

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1070 of 2013

- Bhoko @ Sukal Das S/o . Hagru Ram Aged About 66 Years R/o. Bhatapara, Mata Dewala Ward, Khokhi Road, Near Jaistambh, P.S. Bhatapara, Distt. Balodabazar C.G., Chhattisgarh

---- Appellant

Versus

- State Of C.G. Through P.S.Palari, Distt. Baloda Bazar C.G., Chhattisgarh

---- Respondent

CRA No. 1255 of 2017

- Kalash Bai W/o. Bhokoram, Aged About 45 Years R/o. Bhatapara, Mata Dewala Ward, Khokhi Road, Near Jaistambh, P.S. Bhatapara, Distt. Balodabazar C.G., Chhattisgarh
- Permani @ Permila Wd/o. Late Dasrath Satnami, aged 30 years R/o. Boirdih, Police Station Pallari, District Raipur (Baloda Bazar) Bhatapara CG

---- Appellants

Versus

- State Of C.G. Through P.S.Palari, Distt. Baloda Bazar C.G., Chhattisgarh

---- Respondent

For Appellants	: Shri Suresh Kumar Tandon and Shri M.K.Baeg, counsel for the appellants.
For Respondent/State	: Shri Ravindra Agrawal, G.A.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgement on Board by Diwaker J.

23/02/2018

As these two appeals arise out of the comon judgment and order dated 31.07.2012 passed by the First Additional Sessions Judge, Baloda Bazar in Sessions Trial No.165/2011, convicting the

accused/appellants under Section 302/34 IPC and sentencing each of them to undergo imprisonment for life and to pay fine of Rs. 500/- with default stipulation, they are being disposed of by this common judgment.

2. In the present case, name of the deceased is Dashrath. Accused/appellant Permani @ Permila is wife of the deceased whereas accused/appellant Kalas Bai is the sister of Permila accused No.2 and Bhoko is the husband of accused No.1 Kalas Bai. On 14.05.2011 accused/appellants Bhoko and Kalas Bai came to the house of accused/appellant No.2 and deceased. At about 8.00 p.m. after consuming liquor by the deceased and accused/appellant No.1, when all the family members were taking dinner, over some dispute deceased threw the food served in his plate and also in other plates, upon which appellants 1 & 2 caught hold of the deceased and then it is said that accused/appellant Bhoko gave a blow of club to the deceased and abused him resulting his instantaneous death. At the instance of Manohar (PW-1) merg intimation Ex.P-1 was recorded on 15.05.2011. Based on the said merg FIR Ex.P-14 was registered on 17.05.2011 against three accused persons under Sections 302/34 IPC. Inquest on the body of deceased was prepared vide Ex.P-3 and body was sent for postmortem examination which was conducted by Dr. F.R.Nirala (PW-8) vide Ex.P-18 and according to him cause of death was shock (hypovolemic shock) due to injury over liver resulting to internal hemorrhage and death was homicidal in nature. After investigation, charge sheet was filed against the accused/appellants under Section 302/34 IPC and accordingly charge was framed.

3. In order to establish the guilt of the accused/appellants,

prosecution has examined 9 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Contention of counsel for the appellants is that there was no premeditation on the part of the accused persons in the commission of the crime. The incident had taken place in a heat of passion, upon sudden quarrel, accused/appellant Bhoko assaulted the deceased with a club and thus even if the entire prosecution is taken as it is, at best the appellants can be convicted under Section 304 Part II IPC. It has been argued that the appellants are in jail since 17.05.2011 and therefore after converting their conviction into Section 304 Part II IPC their sentence be reduced to the period already undergone by them. He has placed his reliance in the matter of **Laxmichand @ Balbutya Vs. State of Maharashtra** reported in (2011) 2 SCC 128.

6. On the other hand supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellant is strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material on record.

