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

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Date of Judgment: 28th April, 2017

+ **Crl. A. No.423/2016**

ANIL @ HUNNY

..... Appellant

Through Mr. K. Singhal, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr. Rajat Katyal, APP

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Present appeal is directed against the judgment dated 05.02.2016 and the order on sentence dated 08.02.2016 passed by the learned Trial Court in FIR No.145/2011, Sessions Case No.78/15(Old No.89/2011), by which the appellant stands convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/- and further sentenced to simple imprisonment for a period of six months in case of default of payment of fine.
2. The case of the prosecution is that a DD no.42A dated 14.06.2011 was received, upon which SI Jai Parkash along with Constable Mahesh went to Bhagwan Mahavir Hospital, Pitampura, Delhi and collected the MLC of one Sanjay, who had received stab injury over upper right

side of the abdomen. Another DD no.46A regarding death of Sanjay was received at 11:50 p.m. In the Hospital, statement of one Rahul was recorded and he stated that he is residing along with his parents and doing job at Gandhi Vastra Bhandar, A-727, Camp No.4, Jwala Puri, Delhi. The appellant Anil @ Hunny S/o Sh. Ghissa Ram r/o H. No.B-605, Camp No.4, Jwala Puri, Delhi is also doing job at Gandhi Vastra Bhandar. Rahul's elder brother Mukesh and their known distant relative Sanjay S/o Sh. Bhanwar Lal used to work at Punjabi Basti Nangloi. Mukesh and Sanjay used to pick him on cycle from Gandhi Vastra Bhandar after finishing their work and from there; they used to go to their houses in Nihal Vihar. 2-3 days prior to the incident Sanjay had some altercation with the appellant Anil @ Hunny and he had threatened him to see him later on. On 14.06.2011 at about 9.45 PM, Rahul along with the appellant Anil @ Hunny were present at Gandhi Vastra Bhandar and his brother Mukesh and Sanjay came there on cycle and at that time he was closing the shop. The appellant Anil asked Sanjay as to why he was staring at him and the appellant started verbal altercation with him (Sanjay). Thereafter, the appellant Anil @ Hunny took out meat cutting knife from the back side pocket of his pant and gave a knife blow on the abdomen of Sanjay and he fled from the spot with the knife. It is also mentioned that the appellant Anil @ Hunny was residing in the neighbourhood and during day time he went to his house. When the appellant Anil returned to the shop he was having meat cutting knife with him. Blood started oozing from the abdomen of Sanjay and the owner of Shop, Desh Raj Gandhi took Sanjay to Bhagwan Mahavir Hospital,

Pitam Pura in his car. During treatment, the doctor declared Sanjay dead. It was also stated by Rahul that he had witnessed the incident of killing Sanjay (hereinafter referred to as 'the deceased') by giving knife blow to him.

3. After completion of the investigation, charge sheet was filed. Charge under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC') was framed against the appellant to which he pleaded not guilty and claimed to be tried. In order to prove its case, the prosecution examined 18 witnesses in all. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he denied all the incriminating circumstances and claimed to be falsely implicated in the present case. No evidence was led by the appellant in his defence.
4. Mr. Singhal, learned counsel appearing for the appellant submits that the impugned judgment and order on sentence of the Trial Court are illegal and deserve to be set aside as the Trial Court has ignored material evidence available on record and based the impugned judgment in a hurry without correctly appreciating the facts of the case. Counsel contends that although PW-8 is not an eye witness, his testimony has been recorded as that of an eye witness to convict the appellant, although PW-8 has nowhere testified that he was present when the appellant stabbed the deceased. Counsel submits that in case PW-8 was present at the spot of incident, he would have accompanied the victim to the Hospital, whereas as per the MLC in the column of name and address of the accompanying person, no parentage and address has been mentioned. He submits that as per the case of the

prosecution, it was Mukesh who claims to be present at the time when the incident took place and brought the victim to the Hospital and not PW-8 Rahul.

