

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 27 OF 2016

Ramesh Nandu Surun

... Appellant

V/s.

The State of Maharashtra

... Respondent

Mr. Shekhar Ingawale, Amicus Curiae for the Appellant.
Mrs. P.P. Shinde, APP for the State.

CORAM

**: R.M.SAVANT, &
N.J.JAMADAR, JJ.**

RESERVED ON

: 26TH NOVEMBER 2018

PRONOUNCED ON

: 30TH NOVEMBER 2018

JUDGMENT (PER : N.J.JAMADAR,J.):

1. Challenge in this appeal is to a Judgment and Order in Sessions Case No. 333 of 2014 dated 06th November 2015 passed by the learned 3rd Additional Sessions Judge, Thane, whereby and whereunder the appellant Ramesh came to be convicted for the offence punishable under Section 302 the Indian Penal Code and sentenced to suffer imprisonment for life and pay fine of Rs.1000/- with default stipulation, for having committed murder of his wife Sita Surun (hereinafter referred to as “the deceased”)
2. The background facts, which led to aforesaid prosecution and conviction, can be stated in brief as under:-

a) The appellant was residing at Village-Kharmba, Taluka-Jawahar, District-Thane along with his deceased wife and children. The appellant was given in to the vice of drinking intoxicating liquor. Often there were quarrels between the appellant and the deceased, on the said count. Smt. Sita Dashrath Kadu is the sister of the deceased and resides in the vicinity of the house of the appellant.

b) On 17th February 2014 at about 3.00 p.m., Smt. Sita Kadu (hereinafter refer to as 'the informant') heard commotion emanating from in front of the house of the appellant. The informant rushed to the house of the appellant. The deceased was lying there at in a pool of blood. The children of the deceased, namely Surekha and Yojana and others had gathered there at. It transpired that a quarrel had occurred between appellant and the deceased over serving lunch to the appellant. The appellant got enraged and assaulted the deceased by means of an axe, on her neck. The deceased succumbed to the fatal injury. Thus, the informant lodged report against the Appellant with Jawahar Police Station.

c) Crime came to be registered against the appellant vide CR No. 11 of 2014. Investigation commenced thereon. Inquest on

the dead body of the deceased was held. The Investigating Officer visited the scene of occurrence and drew panchnama of the scene of occurrence on the very day. The weapon of offence i.e. an axe came to be seized under the seizure panchnama on 17th February 2014 itself. The clothes which the appellant wore at the time of occurrence came to be seized. The dead body was sent for postmortem examination. The Investigating Officer interrogated witnesses and recorded their statements. After completion of the investigation, the chargesheet to be lodged against the appellant for the offence punishable under Section 302 of the Indian Penal Code.

d) Upon committal, the learned Sessions Judge framed charge against the appellant for the offence punishable under Section 302 I.P.C. The appellant abjured his guilt and claimed for trial.

e) At the trial, to prove the guilt of accused, the prosecution examined 9 witnesses including the informant Sita Kadu (PW-1), Shantibai Tumda (PW-3), a neighbour of the deceased and Surekha Surum (PW-6), the daughter of the appellant and the deceased, as the eye witnesses to the occurrence, Eknath Rabade (PW-4) and Vilas Rabade (PW-7), the villagers who caught hold

of the appellant while he was fleeing away after the occurrence; Dr. Kaviraj Bhoje (PW-5) who conducted postmortem examination and Chetan Rathod (PW-8) and Keshav Naik (PW-9), the Investigating Officers. The appellant did not lead any evidence in his defence which consisted of denial.

f) The learned Sessions Judge after appraisal of the evidence and material on record, found that the deceased met a homicidal death; the ocular account of Surekha (PW-6), the daughter of the deceased, and Shantibai Tunda (PW-3) inspired confidence and the evidence of other witnesses and circumstantial evidence rendered the necessary corroboration. Thus, the learned Sessions Judge returned the finding of guilt against the appellant. The learned Sessions Judge further found that the appellant had the intention to kill the deceased and, therefore, convicted him for the offence punishable under Section 302 of the Indian Penal code and passed sentence as described above. Hence, the appellant has preferred this appeal.

