SUPREME COURT OF INDIA

Ravindra Shalik Naik

Vs.

State of Maharashtra

Crl.A.Nos….of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly)

09.02.2009

JUDGMENT

Dr.Arijit Pasayat, J

1. Leave granted.

2. Challenge in these appeals is to the common judgment of a Division Bench of the Bombay High Court, Nagpur Bench, dismissing the appeals filed by the present appellants. The appellants were found guilty of offence punishable under Sections 302 read with 34 of the *Indian Penal Code, 1860* (in short the `IPC'). The appellant Ravindra was also convicted for offence punishable under Section 324 IPC. Appellants Ravindra, Naresh and Shalikrao are hereinafter referred to as A-1, A-2 and A-3. The learned Adhoc Additional Sessions Judge, Yuvatmal had found the appellants guilty as aforenoted.

3. Background facts in a nutshell are as follows:

> "Appellant Shalik is father of appellants Ravindra and Naresh. On 13.11.1999, at about 7 p.m. appellant Naresh was going to his house and was carrying bundle of cotton/grass. The road to his house was adjacent to the house of complainant Vandana (PW1). On the way, the cotton bundle hit the roof of the complainant's house and, therefore, husband of the complainant, Dewanand (PW 3) accosted appellant Naresh and told him that he should have been more careful while carrying the bundle of cotton and ought to have seen that no damage was done to the roof of the house of complainant. Quarrel ensued between appellant Naresh and Dewanand (PW-3) and there was exchange of words between them. Appellants Shalik and Ravindra also came to the spot of incident and started quarrelling with the husband of the complainant- Dewanand (PW3). The father-in-law of the complainant, Kisan Gedam (hereinafter referred to as `deceased') intervened to pacify the quarrel between appellants and his son Dewanand. Appellants Shalik, Ravindra and Naresh went inside their house, which was close to the spot of incident and all of them returned to the spot armed with axe, knife and gupti. All the three appellants inflicted injuries on

the head and abdomen of deceased Kisan by means of those weapons. Appellants Ravindra and Naresh inflicted injuries on the hand of husband of complainant-Dewanand (PW3) with those weapons with intention to cause his death. Deceased Kisan was taken to the Hospital at Ner where he was declared dead.

After completion of investigation charge sheet was filed and since the accused persons pleaded innocence trial was held. Placing reliance on the evidence of complainant Vandana (PW-1) and Dewanand (PW-3) the trial Court held the accused persons guilty as aforenoted.

In appeal, the primary stand was that PWs 1 and 3 should not have been relied upon and in any event the provisions of Section 302 IPC are not attracted to the facts of the case. The High Court did not find any substance in the plea and upheld the conviction and sentence as afore noted. The stands taken before the High Court were re-iterated in the present appeals.

So far as the reliability of the evidence of PWs 1 and 3 are concerned their evidence is clear and cogent and though they were subjected to incisive cross examination, nothing material could be elicited to discard their evidence."

4. The main plank of the appellants' arguments relates to applicability of section 302 IPC. It has been contended that there is no pre-meditation involved and in course of sudden quarrel the incident took place.

5. 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.

6. 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 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 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 acting 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'. These aspects have been highlighted in *Dhirajbhai Gorakhbhai Nayak v. State of Gujrat*[1], *Parkash Chand v. State of H.P.*[2], *Byvarapu Raju v. State of A.P. and Anr.*[3] and Buddu Khan v. State of Uttarakhand (SLP (Crl.) No. 6109/08 disposed of on 12.1.2009)

7. Considering the background facts in our considered opinion the appropriate conviction would be under Section 304 Part I IPC. The custodial sentence of 10 years would meet the ends of justice.

8. The appeals are allowed to the aforesaid extent.

[1]*(2003 (5) Supreme 223]*
[2]*(2004 (11) SCC 381)*
[3]*(2007 (11) SCC 218)*