5. After some hearing in the matter, learned counsel for the appellant submits that the appellant does not wish to contest the order of conviction, but he submits that no case is made out under Section 302 IPC and the case would fall under Section 304 Part I IPC. He submits that even if the testimony of PW-8 is taken to be correct, in that case there was no pre-mediation and further the incident occurred at the heat of moment which is evident upon reading the testimony of PW-8 who has testified that on 14.06.2011 when he was working at Gandhi Vastra Bhandar along with the appellant, one of his distant relation named deceased Sanjay had come to the Bhandar and at the time when PW-8 was closing the door of the shop, the appellant had told the deceased as to why he was gazing/staring at him and on this, hot exchange of words took place and while quarrelling both of them went on one side of the shop, when except for the appellant and the deceased, no one was present and after 10 or 15 minutes, he saw the deceased in a pool of blood while the appellant was not present at the spot. Mr. Singhal submits that, even as per the case of the prosecution a 31.5 cm knife was produced from the pocket of the appellant, is highly improbable as it would be impossible for the appellant to carry such a knife in his pocket and it is also highly improbable that he had visited the shop with the knife with the objective of killing the deceased. It is submitted while relying on the site plan that a meat shop is situated adjacent to the place of the incident i.e. Vastra

Bhandar from where the knife was picked up. Relying on the Exhibits PW18/B1-B3, the counsel submits that the knife may have been picked up by the adjoining meat shop which would show that the incident took place at the spur of the moment. To substantiate his argument, Mr. Singhal has relied upon the judgments in the case of *Rampal Singh v. State of Uttar Pradesh*, reported at 2012(8) SCC 289, *Mochi Raju vs. State of Gujarat*, reported at JT 2001(10) SC 398; *Golla Yelugu Govindu v. State of Andhra Pradesh*, reported at (2008) 16 SCC 769; *Vidhya Rani v. State(Delhi Admn.)*, reported at 2010(2) JCC 1478; *Rajesh @ Kalia v. State of Delhi*, reported at 2014(3) JCC 1890; and *Surinder Pal @ Billoo v. State of Delhi*, reported at 2010(1) JCC 603.

6. Counsel for the appellant further submits that the incident took place at 9:45 p.m., the MLC is of 10:16 p.m. and the time of death is 11:30 p.m. Mr. Singhal contends that had the intent of the appellant been to kill the deceased, he would have not left the deceased alive and thus, not only it would establish that there was no intent to kill the deceased, but it would also stand established that the appellant did not act in a cruel manner. While relying on the post-mortem report, Mr. Singhal submits that it was only injury no.1 which resulted into the death of the deceased. This would show that there was only one fatal blow and it was not that multiple fatal blows were inflicted on the deceased.
7. While relying on the testimony of PW-8, the counsel submits that it is not a case where the appellant had specially visited the shop to kill the deceased. His presence there was only incidental as he had come to pick up Rahul (PW8) from the shop. The counsel also submits that the

testimony on record would show that the witnesses, including PW-8 was pressurised to make the statements as during cross-examination of PW-8, it emerges that it is only after the appellant had reached the Police Station, PW-8 was allowed to go home. Counsel submits that the conduct of the appellant would show that he came to the Police Station on his own, which is evident upon reading the statement of PW-8.

8. Learned counsel submits that the recovery of the knife is highly improbable as according to the case of prosecution when the appellant came to the Police Station he was shrouded with suspicion and post the arrest the appellant had pointed to the place where the knife was thrown and the knife was recovered from there, whereas as per the testimony of PW-8, the appellant had voluntarily came to the Police Station and at that time, the knife was also present at the Police Station.
9. Per contra, Mr. Katyal learned counsel for the State submits that the State has been able to prove its case beyond any shadow of doubt. There is no infirmity in the order of conviction as also the order on sentence. He submits that the appellant had used a deadly weapon to attack the deceased which was 31.5 cm in length and was carried by him. The knife blows inflicted were one on the back side of the chest and the other on abdomen area which resulted in his death. He submits that the fact that the appellant used a knife and inflicted injuries at the vital part of the body shows that the appellant had knowledge and intention to kill the deceased and, thus the Trial Court has rightly convicted the appellant under Section 302 IPC. Mr. Katyal

further submits that after attacking the deceased, the appellant had left him to die and had absconded from the place of incident. Thus, the case would fall under Section 302 of IPC and not under Section 304 Part I or Part II IPC. To substantiate his arguments, learned counsel for the State has relied upon the judgment in the case of *Virsa Singh v. State of Punjab*, reported at *AIR 1958 SC 465*.

