CASE NO.:
Appeal (crl.) 229 of 2003

PETITIONER:
Ghapoo Yadav & Ors.

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 17/02/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T

(Arising out of SLP (CRL.) NO.4782/2002)

ARIJIT PASAYAT J.

Leave granted.

Appellants (hereinafter referred to as 'the accused' by their respective names) question legality of the judgment of the Madhya Pradesh High Court dated 18.4.2001, upholding their conviction for offences punishable under Sections 148 and 302 read with Section 149 of the Indian Penal Code, 1860 (in short 'the IPC') and the sentence of rigorous imprisonment for three years and fine of Rs.2,000/- with default stipulation, and imprisonment for life and fine of Rs.5,000/- with default stipulation respectively.

Factual scenario as described by the prosecution is essentially as follows:

Lekhram (PW-2) and Gopal (hereinafter referred to as 'the deceased') were sons of Ramlal (PW-1). Accused Gapoo Yadav is the father of accused Janku, Kewal and Mangal Singh. Accused Sunder is the nephew of accused Gapoo. Deceased, the witnesses and the accused belonged to the same village and there was land dispute between them. On the request made by Ramlal (PW-1), measurement of the land was done by the revenue authority. On the basis of the said measurement, it was found that land belonging to accused Mangal Singh was in the possession of Ramlal (PW-1) and over the said land a berry tree existed. Though, initially the tree was in possession of Ramlal, after measurement he parted with possession thereof. Said tree was cut by the family members of Ramlal (PW-1) a day prior to the incident for which deceased had altercation with the accused persons. On the date of incident i.e. 9.6.1986 there were altercations between the accused persons and the deceased, his brother Lekhram and father Ramlal. Accused Janku enquired from the deceased as to why they were cutting the tree. Lekhram responded that it was cut three days prior to the incident as the tree belonged to them and was planted by their family members. Deceased claimed that he had not cut the tree. This led to altercations and scuffles amongst them and the accused persons assaulted deceased, which

resulted a fracture of his leg. When Ramlal and Lekhram went to save him, the accused persons ran towards them threateningly. Ramlal and Lekhram fled away from the place of incident, and returned later on with the other villagers. They took the deceased who was then grasping for breath on a cot to Maharajpur Police Station. Information was given by the deceased to the police at 8.45 p.m. He was sent for treatment and was examined by Dr. R.K. Chaturvedi (PW-3). On examination he found 7 injuries on his body. His dying declaration was recorded. Later on, deceased took his last breath on 10.6.1986 at 2.00 a.m. Dr. Chaturvedi sent the intimation of death to the Police Station. Though initially case was registered under Section 307 IPC, same was converted to one under Section 302 IPC. Port mortem was conducted by Dr. D.N. Adhikari (PW-6). Investigation was undertaken and on completion thereof charge sheet was filed indicating alleged commission of offences punishable under Sections 147, 148 and 302 read with Section 149 IPC. The case was committed to the Court of Sessions, and finally charges were framed under Sections 148 and 302 read with Section 149 IPC.

Accused persons pleaded innocence and claimed false implication.

On consideration of the evidence on record, the Trial Court found that the accused persons were guilty and accordingly convicted and sentenced them as aforenoted. It is to be noted that apart from the evidence of the two eye-witnesses, reliance was also placed on the dying declaration (Ex.P-1) recorded by Dr. Chaturvedi (PW-3). In appeal, the conviction and consequential sentences imposed were upheld.

Though, in support of the appeal learned counsel for the appellants attacked the findings recorded, ultimately he confined his arguments to the question relating to nature of the offence. He further conceded that if the factual findings as recorded are affirmed then Sections 148 and 149 would have application. In our view, the approach is well founded because the Trial Court and the High Court having analysed the evidence in detail, concluded that accused persons were culprits.

It was the stand of the learned counsel for the appellants that the injuries sustained by the deceased were in course of sudden quarrel, without pre-meditation and without cruel intents and, therefore, Section 302 IPC was not applicable. According to him, Section 302 IPC cannot be applied even if the prosecution case is accepted in toto, and Exception 4 to Section 300 is clearly applicable.

In response, learned counsel appearing for the State of Madhya Pradesh submitted that it is a case to which Section 302 has clear application, and the courts below have rightly applied it along with Sections 148 and 149 IPC.

The question is about applicability of Exception 4 to Section 300, IPC. For bringing in its operation 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 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 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'.

In the case at hand, out of the seven injuries, only injury No.2 was held to be of grievous nature, which was sufficient in the ordinary course of nature to cause death of the deceased. The infliction of the injuries, and their nature proves the intention of the accused appellants, but causing of such injuries cannot be termed to be either in a cruel or unusual manner for not availing the benefit of Exception 4 to Section 300 IPC. After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physicals. It is not the case of the prosecution that the

accused appellants had come prepared and armed for attacking the deceased. The previous disputes over land do not appear to have assumed characteristics of physical combat. This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable. The fact situation bears great similarity to those in Sukhbir Singh v. State of Haryana (2002 (3) SCC 327). Appellants are to be convicted under Section 304 Part I, IPC and custodial sentence of 10 years and fine as was imposed by the Trial Court would meet the ends of justice. The appeal is allowed to the extent indicated above.

JUDIS