3. Shri. Shekhar Ingawale, learned Counsel who was appointed as Amicus Curiae, to espouse the cause of the appellant, took a slew of exceptions to the impugned judgment. The principal challenge was that though the homicidal death of the deceased is not

disputable yet authorship thereof attributed to the appellant is not borne out by the evidence on record. Amplifying the submission, the learned Counsel for the Appellant would urge that the alleged eye witnesses Shantibai Tunda (PW-3) and Surekha (PW-6) had no opportunity to observe the incident. The veracity of their testimony was also assailed on the ground that there was inordinate delay in recording their statements under Section 161 of the Code of Criminal Procedure. Secondly, it was urged that the circumstantial evidence in the nature of seizure of the weapon of offence i.e. axe is also suspect on two counts. One, the recovery cannot be attributed to the appellant as the prosecution claimed a direct seizure and not recovery pursuant to the discovery made by the appellant and two, there is grave lacuna in the prosecution's case as the said axe was not immediately sealed after it was allegedly seized. Thirdly, the corroboration sought to be rendered by the other witnesses and circumstantial evidence falls through once the star witnesses namely Shantibai (PW-3) and Surekha (PW-6) stand discredited.

4. Per contra, Smt. P.P. Shinde, the learned APP stoutly submitted that the guilt of the appellant stands proved by overwhelming, cogent and reliable evidence. It was submitted that the appellant

was apprehended within moments of inflicting the fatal blow upon the deceased. The near and dear ones of the appellant had no reason to falsely implicate the appellant.

5. Before adverting to deal with the challenges mounted by the learned Counsel for the appellant, it may be apposite to have a brief resume of the evidence of Shantibai Tunda (PW-3) and Surekha Surum (PW-6), the eye witnesses. Shantibai (PW-3) testified to the fact that on the date of occurrence at about 3.00p.m., the deceased was sitting in front of the door of her house. The appellant was also present. There was exchange of words. The appellant went inside the house, brought an axe and assaulted the deceased on the neck. The deceased fell down. The appellant attempted to flee away but he was apprehended by Eknath Rabade (PW-4); her husband, Vilas Rabade (PW-7), Sanjay Nagwansh and others.
6. This version of Shantibai (PW-3) was sought to be corroborated by Surekha (PW-6), the daughter of the deceased, who had the misfortune to testify against her father-the appellant, in proof of the homicidal death of her mother, the deceased. Surekha (PW-6) informed the Court that on the date of occurrence at about 3.00 p.m., the appellant asked the deceased to serve food. The

deceased was then sitting at the door of their house. As the deceased did not serve food, as demanded by the appellant, the later brought an axe from the house and assaulted the deceased by means of the said axe on her neck. Her grandmother Reshmi raised alarm. Her relatives and neighbours gathered. The deceased was taken to hospital. The appellant was taken to the police station.

7. It is imperative to note that nothing material could be elicited in the cross-examination either Shantibai (PW-3) or Surekha (PW-6), to discredit their claim of having witnessed the occurrence. It was, however, brought out in the cross-examination of Shantibai (PW-3) that the house of the appellant is 50 feet away from her house. She went on to admit that when she reached the spot of occurrence, people had gathered thereat.
8. The aforesaid admissions, however, do not advance the cause of the appellant. The evidence is required to be appreciated in the light of the fact that the incident occurred in the broad day light and that too at the door of the house of the appellant. The presence of the appellant and the deceased at the time and place of occurrence was natural. Since, the incident occurred in front of the door of the house of the appellant, Shantibai (PW-3)

whose house was situated at the distance of 50 feet, had the opportunity to observe the same. Nothing could be elicited in the cross-examination of Shantibai (PW-3) to demonstrate that either by reason of physical situation at the scene of occurrence or on account of physical presence of Shantibai (PW-3) elsewhere, it was not possible for Shantibai (PW-3) to witness occurrence.

