

A VISHAL SINGH
v.
STATE OF RAJASTHAN
(Criminal Appeal No. 414 of 2002)

B FEBRUARY 25, 2009
[DR. ARIJIT PASAYAT, V.S. SIRPURKAR AND ASOK
KUMAR GANGULY, JJ.]

Penal Code, 1860:

C Sections 302, 341 – Exception 4 to s.300 – Trial Court
convicting accused under s.302 and 341 IPC – High Court
upholding conviction under s.302 – On appeal, **Held:** In the
D facts of the case Exception 4 to s.300 has no application –
Appellant rightly convicted under s.302 IPC.

WORDS AND PHRASES:

'Undue advantage', 'unfair advantage' – Meaning of.

E The appellant was convicted by the trial court for
offences punishable under sections 302 and 341 IPC. The
High Court upheld the conviction under s.302 IPC. Hence
the appeal.

Dismissing the appeal, the Court

F HELD: 1. 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
G 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 7] [449-D-F] A

Dhirajbhai Gorakhbhai Nayak v. State of Gujrat 2003 (5) Supreme 223; *Parkash Chand v. State of H.P.* 2004 (11) SCC 381; *Byvarapu Raju v. State of A.P. and Anr.* 2007 (11) SCC 218 and *Hawa Singh and Anr. v. State of Haryana* SLP (Crl.) No.1515/2008 disposed of on 15.1.2009, relied on. B

2. In the instant case the High Court noted that the accused appellant was armed with knife and standing with his friends and accosted the deceased and PW-6. They were labelled thieves and after abusing them, accused persons started search of their persons which was ordered by the present appellant. When the deceased resisted he was not only thrashed but also given fatal injury on his chest with such force that it penetrated upto lower lobe of lung as also pericardium resulting in his death. There was no evidence of any scuffle much less sudden fight or sudden quarrel or altercation between the parties. It was the right of the deceased and PWs 6 and 7 to resist their personal search because they were not armed. That being so, Exception 4 to Section 300 IPC has no application to the facts of the case. The appellant has been rightly convicted in terms of Section 302 IPC. [Para 8] [449-G-H; 450-A-C] C D E

Case Law Reference: F

2003 (5) Supreme 223 relied on Para 7

2004 (11) SCC 381 relied on Para 7

2007 (11) SCC 218 relied on Para 7 G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 414 of 2002.

From the Judgment & Order dated 10.8.01 of the High H

A Court of Judicature for Rajasthan at Jodhpur in CrI. Appeal No. 596/1997.

Mahabir Singh, Rakesh Dahiya, Nikhil Jain and Ajay Pal for the Appellants.

B Manish Singhvi, AAG(Raj.) Milind Kumar and Aruneshwar Gupta for the Respondent.

The Judgment of the Court was delivered by

C **DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of Rajasthan High Court, Jodhpur Bench upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). The accused alongwith four others faced trial. While the accused faced trial for alleged commission of offences D punishable under Sections 302 and 341 IPC, others faced trial for offence punishable under Sections 323 and 341 IPC.

2. The learned Special Judge SC/ST Act Cases, Jodhpur, held the appellant guilty of offence punishable under Sections E 302 and 341 IPC. We are not concerned with the conviction and sentence in respect of other accused persons.

3. Prosecution version in a nutshell is as follows:

F At 8.00 p.m. on 5.12.1996 in the city of Jodhpur P. Mukesh (PW-6) with his uncle Chetan Prakash (PW-7) as also his father Kaluram (since deceased) went to Railway Stadium on bicycles to bring waste meals discarded by the marriage party for their pigs. At about 10.15 p.m. they were coming back from the Railway Stadium in two bicycles and the waste meals G near S.P.S. School. By the side of the road, five persons were standing with a scooter and a Hero Puch. They stopped the deceased and others and asked wherefrom they were coming and called them thieves and wanted to take their personal search. When Kaluram as also Chetan Prakash refused to H give their personal search, Vishal Singh accused appellant

herein, took out a knife from his pocket and inflicted the fatal blow on the chest of Kalurani. Co-accused Manoj Kumar inflicted a stone blow on the head of Kalurarn. The remaining three persons started beating by fists. When PW-6 Mukesh and PW-7 Chetan Prakash intervened, all the assailants made good their escape.

After walking few steps Kalurarn became unconscious and fell down. Thereafter, injured Kaluram was taken to Railway Hospital through a taxi from where he was referred to Mahatma Gandhi Hospital for treatment where Kaluram passed away at 1.30 A.M. At the hospital itself Mukesh (PW-6) at 2.15 P.M. gave a parcha bayan Ex.P.7 to Girija Shankar, S.I. (PW-3) who sent the same to Police Station Sardarpura where FIR Ex.P/24 was recorded at 2.30 A.M. Immediately thereafter all the five accused persons were put under arrest. Knife (Article 1) was recovered on the voluntary disclosure statement given by appellatant which was seized, sealed and sent to the FSL where it was found stained with human blood.

After investigation charge sheet was filed. Since the accused persons pleaded innocence trial was held.

One Manoj Kumar who had faced trial alongwith the appellatant was acquitted of all charges. The other co-accused persons were convicted under Sections 323 and 341 and were released on probation.

Before the trial Court the primary stand was of false implication and alternatively it was pleaded that there was single injury and that too in a sudden quarrel and sudden fight without pre-meditation and, therefore Section 302 has no application. The trial Court did not accept the plea and as noted above recorded conviction and imposed life imprisonment.

4. In appeal, the stand taken before the trial Court was reiterated. Learned counsel for the State on the other hand

A submitted that there was no quarrel as claimed by the accused. Therefore, Exception 4 to Section 300 has no application to the facts of the case. The High Court did not accept the plea of the accused appellant and dismissed the appeal.

B 5. Stand taken before the High Court was re-iterated. It is to be noted that occurrence took place at about 10.15 p.m. on 5.12.1996 and the FIR was promptly lodged.

C 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.

D 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

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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), *Byvarapu Raju v. State of A.P. and Anr.* (2007 (11) SCC 218) and *Hawa Singh and Anr. v. State of Haryana* (SLP (Crl.) No.1515/2008 disposed of on 15.1.2009).

8. In the instant case the High Court noted that the accused appellant was armed with knife and standing with his friends and accosted the deceased and PW-6. They were labelled thieves and after abusing them, accused persons

- A started search of their persons which was ordered by the present appellant. When the deceased resisted he was not only thrashed but also given fatal injury on his chest with such force that it penetrated upto lower lobe of lung as also pericardium resulting in his death. There was no evidence of
- B any scuffle much less sudden fight or sudden quarrel or altercation between the parties. It was the right of the deceased and PWs 6 and 7 to resist their personal search because they were not armed. That being so, Exception 4 to Section 300 IPC has no application to the facts of the case. The appellant
- C has been rightly convicted in terms of Section 302 IPC. We find no merit in this appeal which is accordingly dismissed.

G.N.

Appeal dismissed.