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TRIMBAK

v.

STATE OF MAHARASHTRA
(Criminal Appeal No. 438 of 2008)

B

MARCH 4, 2008

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

Penal Code, 1860:

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s.300 Exception 4, s.302 and s.304 Part I – Sudden fight between accused and deceased – Accused assaulted deceased with axe lying nearby – Wife of deceased intervened and she was also given blow with axe on head – Courts below held accused guilty under ss.302 and 324 – Accused pleading applicability of Exception 4 of s.300 – Held: Considering
D *factual background, appropriate conviction would be under s.304 Part-I and not under s.302 – Conviction altered accordingly.*

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s.302 – Applicability of, when single blow given – Held: It is not rule of universal application that whenever one blow is given, s.302 is ruled out – It would depend upon the weapon used, the size and force with which blow was given, part of body on which it was given and several other factors.

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s.300 Exception 4 – Invocation of – Essential ingredients.

Words and phrases:

'fight', 'sudden fight', 'undue advantage' – Meaning of – In the context of Exception 4 to s.300 IPC.

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The prosecution case was that the accused and deceased were present in the field. There were verbal exchanges between the accused and deceased. Thereafter accused picked up the axe which was lying nearby and he assaulted deceased with the said axe on the head. When wife of deceased rushed forward to

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intervene, the accused gave a blow with the axe on her head. On account of assault, deceased died on the spot and his wife sustained bleeding injuries. The trial court convicted the accused for the offences under ss.302 and 324 IPC, however acquitted him of the offence under s.307 IPC. High Court affirmed the judgment of trial court.

In appeal to this Court, appellant contended that the deceased lost his life in the course of sudden quarrel and that there was no premeditation and that the accused had not taken advantage and had also not acted in a cruel manner; that only one blow was allegedly given after picking up the axe; that prior to that he was not armed and in any event only one blow was given. In essence it was submitted that s.302 IPC would not apply and Exception 4 of s.300 IPC applied.

Partly allowing the appeal, the Court

HELD : 1. For bringing in operation of Exception 4 to s.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. [Para 9] [810-B]

2. The fourth exception to s. 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 do 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

A 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

B 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

C 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

D 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;

E (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

F Exception 4 to s.300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down. 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

G 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 proven facts of each case. For the application of Exception 4 to

H s.300 IPC, 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] [810-C-H; 811-A-E]

3. It cannot be laid down as a rule of universal application that whenever one blow is given, s.302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors. [Para 11] [811-E, F]

4. Considering the factual background of the case, the appropriate conviction would be under s.304 (I) IPC and custodial sentence of ten years would meet the ends of justice. [Para 12] [811-F, G]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 438 of 2008.

From the final Order and Judgment dated 15.9.2005 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 58/2002.

Bimal Roy Jad and Sunita Pandit for the Appellant.

Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court, Nagpur Bench, dismissing the appeal filed before it by the appellant. The appellant was convicted for allegedly having committed an offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and was sentenced to imprisonment for life by learned Sessions Judge Akola in Sessions Trial No. 58 of 2001. He was also found guilty of offence punishable under Section 324

- A IPC. Sentences of imprisonment for life and fine with default stipulation and sentence of 6 months and fine with default stipulation were imposed for the two offences. It was further ordered that if the fine amount is deposited then a sum of Rs.2,000/- was to be paid to the complainant as a compensation
- B in terms of Section 357 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.').

3. Background facts in a nutshell are as follows:

- C Narmadabai (PW2) is the widow of Shamrao Telgote (hereinafter referred to as 'deceased') who was working in the field of one S. K. Majid, situated near village Gaigaon. Shamrao was living in the field in a hut and the accused was working in the field and living there in a hut. The house of owner of the field S.K. Masjid was also situated in the field and S.K. Majid was
- D residing with his mother Gulabbi in the said house.

- E On 24.12.2000 at about 7.30 p.m. Narmadabai and Gulabbi were sitting in front of the house of Gulabbi in the field. The accused and deceased Shamrao were present there. There were verbal exchanges between the accused and Shamrao.
- F Thereafter accused picked up the axe which was lying there and he assaulted Shamrao with the said axe on the head of Shamrao. When Narmadabai rushed forward to intervene, the accused also gave a blow with the axe on her head. On account of assault, Shamrao died on the spot and his wife sustained
- G bleeding injuries. Thereafter, the accused ran away from the field. Since it was night time and as there was no conveyance for going to the Police Station situated at Ural, Narmadabai did not go to the Police Station. She lodged an oral report on the next day i.e. 25.12.2000 in the morning. On the basis of this
- H report, F.I.R. under Sections 302 and 307 IPC was registered by PSI Madhukar Bhoge (PW 8). The investigation was taken up and the accused was arrested on 01.01.2001. After completing the investigation, charge-sheet was filed against the accused under Sections 302 and 307 IPC. The case was committed to the Court of Session. In the trial, the prosecution

examined eight witnesses and also produced several documents to prove its case against the accused. The defence of the accused was one of denial. After appreciating the evidence led by the prosecution, the trial court convicted the accused for the offences under Sections 302 and 324 IPC. The accused was acquitted of the offence under Section 307 IPC.

The conviction and sentence as imposed by the trial Court came to be challenged by the appellant before the High Court. Primary stand was that the occurrence took place in course of sudden quarrel and the evidence tendered does not inspire confidence. The stand of the State, on the other hand, was that Narmadabai (PW-1) whose evidence was vital for the prosecution case herself had suffered injuries. The appeal was dismissed.

4. In support of the appeal, the stand taken before the High Court was reiterated. Additionally, it was submitted by learned counsel for the appellant that the factual scenario clearly established that in course of sudden quarrel the attack was made and the deceased lost his life.

5. Learned counsel for the State submitted that considering the nature of the injury the appellant has been rightly convicted for offence punishable under Section 302 IPC.

6. The basic stand of the appellant appears to be that in course of a quarrel the occurrence took place. This fact has also been accepted by Narmadabai (PW 1) stated that there were verbal exchanges between the accused and the deceased and thereafter accused picked up the axe which was lying there and assaulted the deceased.

7. According to appellant background facts projected by the prosecution clearly show that the assault was given in the course of a sudden quarrel. There was no premeditation and the accused did not take advantage and had also not acted in a cruel manner. Only one blow was allegedly given after picking up the axe. Prior to that he was not armed. In any event only one

A blow was given. In essence it was submitted that Section 302 IPC has no application and fourth exception of Section 300 IPC applies.

8. The pivotal plea relates to the applicability of Exception 4 of Section 300 IPC.

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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.

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10. The fourth exception to 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 do 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

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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 IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down. 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 proven facts of each case. For the application of Exception 4 to Section 300 IPC, 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. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors.

12. Considering the factual background of the case, in our considered view the appropriate conviction would be under Section 304 (I) IPC, and custodial sentence of ten years would meet the ends of justice.

13. The appeal is allowed to the aforesaid extent.