

GURU DEV SINGH

v.

STATE OF M.P.

(Criminal Appeal No. 1125 of 2011)

MAY 10, 2011

**[DR. MUKUNDAKAM SHARMA AND  
ANIL R. DAVE, JJ.]**

*Penal Code, 1860:*

*ss. 302/34 and 323/34 – Three accused attacking the victims with deadly weapons – One of the victims found dead in the following morning – One of the accused died pending trial – Conviction of two by trial court u/ss 302/34 and 307/34 – High Court maintaining conviction u/s 302/34, but setting aside conviction u/s 307/34 and instead convicting the accused u/s 323/34 – Appeal by one accused – HELD: There is categorical evidence of the injured eye-witness that the accused persons caused serious injuries on the head and other parts of body of the deceased with 'kirpan', 'lohang and lathi' – The other eye-witness stated that the accused after causing injuries to the deceased threw him in the 'nala' – Medical evidence, the statement of eye-witnesses, the statement of accused leading to recovery of crime weapons, clearly establish that the deceased received serious injuries from the weapons used by the accused, due to which he died – Appellant is guilty of offences punishable u/ss 302/34 and 323/34 IPC and the order of conviction and sentence passed by High Court against him is upheld.*

*s.300 – Exceptions I to IV – Three accused attacking two victims with deadly weapons resulting in death of one of the victims – Plea of accused that there was provocation from the side of the victims and the incident happened due to sudden fight – HELD: The defence is not corroborated by evidence*

- A on record – From the evidence it is found that provocation came from the side of accused and not from the victims – It was also not a sudden fight as it has been proved that accused were armed with deadly weapons like 'kirpan', 'lohangi' and lathi and they surrounded the victims and gave blows to vital parts of deceased with intention to kill him – Thus, none of Exceptions to s.300 is attracted.

### FIR

- C Delay in lodging the FIR – Victim attacked at about 8 P.M. in the night and found dead on the following morning and FIR recorded thereafter – HELD: There is proper and reasonable explanation that as the victim was not found at the place of incident, he was searched throughout the night and only after tracing him in the 'nala' on the following morning and finding him dead, FIR was lodged immediately thereafter.

- E The appellant-accused No.2 (A-2) along with A-1 and 'B' was prosecuted for the murder of one 'BS', the brother of the complainant (PW-3). The prosecution case was that on 17.11.1986, 'BS' along with one 'SS' had gone to purchase seeds of 'chana' and at about 8.00 p.m. when they reached near the place of incident, A-1 armed with 'Kirpan' (sword) accused 'B' armed with lathi and A-2 armed with 'Lohangi' met them; that accused 'B' had enmity with 'BS' as the latter wanted the sister of 'B' to marry one 'LS' but 'B' was opposed to it. All the three accused with their respective weapons attacked 'BS' and PW-1. 'BS' fell down due to serious injuries; PW-1 managed to run away and told the incident to PW-3. Thereupon, PW-3 along with PW-1 and others reached the place of incident but they could not find 'BS' there. On the following morning the dead body of 'BS' was found in the 'nala' and the FIR was lodged. Accused 'B' died pending trial. The trial court convicted A-1 and A-2 u/ss.302/34 and 307/34 IPC and sentenced them to imprisonment for life and RI for 7 years, respectively, for

the two counts. On appeal, the High Court maintained the conviction and sentence u/s 302/34 IPC but set aside the conviction and sentence u/s. 307/34 IPC and instead convicted the accused u/s 323/34 IPC.

In the instant appeal filed by A-2 it was contended for the appellant that there were vital discrepancies in the evidence as alleged by the eye-witnesses namely, PW-1 and PW-2 and, therefore, their evidence could not be relied upon and further PW-1 was an interested witness as there was a mutual fight between the parties in which PW-1 was a party; that the accused also received injuries and the prosecution furnished no explanation therefor; that there was delay in lodging the FIR; and that, in any case, the appellant was protected under Exceptions to s:300 IPC for there was provocation from the complainant side and the incident occurred due to sudden fight between the parties.

