

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

Judgment delivered on: March 20, 2014

+ **CRL.A. 666/2009**

VINOD @ CHAVANI Appellant

Through: Mr. Jaideep Malik, Advocate

versus

STATE (GOVT. OF NCT) OF DELHI Respondent

Through: Mr. Sunil Sharma, APP for the
State

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

KAILASH GAMBHIR, J.

1. Challenge in the present appeal is the impugned judgment and order on sentence dated 16.01.2008, whereby the learned Additional Sessions Judge had convicted the appellant for the commission of offence punishable under Section 302 of Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) and sentenced him to undergo imprisonment for life together with fine of Rs.5,000/- or in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

2. The case of the prosecution in brief is reproduced as under:-

On 14.02.2005. Constable Ashok Kumar, while posted at PS Mangolpuri, was on duty in F and G block, Magolpuri as Beat constable. The constable was present near masjid of F block mangolpuri. At 8.30 p.m, he heard alarm being raised 'killed-killed'. This alarm attracted him towards the place from where the alarm was emanating. Constable Ashok Kumar then saw the accused with a knife in his right hand. The accused was trying to run away. The Constable tried to catch hold of him, but in vain as the accused entered a park of F-Block and then vanished. The Constable then came to the shop of junk dealer, situated at F-939, Mangolpuri, where he found Tarsem Singh lying injured in front of his shop. Blood was oozing out of the left side of his abdomen. On enquiry, Tarsem Singh, the injured, told the Constable that the accused hurled abuses at him, threatened him and then stabbed him with an intent to kill him. In the meanwhile, Pawan son of Tarsem Singh also reached there. The Constable accompanied by PW-2, Pawan removed his father Tarsem Singh to Sanjay Gandhi Memorial Hospital in an auto-rickshaw and got him admitted there. Uniform of the Constable got stained with blood in that process. On 14.02.2005, Dr. Indira conducted medico legal examination on the person of Tarsem Singh and prepared MLC. On the

same day, Dr. Sanjay Kumar surgically operated upon Tarsem Singh and appended his report on MLC. DD No. 83 B was recorded at PS Mangolpuri on the basis of information received from SGM Hospital regarding admission of Tarsem Singh, in injured condition, after a quarrel at the junk dealer's shop in F-Block, Masjid wali street. On the basis of this information, SI Mahender Singh accompanied by Constable Kulwinder Singh reached SGM Hospital and found Tarsem Singh lying injured in the hospital. Constable Ashok Kumar and PW-2, Pawan met the SI in that hospital. The constable represented himself to be an eye witness of the incident and made a statement. SI Mahender Singh then appended rukka to the statement and sent the same to the police station through constable Kulwinder and on that basis registered an FIR. SI further recorded statements of duty constable Raja Ram and also of PW-2, Pawan. SI further collected sealed parcel purported to contain a shirt and baniyan of Tarsem Singh alongwith sample seal and another sealed parcel purported to contain sample of blood of Tarsem Singh. On 16.02.2005 another DD no. 33B was recorded to the effect that Tarsem Singh injured has been declared dead. Dead body was identified by Rajinder and Pawan, brother and son of Tarsem Singh respectively.

Inquest proceedings were carried out in the mortuary of SGM Hospital. Prima facie case having been made out, charge for an offence under section 302 IPC was framed against the accused. The accused pleaded not guilty and claimed trial.

3. To prove its case the prosecution had examined 19 witnesses. Statement of the accused was recorded by the learned Trial Court under Section 313 Cr.P.C. Accused was confronted with the entire incriminating evidence produced against him and in response to various questions, the defence raised by the accused was of false implication and denial of knowledge about many incriminating facts. In response to question No. 30 the stand taken by the accused was that in the year 2004 police of P.S. Mangolpuri had falsely implicated him in a case in which he was acquitted. He further stated that he was given injuries on his head by the police and when he was produced before the Court in connection with a case of theft he narrated the entire incident to the Magistrate. He further stated that it was thereafter, that he was threatened by the police with false implication in a criminal case i.e. how he was made an accused in the present case. Limited to the raising of the said plea of false implication the accused, however, lead no evidence in his defence.

