

# **SUPREME COURT OF INDIA**

State of M.P.

Vs.

Shivshankar

CrI.A.No.2051 of 2014

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

16.09.2014

## **JUDGMENT**

### **ADARSH KUMAR GOEL, J.**

1. Leave granted.
2. This appeal has been preferred against the Judgment dated 10th July, 2008 of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in Criminal Appeal No.292 of 2005 altering the conviction of the respondent from Section 302 of the Indian Penal Code (IPC) to 304 Part-I of the IPC reducing the sentence from life imprisonment to rigorous imprisonment for seven years while upholding the sentence to pay a fine of Rs.10,000/-, in default to undergo two years further rigorous imprisonment.
3. The case of the prosecution is that on 2nd March, 1999 after celebration of Holi festival, sugar cakes (Batase) were being distributed in front of the house of the complainant by Ramlachhin Gurjar (PW 10). Complainant Remsewak (PW 4) and his brothers Ramnaresh (PW 6), Vinod (PW 7) and deceased Satish were standing near the temple. An altercation took place on account of Mukesh taking some sugar cakes without the permission of PW 10. The respondent slapped PW 4 and his brothers. This led to further altercation between the accused and the complainant party. The accused went inside his house, brought the licensed gun of his brother and fired a shot hitting

the deceased on the stomach. Apart from the accused, acquitted co-accused Shrichand and Shyamsunder had Kattas and Mukesh and Badshah were having 12 bore single barrel guns. The acquitted co-accused also fired in the air. The deceased succumbed to his injuries. Thereafter, Ramsewak lodged First Information Report. After investigation, the accused were sent up for trial. The prosecution case against the respondent was proved by three eye witnesses Ramsewak (PW 4), Ramnaresh (PW 6) and Vinod (PW 7) who were brothers of the deceased, apart from other corroborating evidence. The respondent was convicted under Section 302, IPC while others were acquitted.

4. The respondent preferred an appeal before the High Court, but in view of clear evidence of firing of gun shot by him causing death of the deceased, only challenge was to the nature of the offence. It was submitted that quarrel took place suddenly and the accused had no intention to cause the death of the deceased. Firing in the air by the co-accused showed that the intention was not to cause the death. The accused fired only one shot and in the circumstances no offence under Section 302, IPC was made out.

5. The above plea prevailed with the High Court. It was held as follows :

10. Considering the entire scenario of the case, it is clear that the incident occurred suddenly and without premeditation and therefore it cannot be gathered that the intention of the appellant was to intentionally cause the death of the deceased and therefore, the conviction of the appellant under Section 302 of I.P.C. is not sustainable in law. But at the same time, it is equally important to note that the appellant brought the licensed gun from his house and then he fired which hit over the abdomen of the deceased resulting into his death. Thus, we are of the considered view that looking to the facts and circumstances, this is a case of culpable homicide not amounting to murder which is punishable under Section 304 (part-I) of I.P.C.

6. We have heard learned counsel for the parties.

7. Learned counsel for the State submitted that the view taken by the High Court is patently erroneous in law as the offence under Section 302, IPC was clearly made out. It was not a case of ~fight™ as the deceased side did not cause any assault nor had any

weapon. There was time for the accused to cool down. His conduct in going to his house and bringing the gun and thereafter firing from the said gun clearly established that neither the firing was accidental, nor unintentional nor in the heat of sudden fight. Thus the offence was clearly a murder falling under Section 302, IPC and not falling in any of the exceptions. Reliance has been placed on judgment of this Court in State of Orissa Vs. Khaga Alias Khageswar Naik & Ors. [1] 8. Learned counsel for the respondent supported the view taken by the High Court.

9. After due consideration of the rival submissions, we are of the view that the High Court has clearly erred in holding that the offence falls under Section 304 Part-I, IPC.