8. Mohan (PW-2) is the child witness aged 8 years and the sole

eyewitness to the incident. The court below after being satisfied with his mental status has recorded the statement. He has stated that on the date of incident at about 8.00 p.m. when all the family members were having dinner over some quarrel accused/appellant Bhoko assaulted the deceased with club. He has admitted the fact that deceased had consumed excess liquor and assaulted the appellant No.1. Dr. F. R. Nirala (PW-8) is the autopsy surgeon who conducted postmortem examination on the dead body and according to him cause of death was shock (hypovolemic shock) due to injury over liver resulting to internal hemorrhage and death was homicidal in nature. Munna (PW-9) has stated that after the incident he met accused/appellant No.2 and she informed him that the accused/appellant has given a blow of club to the deceased and then she further informed him that it is the deceased who at first assaulted them and then they caused injury to the deceased. He has also admitted the fact that deceased was in a habit of consuming excess liquor. Manohar Bharadwaj (PW-1) is the lodger of FIR. Dilip (PW-5) eyewitness to the incident has not stated anything and has been declared hostile. Anup Nag (PW-7) is the Investigating Officer who has done the investigation.

9. Close scrutiny of the evidence makes it clear that on the date of incident, accused/appellants Bhoko & Kalas Bai came to the house of the accused/appellant No.2 and deceased where accused/appellant Bhoko and the deceased consumed liquor and while they were having dinner, over some quarrel, deceased threw the food served to them and thereafter it is the deceased who at first assaulted the accused persons and in turn accused/appellant Bhoko picked up the club lying over there and assaulted him resulting his unfortunate death.

10. Considering the facts and circumstances of the case, in our considered view, the appellants case would fall in the category of culpable homicide not amounting to murder as even according to the prosecution, the injuries were caused by club and that too in a quarrel between the deceased and accused Bhoko inside the house. The appellants had no pre-plan or intention to kill the deceased and the incident took place in a sudden fight without any premeditation and the act of the appellants hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellants having taken undue advantage or acting in a cruel or unusual manner.

11. Apart from the incident being the result of 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 IPC. To bring a case within Exception 4 all the ingredients mentioned in it must be found. Reference may also be made to the decision in the matter of **Ankush Shivaji Gaikwad Vs. State of Maharashtra** reported in **(2013) 6 SCC 770** wherein it has been held that :

“11.the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their Jaggery crop in their field at around 10

p.m. when their dog started barking at the appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels – a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 of the I.P.C.

12. Time now to refer to a few decisions of this Court where in similar circumstances this Court has held Exception 4 to Section 300 of the I.P.C. to be applicable and converted the offence against the appellant in those cases from murder to culpable homicide not amounting murder.

13. In *Surinder Kumar v. Union Territory, Chandigarh* (1989) 2 SCC 217, this Court 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. This Court held that the

number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that 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.” (emphasis supplied)

14. We may also refer to the decision of this Court in [Ghapoo Yadav and Ors. v. State of M.P.](#) (2003) 3 SCC 528, where this Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. 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](#) IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite:

“...The help of Exception 4 can be invoked if death is caused

(a) without premeditation, (b) in a sudden fight: (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to [Section 300. IPC](#) is not defined in the [IPC](#). It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4 It is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.” xxx xxx
xxx ...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 IPC](#) is clearly applicable...” (emphasis supplied)

15. In *Sukbhir Singh v. State of Haryana* (2002) 3 SCC 327, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of [Section 300 IPC](#). In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The 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 IPC](#). 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.” (emphasis supplied)

16. Reference may also be made to the decision in *Mahesh*

v. State of MP (1996) 10 SCC 668, where the appellant had assaulted the deceased in a sudden fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by this Court to be sufficient to bring the case under Exception 4 to [Section 300](#) of the IPC. This Court held:

“...Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present also with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to [Section 300 IPC](#) is clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under [Section 304](#) (Part- I) [IPC](#)...” (emphasis supplied)

17. To the same effect are the decisions of this Court in [Vadla Chandraiah v. State of Andhra Pradesh](#) (2006) 14 SCALE 108, and [Shankar Diwal Wadu v. State of Maharashtra](#) (2007) 12 SCC 518.

18. The next question then is whether the case falls under Section 304 Part I or Part II of the [IPC](#). The distinction between the two parts of that provision was drawn by this Court in [Alister Anthony Pareira v. State of Maharashtra](#) (2012) 2 SCC 648, in the following words:

“..... For punishment under Section 304 Part I, the

prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death....”

