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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. A. No.1732/2014

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Reserved on: 20th September, 2017
Date of Decision: 30th October, 2017

RAVI

.....Appellant

Through: Mr. O. P. Saxena, Advocate

Versus

STATE

.....Respondent

Through: Ms. Radhika Kolluru, APP for the
State

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The appellant has filed the present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) against the impugned judgment, dated 08.07.2014 and the order of sentence, dated 15.07.2014, respectively passed by the learned Additional Sessions Judge, Rohini Courts, Delhi in case FIR No.181/2011 filed under Section 302/34 Indian Penal Code (IPC), P.S.- Sultanpuri, whereby the appellant has been convicted under Section 302/34 of the Indian Penal Code (IPC), 1860 and sentenced to undergo Rigorous Imprisonment for life and fine of Rs.10,000/- each and in default of payment of fine, further to undergo

Simple Imprisonment for six months for offence punishable under Section 302 IPC.

2. We have heard learned counsel for the appellants as well as learned APP for the State and have also gone through the material on record. The brief facts of the prosecution case as noticed by the Trial Court are that on 04.05.2011 at 06:35 a.m. on receipt of DD No. 16B, it was informed that a person had been murdered near Sewing Centre, C-9, Sultanpuri, Delhi. SI Suresh Chand along with Ct. Kailash reached there and found a dead body lying on a cot. Lot of blood was lying on the ground beneath head, face was also blood stained. A big stone was lying about five feet away from the cot on which some hair were sticking. Identity of the deceased was established as Kuldeep @ Petal by his brother Pradeep. On these facts, *rukka* was prepared and case under Section 302 IPC was registered by sending Ct. Vijender to the Police Station. Further investigation was conducted by Inspector Arun Kumar Sharma who lifted blood stained earth soil, blood stained slippers, cot and blood stained stone of 12.3 kg from the spot. Incidentally, Police met a witness, namely, Deepak who told them that on 3.5.2011 at 9:30 p.m., accused Ravi and Kuldeep were fighting on the issue of breaking of liquor bottle. On his arrest, appellant Ravi pointed out the place of murder and the place where they had taken the liquor together and fought with each other. Co-accused Kuldeep was arrested at the instance of appellant Ravi and he too pointed out both the places. At the instance of both accused, broken pieces of bottle, earth soil lying near glass pieces and earth soil lying on the place from where the stone was lifted by the accused

persons, was taken into possession. Both the accused produced their clothes before the police they were wearing at the time of the murder. Statement of Deepak was recorded under Section 164 Cr.P.C.

3. By order dated 24.09.2011, the Trial Court framed charges under Section 302/34 IPC against the appellant and Kuldeep.

4. To bring home the guilt of the appellant, the prosecution examined 21 witnesses in all. The appellant herein did not lead any defence evidence. The statement of the appellant was recorded under Section 313 Cr.P.C. whereby he pleaded not guilty.

5. Learned counsel for the appellant has stated that the conviction of the appellant is based on assumptions, presumptions, surmises and conjunctures. Hence, the impugned judgment and order on sentence is liable to be set aside.

6. Learned counsel for the appellant further stated that the Trial Court has failed to take into consideration the material on record. The statements of witnesses produced by the prosecution are neither reliable nor truthful, hence, no reliance can be placed on these testimonies. Learned counsel for the appellant further submitted that while appreciating the facts on the record, the Trial Court has committed a grave error under the law in considering incriminatory circumstances. It is also submitted that Trial Court lost sight of the fact that if there is any shadow of doubt, that

circumstances have to be rejected or not to be considered in the chain or on the other hand there was a doubt or two hypothesis were possible where one was against the prosecution and the other against the accused, the benefit of reasonable doubt has not been given to the appellant and that circumstances have been considered proved against the appellant. It is also submitted, that circumstances have been used in order to complete the chain of circumstantial evidence and ultimately the appellant was convicted on the basis of aforesaid circumstances.