Dismissing the appeal, the Court

HELD: PW-1 is an injured witness and, therefore, an eye-witness to the occurrence. He has given vivid description as to how the incident has taken place. He has clearly stated that there was no provocation on the part of complainant party, and that the provocation, (in fact) came from the side of the accused persons. There is a categorical statement of PW-1 that the appellant and other accused persons caused serious injuries on the head and body of the deceased by 'lohangi', 'kirpan' and 'lathi'. PW-1 also stated that, the appellant, and another accused gave him (PW-1) 'lathi' blows and realizing that the accused would kill him, he ran away from the place of occurrence and reported the matter to his father who came along with him and other persons to the place of occurrence but they could not find the deceased after searching throughout the night. They could find the body of the deceased only on the morning of 18.11.1986 in a

A **'nala'** whereupon the report was lodged. [para 13-14]  
[950-E-H; 951-A-E]

B 1.2. PW-2, who is also an eye-witness to the  
occurrence, has clearly stated that all the three accused  
persons hit the deceased on his head, hands and legs  
and also hit PW-1 when he tried to rescue the deceased  
whereupon PW-1 ran away from the spot. He also stated  
that the accused lifted the deceased and took him  
towards the *nala*. This eye-witness has further stated that  
C he followed them stealthily by remaining 8-10 steps  
behind them. The accused persons threw the deceased  
in the *nala* and went away. Thereafter PW-2 returned back  
to his village and on the following day went and narrated  
the facts to the complainant. [para 15] [951-F-H; 952-A-B]

D 1.3. The statement of the two eye-witnesses, viz., PWs  
1 and 2, are also supported by the proved medical  
evidence of PW-7 who conducted the post mortem of the  
dead body on 18.11.1986. PW-7 has stated in his evidence  
that he found 21 injuries on the body of the deceased and  
E that in his opinion 8 injuries were on the head of the  
deceased. He clearly stated in his evidence that the  
deceased died due to the head injuries and that the said  
injuries were sufficient to cause death in normal course  
of nature. The injuries were caused by sharp cutting, hard  
F and blunt weapons. [para 16, 19-20] [952-C-E; 953-B-C]

G 1.4. PW-4, who is a witness to the recovery of *lathi*,  
*lohangi* and *kirpan* has clearly stated that on the basis of  
the statements made by the accused persons the  
weapons were recovered from the places shown by  
them. Therefore, his evidence also proves the allegation  
made against the accused persons including the  
appellant. [para 21] [953-D-E]

H 1.5. When the medical evidence of PW-7 is read along  
with post mortem report and the statements of PWs 1 and

2 as also the statements of the accused persons leading to the discovery, it is clearly established that the deceased received serious injuries on account of the blows of the sword, *lathi* and *lohangi* used by the accused persons due to which he died. [para 18] [952-G-H; 953-A]

2. The defence of accused that his case is covered under one of Exceptions I to IV to s. 300 IPC is not corroborated by the evidence on record. On going through the evidence on record it is found that the provocation came from the side of the accused and not from the deceased or PW-1. It was also not a sudden attack as it was proved that the accused persons were armed with deadly weapons like, '*lohangi*' and '*kirpan*' at the time of occurrence and in fact they surrounded the deceased and the injured eye-witness, (PW-1), and started giving blows of '*sword*', '*lathi*' and '*lohangi*' on the vital parts of the body with the intention of killing the deceased. Therefore, it cannot be said that any of the Exceptions I to IV to s. 300 IPC is attracted in the instant case. [para 27] [956-G-H; 957-A-B]

*Kulesh Mondal v. The State of West Bengal* 2007 (9) SCR 799 = (2007) 8 SCC 578 *K. M. Nanavati v. State of Maharashtra* 1962 Suppl. SCR 567 = AIR 1962 SC 605, and *Babulal Bhagwan Khandare & Anr. v. State of Maharashtra* 2004 (6) Suppl. SCR 633 = (2005) 10 SCC 404 referred to.

