

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.815 of 2011

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) Assailing the judgment dated 11.10.2010, passed in S.C.No.45 of 2010, on the file of the I Additional District and Sessions Judge, Panga Reddy District-cum-Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad, wherein the sole accused was found guilty for an offence punishable under Section 302 IPC, the present Criminal Appeal is filed by the accused.

2) The gravamen of the charge against the accused is that on 06.08.2009 at about 8.30 p.m. in a canteen in CCI Company Labour Quarter, Pocharam Village, Ghatkesar Mandal, the accused is alleged to have caused the death of one Tharak Mandal (herein after referred to as "deceased") by beating him with an iron rod. He was found guilty for an offence punishable under Section 302 IPC for causing death of the deceased and sentenced to undergo 'Imprisonment for Life' and to pay a fine of Rs.500/-.

3) The facts in issue are as under:

The accused was working as a Labour Contractor under PW.1. The deceased also worked under him as a labourer. On the fateful day, PW.4, PW.5, deceased and L.Ws.1 and 2 and the accused went to the canteen in CCI Company, for having tea. At about 8.30 p.m.

at the tea stall, the accused and deceased sat on one table. At that point of time, the accused asked the deceased as to why he should not renovate his shed when he is having sufficient means to renovate the same. During the conversation, the accused addressed the deceased as Hizra (neutral person). On that the deceased gave slap on the cheek of the accused. Enraged by the same, the accused picked up an iron rod, which was lying there, and gave a blow on the deceased causing bleeding injury on the head. Immediately, the persons, who were available at the place, shifted the deceased to the hospital and also apprehended the accused at the spot. This incident is said to have taken place on 06.08.2009 at about 8.30 p.m. On the next day morning at about 9.00 a.m. PW.6 the Sub-Inspector of Police, Ghatkesar, received a report from PW.1, which lead to registration of a case in Crime No.198 of 2009. Ex.P6 is the report and Ex.P7 is the First Information Report. On the same day, PW.6 visited the scene of offence, situated in Labour Colony in Singapore Town Ship and in the presence of PW.2 and another conducted the scene of offence panchanama. Ex.P8 is the panchanama and Ex.P2 is the rough sketch of the scene. The deceased died on 07.08.2009. On receipt of information, PW.6 visited Gandhi Hospital and in the presence of PW.2 conducted inquest over the dead body. Ex.P3 is the inquest report. Thereafter, he sent a requisition to the doctor to conduct an autopsy over the dead body. Ex.P4 is the Post Mortem Examination Report issued by the doctor, wherein he opined that the cause of death was “due to head injury”. After collecting all

the material, PW.6 filed a charge sheet before the Court of XIII Metropolitan Magistrate, Cyberabad at L.B.Nagar, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.45 of 2010.

4) On appearance, charge under Section 302 was framed, read over and explained to the accused. The plea of the accused is one of total denial.

5) To substantiate their case, the prosecution examined PWs. 1 to 6 and got marked Exs.P1 to P9 and M.O.1. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on his behalf in support of his defence.

6) After considering the oral and documentary evidence on record, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal is filed.

7) Learned counsel for the appellant mainly submits that there is an abnormal delay in lodging the report. According to her, though the incident took place at 8.30 p.m. on 06.08.2009, a report came to be lodged on the next day morning. There is no explanation for the delay in lodging the report. It is further stated that non-examination of eye witnesses, who were present at the

scene, is fatal to the prosecution case. It is further contended that in the absence of any motive to kill the deceased and as the incident took place in the spur of movement, the trial Court erred in convicting the accused under Section 302 IPC.

8) As seen from the record, PW.5 was examined as an eye witness to the incident. According to him, the accused, deceased, LWs.2 and 3 (not examined) were all friends and they came to Singapore township in connection with labour work, about 12 days prior to the date of incident. On the date of incident they went to tea stall, where the accused asked the deceased as to why he should not renovate his shed, since he is having enough funds to do so. In the said conversation, it appears that the accused addressed the deceased as 'hizra'. Thereafter, the deceased slapped the accused on his cheek, which enraged the accused. He picked up an iron rod which was lying at the scene and hit on the head of the deceased, which resulted in his death on the next day.

9) Though the report was given on the next day morning by PW.2, under whom the accused and the deceased used to work, the same cannot be said to be fatal. It is not the case of the accused that there was any motive for PW.2, PW.5 and others to falsely implicate him in the crime. Infact, the evidence on record no where establish any enmity between both of them. On the other hand, the evidence of PW.5 amply established that on the date of incident, all of them including the deceased and accused

went to the tea stall to have a tea and during conversation the incident is said to have taken place.