9. The testimony of Surekha (PW-6) stands on an even higher pedestal. On the core of the occurrence, her testimony went virtually unchallenged. Apart from the suggestions that she had not witnessed the occurrence and she was apprised about the occurrence by her uncle, which were promptly denied, nothing could be elicited in her cross-examination. It is pertinent to note that the presence of Surekha (PW-6) in the house of the appellant at the time of occurrence is most natural. The FIR lodged by Sita Kadu (PW-1) records the presence of Surekha (PW-6), apart from other witness, at the time of occurrence. Surekha (PW-6) is a young girl of 17 years. It does not appeal to human credulity that a young girl, who was on the verge of attaining majority, would depose against her father-appellant, falsely accusing him of the murder of her mother. Thus, the first

challenge to the impugned judgment on the count that the star witnesses, Shantibai (PW-3) and Surekha (PW-6) had, in fact, not witnessed the occurrence falls through.

10. The learned Counsel for the appellant endeavoured to draw home the point that the credibility of the testimony of abovenamed witnesses is impaired on account of delay in recording their statements under Section 161 of the Code of Criminal Procedure. It was urged that though the abovenamed witnesses were very much available for interrogation, the statement of Shantibai (PW-3) came to be recorded on next day of occurrence i.e. 18th February 2014 and that of Surekha (PW-6) came to be recorded on 19th February 2014. This delay, in the context of the factual scenario, according to the learned Counsel for the Appellant, is inordinate. Since there is no plausible explanation for recording the statements of the abovenamed witnesses belatedly their testimony cannot be relied upon to base the finding of guilt, urged the learned Counsel for the appellant.
11. To lend support to aforesaid submission, the learned Counsel for the appellant placed strong reliance upon a ruling of Supreme Court in the case of **Ganesh Bhavan Patel and Anr. V/s. State**

of Maharashtra¹. In the said case, the statements of the eyewitnesses therein, who were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, were recorded on the following day. In this background, the Supreme Court had observed as under :-

“Delay of a few hours, simpliciter, in recording the statements of eye-witnesses may not, by itself, amount to a serious infirmity in the prosecution case. But it may assume such a character if there are concomitant circumstances to suggest that the investigator was deliberately marking time with a view to decide about the shape to be given to the case and the eye-witnesses to be introduced.”

12. It is trite that mere delay in recording the statements of witnesses by itself may not be a ground to discard their testimony. Two factors assume significance whenever the credibility of testimony of witnesses is questioned on account of their delayed interrogation; one whether there is a plausible explanation for such delay, and two, are there any concomitant factors or circumstances which, coupled with delay, render it unsafe to place reliance on the testimony of such witnesses.
13. In the case at hand, we do not find that the recording of statements of Shantibai (PW-3) on 18th February 2014 and that

1 AIR 1979 SC 135

of Surekha (PW-6) on 19th February 2014 detracts materially from the prosecution case. In the backdrop of the nature of the occurrence, the presence of Shantibai (PW-3) and Surekha (PW-6) at the place of occurrence is natural and stands corroborated by other evidence. The Investigating Officer could have recorded their statements at an earlier point of time. However, in the absence of any concomitant circumstances, this delay, simpliciter, would not be sufficient to render their testimony unworthy of credence. Moreover, it does not appear that the Chetan Rathod (PW-8) the Investigating Officer was confronted with the aspect of delay during the course of his cross-examination.

14. In this context, a useful reference can be made to the ruling of the Supreme Court in the case of **State of U.P. V/s. Satish**², wherein the aforesaid pronouncement in the case of **Ganesh** (supra) was considered and explained in the following words:

“18. As regards delayed examination of certain witnesses, this Court in several decisions has held that unless the Investigating Officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It

2 (2005) 3 SCC 114

would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion [See *Ranbir and Ors. v. State of Punjab* (1973) 2 SCC 444, *Bodhraj @Bodha and Ors. v. State of Jammu and Kashmir*, (2002) 8 SCC 45 and *Banti @ Guddu v. State of M.P.* (2004) 1 SCC 414.