4. The appellant in this case was represented through Mr. Jaideep Malik, Advocate. While the State was represented through Mr. Sunil Sharma, learned APP for the State.

5. Mr. Jaideep Malik, learned counsel for the Appellant at the very outset very fairly conceded to the conviction of the appellant for committing murder of the deceased and confined his arguments for converting the offence from Section 302 IPC to Section 304 Part II IPC after taking recourse to exception 4 of Section 300 IPC. Elaborating his submission, counsel contended that the case of the prosecution is based on circumstantial evidence as nobody had seen the actual occurrence of the crime and the exact events, which led to the commission of the said crime. Counsel also submitted that as per the deposition of PW-9, Constable Ashok Kumar the deceased told him that the accused Vinod @ Chawani, while hurling abuses at him and threatening him, stabbed him, with intent to kill him and this deposition of PW-9 clearly demonstrates that a sudden quarrel had taken place between the accused and the deceased and the act was committed by the appellant in a fit of passion without their being any premeditation. Counsel also argued that prosecution has failed to adduce any evidence to prove any motive on the

part of the accused, which could have led him to commit the murder of the deceased. Counsel also argued that accused had not taken any undue advantage or acted in a cruel manner at the time of causing injuries to the deceased. Counsel thus submitted that the case as proved by the prosecution even if it is accepted in its entirety, the same at best can lead to conviction of the appellant under Section 304 Part II IPC and not under Section 302 IPC as all the four pre-requisites of exception 4 of Section 300 IPC are fully satisfied.

6. Based on the above submissions counsel for the appellant urged for converting the conviction of the appellant from Section 302 to Section 304 Part II IPC and accordingly to modify the sentence from life imprisonment to the period of sentence already undergone by the appellant.

7. Per contra, Mr. Sunil Sharma, learned APP for the State submitted that learned Trial Court has rightly convicted the appellant for committing offence under Section 302 IPC and there exist no circumstance to scale down the offence from Section 302 IPC to Section 304 IPC Part I or II of IPC. Counsel further argued that it was a case of cold blooded murder of deceased Tarsem Singh at the hands of the

appellant, who had inflicted penetrating injuries on the vital parts of chest and abdomen of the deceased with a sharp edged weapon of offence i.e. knife which had a blade of 14.5 cm. Contention raised by learned APP for the State was that none of the ingredients of exception 4 of Section 300 IPC can be attracted in the facts of the present case, therefore, offence committed by the appellant does not deserve conversion from Section 302 IPC to Section 304 Part I or II IPC.

8. Based on these submissions learned APP for the State urged for upholding the impugned judgment and order of sentence passed by the learned Trial Court.

9. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them.

10. The case of the prosecution was based on circumstantial evidence and one of the star witness of the prosecution was PW-9 Constable Ashok Kumar who himself saw the accused running away from the spot after committing the crime. PW-9 made all efforts to apprehend the accused but somehow he escaped with a weapon of offence in his hands after having entered in a nearby park of 'F'Block, Mangolpuri. PW-9

thereafter, returned at the spot and found the victim Tarsem lying in an injured condition in front of his shop and the blood was oozing out from the left side of his abdomen. As per the deposition of PW-9, the victim Tarsem held the accused responsible for inflicting the knife blows with an intention to kill him. PW-9 with the help of the son of the victim also removed him to Sanjay Gandhi Memorial Hospital and after his admission in the hospital, returned back at the spot accompanying SI Mahender Singh. Learned trial court after placing reliance on the well defined principles to prove a case based on circumstantial evidence spelled out the following circumstances which complete the chain of circumstantial evidence unerringly pointing out the guilt of the accused and totally inconsistent with the innocence of the accused and the same are as under:-

- i) *That Constable Ashok Kumar saw the accused running away from the spot soon after the occurrence and that he made good his escape with the weapon of offence by entering into a nearby park despite chase by the constable;*
- ii) *That the accused was apprehended on 25.2.2005 by ASI Subey Singh and in pursuance of his disclosure statement, he led the police*

party to a place near Guru Nanak Public School got recovered the weapon of offence i.e. the knife Ex.PW19/2 and thereafter jersey Ex.PW19/1 from his house;