10. We have heard learned counsel for the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses. The Trial Court has strongly relied upon the testimony of PW-8 Rahul to convict the appellant herein.
11. PW8 Rahul in his examination-in-chief deposed that on the fateful night of 14.06.2011, he along with the appellant were employed at Gandhi Vastra Bhandar, A-727, Camp No. 4, Jwala Puri, Delhi. One of the distant relative of PW8 namely Sanjay (hereinafter referred to as 'the deceased') used to come to Gandhi Vastra Bhandar along with his elder brother Mukesh (PW12) on cycle to pick him along with them after their job was over and they used to go together on the cycle to their houses at Nihal Vihar. PW8 further deposed that 2-3 days prior to the incident; a hot exchange of words took place between the deceased and the appellant. PW8 testified that on the fateful night, his brother Mukesh (PW12) was on leave and the deceased had come to pick him up. It was around 9.45 PM, when he was busy in closing the shop. The appellant asked the deceased as to why he was staring at

him and on this account there was altercation between both of them which resulted in hot exchange of words. After 10-15 minutes, he saw the deceased in a pool of blood while the appellant was not present at the spot. With the help of Desh Raj (his employer/PW5) and the other employees of the shop he removed the deceased in a Santro car to SGM Hospital. After reaching the SGM Hospital, they were advised by Desh Raj (PW5) that it was not safe to admit the deceased in SGM Hospital and on his advice; they took the deceased to Mahavir hospital where he was declared brought dead. PW8 further deposed that his statement was recorded by the police in the night of 14/15.06.2011 at about 2.00/2.30 AM which is Ex. PW-8/A. He accompanied the police to the place of occurrence at about 5.00/6.00 AM on 15.06.2011. Since, it had rained heavily on that night, so blood lying on the spot had washed away. PW8 deposed that he had come to know that the appellant had stabbed the deceased with knife on that night itself. PW8 further deposed that on the next day i.e. on 15.06.2011, he had visited PS Mianwali Nagar where Gautam (friend of the appellant) was already present and Police made inquiries from him. Thereafter, he called the appellant on his mobile who told him that he was present in Peera Garhi and told Gautam that he would be reaching PS. He along with police officials proceeded towards Peera Garhi and met the appellant on the way and on his pointing out; the appellant was brought to the Police Station and was arrested the same day. PW8 further deposed that the appellant was wearing the same shirt when he was arrested and he did not notice any blood stains on it. He saw a

knife in the Police Station carried by the police officials and was being told to go back to his house.

12. However, PW8 in his cross-examination stated that he did not know as to how the deceased sustained injuries till he got him admitted in the hospital. His statement was recorded by the police officials after half an hour of his reaching the hospital. He was not aware about the contents of his statement recorded therein but the same was signed by him. On 15.06.2011, at around 10.00/11.00 AM he again visited the Police Station and was allowed to go home only after the appellant reached the Police Station. He again visited the Police Station on 17.06.2011 and was made to sign on 4-5 papers. He was not aware about the contents of the said papers. On the same day, he came to know about the assault being made by the appellant and before 17.06.2011 he was not aware as to who gave stab injuries to the deceased.
13. Besides the above public witnesses, PW15 SI Jai Prakash proved copies of DD No. 42A (with regard to stabbing of a boy with knife who was admitted in Bhagwan Mahavir Hospital, Pitampura) and 46A (with regard to death of the deceased) copies of which are Ex.PW15/A and Ex. PW15/B respectively. PW1 HC Ratti Ram proved the computer generated copy of FIR, which was recorded by him on 15.06.2011 at about 3.00 AM. Copies of which are Ex.PW1/A and his endorsement on rukka which is Ex.PW1/B. PW18 Ins. Dharam Pal was the Investigating Officer who arrested the appellant vide arrest memo Ex. PW8/C. PW18 had proved the application before the autopsy surgeon for seeking opinion with regard to the weapon of

offence and the subsequent opinion by the autopsy surgeon. Copies of which are Ex.PW18/C and Ex.PW18/D respectively. PW18 also proved the FSL reports, which are Ex.PW18/E and Ex.PW18/F.

