

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Appellate Side

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 413 of 2012

With

CRAN 2/2019 (Old No.: CRAN 3141/2019)

CRAN 3/2020 (Old No.: CRAN/4123/2020)

Bidhan Sardar & Ors.

Versus

The State of West Bengal

For the Appellants : Mr. Sagar Saha, Adv.
Mr. Subir Debnath, Adv.
Ms. Roma Roy, Adv.

For the State : Ms. Amita Gaur, Adv.

Amicus Curiae : Ms. Sreyashee Biswas

Heard on : 01.05.2023

Judgment on : 18.05.2023

Ajay Kumar Gupta, J:

1. The appellants have assailed the judgment and order dated 24th April, 2012 and 25th April, 2012 passed by the learned Additional Sessions Judge, 2nd Court, Nadia in Sessions Trial No. VIII (June)/2010 arising out of Sessions Case No. 55(4)/2010 in Kaliaganj Police Station Case No. 429/2009 dated 28.09.2009 whereby the learned Sessions Judge convicted the appellants under Sections 324 and 302 of the IPC and sentenced them to suffer imprisonment for two years for committing offence under Section 324 of the IPC and to suffer imprisonment for life for offence committed under Section 302 of the IPC and to pay a fine of Rs. 5,000/- each, in default, to suffer rigorous imprisonment for one year each. Both the sentences will run concurrently.

2. The background of the case in hand is that one Unnati Sardar, wife of Sri Dhiren Sardar of Vill. & P.O.- Ghoraikhetra, P.S.- Kaliaganj, District- Nadia had lodged a written complaint to the Officer-in-Charge, Kaliaganj Police Station to the effect that on 28.09.2009 at about 2:45 p.m. Purna Sardar, Bidhan Sardar, Balak Sardar, Ajit Sardar, Tarak Sardar and Chandra Sardar assaulted two brothers of her father-in-law, namely, Sannyasi Sardar and Khokon Sardar with sharp cutting implements and they fell down in Ghoraikhetra Primary School ground

with bleeding injury. The complainant along with others went to rescue them while the accused persons also assaulted Villu Sardar, Panchu Sardar, Kalyani Sardar, Gopal Sardar, Parbati and Dhiren Sardar with sharp cutting implements and out of them Kalyani Sardar, Panchu Sardar and Villu Sardar were severely suffered injuries. Besides it, the other family members of the accused persons also attacked them. The complainant further contended a few days ago, Kala Chand Sardar, the brother-in-law of the son of Panchu Sardar fled away with Kakoli Sardar, the sister of appellant, Bidhan Sardar. A complaint was also lodged in Police Station with regard to the said issue. From that time, a dispute arose between both the parties as such the above named accused persons committed murder of Sannyasi and Khokon and left them on the school ground resulting in registration a Kaliaganj Police Station Case No. 429/2009 on 28.09.2009 under Sections 147/148/149/325/326/302 of the IPC against the appellants, Purna Sardar, Bidhan Sardar, Balak Sardar, Ajit Sardar, Tarak Sardar and Chandra Sardar. After completion of investigation, charge sheet was filed against all the above-named appellants and three others namely, Kakoli Sardar, Tulshi Sardar and Parthana Sardar. Charges were framed on 22.06.2010 against six persons, namely, Purna Sardar, Bidhan Sardar, Balak Sardar, Ajit Sardar, Tarak Sardar and Chandra Sardar under Sections 148/302/326 read with

Section 34 of the IPC. Charges so framed were read over and explained to the appellants who pleaded not guilty and claimed to be tried. As such, trial commenced.

In course of trial, seventeen witnesses have been examined, out of them eye and injured witnesses are the vital witnesses. Prosecution relies on their evidence to prove the case against the appellants. The prosecution also exhibited number of documents.

On the other hand, defence also examined one defence witness, namely, Mrityunjoy Chandra, staff of the Office of the District Hospital, Krishnanagar as D.W. 1 in favour of the appellants. While examination under Section 313 of the Cr.P.C., appellants were claimed they are totally innocent and denied the prosecution case. They further claimed the complainant's parties had rather attacked them and during such attack the villagers in retaliation attacked them. Appellants, Bidhan Sardar and Purna Sardar suffered severe injuries on their person. They were admitted in the hospital for their treatment as such appellants are innocent and real culprits are the complainant's parties.

