

# SUPREME COURT OF INDIA

State of Punjab

Vs.

Sarwan Singh

(K. Ramaswamy and G.B. Pattanaik JJ.)

19.11.1996

## ORDER

The following order of the Court was delivered. Leave granted.

We have heard learned counsel on both sides. This appeal by special leave relates to nature of the offence committed by him.

The admitted position is that on October 25, 1985 at about 6 a.m. in village Kahlon within the jurisdiction of the Police Station Nawahshahr, one Santokh Singh and his party and the respondents ad their party had a dispute on land. They indulged in quarrel as a result of which Santokh Singh died. The courts below recorded a finding that the occurrence had taken place at 6.00 p.m. in which both the parties sustained injuries. The deceased Santokh Singh received as many as 8 injuries five of which were on the head. As per the evidence of PW-2 the autopsy doctor, he died of the multiple injuries on the head. The injuries were inflicted with a gandasa. According to the ordinary course of nature. Therefore, it is clearly a case under Clause thirdly of Section 300, IPC and of murder punishable under Section 302, IPC unless the case is brought in any one of the exceptions engrafted is Section 300 IPC. The trial Court and the appellate Courts have applied Exception (4) to Section 300 which reads as under :

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

In this case, the courts below found that the four injuries inflicted by the respondent-Sarwan Singh were responsible for the death of the deceased. It is seen that when Sarwan Singh had inflicted four injuries on the head with gandasa which is a heavy weapon, it is obviously that he had the knowledge that the injuries would result in death of the deceased. It is true that there was a free fight in which both the parties including the accused sustained injuries. Obviously, therefore, Section 149 IPC was not rightly applied and this Court refused leave as against the acquittal of others. However, the respondent cannot escape the offence. The parties had to fight over dispute of land. It is not the case of the accused that he had acted in self- defence of him or others and in exercise thereof, he inflicted the injuries. Therefore, the right of private defence has not been rightly applied and was not extended to the accused. Under these circumstances, the only question that arises is : whether the respondent had inflicted injuries without undue advantage and acted in a cruel or injuries with a gandasa on the head, it is implicit that he had taken undue advantage and acted in a cruel or unusual

manner in inflicting four heavy blows on the head resulting in death of Santokh Singh. Under these circumstances, the learned Sessions Judge as well as the High Court have committed grave error of law in applying Exception 4 to Section 300 IPC and giving the respondent the benefit holding it to be an offence of culpable homicide. The conviction by the courts below under Sections 304 IPC, Part I, therefore, is set aside. The offence is one of murder punishable under Section 302 IPC and accordingly, the respondent is convicted of the offence and is sentenced to undergo imprisonment for life under Section 302 IPC. The appeal is accordingly allowed.