14. Before taking into consideration the submissions made, we deem it appropriate to analyse the medical evidence in detail. In this regard testimonies of PW-11 Dr. Mamta Verma and PW17 Dr. Manoj Dhingra assume importance. PW-11 Dr. Mamta Verma has proved the MLC of the deceased, which is Ex.PW11/A deposed in his examination-in-chief that on 14.06.2011, at about 10.30 PM she had examined the deceased Sanjay brought by his friend namely Mukesh S/o Mahavir in an injured condition. On examination, it was found that the deceased was gasping and was in unconscious state and he was having a stab injury over the upper right side of abdomen. On local examination, she found a stab wound over right hypochondrium and intestine protruding out from the wound. After giving necessary treatment to the deceased, he was referred to the anaesthetist and senior resident surgeon for further treatment and was declared unfit for the statement. PW11 further deposed that the deceased was declared dead at about 11.30 PM on the same day as he could not be revived despite treatment.
15. On the nature and type of injury suffered by the deceased, we have already referred to the statement of Dr. Mamta Verma (PW11). However, to complete the medical evidence, we would like to refer to the post-mortem report (Ex.PW17/A) which was proved by Dr. Manoj Dhingra (PW17), who had conducted the post mortem on the deceased

on 15.06.2011 and had found the following injuries on the body of the deceased:

“External Examination (injuries)”

(1) *Stab injury surgically stitched 4.5 cm long obliquely placed with single edge sharp end upwards present on right side of abdomen 1.5 cm lateral to midline and 4.5 cm above umbilicus. On fine dissection it is obliquely cutting underlying abdominal soft tissues and muscles and going into abdominal cavity cutting soft tissues and parts of intestine, before cutting into medical part of right kidney and blood vessels around it. Injury is abdominal cavity deep.*

(2) *Stab injury 4 x 2 cm obliquely placed with single edge, sharp end downwards present on back and right side of chest, it is placed 13 cm below right mid clavicular line. On fine dissection it is cutting underlying muscles and soft tissues and going chest cavity deep.*

(3) *Abrasion 0.5 x 0.5 cm over chin.*

(4) *Abrasion 0.5 x 0.5 cm lateral to right eye.”*

16. After the post-mortem examination, PW17 Dr. Manoj Dhingra opined the cause of death as hemorrhage and shock consequent upon stab injury No. 1 which was caused by sharp edged weapon and was sufficient to cause death in the ordinary course of nature. As to the weapon of offence, PW17 opined that on 24.04.2012, Investigating Officer brought a knife and sought subsequent opinion, which is Ex.PW17/A. After observing the knife and the post-mortem report he

opined that injuries No. 1 and 2 are possible with the knife which had been shown to him.

17. Clothes of the appellant were sent to the FSL and as per FSL report which is Ex.PW18/E, blood was detected on the shirt and pant of the appellant and similar blood was detected on the clothes worn by the deceased. As per the testimonies of PW15 SI Jai Prakash and PW18 Insp. Dharam Pal blood was not found at the spot due to rain on the fateful night.
18. This brings us to the moot question whether the present case is one of deliberate or intentional killing resulting in the injuries, which would be a case of murder under Section 302 of IPC; or, unintentional. Further, if it is a case of unintentional and not a premeditated act and had arisen out of sudden quarrel, on the spur of the moment whether it falls under one of the special exceptions carved out under Section 300 of IPC?
19. Learned counsel for the appellant has urged that having regard to the genesis of the occurrence and the surrounding circumstances and the fact that there was only one fatal blow with a knife which landed on the abdomen of the deceased, it cannot be said with reasonable certainty that the appellant committed murder of the deceased Sanjay or the appellant intended to cause the particular injury and the injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.
20. In the case of *Mochi Raju vs. State of Gujarat*, reported at *JT 2001 (10) SC 398*; the Hon'ble Supreme Court considered the evidence of scuffle which took place between the accused and the deceased at the

time of incident and the injury had been caused by the accused at the spur of the moment during which abuses had been exchanged.

Relevant para 5 and 6 read as under:

“5. Our independent analysis of the evidence on the record shows that the findings of the High Court are based on misappreciation of evidence. The statement of PW-3 Govindbhai Bharwad clearly shows that there was a "quarrel" between the two at the time of the incident during which appellant took out a knife from his pocket and stabbed the deceased. Even the statement of Hemant Kumar - PW-7 shows that at the time of the incident at 7 p.m. both the deceased and the appellant were "fighting hand to hand". This evidence apparently has been overlooked by the High Court while returning the finding that there was "no scuffle".

