

# SUPREME COURT OF INDIA

Nafe Singh

Vs.

State of Haryana

(Arijit Pasayat and Asok Kumar Ganguly JJ.)

23.04.2009

## JUDGMENT

**Dr.Arijit Pasayat, J.**

1. Challenge in this appeal is to the judgment of a Division of the Punjab and Haryana High Court dismissing the appeal filed by the appellant.

2. Three accused persons faced trial for alleged commission of offences punishable under Section 302, 323 and 324 read with Section 34 of the *Indian Penal Code, 1860* (in short IPC) for allegedly intentionally causing the death of Bhanwar Singh (hereinafter referred to as the deceased) in furtherance of their common intention and causing injuries to Mukesh (PW.8) and his brother Vinod. The trial court found the accused persons guilty and convicted them for the offences punishable under Sections 302, 323 and 324 read with Section 34 IPC. The appeal was filed by all the three convicted accused persons. Criminal Revision No.474/2005 was filed by the complainant.

3. The prosecution version in a nutshell is as follows:

4. On 30.5.2002, Kanwar Singh (PW.4) complainant along with his brother, namely, deceased Bhanwar Singh was working in the fields known by the name of Yamuna belt. Ram Phal son of Sugna, resident of Goela Khurd, was also ploughing his fields. Besides, the sons of the complainant, namely, Vinod and Mukesh, were also working in the field. At about 12 noon, appellant Nafe Singh armed with a Ballam, Dheeraj armed with a Gandasi and Angrej Singh armed with a lathi, came to their fields and raised a lalkara that Bhanwar Singh be taught a lesson for ploughing the fields, whereafter Nafe Singh gave a Ballam blow to Bhanwar Singh on the right side of his chest on its lateral side lower part, while Deeraj gave a Gandasi blow on his left knee and Angrej gave a lathi blow to him. Upon this, Bhanwar Singh cried Mar Diya Mar Diya and on hearing his noise, Vinod and Mukesh went to rescue their uncle Bhanwar Singh; but they were also inflicted injuries by the above three accused with their respective weapons. When Kanwar Singh - complainant along with Ram Phal intervened, the accused along with their respective weapons fled away from the spot. Accused Nafe Singh while leaving told them that his brothers Sahab Singh and Iqbal Singh has lot of money and can manage the affairs. Kanwar Singh, complainant along with Ram

Phal went to the spot and found his brother Bhanwar Singh lying dead. Thereafter, Hari Singh son of Phula Singh and his wife Kiran Sarpanch who were coming from the fields along with Jhota - Buggi took the injured to village and subsequently, to Civil Hospital, Panipat. Complainant Kanwar Singh made statement exhibits PB before ASI Randhir Singh in regard to the occurrence which led to registration of formal FIR exhibit PB/1 after making an endorsement Ex.PB/2. After commencement of investigation, both the injured, Mukesh and Vinod, were got medico-legally examined and their medical reports exhibits PE and PF were obtained. The police then moved an application Ex. PG for recording their statements and vide endorsement Ex. PG/1 the injured were declared fit to make statement. The police also moved an application Ex. PH/3 for conducting post-mortem on the body of Bhanwar Singh deceased and post-mortem report Ex. PH, was given. Thereafter, a rough site plan, Ex. PH of the place of occurrence was prepared. The dead body of Bhanwar Singh was got photographed and photographs Ex. P3 to Ex. P6 along with their negatives Ex. P7 to Ex.P10 were collected. A scaled site plan of the place of occurrence Ex. PC was got prepared. Blood soaked earth was also collected from the place of occurrence and taken into possession vide seizure memo Ex. PD. Thereafter, proceedings under Section 174 Cr.P.C. were conducted. All the three accused, named above, were arrested out of whom accused Nafe Singh made a disclosure statement Exhibit PQ on the basis of which he got recovered Ballam, Exhibit P/2, which was taken into possession vide recovery memo Ex. PQ/2 after preparing its rough Khaka Ex. PQ/1. Further, the rough site plan of the place of recovery of the said weapon of offence Exhibit PQ/3 was prepared. Later the other two accused namely, Dheeraj and Angrej Singh produced weapons of offence i.e. Gandasi Ex.P1 and Lathi taken into possession vide recovery memos Ex. PS and Ex. PW/1 after preparing their rough khakas Ex. PR and Ex. PR/1 respectively. The police then moved an application Ex. PH/1 for getting opinion from the doctor about the nature of injuries caused to deceased Bhanwar Singh with Ballam and obtained report Ex. PH/2.

5. On completion of investigation, the accused-appellants were charge- sheeted under Sections 302/324/323 read with Section 34 IPC. As the accused pleaded innocence, trial was held. In order to substantiate the accusations, 15 witnesses were examined. The accused persons in their statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the Code) took the plea of innocence and false implication as well as the plea of self-defence. The trial court placed reliance on the evidence of the witnesses and directed conviction. It did not find any substance in the plea that this being a case of free fight, Section 302 will have no application.

6. Questioning the correctness of the judgment of their conviction, three convicted accused preferred appeal before the High Court which was numbered as Appeal No. 87DB of 2005. By the impugned judgment, the High Court altered the conviction of the two accused persons to Section 324 and 323 IPC and considering the period of sentence already served, they were directed to be set at liberty unless required in any other case. The appeal of the present appellant was dismissed.

7. Learned counsel for the appellant submitted that in a case of free fight which has been established by the evidence on record, Section 302 will have no application.

8. In support of his contention, learned counsel has drawn our attention to the law laid down in the case of *Ramkishan v. State of Maharashtra* (2007) 3 SCC 89. Paragraph 10 of the said judgment reads as under: 10. 17. 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 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.

“18. 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 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 a cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

19. 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*<sup>1</sup> 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 by using the blows with the knowledge that they were likely to cause death he had taken undue advantage.

Learned counsel for the respondent, on the other hand, supported the judgment of the High Court.”

9. It is to be noted that in some cases conviction is made in terms of Section 304 Part-I IPC and in some cases conviction is made in terms of Section 304 Part-II IPC.

10. Considering the facts of this case, according to us, the appropriate conviction will be under Section 304 Part-II IPC instead of Section 302 IPC. Ends of justice would be met if the conviction is altered from Section 302 IPC to Section 304 Part II IPC and the custodial sentence is reduced to 7 years R.I. We order accordingly.

11. The appeal is allowed to the aforesaid extent.

<sup>1</sup>(AIR 1993 SC 2426)