

SUPREME COURT OF INDIA

Posuram Deshmukh

Vs.

State of Chhattisgarh

Crl.A.No.697 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

09.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Chhattisgarh High Court upholding the conviction of the appellant for offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the `IPC'). Four persons faced trial for alleged commission of the aforesaid offence. Out of them two were found guilty by Special Judge & Additional Sessions Judge, Durg. Co-accused Puranlal and Prahlad were acquitted.
3. Prosecution version in a nutshell is as follows:

On 19-9-2000 Hiralal (hereinafter referred to as the `deceased') along with Dhaneshwari (PW-1) went to his agricultural field at about 10 a.m. for blocking the water course. When Hiralal and Dhaneshwari were busy blocking the water course, accused Badku @ Komal and Posu came near Hiralal and asked Hiralal not to block the water course, on which . Hiralal said that if he will not block the water course, then water will not come to his field and his field will become dry. On that, some altercation took place between them. At that time accused Posu was carrying Chatwar (a square iron plate fitted at the one end of the stick) accused Badku was carrying lathi. Both of them started attacking with those weapons. When Dhaneshwari, daughter-in-law of Hiralal came to intervene, the accused persons pushed her as a result of which her glass bangles broke and she sustained abrasions. Blood started oozing out of the injuries sustained by Hiralal. He fell down on the field. The accused persons fled from the scene of occurrence. Dhaneshwari went to the village and informed her sister-in- law Bhanbai and the villagers. She informed her brother-in-law also.

Thereafter, she along with her brother-in-law took Hiralal to the Out Post Anjora, P.S. Pulgaon. She lodged a report Ex.P/1. When Hiralal was being taken for examination to the Government Hospital, Durg he succumbed to the injuries on the way. Certificate Ex.P/18 was given by the doctor and based on that intimation Ex.P/30 was written. Based on the report Ex.P/1 Police Station, Pulgaon registered FIR Ex.P/31.

During the investigation accused Badku gave memorandum Ex.P/8, in pursuance of that he get recovered bamboo club under Ex.P/10. Accused Posu gave memorandum Ex.P/9 in pursuance of that Chatwar, a square iron plate fitted at the one end of the stick was seized under Ex.P/11.

4. After investigation, charge sheet was filed. As the accused persons pleaded innocence, trial was held. Twelve witnesses were examined to further the prosecution version. PW-1 was an injured witness. The trial Court placed reliance on the evidence of eye witnesses and found the appellant guilty. Questioning the conviction, the appellant preferred an appeal before the High Court. The stand taken before the High Court that the occurrence took place in course of sudden quarrel was not accepted. The appellant has filed this appeal primarily on the ground that even if the prosecution version is accepted in its totality, case under Section 302 IPC is not made out.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

6. 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.

7. 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 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*¹, *Parkash Chand v. State of H.P.*², *Byvarapu Raju v. State of A.P. and Anr.*³ and *Hawa Singh and Anr. v. State of Haryana* (SLP (Crl.) No.1515/2008 disposed of on 15.1.2009).

8. When the background facts are considered in the light of legal position elaborated above, the inevitable conclusion is that in the present case Exception 4 to Section 300 IPC applies.

9. That being so, the appropriate conviction would be under Section 304 Part I, IPC. The conviction is altered accordingly. Custodial sentence of 10 years would meet the ends of justice.

10. The appeal is allowed to the aforesaid extent.

¹(2003 (5) Supreme 223)

²(2004 (11) SCC 381

³(2007 (11) SCC 218