6. On the basis of the material on record it stands established that there was, apart from an earlier incident of 6.15 p.m. when abuses had been exchanged between the deceased and the appellant, a further scuffle and quarrel between the two again during exchange of abuses at about 7 p.m. when the appellant took out a knife from his pocket and gave an injury to the deceased on his chest, in the occurrence which took place more than fifteen years ago. In this fact situation, the trial court was perfectly justified in holding that the injury had been caused by the appellant at the spur of the moment during a scuffle during which abuses had been exchanged. The submission that the attack was premeditated and the appellant came armed with a knife to stab the deceased is not based on any evidence. Had the drops of water not fallen on the deceased at about 6.15 p.m. and had the deceased not abused the appellant in the name of his mother and sister, perhaps no incident would have taken place. There is no material, on record to show that the appellant armed himself with the knife after that incident and chased the deceased. On the other hand evidence led by the prosecution shows that when the two started "fighting"

during the quarrel at the chowk, the appellant took out the knife from his pocket and gave only one injury to the deceased. He stopped thereafter. There is nothing on the record to show that the injury was deliberately aimed at the chest. The High Court was, therefore, not justified in setting aside the well reasoned order of the trial court. It did so by overlooking vital evidence available on the record which established the manner in which the occurrence took place. The conviction of the appellant, in the facts and circumstances of the case for an offence under section 302 Indian Penal Code was not warranted. In the established facts and circumstances of the case, the offence of which the appellant could be convicted would squarely fall under section 304 part - II IPC and the trial court rightly convicted him for the said offence.”

(Emphasis Supplied)

21. In the case of **Golla Yelugu Govindu v. State of Andhra Pradesh**, reported at (2008) 16 SCC 769, there was exchange of hot words between the husband and wife at about 2.00 AM in the night. The husband hacked his wife with a sickle on her back and the wife fell down. The husband once again hacked on her neck and her left ear causing severe bleeding injuries. The relevant para 13 to 16 read as under:

“13. The residuary plea relates to the applicability of Exception 4 to Section 300 IPC, as it is contended that the incident took place in the course of a sudden quarrel.

14. “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 (sic provocation) 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 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 had 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 a cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'. [Ed.: As observed in **Dhirajbhai Gorakhbhai Nayak v. State of Gujarat**, (2003) 9 SCC 322, at p. 327, paras 10-11.]

15. "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** [AIR 1993 SC 2426] 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 [giving] the blows with the knowledge that they were likely to cause death, he had taken undue advantage." [Ed.: As observed in **Babulal Bhagwan**

Khandare v. State of Maharashtra, (2005) 10 SCC 404, at p. 411, para 19.]

16. Considering the factual scenario in the background of the position in law as highlighted above, the inevitable conclusion is that the appropriate conviction would be under Section 304 Part I IPC. Custodial sentence of ten years would meet the ends of justice. Appeal is allowed to that extent.”

(Emphasis Supplied)

22. In the case of ***Vidhya Rani v. State (Delhi Admn.)***, reported at **2010(2) JCC 1478**; this Court modified the conviction of the accused persons under Section 304 Part II read with Section 34 of IPC and sentenced all the accused persons to rigorous imprisonment for 10 years. Relevant para 25 reads as under:

“25. From the testimony of PW2 Saraswati, it appears that some altercation did take place before the knife wounds were inflicted on the person of the deceased Ram Charit. The aforesaid inference is further substantiated by the fact that in the morning of 7.8.1993 at around 10.15 a.m., both the appellants were sent for medical examination by the IO as they claimed that they had sustained injuries on 5.8.1993 at 9.30 p.m. Dr. Amit Pragyan, as per Ex. PW 12/14 and Ex. PW 12/15, medically examined the appellants Madan Lal and Vidhya Rani and he did find injuries on their person. On examination of Vidhya Rani, Dr. Amit Pragyan found four injuries on the person of appellant Vidhya Rani namely—CLW on left side of head 2 × 1.5 cm, teeth mark on right hand, abrasions on the left knee and abrasion on the right leg and on examination of Madan Lal, he found two injuries on the person of the appellant Madan Lal namely CLW on right side of head (Parietal region) 2 × 2 cm. and abrasion on right side of his forehead, which injuries remain unexplained. Dr. Amit Pragyan has not been