3. The learned Trial Court, after marshalling and apprehension of oral and documentary evidence adduced by the prosecution, came to the conclusion that the appellants were the assailants and declared them as convicts and sentenced them as aforesaid.

4. Learned counsel appearing on behalf of the appellants submitted that all the appellants are innocent and they have been falsely implicated into this case. Prosecution case as alleged is totally false, actually the complainant's parties had firstly attacked and assaulted the appellants, namely, Bidhan Sardar, Purna Sardar and other family members with deadly weapons. They suffered severe injuries. The sharp cutting weapons were brought by them to attack the appellants. Bidhan Sardar and Purna Sardar were admitted in the District Hospital, Krishnanagar, Nadia from 30.09.2009 to 09.10.2009 about 10 days but despite of the said facts, investigating officer, i.e., P.W. 17 suppressed the said facts in this case. They were admitted initially in Bethuadahari hospital for two days i.e., from 28.09.2009 and they were arrested on 30.09.2009 from the Hospital. Immediately after their arrest, the appellants were again sent to the District Hospital, Krishnanagar, Nadia as their conditions were so serious. I.O. did not investigate the case properly and conceal the real picture, Appellants have been examined defence witness from the district hospital,

Krishnanagar as D.W. 1, staff of the said hospital. He deposed police seized the bed head tickets of those two persons from the hospital but surprisingly the investigating officer did not produce or properly investigate the case rather the investigating officer implicated and arrested the appellants including both injured persons in the instant case. He further submitted that from the FIR itself it can be ascertained that there was dispute on the issue of kidnapping of Kakoli, sister of the appellant, Bidhan Sardar and for that a separate case was registered earlier against the complainant's parties. Such facts are admitted by the I.O., P.W. 17 of this case.

Learned Advocate further submitted that initially a case was registered with regard to the kidnapping of sister of Purna Sardar against the two deceased and their relatives. They have attacked the appellants with sharp cutting weapons when they refused to settle the said case as such the appellants' side registered a counter case before the Kaliaganj Police Station and the same was registered as Kaliaganj Police Station Case No. 448 of 2009 dated 10.10.2009 against the deceased and their relatives. The said FIR has been marked as Exhibit I but I.O. did not investigate the said case properly and submit charge sheet against the appellants in a case lodged by the de-facto complainant.

Learned Advocate further argued that it is clear from the prosecution evidence that the quarrel took place between the parties on the issue of kidnapping of Kakoli, sister of Purna and Bidhan Sardar. During such quarrel, both sides suffered injuries and ultimately two persons, namely, Sannyasi Sardar and Khokon Sardar died. Therefore, the present appellants are innocent and they should be acquitted from the case after setting aside the judgment and order under challenge.

Finally, learned advocate in alternatively, submitted that as the incident occurred in the course of sudden quarrel and in fit of passion when Sannyasi went towards their house and picked up quarrel. There was no intention to kill or assault anyone from the side of appellants as it transpires from the evidence of P.W.1, son of Sannyasi. He narrated that on 28.09.2009 at about 2.30/3 p.m., Balak Sardar, Bidhan Sardar and Purna Sardar invaded their house being armed with lathi, dao and rod but without causing any mischief they went back. His father thereafter came out from the house and went to the field of the school. If appellants would have any intension to murder, they would have murdered when they were initially invading their house as alleged by the prosecution. Sudden quarrel took place due to reason of picking up from the side of Sannyasi

as such their sentence may be scale down to culpable homicide not amounting to murder after considering exception 4 of Section 300 of the Indian Penal Code.