19. The High Court has placed reliance on a decision of this Court in *Ganesh Bhavan Patel and Anr. v. State of Maharashtra*, (1978) 4 SCC 371. A bare reading of the fact situation of that case shows that the delayed examination by IO was not the only factor which was considered to be determinative. On the contrary it was held that there were catena of factors which when taken together with the delayed examination provided basis for acquittal.

20. It is to be noted that the explanation when offered by IO on being questioned on the aspect of delayed examination, by the accused has to be tested by the Court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the Court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of prosecution's evidence tendered by the other witnesses”.

15. In view of aforesaid legal position and the attendant facts and circumstances, in the case at hand, we are not persuaded to accede to the submission on behalf of the appellant that the testimony of Shantibai (PW-3) and Surekha (PW-6) becomes untrustworthy on account of delay in recording their statements under Section 161 of the Code of Criminal Procedure.

16. It was then urged on behalf of the appellant that there is a serious infirmity in the prosecution case as regards the seizure of weapon of offence i.e. axe, and prosecution has failed to establish the nexus between the appellant and the weapon of offence. It was further urged that the identity of the weapon of offence becomes uncertain as Dr. Kaviraj Bhoje (PW-5), the Medical Officer affirmed that he had examined the weapon of offence i.e. axe, on 18th February 2014 and did not find any blood thereon. This claim of Dr. Kaviraj Bhoje (Pw-5) falsifies the prosecution's case that blood stains of 'B' group were found on the axe, as reported by the Assistant Chemical Analyser vide CA Report (Exh. 31).
17. The Trial Court was of the view that the aforesaid circumstances do not render the prosecution's case infirm. None of the public witnesses to the seizure nor the Investigating Officer was confronted with the suggestion that the axe and the clothes of the appellant were not stained with blood. In view of ocular account, the lapse on the part of the Investigating Officer in not immediately sealing the axe, after seizure, was not of material significance.
18. We are of the view that the aforesaid approach of the Trial Court

is justifiable. It is imperative to note that Dashrath Kadu (PW-2) the public witness to seizure of the axe, apprised the Court that on the day of occurrence, the said axe came to be produced by the mother of the appellant and thereupon it was seized. He categorically asserted that the axe was stained with blood. It is true that Vilas Rabade (PW-7), a neighbour of the appellant, claimed to have traced out the axe. On this premise, it was urged on behalf of the appellant that there is a variance between the testimony of these two witnesses as regards the source from which the axe came to be seized. We are afraid to accede to this submission. Vilas Rabade (PW-7) did mention that the weapon of offence, which was hidden by the mother of the appellant so as to prevent further untoward incident, came to be produced and seized. In the backdrop of the facts of the case, the act attributed to the mother of the appellant appears more nearer to the truth.

19. As regards the challenge on the count of the claim of Dr. Kaviraj Bhoye (PW-5) that he didn't find any blood on the axe, the observations of the learned Trial Court that the testimony of the witnesses who claimed that they had noticed the blood stains on the axe went untraversed are borne out by the record. In the face

of overwhelming evidence, the aforesaid claim of Dr. Kaviraj Bhoye (PW-5) or for that matter, the lapse on the part of the Investigating Officer to immediately seal the axe, do not run counter to the prosecution case.

20. Having carefully examined the evidence and material on record and on an independent evaluation thereof, we are inclined to hold that the trial court was justified in recording the finding that the deceased met the homicidal death and the prosecution succeeded in establishing the fact that the appellant was the assailant.
21. The learned Counsel for the appellant strenuously urged that even if the authorship of the accused for the homicidal death of the deceased was established, the trial court committed a manifest error in recording a finding that the appellant had committed 'murder' and thus punishing the appellant for the offence punishable under Section 302 of the Indian Penal Code.
22. The learned Counsel for the appellant urged that the trial court did not advert to the question as to whether the act of the appellant would amount to 'murder' or 'culpable homicide not amounting to murder'. The edifice of this submission was built on Exception 4 to Section 300 of the Indian Penal Code. The