3. So far the submission with regard to delay in filing the first information report is concerned, there is proper explanation given by the informant that as the deceased was not found at the place of occurrence, the informant with PW1 was trying to locate the deceased throughout the night and only after tracing him out in the '*nala*' and being sure of his death filed the information immediately

A thereafter. The explanation appeals to be reasonable.  
[para 28] [957-B-C]

B 4. Considering the entire evidence on record, it is held that the appellant is guilty of the offences punishable u/s. 302/34 IPC as also u/s. 323 /34 IPC and, therefore, the order of conviction and sentence passed by the High Court against him is upheld. [para 29] [957-D-E]

Case Law Reference:

C 1962 Suppl. SCR 567 referred to. Para 24  
2007 (9) SCR 799 referred to. para 25  
2004 (6) Suppl. SCR 633 referred to para 26

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1125 of 2011.

From the Judgment & Order dated 3.8.2007 of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in Criminal Appeal No. 426 of 1999.

E Shankar Divate (SCLSC) for the Appellant.

S.K. Dubey, Vikas Bansal, Kusumanjali Sharma and C.D. Singh for the Respondent.

F The Judgment of the Court was delivered by

**DR. MUKUNDAKAM SHARMA, J. 1.** Leave granted.

G 2. The present appeal is directed against the judgment and order passed by the Madhya Pradesh High Court convicting the appellant herein under Section 302 read with Section 34 of the Indian Penal Code [for short "IPC"] as also under Section 323 read with Section 34 of IPC sentencing the appellant to undergo imprisonment for life under Section 302/34 for committing murder with a fine of Rs. 5,000/- and in default of

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payment of fine further to undergo one year additional rigorous imprisonment. A

3. Brief facts leading to the filing of First Information Report and the present case/appeal are that on 18.11.1986 the complainant-Hardev Singh lodged a written complaint which was exhibited in the trial as Exhibit P.1 in the Police Station-Pichhore contending inter alia that his brother Bhola Singh alias Kamal who was residing in Village Sarnagat had gone to Janakpur via Village Badera to purchase seeds of chana on 17.11.1986 along with Sukhdev Singh and that at about 8.00 p.m. when they reached near the tapra of Dilip Singh, Raju, son of Dilip Singh, armed with kirpan [sword]; Baldev armed with lathi and Chhidda alias Gurudev armed with lohangi met them. It was also stated therein that accused Baldev and Bhola Singh had enmity towards each other as Bhola Singh wanted the sister of Baldev to marry Lakkha Singh but Baldev did not want the same and because of that the accused persons attacked Bhola Singh and Suveg Singh whereupon both of them were injured. It was alleged that Bhola Singh fell down due to the serious injuries sustained by him whereas Suveg Singh after being injured ran away to save himself and told this fact to Hardev Singh. Thereupon Hardev Singh alongwith his brother Billa, Bhiru and Suveg Singh returned back to the place of occurrence to save Bhola Singh alias Kamal but they could not find him at the place of occurrence and that only in the morning they could find the dead body of Bhola Singh in the nala near the tapra of Dilip Singh. The dead body of the decease was then taken out whereupon it was found that the deceased was injured by sharp edged and hard and blunt objects. Consequently, the First Information Report was lodged by Hardev Singh on the basis of which a criminal case was registered being Crime No. 193/1986. The police after investigation filed challan against the accused persons, viz., Baldev Singh, Chhidda alias Gurudev Singh and Raju for the commission of offence under Section 302 read with Section 34 and under Section 307 read with Section 34 of the IPC. B  
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A 4. It transpires from the records that the accused persons  
also lodged a complaint with the police regarding the incident  
contending inter alia that Bhola Singh and Suveg Singh  
attacked the accused persons and injured them. However, the  
medical report submitted in support of the said contention  
B indicates that the injuries suffered by the accused persons in  
the present case were simple in nature.

5. On the basis of the charge sheet filed as against the  
appellant and also two other accused persons the case was  
committed to the Sessions Court. Evidence was adduced by  
C the prosecution, on completion of which, the statement of the  
accused under Section 313 Cr.P.C. was also recorded.

