

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1321 OF 2008
(Arising out of SLP (Crl.) No. 1733 of 2007)

Iqbal Singh ...Appellant

Vs.

State of Punjab ...Respondent

With

CRIMINAL APPEAL NO.1322 OF 2008
(Arising out of SLP (Crl.) No. 2844 of 2007)

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. These appeals are directed against the judgment of

a Division Bench of the Punjab and Haryana High Court whereby an appeal and a criminal revision were disposed of. The appellants were found guilty of offence punishable under Sections 302, 324 and 323 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced to undergo various terms of sentences. The Criminal Appeal was filed by three appellants questioning the conviction and sentence as recorded. Complainant filed a revision petition stating that she was entitled to compensation.

3. Background facts giving rise to the trial are essentially as follows:

The complainant and the appellants are first cousins, and as such are closely related to each other. Their grandfather was Roor Singh. As per site plans Ex. PP prepared by Makiat Singh, Patwari PW4 and Ex. PT prepared by Sukhchain Singh PW9 (I.O.), it shows that the place of occurrence was in the common land owned both by the

appellants and the complainant party. The tubewell of which the pipes were being taken out by the appellants, was also in the common piece of land. Sikander Singh (hereinafter referred to as 'deceased') was standing in the water-course point B (Ex.PT). Complainant Gursewak Singh was standing in the common land Point C (Ex.PT) and Bhim Singh was standing at Point D (Ex. PT). It is the appellants who went 16 to 35 feet towards the complainants where deceased Sikander Singh and the other two witnesses Gursewak Singh (PW6) and Bhim Singh (PW7) were standing and thereafter attacked them. Gursewak Singh (PW6) asked the appellants not to take out the iron and plastic pipes of the tubewell, but firstly to talk to the elders. Malkiat Singh, Patwari (PW4), who is a key witness in regard to the ownership of the piece of land where the tubewell was installed, was not put any question regarding the ownership of the common land.

Gursewak Singh (PW6), in his testimony before the Court, stated that the appellants on 7.1.2001 at about 1.00 P.M. armed with spades came to the tubewell and started removing the pipes, which was jointly owned by both the

appellants and complainant party. On being stopped, the appellants felt offended and attacked the complainant party. He (PW6) has further stated that there was no dispute regarding the joint property, but the appellants were not on visiting terms with them as far social functions were concerned. Sikander Singh was attacked in the joint water channel and across the water channel there was the field of Gurpiar Singh, father of Iqbal Singh. After leaving the common pipes of land where the tubewell was installed, rest of the land had been divided by both the parties and they were cultivating the land separately and peacefully. The complainant party did not have any weapons in their hands when they had gone to stop the appellants. This witness (PW6) has stated that they did not go near the appellants, but asked them not to remove the pipes. They were at that time standing at a distance of 5-6 karms. Bhim Singh (PW7) has also reiterated the same. Gursewak Singh (PW6) has stated, that Balbir Singh and Hamir Singh have their fields at a distance of about half a kills from the place of occurrence. Both these witnesses Gursewak Singh (PW6) and Bhim Singh (PW7) corroborate each other inter-se and also corroborate the FIR

Ex. PQ/1.

The medical evidence also corroborates the statements given by the eye witnesses. Dr. Deepak Rai (PW 1) has stated in his testimony, that on examining Gursewak Singh he found that he had received one incised wound injury on the scalp left parietal area vertical in position. Similarly on examining Bhim Singh, he found the first injury to be an incised wound. Second and third were abrasions on the left shoulder and neck. The fourth injury was a lacerated wound on the right parietal area of scalp. On the post-mortem conducted on Sikander Singh, an incised wound was found on the parietal area of the scalp, about 12 cms from right ear pinna backwards, traversing part of left parietal area of scalp to left occipital area. The medical evidence corroborates the ocular account.

4. Trial court took note of the fact that the appellants and the members of the complainant party are related to each other closely. The dispute arose because of conflicting claims as to the ownership of the land. It was submitted

that the occurrence took place when the members of the complainant party came forward and obstructed the appellant from doing the work and restrained them from pulling out the pipe. There was exchange of hot words and in the process, the occurrence, according to the prosecution, took place. In essence it was submitted that the accused were exercising the right of private defence or in the alternative the occurrence took place in the course of a sudden quarrel and therefore Section 302 IPC has no application.

5. Stand of the State was that though there appears to be some exchange of words that cannot take out the case out of the application of Section 302 IPC. The trial court found substance in the plea and found the accused persons guilty.

6. Before the High Court it was submitted that the factual scenario has not been correctly appreciated by the trial court. The plea relating to non-applicability of Section 302 IPC was reiterated. The High Court did not find any substance. It noted that the appellants pulled out the iron

and plastic pipes which were installed on the land jointly owned by both the parties. Since the accused persons pulled out the pipes it was natural that the members of the complainant party who were standing at a distance of 16 to 35 feet from the appellants intervened and asked them not to pull out the pipes unless the elders take a decision. The appellants did not pay any heed. That being so the case at hand was covered by Section 302 IPC.

7. Learned counsel for the appellants reiterated the stand taken before the trial court and the High Court.

8. Learned counsel for the State supported the judgments of the trial court and the High Court.

9. The substantive plea relates to the applicability of Exception 4 of Section 300 IPC.

10. 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.

11. 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'.

12. 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 using the

blows with the knowledge that they were likely to cause death, he had taken undue advantage.

13. From the background facts as considered in the light of the evidence, the inevitable conclusion is that the occurrence took place in course of sudden quarrel, therefore, Exception 4 to Section 300 IPC applies. The appropriate conviction would be under Section 304 Part-I IPC. Custodial sentence of 10 years would meet the ends of justice.

14. The appeals are allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

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.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
August 21, 2008