

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 884 of 2011

- Deepchand Bahuguna S/o Banshidhar Bahuguna, aged about 39 years, Occupation Service, Address : 35th Battalion, India Tibbat Border Security Force, presently at B.S.P. Hostel No.1, Sector-3, Bhilai, District Durg (C.G.), Permanent Address : House No. 1266 Indira Nagar Colony, New Forest, Post Office P.S.-Basant Bihar, Distt.-Dehradoon, Uttarakhand

**---- Appellant
(in Jail)**

Versus

- The State of Chhattisgarh through the Station House Officer, Police Station Bhilai Bhatti, District – Durg (C.G.)

---- Respondent

For Appellant	:	Shri Surendra Singh, Senior Advocate assisted by Shri Neeraj Mehta, Advocate
For Respondent/State	:	Shri Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 02/03/2016

Per, I.S. Uboweja, J.

1. This appeal arises out of the judgment of conviction and order of sentence dated 22.09.2011 passed by the Additional Sessions Judge, Durg (C.G.) in S.T. No.23/2010 convicting the accused/appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine to undergo additional R.I. for 6 months.
2. As per case of prosecution, Constable Sharad B. Satyen (deceased) and accused/appellant Deepchand Bahuguna were working as soldier of India in Tibbat Border Security Force and at the time of incident, both were residing in a room of Hostel No.1, Sector-3, Bhilai. On

11.12.2009, at about 6.00 p.m., some altercation took place between them. Suresh Kumar (PW-4), who was present near the room entered the room and intervening in their matter said that Inspector Ajay Verma was coming this side, thereafter, he left the room. After sometime, he heard the sound of gunshot, he entered the room and saw the deceased lying in pool of blood, he snatched the rifle from the hands of accused and called for catching hold of the accused because he fired a shot at deceased by gun. Some other officials of the force came there and accused had made oral and written confession before them that he had fired a gunshot at deceased. Injured Sharad B. Satyen was shifted to Jawahar Lal Nehru Hospital, Sector-9, Bhilai by the Health Officer, where he was declared dead. From the hospital information of death of deceased was sent to police station, Bhilai Bhatti vide Ex.P-19. On the basis of written report (Ex.P-1) sent by Ashok Kumar Yadav (PW-3), Assistant Commandant, 35 Bn. I.T.B Police Force, Merg No. 46/2009 (Ex.P-5) and FIR No. 173/2009 (Ex.P2) were registered.

3. The investigating Officer reached to the Hospital and after giving notice to the witnesses vide Ex.P-3 prepared inquest on the dead body of the deceased vide Ex.P-4. Dead body of the deceased was sent for post-mortem to District Hospital, Durg, where Dr. Akhilesh Yadav (PW-14) conducted autopsy on the dead body of the deceased vide Ex.P-30 and found following injuries :-

- (i) Lacerated wound of 4x2x1 cm over right chest wall ribs below nipple;

- (ii) Lacerated wound of 3x4x4 cm over right chest beside mid-line in para-median area, from which some portion of liver has come out.
- (iii) Three abrasions over left side of umbilicus of 2x1, 4x1, 3x2 cm;
- (iv) Lacerated wound of 9x5x6 cm over left lumbar area in antero lateral side;
- (v) Bullet entry wound of 1x1.5x9 cm over left waist in upper part of iliac spine;
- (vi) Lacerated wound of 5x5 cm over waist in the upper part of iliac spine;
- (vii) Bullet entry wound of 4x1x8 cm behind left lumbar area in the upper part of iliac crest;
- (viii) Deep abrasion of 8x1 cm over right waist above to knee;
- (ix) Lacerated wound of 13x8 cm over right leg above the ankle;
- (x) Abrasion over left hand of 4x5 cm in inner part; and
- (xi) Lacerated wound of 6x4 cm over lower portion of left forearm.

Cause of death was shock and haemorrhage due to ante-mortem gunshot injuries and death was homicidal in nature.

