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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CrI. A. No.111/2013**

GUDDU

..... Petitioner

Through: **Mr. Chetan Anand, Advocate**

versus

STATE

..... Respondent

Through: **Mr. Rajat Katyal, Additional
Public Prosecutor for the State**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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15.11.2017

VIPIN SANGHI, J. (Oral)

1. The appellant has preferred the present appeal to assail the judgment dated 28.05.2011 passed by the learned Additional Sessions Judge II, Outer District, Rohini Courts, Delhi in Sessions Case No.11/09, in FIR No. 11/09 under Section 302 IPC and 25/27/59 of Arms Act, at Police Station Aman Vihar, Delhi.

2. The appellant stands convicted under Section 302 IPC read with section 25/27 of the Arms Act. Vide order dated 16.07.2011, the appellant has been awarded rigorous imprisonment for life with fine of Rs.20,000/- and in default of

payment of fine, to undergo further rigorous imprisonment for six months, in respect of the offence under Section 302 IPC. It has been further directed that since the offence in question was committed by the appellant while he was on parole, the sentence of imprisonment of life awarded to him shall not run concurrently with his earlier sentence of life imprisonment and the said sentence should commence after any remission or commutation in respect of his earlier sentence granted to him. In this regard reliance was placed on decision of the Supreme Court in ***Bhagwan Bax Singh and Anr. Vs. State of U.P., (AIR 1984 SC 1120)***. The appellant has also been sentenced in respect of the offence under Section 25/27 of the Arms Act with rigorous imprisonment of three years with a fine of Rs.2,000/-. In the event of default of payment of fine, he has been directed to undergo rigorous imprisonment for three months. The benefit of Section 428 Cr. P.C. was given to the convict/appellant.

3. The facts, in brief, are that on 12.01.2009, at about 9.26 p.m., an information was received by the police regarding stabbing of a person. The said information was assigned to ASI Karan Singh who along with Ct. Mahesh reached the spot and came to know that the injured Sultan Singh and Guddu Singh were taken to hospital. The ASI along with constable reached the hospital. At about 10.20 p.m., another information was received from the hospital with regard to the death of injured

Sultan Singh. The said information was recorded vide DD no.36A and it was marked to Insp. Gajendra Singh who along with staff reached the hospital and recorded the statement of complainant Smt.Maya, wife of deceased. In her statement, Smt.Maya stated that when she along with her husband was present at the house of her brother Sooraj Bhan, the accused Guddu-their son-in-law came there and asked for money from her husband Sultan Singh. When the deceased refused to give the money, accused Guddu gave knife blows to him. On the basis of statement made by the complainant, FIR was recorded.

4. Appellant was arrested and after completion of investigation, charge sheet was filed in the Court. Charges under Section 302 IPC and 25/57 of the Arms Act were framed against the appellant to which he pleaded not guilty and claimed trial. To prove its case, the prosecution had examined 21 witnesses. After conclusion of prosecution evidence, statement of the appellant under Section 313 Cr.P.C. was recorded in which he denied the case of prosecution. No evidence in his defence was led by the appellant.

5. Vide impugned judgment of conviction dated 28.05.2011, the appellant was convicted for the offences punishable under Section 302 IPC and 25/27 of the Arms Act. The order on sentence was passed on 16.07.2011. Feeling aggrieved by the same, the present appeal has been preferred by the appellant.

6. We have heard the arguments advanced by the learned counsel for the appellant and learned Addl. Public Prosecutor for the State.

7. During the course of arguments, learned counsel for the appellant has sought to confine his arguments only on the aspect that the conviction of the appellant under Section 302 IPC. His submission is that conviction under Section 302 IPC was not called for in the facts and circumstances of the case, and that the case falls under Section 304 IPC.

