It is accidental.
Mahadev v. State of M.P	Steering wheel broke in a car, and rammed into X, who died in the spot. No evidence of rash driving. Therefore it was said to be accidental

**ELEMENT 3 :** An act should be an accident, done without any criminal intention and such an act should also be a lawful act, done in a lawful manner, by lawful means.

**ELEMENT 4 :**

- If exercise of proper care and caution could have prevented the injury or death, then such act/omission is not accidental.
- Such proper care and caution are judged from the perspective of prudent and reasonable man would consider adequate, in the circumstances of the case.

## 6. Mention the punishments to which offenders are liable under the Indian Penal Code.

### SECTION 53 OF INDIAN PENAL CODE. "PUNISHMENTS"

The punishments to which offenders are liable under the provisions of this Code are

**First- Death;**

**Secondly- Imprisonment for life;**

**Thirdly - Abolished**

**Fourthly- imprisonment, which is of two descriptions, namely:-**

**(1) Rigorous, that is, with hard labor;**

**(2) Simple,**

**Fifthly- Forfeiture of property;**

**Sixthly- Fine**

## 7. Define and Differentiate : Wrongful Restraintment and Wrongful Confinement.

**WRONGFUL RESTRAINTMENT**

**WRONGFUL CONFINEMENT**



Base Section 339- Restraint	Section 340- Confinement
<b>Degree of Offense</b> Wrongful restraint is not a serious offence, and the degree of this offense is comparatively less than confinement.	Wrongful confinement is a serious offence, and the degree of this offense is comparatively intensive than restraint.
<b>Principle element</b> Voluntarily wrongful obstruction of a person's personal liberty, where he wishes to, and he has a right to go.	Wrongfully restraint a person where he wishes to, and he has a right to, within a circumscribing limits.
<b>Personal liberty</b> It is a partial restraint of the personal liberty of a person. A person is restraint is free to move anywhere other than to proceed in a partial direction.	it is a absolute or total restraint or obstruction of a personal liberty.
<b>Nature</b> Confinement implies wrongful restraint.	Wrongful confinement not implies vice-versa.
<b>Necessity</b> No limits or boundaries are required	Certain circumscribing limits or boundaries is required.

## 8. Explain the meaning of 'Assault' with Illustrations and case laws. Whether making gesture is an assault?

### Section 351 in The Indian Penal Code

**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 gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

### The essential ingredients of an assault : Section 351

1) That the accused should make a gesture or preparation to use criminal force;

- 2) Such gesture or preparation should be made in the presence of the person in respect of whom it is made;
- 3) There should be intention or knowledge on the part of the accused that such gesture or preparation would cause apprehension in the mind of the victim that criminal force would be used against him;
- 4) Such gesture or preparation has actually caused apprehension in the mind of the victim, of use of criminal force against him.

#### ASSAULT :

- Assault is generally understood to mean the use of criminal force against a person, causing some bodily injury or pain.
- But, legally, 'assault' denotes the preparatory acts which cause apprehension of use of criminal force against the person. Assault falls short of actual use of criminal force.

According to Section 351 of the Code, the mere gesture or preparation with the intention of knowledge that it is likely to cause apprehension in the mind of the victim, amounts to an offence of assault.

The explanation to Section 351 provides that mere words do not amount to assault, unless the words are used in aid of the gesture or preparation which amounts to assault.

#### EXAMPLE :

1. R v Meade and Belt (1823) 1 Lew. C.C. 184: The defendants surrounded the victim's house singing threatening and menacing songs.

Held: No assault was committed. Holroyd J "no words or singing are equivalent to an assault"

The following have been held to be instances of assault:

- i) Lifting one's lota or lathi
- ii) Throwing brick into another's house
- iii) Fetching a sword and advancing with it towards the victim
- iv) Pointing of a gun, whether loaded or unloaded, at a person at a short distance
- v) Advancing with a threatening attitude to strike blows.

**TEST :** The question whether a particular act amounts to an assault or not depends on whether the act has caused **reasonable apprehension in the mind of the person that criminal force was imminent**. The words or the action should not be threat of assault at some future point in time. The apprehension of use of criminal force against the person should be in the present and immediate.