10) At this stage, it would be appropriate to refer to the evidence in chief of PW.5, which is as under:

"I am resident of Maida in West Bengal State. I know LWs.1 and 2. I know the accused. I know the deceased Tharakmandal, who being killed about one year ago. As myself, Tarakmandal, LWs.1 and 2 and the accused came to Singapore township, Panga Reddy District in connection with our labour work 12 days prior to the killing of deceased Tarakmandal. On the fateful day of the murder of Tarakmandal, myself, the accused and deceased, LWs.1 and 2 went to tea stall in labour colony at Singapore township in the evening at about 8.30 p.m. where the accused and deceased were sat on one table and the accused started asking the deceased why should he not renovate his shed when he is earning sufficiently and further he addressed the deceased as Hizra (neutral person). On that the deceased Tarakmandal gave a slap on the cheek of the accused that enraged the accused to pick up one iron rod from nearby place and gave a hit on the deceased resulting the deceased sustained bleeding injury and fell down on the ground. Immediately, the persons, who are available at the place of incident have shifted Tarakmandal to the hospital and at the same time the accused was caught hold by the public. Two days thereafter I came to know that Tarakmandal died while undergoing treatment in the hospital. The Ghatkesar police has examined me and recorded my statement."

11) Though PW.5 was cross-examined at length, nothing useful was elicited to discredit his evidence. In fact, it was elicited from PW.5 that the accused and deceased were sitting on one table and were having tea. The cross-examination also revealed that during

conversation, there was some exchange of words, which lead to raising of their voices. Under those circumstances, it cannot be said that there was any motive or intention to kill the deceased.

12) Exception 4 to [Section 300](#) I.P.C, is in the following terms :

"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's having taken undue 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."

13) The requirements of this exception are : (a) without premeditation in a sudden fight; (b) in the heat of passion upon a sudden quarrel; (c) the offender has not taken undue advantage; and (d) the offender has not acted in a cruel or unusual manner.

14) As seen from the evidence on record, the incident happened in a spur of movement and it appears that in the heat of passion the accused picked up an iron rod which was lying there and hit the deceased. Hence, the case against the accused would definitely fall under Exception-4 to Section 300 IPC.

15) In *Patel Rasiklal Becharbhai vs. State of Gujarat*¹ the Apex Court held as under:

"The circumstances noted by the High Court show that there was a sudden fight between the two groups. The accused were not armed with sharp-edged weapons, on the other hand they were having agricultural implements.

¹ AIR 1992 SC 1150

There was a quarrel and it was also noted by the High Court that the deceased rebuked A-3 which infuriated him and he having lost his temper inflicted one blow but unfortunately it fell on the neck. No doubt it was a sharp edge of a crow-bar. Once the High Court has ruled out the applicability of [Section 149](#) or 34, [I.P.C.](#) and convicted A-3 under [Section 302](#), [I.P.C.](#) simpliciter then the ingredients of Sub-clause (3) of [Section 300](#) have to be established clearly. This clause as interpreted in a number of cases contemplates that there should be an intention on the part of the accused to cause that particular injury which was proved in an objective manner i.e. the prosecution has to further prove that such an injury was sufficient in the ordinary course of nature to cause death by medical evidence.

We do not propose to say that such an injury, if caused, would not attract the provisions of [Section 302](#), [I.P.C.](#) but circumstances which are peculiar to the facts of this case would show that there is a reasonable doubt whether the accused intended to cause that particular injury in which case the offence is one punishable under [Section 304](#), Part II, [I.P.C.](#), since the accused must be attributed knowledge that he was likely to cause the death. We accordingly set aside the conviction of the appellant (Accused No. 3) under [Section 302](#), [I.P.C.](#) and the sentence of imprisonment for life.”

16) In *Khanjan Pal v. State of Uttar Pradesh*² the Apex Court held as under:

“The evidence clearly established that the whole incident was a sudden development and that the appellant had acted at the spur of the moment and without any pre-meditation. There had been no ill-will or enmity between the two. A casual remark made by the appellant provoked the deceased and the altercation ensued which culminated in the stabbing

² (1990) 4 SCC 53

with knife. The appellant used the knife only once and did not act in any cruel manner. It was in the sudden quarrel in heat of passion that the appellant inflicted the injury on the deceased without any intention to cause death but having knowledge that such act was likely to cause the death of the deceased. In such circumstances, the act of the appellant falls under Exception 4 to [Section 300, I.P.C.](#), and the appellant is liable to be convicted only under [Section 304](#) Part-II, [I.P.C.](#) We accordingly alter the conviction to one under [Section 304](#), Part-II, [I.P.C.](#)”

17) In *Ghapoo Yadav and others v. State of M.P.*³ the Apex Court held as under:

“The Fourth Exception of [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 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

³ (2003) 3 SCC 528

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 'fight' occurring in Exception 4 to [Section 300, IPC](#) is not defined in the [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'."

18) In *Yomeshbhai Pranshankar Bhatt Vs. State of Gujarat*⁴,
the Apex Court held as under:

“When accused had no pre-meditation to kill deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on some provocative utterances of deceased cannot be ruled out and in such case the accused is liable to be convicted under Sec.304 Part II instead of Section 302 of IPC.”

19) In view of the judgments referred to above and having regard to the manner in which the incident in question took place, we are of the opinion that the case of the appellant/ accused falls squarely under Section 304 Part-II of IPC. Hence, the conviction under Section 302 IPC is set aside and the appellant is convicted under Section 304 Part-II IPC and sentenced him to undergo rigorous imprisonment for a period of seven years. The period undergone by the accused shall be given set off under Section 428 Cr.P.C.

20) Accordingly, the appeal is allowed partly. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

05.10.2017
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⁴ 2011(2) ALD (Cri.) 238 (SC)