

CASE NO.:
Appeal (crl.) 560 of 2008

PETITIONER:
Suresh Kumar

RESPONDENT:
The State of Himachal Pradesh

DATE OF JUDGMENT: 27/03/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
REPORTABLE

CRIMINAL APPEAL (CRL.) NO 560 OF 2008
(Arising out of SLP (Crl.) No.6114 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Himachal Pradesh High Court upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'IPC'). Learned Additional Sessions, Judge-I, Kangra had convicted the appellant and sentenced to undergo imprisonment for life and a fine of Rs.5,000/- with default stipulation.

3. Background facts which led to the trial of the accused are essentially as follows:

Brij Lal (PW-1) is a resident of village Nadd, Tehsil Baroh, District Kangra. Sarwan Kumar (PW-3) also belongs to the same village. On 27.02.2001 marriage of Sanjay Kumar son of PW-3 was solemnized. At about 6.30 p.m. baraat of Sanjay Kumar started on foot from village Nadd to Danoa. PW-1 and his son Sanjeev Kumar (hereinafter referred to as 'deceased') also participated in the said marriage party. At about 7.30 p.m. the marriage party reached at a place known as "Thanda Panni". One more marriage party from village Lahar also reached at "Thanda Pani". Most of the boys participating in both the marriage parties were singing and dancing. There was some protest giving rise to exchange of abuses and altercation between the accused and Sanjeev Kumar on a trivial issue. The accused took out knife for the pocket of his trouser and struck a blow on the stomach of Sanjeev Kumar. As a result of blood injury he fell down on the ground and became unconscious. The accused then fled from the spot. PW-1 called his wife from the village. They both arranged a private jeep to take injured Sanjeev Kumar to a hospital at Kangra, but Sanjeev Kumar died on the way at Rasoo Chowk. PW-1 informed PW-2 Smt. Usha Guleria, Ex-Member of Zila Parishad about the incident, PW-2 in turn, informed the S.I/S.H.O. Police Station Kangra from her PCO about death of Sanjeev Kumar due to injuries caused with knife. PW-11 S.I. Surbux Singh, Station House Officer, Police Station, Kangra recorded the telephonic information of PW-2 in daily diary Ext.PW-9/A. He alongwith A.S.I. Dulo Ram. Head Constable Kaur Chand, Constable Sand Kumar and Subash Chand immediately proceeded to

the spot. PW-11 recorded the statement (Ext.PA) of PW-1, complainant under Section 154 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) which was sent to Police Station for registration of the First Information Report. PW-12 Inspector Surinder Singh recorded First Information Report (Ext.PW11/K) inquest report (Ext. PW-11/B) was prepared by PW-11 on the spot. The dead body of deceased Sanjeev Kumar was sent to Civil Hospital at Kangra for postmortem. PW-11 visited the place of occurrence on the same day. On the following day he prepared spot map (Ext.P-11/C) and recorded the statement of the witnesses. He went to village Khart, where the members of the "Barat" were staying. He made search for the accused who at about 11 a.m. was found sleeping in the house of one Amar Nath. The accused was interrogated and arrested by PW-11. On personal search of the accused "Dagger" (Ext.P-1) concealed by him underneath the shirt and tucked in the waist was recovered. Recovery memo (Ext.P- 11/P) of the 'Dagger' was prepared in the presence of PW-6 Ramesh Kumar and Amar Nath (not examined). 'Dagger' Ext.P/1 was sealed in a parcel with seal impression, which after use was handed over to PW-6. Sketch map Ext. P.11/G of 'Dagger' was also prepared on 28.02.2001 'Dagger' alongwith specimen of seal impression was deposited with PW-10 Head Constable Des Raj in the Police Station. PW-13 Dr. D.P. Swami conducted postmortem examination on the body of Sanjeev Kumar on 28.02.2001 at 11.30 a.m. in Dr. Rajinder Parshad Govt. Medical College and Hospital Dharamshala. Dr. Swami found the following injuries on the body of the deceased:

EXTERNAL APPEARANCE:

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Stab marks also seen on the two vests (one T shirt) dept 1 inch x = inch Spindle shaped with clotted blood on these who clothes, Pant, Pajama, and Kachha blood tickled down from this wound of right lower chest to pubic (genitals) region, radish, bright.

ANTI MORTEM WOUNDS:-

1. "Stab wound, on right lower, front chest at 7th rib 1 inch away from sternum /above down ward tailing down, sharp margins spindle shaped".

'ABDOMEN :-

Column of liver... 1 inch x 1/2 inch x 3 inch in length x breadth and depth. Stab wound spindle shaped continuation from injury as reflected in external appearance on upper mid surface pale, clotted 100-cc blood in the area. Diaphragm also cut adjoining to this area."

In the opinion of the Doctor, Sanjeev Kumar died of blood loss Shock due to antimorTEM injury to liver by stab injury, injury caused to the deceased was sufficient in the ordinary course of nature of causing death immediately. Postmortem report Ex. PW- 13/B was handed over to PW-11. PW-11 on receipt of the Chemical Examiner's reports (Ext. PW-11/1) and (Ext. PW- 11/J) and on completion of the investigation, handed over the case file to PW-12 who prepared the challan and the accused was sent up for trial. He pleaded not guilty to the charge and claimed to be tried.

4. 13 witnesses were examined in support of the prosecution version. Accused pleaded innocence. The Trial Court found PWs 3 and 4 to be reliable and accordingly convicted appellant for offence under Section 302 IPC as

aforesaid. The conviction was challenged in appeal. Apart from the question of credibility of the prosecution version, it was pleaded that offence punishable under Section 302 IPC is not made out. The High Court did not accept that plea and as noted above dismissed the appeal.

5. The plea taken before the High Court was reiterated by the appellant in this appeal.

6. There is no appearance on behalf of the State in spite of the service of notice.

7. The evidence of PWs 3 & 4 does not suffer from any infirmity. It is cogent, credible and reliable.

8. The residuary plea relates to the applicability of Exception 4 of Section 300 IPC, as it is contended that the incident took place in course of a sudden quarrel.

9. 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.

10. 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'.

11. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In Kikar Singh v. State of Rajasthan (AIR 1993 SC 2426) it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the head it must be held that giving the blows with the knowledge that they were likely to cause death, he had taken undue advantage.

12. When the facts are considered in the light of the prosecution evidence, the inevitable conclusion is that appropriate conviction will be under Section 304 Part I IPC. Custodial sentence of 10 years would meet the ends of Justice.

13 The appeal is allowed to the aforesaid extent.