*produced as a witness and he has not even mentioned the duration of injuries found on the person of the appellants, which could have given a clue whether those injuries were caused on the night of 5.8.1993 during the occurrence. Thus, in absence of any clear evidence, the benefit must go to the appellants and there is no escape from the conclusion that the appellants also sustained the above described injuries during the occurrence. The witnesses namely PW2 Saraswati, PW9 Sangeeta and PW11 Rajender Kumar have not explained as to how the appellants sustained injuries detailed in Ex. PW 12/14 and Ex. PW 12/15. This imply that there is something more to the story which has not come out in the testimony of the ocular witnesses. That being so, there is a reasonable probability that the knife wounds were inflicted by the appellant Madan Lal on the person of the deceased as a consequence of sudden quarrel and grappling between the parties in the heat of moment. It was night time and if those blows fell on a vital part of the body of the deceased, the intention to kill or the intention to cause such bodily injury which in all likelihood would have resulted in death cannot be inferred, particularly when there was no cogent motive to kill the deceased, on the part of the appellants. Therefore, the offence committed by the appellants falls within the Fourth exception to Section 300, IPC and amounts to culpable homicide not amounting to murder punishable under Section 304 Part II, IPC. In our aforesaid view, we find support from the judgment of Supreme Court in the matter of **Sukhbir Singh v. State of Haryana**, (2002) 3 SCC 327; and in the matter of **Vadla Chandraiah v. State of A.P.**, (2006) 13 SCC 587.”*

(Emphasis Supplied)

23. In the case of **Surinder Pal @ Billoo v. State of Delhi**, reported at **2010(1) JCC 603**, this Court modified the conviction of the accused under Section 304 Part I of IPC and sentenced him to eight years rigorous imprisonment. Relevant para 15 reads as under:

“15. From the testimony of PW4 Sanjay and PW5 Ms. Sudesh, it is apparent that the occurrence in question was an extension of the quarrel between the appellant and PW4 Sanjay, which started as a result of exchange of hot words between the mother of the appellant and PW5 Ms. Sudesh. From the testimony of PW4 Sanjay and PW5 Ms. Sudesh, it transpires that just before the main occurrence there was some altercation between PW4 Sanjay and the appellant in which the appellant, who admittedly was threatening to hit the mother of PW4 Sanjay with a brick, threw the said brick and gave fist blows to PW4 Sanjay, which circumstance clearly indicates that till that time there was no intention on the part of the appellant to cause a serious injury to PW4 Sanjay or PW5 Ms. Sudesh or any member of the family. It is only when the younger son of the deceased Rajnish PW9 went and called his father Omvir (deceased), the unfortunate occurrence took place. It has also come in evidence that when the deceased rushed to the spot, he was followed by PW3 Dharamjit Singh, complainant, who was carrying a saria in his hand and even PW4 Sanjay had admittedly brought a “balli” (a wooden log) and rushed towards the appellant. Only thereafter, the appellant had inflicted two knife blows to the deceased. From the said sequence of events, it is apparent that the appellant was not the aggressor and it was the deceased Omvir who came running to the spot to intervene in the fight. Therefore, there was no possibility of the appellant having planned to kill the deceased. It has not come in evidence from where the knife came, but it is apparent from the record that the deceased had stabbed the appellant because of the aforesaid sudden quarrel, which started with the exchange of abuses and hot words between the mother of the appellant and PW5 Ms. Sudesh, in the heat of moment. Indeed, the appellant inflicted two knife blows on the person of the deceased, which unfortunately proved to be fatal, however, from the circumstances detailed above the intention to kill on the part of the appellant cannot be inferred and, in our

considered view, the offence committed by the appellant squarely falls within Fourth Exception to Section 300 IPC.”

(Emphasis Supplied)

24. In the case of **Rampal Singh vs. State of Uttar Pradesh** reported at **2012 (8) SCC 289**, the Hon’ble Supreme Court altered the conviction of the accused from Section 302 to 304 Part I of IPC and awarded a sentence of 10 year rigorous imprisonment. Relevant para 25 and 30 read as under:

“25. As we have already discussed, classification of an offence into either part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of premeditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view i.e. by applying the “principle of exclusion”. This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, “culpable homicide amounting to murder”. Then secondly, it may proceed to examine if the case fell in any of the Exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the

essence of our criminal jurisprudence and are accepted as rights of the accused.

