

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 665 of 2004

Bhoj Ram Rawat, S/o Shri Tetku Ram Rawat, Aged about 30 years, Agricultural Labour, R/o Village Porda, Police Station House – Gharghoda,
Present Address – Gunu Dongabhawana, Police Station House – Lailunga, District Raigarh (Chhattisgarh)

---- **Appellant**

Versus

State of Chhattisgarh through Police Station House - Lailunga

---- **Respondent**

For Appellant:	Shri Ashok Verma, Advocate.
For State/Respondent:	Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice R.C.S. Samant

Judgment on Board By

Prashant Kumar Mishra, J.

20/03/2017

1. The appellant stands convicted for committing murder of deceased Ramnath at about 2-30 p.m. on 15-09-2002.
2. The prosecution case as projected in the FIR and other material presented by the prosecution is that appellant Bhojram had obtained lease of land belonging to one Nandlal whereas some other lands of Nandlal were also leased out by him to witness Lalsai. On the date of incident, an altercation took place between the appellant and Lalsai where the appellant was asking from Lalsai as to the reason why he has obtained land on

lease from Nandlal. It is said, the appellant slapped Lalsai and thereafter, the appellant was dragged by Lalsai and deceased towards the house of one Mannu and severely assaulted him by means of hands, fists and wooden plank. At this point of time, appellant's wife and his younger daughter Savitri (PW-8) wanted to rescue him but could not enter the house of Mannu because the door was closed. As soon as the appellant was released by Lalsai and the deceased, he rushed towards his house, came back with piped knife (*Gupti*) and first met Ramnath, therefore, he inflicted two successive abdomen blows on the person of Ramnath. The deceased was taken to the P.H.C., Lailunga, however, he succumbed to the injuries during treatment within a short time of his admission in the hospital.

3. The FIR (Ex P-1) was lodged by Mannulal at 16-30 hours on 15-09-2002 itself. Autopsy was conducted by Dr. S. Upadhyaya (PW-14) who submitted his report (Ex. P-31) finding two punctured wounds; first, over right lateral part of chest and the second over iliac fossa. Dr. Upadhyaya opined that the cause of death is syncope due to excessive internal and external hemorrhage due to rupture of spleen. As the case of prosecution was supported with ocular evidence, the charge sheet was filed against the appellant for committing murder of deceased Ramnath. The appellant was also charged for committing offence punishable under Section 3 (2) (v) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, at the end of trial, the appellant has been convicted only for committing offence under Section 302 of the IPC.

4. Shri Ashok Verma, learned counsel for the appellant would submit that the present is a case where, even if the entire prosecution case is believed, the appellant can be convicted only for committing offence of culpable homicide not amounting to murder under Section 304 Part I or II of the IPC.
5. Per contra, learned State counsel would submit that it is a case of murder where the appellant had enough time to cool down but he went inside his house and came back to the place of occurrence with a knife therefore, it is an apparent case of murder.
6. Although the prosecution has examined as many as 17 witnesses to bring home the charges, there being no dispute that due to the injuries caused by the appellant, the deceased died homicidal death and there is ocular evidence available on record clearly implicating the appellant, we would discuss only the relevant evidence. The only question which remains to be decided in this appeal is whether in the given set of evidence, the appellant would be held guilty of committing culpable homicide punishable under Section 302 of the IPC or he would

be guilty of committing culpable homicide not amounting to murder punishable under Section 304 Part I or II of the IPC.

7. Before proceeding to marshal the evidence, to conclude the above aspect of the matter, we shall remind ourselves as to principle when a person would be held guilty under Section 302 of the IPC or under Section 304 Part I or Part II of the IPC.
8. 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***¹ and it has been held thus in paras 10 & 11 :

“10. 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

1 (2008) 9 SCC 707

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 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 a recent case also reported in the matters of **Dilip Kumar Mondal and another v. State of West Bengal**⁶, the Supreme Court has held in paragraph 22 as under:

2 (2011) 2 SCC 123
 3 (2006) 11 SCC 444
 4 (2004) 11 SCC 395
 5 (2007) 14 SCC 475
 6 (2015) 3 SCC 433

“22. This Court in **Sridhar Bhuyan v. State of Orissa**⁷ reaffirmed the same and held as under (SCC pp. 396-97, paras 7-8).

