

CASE NO.:
Appeal (crl.) 368 of 2006

PETITIONER:
Smt. Sandhya Jadhav

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 31/03/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.6361 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Appellant calls in question legality of the judgment rendered by a Division Bench of the Bombay High Court Nagpur Bench disposing of two appeals; one filed by the appellant and the other by two co-accused person. Challenge was to the conviction recorded and sentence imposed by the 6th Additional Sessions Judge, Nagpur. Appellant was convicted for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- with default stipulation. Appellant was also convicted for offence punishable under Section 325 read with Section 34 IPC along with the other co-accused Kawadu and Arun and all of them were sentenced to suffer RI for 5 years and to pay a fine of Rs.300/- with default stipulation. Co-accused persons were convicted for commission of offence punishable under Section 323 read with Section 34 IPC and sentenced to suffer RI of one year and to pay a fine of Rs.200/- with default stipulation. Appeal filed by the appellant was dismissed. Prosecution version which led to trial of the accused persons in brief is as follows:

Appellant and co-accused persons were residing as tenants in the house of Govindrao Ghoradkar (PW-2). On 6th June, 1990 at about 8.00 a.m. Govindrao Ghoradkar (PW-2) went to the accused persons for demanding house rent. The accused persons in collusion with one another and in furtherance of their common intention assaulted Govindrao Ghoradkar (PW-2) and when his nephew Anand Ghoradkar (hereinafter referred to as the 'deceased') intervened in the matter to separate them, appellant Sandhya delivered a knife blow on the back of the deceased Anand and committed his murder. On the complaint lodged by Govindrao Ghoradkar (PW-2) and Gajanan Ghoradkar, brother of deceased, police registered two separate reports, i.e. (Exh.22) and report (Exh.20) respectively. Investigation was conducted and the accused persons were charge-sheeted for having committed offences punishable u/s 302 read with Section 34 of IPC and u/s 324 read with Section 34 of IPC and so far as accused nos. 2 and 3 are concerned, they were also charged for having committed offence punishable u/s 323 read with Section 34 of IPC.

In reply to the charge, all the accused persons pleaded not guilty and took a common plea that on the day of the incident Govindrao Ghoradkar (PW-2) came along with 5-6 persons and beat them. On conclusion of the trial, the trial Court found the accused persons guilty of the charges, convicted and sentenced them which were matter of challenge in the two appeals before the High Court.

In the appeals primary stand was that the case was not covered under Section 302 IPC so far as the appellant is concerned. The occurrence took place in the course of sudden quarrel where the so-called eye-witness and the deceased were the aggressors; the right of private defence was available to her and in any event the occurrence took place in case of sudden quarrel and, therefore, Section 302 IPC have no application. It was also pointed out that there was no intention to kill as a single blow was allegedly given and, therefore, also Section 302 IPC had no application. The High Court did not accept the contentions and upheld the conviction as recorded by the Trial Court.

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 injury inflicted, the Trial Court was justified in recording 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 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'.

The aforesaid aspects have been highlighted in *Sridhar Bhuyan v. State of Orissa* (JT 2004 (6) SC 299), *Prakash Chand v. State of H.P.* (JT 2004 (6) SC 302), and *Sachchey Lal Tiwari v. State of Uttar Pradesh* (JT 2004 (8) SC 534).

The residual plea is that only a single blow was given. Though it cannot be laid down as a rule of universal application that whenever death occurs on account of a single blow, Section 302 IPC is ruled out, the fact situation has to be considered in each case.

If the factual background is considered in the legal position as set out above, the inevitable conclusion is that Exception 4 to Section 300 IPC has full application. The conviction is to be altered to Section 304 Part II IPC instead of Section 302 IPC as done by the Trial Court and affirmed by the High Court. Custodial sentence of 7 years would meet the ends of justice.

Appeal is allowed to the aforesaid extent.