5. Learned counsel appearing on behalf of the State, on the other hand, vehemently submitted no such incident of kidnapping and rape was occurred as claimed by the defence regarding Kakoli, sister of appellants Bidhan and Purna Sardar. It is the clear case of murder of two persons. Appellants, Purna Sardar, Bidhan Sardar, Balak Sardar, Ajit Sardar, Tarak Sardar and Chandra Sardar came together and assaulted Sannyasi Sardar and Khokon Sardar with a sharp cutting weapon i.e. Ramdao. Incident took place on 28.09.2009 at about 2:30 p.m. to 3 p.m. Firstly, Ajit Sardar attacked with Ramdao on the head of Sannyasi, thereafter Bidhan Sardar took the said weapon and assaulted on the chest of Khokon Sardar. Due to such assault, Sannyasi Sardar fell down in the ground when others assaulted him with Ramdao indiscriminately. Seeing such incident, the complainant along with other family members rushed to the spot to rescue them but appellants also started assaulting all of them indiscriminately. They suffered severe injuries on their persons. Both Sannyasi and Khokon succumbed to their injuries on the spot. All the injured persons who were present at the spot have seen the incident

from their own eyes. They corroborated the prosecution case in toto without any inconsistency and contradictions. Appellants' act of assault cannot be said to be falling under the purview of Exception 4 of Section 300 of IPC as such they are not entitled to get any benefits. Prosecution has proved its case of murder and causing hurt beyond reasonable doubt. Consequently, instant appeal is devoid of merit and deserves to be dismissed.

6. Heard the rival submissions of the parties and on perusal of the materials available on record, it appears two persons, namely, Sannyasi and Khokon died and some persons, namely, Vellu, Panchu, Gopal, Kalyani, Parbati, Bishnu Sardar and Dhiren were suffered injuries. They were injured eye witnesses, who were present at the spot, where the incident took place on the fateful date i.e., on 28.09.2009. They are the vital witnesses because they have seen the incident from their own eyes. All injured are eye witnesses and the relatives of two deceased except Velu Sardar and Pachu Sardar, who are the villagers. So let me scan their oral and documentary evidence.

7. P.W. 1, Bishnu Sardar deposed that on 28.09.2009 at about 2.30/3 p.m. Balak Sardar, Bidhan Sardar and Purna Sardar invaded their

house being armed with lathi, dao, rod but they went back without causing any mischief. Thereafter, his father came out of the house and went to the field of the Primary School when Balak Sardar, Ajit Sardar, Bidhan Sardar, Purna Sardar, Tarak Sardar, Chandra Sardar, Kakoli Sardar, Tulshi Sardar along with Prarthana Sardar attacked his father. Ajit Sardar landed a blow of Ram dao on the head of his father, Bidhan Sardar took the said weapon and assaulted his uncle Khokon Sardar on his chest. When his father fell down on the ground, Balak Sardar, Purna Sardar, Tarak Sardar, Ajit Sardar, Chandra Sardar, Bidhan Sardar assaulted him with ram dao indiscriminately. They rushed to the spot. He was assaulted by Tarak. He landed a blow with iron rod on the back of his head. His uncles Pachu Sardar, Bhillu Sardar and Kalyani Sardar, Kabita Sardar and Hiren Sardar who rushed there got assaulted by the appellants. Both Vellu Sardar and Kalyani Sardar sustained injuries on their heads, Kabita sustained injuries on her left hand. Panchu was assaulted with lathi and rod who sustained injuries on his head. His father died on the spot. Police came and took them to the hospital at Debogram. The injured were attended by the doctor of Debogram B.P.H.C. Bhilu, Kalyani and Panchu Sardar was referred to Saktinagar hospital. Another uncle, Gopal Sardar was also assaulted. He sustained injury on his forehead.

During cross-examination, he stated that police came within an hour. He was not interrogated by the police on the spot. Police interrogated him in the hospital. He told the I.O. that his father came out and went to the field of the primary school. He told the I.O. that Ajit Sardar landed a blow on the head of his father by a dao. He could not remember exactly whether he told the I.O. that Bidhan Sardar took the said weapon and assaulted Khokon Sardar on his chest. He told the I.O. that after his father fell down on the ground, he was assaulted by Balak Sardar, Ajit Sardar, Bidhan Sardar, Tarak Sardar and Chandra with ram dao and rod. He could not say if Kalachand kidnapped Kakoli, sister of Bidhan. He could not say if any criminal case was filed over the said issue at Kaliaganj P.S. He could not say if Balak Sardar, Purna Sardar and Bidhan Sardar sustained injuries over the self-same incident and were admitted to the hospital. He could not say that his father and uncles picked up quarrel with Bidhan in course of discussion and incident took place in his house. He denied all other suggestions put to him.