learned Counsel for the appellant would urge that there was no premeditation, the occurrence had its genesis in a sudden fight and the appellant inflicted a single blow by means of axe in the heat of passion upon the deceased. There is no material to indicate that the appellant had taken any undue advantage or acted in a cruel or unusual manner. Thus, according to the learned Counsel for the appellant, all the ingredients to bring the case within the ambit of Exception 4 to Section 300 were fulfilled. The learned Counsel for the appellant urged that the conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code deserves to be interfered with.

23. In opposition to this, the learned APP submitted that in the backdrop of the evidence on record, especially the fact that the appellant inflicted a blow by means of deadly weapon on the vital part of the body, resulting in almost instantaneous death of the deceased, the conviction of the appellant for the offence punishable under Section 302 of the Indian Penal Code is wholly justifiable.
24. We have given anxious consideration to the rival submissions. We find that the aforesaid submission on behalf of the appellant

has substance. The learned Sessions Judge did not advert to the question as to whether the proved act of the appellant would fall within the dragnet of 'murder' or 'culpable homicide not amounting to murder'. The learned Sessions Judge simply observed that for a trifling reason, the appellant assaulted the deceased by means of an axe and thus, the appellant had the intention to kill the deceased. The learned Sessions Judge ought to have posed unto himself a question as to whether the proved facts and circumstances bring the act of the appellant within any of the Exceptions to Section 300 IPC.

25. In this context, reference to the judgment of the Supreme Court in the case of **State of Andhra Pradesh V/s. Rayavarapu Punnayya and Another**³ would be advantageous. In this case the Supreme Court instructively explained the distinction between 'murder' and 'culpable homicide' not amounting to murder. In the process, the Supreme Court illuminatingly postulated the method of determining the question as to whether, in the given facts, the offence proved is 'murder or 'culpable homicide not amounting to murder', in three stages. Para 21 of the said judgment reads as under:

³ (1976) 4 SCC 382

“21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on, whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.”
(emphasis added)

26. In the instant case, the Trial Court has not considered the later part of aforesaid third stage i.e. whether the case comes within any of the exceptions enumerated in Section 300. We propose to examine the said aspect. The question which comes to the fore is whether the act of the appellant comes within Exception 4 to Section 300 IPC

27. From the established facts the following position emerges. The deceased was sitting at the door of her house. The appellant came thereat. The appellant asked the deceased to serve food.

An altercation ensued between appellant and deceased over the apparent refusal of the deceased to serve the food. The quarrel was sudden. The appellant, unable to control the passion and in a fit of anger, went inside the house, brought an axe and assaulted the deceased.

28. In this factual backdrop, the reliance placed by the learned Counsel for the appellant on the rulings of the Supreme court in the cases of *Keshavlal Vs. State of Madhya Pradesh*⁴ and *Sandhya Jadhav (Smt.) Vs. State of Maharashtra*⁵, appears well founded.
29. In the case of **Keshavlal** (supra), the accused therein had an altercation with the deceased, who was stated to be his mistress and whereupon he took up a knife and stabbed the deceased, which proved to be fatal. The Supreme Court, on the said facts, found that the case was covered by Exception 4 to Section 300 of the Indian Penal Code. The Court observed as under:

“In the facts and circumstances of the case we find that a usual brawl between the persons living as husband and wife resulted in the death of the deceased. There is nothing on record to show that the accused had pre-planned the execution of the offence. It is admitted even by the prosecution witnesses that the appellant had come unarmed at the residence of the parents of the

⁴ *AIR 2002 SC 1221*

⁵ *(2006)4 SCC 653*

deceased and after altercation he picked up a kitchen knife from that house by which he inflicted one injury on the person of the deceased. It appears that the appellant committed the offence without pre-meditation in a sudden fight, in the heat of passion upon a sudden quarrel which was not provoked by him. It has also come on record that the appellant was not taking any undue advantage during the occurrence. The offence cannot be said to have been committed in a cruel or unusual manner. The appellant-accused was, therefore, entitled to the benefit of Exception 4 of Section 300 of the Indian Penal Code.”