**9. Explain in brief – Kidnapping and Abduction.****KIDNAPPING VS ABDUCTION**

<b>Kidnapping from India (Section 360)</b>	<b>Kidnapping from lawful guardian (Section 361)</b>	<b>Abduction (Section 362)</b>
<b>A person is taken out of the limits of India.</b>	A person is taken away from the lawful guardian.	A person is compelled by force or induced by deception to go from any place.
<b>Age of the person is immaterial.</b>	The person must be less than 16 yrs of age if male, less than 18 if female, or of unsound mind.	Age of the person is immaterial.
<b>It is not a continuing offence.</b>	It is not a continuing offence.	It is a continuing offence.
<b>The person is conveyed without his consent.</b>	Consent of the person kidnapped is immaterial.	Person moves without his consent or the consent is obtained by deceitful means.
<b>It can be done without use of force.</b>	It can be done without use of force or deception.	It is always done by the use of force or deception.

**10. A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give and A takes it. What the offence has the A has committed?**

This is an illustration (o) under Section 378 : A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.

Whoever

- (a) intending to take dishonestly,
- (b) any movable property,
- (c) out of the possession of any person,

(d) without the (express or implied) consent of that person or of any person having for that purpose (expressed or implied) authority,

(e) moves that property in order to such taking

is said to commit *theft*.

In order to constitute theft, guilty mind in the form of dishonest intention must be present. Dishonest intention is the gist of the offence of theft. It is the dishonest intention of the taker which must determine whether the moving of the thing is theft. In other words, the act is theft only when the thing is moved dishonestly.

Thus, taking without any dishonest intention is no theft. In other words, the taking must be dishonest and the dishonest intention must exist at the time of taking.

As explained by the Supreme Court this intention is known as *animus furandi* and without it the offence of theft is not complete.

It is the intention of the taker at the time when he removes the article that determines whether the act is theft or not. The intention to take dishonestly exists when the taker intends to cause 'wrongful gain' to one person and 'wrongful loss' to another. Wrongful gain or wrongful loss must be involved in dishonesty.

The punishment for the offence is imprisonment up to three years or fine or both.

11. Enumerate the situations where the offence will cease to be murder and would become as culpable homicide not amounting to murder.

Section 300(1) to Section 300(4) provide the essential ingredients wherein culpable homicide amounts to murder. The section also provides five exceptional situations, the existence of which will remove a case from the purview of section 300. It will become merely be culpable homicide not amounting to murder.

**FIVE EXCEPTION UNDER SECTION 300 (1) grave and sudden provocation; (2) private defence; (3) acts of public servants; (4) sudden fight, and (5) consent.**

#### **EXCEPTION 1—GRAVE AND SUDDEN PROVOCATION :**

**If the offender** on account of grave and sudden provocation, is deprived of his power of self-control and causes the death of a person then culpable homicide will not be murder.

The Explanation to Exception 1 states that whether the provocation was grave and sudden is a question of fact.

In *KM Nanavati v State of Maharashtra* : 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.

**EXCEPTION 2—EXCEEDING THE RIGHT OF PRIVATE DEFENCE :** The second exception stipulates that the exceeding of the right of private defence should be without pre-meditation, and without any intention of doing more harm than is necessary for the purpose of coverage by the exception. It is important that it should have been done unintentionally.

The question whether the exceeding of the right of private defence was done intentionally or unintentionally is a question of fact, which has to be decided on the facts and circumstances of each case.

**EXCEPTION 3—ACT OF PUBLIC SERVANT :** The essential elements of this section (i) the offence must be committed by a public servant or by a person aiding a public servant; (ii) the act alleged must have been committed by the public servant in the discharge of his official duties; (iii) he should have exceeded the powers given to him by law; (iv) the act should be done in good faith; (v) the public servant should have believed that his act was lawful and necessary for the due discharge of his duties, and (vi) he should not have borne any ill-will towards the person whose death was caused.

**EXCEPTION 4—SUDDEN FIGHT :** It implies mutual attack in which both the parties participate. It implies exchange of blows.

The essential elements of this section of this Exception are that: (i) the murder should have been committed without premeditation; (ii) it should have been committed in a sudden fight; (iii) it should have been committed in the heat of passion; (iv) it should have been committed upon a sudden quarrel, and (v) it should have been committed without the offender having taken undue advantage or acted in a cruel or unusual manner.

**EXCEPTION 5—DEATH BY CONSENT :** Culpable homicide is not murder when the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent.

The points to be proved are: (i) the death was caused with the consent of the deceased; (ii) the deceased was then above 18 years of age, and (iii) the consent given was free and voluntary, and was not given through fear or misconception of facts.