

RAJ PAUL SINGH & ANR.

v.

STATE THROUGH P.S. MUSHEERABAD, HYDERABAD
(Criminal Appeal No. 1339 of 2008)

OCTOBER 09, 2012

[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Penal Code, 1860 – ss. 302/34 and 300 Exception 4 – Prosecution u/s. 302/34 – Conviction under by courts below – On the basis of evidence of two eye-witnesses – On appeal, plea that case was covered under Exception 4 to s. 300 – Conviction u/s. 302/34 was correct – The case does not fall under Exception 4 to s. 300 because the accused have taken undue advantage and have acted in cruel or unusual manner.

The appellants-accused were prosecuted for killing a person by stabbing him. The prosecution case was that PW1 (wife of the deceased) lodged an FIR that appellant No. 1 (brother of the deceased) started abusing her, her children and her husband (deceased). When the deceased asked him to stop this, he asked appellant No. 2 (his wife) to get a knife. Appellant No. 2 gave the knife to him, and he stabbed the deceased. PW-1 and PW-2 (son of the deceased) were the eye-witnesses to the incident. Trial Court convicted both the accused u/s. 302 r/w s. 34 IPC. High court confirmed the conviction.

In appeal to this Court, appellants contended that there was no premeditation and the accused stabbed the deceased in a heat of passion which arose out of sudden quarrel and hence Exception 4 to s. 300 IPC was attracted.

Dismissing the appeal, the Court

A HELD: 1. It is clear from the language of *Exception 4*
 to Section 300 IPC, that culpable homicide will not
 amount to murder, if it is committed without premeditation
 in a sudden fight in the heat of passion upon a sudden
 quarrel provided the offender has not taken undue
 B advantage or acted in a cruel or unusual manner. In a
 case where a man stabs another person, unless it is
 established that there was some threat from that person
 to the offender, the court cannot possibly hold that the
 offender by stabbing that person has not taken any
 C undue advantage or has not acted in a cruel or unusual
 manner. [Para 6] [1207-G; 1208-E]

2. In the instant case, the conviction of the appellants
 for the offence under Section 302 r/w. Section 34 IPC, is
 based on the evidence of PW-1 and PW-2, the two eye-
 D witnesses. It is clear from the evidence of the two eye-
 witnesses that the deceased was unarmed and there was
 absolutely no physical threat from the deceased to the
 appellants and appellant No.1 after being provided with
 a knife by appellant No.2, stabbed the deceased on the
 E left side of the chest on the instigation of appellant No.2
 and because of these injuries the deceased died. This
 was, thus, a case where the appellants have taken undue
 advantage and have acted in a cruel or unusual manner
 and the case does not fall within *Exception 4* to Section
 F 300 IPC. The trial court and the High Court have rightly
 held the appellants guilty of the offence of murder u/s. 302
 r/w. Section 34 IPC. [Paras 7, 8 and 9] [1208-F; 1210-B-C-
 F]

G *Narayanan Nair Raghavan Nair v. The State of
 Travancore – Cochin AIR 1956 SC 99; Kikar Singh v. State
 of Rajasthan AIR 1993 SC 2426:1993 (3) SCR 696 ; Naveen
 Chandra v. State of Uttranchal 2006 (9) Suppl. SCR 668 –
 relied on.*

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Case Law Reference:

2006 (9) Suppl.SCR 668	Relied on.	Para 5	A
AIR 1956 SC 99	Relied on.	Para 6	
1993 (3) SCR 696	Relied on.	Para 6	B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1339 of 2008.

From the Judgment & Order dated 26.4.2007 of the High
Court of Judicature of Andhra Pradesh at Hyderabad in
Criminal Appeal No. 1258 of 2006.

Kuldip Singh, Mohit Mudgil for the Appellants.

D. Mahesh Babu, Mayur R. Shah, Bala Shivdu for the
Respondent.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal against the
judgment and order dated 16.04.2007 of the Andhra Pradesh
High Court in Criminal Appeal No. 1258 of 2005.