8. The conviction of the appellant is based mainly on the testimony of Maya (PW2), wife of the deceased and Sooraj Bhan (PW3), brother-in-law of the deceased. PW2 had deposed that she along with her husband Sultan Singh-who was working as a labourer in Delhi, were residing with her brother Suraj Bhan. One week prior to the incident i.e. on 12.01.2009, she along with her husband Sultan Singh visited the house of accused Guddu to meet her daughter, and they stayed there for about one week. On 12.01.2009, accused Guddu was demanding money from her husband since morning. As they were not having any money at that time, her husband refused to pay any money and, thereafter, they left the house of accused. They reached the house of her brother at about 8.30 p.m. Her brother Suraj Bhan was present there. PW2 further deposed that at about 9.00 p.m., accused Guddu entered the house of her brother. Smell of alcohol was emitting from the mouth of

accused at that time. Her husband Sultan Singh was lying on a cot outside the room of her brother Suraj Bhan, and PW2 was present near him. Accused again started demanding money from her husband. Accused Guddu was abusing her husband in her presence and in the presence of Suraj Bhan. Her husband told the accused that he was not having money. Thereafter, accused exhorted her husband "*Mujhe kharcha do nahi to mein jaan se maar donga*" (give me money else he would be killed). On that, her husband told the accused that he was not having any money. PW2 further deposed that the accused immediately took out a knife from his pant and gave its blows on the neck and mouth of her husband twice. Blood scattered on the floor and the cot. She along with her brother Suraj Bhan caught held of the accused at the gate of the house as he was fleeing. The accused was given a beating. Someone informed the police. One PCR vehicle removed her husband to SGM Hospital, and the other PCR van removed the accused to the hospital. Police recorded her statement vide Ex.PW2/A. Investigating Officer lifted blood, blood stained earth control and blood stained brick from the spot, and seized the same vide seizure memo Ex.PW2/B. She further deposed that the accused got recovered one blood stained knife from kabar at a distance of about 5-6 steps from the door of the house. Sketch of the knife was prepared vide Ex.PW2/C and it was seized vide seizure memo Ex.PW2/D. She identified the knife as Ex.P1 which was used by the accused to cause injury to her husband. She also

identified the clothes of the accused as Ex.P3. She further identified the clothes of her deceased husband as Ex.P4.

9. Testimony of PW2 Maya has been corroborated by PW3 Suraj Bhan. PW3 had deposed that Maya is his sister and Sultan Singh was his brother-in-law (Jija). His sister Maya and brother-in-law Sultan Singh were working as labourers and were residing in the house of PW3 for the past 6-7 years. Accused Guddu is son-in-law of Smt. Maya. He further deposed that about a week prior to the incident i.e. on 12.01.2009, his sister Maya and brother-in-law Sultan Singh had gone to the house of accused to meet their daughter. On 12.01.2009 at about 8/8.15 p.m., when PW3 was present at his house, his sister Maya and brother-in-law Sultan Singh came to the house of PW3. At about 9.15 p.m., when PW3, his sister Maya and brother-in-law were present in the house, accused Guddu entered the house of PW3. Smell of alcohol was emitting from his mouth. Accused immediately started asking for money from Sultan Singh. His brother-in-law Sultan Singh told the accused that he was not having any money. On this, the accused started abusing and exhorted to Sultan Singh that *“kharcha de do nahi to jaan se maar doongd”*. Sultan Singh again told the accused that he was not having any money. Accused immediately took out a knife from the pocket of his pant and gave two knife blows, one on the neck and one on the cheek. Blood started oozing out and scattered over the floor.

PW3 and his sister apprehended the accused and also gave beatings to him. Someone informed the police at 100 number. Two PCR vans reached the spot. In one PCR van, Sultan was removed to SGM Hospital. PW3 accompanied his brother-in-law in the same PCR. While in the other PCR van, accused was taken to the hospital. In SGM hospital, after examining his brother-in-law, the doctor declared him dead. Accused was arrested vide arrest memo Ex.PW3/A. PW3 identified the knife as Ex.P1 which was used by the accused to cause injury to his brother-in-law. He also identified clothes of accused as Ex.P3 and clothes of deceased as Ex.P4.

