

Before Jasbir Singh, Rameshwar Singh Malik, J.J.

GULAB SINGH—Appellant

versus

STATE OF HARYANA—Respondent

CRA No. 18-DB of 2007

26th November, 2012

Indian Penal Code, 1860 - Ss.302 & 304-Part-I - Sudden fight - Altercation took place on purchase of chewing tobacco - Appellant convicted u/s 302 IPC by trial court - He gave two knife blows on thigh of deceased by knife used for cutting vegetables - Deceased died due to haemorrhage and shock as a result of cutting cutting of femoral artery and femoral vein - Conviction modified from S.302 IPC to 304 Part-I, IPC - Held - There was no previous enmity - injuries were not on any vital part of body -Appellant caused injuries without premeditation and in the heat of passion without taking undue advantage - cannot be said to be within the scope of Section 302 IPC- appeal partly allowed.

Held, that in the considered opinion of this Court, the present case would fall under Section 304 Part I IPC. In order to hold that the case would fall under Section 304 Part I IPC, the death must have been caused by the appellant under any of the circumstances mentioned in any of the five exceptions to Section 300 IPC.

(Para 18)

Further held, that it is equally important to note here that the appellant did not cause the injury on any vital part of the body of the deceased. Both the injuries were caused on the thigh of the deceased, which cannot be said to be a vital part of the body, as such. The cause of death was also found to be haemorrhage and shock which was the result of cutting of left femoral artery and femoral vein. As a result of the foregoing discussions, this Court feels no hesitation to conclude that since the appellant caused the injuries to the deceased without pre-meditation, in a sudden fight in the heat of passion upon a sudden quarrel without taking any undue advantage, nor he acted in a cruel or unusual manner, the present case, under no circumstance, cannot be said to be within the scope of Section 302 IPC.

(Para 20)

Further held, that In this view of the matter, we are of the considered opinion that this case will fall under Exception 4 to Section 300 IPC because the incident took place in the heat of passion upon a sudden quarrel. Therefore, in the circumstances of the present case, the accused/appellant Gulab Singh is liable to be convicted for the offence punishable under Section 304 Part-I IPC.

(Para 16)

Pawan Girdhar, Advocate, *for the appellant*.

Kshitij Sharma, Assistant A.G, Haryana.

RAMESHWAR SINGH MALIK, J.

(1) The instant appeal is directed against the judgment of conviction and order of sentence of even date i.e. 3.3.2006 passed by the learned trial court, thereby convicting the appellant for an offence under Section 302 of the Indian Penal Code ('IPC' for short), and awarding him the sentence to undergo rigorous imprisonment for life.

(2) Facts first. The prosecution case, as unfolded from reading of FIR Ex. PE, was that Desraj-PW2 got his statement recorded to the effect that he had three sons. His eldest son was Ram Kumar, younger to him was Rajender Kumar and the youngest was Jitender Kumar. Rajender Kumar-deceased was running a Karyana shop in Nalwa Colony. He was staying with his son Rajender Kumar for the last several days. On the date of occurrence, at about 5:00 p.m., his son Ram Kumar and nephew Vir Bhan had come to see him at Nalwa Colony. They were taking tea. It was about 5:30 pm, he heard cry of his son Rajender Kumar that '*mar diya mar diya*'. Hearing this, all three of them came out of the house and saw that Gulab Singh-appellant was holding a knife (for cutting vegetables) in his hand. On seeing them, he gave two knife blows on the thigh of Rajender Kumar-deceased. They raised alarm '*pakro pakro*' (catch-catch). Thereafter, Gulab Singh ran away along with knife. His son fell down there. Huge blood had oozed out. His son Rajender Kumar told them that some altercation took place between him and Gulab Singh, on the issue of purchasing Gutkha (chewing tobacco), from the shop of Rajender Kumar-deceased, by Gulab Singh who was not giving its price. Due to that grudge, Gulab Singh-appellant caused two blows to Rajender Kumar with the knife. In the meantime, after hearing the noise, Sonu son of Kashmiri and Salender had come at the spot. Thereafter, they took Rajender Kumar to Civil Hospital, Panipat, for treatment, where he was declared dead by the Doctor. The statement was recorded, which was read over to Desraj-PW2, who accepted the same to be correct and put his signature.