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30. Another very important aspect is that it is not a case of previous animosity. There is nothing on record to show that the relation between the families of the deceased and the appellant was not cordial. On the contrary, there is evidence that the relations between them were cordial, as deposed by PW 1. The dispute between the parties arose with a specific reference to the ladauri. It is clear that the appellant had not committed the crime with any premeditation. There was no intention on his part to kill. The entire incident happened within a very short span of time. The deceased and the appellant had had an altercation and the appellant was thrown on the ground by the deceased, his own relation. It was in that state of anger that the appellant went to his house, took out the rifle and from a distance i.e. from the roof of Muneshwar, he shot at the deceased. But before shooting, he expressed his intention to shoot by warning his brother to keep away. He actually fired in response to the challenge that was thrown at him by the deceased. It is true that there was knowledge on the part of the appellant that if he used the rifle and shot at the deceased, the possibility of the deceased being killed could not be ruled out. He was a person from the armed forces and was fully aware of the consequences of use of firearms. But this is not necessarily conclusive of the fact that there was intention on the part of the appellant to kill his brother, the deceased. The intention probably was to merely cause bodily injury. However, the Court cannot overlook the fact that the appellant had the knowledge that such injury could result in the death of the deceased. He only fired one shot at the deceased and ran away. That shot was aimed at the lower part of the body i.e. the stomach of the deceased. As per the statement of PW 2, Dr A.K. Rastogi, there was a

stitched wound obliquely placed on the right iliac fossa which shows the part of the body the appellant aimed at."

(Emphasis Supplied)

25. The present appeal is to be decided on the touchstone of the law laid down by the Hon'ble Supreme Court and reiterated by this Court in the foregoing para. Admittedly, the fact that the appellant gave a single fatal blow with a knife to the deceased Sanjay which landed on his abdomen and this injury resulted in death of Sanjay is not open to dispute and not questioned before us. After analysing the evidence on record, it is evidently clear that the occurrence has the features of an incident in which the injuries are inflicted in a sudden fight without pre-meditation in the heat of passion upon a sudden quarrel within the contemplation of Exception 4 to Section 300 of IPC, which takes the case out of the purview of murder.
26. As defined in the Exception 4, there was no premeditation on the part of the appellant; the appellant was not armed prior to the incident and only picked a knife from the adjoining meat shop. There is no evidence that the appellant made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellant assaulted deceased in such a manner that the deceased suffered grievous injuries, but considering the fact that the appellant did not act in a cruel or unusual manner, did not take undue advantage. The medical evidence further establishes there were two external injuries sustained by the deceased and out of the two, injury No. 1 was sufficient to cause death in the ordinary course of nature.

27. Furthermore, it may be noticed from the arrest memo of the appellant which is Ex.PW8/C that the appellant was arrested on the next day of the incident when he was called to the Police Station for interrogation. He did not run away from the clutches of law and had duly appeared when he was called for interrogation. In case the appellant had any intention or desire to kill the deceased Sanjay, and had intentionally beaten him, his conduct post the occurrence would have been different. The aforesaid facts when analyzed in conjunction with the attending circumstances enwombing the present incident, strongly dispels the possibility that the appellant harboured an intention to kill the deceased. Therefore, the act of the appellant did not amount to murder; the nature of the offence committed would be culpable homicide not amounting to murder. Hence, the present case is squarely covered under Section 304 of IPC which reads as under:

“Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

(Emphasis Supplied)

28. Applying the law to the facts of the present case, we are persuaded to accept the alternative limb of submission advanced by the learned counsel for the appellant that the present case would fall within the ambit of Section 304 Part I of IPC. We find force in the argument made by the counsel for the appellant that the shop adjoining the place of incident is a meat shop and there is every possibility that the appellant had picked the knife from the said shop as there is no evidence on record to show that the appellant was carrying a knife with him. This shows that the appellant did not have the requisite intention to kill the deceased and the incident had happened on the spur of moment which was ensued in a scuffle during which there was hot exchange of words between the appellant and the deceased. There was no motive which could have impelled the appellant to commit the murder of Sanjay. The ends of justice would be met if we modify the sentence awarded to the appellant and sentence him to undergo rigorous imprisonment for a period of 8 years. Case on which reliance is placed by learned counsel for the State is distinguishable and not applicable in the facts and circumstances of the present case.
29. Consequently, the appeal is allowed in part, the conviction and order on sentence recorded by the Trial Court is modified to the extent indicated hereinabove. The appeal stands disposed of. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered.
30. The Trial Court record be sent back along with a copy of this judgment.

31. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail record.

G. S. SISTANI, J.

APRIL 28, 2017
//pst

VINOD GOEL, J.