7. Learned counsel for the appellant also submitted that PW-12 namely Deepak is a planted witness who has made improvement to his earlier statement and has contradicted his earlier statement recorded under Section 161 Cr.P.C. Therefore, the Trial Court ought not to have relied upon the testimony of this witness.

8. It is also submitted that the Trial Court has failed to take into consideration that prosecution has completely failed to show the motive behind the alleged murder of the deceased by the appellant. No prosecution witness including PW-12 namely Deepak has deposed anywhere that there was any enmity between the deceased and the appellant, yet the Trial Court convicted the appellant only on suspicion. It is also stated that it is a settled rule of criminal jurisprudence that suspicion however grave, cannot be a substitute for proof and the courts should take utmost precaution in finding an accused guilty only on the basis of circumstantial evidence. He also submitted that the Trial Court made the observation that reasons of quarrel

have been deposed differently by PW-12 in examination-in-chief and cross examination, yet the Trial Court was pleased to convict the appellant only on the presumption that there may be more than one reasons for the quarrel but it has been established fully that both the accused had quarrelled with the deceased and therefore, the prosecution established the motive, though not in exact terms.

9. It is also submitted that no independent witness joined during the recovery of alleged blood stained clothes.

Learned counsel for the appellant submitted, that the impugned judgment and order on sentence is liable to be set aside.

10. *Per Contra*, Ms. Radhika Kolluru, learned APP for the State submits that learned Trial Court has properly appreciated the evidence and documents proved on record. PW-12 Deepak who is the star witness in this case, has stated that he saw the appellant and the co-accused in front of a grocery shop and the deceased Kuldeep @ Petal was standing at some distance from them. The appellant and the co-accused offered liquor to PW-12, but he refused. In the meanwhile, deceased Kuldeep @ Petal came near them and asked the appellant why they were forcing PW-12 to take liquor despite his refusal. PW-12 further deposed that on this advice both the accused were annoyed and started quarrelling with Kuldeep @ Petal. PW-12 came to know that Kuldeep @ Petal was dead, the next day. He spoke to appellant Ravi who begged forgiveness “*Humse Galti Ho Gai.*”

11. Learned APP for the State has submitted that the post mortem report opined that the injury is possible by the examined stone. Learned APP for the State further submitted that the weapon of offence i.e. a stone of 12.3 kg was recovered from the place of recovery of dead body and it was found stained with blood group 'O' of the deceased. It is further submitted that the appellant handed over his blood stained clothes to the IO and it was found stained with the kind of mud, with which the stone was found stained.

12. The Trial Court in its conclusion had held as under:-

“21. Conclusion:-

The prosecution has failed to establish the circumstances of 'last seen' and extra judicial confession. It has failed to establish the connection of blood stained stone with any accused. It failed to connect mud stained clothes of accused Kuldeep with mud of stone. Pointing out memos are also of no help to the prosecution case. But it has successfully established the motive against both accused. Additional circumstance proved against accused Ravi is that his T-shirt was found stained with the blood group of the deceased. It could not prove any other circumstance against accused Kuldeep. So benefit of doubt is given to accused Kuldeep but accused Ravi is held guilty u/s 302 IPC.”

13. The evidence, documents and the material on record led the Trial Court to hold that there was motive behind the commission of the offence and further the joining of the events resulting from the circumstantial evidence clearly points towards the guilt of the appellant.

14. In the light of the aforesaid submissions of both the parties we proceed to analyse the testimonies of prime witnesses, as noted by the Trial Court.

15. PW-1 Bijender, had deposed that his younger brother Kailash earlier owned a house in C9, Sultan Puri and later sold it and shifted to some other place with his children but Kuldeep @ Petal remained there who used to ply a rickshaw there and used to sleep in the garage of C9. He further deposed that his wife told him at 6/6.30 a.m. that Kuldeep @ Petal had been murdered and that his dead body was lying at the place where he used to sleep. He and his wife sent their son Raju to intimate the family members of Kuldeep @ Petal. To the same effect is the evidence of his wife PW-2 Bimla.

