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**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1290 of 2015**

Firtu Singh S/o Nanku Singh Aged About 32 Years R/o Village Chhuri,  
Police Station Katghora, Distt. Korba Chhattisgarh.

----Appellant

**Versus**

State Of Chhattisgarh Through Police Station Katghora, Distt. Korba  
Chhattisgarh.

---- Respondent

For Appellant:

Shri Alok Kumar Pandey, Advocate.

For Respondent/State:

Shri Ashish Shukla, Government Advocate.

**Hon'ble Shri Justice Prashant Kumar Mishra****Hon'ble Shri Justice P. Sam Koshy****Order On Board****Per Prashant Kumar Mishra, Judge****7/1/2016**

1. The Appellant stands convicted by the Trial Court for committing offences under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life with fine of Rs.1,000/- along with default stipulations by the Additional Sessions Judge, Katghora, District Korba (CG) in Sessions Trial No.24/2006 dated 30.3.2007.

2. The allegation against the Appellant is of committing murder of his father Nanku Singh. The incident occurred at about 7 pm on 22.10.2015 when the Appellant allegedly entered the house in a state of intoxication. When the deceased tried to persuade him not to consume liquor, the Appellant started quarelling with his father and started assaulting him by hand and fist. His mother Sumitra Bai PW-2 tried to intervene. However, the Appellant assaulted her also causing injuries. The deceased was immediately

taken to Government Hospital, Khatgora where he was treated by Dr. HD. Dahire PW-5. The deceased succumbed to the injuries and died in the evening of 22.10.2005. On the memo sent by the hospital administration, the merg was registered and the dead body was sent for autopsy. The Investigating Officer recorded the statements of Bhupendra Shrivastava PW-1, Sumitra Bai PW-2 - the mother of the Appellant, Pardesilal PW-3, Devendra Kumar PW-4 and Deepak Kumar PW-6, all neighbours of the Appellant and some other witnesses. Since no weapon has been used by the Appellant in assaulting the deceased, recovery of the same was out of question.

3. In the charge sheet, the Appellant was charged for committing offences under Sections 294, 506 (Part-II), 324 and 302 IPC.

4. In course of trial, the prosecution examined 9 witnesses namely Bhupendra Shrivastava PW-1, Sumitra Bai PW-2, Pardesilal PW-3, Devendra Kumar PW-4, Dr. HD Dahire PW-5, Deepak Kumar PW-6, Rajendra Pandey PW-7, RL. Maravi, PW-8 and GS. Johar PW-9. In his cross-examination under Section 313 Cr.P.C, the Appellant abjured the guilt and pleaded innocence.

5. On the basis of evidence available on record, the trial Court acquitted the Appellant for the offences punishable under Sections 294, 506 (Part-II) and 324 IPC for lack of evidence and he has been convicted under Section 302 IPC.

6. The case of the prosecution is built around the evidence of Sumitra Bai PW-2, Pardesilal PW-3, Bhupendra Shrivastava PW-1, Dr. HD. Dahire PW-5 and Deepak Kumar PW-6. All these witnesses except Dr. HD. Dahire PW-5, have turned hostile. However, in her cross-examination, Sumitra Bai PW-2 admitted the fact that on the date of incident, the Appellant entered the house

in a state of intoxication and started quarelling with her husband i.e. the father of the Appellant and assaulted him by hand and fist. When she tried to intervene, she was also beaten by the Appellant. She also admits the fact that when the deceased fell unconscious, the Appellant fled away from the house thinking that the deceased has died instantly. She also admits her own medical examination by Dr. Dahire, PW-5. She goes to the extent of admitting the entire contents of the First Information Report, Exhibit P-2. Thus, the most crucial witness against the Appellant i.e. his own mother has proved the case of the prosecution even after being declared hostile.

7. It is settled law that the entire statement of a hostile witness is not to be discarded but such portion of the evidence which is in conformity with the prosecution case is admissible and can be read in evidence. See....*Koli Lakhmanbhai Chanabai v. State of Gujarat*<sup>1</sup>

8. Similar is the case with the statements of Pardesilal PW-3, Devendra Kumar, PW-4 and Deepak Kumar, PW-6. All these witnesses have been declared hostile. However, in their cross-examination they have admitted that when they entered the house of the deceased after hearing the alarm raised by Sumitra Bai PW-2, they found the deceased lying injured and unconscious. Devendra Kumar PW-4 has fully supported the case of the prosecution. Although he was not an eye-witness, he reached the place of occurrence immediately after hearing the alarm raised by Sumitra Bai PW-2 and withstood by the statement given to the police.

9. In the above state of evidence on record, the complicity of the Appellant in committing the crime of assaulting the deceased by hand and fist causing his death is fully proved and the Trial Court has not committed any illegality in convicting the Appellant.

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1 2000 CRI.L.J. 408 (SC)

10. This leaves this Court to examine as to what offence the Appellant has committed. Considering the entire factual situation of the case, the nature of allegation and the state of evidence, this Court is required to consider as to whether the offence committed by the Appellant would fall within the ambit of Section 302 IPC or it would fall under Section 304 (Part-I) or under Section 304 (Part-II) IPC.

11. 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 in *Bangaru Venkata Rao v. State of Andhra Pradesh*<sup>2</sup> 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 de-

ceased 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.”

12. Yet again the said aspect has been considered by the Supreme Court in

**Mangesh v. State of Maharashtra**<sup>3</sup>, 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.*<sup>4</sup>, 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 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*<sup>5</sup> and *Gali Venkataiah v. State of A.P.*<sup>6</sup>”

13. In the case at hand, the appellant entered the house in a state of intoxication; started quarreling with his father and assaulted him by hands and fists. However, the assault had such intensity that the deceased had suffered

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3 (2011) 2 SCC 123

4 (2006) 11 SCC 444

5 (2004) 11 SCC 395

6 (2007) 14 SCC 475

fracture of ribs on both sides which led to rupture of both the lungs. Yet the fact remains that the appellant has not used any weapon for causing injury and the quarrel had taken place without pre-meditation. Thus, exception IV to Section 300 of the IPC is not attracted in the case at hand. The appellant has caused such bodily injury as is likely to cause death because the assault had led to fracture of ribs which in turn ruptured both the lungs. Therefore, it appears, the appellant has taken undue advantage or has acted in cruel or unusual manner to inflict such bodily injury to his own father which has caused his death. Therefore, even if the offence would not fall within the definition of murder, but it would definitely fall under Section 304 Part-I of the IPC.

14. Accordingly, the appeal is allowed in part. Conviction imposed on the appellant under Section 302 of the IPC is set aside and instead he is convicted under Section 304 Part-I of the IPC. The appellant has already remained in jail for more than 10 years, therefore, the jail sentence already suffered by him appears to be sufficient in the facts and circumstances of the case, therefore his is awarded jail sentence to the period already undergone.

15. The appellant be set at liberty forthwith unless required to be detained in any other case, on his furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like sum to the satisfaction of the trial Court. His bail bond shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC. He shall appear before the higher Court, as and when directed.

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

Sd/-  
(P. Sam Koshy)  
**JUDGE**