(3) The statement of the complainant, referred to above, was recorded as Ex. PB by Tara Chand- ASI of Police Station Chandni Bagh. Tara Chand-ASI recorded his endorsement thereon as Ex. PB-2 to the effect that a V.T. Message had been received from the In charge Police Post, Bus Stand, Panipat that Rajender Kumar son of Desraj, injured in quarrel, was admitted in Government Hospital, Panipat, whose dead body was in the Hospital and I.O. be sent for proceedings. Receiving this message, ASI Tara Chand along with HC Nishawsar Singh-31, Constable Ram Kishan No. 329, reached Government Hospital, Panipat, after receiving Doctor's ruqa from Police Post, Bus Stand, where Desraj met and got his statement recorded. The statement was recorded and it was read over to the complainant. He, after admitting the same to be correct, put his signatures underneath his statement in Hindi, which was attested by Tara Chand-ASI.

From the statement and ruqa of the Doctor, an offence under Section 302 IPC was found to be made out. A written communication was sent to the police station for registration of the case through Constable Ram Kishan No. 329. It was requested that after registration of the case, its number be intimated. Special report be sent to the higher officers. SHO be also informed. He started the investigation at the spot with the help of Head Constable and the complainant. On the basis of above said communication, DD No. 36 dated 29.9.2004 was recorded at 10 p.m. Accordingly, FIR No. 374 dated 29.9.2004 under Section 302 IPC came to be registered by ASI Krishan Chandar, Police Station Chandni Bagh.

(4) Based on the abovesaid facts, investigation was initiated by PW-10 ASI Tarachand. However, on 30.9.2004, investigation was taken over by PW11, Inspector Azad Singh. He recorded the statement of the witnesses. Accused was arrested. He was interrogated. He suffered a disclosure statement Ex. PQ in the presence of Raja Ram, a relative of the deceased. Accused disclosed that he had kept concealed a knife near the house of his mother-in-law situated in Nalwa Colony. He offered to get the knife recovered from the disclosed place. The knife was taken into possession, vide recovery memo Ex. PQ/1. Sketch of the knife was prepared as Ex. PQ/2. Rough site plan of the place of recovery was prepared as Ex. PQ/3. On completion of the investigation, final report was prepared by him on 19.10.2004. Accordingly, the report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short), was presented to the learned court of competent jurisdiction.

(5) All the necessary documents were supplied to the accused, in accordance with law. The offence having been found to be exclusively triable by the learned court of Sessions, the learned Magistrate committed the case to the learned court of Sessions for its trial. Having found a prima facie case to be made out, the charge was framed against the accused. The accused pleaded not guilty and claimed trial.

(6) The prosecution, in order to prove its case, examined as many as 12 PWs, besides tendering relevant documents in evidence. After conclusion of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material brought on record, was put to the accused. He alleged false implication and claimed himself to be innocent. However, he did not produce any defence evidence.

(7) After hearing the parties and on perusal of the evidence brought on record, learned trial court, vide its judgment of conviction dated 3.3.2006, held that prosecution had proved its case beyond reasonable shadow of doubt. The accused was held guilty for the offence punishable under Section 302 IPC and also for the offence punishable under Section 25 of the Indian Arms Act, 1959. Consequently, vide order of sentence dated 3.3.2006, convict was sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 IPC. He was also sentenced to undergo rigorous imprisonment for a period of one year for the offence under Section 25 of the Indian Arms Act. However, both the sentences were ordered to run concurrently.

(8) Feeling aggrieved against the impugned judgment of conviction and order of sentence, appellant has approached this Court, by way of instant appeal. That is how, this Court is seized of the matter.

(9) Learned counsel for the appellant vehemently contended that motive was conspicuously missing in the present case. He further submits that there was an inordinate and long delay in registration of the FIR, which remained unexplained. He next contended that Raja Ram who claimed to be a relative of Des Raj complainant and witness to the disclosure statement as well as recovery, was not produced in the witness box, which creates serious doubt in the prosecution story. He concluded by submitting that the incident took place at the spur of moment and the appellant did not cause any injury on the vital part of the body of the deceased. Thus, it shows that intention to commit the murder was missing, because of which the case will not fall under Section 302 IPC but only under Section 304 Part II IPC and the conviction under Section 302 IPC was not sustainable in law. He prays for acceptance of the appeal.

(10) Per contra, learned counsel for the State submitted that the prosecution has completed the chain of events, so as to bring home the guilt against the appellant. He also submitted that barring the few minor discrepancies, which are natural and do not go to the root of the case, there was no serious lacuna in the case of the prosecution. He further submitted that since the statements of PWs were reliable and trustworthy, the appeal was without any substance and the same was liable to be dismissed.