16. PW-6 Rajiv @ Raju had deposed that in the year 2011, his mother PW-2 Bimla had gone to market to purchase eatables and when she returned she was in perplexed condition and told him and his father that someone had killed Kuldeep @ Petal. Then he went to the house of Pradeep, brother of the deceased to give him information. Pradeep also reached the spot.

17. PW-3 Pradeep had deposed that deceased Kuldeep @ Petal was his younger brother and that he was a rickshaw puller. He further deposed that on 4.5.2011 at 6/6.30 a.m. PW-6 Rajiv @ Raju informed him that dead body of Kuldeep @ Petal was lying at Kumharon Wali Basti, C9, near Sewing Centre. He reached there and saw that dead body was lying on a cot with injuries on the head. Blood stained stone was also lying nearby. He intimated PCR with his phone no. 9289877138.

18. PW-9 Lady Ct. Sheetal was posted in CPCR as Channel Operator on 4.5.2011 when she received a call at 6.25 a.m. from phone no. 9289877138 that there was murder near Kumharon Wali Basti, near Sewing Centre, C9, Sultanpuri. She filled up the PCR form Ex.PW-9/A and flashed the communication further.

19. PW-8 Ct. Naresh Kumar registered DD no. 16B Ex.PW-8/A on 4.5.2011 at 6.35 a.m. that there was a murder in C9, Sultanpuri, Delhi and handed over copy of the same to PW-16 SI Suresh Chand who left for the spot with PW-15 Ct. Kailash.

20. PW-18 HC Ajay Sharma was posted at CPCR/PHQ on 4.5.2011. On that day, PCR van officials made communication with him and he fed that communication in the computer at point A in PCR form is Ex.PW-9/A.

21. PW-16 and PW-15 had reached the spot on receipt of DD No. 16B. PW-16 deposed that he saw a crowd at the spot. A person was lying dead on a cot having injuries on the head, a pair of slippers and a blood stained stone were lying near the cot. He came to know the identity of the deceased as Kuldeep @ Petal through his brother PW-3 Pradeep. He prepared *rukka* Ex.PW-16/A and sent it to PS through Ct. Vijender for registration of the FIR. While he was making inquiry, Inspector Arun also reached the spot along with Ct. Vijender. He moved application Ex.PW-16/B for postmortem of dead body in the Mortuary of SGM hospital. Site plan Ex.PW-16/C was prepared on his pointing out by PW-21 Inspector Arun

Kumar Sharma as investigation was done by him after registration of FIR. To the same effect is the testimony of PW-15 Ct. Kailash.

22. PW-10 Ct. Amrita Nagar was working as a computer operator in PS Sultanpuri on 4.5.2011. She deposed that the then duty officer PW-7 HC Raj Kumar came to her at 7.55 a.m. and she recorded case FIR Ex.PW-7/F. PW-7 also asserted that he got FIR registered through PW-10 via computer. Before it, PW-21 had made departure entry at 6.50 a.m. vide DD No. 8A Ex.PW-7/A. It was PW-7 who registered DD No. 9A Ex.PW-7/B at 6.52 a.m. regarding departure of Ct. Vijender to the spot.

23. PW-13 Ct. Charan Singh had deposed that on 4.5.2011 he collected copies of case FIR from duty officer and delivered to the office of DCP, Joint Commissioner and Ld. MM

24. PW-4 SI Anil Kumar and PW-5 Ct. Harish Kumar, photographer reached the spot on receipt of call from Control Room. They noticed a male dead body lying on a cot. PW-16 SI Suresh and PW-21 Inspector Arun Kumar Sharma along with staff were also present. PW-4 inspected the spot and prepared crime team report Ex.PW-4/A. PW-5 clicked thirteen photographs Ex.PW-5/A1 to Ex.PW-5/A13 of the spot, dead body and stone from different angles. Negatives are collectively Ex.PW-5/B.

