**SUPREME COURT OF INDIA**

Bangaru Venkata Rao

Vs.

State of Andhra Pradesh

Crl.A.No.885 of 2005

(Dr. Arijit Pasayat and G.S. Singhvi JJ.)

05.08.2008

**JUDGMENT**

**Dr. Arijit Pasayat, J.**

1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court upholding the conviction of the appellant for offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') and sentence of imprisonment for life and fine of Rs.1,000/- with default stipulation as recorded by learned Sessions Judge, Srikalulam.

2. Background facts as projected by the prosecution to fasten guilt on the appellant are as follows:

> "Accused had suspected the fidelity of his wife Polamma (hereinafter referred to as the `deceased') towards him, for about one week prior to the offence. On 24.8.2000 at 2.00 p.m. the accused with an intention to kill her, stabbed on the left side of her abdomen with a knife. On hearing her cries, the neighbours Damyanthi, Appamma, Shanthi (PW-3) the daughter of the accused Ankamma and others rushed there and found the accused holding a knife and on seeing them, he left the house. Polamma informed them that the accused had stabbed her. She was immediately shifted to the hospital at Palakonda. There, the Medical officer gave treatment and the Sub Inspector of Police recorded her statement and registered the Crime no.55/2000 under section 307 IPC. Polamma was shifted to Headquarters Hospital, Srikakulam and there she died at 6.00 P.M. while undergoing treatment. On information, the section of law was altered to 302 IPC. The accused was arrested on 25.8.2000 at 4.00 P.M. at the RIC bus complex and in pursuance of his confessional statement; the Inspector of Police recovered the weapon of offence i.e. the knife. A charge under Section 302 IPC was framed against the accused and it was read over and explained to him in Telugu. When he was questioned under section 228(2) of *Code of Criminal Procedure, 1973* (in short `Cr.P.C.') regarding the said charge, the accused stated that his wife harassed him in several ways and that on 24th August at

2.00 P.M. his wife sent away the children after 4.30 P.M. after providing lunch to them and that when he was lying on the cot his wife went out and came back 10 or 15 minutes later and tried to stab him and that he snatched the said knife and stabbed her and that he had rushed to the police station and informed the same to the police and the police did not take it seriously, as he went to the police station earlier on that day at about 8.00 A.M. and his wife took him away characterizing him to be mentally unsound and the police did not take his representation seriously.

In order to establish the accusations, prosecution examined 7 witnesses. PW-1 who is a neighbour stated that at the time of occurrence she was in her home and on hearing cries of the deceased, she rushed to the house of the accused and found doors of the house closed. At that time Santhi (PW- 3) daughter of the accused, Palakonda Appamma (PW-2) and one Akula Shankari also came there. All of them knocked the door. Then accused opened the door. They found the accused with a knife in his hand which was stained with blood. They found the deceased on the cot lying and holding her hand on a bleeding injury on the abdomen. When they asked her about the incident, the deceased told that the accused was suspecting her character for some days and had stabbed her after exchanging of hot words between them. They took her to the hospital in a cycle rickshaw and she was admitted. The accused was found guilty and convicted as noted above.

In appeal, it was stated that the accused had committed the offence in private defence and therefore he could not be convicted under Section 302 IPC. In the ultimate it was submitted that only one blow was given and there was no intention to kill the deceased. The High Court did not find any substance in the aforesaid stands and dismissed the appeal."

3. In support of the appeal, Mr. Karpaga Vinayagam, learned amicus curiae has submitted that even if it is accepted that the appellant was not exercising the right of private defence, the conviction under Section 302 is not proper. It is further submitted that the evidence on record clearly establishes that there was sudden quarrel between the accused and the deceased and single blow was given and, therefore, the conviction under Section 302 is not proper.

4. Learned counsel for the State on the other hand supported the judgment of the trial Court and the High Court.

5. In *Pappu v. State of M.P.*[1] it was inter- alia observed as follows:

"14. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body it was given and several such relevant factors."

6. In *Ramkishan v. State of Maharashtra*[2] at para 8 it was observed as follows:

"8. The assault undisputedly was made in the course of sudden quarrel, without premeditation and without the accused taking any undue advantage."

7. The residuary plea relates to the applicability of Exception 4 of Section 300 IPC.

8. For bringing in its operation 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.

9. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution 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 reason 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 in such cases could 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 have 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'.

10. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In *Kikar Singh v. State of Rajasthan*[3] it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the head it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage. In the instant case blows on vital parts of unarmed persons were given with brutality. The abdomens of two deceased persons were ripped open and internal organs come out. In view of the aforesaid factual position, Exception 4 to Section 300 I.P.C. has been rightly held to be inapplicable.

11. Considering the factual background, in our considered view the appropriate conviction would be under Section 304 Part I, IPC. Custodial sentence of 10 years would meet the ends of justice. We record our appreciation for the able manner in which Mr. Karpaga Vinayagam, learned amicus curiae assisted the Court.

12. The appeal is allowed to the above extent.

[1]*(2006 (7) SCC 391)*
[2]*(2007 (3) SCC 89)*
[3]*(AIR 1993 SC 2426)*