(11) Having heard the learned counsel for the parties, on carefully going through record of the case and after giving thoughtful consideration to the rival contentions raised on behalf of the both the parties, this Court is of the considered opinion that although the prosecution was able to prove its case beyond reasonable doubt, yet the conviction under Section 302 IPC and corresponding sentence was not warranted. In fact, in the considered view of this Court, the present case falls within the scope of Section 304-Part I IPC. In this view of the matter, the appeal deserves to be partly allowed. To say so, reasons are more than one, which are being recorded hereinafter.

(12) It is the case of prosecution itself that there was no previous enmity between the appellant and the deceased. It is the allegation against the appellant that he went to the shop of the deceased to purchase Gutkha. When the deceased demanded price of the Gutkha from the appellant, an altercation took place between them. Thus, at the spur of moment, the appellant gave two knife blows on the thigh of the deceased. Thigh, as such, is not a vital part of the body. The cause of death, as per the statement of Doctor Bajinder Singh-PW12, was due to haemorrhage and shock on account of cutting of left femoral artery and femoral vein.

(13) So far as the delay in registration of the FIR is concerned, it was not fatal to the prosecution. The incident took place at 5:30 p.m., whereas the FIR came to be registered at 10:00 p.m. It is not expected from the author of the FIR that instead of making effort to take the injured to the hospital first, he would go to the police station for registration of the case. The first and foremost duty of the complainant should be to save the life of the injured. In the present case, firstly there was hardly any delay. The FIR has been registered within a short span of time of 5 hours. Further, the delay, if any, has been properly explained.

(14) Furthermore, delay alone cannot be held to be fatal to the case of prosecution, in every given situation. No straight jacket formula can be laid down in this regard. It would be depending upon the peculiar fact situation of each case. In this view of the matter, this Court feels no hesitation to hold that the delay, if any, has been duly explained and the same cannot be held fatal to the case of the prosecution.

(15) The next argument raised on behalf of the appellant that statements of PWs were not trustworthy is also without any force. The witnesses have deposed before the Court in a natural manner. The prosecution has duly proved the chain of events, right from the occurrence till filing of the report under Section 173 Cr.P.C., thereby connecting the appellant with the offence. The witnesses were put to lengthy cross examination but nothing substantial could be elicited from them, so as to cause any dent in the prosecution story. Thus, it is unhesitatingly held that prosecution witnesses have successfully stood the acid test of cross examination.

(16) An effective investigation was carried out. The Investigating Officer has duly corroborated the case of the prosecution. Further, an independent witness Sonu PW4 was also examined. He has also supported the prosecution version. Recovery of knife-weapon of offence, has also been duly proved.

(17) This brings us to the next contention of the learned counsel for the appellant that since the occurrence took place at the spur of moment on a trivial issue and the appellant did not cause the injury on any vital part of the body of the deceased, the present case would not fall within the scope of Section 302 IPC and it would come under Section 304 Part II IPC. This Court has found some force in this contention of the learned counsel for the appellant. However, after critically analysing facts of the present case and the evidence available on record, this Court is of the considered view that the present case would not fall under Section 302 IPC but the same would also not come under Section 304 Part II IPC either, as submitted by the learned counsel for the petitioner.

(18) In the considered opinion of this Court, the present case would fall under Section 304 Part I IPC. In order to hold that the case would fall under Section 304 Part I IPC, the death must have been caused by the appellant under any of the circumstances mentioned in any of the five exceptions to Section 300 IPC.

(19) After a close examination of the evidence brought on record, this Court is of the considered view that the present case would not fall within the ambit of Section 302 IPC. The reason is simple but strong that there was no previous enmity between the appellant and the deceased, nor

it is the case of the prosecution. Thus, there was no motive with the appellant to commit the murder. Further, the incident took place on a trivial issue i.e. alleged non payment of a meagre amount, as price of Gutkha (chewing tobacco), purchased by the appellant from the shop of the deceased.

(20) It is equally important to note here that the appellant did not cause the injury on any vital part of the body of the deceased. Both the injuries were caused on the thigh of the deceased, which cannot be said to be a vital part of the body, as such. The cause of death was also found to be haemorrhage and shock which was the result of cutting of left femoral artery and femoral vein. As a result of the foregoing discussions, this Court feels no hesitation to conclude that since the appellant caused the injuries to the deceased without pre-meditation, in a sudden fight in the heat of passion upon a sudden quarrel without taking any undue advantage, nor he acted in a cruel or unusual manner, the present case, under no circumstance, cannot be said to be within the scope of Section 302 IPC.

(21) In this view of the matter, it is held that in view of the peculiar fact situation of the present case, the instant case would fall within the scope of Exception – 4 to Section 300 IPC, which reads as under:-

“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

Exception

4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner .

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.”