25. PW-17 HC Govind was posted as MHC(M) on 4.5.2011 when PW-21 Inspector Arun Kumar Sharma deposited with him 14 pullandas. Eleven of

them were bearing seals of AK and three had seals of SGMH Mortuary. He made entry no. 12811 Ex.PW-17/A in register no. 19. He further deposed that on 5.7.2011, he handed over a pullanda having seals of AK to SI Dhirender to take opinion from the doctor of SGM hospital and made entry at that point against main entry. That pullanda was redeposited with him on 6.7.2011 and at that time it was having seals of SGM hospital Mortuary. He further deposed that on 19.7.2013, he handed over 13 pullandas to PW-14 SI Amrit Lal to deposit in FSL, Rohini vide RC No. 51/21/11 Ex.PW-14/A. Ten pullandas were having seals of AK and three were bearing seals of SGMH Mortuary. He had also given sample seals of AK and SGMH Mortuary to PW-14. He further deposed that on the same day, he handed over the viscera box and sample seal of SGMH to PW-14 vide RC No. 50/21/11 Ex.PW-14/C. After deposit, PW-14 handed him over receipt acknowledgment Ex.PW-14/B and Ex.PW-14/D.

26. PW-14 SI Amrit Lal also asserted that he had taken delivery of sealed pullandas from MHC(M) and had deposited in FSL on 19.7.2011.

27. PW-11 SI Mahesh Kumar prepared scaled site plan Ex.PW-11/A after visiting the spot and taking rough notes and measurements from there on 10.6.2011. PW-19 Ct. Munawwar Khan, PW-20 SI Virender and PW-21 Inspector Arun Kumar Sharma are witnesses of the same facts.

28. PW-21 deposed that on 4.5.2011 at 6.35 a.m., on receipt of information of murder, he along with PW-19 and PW-20 reached C9, near Sewing Centre, Kumharon Wali Basti, Sultanpuri where PW-16 SI Suresh

Chand and PW-15 Ct. Kailash were already present. A dead body was lying on a cot and a lot of blood had scattered on the ground beneath the cot. A blood stained stone having some hair was lying near the cot. He lifted the blood, blood stained soil, earth control, pair of slippers, stone and cot and seized them vide memos Ex.PW-19/A, Ex.PW-19/B, Ex.PW-19/C, Ex.PW-19/D, Ex.PW-19/E and Ex.PW-19/F. Before it, sketch of the stone was prepared Ex.PW-21/A1 . The dead body was taken to SGM hospital where he prepared inquest report Ex.PW-21/C. After postmortem, the doctor handed him a pullanda containing viscera. Two other pullandas and a sample seal were also handed over to him by the same doctor which he seized vide memo Ex.PW-15/A. He again reached the spot and during inquiry from a person Deepak, he came to know that the culprits might be Ravi and Kuldeep, who were fighting over a half bottle of liquor, the previous night. He, PW-19, PW-20 and PW-12 reached Indira Park, Sultanpuri and appellant Ravi was arrested on the identification of PW-12 Deepak. He pointed out the place of murder and memo Ex.PW-19/I was prepared. He had also pointed out a place near J. K. Public School near to the Coal Shop, from where he and co-accused had lifted a stone in order to kill Kuldeep @ Petal. The IO lifted and took into possession, the earth control from that place vide memo Ex.PW-19/J. On the same day, accused Kuldeep was arrested at the instance of appellant Ravi. Accused Kuldeep also pointed out the place of murder and pointing out memo Ex.PW-19/M was prepared. Then he led the police party to the place where he had thrown the half bottle of liquor in a broken condition, broken bottle of liquor was recovered from there and sealed with the seal of AK. Soil from that place