8. Another injured witness namely Dhiren Sardar, P.W. 3 stated Ajit assaulted Sannyasi with a ram dao on the field of the school. Bidhan picked up the said weapon and assaulted Khokon. Other accused persons

then started assaulting Sannyasi, who died on the spot. Khokon also died on the spot. When he intervened, he sustained injuries on his right hand. He got treated at Debogram hospital.

9. P.W. 4, Kabita Sardar, another injured witness stated that Sannyasi Sardar and Khokon Sardar were her grand fathers who was murdered. Her mother Unnati is dead. Balak, Purna, Bidhan, Kakoli and Prarthana attacked them. Sannyasi went out and told them not to create trouble. Ajit was armed with ram dao. He assaulted Sannyasi with a ram dao on his head. Then, Tarak and Chandra came and assaulted his Dadu with rod and lathi. Bidhan assaulted Khokon with ram dao. She rushed to the spot and she was also assaulted by Purna and Balak with dao on her left hand. She got treated at Debogram hospital.

10. P.W. 6 Jugal Sardar proved his signature appearing in the inquest report (Ext.10) and seizure of Ramdao in his presence by the police. He put his signature therein marked as Ext.2.

11. P.W. 8, Panchu Sardar narrated that he was in the field of Primary School two years ago in the month of Aswin at about 2.30 p.m., when the accused persons along with Kakoli and Tulshi attacked him, Khokon,

Gopal, Sannyasi and others over the issue of boundary. The appellants were fixing the fencing on the school land and Sannyasi protested the same. Ajit assaulted Sannyasi with hasua on his head. Sannyasi fell down. Bidhan landed a blow with dao on the chest of Khokon. Tarak, Chandra, Purna and Balak assaulted Sannyasi indiscriminately with dao. He was assaulted with dao by Purna and Balak. He sustained injury on his head. Police came and they were taken to the hospital. He was referred to Saktinagar hospital by the doctor of Debogram hospital along with Kalyani and Bhepu.

During cross-examination he stated that Bappa is his son. He could not say anything about the police case, lodged in connection with an allegation that Bappa kidnapped Kakoli. He was examined by the I.O. and he told the I.O. that he was present on the field at the relevant point of time. He told the police that trouble broke out over the issue of fixing of fencing. He told the I.O. that Ajit assaulted Sannyasi with hansua on his head. He told the I.O. that Bidhan assaulted Khokon with dao on his chest. He denied all other suggestions put to him. He stated that there was no enmity between him and the appellants.

12. P.Ws. 2, 5, 6, 7, 9, 14 and 16 deposed regarding the incident as similar as P.Ws. 3, 4 and 8. P.W. 7 further admitted the house of Bidhan Sardar is contiguous to the land of school.

13. P.W. 10, Samaullah Sheikh escorted the dead bodies of Khokon and Sannyasi for post-mortem examination from Debogram R.O.P. to Krishnanagar Morgue. He was given the wearing apparels of the deceased persons to produce the same before the I.O. and the same were seized by I.O. He put his signatures to the seizure as witness marked as Exhibits 3 and 4.

14. P.W. 11, Dr. Anirban Jana stated that he attended Kalyani Sardar, Bhepu Sardar and Panchu Sardar, who were referred from Debogram B.P.H.C. He examined them as indoor patients. Kalyani Sardar had cut injury on the occipital region. She was discharged on 30.09.2009. Bhepu Sardar had one repaired cut injury on the left parietal region of his scalp and on his right arm. He was discharged on 30.09.2009. He further stated Panchu Sardar had cut injury on his scalp over occipital region. He found two abrasions on his back. He advised him for C.T. Scan but no abnormality was found. He was discharged on 02.10.2009. The above three injury reports are marked as Exhibits 5, 5/1 and 5/2.

15. Dr. Ajit Kumar Biswas, P.W. 12 is the Autopsy Surgeon who held post-mortem examination over the dead bodies of Sannyasi Sardar and Khokon Sardar brought and identified by Constable 1061, Somaulla Sk., in connection with Kaliaganj P.S. Case No. 429/2009 dated 28.09.2009. He opined, the death was due to shock and haemorrhage which were ante mortem and homicidal in nature. Both P.M. reports were prepared by him containing his office seal and signatures marked as Exhibits 6 and 6/1 respectively.