10. PW8-Puja had deposed that on 12.01.2009 at about 9 p.m., she was present at her house and was cleaning the utensils. After sometime, she went outside the house to take water from the street tap and saw that the accused Guddu was present there. This witness was declared hostile by the prosecution and during cross-examination by the learned CPP for the State, PW8 had admitted that accused was carrying one knife and he was hiding his hand at his back. She also admitted that Suraj Bhan, and wife of deceased Maya apprehended the accused.

11. The post mortem report of the deceased Ex.PW7/A was proved by its author Dr.V.K. Jha (PW7). He deposed that on 09.02.2009, IO moved an application before him regarding opinion of weapon of offence alongwith one sealed parcel

sealed with the seal of GK. On opening the parcel, it contained a knife. He prepared the sketch of the said knife and proved the same as Ex.PW7/B. After examining the weapon of offence, he gave the opinion that the injuries mentioned in the post mortem report could have been caused by this weapon or similar such type of weapon. After examination, it was sealed with the seal of mortuary and handed over to the IO. He proved on record his subsequent opinion as Ex.PW7/C. He identified the knife as Ex.P-1 as the same which was examined by him. He observed the following external injuries on the dead body of the deceased :

(i)incised wound on right side of the neck 1.5 cm.
X 1 cm X muscle deep.

(ii)incised wound on front of neck 3 cm X 1 cm X
bone deep.

(iii)contusion over lateral angle of left side mouth
1 cm X 1 cm.

On internal examination of injury No.1, it has cut skin muscle and vessels. Liquid and clotted blood present. On dissection of injury No.2, it has cut skin muscles, vessels and trachea in two halves and trachea was pulled apart. The doctor opined the cause of death as asphyxia and haemorrhage shock as a result of tracheal and vessel injury consequent to stabbed wound inflicted by other party.

12. Thus, from the evidence brought on record, the prosecution has been able to establish that the deceased Sultan Singh was the father in law of the appellant, whereas Maya (PW-2) was mother-in-law of the accused. Both Sultan Singh and Maya were residing at the residence of Sooraj Bhan (PW-3) (brother of Maya). As per the testimonies of PW-2 and PW-3, the accused came to the residence of PW-3, where he asked for the money from his deceased father-in-law as, even earlier, the accused used to ask for money and the deceased used to pay sometime Rs.500/- and sometime Rs.1,000/- to the accused. On not giving the money, the accused exhorted the deceased “*kharcha de do nahi to jaan se maar doongd*”, and when the deceased again refused, he gave two knife blows to the deceased. The accused was also found to be under the influence of liquor, as per the medical examination of the accused. The independent witness, namely, Puja also supported the case of the prosecution. The knife was recovered near the place of incident and the blood group of the blood found on the knife and the blood found on the clothes of the appellant matched with that of the deceased. The death of the deceased was a result of the knife blows inflicted by the appellant, as established by PW-7.

13. In the face of above evidence, counsel for the appellant restricted his arguments to establish that the accused/appellant could not be convicted under Section 302 of IPC and, at the

highest, he could be convicted under Section 304 of IPC.

14. The argument advanced by counsel for the appellant is that there was no intention, or motive, on the part of the accused to cause the death of the deceased, who happened to be his father-in-law, and the incident took place on the spur of the moment. Thus, no intention or motive could be attributed to the accused, to cause the murder of the deceased. He further submits that the present case falls under Exception 4 of Section 300 of IPC, which says "*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 having taken undue advantage or acted in a cruel or unusual manner*".

15. Ld. counsel submits that it was not established by the prosecution that the offence was premeditated, or that the appellant had taken undue advantage, or acted in a cruel or unusual manner. The offence took place when the appellant demanded money from his father-in-law, like on earlier occasions, and since the same was denied-in a sudden fight, in the heat of passion, upon a sudden fight the fatal injuries were inflicted upon the deceased. That there was no pre-meditation is evident from the fact that the appellant is claimed to have warned his father-in-law/deceased to give the money, and only when the money was not given to him, the appellant stated to have inflicted injuries on the victim. Further submission

advanced by counsel for the appellant is that the trial court committed error while holding that the sentence awarded in this case would start after completion of the sentence of imprisonment already awarded to the accused.