was also lifted. One pullanda of soil and liquor bottle was prepared which was taken into possession vide memo Ex.PW-19/B. Then accused Kuldeep led the police party to his house no. C6/347, Sultan Puri, Delhi from where he produced his black and white check shirt and blue jeans claiming that he was wearing the same at the time of the murder. The clothes were taken into possession vide memo Ex.PW-19/O and sealed with the seal of AK. Thereafter appellant Ravi took them to a rickshaw garage no. C-10, Vikas Kendra and brought a blood stained T-shirt and pant from the roof of a *jhuggi*/shed which were sealed with the seal of AK and taken into possession vide memo Ex.PW-19/P. Both the accused pointed out the place i.e. C9/132, which was a Kerosene oil shop in front of J. K. Public School, where both had consumed liquor. It was the same place where the deceased Kuldeep @ Petal had broken their liquor bottle. Pointing out memos Ex.PW-19/Q and Ex.PW-19/R were prepared. He further deposed that statement u/s 164 Cr. P. C. of PW-12 Deepak was recorded before the Magistrate on 01.06.2011. He then tendered FSL results as Ex.PW-21/E, Ex.PW-21/F and Ex.PW-21/G.

29. PW-12 Deepak has deposed that he could not remember the exact date, but it was 3rd or 4th day of May, 2011, when he reached C9, Kumharon Wali Basti, Sultanpuri, Delhi at 8/8.30 p.m. and saw Kuldeep @ Petal and appellant Ravi and co-accused Kuldeep in front of grocery shop. Both accused were sitting in front of grocery shop but deceased Kuldeep @ Petal was standing at some distance from them. They were consuming liquor, and then both accused offered him liquor but he refused. In the meantime, the

deceased Kuldeep @ Petal also came near them and asked them, why they were forcing PW-12 to take liquor despite his refusal. PW-12 further deposed that on this advice both accused were annoyed and started quarreling with Kuldeep @ Petal. He pacified the matter and both accused went away from the spot, thereafter he also left for his house. The next morning PW-12 came to know that Kuldeep @ Petal was no more. He spoke to appellant Ravi who begged forgiveness saying “*Humse Galti Ho Gayi.*” He further deposed that he could not remember the exact date of recording of his statement u/s 164 Cr. P. C. but claimed that such statement was recorded. PW-12 answered the leading question that accused persons and deceased had met him at 9.30 p.m. and at that time both accused were quarreling with Kuldeep @ Petal saying “*Tumne Meri Sharab Ki Adhi Botal Todkar Achha Nahin Kiya.*” He denied the suggestion that both accused were arrested on his identification. He also spurned the suggestion that during interrogation by the police, appellant Ravi disclosed that he and co-accused Kuldeep had murdered Kuldeep @ Petal. In further cross-examination by APP, PW-12 deposed that both accused persons were brought to the police station and when he spoke to them in police station, appellant Ravi told “*Usse galti ho gayi.*”. In a specific question by APP, PW-12 answered that his statement u/s 164 Cr. P. C. mentioning “*Usse galti ho gayi aur usne Petal ko maar diya*” was the correct one. He further admitted that at the time of recording of the statement u/s 164 Cr. P. C., he was not under any pressure or coercion.

30. Learned Trial Court has taken into consideration the testimonies of all the witnesses. PW-12 has also deposed that when he reached C-9, Kumharon Wali Basti, Sultan Puri, in the night intervening 3rd and 4th May, 2011 at about 8/8:30 p.m., he saw appellant and Kuldeep sitting in front of a grocery shop, while Kuldeep @ Petal was standing at some distance from them. Both were consuming liquor and they asked PW-12 to take drinks. In the meantime, Kuldeep @ Petal also reached there and asked them why they were forcing him to consume liquor despite his refusal. They got annoyed and started quarreling with him. He pacified the matter and both accused went away from the spot. He also left for his house. PW-12 also testified in his cross-examination that accused persons and deceased had met him at 9.30 p.m. They were quarreling because Kuldeep @ Petal had broken their liquor bottle. Contention of the defence counsel is correct as reasons of quarrel have been deposed differently by PW-12 in examination-in-chief and cross-examination by APP. In examination-in-chief, the reason is that both accused got annoyed, when deceased Kuldeep @ Petal asked them why they were insisting PW-12 to consume liquor. Whereas, in cross-examination, the reason is that Kuldeep @ Petal had broken the liquor bottle of the accused persons. There may be more than one reasons of the quarrel with the deceased but it has been established fully that both had quarreled with deceased Kuldeep @ Petal in the night intervening 3rd and 4th May, 2011 between 8-8.30 p.m. In his cross examination, PW-12 deposed that the appellant told “*Usse galti ho gayi*”.