16. P.W. 13, Manick Chatterjee is the scribe of the information. He had scribed a written complaint as per instruction of Unnati Sardar, since deceased. The said information is marked as Exhibit 7.

17. P.W. 15, Dr. Bilash Sarkar, who was attached to Debogram B.P.H.C on 28.09.2009. He examined Dhiren Sardar and found injury at the base of right ring finger and he found abrasion over the middle finger. He examined Gopal Sardar at about 4.25 pm and found lacerated cut injury over mid-forehead and left side of the fore-head. He examined Parboti Sardar and found 1” cut injury over left frontal region and half inch cut injury over left occipital region. He examined Bishnu Sardar and

found one abraded cut injury over occipital region measuring about 1" in length. He examined Kalyani Sardar and found cut injury about 2 ½" X 2" over left parietal region and parieto occipital region. He examined Bhelu Sardar and found 2 ½" cut injury over side frontal bone. Swelling over right arm with abraded injury. He examined Panchu Sardar and found one superficial cut injury over the right parietal region about 1 ½" X a swelling over right forearm. Finally, he referred the injured namely Kalyani Sardar, Bhelu Sardar and Panchu Sardar to Saktinagar hospital for better management. He was told about the history of assault by the patient party to the effect that Panchu was assaulted by Purna, Bidhan, Papas, Tarak, Chandra, Ajit Sardar, Prarthona, Arati and Hasmoni Sardar. His reports are marked collectively as Exhibit 8.

18. P.W. 17, S.I. Subhasis Goswami is the I.O. of this case. He stated that he was entrusted with the investigation of Kaliaganj P.S. Case No. 429/09 dt.28.09.2009. He prepared a rough sketch map with index. He found two bodies of Khokon Sardar and Sannyasi Sardar on the field of Gharaikshetra Primary School. He held inquest over the two dead bodies and prepared his inquest reports. He seized blood stained and controlled earth from the place of occurrence (exhibits 12 and 12/1). He seized the

offending weapon from the said ground (exhibit 2/2). On 12.10.2009 he seized another weapon and the seizure list is marked as exhibit 11.

During cross-examination, he stated that he took up investigation at 6.15 p.m. He came to Gharaikshetra at about 18.45 hours. He arrested Ajit Sardar from his house and recorded his statement, on the following morning he was produced before the Court. He arrested Bidhan Sardar and Purna Sardar from Bethuadahari hospital on 30.09.2009 after they were discharged. They were admitted from 28.09.2009. He did not collect the injury report of those two persons. He seized the two weapons after two days. He sent the earth to F.S.L. but did not get the report.

He examined Bhelu Sardar who did not tell him that the incident sprang up over the issue of fixing fencing. He admitted that a case was registered in the police station over the incident of kidnapping.

He examined Panchu Sardar who did not tell him that the incident took place as Sannyasi raised objection when the accused persons were putting fencing.

19. Defence adduced D.W.1 on their behalf to support their contention that they are innocent and they sustained injuries on their persons due to assault by the complainant's side. It reveals that he was a Group-D Staff attached to the office of Superintendent of District Hospital, Nadia. He deposed as per instruction by his superior he brought some medical papers from the hospital. He further stated Bidhan Sardar and Purna Sardar were admitted to the District Hospital, Krishnanagar from 30.09.2009 to 09.10.2009. Police seized the bed head tickets of those two persons from the hospital. Documents attested by the Superintendent of the District Hospital, Dr. Kajol Mandal marked as Exbt. A.

During cross-examination the D.W. 1 admitted that Exhibit A does not contain the names of their father names and addressed of those persons. However, from careful perusal of the Exhibit 'A' it transpires there are five names of injured persons. Those persons are Kalyani Sardar treated from 28.09.2009 to 30.09.2009, Panchu Sardar treated from 28.09.2009 to 02.09.2009 and Valu Sardar treated from 28.09.2009 to 30.09.2009 in connection with Kaliaganj Police station case No.429/09 dated 28.09.2009 and Bidhan Sardar and Purna Chandra Sardar were treated from 30.09.2009 to 09.10.2009 at District Hospital, Nadia in connection with Kaliaganj Police Station Case No.448/09 dated