10. It is clear from the case of the prosecution mentioned above that the accused first slapped the complainant which was followed by verbal abuses and thereafter the accused brought the licensed gun and fired at the deceased, who died. It was, thus, a voluntary and intentional act of the accused which caused the death. Intention is a matter of inference and when death is as a result of intentional firing, intention to cause death is patent unless the case falls under any of the exceptions. We are unable to hold that the case falls under Exception 4 of Section 300, IPC as submitted by learned counsel for the respondent. Exception 4 is attracted only when there is a fight or quarrel which requires mutual provocation and blows by both sides in which the offender does not take undue advantage. In the present case, there is no giving of any blow by the complainant side. The complainant side did not have any weapon. The accused went to his house and brought a gun. There is neither sudden fight nor a case where the accused has not taken undue advantage.

In State of A.P. v. Rayavarapu Punnayya [2] , it was held : 12. In the scheme of the Penal Code, culpable homicide is genus and murder its specie. All murder is culpable homicide but not vice-versa. Speaking generally, culpable homicide sans special characteristics of murder, is culpable homicide not amounting to murder. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the greatest form of culpable homicide, which is defined in Section 300 as murder. The second may be termed as culpable homicide of the second degree. This is punishable under the first part of Section 304. Then, there is culpable homicide of the third degree. This is the lowest type of

culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

13. The academic distinction between murder and culpable homicide not amounting to murder has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. In *Bhagwan Munjaji Pawade v. State of Maharashtra* [3] , this Court held as under :

6. . It is true that some of [pic]the conditions for the applicability of Exception 4 to Section 300 exist here, but not all. The quarrel had broken out suddenly, but there was no sudden fight between the deceased and the appellant. ~Fight™ postulates a bilateral transaction in which blows are exchanged. The deceased was unarmed. He did not cause any injury to the appellant or his companions. Furthermore no less than three fatal injuries were inflicted by the appellant with an axe, which is a formidable weapon on the unarmed victim. Appellant, is therefore, not entitled to the benefit of Exception 4, either. In *In Sridhar Bhuyan v.*

*State of Orissa* [4] , this Court held as under :

7. 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 [pic]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.

8. 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<sup>TM</sup>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<sup>TM</sup>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 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 a cruel or unusual manner. The expression undue advantage as used in the provision means unfair advantage.

Similar observations were made in *State of Orissa v. Khaga alias Khageswar*

Naik and Ors. (supra), which reads as under :

8. The rival submission necessitates examination of Exception 4 to Section 300 IPC, same reads as follows:

300. Murder.”\* \* \* Exception 4.”Culpable homicide is not murder if it is committed without premeditation in a 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.

[pic]Explanation.”It is immaterial in such cases which party offers the provocation or commits the first assault. From a plain reading of the aforesaid Exception it is evident that it shall be attracted only if the death is caused (i) without premeditation, (ii) in a sudden fight and (iii) in a heat of passion upon a sudden quarrel. If all these ingredients are satisfied, the Exception will come into play only when the court comes to the conclusion that the offender had not taken undue advantage or acted in a cruel or unusual manner. Above all, this section would be attracted when the fight had taken place with the person killed.

9. The aforesaid view finds support from a judgment of this Court in Pappu v. State of M.P.<sup>2</sup> in which it has been held as follows: (SCC pp. 394-95, para 13)  
13. 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 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.

11. Then, can it be said that the crime has been committed in a heat of passion? If time

is taken to cool down, then the crime cannot be said to have been committed in a heat of passion. It is the specific case of the prosecution, which in fact, has also been accepted by the High Court that when her father Tikeswar abused them, the accused Khageswar being annoyed brought a budia from his house, which is nearby, and dealt blows to her father and the accused Dusasan brought a lathi and assaulted her father. This clearly shows that both the convicts had sufficient time to cool down and therefore, it cannot be said that the crime was committed in a heat of passion. The above observations fully support the view that the present case falls under Section 302, IPC.

Accordingly, we allow this appeal, set aside the judgment of the High Court and restore that of the trial Court, i.e., 5th Additional Sessions Judge, Bind, Madhya Pradesh in Sessions Trial No.285 of 1999. The respondent stands convicted under Section 302, IPC and sentenced to undergo Life Imprisonment and to pay fine imposed by the Courts below, in default to undergo further imprisonment as directed by the Courts below.

[1] (2013) 14 SCC 649

[2] (1976) 4 SCC 382

[3] (1978) 3 SCC 330

[4] (2004) 11 SCC 395