

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : August 25, 2009

+ **CRIMINAL APPEAL NO.418/2009**

KISHAN @ RAJU Appellant
Through: Mr.Sumeet Verma, Advocate.

Versus

THE STATE (GOVT OF NCT) Respondent
Through: Mr.Sunil Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE AJIT BHARIHOKE

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether the judgment should be reported in Digest ? | No |

SANJAY KISHAN KAUL, J.(ORAL)

1. A momentary fit of anger caused the unfortunate loss of life of a 17 years old young boy and the incarceration of the appellant for a period of eight years and five months who was also about the same age.

2. One Sachin Tyagi and his friend Pawan Tyagi had boarded a bus at about 8.45 a.m. on 7.2.2001 near Mont Fort School, Ashok Vihar. Pawan Tyagi wanted to purchase a ticket for Rs.6/- and gave the said amount to the appellant who was a helper in the bus. The helper refused to do so and retorted that he was not Pawan's father's servant. This resulted in an altercation. The

appellant called out to the driver of the bus Vinod Kumar and the bus was stopped. Vinod Kumar held Pawan by the collar and the appellant took out an iron rod from under the seat of the conductor and struck a single blow on his head which ultimately resulted in his death after hospitalisation.

3. The appellant and Vinod Kumar were charged and pleaded not guilty. On conclusion of trial, the appellant was convicted under Section 302 of the IPC while Vinod Kumar was found not to have a common intention which could be proved beyond reasonable doubt and thus was accordingly acquitted. The appellant has thereafter preferred the present appeal.

4. Learned counsel for the appellant has confined his submissions to the offence being punishable under Section 304 Part II of the IPC and not under Section 302 of the IPC. The appellant is present in the Court and the limited arguments have been advanced on his instructions.

5. Learned counsel for the appellant has submitted that the evidence led in respect to the aforesaid factual matrix shows that a single blow with an iron rod was caused by the appellant on the deceased Pawan Tyagi which resulted in the hospitalization of the deceased and the death was a consequence after 17 days. The case against the appellant was initially registered in the FIR under Section 308 of the IPC (an attempt to commit culpable homicide not amounting into murder) and not under Section 307 of the IPC (an attempt to murder), but after the deceased passed away the

same was converted into one under 302 IPC. Learned counsel seeks to take benefit of Exception 4 of Section 300 of the IPC.

6. In order to appreciate the aforesaid plea, we consider it necessary to extract the relevant Section.

“300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

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 offenders having taken undue advantage or acted in a cruel or unusual manner.”

7. The submissions learned counsel for the appellant is that the incident occurred without any pre-meditation in a sudden fight in the heat of moment, when the appellant after taking six rupees refused to assist the deceased in getting the tickets from the conductor and also refused to refund the amount. This resulted in stopping of bus by the driver, who came down and caught hold of the deceased while the appellant struck him with an iron rod taken out from under the seat of the conductor.

8. Learned counsel for the appellant in support of his plea has referred to the judgments of the Apex Court. Learned Counsel submitted by relying on **Tholan Vs. State of Tamil Nadu, 1984 SCC(Criminal) 164**, that where in a sudden fight a single blow given with a knife was held to fall within Section 304 Part II of the IPC, a sudden fight like the present one where a single blow is

given on the head would also invite the same provision. The relevant observations are reproduced as under:-

“There arose a situation in which appellant probably misguide by his own egocentric nature objected as to why Sampat should ask him to leave the place and in this background he gave one blow with a knife which landed on the right side chest of the deceased, which has proved fatal. Could the appellant be said to have committed murder? In other words, whether Part I or Part III of Section 300., I.P.C. would be attracted in the facts of this case. Even Mr. Rangam learned Counsel for the State of Tamil Nadu could not very seriously contend that the appellant intended to commit murder of Sampat. His submission was that at any rate appellant when he wielded a weapon like a knife and gave a blow on the chest, a vital part of the body, must have intended to cause that particular injury and this injury is objectively found by the medical evidence to be fatal and therefore Part III of Section 300 would be attracted. On this aspect, the decisions are legion and it is not necessary to recapitulate them here merely to cover idle parade of familiar knowledge. One can profitably refer to Jagrup Singh v. State of Haryana, Randhir Singh v. State of Punjab ;, Kulwant Rai v. State of Punjab and Hari Ram v. State of Haryana. To this list two more cases can be added Jagtar Singh v. State of Punjab and Ram Sunder v. State of U.P. Having regard to the ratio of each of these decisions, we are satisfied that even if Exception I is not attracted the requisite intention cannot be attributed to the appellant. But in the circumstances herein discussed he wielded a weapon like a knife and therefore he can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. In such a situation, he would be guilty of committing an offence under Section 304 Part II of the Indian Penal Code. Having regard to the circumstances of the case a sentence of 5 years would be quite adequate.”

9. Learned counsel also referred to the elucidation in respect of the 4th exception of Section 300 of the IPC made in **Ravindra Shalik Naik & Ors. Vs. State of Maharashtra, 2009 (2) Scale 354** in para 6 as under:-

“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*, (2003) (5) Supreme 223, *Parkash Chand v. State of H.P.* (2004) (11) SCC 381,; *Byvarapu Raju v. State of A.P. and Anr.*, (2007) (11) SCC 218 and *Buddu Khan v. State of Uttarakhand SLP* (Crl.) No. 6109/08 disposed of on 12.1.2009”

10. Lastly, learned counsel has referred to **Pappu Vs. State of M.P., 2009 (4) Scale 521** to make out a distinction between the offence of murder as against culpable homicide not amounting to murder as defined under Section 300 of the IPC in the following terms:-

“7. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC 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 the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, ‘culpable homicide of the first degree’. This is the gravest 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.

8. The academic distinction between `murder' and `culpable homicide not amounting to murder' has always vexed the Courts. 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 minute 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. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide	Subject to certain exceptions
if the act by which the death is	culpable homicide is murder
caused is done -	if the act by which the
	death is caused is done -

INTENTION

(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

KNOWLEDGE

(c) with the knowledge that the act is likely to cause death.	4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.
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11. In the above referred case, the exchange of hot words between the accused and the deceased resulted in a shot being fired resulting in an injury on the chest of the deceased which was held to be a fit case for conviction under Section 304 Part II of the IPC with a custodial sentence of eight years.

12. The legal principles enunciated aforesaid, in our considered view, would squarely apply to the facts of the present case which is a case of a single blow at the heat of the moment. There was no previous rivalry or altercation between the appellant and the deceased. The parties are not known to each other. The deceased was travelling in public transport where the appellant was a helper. The demand by the deceased for the helper to assist him in getting the ticket resulted in an altercation and the appellant calling for help from the driver. The bus was stopped and the deceased was collared by the driver when the appellant gave him a single blow with the iron rod which was already lying under the seat of the conductor. There was no pre-meditated act.

13. The case thus, squarely, falls within the 4th exception to Section 300 IPC and thus the appellant is liable to be convicted under Part II of Section 304 of the IPC and not under Section 302 IPC. We imposed a sentence of 8 years which would suffice in the given facts of the case and the sentence and the fine imposed in terms of the impugned judgment accordingly stands modified.

14. The appeal is allowed to the aforesaid extent and the appellant be released forthwith if not wanted in any other case as

he has already completed that period of incarceration as per the nominal roll.

15. A copy of the order be sent expeditiously to the Superintendent, Tihar Jail.

SANJAY KISHAN KAUL, J.

AUGUST 25, 2009
gm

AJIT BHARIHOKE, J.