10.10.2009. Both case and counter case were arisen from the same incident, which was taken place on 28.09.2009. Father names or addresses of all the injured persons have not been reflected in the Exhibit- 'A'. P.W. 15, Dr. Bilash Sarkar concedes in his oral evidence he treated the patients namely, Kalyani Sardar, Pachu Sardar and Velu @ Bhelu @ Villu @ Vellu Sardar. That does not mean other two injured, namely, Bidhan Sardar and Purna Chandra Sardar were not suffered injuries and treated in the Hospital. D.W.1 corroborated with documentary evidence i.e. Ext. 'A' that they were treated in the said hospital from 30.09.2009 to 09.10.2009. It is also proved by the I.O., P.W.17 that he arrested Bidhan Sardar and Purna Sardar from Bethuadahari Hospital on 30.09.2009 where they were admitted on 28.09.2009 but due to serious illness they were further admitted in District Hospital on 30.09.2009 for better treatment.

20. Prosecution has been able to prove that P.Ws. 1, 2, 3, 4, 7, 8, 9 and 14 were sustained injuries. P.W. 15 has corroborated that he attended seven injured persons, namely, Bishnu Sardar, Dhiren Sardar, Gopal Sardar, Parboti Sardar, Kalyani Sardar, Velu @ Bhelu @ Villu @ Vellu Sardar Sardar, Panchu Sardar. At the same time, P.W. 11 Dr. Anirban Jana stated that three injured persons, namely, Bhepu Sardar, Panchu

Sardar, Kalyani Sardar were admitted under his care and they suffered injuries on their scalp. Injury reports marked as Exbts. 5, 5/1 and 5/2. This Court does not have any doubt about the death of two persons, namely, Sannyasi and Khokon because most of the witnesses proved that Ajit assaulted Sannyasi with ramdao and Bidhan Sardar assaulted Khokan Sardar with the same weapon after taking from Ajit. Both dead bodies were found from the said school field. Inquest report and P.M. reports (Exhibit No. 1/2, 6 and 6/1) support the same. In the said incident parties of both sides were suffered injuries. The said facts were corroborated by the Doctors examined as P.Ws. 11, 12 and 15. Medical documents exhibited as 5, 5/1, 5/2 and Exhibit 'A' also indicates the same.

P.W. 17, Subhasis Goswami, I.O. of this case arrested appellants Bidhan and Purna from Bethuadahari Hospital on 30.09.2009 where they were admitted on 28.09.2009. However, He stated he did not seize the injury report of those two persons though D.W. 1 stated I.O. seized Bed Head Tickets of both persons from the hospital. Ext. 'A' also reflects the same. He should have produced the said bed head tickets. If he would have produced those bed head tickets real picture would have come. The whole evidence suggests that there was quarrel between the parties on the

fateful date. Defence claims that the deceased persons and their family members invaded the house of appellants and assaulted them. During such assault, Bidhan and Purna sustained severe injuries as such they were admitted on 28.09.2009 to 30.09.2009 at Bethuadahari Hospital and thereafter from 30.09.2009 to 09.10.2009 at District Hospital, Nadia whereas prosecution case is different. Appellants were putting fencing in the field of the school on the fateful day and when Sannyasi raised protest appellants assaulted him and others with ramdao and other weapons. Whatever may be the reasons, it is admitted facts that there was quarrel between the parties. Prosecution has proved that offending weapon were seized from Gharaikshetra Primary School's field and two bodies of Khokon Sardar and Sannyasi Sardar were also found on the field of Gharaikshetra Primary School. Seizure witness and I.O. also corroborated the said facts in their oral and documentary evidence, so it can be safely accepted that the incident took place at Gharaikshetra Primary School's field i.e. contiguous to the house of appellant, Bidhan Sardar as stated by the prosecution witness, P.W. 7.

21. Now, on the basis of the aforesaid rival legal contentions, evidence of the prosecution and defence evidence on record, the following points would arise for consideration by this Court:

(1) What was the motive or reason for quarrel between the parties?

(2) Whether there was pre-meditation or in furtherance of their common intention murdered Sannyasi and Khokon Sardar?

(3) Whether sudden quarrel occurred on 28.09.2009 between the parties?

(4) Whether the appellants are entitled to get benefit under the exception 4 of Section 300 IPC?

22. From meticulously perusal of entire evidence, this Court does not repose confidence about the version of prosecution that appellants were putting fencing in the field of school on following three reasons:

Firstly, in FIR complainant herself admitted that a few days ago, Kalachand Sardar, the brother-in-law of the son of Panchu Sardar fled away with Kakoli Sardar, the sister of

Bidhan Sardar, one of the appellants herein and regarding this issue a case was registered in the police station. Apart from that P.W. 17, I.O. of this case also admitted about the registration of case over the issue of kidnapping of Kakoli in the police station. Prosecution witness i.e. P.W. 1 also admitted during cross examination that they had no previous enmity between the parties. Disputes cropped up with the issue of Kakoli.

Secondly, story of putting fencing in the field of school by the appellants agitated first time during trial. There was no reflection either in the FIR or statement of the witnesses. I.O. clearly denied the version of prosecution by saying that none of witnesses told him that the incident sprang up over the issue of planting fencing or when Sannyasi raised objection while putting fencing by the appellants.

Thirdly, no any articles used for putting fencing were seized from the field of school to prove the contention of the prosecution. Thus, it can be safely presume reason for quarrel was on the issue of kidnapping of Kakoli, sister of appellants,

Bidhan and Purna Sardar and not the issue of putting fencing by the appellant in the field of the said school as claimed by the prosecution.

23. In view of evidence adduced by the prosecution initially appellants Balak Sardar, Bidhan Sardar and Purna Sardar invaded their house being armed with lathi, dao, rod on 28.09.2009 at about 2.30/3 p.m. but they went back without causing any harm to anyone. In addition, kidnapping of Kokoli and registration of case against the complainant's parties in Kaliaganj Police Station is not denied by the prosecution rather it is admitted. So, question of intention or pre-meditation to murder Sannyasi and Khokon Sardar does not arise because they went back without causing harm to anyone. Actually, quarrel took place when Sannyasi came out from his residence and proceeded towards field of the school i.e. contiguous to the house of Bidhan Sardar so there is every possibility that quarrel picked up from the side of Sannyasi, since deceased. Consequently, contentions of prosecution itself proved beyond reasonable doubt that the appellants had no intention or pre-meditation to murder or assault anybody.

24. Undoubtedly, prosecution has been established beyond reasonable doubt that two persons, namely, Sannyasi Sardar and Khokon Sardar were died on a fateful date i.e. on 28.09.2009 and seven to eight persons were suffered injuries. Deceased were died due to shock and haemorrhage which were ante mortem and homicidal in nature.

Similarly, D.W. 1 also proved beyond reasonable doubt that Bidhan Sardar and Purna Sardar were admitted to the District Hospital, Krishnanagar from 30.09.2009 to 09.10.2009. Police seized the bed head tickets of those two persons from the hospital. Appellants' side also lodged counter case registered as Kaliaganj Police Station Case No. 448/2009 dated 10.10.2009 against the deceased and their relatives for assaulting the appellants on the self-same incident, which was took place on 28.09.2009. Certified copy of FIR marked as Ext. I.

It further reveals while examination under Section 313 of the Cr.P.C., appellant, Bidhan Sardar stated that on 28.09.2009, complainant parties attacked their house, Bishnu, Subrata, Gopal, Dhiren, Arati, Latika and Jugal Sardar were shouting in their house. They attacked them with ramdao, rod and hansua. They fell down senselessly and para people admitted them in hospital. He knows nothing more.

Appellant, Balak Sardar also stated in his examination under Section 313 of the Cr.P.C. that Bappa Sardar, Kalachand and Jayanti kidnapped her sister Kakoli. They recovered her sister. They filed a case against above three persons. Subsequently, Bappa, Jugal, Bishnu, Panchu, Gopal, Subrata, Dhiren, Arati, Parbati and Latika Sardar attacked their house with ramdao, rod and began to assault asking them for settlement of the case. They suffered fractured injuries on their heads. They became senseless. Some persons admitted them in Bethuadahari Hospital. He does not know thereafter what happened.

Another appellant, Purna Sardar also stated in his examination under Section 313 of the Cr.P.C. that they committed rape upon her sister after kidnapping her. They filed case against them. They assaulted them with ramdao, hansua and rod attacking their house and they suffered injuries. Village people brought them to Bethuadahari Hospital.

25. In the light of above discussions, it cannot be ruled out quarrel took place between the parties when Sannayasi, since deceased went towards the house of appellants and invited or picked up quarrel with them. Thus, it can be safely accepted it was sudden quarrel in a fit of

passion and without any pre-planned/ pre-meditation as such nature of the offence committed by the appellants' falls under the Exception 4 of Section 400.

In this regard, several judgments passed by the Hon'ble Apex Court, on the similar circumstances, can be relied upon. Those judgments are indicated herein below:

In **Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC 217**, Supreme Court held:

"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, 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)

In **Dhirajbhai Gorakhbhai Nayak v. State of Gujarat, (2003) 9 SCC 322**, the Hon'ble Supreme Court while discussing the ingredients of Exception 4 of Section 300 IPC, held:

"The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the

Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue

advantage” as used in the provision means “unfair advantage”.”

The Hon’ble Supreme Court in the case of **K. Ravi Kumar vs. State of Karnataka reported in (2015) 2 SCC 638**, held:

“9. Before we turn to the facts of this case, it is apposite to take note of the principle of law laid down by this Court as to in which circumstances, the accused is held entitled to claim the benefit of Exception 4 to Section 300 IPC thereby is entitled to seek conversion of the offence committed by him from murder to culpable homicide not amounting to murder. Indeed, the principle of law on this issue remains no longer res integra and settled by a series of decisions of this Court. What has varied is its application to every case.

10. Exception 4 to Section 300 reads as under:

"300. Murder - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or 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 partly offers the provocation or commits the first assault."*

In **Sukbhir Singh v. State of Haryana, (2002) 3 SCC 327**, the appellant caused 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, the Supreme Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 to Section 300 IPC. In cases where after the injured had fallen down, the appellant-accused 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 and further held:

"19.....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)

26. Keeping in view of the decision of the Apex Court, this Court also inclined to give benefit of Exception 4 to Section 300 IPC to the appellants by altering their sentence awarded by the trial Court from under Section 302 to under Section 304 Part II IPC on the following reasons: -

1. There was no furtherance of pre-meditation in the commission of offence.

2. It is admitted facts that initially the appellants invaded in the house of de-facto complainant being armed with lathi, dao, rod but they went back without causing any harm to anyone.

3. Incident was occurred on 28.09.2009 due to sudden quarrel ensued between the appellants and deceased and their relatives on the issue of kidnapping of Kakoli.

4. No conclusive evidence was adduced by the prosecution to prove any kind of constant quarrel ever ensued between the parties prior to 28.09.2009.

5. Parties of both sides' sustained injuries in such quarrel occurred on 28.09.2009 and they were admitted in the hospital for their treatment.

27. Therefore, we are of the considered view that aforesaid reasons are sufficient to give benefit of Exception 4 to Section 300 IPC to the appellants and enables this Court to hold that the offence in question was not murder but it was an offence of culpable homicide not amounting to murder as specified in Exception 4 to Section 300 and hence, appellants are punishable under Section 304-part II IPC.

28. In the result, we allow the appeal but only to the extent that instead of Section 302 IPC, the appellants shall stand convicted for the

offence of culpable homicide not amounting to murder punishable under Section 304 Part II of the IPC and accordingly sentenced to undergo rigorous imprisonment for a period of 10 years. The conviction and sentence imposed under Section 324 of the IPC as well as the fine imposed upon the appellants and in default, sentence awarded to them shall remain unaltered and both sentences shall run concurrently.

29. Appeal is, thus, allowed in part. Consequently, CRAN applications being CRAN 2/2019 (Old No.: CRAN 3141/2019) and CRAN 3/2020 (Old No.: CRAN/4123/2020) are also disposed of.

30. Appellants shall be set at liberty forthwith if they are not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure. Fine amount, if not paid, be recovered in accordance with law.

31. Lower Court Records along with copies of this judgment are to be sent down at once to the learned Trial Court for information and necessary compliance.

32. Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Joymalya Bagchi, J)

(Ajay Kumar Gupta, J)

P. Adak (P.A.)