- iii) That he was absconding from 14.2.2005 to 24.2.2005;*
- iv) That as per expert evidence, knife Ex.PW19/2 was used in inflicting injuries on the person of Tarsem Singh;*
- v) That from the medical evidence, it stands established that Tarsem Singh died because of haemorrhagic and septicaemic shock alongwith respiratory embarrassment by collapse consolidation of lungs following penetrating injuries of the chest and abdomen;*
- vi) That blood stains observed on the shirt and baniyan of the deceased tallied with the blood stains observed on the knife and were of same blood group.*

11. As already stated above, learned counsel for the appellant has chosen not to challenge the impugned judgment passed by the learned trial court so far as the involvement of the appellant is concerned in committing the offence of murder, still for our satisfaction, we have

carefully gone through the impugned judgment passed by the learned Trial Court and the entire material on record to re-assess the reasoning given by the learned Trial Court in holding the appellant guilty for committing an offence of murder. On appreciation of the same, we do not find any illegality or perversity in the findings given by the learned Trial Court in holding the appellant guilty for an offence of murder.

12. We are now left with the only question as has been canvassed by counsel for the appellant, i.e., whether the appellant has been rightly convicted for the capital offence punishable under Section 302 of IPC and if not, whether the offence committed by the appellant would constitute a lesser offence falling within exception 4 to Section 300 of IPC and punishable under Section 304 (Part I) or under Section 304 (Part II) of the IPC.

13. To appreciate the above contention raised by learned counsel for the appellant, it would be relevant to reproduce section 300 IPC, which reads as under:-

"Section 300: 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—

Secondly.—If it is done 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—

Thirdly.—If it is done 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—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

*Exception 1.—**When culpable homicide is not murder.**—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation

Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

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

Explanation

It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

14. As would be seen from a bare look of the said provision, it lays down the following four requirements, which must be satisfied for an offence falling under the said exception. The same are as under:-

- a. It was a sudden fight.
- b. There was no pre-meditation
- c. The act was done in a heat of passion.
- d. The offender having taken undue advantage or acted in a cruel or unusual manner.

15. For the application of exception 4 to section 300 IPC, all the aforesaid prerequisites must be tested in all probabilities and in the absence of existence of any of the four prerequisites, exception 4 to section 300 IPC will have no application. It is thus not sufficient to show that there was a sudden quarrel and there was no pre-meditation but it must be further 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'. Dealing with the said exception 4 to section 300 IPC the Hon'ble Apex Court in ***Ghappu Yadav and ors. Vs. State of M.P., (2003) 3 SCC 528*** has held as under:-

...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. Indian Penal Code is not defined in the Indian Penal Code. 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'.

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...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused Appellants had come prepared and armed for attacking the deceased....This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section 300 Indian Penal Code is clearly applicable...

16. Reference may also be made to the decision of the Hon'ble Apex Court's judgment in ***Pulicherla Nagaraju @ Nagaraja Reddy vs. State of Andhra Pradesh, (2006) 11 SCC 444***, where the court spelt out some of the circumstances to find out whether there was any intention to cause death on the part of the accused and relevant paragraph of the same is reproduced as under:-

...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls Under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the

spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention...

17. In the background of the aforesaid legal position, let us now closely examine the facts of the case at hand and see whether the same are covered within the parameters of exception 4 to section 300 of IPC. There is neither any evidence on record to show that some sudden fight had taken place between the appellant and the deceased, due to which in a heat of passion the appellant had committed his murder, nor any pre-meditation on the part of the appellant to carry out the murder of the deceased has been proved. Through the evidence of PW-9 and PW-3, it

was proved that before his death, the deceased Tarsem told them that the accused while hurling abuses at him threatened him, stabbed him with an intent to kill him. Defence also failed to lead any evidence to show that some sudden fight had taken place between two of them to provoke the accused and in the heat of passion he started inflicting blows with a knife. In the absence of any such evidence on record, the injuries which were inflicted by the accused on the body of the deceased clearly demonstrate the intention of the appellant for committing a particular nature of crime. The post mortem of the deceased was conducted by PW-4 – Dr. Sameet Pandit, Medical Officer, Sanjay Gandhi Memorial Hospital and the same was proved on record as Ex.PW-4/A in his evidence. As per the post mortem report, the following external injuries on the body of the deceased were noticed:-

- (1) *Incised cut mark with sharp edges present on the left side of lower part of chest, in mid axillary region, spindle shape, placed transversally at about 16 cms below and lateral to left nipple in 7 intercostal space, 1.5 x 0.5 cms in size, has two stitches and is cavity deep.*
- (2) *Incise cut mark on left lower quadrant of abdomen about 12 cms from umbilicus numbering two about 1.5 x 0.5 cms each placed parallel and transversally at two cms distance apart, both are cavity deep having one stitch each (?Drainage)*
- (3) *Incise cut mark right side of abdomen about 16 cms, lateral to umbilicus, transversally placed about 1.5 x 0.5 cms, size having one stitch is cavity deep .*
- (4) *Surgical left laprotomy wound along the median*

plane of abdomen 20 cms with left lateral transverse extension of about 15 cms above umbilicus having 23 and 15 stitches respectively."

18. On the internal examination of the body of the deceased, in the post mortem, the doctor found as under:-

"(i) Head: Scalp and skull bones were found normal. Brain was pale,

(ii) Neck: Hyoid bone, thyroid, cricoids cartilages, tracheal rings were found normal. Soft tissues were also normal.

(iii) Chest: On exposing external injury number 1 on left side after penetrating intercostals muscles and connective tissues passes into left chest cavity and further through left crus of diaphragm into abdomen. Left side of chest found containing 500 mls. Of blood. Left lung found to have collapsed while right lung was found pale and showed pockets of pus formation in lower lobe. Heart was found normal.

(iv) Abdomen and Pelvis: Liver was found enlarged and pale, gave gritty feel on cut section, Spleen was blacken due to ischemia and softened. Kidneys, both were found pale, left showed small cyst. Pancreas showed stitch marks near the neck. Stomach contained about 50 mls of blood, mucosa was found normal. Bowls, small intestines showed repairing on three sites on left side. Large intestine showed blackening with ischemia of left half of transverse, left and upper part of descending colon with repairs of transverse mesocolon. Superior mesenteric vessels showed stitch marks and repairing near pancreas. Urinary bladder and rectum were empty. Genital organs were found normal."

19. The cause of death as was opined by the doctor in the post mortem was haemorrhagic and septicaemia shock along with respiratory embarrassment by collapse consolidation of lungs following penetrating injuries of the chest and abdomen. All the injuries on the body of the

deceased were found to be ante-mortem injuries.

20. The above injuries were inflicted by the appellant with the help of a knife. The sketch of the knife was proved on record as Ex.PW-14/B and according to the sketch, the length of the blade of the knife was 14.5 cm and total length of the knife was 25.5 cm. This knife was shown to PW-3 – Dr. Sanjay Kumar, Senior Resident, Sanjay Gandhi Memorial Hospital during his examination-in-chief and on examining the knife and the MLC of the deceased, he opined that the stabbed wound observed on the person of the deceased – Tarsem Singh could be possible because of the use of that knife. In his cross-examination also, PW-3 deposed that the dimension of the stabbed wound totally tallies with the dimension of the knife. The length of the knife which was used by the appellant is of a large size and this is so evident from the nature of injuries, which were inflicted by the appellant on the body of the deceased. Injury No.1 which was inflicted on the left side of the lower portion of chest, in middle axillary region, spinal shape, placed transversally at about 16 cms below and lateral to left nipple in 7 intercostal space, 1.5 x 0.5 cms in size, had two stitches and was cavity deep. PW-4 also stated that the injury went from chest further to the abdomen. Not only the injury No.1 which was at

a vital part of the body of the deceased but even the injuries at No.2, 3 and 4 were inflicted in the abdomen of the deceased and such kind of penetrating injuries inflicted on the chest and abdomen of the deceased clearly reflect the intention on the part of the accused to have caused such injuries which were sufficient to kill the deceased in the ordinary course of the nature. As per the case of the prosecution, the deceased was not armed with any weapon of offence and it was the accused only, who started inflicting blows with a knife on the body of the deceased in a brutal manner.

21. The deceased was extended immediate medical treatment but remained totally unconscious during the period of his treatment and ultimately succumbed to his injuries just within a period of two days.

22. The occasion must be sudden and not as a cloak for pre-existing malice. It is necessary that all the ingredients of sudden fight, absence of pre- meditation and no undue advantage or cruelty are established (***Ref: Rajender Singh V. State AIR 2000 SC 1779***). The question as to whether the accused had taken an undue advantage and acted brutally or in a cruel manner is a question of a fact and in order to analyse this aspect, it is important to plausibly assess the various circumstances.

23. In *Suresh Chandra Vs. State of Uttar Pradesh*, reported in (2005)6SCC130, the Hon'ble Supreme Court dealing with a similar issue held as under:

6. On this aspect, learned counsel for the appellant contended that the Exception 4 to Section 300 IPC is attracted. Exception 4 reads as under :

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

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

7. Learned counsel for the appellants submits that the incident had happened without any premeditation or prior concert, upon a sudden quarrel and the resultant attack on the victims was unintentional and, therefore, the offence would appropriately fall under Exception 4 punishable under Section 304 Part I or II. We find it difficult to countenance this argument. Though there was absence of premeditation and it was a case of sudden fight, that is not sufficient to bring the offence committed by the accused within the purview of Exception 4. The further requirement of Exception 4 that the offender should not have taken undue advantage or acted in a cruel or unusual manner should be satisfied. The very fact that the accused-appellants used the fire arms in the course of a frivolous quarrel triggered off by the sarcastic remarks of Ravindra Singh would demonstrate beyond doubt that the appellants acted in a cruel manner and it would further demonstrate the intention to cause death or at any rate, to cause a bodily injury of the nature mentioned in clause thirdly of Section 300. Such intention is writ large on the acts done by the accused. Thus, it is a case in which Clauses I to III of Section 300IPC are attracted and, as already observed, Exception 4 would not come to the rescue of the appellants for the reason that they have acted in a cruel and unusual manner by shooting at unarmed victims who merely indulged in a verbal duel with

them. The fact that the other two accused who were said to have exhorted the three appellants to attack the members of the other party were acquitted has no material bearing on the question whether the appellants could be given the benefit of Exception 4. Thus, the argument in regard to the nature of offence cannot be sustained. On the facts of this case, it is only Section 302 IPC that is attracted."

24. Reiterating the law laid down in the case of ***Kikar Singh V. State***, ***AIR 1993 SC 2426(1)***, the Hon'ble Apex Court in the case of ***Naveen Chandra V. State of Uttaranchal***, ***AIR 2007 SC 363*** held as under:

"9. 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 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'.

10. 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: 1993CriLJ3255 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 using the blows with the knowledge that they were likely to cause death, he had taken undue advantage. In the instant case blows on vital parts of unarmed persons were given with brutality. The abdomens of two deceased persons were ripped open and internal organs come out. In view of the aforesaid factual position, Exception 4 to Section 300 I.P.C. has been rightly held to be inapplicable.

The above position was highlighted in Babulal Bhagwan Khandare and Anr. v. State of Maharashtra (2005)10SCC404."

11. Considering the background facts in the backdrop of legal principles as set out above, the inevitable conclusion is that 4th Exception to Section 300 IPC does not apply."

25. Taking the cumulative view of the facts of the present case and the legal position discussed above, we are not persuaded with the contention raised by learned counsel for the appellant that the case of the appellant can lie within the ambit of exception 4 to Section 300 IPC, as none of the ingredients and prerequisites laid down therein are attracted to the facts of the present case.

26. We find ourselves in complete agreement with the reasoning given by the learned trial court in holding the appellant guilty for committing an offence punishable under Section 302 IPC and sentencing him

accordingly. Therefore, finding no merit in the present appeal, the same is dismissed.

27. A copy of this order be sent to Jail Superintendant to convey the fate of the appeal to the appellant.

KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

MARCH 20, 2014

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