31. The deposition of PW-12 clearly proves beyond any doubt that there was quarrel between the appellant and Kuldeep and the deceased which was pacified by him and thereafter both the appellant as well as Kuldeep went away from the spot and thereafter PW-12 too left for his house. The appellant and the deceased were last seen by PW-12 when they had quarreled.

32. The prosecution has also proved by way of evidence of PW-21 who has deposed that appellant took police party to a rickshaw garage no. C10, Vikas Kendra and brought a blood stained T-shirt and pant from the roof of a *jhuggi*/shed which were sealed with the seal of AK and taken into possession vide memo Ex.PW-19/P. These clothes were sent to FSL and FSL report Ex.PW-21/F is to the effect that the T-shirt was found stained with the blood. The report of the biological division proved that the blood sample of deceased was of “O” group and that T-shirt of appellant was also stained with “O” group blood. Hence, his T-shirt was found stained with the blood of the deceased. He could not offer any explanation how his T-shirt got stained with the blood group of the deceased. One another objection raised by the counsel for the appellant is that no public witness joined the effective recovery of clothes, however, we do not find any impact of the same on the case of the prosecution on this ground as generally, the public reluctantly comes forward to depose before the Court and hence, non joining of the public witnesses cannot in any way adversely affect the case of the prosecution.

33. We proceed to analyse the incriminating circumstances established against the appellant. From the afore-going, the following incriminating circumstances stand established against the appellant:-

- (i) It stands proved that there was a quarrel between the appellant and the deceased.
- (ii) The post mortem report and the Doctor's opinion that injuries were possibly caused by the examined stone.
- (iii) The weapon of offence was recovered from the place of recovery of dead body and it was found stained with blood group 'O' of the deceased.
- (iv) T-shirt of the appellant was found stained with the blood of the deceased. He did not offer any explanation how his T-shirt got stained with the blood group of the deceased.
- (v) The clothes of the appellant were stained with the kind of mud with which stone was found stained.

34. The aforesaid discussion, circumstances and evidence brought on record conclusively point towards the guilt of the appellant. Hence, the Trial Court is correct in convicting the appellant.

35. Mr. Saxena, learned counsel for the appellant, has also argued that if the conclusion upholding the conviction is reached, further, then the offence under Section 302 IPC is not made out against the appellant. Regarding the applicability of Section 302 of IPC, we are of the opinion that learned counsel for the appellant's argument has merit and deserves to be accepted. There is evidence that the appellant had a quarrel with the

deceased. There was no pre meditation. The weapon used is also of significance which was a stone, which evinces that there was no preparation. It cannot be said that the appellant had taken any undue advantage or acted in a cruel or unusual manner as he had only given one blow with the stone. Hence, the present case would be covered under Exception 4 of Section 300, which reads as under:

“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 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.”
(Emphasis Supplied)

36. To bring a case under this exception, four fold requirements must be satisfied: first, there must be a sudden fight; second, absence of premeditation; third, the accused must have been overcome with the heat of passion; and fourth, the accused must not have taken undue advantage or acted in a cruel or unusual manner.

37. In *Sayaji Hanmant Bankar v. State of Maharashtra*, (2011) 14 SCC 477, the convict had thrown a water pot and a kerosene lamp on the deceased (his wife) after a quarrel had taken place with her, the burn was exasperated by the fact that the deceased was wearing a nylon sari resulting in her death. The Apex Court found that there was a sudden fight and modified the conviction from Section 302 IPC to Section 304 Part I IPC. The relevant paragraphs read as under:

“7. It is clear from the reading of aforesaid Exception 4 that if the act is done without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and if the offender does not take any undue advantage or act in a cruel or unusual manner, then Exception 4 will be attracted.

