

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-383-2019 (O&M)
Date of decision:19.12.2024.

Natwar Lal @ Saurabh

...Appellant.

Versus

State of Haryana

...Respondent.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Sudarshan Kumar, Advocate
for the appellant.

Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

Sukhvinder Kaur, J.

1. Appellant-Natwar Lal @ Saurabh has preferred the instant appeal against judgment of conviction dated 08.03.2019 and order of sentence dated 11.03.2019, passed by learned Additional Sessions Judge, Palwal, whereby appellant has been convicted under Section 3 (1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1983 (for short, SC & ST Act) and sentenced to undergo RI for one year and to pay fine of Rs.500/- and in default of payment of fine to further undergo SI for fifteen days, under Section 302 of IPC and sentenced to undergo RI for life and to pay fine of Rs.5,000/- and under Section 25 of Arms Act has been sentenced to undergo RI for three years and to pay fine of Rs.500/- and in default of payment of fine to further undergo SI for fifteen days.

2. The factual scenario, as projected by prosecution, is that on

25.02.2017, on receiving information regarding incident of firing in village Kushlipur, ASI Pritam Singh along with Constable Hans Raj went there and came to know that injured had been shifted to GH Palwal. From GH Palwal, ASI Pritam Singh collected ruqa and MLR of injured Chatar Pal and doctor informed that injured had been referred to higher medical centre. Complainant Prahlad Singh submitted application Ex.P19 alleging that Chatar Pal alias Koko son of his uncle Fakir Chand used to sell eggs on a pushcart. On that day i.e. 25.02.2017, at about 8.30 PM they were conversing near Fakir Chand's pushcart. In the meanwhile, Natwar Lal son of Parsi Pandit resident of Kushlipur came to the pushcart and demanded eggs from Chatar Pal. When Chatar Pal demanded money from Natwar Lal, he whipped out a country made pistol from his dub and fired at Chatar Pal alias Koko, who fell down on the ground. He raised hue and cry and Natwar Lal ran away with his pistol. At the same time, Fakir Chand and his brother Rajesh also came there. Chatar Pal was taken to GH Palwal and from there he was referred to Higher Medical Centre. Upon aforesaid application Ex.P19, ASI Pritam Singh made endorsement Ex.P20 and sent the same to police station for registration of case and FIR No.163 dated 25.02.2017, under Sections 307 IPC and Section 25 of the Arms Act was registered. During investigation, photographs of place of occurrence were clicked in the mobile phone. Blood stained earth was taken into possession and was converted into a sealed parcel. On 26.02.2017 intimation regarding death of Chatar Pal at Sarvodaya Hospital, Faridabad was received due to fire arm injuries. Inquest proceedings were carried out. Post mortem on the dead body of Chatar Pal was got conducted. On 26.02.2017 accused Natwar Lal alias Saurabh was arrested. In pursuance to disclosure statement, accused

got recovered country made pistol, one empty and two live cartridges. Statements of witnesses were recorded. Recoveries were got examined from FSL. Sanction for prosecution of accused was obtained. After completion of investigation, challan/ final report under section 173 Cr.P.C was presented in the Court of learned Illaqa Magistrate and committed the case to Court of Sessions for trial.

3. Finding a prima facie case, charge for offences punishable under Sections 302 IPC, Section 3(1)(x) of SC & ST Act and Section 25 of the Arms Act was framed against the accused, to which he pleaded not guilty and claimed trial.

4. In this case, in order to prove its case prosecution has examined as many as 24 witnesses PW1 EHC Kamal Kishore deposed regarding delivering of special reports on 25/26.2.2017 to Illaqa Magistrate and superior police officers without any delay.

PW2 Desh Raj ARC proved caste certificate Ex.P1 of Chatar Pal son of Fakir Chand.

PW3 Mahesh Kumar, Reader proved sanction dated 22.5.2017 Ex.P2 under section 39 of Arms Act for prosecution of accused.