(22) In terms of the explanation to Exception 4 to Section 300 IPC, it is immaterial in such cases as to which party offers the provocation or commits the first assault. For the applicability of Exception 4 to Section 300 IPC, the number of injuries caused during the occurrence is not a decisive factor but the occurrence itself must be sudden and not premeditated while

the offender had acted in a fit of anger. Of course, he is not liable to take any undue advantage or act in a cruel manner. In the present case, it is one of the usual quarrel that the accused-appellant committed the unfortunate act of hitting the deceased but without premeditation and in the heat of passion.

(23) The Hon'ble Supreme Court in the case of **Muthu versus State by Inspector of Police, Tamil Nadu (1)**, observed as under:-

"However, when the weapon was not initially in the hand of the accused, but was picked up from the spot during the altercation, then it cannot be said that it is a case under Section 302 IPC, rather it is only a case of culpable homicide not amounting to murder which comes under Section 304 IPC and not under Section 302 IPC.

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No doubt, even in the heat of the moment or fit of anger one should not attack somebody since human beings are different from animals inasmuch as they have the power of self-control. Nevertheless, the fact remains that in the heat of the moment and in a fit of anger people some times do acts which may not have been done after premeditation. Hence the law provides that while those who commit acts in the heat of the moment or fit of anger should also be punished, their punishment should be lesser than that of premeditated offences. It is for this reason that Exceptions 1 and 4 have been inserted in Section 300 IPC.

We may also refer to Exception 4 to Section 300 IPC which reads as under:

"Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner".

The difference between Exception 1 and Exception 4 to Section 300 has been explained by this Court in Pappu vs. State of M.P. 2006 (7) SCC 391. In our opinion, the present case also comes under Exception 4 to Section 300 IPC since the ingredients of Exception 4 are all satisfied in the facts of the present case.

In our opinion, throwing waste and rubbish inside the house or shop of somebody is certainly a grave and sudden provocation. Everyone wishes to keep his premises neat and clean, and is likely to lose his self-control in such a situation. The incident in question occurred in a sudden fight and a heat of passion by a sudden quarrel without the appellant having taken undue advantage or acted in a cruel or unusual manner. Hence the appellant is entitled to the benefit of Exceptions 1 and 4 and the case comes under Section 304 IPC."

(24) Similarly, the observations made by the Hon'ble Supreme Court, in the case of **Posuram Deshmukh versus State of Chhattisgarh (2)**, which aptly apply and can be gainfully followed in the present case, are as under:-

"For bringing in operation of Exception 4 to Section 300 IPC it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges

them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily

depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. These aspects have been highlighted in Dhirajbhai Gorakhbhai Nayak v. State of Gujrat, (2003) 9 SCC 322, Parkash Chand v. State of H.P (2004) 11 SCC 381, Byvarapu Raju v. State of A.P. and Anr. (2007) 11 SCC 218 and Hawa Singh . v. State of Haryana. (2009) 3 SCC 411."

(25) The ratio of the abovesaid judgments would apply to the facts and circumstances of the present case inasmuch as it was not the intention of the accused-appellant to commit the murder of the deceased and the death had occurred in a sudden fight, without any premeditation and the act was done in the heat of passion without the accused-appellant taking any undue advantage or acting in a cruel manner.

(26) Therefore, keeping in view the evidence and material discussed in the foregoing part of the judgment, this Court has unhesitatingly come to the conclusion that the present case would fall not under Section 302 IPC but it would fall under Section 304 Part -I IPC. In this view of the matter, we are of the considered opinion that this case will fall under Exception 4 to Section 300 IPC because the incident took place in the heat of passion upon a sudden quarrel. Therefore, in the circumstances of the present case, the accusedappellant- Gulab Singh is liable to be convicted for the offence punishable under Section 304 Part-I IPC.

(27) No other argument was raised.

(28) Considering the totality of facts and circumstances of the present case noted above, coupled with the reasons aforementioned, it is unhesitatingly held that the offence committed by the appellant would be covered under Section 304-Part I IPC and not under Section 302 IPC. Thus, the appeal is party allowed. Consequently, conviction and sentence

of the appellant for the offence under Section 302 are ordered to be set aside. However, appellant is convicted for the offence under Section 304-Part I IPC.

(29) In view of what has been observed above, while upholding the impugned judgment, the conviction of the appellant is modified from Section 302 IPC to Section 304 Part-I IPC. His sentence is modified from imprisonment for life to the imprisonment for 10 years. The appellant shall pay a fine of '5,000/- and in default thereof, he shall undergo further imprisonment for three months.

(30) Resultantly, the instant appeal is partly allowed, and disposed of, accordingly.