19. Reference may also be made to the decision of this Court in [Singapagu Anjaiah v. State of Andhra Pradesh](#) (2010) 9 SCC 799 where this Court observed:

“16. In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused...” (emphasis supplied)

20. The decision of this Court in [Basdev v. The State of PEPSU](#) AIR 1956 SC 488, drew a distinction between motive, intention and knowledge in the following words:

“...Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things...”

21. This Court in the above decisions quoted the following passage from *Reg. v. Monkhouse* (1849) 4 Cox C. C. 55

where Coleridge J. speaking for the Court observed:

"The inquiry as to intent is far less simple than that as to whether an act has been committed, because you cannot look into a man's mind to see what was passing there at any given time. What he intends can only be judged of by what he does or says, and if he says nothing, then his act alone must guide you to your decision. It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention. A man could not put a pistol which he knew to be loaded to another's head, and fire it off, without intending to kill him; but even there the state of mind of the party is most material to be considered..." (emphasis supplied)

22. [In Camilo Vaz v. State of Goa](#) (2000) 9 SCC 1, the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the Trial Court and the Bombay High Court convicted the appellant under [Section 302](#) I.P.C. This Court, however, converted the conviction to one under [Section 304](#), Part II, [I.P.C.](#) and observed:

"....When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of [Section 304](#), [IPC](#) as in the present case..." (emphasis supplied)

23. [In Jagrup Singh v. State of Haryana](#) (1981) 3 SCC 616 the accused had given a blow on the head of the deceased with the blunt side of a gandhala during a sudden fight causing a fracture to the skull and consequent death. This Court altered the conviction from [Section 302](#) to [Section 304](#),

Part II [IPC](#) placing reliance upon the decision in [Chamru Budhwa v. State of Madhya Pradesh](#) AIR 1954 SC 652 in which case also the exchange of abuses had led both the parties to use lathis in a fight that ensued in which the deceased was hit on the head by one of the lathi blows causing a fracture of the skull and his ultimate death. The accused was convicted for the offence of culpable homicide not amounting to murder under [Section 304](#), Part II of the [IPC](#).

24. Reference may also be made to the decisions of this Court in [Sarabjeet Singh and Ors. v. State of Uttar Pradesh](#) (1984) 1 SCC 673, [Mer Dhana Sida v. State of Gujarat](#) (1985) 1 SCC 200 and [Sukhmandar Singh v. State of Punjab](#) AIR 1995 SC 583 in which cases also the cause of death was a fracture to the skull in a sudden fight without premeditation. The Court altered the conviction from [Section 302](#) IPC to [Section 304](#), Part II of [IPC](#).

25. Though the accused had inflicted only one injury upon the deceased, the fact that he had attempted to stab him a second time was taken as an indication of the accused having any intention to kill for the purpose of Section 304 Part I, [IPC](#) in [Kasam Abdulla Hafiz v. State of Maharashtra](#) (1998) 1 SCC 526, where this Court observed:

“....Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the 1st part of [Section 304 I.P.C.](#) The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed...”

(emphasis supplied)

26. We may lastly refer to the decision of this Court in [Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh](#) (2006) 11 SCC 444 where this Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused. This Court observed:

“...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under [Section 302](#) or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under [Section 302](#), are not converted into offences punishable under [Section 304](#) Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under [Section 302](#). The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances :

(i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at

a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention..." (emphasis supplied)

27. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II of the IPC.

68. In the result, we allow this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the Courts below. A copy of this order

be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.

12. Thus, looking to the facts and circumstances of the case, in particular the nature of injuries sustained by the deceased, the weapon used by the accused/appellants, we are of the view that the accused/appellants are liable to be convicted under Section 304 Part II IPC. Appellants are reported to be in jail since 01.06.2011. Considering the detention period of the accused/appellants, we are of the view that ends of justice would be served if their sentence is reduced to the period already undergone by them. Order accordingly. Appellants be released forthwith if not required in any other case.

13. In the result, the appeal is partly allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge