SURESH CHANDRA

v.

STATE OF UTTAR PRADESH

JULY 21, 2005

[P. VENKATARAMA REDDI AND D.M. DHARMADHIKARI, JJ.]

Penal Code, 1860:

s.302 r/w s.34, s.300, Exception 4—Accused-'Baraties' in a marriage—On a sudden quarrel firing gun shots and killing two persons—Convicted and sentenced to life imprisonment—Plea that there being absence of premeditation and being a case of sudden fight, case fell under Exception 4 to s.300 and punishable u/s 304—Held, the very fact that accused fired at the victims on a frivolous quarrel demonstrates beyond doubt that they acted in a cruel manner and intended to cause death or bodily injury of the nature mentioned in clause 'thirdly' of s.300—It is a case in which clauses I to III of s.300 are attracted and Exception 4 is not applicable—It is evidenced that all the three accused fired at the victims—It is a case where common intention sprang up at the spot—However, **prima facie**, *facts and circumstances of the case justify remission of sentence to some extent—Such application, if filed, it is hoped, would be duly considered—Criminal Law—Common intention—Remission of sentence.*

Sukhbir Singh **v.** *State of Haryana,* **[2002] 3 SCC 327 and** *Surinder Kumar* **v.** *Union Territory, Chandigarh,* **[1989] 2 SCC 217, distinguished.**

Sunder Singh **v.** *State of Rajasthan,* **[1988] Supp. SCC 557, held inapplicable.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 746 of 2003.

From the Judgment and Order dated 23.7.2002 of the Allahabad High Court in Crl. A. No. 2105 of 1981.

WITH

Crl. A. Nos. 747 and 748 of 2003.

A Sudhir Kulshreshtha, for the Appellant in Crl. A. No. 746/2003.

P.S. Mishra, Ajay Bhalla, Ms. Shikha Sapra and Ms. Abha R. Sharma with him for the Appellant in Crl. A. No. 748/2003.

Subhash Chandra Birla and Subrat Birla, for the Appellant in Crl.A. No. B 747/2003.

Ravi Prakash Mehrotra, Mrs. Deepti R. Mehrotra and Garvesh Kabra, for the Respondent.

The following Order of the Court was delivered :

C

ORDER

The facts of this case reveal that an auspicious occasion of marriage had turned out to be a funeral ceremony, following a quarrel that ensued between the invitees on a flimsy ground. The three appellants therein along D with two other, who have been acquitted by the High Court, were charged for murdering two persons, namely, Ravindra Singh and Mahendra Singh in the night of 20th February, 1977 in the village Tikari, Aligarh District. On trial, the appellants were convicted under Section 302 read with 34 IPC and Section 307 read with 34 IPC and sentenced to life imprisonment. The other two E accused were convicted under Section 302 read with 109 IPC.

On appeals filed by the accused before the High Court, the conviction and sentence of the appellants was upheld by the High Court. The conviction of the other two accused was set aside by the High Court giving them the benefit of doubt.

F

The prosecution case is that on 20th February, 1977 on the occasion of the marriage at the house of Sri Ram Nayi, the bridegroom party (known as 'Baratis') came to the village and stayed in a Chaupal (Courtyard of the house) of one Vikram Singh. There was a dance performance on that occasion. At about 8 p.m. Barati after taking their meal went inside the Chaupal to take G rest. The acquitted accused, Bhikari and Nawab Singh, belonging to the Barati party remained in the Verandah of the house. The deceased Ravindra Singh remarked probably as a joke that the dancers have become tired and, therefore, Baratis could as well start dancing. Irked by this remark, some of the members of the Barati party protested and it led to heated exchange of words and mutual abuses. At that stage, the acquitted accused exhorted the appellants H to attack the persons of the group who were involved in the scuffle. It

appears that the three appellants of the Barati party were carrying arms which, we are told, was not unusual for the baratis to carry in those rural areas. Then, according to the prosecution case, the three appellants herein fired at Ravindra Singh and Mahendera Singh and they died at the spot. Three other persons, namely, Dwarika Prasad, Karua and Ujagar Singh also sustained injuries from the shots fired at them by the accused. Karua was examined as PW.5. PW.1, Nripendra Singh, brother of the deceased, lodged the report with the police on the same night.

The postmortem report reveals that two fire arm injuries were found on the chest and on the left side of the back of Ravindra Singh. On the body of Mahindera Singh, a fire arm wound over the left side of abdomen was found. A wound 13 cm. below left nipple and 10cm. above umbilicus was also found. The fire arms (guns) used by the appellants were seized by PW.12, I.O. and some empty cartridges found at the scene of offence were also collected and they were sent to the Ballistic expert whose report is Ex.Ka-31. The said report was admitted on consent without formal proof. The Ballistic expert certified that the cartridge EC/1 was fired from the gun recovered from the appellant Mulayam Singh. The cartridge EC/2 was fired from the right barrel of D.B.B.L. gun recovered from the appellant Suresh Chandra and EC/4 and EC/5 from the gun seized from Bhuvnesh Pratap. The recovery memo relating to the gun and cartridges prepared by the Investigating Officer would show that the butt and trigger guard of the gun used by the appellant Suresh Chandra were in a broken condition.

This Court granted leave confined to the question whether the conviction could be converted into one for the offence punishable under Section 304 IPC instead of Section 302 IPC.

On this aspect, learned counsel for the appellant contended that the Exception 4 to Section 300 IPC is attracted.

Exception 4 reads as under:

> 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.
>
> *Explanation.* - It is immaterial in such cases which party offers the provocation or commits the first assault.

A Learned counsel for the appellants submits that the incident had happened without any premeditation or prior concert, upon a sudden quarrel and the resultant attack on the victims was unintentional and, therefore, the offence would appropriately fall under Exception 4 punishable under Section 304 Part I or II. We find it difficult to countenance this argument. Though there was absence of premeditation and it was a case of sudden fight, that B is not sufficient to bring the offence committed by the accused within the purview of Exception 4. The further requirement of Exception 4 that the offender should not have taken undue advantage or acted in a cruel or unusual manner should be satisfied. The very fact that the accused-appellants used the fire arms in the course of a frivolous quarrel triggered off by the C sarcastic remarks of Ravindra Singh would demonstrate beyond doubt that the appellants acted in a cruel manner and it would further demonstrate the intention to cause death or at any rate, to cause a bodily injury of the nature mentioned in clause thirdly of Section 300. Such intention is writ large on the acts done by the accused. Thus, it is a case in which Clauses I to III of Section 300 IPC are attracted and, as already observed, Exception 4 would not D come to the rescue of the appellants for the reason that they have acted in a cruel and unusual manner by shooting at unarmed victims who merely indulged in a verbal duel with them. The fact that the other two accused who were said to have exhorted the three appellants to attack the members of the other party were acquitted has no material bearing on the question whether E the appellants could be given the benefit of Exception 4. Thus, the argument in regard to the nature of offence cannot be sustained. On the facts of this case, it is only Section 302 IPC that is attracted.

Learned Senior counsel Shri P.S. Mishra, appearing for one of the appellants, relied on three decisions of this Court. In the first two decision F *viz.*, *Sukhbir Singh* v. *State of Haryana,* [2002] 3 SCC 327 and *Surinder Kumar* v. *Union Territory, Chandigarh,* [1989] 2 SCC 217, Exception 4 to Section 300 was applied where injuries were caused with a 'Bhala' in one case and 'knife' in another case in the course of a sudden altercation, and on the facts, it was held that the appellants had no intention to kill them nor did they act in a cruel or unusual manner. The fact situations in those who cases were G different. Shooting with fire-arms from a close range and that too on the vital parts of the body makes all the difference in the instant case. Learned Senior counsel then cited the decision in *Sunder Singh* v. *State of Rajasthan,* [1988] Supp SCC 557. In that case, the appellant-accused killed the deceased by firing with his gun. The learned Judges having observed that it was not a H premeditated fight and that each was asserting that it was his turn to draw

the water, held thus: A

> "In this circumstance, it would not be wrong to assume that the appellant in the exercise of his right got enraged and tried to prevent the mischief by the deceased. It seems to us that the action of the accused could reasonably be brought under Section 304 Part I, IPC."

B

We find it difficult to discern the ratio of this judgment. No particular Exception was referred to in this short judgment. From the few words spoken to by Their Lordships, we get the impression that the right of self defence was sought to be exercised by the accused. If Exception 4 was in the minds of Their Lordships, we would expect a discussion on the point whether all the ingredients of that provision, including the last part, were satisfied. We C cannot, therefore, treat this case as a binding precedent applicable to the facts of this case.

In the course of arguments, the learned counsel appearing for Suresh Chandra has argued that his case stands on a different footing and he is D entitled for benefit of doubt. It is pointed out that as per the recovery memo the butt and the trigger guard of his gun were found in a broken condition. He, therefore, submits that a reasonable inference has to be drawn that the gun was non-functional as it would have been damaged in the course of altercation that ensued. Though, according to the order of this Court dated 6.5.2003 the leave was granted only to a limited extent, nevertheless, we E addressed ourselves to this aspect and we find no substance in the argument of the learned counsel. The report of the Ballistic expert negatives the contention of the learned counsel that the gun would not have been used at all. The expert did test firing and found, as already noticed, that one of the empty cartridges seized from the spot could have been fired by the same fire F arm which is a double barrel gun. Either the shot would have been fired before the gun got damaged or the partial damage to the butt and trigger guard would not have precluded the accused to operate the gun. The learned counsel for the appellant then drew our attention to the statement recorded under Section 313 Cr.P.C., in an endeavour to buttress his argument that the firing was accidental. Having regard to the sequence of events and the G sudden quarrel, the learned counsel submits that the accidental firing was highly probable. First of all, if the said plea under Section 313 Cr.P.C. is to be accepted, it strikes at the root of the argument that the gun was non-functional. Secondly, it is difficult to believe that accidental firing would have taken place from all the three guns handled by the three appellants at about the same time. H

A We have no hesitation in rejecting this contention.

In the conclusion, we may note that there is overwhelming evidence including the evidence of injured witness PW.5 to the effect that all the three appellants fired at the victims. Even if they fired indiscriminately without targeting any particular person, they cannot escape the punishment for murder. B The Ballistic expert's report and cartridges found at the spot of offence and the fire arm injuries found on the deceased and others corroborate the prosecution version beyond reasonable doubt. It may be that the appellants did not carry the fire arms with the purpose of attacking the persons who were present at the wedding venue or that they had no preconceived plan to attack C the victims. Even then, all the three appellants enraged by what had happened at the venue, deliberately wielded the fire arms held by them to cause injuries to the deceased persons. It is a case where the common intention sprang up at the spot. The manner in which the appellants took the extreme step of firing at victims, causing injuries on the vital parts of their bodies would amply demonstrate the common intention that impelled them to resort to the shooting D spree then and there.

Viewed from any angle, we find no ground for interference with the judgment of the High Court. The appeals are dismissed.

Before parting with the case, we would like to observe that the facts and E circumstances of this case *prima facie* justify remission of the sentence to some extent. But, having found the appellants guilty under Section 302 read with 34 IPC, it is not possible for this Court to reduce the sentence of life imprisonment. It is open to the appellants to approach the State Government/ Governor of the State for the commutation or remission of sentence. We may F mention that apart from the unexpected turn of events that have taken place, the incident had taken place about three decades back. It is also brought to our notice that the appellant, Suresh Chandra is aged about 80 years now and he is ailing. We have no doubt that the applications for commutation/remission of sentence will be duly considered with expedition, taking into account the relevant circumstances.

G

R.P. Appeals dismissed.