30. In the case of **Sandhya Jadhav** (supra), the facts were that the accused was the tenant of uncle of the deceased. An altercation ensued over the payment of rent. The deceased intervened in the matter to separate the accused and his landlord. The accused thereupon gave a knife blow on the back of the deceased, resulting in his death. The Supreme Court extended the benefit of Exception 4 to Section 300 of the Indian Penal Code, with the following observations:

“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 of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in*

both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons 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'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'."

31. A useful reference can also be made to a judgment of Supreme Court in the case of ***Mukesh Vs. State of Madhya Pradesh***⁶, wherein, facts were that the accused and his friend had gone to a hotel for having dinner. The accused was stated to have consumed liquor. An unintended quarrel broke out between the accused and the victim party, including the deceased, in regard to the preference in service of food to them; consequent to this, the accused whipped out the knife and stabbed the deceased and another person. In the aforesaid fact-situation, the Supreme Court altered the conviction from Section 302 of the Indian Penal Code to Section 304 part 1, with the following observations.

"We have examined the material on record and we do notice that Injuries 4 and 5 inflicted by the appellant are grievous but the same were caused even according to the prosecution in a sudden fight without any motive. As a matter of fact the deceased and PW 2 were total strangers to the appellant. It is also seen from the evidence that after attacking the deceased and the deceased having fallen down, the appellant did not

6 (2010)15 SCC 585

attack any further. Therefore, we think that the facts of Sukhbir case is almost similar to the case in hand, therefore, the appellant is entitled for the same benefit. We also notice that in the absence of any motive to kill, the injury suffered by PW 2 also cannot be treated as having inflicted with an intention to kill. Therefore, conviction of the appellant under Section 307 IPC also cannot be sustained.”

32. In the backdrop of aforesaid legal position, re-adverting to the facts of the instant case, as analysed above, we are of the view that the act attributed to the appellant falls within the four corners of Exception 4. The appellant was initially unarmed. There was no premeditation. The appellant gave a single blow to the deceased in consequence of a sudden quarrel. There was no time lag between the altercation and the attack by the appellant. The appellant did not take undue advantage of the hapless condition of the deceased after she fell down, nor the appellant acted in a cruel or unusual manner. The prosecution did not attribute any motive for the killing of the deceased. Nor it is alleged that the attack upon the deceased had its genesis in any previous quarrel or the altercation over the serving of food was a subterfuge. These factors impel us to hold that the appellant assaulted the deceased in a sudden fight in a heat of passion and upon a sudden quarrel.

33. The conspectus of aforesaid consideration is that the instant case comes within the ambit of Exception 4 to Section 300 IPC. Thus to this extent, the Appeal deserves to be allowed. The order of conviction is thus, required to be altered from the offence punishable under Section 302 IPC to Section 304 part 1 IPC. Consequently, the sentence is also required to be modified. Having regard to the entire gamut of the circumstances, in our view, a sentence of 10 years imprisonment would meet the ends of the justice. Hence, we pass the following order.

:ORDER:

- i) The Appeal stands partly allowed.
- ii) The impugned order of conviction for the offence punishable under Section 302 Indian Penal Code and sentence of imprisonment for life, imposed upon the appellant, stand quashed and set aside.
- iii) The appellant - Ramesh Nandu Surun stands convicted for the offence punishable under Section 304 part 1 Indian Penal Code. For the said offence, the appellant is sentenced to suffer rigorous imprisonment for 10 years and pay a fine of Rs.1000/- (Rs. One thousand). In default of payment of fine, he shall suffer further rigorous imprisonment for one month.

iv) The appellant shall be entitled to set-off under Section 428 of Code of Criminal Procedure.

(N.J.JAMADAR, J.)

(R.M.SAVANT, J.)