

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 769 of 2004**

- Punem Sannu, S/o Chinna, Caste Muria, aged about 35 years, R/o Koralapalli, P.S. Farsegarh, Distt. Dantewara (C.G.)

---- Appellant**Versus**

- The State Of Chhattisgarh, through P.S. Farsegarh, Distt. Dantewara (C.G.)

---- Respondent

For Appellant	:	Smt. Kiran Jain, Advocate
For Respondent/State	:	Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board**21/07/2016**

The appellant stands convicted under Section 302 IPC for committing murder of his wife – Punem Bandi. The incident occurred at about 16.00 hours on 23.06.1999.

2. The case of the prosecution, as reflected in the documents available on record, is that the appellant came back after completing his work in the agricultural field and requested his wife to provide food. His wife was lying on a cot in an alcoholic condition and the food was not cooked, therefore, the appellant picket up wooden raft (*Peedha*) and grinding stone and inflicted one blow over the left parietal region of the head of the deceased by means of grinding stone. The deceased died instantly.

3. In course of investigation, memorandum statement of the appellant was recorded on 27.06.1999 and in consequence there of, the wooden raft and the grinding stone were recovered on the same date. The dead body was sent for autopsy, which was conducted by Dr. R.L. Gangesh (P.W.6) who reported that mode of death is coma due to head injury related with hypovolemic shock and the nature of death was homicidal in nature.

4. In course of trial, the prosecution examined seven witnesses, out of which, Sukhmati (P.W.4), aged 7 years, is the daughter of the appellant, Mudma Papu (P.W.1) and Poyami Baroti (P.W.3) are the witnesses who were present in the Panchayat when the appellant made extra judicial confession.

5. As per the statement of Mudma Papu (P.W.1), he was present in the Panchayat where Sarpanch Podiyami Guddi, Podiyami Boti and other villagers were also present. During the Panchayat meeting, the accused was enquired about the incident, on which, he confessed that since his wife did not cook the food he assaulted her by means of grinding stone and wooden raft, for which she died. This witness has lodged the F.I.R. (Ex.P.1) and has proved the contents thereof. He is a witness to the memorandum statement Ex.P.2 also. During cross-examination, he also stated that even before the Panchayat meeting, the accused had informed him soon after the incident. Poyami Baroti has also supported the case of extra judicial confession by stating that he was present in the Panchayat meeting wherein the accused confessed the guilt. Sukhmati (P.W.4) is the only eye witness to the incident. Although she is a child witness yet she stated in clear terms that her father committed murder of her mother on the date of incident. She speaks about quarrel between her parents and that the accused had consumed liquor at that time.

6. From the afore-stated evidence, prosecution has been able to prove that the appellant assaulted the deceased which resulted in her death and the nature of death of deceased was homicidal in nature, as has been proved by the Dr. R.L.Gangesh (P.W.6).

7. We shall now examine as to whether the appellant has rightly been held guilty of committing culpable homicide amounting to murder punishable under Section 302 IPC or the act committed by him would fall within any of the Exceptions 1 to 4 of Section 300 IPC to bring it within the definition of culpable homicide not amounting to murder punishable under Section 304 Part-I or Part-II IPC.

8. Before proceeding to deal with the factual matrix and the applicability of the principles, it would be apt to refer to the law laid down by the Supreme Court regarding applicability of any of the Exceptions 1 to 4 of Section 300 IPC. In ***Bangaru Venkata***

Rao v. State of Andhra Pradesh¹ wherein the question as to when conviction under Section 302 of the IPC can be converted into culpable homicide, not amounting to murder under Section 304 Part I & Part II of the IPC has been considered by the Supreme Court and it has been held thus in paras 10 & 11 :

“10. 9. The residuary plea [relates to the] applicability of Exception 4 to Section 300 IPC.

10. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden 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.

11. The Fourth Exception to 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 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 an 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 could in such cases 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 offenders 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 cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

11. '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* 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. 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 had come out. In view of the aforesaid factual position, Exception 4 to Section 300 IPC has been rightly held to be inapplicable."

9. Yet again the said aspect has been considered by the Supreme Court in **Mangesh v. State of Maharashtra**², in the following manner in para 13 :

"13. The judgment cited by the learned counsel for the State, *Pulicherla Nagaraju v. State of A.P.*³, is quite distinguishable from the present case as in that case the knife-blow that caused death was given with full force and the single injury was found to be 12 cm deep. Even in that case the law has been laid down as under: (SCC p. 458, para 29)

"29. ... 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 premeditation; (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

² (2011) 2 SCC 123

³ (2006) 11 SCC 444

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.” This Court has reiterated the same view in *Sridhar Bhuyan v. State of Orissa*⁴ and *Gali Venkataiah v. State of A.P.*⁵”

10. In the case at hand, the deceased was the appellant's wife and there is no evidence about any previous enmity or dispute between them. They are residents of remote village Koralapalli, Police Station – Farsegarh, District Dantewara and belong to tribal community. At the time of incident, the appellant had come back to his house after finishing his work in the agricultural field and requested the deceased for providing food which was not available in the house as the deceased was lying on a cot after consuming liquor. Non-availability of food enraged and provoked the appellant to pick up the wooden raft and grinding stone and thereafter he gave one blow over the left parietal region of the deceased by means of grinding stone. Although there was no provocation by the deceased yet non-availability of cooked food in the house was sufficient enough to enrage the appellant. The act was committed without premeditation and in the peculiar facts and circumstances of the case, therefore, it appears that the appellant may have the knowledge that the assault made on the head of the deceased would be fatal but had no intention to kill her. It is also to be seen that the appellant himself had consumed liquor, therefore, he might not be in such mental alertness where he may be said to be aware of the outcome of the assault. It is to be kept in mind that tribals in Bastar region usually consume liquor, therefore, it is not a case where the appellant had consumed liquor while preparing to commit offence or only for committing the offence.

11. Having regard to entire facts and circumstances of the case, we are of the considered opinion that the act committed by the appellant would fall within the ambit of 4th Exception to Section 300 IPC and it would be punishable under Section 304 Part-II IPC. Accordingly, instead of convicting the appellant under Section 302 IPC, we convict him for offence punishable under Section 304 Part-II IPC.

4 (2004) 11 SCC 395

5 (2007) 14 SCC 475

12. The appellant was arrested on 27.06.1999. He was directed to be released on bail in this appeal on 28.09.2005 and was thereafter released on 24.11.2005. Although the bail was cancelled on 16.12.2008, however, it appears the warrant for his re-arrest has not been executed. The appellant has thus remained in jail for about six years and five months. Having regard to the social strata to which the appellant belongs, we are of the considered opinion that the jail sentence of six years and five months already suffered by the appellant is sufficient sentence, therefore, the sentence already undergone by the appellant is treated to be the period for which he is convicted.

13. The appellant is on bail and his bail bond shall remain in operation for a period of six months from today, in view of the provisions contained under Section 437-A of the Cr.P.C. He shall appear before the higher court as and when directed.

14. Appeal stands allowed in part.

Sd/-
Judge
(**Prashant Kumar Mishra**)

Sd/-
Judge
(**Chandra Bhushan Bajpai**)