

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. _____ OF 2009
(Arising out of SLP (Crl.) No. 1515 of 2008)

Hawa Singh and Anr.

..Appellants

Versus

State of Haryana

..Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellants for offences punishable under Section 302 read with Section 34 and Section 452 of the Indian Penal Code, 1860 (in short the 'IPC'). Though they were charged of several other offences they were acquitted of those charges. In the appeal filed by the appellants before the High Court there were several

co-accused i.e. Jagdish, Devinder, Balwan and Murti Devi. Accused Jagdish and Devinder who were convicted under Section 323 read with Section 34 and Section 452 IPC. The other two accused persons i.e. Balwan and Murti were acquitted of all charges.

3. Prosecution version in a nutshell is as follows:

On March 20, 2000 at 4.00 p.m. Man Singh was sitting near the gate of his house, while members of his family were present inside the house. Hawa Singh, Parkash and Jagdish armed with swords, Balwan and Devender @ Raju armed with lathis, their sister Murti armed with rapri and their mother Gindori armed with pharsa came there. They entered the house and upon exhortation that a lesson be taught to Man Singh for getting them convicted, Hawa Singh opened the attack with a sword with which he hit Man Singh on the head. This was followed by Parkash giving a blow with his sword which hit Man Singh in the middle of his head. Jagdish also gave a sword blow which hit Man Singh on the back of the head. When alarm was raised Balwan hit Sajjan (PW-7) with a lathi on his forehead above left eye. Devender @ Raju hit Sajjan (PW-7) with a lathi on his left leg. Murti and Gindori also inflicted injuries on Sajjan. They also caused grievous

injuries to Anju and Sarti. Sajjan's younger brother Krishan and his uncle Azad Singh reached the spot to rescue them from the assailants. During the course of rescuing the injured, Azad Singh also sustained injuries. Some injuries were also inflicted by complainant party on the accused in self defence before the accused retreated from the spot with their respective weapons. After the occurrence was over, the injured were taken to Civil Hospital, Bhiwani. On reaching the hospital Man Singh succumbed to his injuries whereas the injured were medico legally examined. Anju and Sajjan were medico legally examined by Dr. Arjun Chander Yadav (PW-1) at 6.35 p.m. and 8.15 respectively. Anju was found to have various injuries on her right hand.

The case was registered at Police Station Sadar, Bhiwani on the basis of the statement of Sajjan (PW-7) recorded by ASI Suraj Bhan at 10.50 p.m. on the same evening at General Hospital, Bhiwani. FIR was recorded in respect of offences punishable under Sections 302, 148, 149, 452 and 323 IPC. Special report was delivered at 3.50 a.m. on March 21, 2000. Thereafter, the Investigating Officer took up the investigation by first preparing the inquest report on the dead body of deceased Man Singh. After the inquest proceedings, post mortem was conducted by Dr. Ramesh Kumar

(PW-4). The Medical Officer found several injuries on the body of Man Singh. In the opinion of the Medical Officer the death was caused due to hamorrhage and shock and injury to the brain. The accused were arrested on March 30, 2000 by Inspector Darshan Lal (PW-11). On the basis of their respective disclosure statements, certain weapons were recovered from possession of the accused i.e. axes from Parkash and Hawa Singh, rapris from Jagdish and Devender @ Raju and a lathi from Balwan.

After completion of the investigation all the accused barring Murti were sent up for trial. Murti was placed in column 2 of the report under Section 173 of the Code of Criminal Procedure, 1973 (in short the 'Code'). She was subsequently summoned to stand trial under Section 319 of the Code. Charge was first framed against the accused on July 19, 2000 under Section 302 read with Section 149 IPC and other related offences. Charges were reframed on January 25, 2001. By this time Murti Devi had been summoned as accused. Finally charge was reframed on April 15, 2004. All the accused persons were found guilty and convicted.

Before the High Court the specific stand was that Section 302 had no application because there was free fight and the occurrence took place in

course of sudden quarrel. The High Court accepted that there was a sudden quarrel and there were injuries on both sides. But it took the view that the appellants were apparently the aggressors and, therefore, the conviction under Section 302 IPC was in order.

4. In support of the appeal, learned counsel for the appellants submitted that after having recording a finding that there was free and open fight, the question as to who was the aggressor was really irrelevant and the fact that the persons belonging to the complainant party received more injuries was also really of no consequence.

5. Learned counsel for the respondent-State supported the judgment.

6. 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.

7. 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], Parkash Chand v. State of H.P. (2004 (11) SCC 381) and Byvarapu Raju v. State of A.P. and Anr. (2007 (11) SCC 218)

8. From the facts of the case, it appears that the accused persons armed with deadly weapons like swords, balwan, lathis, pharsa came to the house of the Man Singh on 20th March, 2000, at 4 p.m., to teach Man Singh a lesson for getting the accused persons convicted. After coming to the house of Man Singh, Hawa Singh opened the attack with the sword, with which he hit Man Singh on the head and ultimately Man Singh succumbed to his injuries.

9. Exception 4 to Section 300 IPC applies in the absence of any premeditation. This is very clear from the wording of the exception itself. The exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel but here, the accused party, being deadly armed, came with the intention of teaching Man Singh a lesson and in furtherance of that, one of them, Hawa Singh, hit Man Singh on the head

with a sword, an attack with a deadly weapon on the vital part of the body and that proved to be a fatal blow.

10. Therefore, Exception 4 to Section 300 has no application to the facts of the present case.

11. The appellants have been rightly convicted in terms of Section 302 IPC.

12. The appeal is accordingly dismissed.

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

.....J.
(ASOK KUAMR GANGULY)

New Delhi,
January 15, 2009