SUKHDEV

v.

STATE OF PUNJAB

JUNE 21, 2007

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Penal Code, 1860; ss.302, 324 & 326:

Assault & murder—Accused attacked deceased and others with a knife injuring them—Allegedly wife of accused also injured—Deceased succumbed to injures—F.I.R.—Chargesheet—Trial Court found accused guilty of committing offences punishable u/ss. 302, 324 and 326 and sentenced him accordingly—Affirmed by High Court—On appeal, held, DW1, wife of the accused could not explain as to why she did not report the matter to the police immediately and medically examined herself if she was injured in the incident—In the facts and circumstances of the case both the courts below rightly found evidence of the injured witnesses credible and evidence of DW 1, wife of the accused highly improbable—Hence, accused was rightly convicted by the court's below under s.302 IPC—Evidence—Injured eye witnesses—Testimony of.

Exception 4 to s. 300 IPC—Applicability of—Held: Not applicable.

Words and phrases:

'Sudden fight' and 'undue advantage'—Meaning of in the context of exception 4 to S.300 IPC.

PW.3, President of a village was working at a petrol pump, at about 9.30P.M. on November 3,1994, he heard a noise that the heap of chaff of a villager had caught fire, hearing the cry PW3 alongwith his brother, the deceased, PW.4 and accused reached the spot to help in extinguishing the fire. The accused made an allegation against the deceased that he had set the heap of chaff on fire, when the deceased denied the allegation, there started a quarrel between them. Accused then ran inside his house and brought a knife and caused blows with it on the body of the deceased and PW4 and injured them. Allegedly, when the wife of the accused tried to separate them, she

A also got injured. The injured were taken to a Hospital, but shortly before they reached there, the deceased succumbed to his injuries. On the basis of statement of PW3 as recorded by the police in the Hospital, an FIR was registered at police station. The dead body of the deceased was sent for post-mortem examination. Accused was arrested and on his disclosure statement, B a blood stained knife, the alleged murder weapon was recovered. On completion of the investigation, the accused was charged for an offence punishable under Section 302 IPC for committing the murder of the deceased and under sections 324 and 326 IPC for causing injuries to PW3 and PW4. Trial Court found the accused guilty of offences, convicted and sentenced him for committing offences u/ss 302, 324 & 326. Appeal filed by the accused C was dismissed by the High Court. Hence, the present appeal.

Accused-appellant contended that the trial court and the High Court should not have placed reliance on the interested version of PWs.3&4; that the evidence of DW1 was clear and cogent and completely ruled out acceptability of prosecution version; and that even accepting the prosecution D version, the injuries were inflicted in course of sudden quarrel and, therefore, Section 302 has no application.

Dismissing the appeal, the Court

HELD: 1. The trial court and the High Court found the evidence of the E injured eye witnesses to be credible. The testimony of an injured witness has significant relevance. Though they were examined at length nothing brittle in their testimony could be noticed. The evidence of DW-1 is highly improbable as was rightly held by the trial court and the High Court. If she had been injured in the incident, it was not explained as to why she did not F report the matter to the police immediately and the medical examination was done after about two days. This conduct of DW-1 who happened to be the wife of the accused has been rightly taken note of by the trial court and the High Court. [Para7] [1127-F-G]

2.1. For bringing in operation of Exception 4 to Section 300 IPC, it has G 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. [Para 9] [1128-A]

2.2. To bring a case within Exception 4 all the ingredients mentioned in H 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'.

[Para 10] [1128-G-H; 1129-A-B]

Sridhar Bhuyan **v.** *State of Orissa,* **JT (2004) 6 SC 299;** *Prakash Chand* **v.** *State of H.P.,* **JT (2004) 6 SC 302;** *Sachchey Lal Tiwari* **v.** *State of Uttar Pradesh,* **JT (2004) 8 SC 534;** *Sandhya Jadhav* **v.** *State of Maharashtra,* **[2006] 4 SCC 653 and** *Lachman Singh* **v.** *State of Haryana,* **[2006] 10 SCC 524, relied on**

2.3. When the background facts are considered in the touchstone of the legal principles, the inevitable conclusion is that Exception 4 to Section 300 has no application. Appellant has been rightly convicted under Section 302 IPC. [Para 12] [1129-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 101 of 2002.

From the Judgment and Order dated 09.01.2001 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 108-DB of 1996.

K. Sarada Devi for the Appellant.

Kuldip Singh, R.K. Pandey, Sanjay Katyal and T.P. Mishra for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court dismissing the appeal filed by the appellant and upholding the conviction as recorded by learned Sessions Judge, Patiala. Accused was found guilty of offences

A punishable under Sections 302, 326 and 324 of the Indian Penal Code, 1860 (in short the 'IPC') and sentences of life imprisonment and two years and 1 year respectively for the aforesaid offences with default stipulations were imposed.

2. Background facts in a nutshell are as follows:

B

Paramjit Singh, (P.W.3), President of village Sarala Kalan, was working at a petrol pump at Ghanaur. At about 9.30 P.M. on November 3, 1994, he heard a Raula that the heap of chaff of Amar Nath of Village Sarala Kalan had caught fire. Hearing this, he, his brother Kishan Singh (hereinafter referred to as the 'deceased'), Satpal (P.W. 4) and accused Sukhdev too reached the C spot to help in extinguishing the flames. Immediately after reaching there, Sukhdev made an allegation that this heap had been set on fire by the deceased Kishan Singh. He denied the allegation on which there was a quarrel between the two. Sukhdev then ran inside his house situated close by and brought a knife and caused blows with it to Kishan Singh. Satpal (P.W. 4) D moved forward to help Kishan Singh but Sukhdev also gave him a knife blow. Savitri Devi (DW.1) wife of accused Sukhdev, then came forward to separate the parties. Sukhdev, however, aimed another blow towards Satpal, but the same hit Savitri Devi instead. Paramjit Singh tried to lift Kishan Singh, who was lying in the pool of blood but Sukhdev also gave him a knife below on his back and then ran away from the spot. The injured were there after E removed to Rajendra Hospital, Patiala but shortly before they reached there, Kishan Singh succumbed to his injuries. Satpal and Paramjit Singh were, however, admitted to the hospital for treatment. A message was sent from the hospital to the police station at about 1.20 A.M. on November 4, 1994, on which SI Gobinder Singh (P.W.6) reached the hospital and on inquiry was F told by the doctor that Satpal was not fit to make a statement whereas Paramjit Singh was fit to do so. Paramjit Singh's statement, (Ex.P.K.) was accordingly recorded at about 5 A.M. and on its basis, the formal F.I.R. was registered at Police Station, Ghanaur at 6.30 A.M. The special report was delivered to the Illaqa Magistrate at Rajapura at 5.45 P.M. the same day, the police officer also visited the place of occurrence and made the necessary inquiries and G also dispatched the dead body for its post-mortem examination. The post mortem was conducted at 12.15 P.M. on November 4, 1994 after the police papers had been received by the doctor 15 minutes earlier. On November 5, 1994 SI Gobinder Singh also went to Civil Hospital, Rajpura on coming to know that Savitri Devi, wife of accused Sukhdev, was lying admitted there but H found her unfit to make a statement. Her statement was ultimately recorded

on November 7, 1994. Likewise, Satpal's statement was recorded on November 8, 1994 after he had been declared fit to give it. Sukhdev accused was arrested on November 12, 1994 and on his disclosure statement, a blood stained knife, the alleged murder weapon was recovered. On the completion of the investigation, the accused was charged for an offence punishable under Section 302 IPC for committing the murder of Kishan Singh and under Section 326 IPC for causing grievous injury to Satpal and further under Section 324 IPC for causing simple injuries to Paramjit Singh and Savitri Devi and as he claimed to be innocent, was brought to trial.

3. Placing reliance on the evidence of the eye witnesses Paramjit Singh (PW-3) and Satpal (PW-4) the trial court found the accused guilty of offences, convicted and sentenced him as aforenoted.

4. Appeal before the High Court was dismissed as noted above.

5. In support of the appeal, learned counsel for the appellant submitted that the trial court and the High Court should not have placed reliance on the interested version of PWs. 3 & 4. The evidence of Sharda Devi (DW-1) was clear and cogent and completely ruled out acceptability of prosecution version. Even accepting the prosecution version, the injuries were inflicted in course of sudden quarrel and, therefore, Section 302 has no application.

6. Learned counsel for the respondent-State on the other hand supported the judgment of the Courts below.

7. Coming to the acceptability of the prosecution version it is to be noted that the trial court and the High Court found the evidence of the injured eye witnesses to be credible. The testimony of an injured witness has significant relevance. Though they were examined at length nothing brittle in their testimony could be noticed. The evidence of DW 1 is highly improbable as was rightly held by the trial court and the High Court. If she had been injured in the incident, it was not explained as to why she did not report the matter to the police immediately and the medical examination was done after about two days. This conduct of DW 1 who happened to be the wife of the accused has been rightly taken note of by the trial court and the High Court. Therefore, there is no substance in the plea of learned counsel for the appellant that the prosecution version is not accepted.

8. Coming to the alternative plea the same needs careful examination.

A 9. 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.

B 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 C 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 D 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 E 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 F 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. G 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 H 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. 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, *Sachchey Lal Tiwari* v. *State of Uttar Pradesh,* JT (2004) 8 SC 534, *Sandhya Jadhav* v. *State of Maharashtra,* [2006] 4 SCC 653 and *Lachman Singh* v. *State of Haryana,* [2006] 10 SCC 524.

12. When the background facts are considered in the touchstone of the legal principles elaborated above, the inevitable conclusion is that Exception 4 to Section 300 has no application. Appellant has been rightly convicted under Section 302 IPC.

13. The appeal is sans merit and is dismissed. The accused shall surrender to custody to serve remainder of sentence.

S.K.S. Appeal dismissed.