6. The learned Sessions Judge after perusing the  
evidence on record passed an order of conviction against the  
D accused for commission of offence under Section 302/34 and  
Section 307/34 of the IPC and passed an order of sentence  
to undergo life imprisonment for the offence under Section 302/  
34 IPC and also imposed fine of Rs. 5,000/- and in default of  
payment of fine, to further undergo one year additional rigorous  
E imprisonment. The Sessions Court also passed an order of  
sentence under Section 307/34 of the IPC ordering the accused  
to undergo rigorous imprisonment for seven years and also  
imposed fine of Rs. 2,000/- and in default in payment of fine,  
to further undergo six months' additional rigorous imprisonment.

F 7. Being aggrieved by the aforesaid judgment and order  
of conviction passed by the Sessions Judge, Raju and the  
present appellant filed appeals before the High Court of  
Madhya Pradesh. We are informed that one of the accused,  
viz., Baldev Singh had died in the meantime. The High Court  
G took up the appeals filed by Raju and the present appellant for  
consideration and by a judgment and order dated 03.08.2007  
maintained the order of conviction of the accused persons,  
including the appellant herein, under Section 302/34 IPC and  
also maintained the sentence of imprisonment passed against  
H them. The High Court, however, set aside the conviction under



Section 307/34 IPC and instead the accused persons were convicted under Section 323/34 IPC, for which, no separate sentence was passed as they were already convicted for life under Section 302/34 IPC. A

8. As against the aforesaid judgment and order the present appeal is filed only by Gurudev Singh. We are informed at the Bar that accused Raju has not filed any appeal as against his order of conviction and sentence. Therefore, in the present appeal we are concerned only with the order of conviction and sentence passed by the Sessions Judge and confirmed by the High Court under Section 302/34 of the IPC as against the present appellant, Sri Guru Dev Singh. B C

9. Counsel appearing for the appellant submitted that the evidence/statements of Suveg Singh [PW-1] and Lakkha Singh [PW-2], who were stated to be eye-witnesses to the said incident, cannot be relied upon as there are vital discrepancies in their evidence. It was also submitted that PW-1 is an interested witness for he was also a party to the fight wherein there was a mutual maarpit/fight between the parties in which even the accused persons received injuries for which no explanation has been submitted by the prosecution and, therefore, the order of conviction and sentence passed against the appellant is liable to be set aside. He also submitted that even if the evidence adduced by the prosecution is to be believed, the accused is protected under Exceptions provided under Section 300 IPC for there was provocation from the side of the complainant party and that due to such provocation, the incident occurred due to sudden fight between the parties. D E F

10. The aforesaid contentions of the counsel appearing for the appellant were refuted by the counsel appearing for the State who contended inter alia that the injuries received by the accused were very simple in nature whereas the injuries inflicted on the deceased were very serious in nature and were inflicted on the vital parts of the body of the deceased and, therefore, there was a clear intention on the part of the accused G H

A persons to kill and murder the deceased and that even the injuries received by PW-1 were also serious in nature but he could save himself from the vital blows by fleeing away from the place of occurrence.

B 11. There was also a contention on behalf of the appellant regarding the delay in filing the First Information Report. The said contention was also refuted by the counsel appearing for the respondent contending inter alia that the deceased was not traceable and, therefore, the complainant and his relations were busy throughout the night trying to locate Bhola Singh alias C Kamal and that the First Information Report was lodged only after the dead body of the deceased was found in the morning of 18.11.1986 from the nala near the tapra of Dilip Singh. Therefore, it was submitted that there was sufficient explanation for the delay in filing the aforesaid First Information Report.

D 12. We have considered the aforesaid submissions put forward by the counsel appearing for the parties in the light of the documents placed on records.

E 13. Suveg Singh [PW-1] is an injured witness and, therefore, an eye-witness to the occurrence. He has given vivid description as to how the incident has taken place. He has clearly stated that there was no provocation on the part of complainant party, and that the provocation in fact came from the side of the accused persons. He clearly stated that when F he along with Bhola Singh alias Kamal was returning back from the shop where they had gone to purchase seed of chana and when they reached near the tapara of Dilip Singh at about 8.00 p.m. they found accused Baldev Singh armed with lathi, Chhidda alias Gurudev armed with lohangi and Raju armed G with kirpan. It was also stated by him that all the three accused persons surrounded him and Bhola Singh alias Kamal and Baldev Singh told that his sister was engaged in Village-Salaiya and Bhola Singh was mediator in the said engagement. He has also stated in his evidence that all the accused persons H were opposing the proposed engagement and so they asked

Bhola Singh alias Kamal to cancel the marriage which Bhola Singh refused, whereupon Chhidda alias Gurudev, Raju and Baldev Singh attacked both Bhola Singh and him and caused vital injuries on different parts of the body of the deceased as also on his body.