8. We have gone through the evidence carefully. It seems that as soon as the accused entered the house, there appeared to be some quarrel with his wife and in that fight first, he threw a water-pot and thereafter a kerosene lamp. The burning seems to be more out of the fact that unfortunately at that time, the lady was wearing a nylon sari. Had she not been wearing a nylon sari, it is difficult to imagine how she could have been burnt to the extent of 70%. In our view this was a case which clearly falls under Exception 4 to Section 300 IPC since there was a sudden fight. There was no premeditation either. Therefore the appellant-accused is liable to be convicted for the offence punishable under Section 304 Part I.

9. We, accordingly, alter the conviction of the accused from Section 302 IPC to Section 304 Part I IPC and sentence him to the period already undergone by him. The sentence of fine remains the same.”

(Emphasis Supplied)

38. In *Sandhya Jadhav v. State of Maharashtra*, (2006) 4 SCC 653 a solitary knife blow was given to the deceased, when he attempted to intervene and separate the convicts trying to assault his uncle. The Supreme Court converted the conviction to Section 304 Part I observing as under:

“8. 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.

9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon 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 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 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 cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.”

(Emphasis Supplied)

[Also see **Abhijeet Raj v. State (Govt. of NCT of Delhi)**, **MANU/DE/1264/2016** and **Jagtar Singh v. State of Delhi**, **190 (2012) DLT 445**]

39. Coming to the case at hand, all the essentials of Exception 4 stand satisfied: the offence was committed pursuant to a sudden fight pertaining to quarrel arisen between the deceased and the appellant, there was no premeditation on the part of the appellant, the single solitary blow was inflicted with a stone obtained from the place of the offence, the appellant did not carry with him the weapon of offence, and the appellant neither acted in a cruel nor in a unusual manner. There is no evidence of previous enmity between the appellant and the deceased. Therefore, taking into account factual matrix, we find it difficult to infer that the appellant had intention to cause death of the deceased or to cause such injury which was likely to result in the death of the deceased. Apparently, the appellant acted on the basis of quarrel in a sudden fight. The appellant cannot even be attributed with the knowledge that his act will result in the death of the deceased. The

appellant has acted without pre-mediation and not taken undue advantage of the situation, nor has he acted cruelly. Thus, we are of the view that the conviction of the appellant falls within the sub-section 4 of the 300 IPC and the conviction under the Section 302 cannot be sustained, it is accordingly converted into conviction under Section 304 Part II of the Indian Penal Code.

40. In the present case, there was no prior preparation by the appellant to kill the deceased and a stone was taken up from the nearby place. Thus, the appellant seems to have hit the deceased on the spur of the moment. The injuries are many but only one caused the death of the deceased. The judgment relied upon by the prosecution titled as ***Gyanendra Kumar v. State of U.P.***, AIR 1972 SC 502 (V59 C 98) is of no help, in view of distinct fact of the present case as in the case of ***Gyanendra Kumar(supra)***, the appellant came back with a gun. This fact is non-existent or relatable to the facts of the present case.

41. Coming to the sentence, there is no history of previous conviction and as per nominal roll, the conduct of the appellant in jail is reported as satisfactory.

42. Having regard to the culpability of the appellant, we are of the view that the ends of justice would be met if the sentence of the appellant is modified to imprisonment for 8 years.

43. Consequently, the appeal is allowed in part, the conviction and order on sentence recorded by the Trial Court is modified to the extent indicated herein above. The appeal stands disposed off. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered.

44. The Trial Court record be sent back along with a copy of this judgment.

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

(CHANDER SHEKHAR)
JUDGE

(G. S. SISTANI)
JUDGE

30th OCTOBER, 2017

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