16. From the testimonies of PW-2, PW-5 and PW-8, no motive or intention can be gathered and attributed to the accused to cause the death of the deceased.

17. From the evidence on record, it appears to us that the appellant had not gone to the house of Sooraj Bhan, where Sultan Singh-his father-in-law was present, with the intention of committing his murder. He had gone with the intention of demanding (kharcha) money from him. Though he was in possession of a knife, he had gone primarily to demand money from Sultan Singh as he had been giving money in the past to the appellant, as per the statement of Maya. On earlier occasions, as per statement of Maya, Sultan Singh used to give money to the appellant; sometimes Rs.500/- and sometimes Rs.1,000/-. The post-mortem report of the deceased Sultan Singh shows that he received two knife blows. Moreover, neither Maya nor Suraj Bhan were given any knife blows by the appellant-though they were also present and had prevented him from fleeing, and had also given him beating. Thus we cannot say that the appellant acted in a particularly cruel or unusual manner while committing the crime. Thus, we are of the considered view that the offence committed by the appellant

does not fall in the category of murder. Rather it falls within fourth exception to Section 300 IPC.

18. We find support for our view from the decision of the Supreme Court in ***Surinder Kumar v. Union Territory, Chandigarh (1989) 2 SCC 217***. In similar circumstances, the Supreme Court invoked Exception 4 to Section 300 of the Indian Penal Code, and converted the offence against the appellant in that case from murder, to culpable homicide not amounting murder. It was held that if, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, out of which only one proves fatal, he would be entitled to the benefit of the Exception, provided he has not acted cruelly. It was further held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. It has to be seen that whether the occurrence had taken place on account of a sudden and unpremeditated fight, and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300 this Court observed:

“...To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant

who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

Further, in the case of ***Ghapoo Yadav and Ors. v. State of M.P. (2003) 3 SCC 528***, it was held that in a heat of passion, there must be no time for the passions to cool down. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 Indian Penal Code. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. Relevant paras. from the judgment are as under :

“...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, Indian Penal Code is not defined in the Indian Penal Code. 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'.

...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused

Appellants had come prepared and armed for attacking the deceased....This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section 300 Indian Penal Code is clearly applicable...”

In *Sukbhir Singh v. State of Haryana (2002) 3 SCC 327*, the Hon’ble Supreme Court observed:

“...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 Indian Penal Code. After the injuries were inflicted and the injured had fallen down, the Appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner.”

19. We are, thus, of the view that the offence committed by the appellant tantamounts to culpable homicide not amounting to murder, and squarely falls within fourth exception to Section 300 IPC and hence punishable under Section 304 Part I IPC. Accordingly, the appellant is acquitted under Section 302 IPC and the sentence of life imprisonment with fine of Rs.20,000/- is set aside.

20. Consequently, the appellant is convicted and sentenced for a lesser offence under Section 304 Part-I IPC, as the appellant caused vital injury on the neck of the deceased as the same was likely to cause death in ordinary course of nature, though without any intention.

21. Accordingly, the appellant is sentenced to 10 years of rigorous imprisonment with a fine of Rs.20,000/- and in default of payment of fine, the appellant shall undergo rigorous imprisonment for six months for the offence punishable under Section 304 Part I IPC. This sentence shall run concurrently with the life sentence that the appellant is undergoing in an earlier case arising out of FIR No.240/98, PS Mangol Puri, Under Sections 302/394/34 IPC in terms of Section 427(2) of the Code.

22. The conviction of the appellant under Section 25 and 27 of the Arms Act and the sentenced awarded to the appellant is maintained.

23. The appeal stands disposed of.

VIPIN SANGHI, J

P.S. TEJI, J

NOVEMBER 15, 2017
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