14. There is a categorical statement of PW-1, the eye-witness, that the present appellant-Chhidda alias Gurudev Singh and other accused persons caused serious injuries on the head and body of the deceased by inflicting injuries by weapons like lohangi, kirpan and lathi which they were carrying with them. It was also stated by him that Chhidda alias Gurudev Singh, the present appellant, gave PW 1 a blow of lathi on his hand while Baldev gave him a blow of lathi on his waist/back and the third blow was given by Chidda on his back, after being so hit and on the realizing that the accused persons would kill him he ran away from the place of occurrence and reported the matter to his father Pyarasingh who came along with him and other persons to the place of occurrence but they could not find Bhola Singh after searching throughout the night. They could find the dead body of Bhola Singh only on the morning of 18.11.1986 in a nala near the tapra of Dilip Singh whereupon they returned back to Janakpur and lodged the report.

15. Lakkha Singh [PW-2], who is also an eye-witness to the said occurrence, has clearly stated that all the three accused persons hit Bhola on his head, hands and legs and also hit Suveg Singh [PW-1] when he tried to rescue Bhola Singh whereupon Suveg Singh ran away from the spot. He also stated that Baldev Singh, Gurdev Singh and Raju lifted Bhola Singh and took him towards the nala. This eye-witness has further stated that he further followed them stealthily by remaining 8-10 steps behind them and then the accused persons threw Bhola Singh in the nala and at that time also Bhola Singh was crying and pleading with the accused persons but Baldev Singh again beat Bhola Singh there with lathis and accused Chidda alias Gurdip Singh beat Bhola Singh with lohangi. Thereafter

A accused Raju said that Bhola Singh is dead now and thereupon all the accused persons left the body of Bhola Singh there and went away towards their tapras. Thereafter he [PW-2] returned back to his Village-Sarnagat and on the next day he went to the Village-Janakpur and narrated the facts to B Hardev Singh.

16. The aforesaid statement of the two eye-witnesses, viz., PWs 1 & 2, are also supported by the proved medical evidence of Dr. B.D. Sharma [PW-7] in the present case. The post mortem report of the dead body was conducted by Dr. B.D. C Sharma on 18.11.1986 which indicates that there were as many as 21 injuries on the deceased which are in the nature of lacerated wounds as well as contusion on the skull and other parts of the body. The injuries caused on the skull which are in the nature of lacerated wound and also contusion over skull are D all very deep. Other injuries were also found to be very serious in nature and were caused by sharp cutting hard and blunt weapon. It is thus established from the aforesaid post mortem report that the deceased would have received injuries from sword as also from lathi and lohangi. The nature of the injuries E caused to the deceased would prove and establish that the aforesaid injuries were caused with the intention of killing the deceased.

17. It was also established from the records that the sword F as also the lohangi and lathi, the weapons used during the incident, have been recovered at the instance of the accused persons and on the basis of the statements made by the accused persons leading to their discovery which are cogent and admissible evidence in the present case.

G 18. When the aforesaid medical evidence of PW-7 is read along with post mortem report and the statements of PWs 1 & 2, who were stated to be eye-witnesses, as also the statements of the accused persons leading to the discovery, which are admissible in evidence, it is clearly established that the H deceased received serious injuries on account of the blows of

the sword, lathi and lohangi used by the accused persons due to which Bhola Singh died. A

19. Dr. B.D. Sharma [PW-7] has stated in his evidence that he found 21 injuries on the body of the deceased and that in his opinion 8 injuries were on the head of the deceased, which resulted in Subdural Hematoma and Coma. He clearly stated in his evidence that the deceased died due to the head injuries and that the said injuries were sufficient to cause death in normal course of nature. B

20. So, all the aforesaid injuries proved through the medical evidence are also supported by the oral testimony of two eye-witnesses, viz., PWs 1 & 2. C

