

CASE NO.:
Appeal (crl.) 830 of 2004

PETITIONER:
Parkash Chand

RESPONDENT:
State of H.P.

DATE OF JUDGMENT: 09/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

(Arising out of SLP (Crl.) No. 705/2004)

ARIJIT PASAYAT, J

Leave granted.

Over a petty matter the appellant is supposed to have committed fratricide. He was found guilty by the Trial Court for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo imprisonment for life. In appeal, conviction and sentence were upheld by the High Court of Himachal Pradesh, Shimla.

Accusations which led to the trial of the accused are essentially as follows:

Shri Sukh Dev alias Guddu (hereinafter referred to as the 'deceased') was real younger brother of the accused. On 6.2.2000 at about 9.00 p.m. there was a quarrel between the deceased and the accused. Cause of the quarrel was that the dogs of the accused had entered the kitchen room of the deceased and when the deceased had asked the accused to keep his dogs tied in the chains, verbal altercation took place and tempers flew, the accused went to his room, took out his gun and fired a gun shot at the deceased from a distance of about 35 feet, as a result of which pellets of the gun shot had pierced into the chest of the deceased. Information was lodged with the police, investigation was undertaken and charge sheet was filed. Accused pleaded innocence and false implication. During trial, father of the deceased and accused was the star witness as he claimed to be an eye witness. He graphically described the factual scenario. Placing reliance on his evidence, the trial court found the accused guilty. Appeal filed by him was dismissed by the impugned judgment.

The Trial Court and the High Court did not accept the plea of the accused-appellant that the incident has been occurred during the course of a sudden quarrel, and Section 302 IPC has no application and Exception 4 to Section 300 I.P.C. is applicable. The plea was reiterated during the course of hearing of the present appeal. Additionally, it was submitted that the shot was fired from a distance of about 35 feet and it cannot be said that the intention was to cause death.

Learned counsel for the State supported the judgments of the Courts below.

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 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'. These aspects have been highlighted in *Dhirajbhai Gorakhbhai Nayak v. State of Gujrat* [2003 (5) Supreme 223]. When the factual scenario is considered in the legal principles indicated above, the inevitable conclusion is that Exception 4 to Section 300 IPC is clearly applicable.

Additionally the shot was fired from a distance of 35 feet. Though the distance is always not determinative about the intention or knowledge of accused, the factual background has to be considered taking into account the nature of injuries sustained, the weapon used and such other relevant factors. As illuminatingly highlighted in *Virsa Singh v. State of Punjab* (AIR 1958 SC 465) under clause Thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted. For cases to fall within clause, Thirdly, it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. According to the rule laid down in *Virsa Singh's* case (supra) even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be

murder. Illustration (c) appended to Section 300 clearly brings out the point. The above aspects were highlighted in *Abdul Waheed Khan v. State of A.P.* [(2002) 7 SCC 175, and *Ruli Ram & Ors. v. State of Haryana* (2002) 7 SCC 691. On that score also the proper conviction will be under Section 304 Part I IPC and not Section 302 IPC as done by the Trial Court and upheld by the High Court. The conviction is accordingly altered. Custodial sentence of ten years would meet the ends of justice.

The appeal is allowed to the extent indicated.

JUDIS