

SRIDHAR BHUYAN

v.

STATE OF ORISSA

AUGUST 9, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

*Penal Code, 1860 :*

*Sections 302, 304 and 300 Exception 4—Murder—Evidence of eyewitnesses—Plea that offence was result of sudden quarrel and without premeditation—Conviction by Courts below for murder—On appeal, conviction altered to Section 304 Part I as the case falls under Exception 4 to Section 300.*

*Section 300 Exception 4—Applicability of—Held : For application of the provision it is not sufficient to show that there was sudden quarrel and there was no premeditation, but must be further shown that offender did not take undue advantage or acted in cruel and unusual manner.*

*Words and Phrases :*

*'Undue advantage' and 'sudden fight'—Meaning of.*

**Appellant-accused was charged for murder. Prosecution case was that the deceased, with a view to settle down issue regarding eve-teasing of his relative by brother of the appellant had gone to his house. When the appellant refused to come along for settlement, quarrel ensued. Appellant took out a knife from his house and stabbed the deceased. He succumbed to the injuries. Trial Court relying on evidence of three eye-witnesses, held the accused guilty of the offence and convicted him u/s 302 IPC. High Court, though accepted that there was quarrel, yet upheld the conviction.**

**On appeal, appellant contended that his case fell under Exception 4 to Section 300 IPC as the assaults were made in course of a quarrel.**

**Partly allowing the appeal, the Court**

**HELD : 1.1. The help of Exception 4 of s.300 IPC can be invoked**

**A** 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. [399-B-C]

**B** 1.2. 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

**C** 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

**D** 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'. [399-C-E]

**E** 2. The present case is not covered under Section 302 IPC. The ingredients necessary to bring in application of Exception 4 to Section 300 IPC are present. The conviction is altered to Section 304 Part I IPC. [399-F]

**F** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 826 of 2004.

From the Judgment and Order dated 18.3.2002 of the Orissa High Court in Crl. A. No. 279/89.

**G** M.K. Sapra, Kanwar Sapra, B. Aggarwala, Saurav Srivastava and Rajiv Mehta for the Appellant.

Shibashish Misra for the Respondent.

The Judgment of the Court was delivered by

**H** ARIJIT PASAYAT, J.: Leave granted.

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A Division Bench of the Orissa High Court confirmed conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'I.P.C.') and sentence of imprisonment for life as awarded by Learned Sessions Judge, Mayurbhanj, Baripada.

Prosecution version as unfolded during trial is as follows :

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On 21.8.1988, Umakant (brother of the appellant) teased Jayanti, the niece of Chintamani Rout (PW-1), father of the Pratap (hereinafter referred to as the 'deceased'). On 22.8.1988 Pratap complained about the previous incident to his father (PW-1) who asked him to wait till the arrival of Jayanti's father who was away from the village. In the evening when Jayanti's father returned home, the deceased along with Jayanti's father and Benudhar Rout (PW-5) went to the house of the appellant to ascertain the reason for his having teased Jayanti. As Umakanta was absent nothing could be decided. On the succeeding day i.e. 23.8.1988 morning, the deceased went to the house of the appellant to ascertain whether his brother Umakanta had returned home. He also insisted that the appellant and his brother Umakanta should come for a settlement of the incident regarding teasing of Jayanti. As they refused, quarrel ensured there. At this moment, the appellant went inside his house and came out with a knife and dealt blows with it on the back of the deceased. When the deceased turned his face, the appellant caught hold of his neck and pierced the knife into his chest. PWs 4 and 7 who were present at the spot tried to save the deceased from the appellant but could not succeed. The deceased who had fallen down near the fence of Chakradhar Bhuyan was, however, taken to the village library where he succumbed to his injuries.

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In order to establish accusations, 8 witnesses were examined including PWs. 1, 4 and 7 who were claimed to be eye-witnesses. PWs. 5 and 6 deposed about the alleged confession made by the appellant before them of having committed the crime. Placing reliance on the evidence of eye-witnesses, learned Sessions Judge found the accused guilty and convicted and sentenced him as aforementioned. High Court did not find any infirmity in the conclusion by the Trial Court to warrant interference. A plea was taken before the High Court that offence is not covered by Section 302 IPC in view of the fact that assaults were made during a sudden quarrel. Though the High Court accepted that there was a quarrel, it came to hold that

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A Section 302 IPC has been rightly applied.

Learned counsel for the appellant submitted that even if the accusations of the prosecution are accepted in toto a case under Section 302 IPC is not made out, in view of the categorical findings recorded by the Trial Court and the High Court that the assaults were made in course of a quarrel and conviction should not have been done in terms of Section 302 IPC. According to him Exception 4 to Section 300 IPC is applicable.

In reply, learned counsel for the State submitted that looking at the factual scenario as projected by the prosecution witnesses, and the nature of the injuries inflicted, the Trial Court was justified in recorded conviction under Section 302 IPC and the High Court has rightly dismissed the appeal.

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.

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 provision 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 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, not 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'.

Considering the factual scenario, in the background of legal principles set out above, the inevitable conclusion is that the case is not covered under Section 302 IPC. The ingredients necessary to bring in application of Exception 4 to Section 302 IPC are present. The conviction is altered to Section 404 Part 1 IPC. Custodial sentence of 10 years would meet the ends of justice.

The appeal is allowed to the extent indicated.

K.K.T.

Appeal partly allowed.