PW4 Dr. Ajay Pal Singh proved post-mortem report of Chatar Pal Ex.P3 as per which cause of death of deceased was shock and haemorrhage due to injuries on vital organs, i.e. left lung as a result of gun shot, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. He proved clothes of deceased Ex.MO/1 to Ex.MO/4.

PW5 ASI Jagbir Singh tendered affidavit Ex.PW5/A in examination in chief regarding deposit of case property in the malkhana, on

26.02.2017 by ASI Pritam Singh. On 28.2.2017 DSP HQ Ramesh Kumar deposited sealed parcel containing pistol. On 25.5.2017 he sent case property to FSL through EASI Ramdiya. The case property remained intact in his possession.

PW6 ASI Om Parkash stated that on 28.2.2017 accused suffered disclosure statement Ex.P4, and got recovered country made pistol along with one empty and two live cartridges from his fields which were taken into possession vide memo Ex.P6.

PW7 ASI Mahender Singh stated that on 25.2.2017 on receipt of tehrir with endorsement of ASI Pritam Singh through Constable Hans Raj, he registered FIR Ex.P8 and made endorsement Ex.P9. He sent special reports to Illaqa Magistrate and superior police officers through EHC Kamal Kishore.

PW8 Dr. Gagan medico legally examined Chatar Pal and proved his MLR Ex.P10 and ruqa to police Ex.P11.

PW9 Dr. Dheeraj Gupta stated that on 25.2.2017 patient Chatar Pal was brought in unconscious state in the emergency of Sarvodaya Hospital, Faridabad at 9.50 PM. His condition was very critical and blood pressure was not recordable and on examination, it was found that entry wound was present below left clavicle and exit wound was present in left scapular region. Resuscitation was done for 40 minutes but he could not be revived and was declared dead at 10.28 PM. He proved consultation report Ex.P11, blood/ component transfusion form Ex.P12, CPR sheet Ex.P13, Medical certificate of cause of death Ex.P14 and ruqa to police Ex.P15.

PW10 DSP Ramesh Kumar stated that on 28.2.2017, during interrogation, accused suffered disclosure statement Ex.P4 and got

recovered one country made pistol with one used and two live cartridges, which were taken into possession vide memo Ex.P6. He also proved rough site plan of place of recovery Ex.P16 and sketch of pistol Ex.P7. He recorded statements of witnesses and thereafter, case was handed over for further investigation.

PW11 SI Dalbir Singh stated that on 26.2.2017, on receipt of secret information, he along with ASI Om Parkash and ASI Pritam Singh went to disclosed place near Mannat Dhaba and apprehended the accused. Accused was got medico legally examined at GH Palwal and on 27.2.2017 caste certificate Ex.P1 was taken into possession vide memo Ex.P17 and offence under Section 3 of SC & ST Act was added.

PW12 ASI Pritam Singh stated that on 25.2.2017, after receiving telephonic information regarding firing incident at village Kuslipur, he along with constable Hans Raj went there and came to know that injured had been shifted to GH Palwal for treatment. After reaching at GH Palwal, they collected ruqa Ex.P18 and MLR Ex.P10. The patient was reported to have been referred to Higher Medical Centre. Prahlad son of Karan Singh met him and moved application Ex.P19, on which he made endorsement Ex.P20 and sent the same through constable Hans Raj to the police station for lodging of FIR. He prepared rough site plan Ex.P25, of place of occurrence at the instance of complainant and also lifted blood stained earth and pieces of newspaper which were taken into possession vide memo Ex.P22. He went to Sarvodaya Hospital, Faridabad alongwith C-Hans Raj and took into possession clothes of deceased and sample seal vide memos Ex.P23 and Ex.P24 respectively. Accused suffered disclosure statement on 26.2.2017 while being interrogated by DSP Abhimanyu

PW13 ASI Ram Kishan remained associated with DSP Abhumanyu during the investigation of this case and had deposed regarding suffering of disclosure statement by the accused.

PW14 HC Naresh Kumar also remained associated with DSP Ramesh Kumar during investigation of this case and he has deposed that on interrogation by Investigating Officer accused suffered disclosure statement Ex.P4 and got recovered one country made pistol along with two live cartridges and one used cartridge which were taken into police possession vide recovery memo Ex.P6.

PW15 EASI Ramdiya tendered into evidence his affidavit Ex.PW15/A stating that on 03.04.2017 Jagbir Singh Malkhana Moharar handed over him the case property for depositing in FSL. On 22.5.2017 he took the case property to FSL, Bhondsi but the same was not deposited by raising an objection. On 23.5.2017 he again took the case property to FSL but met with the same fate. Ultimately, he deposited the case property with FSL on 25.5.2017. The case property remain intact in his possession.

PW16 SI/SHO Santosh Kumar stated that on 22.5.2017 after completion of investigation, he prepared report under section 173 Cr.P.C.

PW17 Constable Hans Raj remained associated with ASI Pritam Singh during investigation in this case and has deposed about various investigation proceedings conducted by ASI Pritam Singh.

PW18 Prahlad Singh complainant is a material witness of the prosecution and has deposed as per the prosecution version. He stated that on 25.2.2017 at about 8.30 PM, his cousin Chatar Pal alias Koko son of Fakir Chand was selling eggs at his pushcart in Gali no.1 of Rehrana Road, Kuslipur. He was talking to Chatar Pal near the pushcart. In the meantime,

accused Natwar Lal came to the pushcart of Chatar Pal and demanded eggs, upon which Chatar Pal demanded his previous balance of Rs.400-500/-. After that he extended threat to Chatar Pal and went away. After about 5-7 minutes, he again came back and took out a country made pistol from his dub and fired upon Chatar Pal alias Koko, which hit upon the left side of Chatar Pal's chest. After receiving bullet injury, Chatar Pal fell down on the ground. Fakir Chand father of deceased and his brother Rajesh who were standing at a distance of about 20 feet came to the spot and lifted the injured and took him to GH Palwal, who later on died due to receiving of said gun shot injury. He, Fakir Chand and Rajesh had seen the accused while firing upon the deceased. He moved application Ex.P19 to the police at GH Palwal. Thereafter, police reached at the spot and lifted blood stained earth. On the next day, his uncle Fakir Chand told him that Ram Kumar, Shiv Kumar and Kapil had also come with accused when the latter fired shot upon Chatar Pal. He had seen the above named persons standing near the pushcart but did not name them in his complaint thinking that they would have come to purchase eggs for themselves.

PW19 Fakir Chand deposed that his son Chatar Pal (since deceased) was selling eggs at his pushcart at Rehrana turn, Kuslipur near their house. On 25.02.2017 at about 8.30 P.M. when his son Chatar Pal was present at his egg pushcart, accused Natwar Lal @ Sourabh came there for taking eggs from his son. When his son demanded previous balance of Rs.400-500/- Natwar starting abusing him by his caste and asked him that why he had demanded balance amount from him. Then accused took out country made pistol from his dub and fired upon Chatar Pal which hit upon the left side of his chest. After receiving bullet Chatar Pal fell down on the

ground. At that time Prahlad was also present near pushcart of his son. He along with his son Rajesh was present at a distance of about 30 feet from the place where his son Chatar Pal was selling eggs. He and Rajesh had seen the accused while firing upon his son. He reached at the spot and lifted Chatar Pal and took him to GH, Palwal. Accused after causing injury run away from the spot. Ram Kumar, Shiv Kumar and Kapil were also accompanying the accused and had come with accused to commit the offence. Due to his serious condition GH, Palwar referred him to Faridabad hospital. They admitted the injured at Sarvodaya Hospital, Faridabad where he died due to injuries received by him.

PW20 R.S. Sangwan, Assistant Director (Ballistics), FSL, Madhuban stated that on 12.7.2017 he examined five parcels in the present case and prepared report regarding the parcels. He found that products of combustion of smokeless powder detected from the barrel of country made pistol. Test firing was done from the laboratory from the country made pistol. Its firing mechanism was found in working order. He proved report Ex.PY that was prepared by him. He has opined that .315 bore cartridge case marked as C/1 had fired from country made pistol marked as W/1 (recovered from the accused Natwar Lal @ Saurabh) and not from any other fire arm even of the same make and bore/ calibre because every fire arm has got its own individual characteristic marks.

PW21 Devender Kumar, Senior Scientific Officer (Serology), FSL, Madhuban stated that on 14.7.2017 he examined the blood on clothes and prepared reports Ex.PX and PZ according to which blood was subjected to serological test to determine its species of origin.

PW22 SI Ravinder Singh deposed that on 24.1.2018 after

completion of investigation in this case, he prepared supplementary challan under section 173(8) Cr.P.C against the accused and submitted in the court.

PW23 DSP Abhimanyu, City Palwal stated that on 27.2.2017 he interrogated the accused and during interrogation he suffered disclosure statement Ex.P21. He also recorded statements of witnesses under section 161 Cr.P.C.

PW24 Ravinder Singh, draftsman stated that on 18.5.2017 he visited the spot and prepared scaled site plan Ex.P29 on the direction and demarcation of DSP Ramesh Kumar.

5. Besides that prosecution also tendered into evidence FSL Reports Ex.PX, Ex.PY and Ex.PZ.

6. After closure of evidence of the prosecution, statement of accused under Section 313 Cr.P.C. was recorded wherein he claimed innocence and false implication in the present case. He stated that in fact it was a blind murder case and he was present in his house since evening till night along with his family.

7. In his defence, the accused examined DW1-ASI Rati Ram, who brought summoned record pertaining to 25.02.2017 of employee Prahlad Singh. As per DD No.34 dated 25.02.2017, Prahlad Singh was deputed for law and order within the jurisdiction in Police Station Chandhat i.e. Chowki Alawalpur at about 9.50 AM and produced on record copy of same as Ex.DW1/A. He returned to police station vide DD entry 68 dated 25.02.2017 at about 6.30 PM, copy of which is Ex.DW1/B.

DW2-Parashram stated that Natwar is his son. On 25.02.2017 he remained with him at his house from 6.00 PM to 8.00 AM next morning and he had taken dinner with him and had slept with him at his house.

Natwar had been falsely implicated in this case because of party politics in the village. False weapon had been planted upon him. He verbally told the police that his son was innocent and had been falsely implicated in this case.

8. Learned counsel for the appellant has contended that PW18 Prahlad Singh complainant and PW19 Fakir Chand, father of deceased, had not witnessed the occurrence and they came to the spot later on. He further contended that there is delay of more than 3 hours in lodging the FIR. The occurrence took place at about 8.30 PM and FIR was got lodged at about 11.30 PM. He argued that an application was moved by prosecution under Section 319 Cr.P.C. stating that Ram Kumar, Shiv Kumar and Kapil had also accompanied accused Natwar Lal at the time when appellant fired shot upon accused Chhatar Pal. During investigation these persons were found to be innocent and were not found to be involved in the present occurrence. So false involvement of other three persons shows that complainant had tried to falsely implicate accused as well as those three other persons in this case. He urged that there is delay of three months in sending recoveries to FSL and link evidence is not complete. He has contended that the alleged objections raised by FSL, when the sample was earlier taken on two occasions has not been disclosed. It was also contended by learned counsel for the appellant that learned trial Court has not considered that there was no element of premeditation and appellant had no previous enmity with deceased. It was submitted that for the sake of arguments even if it is accepted the alleged incident took place, the present case falls within 4th exception of Section 300 IPC, as prosecution has not established the element of premeditation.

9. We heard learned counsel for the appellant at length and have

perused the record of the case.

10. FIR in the present case was registered on the basis of application Ex.P19, moved by complainant Prahlad Singh, wherein it was clearly stated that in his presence and presence of Fakir Chand father of deceased and his brother Rajesh, when accused asked for eggs from Chatar Pal and Chatar Pal demanded the previous amount from him, accused fired a shot at Chatar Pal which proved fatal. Eyewitness account in the shape of testimony of PW18-Prahlad Singh and PW19-Fakir Chand, cannot be discarded only due to the reason that they are closely related to deceased. They have remained consistent in their stand and their testimony could not be shaken despite lengthy cross-examination. They are proved to be natural witnesses, present at the time of occurrence.

11. The presence of PW19 Fakir Chand at the place of occurrence at the time of incident also stands corroborated by statement of PW8-DR. Gagan, Medical Officer, GH, Palwal, who stated that victim was accompanied by only one person, who was father of victim. This cements the presence of Fakir Chand at the spot at the time of occurrence. It is apparent that Fakir Chand, being present at the spot, immediately took deceased to the hospital for his treatment.

12. The ocular version in this case also stands duly corroborated from the medical evidence that has been brought on record by prosecution PW8 Dr. Gagan in his affidavit Ex.PW8/A stated that on 25.2.2017 he medico legally examined Chatar Pal and found tetoni muscle penetrated wound at left side of chest round in shape just below middle clavicle with bleeding and diverted margin wound of left side of back, below left scapula region. Injury no.1 and 2 were caused by fire arm. Patient was referred to

higher centre. He proved copy of MLR Ex.P10 and ruqa Ex.P11.

13. PW9 Dr. Dheeraj Gupta stated that on 25.02.2017 at about 9.50 PM Chatar Pal was brought to the emergency of Sarvodaya Hospital, Faridabad in critical condition. His body was examined and injury wound was present below left clavicle and exit wound was present in left scapular region. During treatment, resuscitation continued for forty minutes but could not revive and was declared dead at 10.28 PM. He proved emergency consultation report Ex.P11, blood transfusion form Ex.P12, CPR sheet Ex.P13, medical certificate regarding cause of death Ex.P14 and ruqa Ex.P15.

14. PW4 Dr. Ajay Pal Singh, who proved postmortem report Ex.P3, categorically stated that cause of death was shock and hemorrhage due to injury to vital organ such as left lung, as a result of gun shot which was ante mortem in nature and sufficient to cause death in ordinary course of nature. Thus it stands proved that accused died on account of gun shot injury given to him at the hands of accused. He has further stated in his cross-examination that the wound had a classical picture of gun shot wound wherein the suit particles were visible and evident surrounding the wound. It also lends corroboration to the ocular version regarding causing of gun shot injuries to the deceased in the manner as alleged by PW19 and PW20.

15. The accused has taken the plea that he was not present at the spot at the time of the alleged occurrence and on the day of occurrence he was present at his house since evening till next morning alongwith his family.

16. The Apex Court in *Binay Kumar Singh Vs. State of Bihar, 1997 (1) RCR (Criminal) 178* has held as under:

“The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and had participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need to be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.”

17. In the instant case, when a plea of alibi has been taken by the accused, burden is upon him to establish the same by leading positive

evidence, after onus regarding his presence has been established by the prosecution by examining two eyewitnesses of the occurrence. The cumulative effect of evidence regarding presence of accused at the scene of occurrence cannot be disbelieved only on the bald utterance of DW2 Parashram father of accused, especially when he has categorically stated during his cross-examination that he did not know that at the time of murder Parhlad, Fakir Chand and another son of Fakir Chand were present at the spot. He is again categorical in stating that he did not make any representation to any police official regarding false implication of his son. Thus the plea of alibi taken by accused is not established.

18. The alleged delay of 3 ½ hours in lodging of FIR is not fatal to the prosecution case as was argued. Keeping in view the fire arm injuries suffered by accused Chatar Pal, natural priority was to firstly provide medical aid and not to go to Police Station for lodging of FIR. In the given circumstances it cannot be said that there is unexplained delay in filing of FIR. Otherwise, also there was no reason for PW19 and PW20, who were closely related to deceased to falsely involve the accused and save the real culprit who had caused death of deceased by giving him gun shot injuries.

19. Delay in sending of case property to FSL is also of no consequence as PW15-EASI, Ramdiya, specifically stated that firstly case property for depositing in FSL, Bhondsi was taken on 03.04.2017, but the same was not deposited due to some objection being raised. On 22.5.2017 he again took the case property to FSL but met with the same fate. On 23.05.2017 it was sent to RFSL Madhuban, but there also objections were raised. Ultimately, he deposited the case property with FSL on 25.5.2017. He has categorically stated that case property remained intact while in his

possession. As such link evidence is complete in the present case. Absence of detail of objection(s) raised by itself is not sufficient to create a dent and that too a material one in the prosecution version, as urged by learned counsel for appellant.

20. It is pertinent to be noted that FSL, Madhuban, Karnal gave report Ex.PY, stating that test firing was done from the laboratory from the country made pistol. Its firing mechanism was found in working order. .315 bore cartridge case marked as C/1 had fired from country made pistol marked as W/1 (recovered from the accused Natwar Lal @ Saurabh) and not from any other fire arm even of the same make and bore/ calibre because every fire arm has got its own individual characteristic marks. So from aforesaid FSL report also it stands proved that accused was killed with gun shot which had been fired from country made pistol used by the accused.

21. As per testimony of PW6 ASI Om Parkash, accused suffered disclosure statement, pursuant to which he got recovered said country made pistol, one empty and two live cartridges.

22. PW3-Mukesh Kumar has proved sanction order Ex.P2 accorded by District Magistrate under Section 39 of the Arms Act for prosecution of the accused, under Section 25/54/59 of Arms Act.

23. PW2-Deshraj ARC, Sub Registrar Office, Palwal has proved SC certificate of Chatar Pal son of Fakir Chand Ex.P1 by their office.

24. PW19-Fakir Chand has categorically stated that when deceased demanded previous balance from accused then accused abused his son by his caste and asked that why he had demanded previous balance from him. As deceased and accused belonged to the same village so accused was aware about caste of deceased. DW2 Parashram, father of appellant was also

aware about caste of deceased as DW2 Parashram, father of appellant admitted in his cross-examination it to be correct that deceased was Harijan (Scheduled Caste). Charge on this count is also proved.

25. It was also argued by learned counsel for the appellant that accused had no premeditation and only a single shot had been fired from country made pistol and as he was not having any previous enmity with the deceased the case falls within 4th exception of Section 300 IPC.

26. Hon'ble Supreme Court in *Pappu Vs. State of Madhya Pradesh, 2006(7) SCC 391*, while discussing the scope of 4th exception of Section 300 IPC held that “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'."

27. Thus for applicability of Exception 4 of 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. In the present case, none of circumstances which would bring the case within the ambit of Exception 4 to Section 300 IPC is made out. Even, if it is accepted that there was an improvement by the witnesses while recording their testimony that the accused had gone after the altercation and got his pistol and then shot at Chatar Pal, whereas this is not so mentioned at the very outset when FIR was lodged, it is to be noted that, even in the initial statement it is clear that there was no such sudden

provocation by the deceased which would lead the accused to act in the manner that he did. Demand of the previous amount which was owned by the accused to Chatar Pal cannot be termed to be such a grave and sudden provocation and neither is it a matter of routine that such a demand would invite the reaction as was of the accused.

28. Considering the factual background in the case in hand, it is clearly not covered within 4th exception of Section 300 IPC and accused has been rightly convicted under Section 302 IPC.

29. No other argument was raised.

30. For the reasons recorded hereinabove, we find no merit in this appeal and thus, we dismiss the same by affirming the judgment and order, under challenge.

31. Let a copy of this judgment and order be transmitted to the Court with the direction to inform the appellant – Natwar Lal @ Saurabh about the fate of his appeal.

32. Pending application(s), if any, shall also stand disposed of

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

19.12.2024.

Komal

Whether speaking/reasoned?	:	Yes/ No
Whether reportable?	:	Yes/ No