“7. For bringing in operation of Exception 4 to Section 300 IPC, 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.

8. 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 appreciate. 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 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 in such cases could 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 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 word '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

7 (2004) 11 SCC 395 : 2004 SCC (Cri) Supp 98

two or 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 a cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

11. It has been further held in para 20 in the matter of **Bivash Chandra Debnath alias Bivash & others vs. State of West Bengal**⁸, as under:

"20. On appreciation of evidence on record of the present case, we agree with the contention of the learned Senior Counsel for the appellants that since it is a case of sudden fight and there was no premeditation on the part of the appellants and the offenders have not acted in "unusual manner", their acts are covered under Exception 4 to Section 300 IPC. In the similar case in **Pulicherla Nagaraju v. State of A.P.**⁹, in para 29, this Court has discussed the issue as to when the conviction can be converted from an offence punishable under Section 302 IPC to Section 304 Part I or Section 304 Part II IPC and the same is reproduced hereunder: (SCC pp. 457-58, para 29)

"29. 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 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

8 (2015) 11 SCC 283

9 (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500

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 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. "Be that as it may".

12. When we examine the evidence in the case in hand, it would be manifest that at the threshold, the appellant had no dispute with the deceased about the obtainment of lease of land belonging to Nandlal as the said dispute was with Lalsai. Although it is not clear from the evidence as to whether Lalsai and the deceased were mere friends or relatives yet there is evidence to the effect that at the time when the quarrel broke out between the appellant and Lalsai, the said Lalsai was accompanied with deceased Ramnath. There is clinching evidence in form of admission of eyewitness Gangaram (PW-7) and Lalsai (PW-9) that before the appellant inflicted injuries over the person of the deceased by means of piped knife the appellant slapped Lalsai and thereafter Lalsai and Ramnath dragged him towards

the house of one Mannu and severely assaulted by means of hands, fists, kicks and wooden rod. Immediately after Lalsai and Ramnath finished with their beating of the appellant, he went back to his house and immediately came back with piped knife and inflicted two punctured wounds over the person of the deceased. There is no statement in any of the eyewitnesses account that the time gap between the first incident and the incident of injuring the deceased was to such an extent that he would have got enough time to cool out. Although it may appear to be two separate transactions, yet the quick succession in which the deceased and Lalsai gave beating to the appellant and his coming back to the place of occurrence with piped knife would practically be in the same series of transactions, therefore, it is clearly a case of taking revenge by the appellant for the beating given to him by the deceased and Lalsai because on account of such beating, he was so much provoked that he wanted to injure the deceased but not commit his murder. Even otherwise, the appellant had no dispute or quarrel with Ramnath. Injury to Ramnath happened because when the appellant came back from his house, it was Ramnath who first met the appellant, therefore, he became victim of his anger.

13. The above discussion would compel as to conclude that the present is a case where the appellant did not injure the deceased with premeditation but his act was result of anger and

his intention to take revenge only and the appellant had knowledge that the punctured wound over right chest or iliac fossa may cause death of the deceased but he had no intention to commit his murder.

14. In our considered view the act committed by the appellant would fall within 4th exception to Section 300 of the IPC and he would be guilty of culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC. The appeal is accordingly allowed in part.
15. Since he has already suffered 14 years and 6 months of imprisonment, the said jail sentence undergone by the appellant is sufficient sentence for conviction under Section 304 Part II of the IPC.
16. Learned counsel for the parties would inform that the appellant is on bail. His bail bond shall remain in force for a period of six months as provided under Section 437-A of Cr.P.C.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(R.C.S. Samant)