4. In further investigation, four empty bloodstained cartridges were seized from Amit Katoch (PW-2) and sealed vide Ex.P-6. Spot map was prepared vide Ex.P-8. One rifle *butt* No.81 containing one cartridges in its chamber and one magazine containing 10 round bullets were seized and sealed vide Ex.P-9. Bloodstains, small part of damaged wall, four empty cartridges and one piece of front part of bullet were seized from the spot vide Ex.P-10. Clothes of the deceased, piece of bullet found from the body of deceased during post-mortem and specimen of blood were seized vide Ex.P-14. One C.D. Recorded by Dhirendra Singh Negi (PW-11) regarding confession of appellant was seized vide Ex.P-16. Accused was arrested after taking permission from Commandant of ITBP. Seized

articles were sent to FSL for chemical examination vide Exs.P-27 & P-28.

5. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions, Durg, from where learned Additional Sessions Judge, received the case on transfer for trial.
6. In order to bring home the charges of the accused/appellant, the prosecution examined as many as fourteen witnesses. Accused /appellant was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question.
7. The trial Court after hearing for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para 1 of this judgment.
8. Learned counsel for the appellant submits as under -
 - (i) that he is not disputing the death of deceased being homicidal in nature and was shot dead by the rifle fire of the accused / appellant.
 - (ii) that it is a case in which deceased and accused were quarrelling with each other, deceased abused the accused by using filthy language to the accused and at this juncture accused deprived

of the power of self control by grave and sudden provocation, he fired a gun shot at deceased .

(iii) that there was no premeditation and on the heat of passion upon a sudden quarrel it was happened.

(iv) that the number of blows would never be material to consider the impact on the mind of the accused so as to take him out of Exception 1 to Section 300 IPC.

In support of above arguments reliance has been placed on the decision passed in the matter of **State of Gujarat v. Bhand Jusb Mamad** reported in **1982 CRI.L.J. 1691** in which Gujarat High Court has held that mere verbal abuse may also amount to grave and sudden provocation. Further reliance has been placed on the decision passed in the matter of **Mansa Ram v State** reported in **1975 CRI. L.J. 1772** in which Allahabad High Court has held that the question whether the provocation was grave and sudden enough to prevent the offence from being murder should not be treated as a question of law but, one of the fact and decided like any other question of fact. Therefore each case must be considered according to its own facts and the court must decide on the particular circumstances of that case whether the provocation was grave and sudden enough to permit an indulgent view of the crime committed by the accused. No abstract rule of reasonableness can be laid down by the application of the doctrine of “grave and sudden provocation”. What a reasonable man i.e. a normal person will do in certain

circumstances depends upon the cultural, social and emotional background of the society to which the accused belongs. However, the court must consider the reaction not of the normal man in the abstract but the normal man whose impulses are conditioned by the same environment as the accused. Further reliance has been placed on the decision passed in the matter of **Radha Kishan v. State of Haryana** reported in **AIR 1987 SC 768** in which the Apex Court has held that the circumstances warrant the conclusion that the appellant must have shot Darya either on account of some grave and sudden provocation or in the course of a sudden quarrel attracting Exception 1 or Exception 4 to Section 300 IPC.

Learned counsel for the appellant further argued extra judicial confession made before the police is hit by Section 25 of the Evidence, therefore, that confession has no value in the eye of law. In view of this, the order convicting the accused for the offence punishable under Section 304 Part – I of the IPC cannot be said to be improper.

9. On the other hand, supporting the impugned judgment, learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that accused/appellant has intentionally murdered the deceased, accused was armed with dangerous weapon, he used it against unarmed deceased, medical evidence shows that at the time of

incident deceased was not in drunken condition, accused/appellant has caused injury with intent to cause the death of deceased, therefore, Sessions Judge has rightly convicted and sentenced the appellant as aforementioned.

10. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution.
11. In the present case, homicidal death of deceased due to fatal injuries caused by bullet found over the body, has not been substantially disputed on behalf of the appellant. Even otherwise, from the evidence of Dr. Akhilesh Yadav (PW-14) and autopsy report (Ex.P-30) it is established that death of the deceased was homicidal in nature. It is also not disputed by the counsel for the appellant that accused/appellant has used his rifle and fired, therefore, deceased died due to injuries of bullet. It is also proved by the evidence of Suresh Kumar (PW-4), Ashok Kumar Yadav (PW-3), Sukhraj Singh (PW-1), P. Venugopal (PW-6) and Sitaram (PW-10).
12. Prosecution witness Suresh Kumar (PW-4) is the star witness of the prosecution. His statement shows that initially, present appellant and the deceased were quarrelling with each other and some filthy abuses were going on between them. This witness heard noises from inside the room, he entered the room and intervened them and thereafter came out of the room. After some time, he heard the sound of firing and when firing was stopped, he again entered inside

the room and saw that deceased was lying in injured condition. He snatched the rifle from the accused/appellant, then some other soldiers came there. He was cross-examined by the defence, he tried to state that he felt that deceased and the accused consumed liquor; he also stated that they were not in intoxicated condition, he denied the suggestion that both had fired a gun shot at each other, he explained that deceased rifle was put in the corner of the room and no fire from that rifle was found. Dr. Akhilesh Yadav (PW-14) who conducted autopsy, stated that he has not found any smell of alcohol from the stomach of the deceased. He prepared his autopsy report vide Ex. P-30. Therefore, it is clear from doctor's statement and his autopsy report that deceased had not consumed liquor before his death, therefore, the statement of Suresh Kumar (PW-4) is not reliable that he felt smell of alcohol from deceased mouth.

13. No doubt, extra judicial confession by the accused before his superior officer is not admissible in the eye of law because they also come under the definition of police and Section 25 of the Indian Evidence Act hits the confession before the police officer, oral or written confession before the senior officer or authority is meaningless.
14. Autopsy Surgeon Dr. Akhilesh Yadav (PW-14) has deposed in his statement that 11 injuries were found on the dead body of deceased and multiple fractures were found during the course of autopsy. He also stated that two bullets and 9 bullet particles were found inside the

dead body and it was sealed and gave for examination to police official.

15. The evidence of Suresh Kumar (PW-4) is further corroborated by the evidence of Dr. Akhilesh Yadav (PW-14) who conducted autopsy and found the above injuries on the dead body of the deceased. There is no discrepancy in the statement of Suresh Kumar (PW-4) and defence counsel has also not disputed the incident. Medical evidence has also supported the incident and it is clear that injuries were caused by bullet shot. It is not a case of single gun shot fire. Investigating Officer Baburam Sharma (PW-12) has clearly stated that he seized four bloodstained cartridges and used rifle from Amit Katoch (PW-2).
16. Dheerendra Singh (PW-11) who is the Deputy Commandant in ITBP, stated that accused used 9 round bullets from his rifle and 11 round bullet was intact in rifle.
17. In the instant case, the appellant armed with a rifle was present near the deceased and he used his rifle from short distance. He has fired number of bullets on deceased. After some hot talks with the deceased, he fired many gun-shots at deceased which establishes his intention to kill the deceased. The nature of weapon used, the manner in which it was used, severity of the fire of gun shot from short distance and part of the body where the injuries were inflicted with such an intensity, would show that the appellant had intention to commit murder of the deceased.

18. Uttering of filthy words cannot be so much intolerable that he may lose his self control this much and fire almost full magazine (9 bullets) at his colleague. In statement of accused under Section 313 of the Cr.P.C., he has not clarify that what filthy words were spoken by the deceased before his death. Statement of Suresh Kumar (PW-4) is also not clear that what filthy words were used by the deceased, therefore, it cannot be ascertained that deceased has used such type of filthy words which were enough for accused to lose his self control. Where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, the situation does not permit of the plea of private defence. The victim was all alone in the room he was unarmed, the appellant set numbers of gunfire at him, thus it is clear enough for holding that the intention of accused/appellant was to kill the victim. Therefore, the case laws cited by learned counsel for the appellant are distinguishable from the facts and circumstances of the present case and in addition to above, even the accused has not examined himself as his defence for proving the fact that provocation of deceased was so grave and sudden enough to prevent the offence.
19. Considering the totality of the facts and circumstances of the case, we are of the opinion that an offence under Section 302 IPC is made out and the case of the appellant would not fall under any Exception of Section 300 IPC for punishment under some lessor Section.

20. For the foregoing reasons, we do not find any substance in the appeal. Accordingly, the appeal is liable to be dismissed and is hereby dismissed.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE