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JUSTICE ANIS CRIMINAL APPEAL No. 631 OF 2010 JUDGMENT: (Per the Hon'ble Sri Justice K.C.Bhanu) 1. This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment dated 22.02.2010 in

against the accused. At the relevant point of time, PW2 was working as Junior Assistant, whereas PW3 was working as Extension Officer and PW4 was working as Senior Assistant in the office of M.P.D.O., Alampur. Since it is a working day, their presence at the scene of occurrence cannot be doubted unless contrary is proved. There is no such contra evidence. Further, they were examined during the course of inquest which was conducted on the same day from 4.00 to 6.00 p.m. Therefore, even four hours after the incident, the names of these witnesses were found place in the inquest report. Further, there is no other reason to doubt their presence at the time of incident. Similarly, it is not shown that these witnesses PWs 2 to 4 had entertained any motive or enmity against the accused so as to implicate him in a case of this nature. Their evidence is very clear that on the date of incident, the accused went to the office of M.P.D.O. of PW1 and questioned the deceased as to why he did not deal with his leave application, for which the deceased replied that he was busy with preparing the bill and it can be discussed later. On that, the accused took out an axe from umbilical portion of abdomen and hit on the head and neck of the deceased, as a result the deceased sustained bleeding injuries. Thereafter, the accused left the place by carrying the axe with him. Nothing has been elicited from these witnesses to discredit their testimony in view of the fact that their presence at the time of incident has been established and there is every possibility for them to identify the accused who is known to them since he was also working as a teacher in the same Mandal, and the accused is not a stranger to these witnesses. In the entire cross-examination of these witnesses, nothing has been elicited so as to doubt their evidence. Therefore, from the evidence of PWs 2 to 4, it is established beyond all reasonable doubt that it is the accused who carried axe with him and caused injuries on the head and neck of the deceased. 15. From the evidence of PW13, it is also established that MO1 was used in the commission of offence, because as seen from Ex.P.12, MO1 contained 'O' group blood. The clothes of the deceased were also subjected to the examination by the Serologist. The clothes of the deceased viz., white colour terry cotton half sleeved shirt and white colour sleeved banian contained bloodstains of 'O' group. Therefore, it is established beyond all reasonable doubt that MO1 axe was used in the commission of offence which incriminates against the accused for the reason he produced the weapon when he surrendered before the police from his waist which was tied with an elastic band. Concealment of weapon of offence is exclusively within the knowledge of the accused. 16. As seen from the evidence of PW13 coupled with the evidence of mediator PW11, it is clear that MO1 was produced by the accused. Therefore, from the evidence on record, it is clear that the accused is the assailant of the deceased by causing injuries with MO1 axe. The medical evidence supports the case of ocular evidence as the doctor has specifically stated that the injuries noticed by him in Ex.P.13 can be caused by a weapon like MO1. 17. Now, it has to be seen whether the case falls under Exception 4 to Section 300 I.P.C. or not as contended by the learned counsel for the appellant or it amounts to a culpable homicide not amounting to murder under Section 300 I.P.C. For invoking Exception 4 of Section 300 I.P.C., it must be shown that it is a culpable homicide not amounting to murder; there must be a sudden fight; in the sudden fight, without any pre-meditation; upon sudden quarrel, the accused caused injury; the accused has not taken any undue advantage of the situation; and the accused must not have acted in a cruel manner. These aspects have been clearly stated by various decisions cited by the learned counsel for the appellant. In a decision reported in Surinder Kumar Vs. Union Territory, Chandigarh the Hon'ble Supreme Court held at Paras 6 and 7 as under: "6. Exception 4 to Section 300 reads as under: 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 under 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. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight ; (ii) there was no premeditation ; (iii) the act was done in a heat of passion ; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. In the present case, the deceased and PW 2 had entered the room occupied by Sikander Lal and his family members and had demanded vacant possession of the kitchen. When they found that the appellant was disinclined to handover possession of the kitchen, PW 2 quarrelled and uttered filthy abuses in the presence of the appellant's sister. On the appellant asking him to desist he threatened to lock up the kitchen by removing the utensils, etc., and that led to a heated argument between the appellant on the one side and PW 2 and his deceased brother on the other. In the course of this heated argument it is the appellant's case that PW 2 took out a knife from his pant pocket. This part of the appellant's case seems to be probable having regard to the antecedents of PW 2. It is on record that PW 2 was convicted at Narnaul on two occasions under Section 411, IPC and his name was registered as a bad character at the local police station. It was presumably because of this reason that he had shifted from Narnaul to Chandigarh a couple of years back and had started to live in the premises rented by PW 4. When the appellant found that PW 2 had taken out a pen knife from his pocket he went into the adjoining kitchen and returned with a knife. From the simple injury caused to PW 2 it would appear that PW 2 was not an easy target. That is why the learned Sessions Judge rejected the case that Amrit Lal had held PW 2 to facilitate an attack on him by the appellant. It further seems that thereafter a scuffle must have ensued on Nitya Nand intervening to help his brother PW 2 in which two minor injuries were suffered by the deceased on the left arm before the fatal blow was inflicted on the left flank at the level of the 5th rib about 2" below the nipple. It may incidentally be mentioned that the Trial Court came to the conclusion that the injury found on the neck of PW 2 was a self-inflicted wound and had therefore acquitted the appellant of the charge under Section 307, IPC. against which no appeal was carried. We have, however, proceeded to examine this matter on the premise that PW 2 sustained the injury in the course of the incident. From the above facts, it clearly emerges that after PW 2 and his deceased brother entered the room of the appellant and uttered filthy abuses in the presence of the latter's sister, tempers ran high and on PW 2 taking out a pen knife the appellant picked up the knife from the kitchen, ran towards PW 2 and inflicted a simple injury on his neck. It would be reasonable to infer that the deceased must have intervened on the side of his brother PW 2 and in the course of the scuffle he received injuries, one of which proved fatal. Taking an over all view of the incident we are inclined to think that the appellant was entitled to the benefit of the exception relied upon. The High Court refused to grant him that benefit on the ground that he had acted in a cruel manner but we do not think that merely because three injuries were caused to the deceased it could be said that he had acted in a cruel and unusual manner. Under these circumstances, we think it proper to convict the accused under Section 304, Part I, IPC and direct him to suffer rigorous imprisonment for 7 years." In a decision reported in Mahesh Vs. State of M.P., the Hon'ble Supreme Court held at Para 4 as under: "From a perusal of the evidence, we find that when the appellant arrived along with the cattle at the field there was no premeditation for the assault. At the spot, there was an altercation between the parties and in the sudden fight, after the deceased objected to the grazing of the cattle, when possibly hot words or even abuses were exchanged between the parties, the appellant gave a single blow with the pharsa on the head of the deceased. The statement of the appellant and the suggestions given on his behalf to the prosecution witnesses that there was an attempt to assault the deceased with a Parena, which was with the deceased, does not appear to be improbable. Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present also with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300 IPC is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part-I) IPC. The trial court, under the circumstances, was justified in convicting him for the said offence and the High Court, in our opinion, fell in error in interfering with it and that too without dispelling any of the reasons given by the trial court. The judgment of the High Court convicting the appellant for an offence under Section 302 IPC cannot be sustained and we accordingly set it aside and instead convict the appellant for the offence under Section 304 (Part-I) IPC." In a decision reported in Sukhbir Singh Vs. State of Haryana, the Hon'ble Supreme Court held at Para 17 as under: "To avail the benefit of Exception 4, the defence is required to probabalise that the offence was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of premeditation and on account of total deprivation of self control but on account of heat of passion, the offence was committed which, normally a man of sober urges would not resort to. Sudden fight, though

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