21. Gurmej Singh [PW-4], who is a witness to the recovery of lathi, lohangi and kirpan has clearly stated that on the basis of the statements made by the accused persons the aforesaid weapons were recovered from the places shown by the accused persons. Therefore, the aforesaid evidence also proves the allegation made against the accused persons including the present appellant. D E

22. The defence that was also raised by the counsel appearing for the appellant was that the aforesaid incident had taken place as a result of provocation on the part of deceased and PW-1 because of which a sudden fight had developed and thus the appellant is protected under one of the exceptions provided under Section 300 of the IPC. F

23. With regard to this plea of the accused it seems that Exceptions I and IV to Section 300 of the IPC are sought to be taken advantage of by the accused in this case. For dealing with such plea raised on behalf of the accused person we may extract the said exceptions to Section 300 IPC, which are as under: - G

"Exception 1: When culpable homicide is not murder. Culpable homicide is not murder if the offender, whilst H

A deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

B Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

C 24. With regard to law dealing with Exception I to Section 300 we may refer to the case of *K. M. Nanavati v. State of Maharashtra* reported in AIR 1962 SC 605 in which this Court held that following conditions must be complied with for the application of Exception I to Section 300 of the IPC: - (1) the  
D deceased must have given provocation to the accused, (2) the provocation must be grave, (3) the provocation must be sudden, (4) the offender, by reason of the said provocation, shall have been deprived of his power of self-control, (5) he should have killed the deceased during the continuance of the deprivation  
E of the power of self-control and (6) the offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

F 25. With regard to Exception IV to Section 300 we may refer to the case of *Kulesh Mondal v. The State of West Bengal* reported in (2007) 8 SCC 578 in which this Court

G “12. The residuary plea relates to the applicability of Exception 4 of Section 300 IPC, as it is contended that the incident took place in course of a sudden quarrel.

H 13. For bringing it in 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.”

26. In the case of *Babulal Bhagwan Khandare & Anr. v. State of Maharashtra* reported in (2005) 10 SCC 404 this Court detailed the law relating to Exception I and IV to Section 300 IPC in following terms: -

"17. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution (sic provocation) 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.

18. 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

A 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 had worked themselves into a fury on account of  
 the verbal altercation in the beginning. A fight is a combat  
 B 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.  
 C 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 a cruel or  
 unusual manner. The expression "undue advantage" as  
 used in the provision means "unfair advantage".

D 19. 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  
 E circumstance must be taken into consideration to decide  
 whether undue advantage has been taken. In Kikar Singh  
v. State of Rajasthan 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 by using the blows  
 with the knowledge that they were likely to cause death he  
 F had taken undue advantage. ...."

27. The defence of accused that his case is covered under  
 one of the above Exceptions to Section 300 is not corroborated  
 by the evidence on record. On going through the evidence on  
 G record we find that the provocation came from the side of the  
 accused and not from the deceased or PW-1. It was also not  
 a sudden attack as it was proved that the accused persons  
 were armed with deadly weapons like, lohangi and kirpan at  
 the time of occurrence and in fact they surrounded the  
 H deceased and the injured eye-witness, PW-1, and started



giving blows of sword, lathi and lohangi on the vital parts of the body with the intention of killing Bhola Singh. Therefore, the argument that one of the above Exceptions to Section 300 of the IPC is attracted in the instant case cannot be accepted on the face of the evidence on record. A

28. So far the submission with regard to delay in filing the first information report is concerned, we are satisfied that there is proper explanation given by the informant for the delay in filing such report. As the deceased was not found at the place of occurrence, the informant with PW1 was trying to locate the deceased throughout the night and only after tracing him out in the nala and being sure of his death filed the information immediately thereafter. The aforesaid explanation appeals to us as reasonable. B C

29. Considering the entire evidence on record, we are satisfied that the appellant is guilty of the offence committed under Section 302/34 of the IPC as also under Section 323 / 34 of the IPC and, therefore, the order of conviction and sentence passed by the High Court of Madhya Pradesh against him is found to be justified. We, therefore, find no merit in this appeal which is dismissed. D E

R.P.

Appeal dismissed.