2. The facts very briefly are that on 19.04.2004 Santoshi
(hereinafter referred to as 'the informant') lodged an FIR in
Musheerabad P.S., District Hyderabad, alleging that on
18.04.2004 at about 9.30 P.M. her husband's brother, the
appellant no.1, came in an auto in a fully drunken condition,
went to his house situated opposite to her house and started
abusing her in filthy language and her husband, she and their
children came down from their portion on the first floor and her
husband warned the appellant not to abuse him, but the
appellant did not listen and he asked his wife to get a knife and
his wife, appellant no.2 herein, went to the kitchen and brought
one knife and gave it to the appellant no.1 and the appellant
no.1 took the knife and stabbed the husband of the complainant
on the left side of his chest and as a result the husband of the

A informant fell down with bleeding injury and he was taken to the Sagarlal Hospital, where he died subsequently. The Inspector of the P.S. Musheerabad, M. Bhasker Reddy, registered a case under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC'). He visited the hospital, the scene of occurrence, conducted the inquest and sent the dead body of the deceased for *post mortem* examination. The appellant no.1 was then arrested and at his instance the knife was recovered and after investigation, a charge-sheet was filed against both the appellants for the offence punishable under Section 302 read with Section 34, IPC. The case was registered as Sessions Case No. 562 of 2004 and after framing of charges, the appellants were tried.

3. At the trial, the informant was examined as PW-1, one of the sons of the deceased was examined as PW-2, Dr. C. Surender Reddy, who conducted the *post mortem* on the dead body of the deceased, was examined as PW-3 and M. Bhasker Reddy, the Inspector of Police and the Investigating Officer, was examined as PW-7. On behalf of the defence, the mother of the deceased, Laxmi Bai, was examined as DW-1. By the judgment dated 19.07.2005, the 1st Additional Metropolitan Sessions Judge held both the appellants guilty of the offence under Section 302 read with Section 34, IPC, and sentenced them to life imprisonment and to pay fine of Rs.100/- and in default to undergo Simple Imprisonment for one month.

4. The appellants then filed Criminal Appeal No. 1258 of 2005, but by the impugned judgment, the Division Bench of the High Court sustained the conviction and the sentence. Aggrieved, the appellants have filed this appeal by way of Special Leave under Article 136 of the Constitution. On 11.02.2008, this Court issued notice *qua* the nature of the offence only and on 18.08.2008 this Court granted leave after condoning the delay in filing the special leave petition, but refused bail to the appellants.

5. Learned counsel for the appellants submitted that the

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nature of the offence committed by the appellants is not murder as defined in Section 300, IPC, but culpable homicide not amounting to murder under Section 304, IPC, for which a punishment less than life imprisonment may be imposed on the appellants. He referred to *Exception 4* to Section 300, IPC, which states that 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. He submitted that in the facts of the present case there was no premeditation on the part of the appellants and there was a sudden quarrel and a sudden fight and the appellant no.1 stabbed the deceased in the heat of passion and therefore *Exception 4* to Section 300, IPC, was attracted. In support of his submission, he cited the decision of this Court in *Naveen Chandra v. State of Uttranchal* [2007(1) RCR (Criminal) 689]. Learned counsel for the respondent, on the other hand, submitted that this is not a case which would at all fall under *Exception 4* to Section 300, IPC. and that both the trial court and the High Court have rightly held that the appellants were guilty of the offence of murder under Section 302 read with Section 34, IPC.

6. *Exception 4* to Section 300, IPC, is quoted hereinbelow:

“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.”

It will be clear from the language of *Exception 4* to Section 300, IPC, quoted above that culpable homicide will not amount to murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel provided the offender has not taken undue advantage or acted in a cruel or unusual manner. In *Narayanan Nair Raghavan Nair v. The State of Travancore – Cochin* (AIR 1956 SC 99), a three-Judge Bench of this Court speaking through Bose, J. held:

A "It is enough to say that the Exception requires that no
 undue advantage be taken of by the other side. It is
 impossible to say that there is no undue advantage when
 a man stabs an unarmed person who makes no
 threatening gestures and merely asks the accused's
 B opponent to stop fighting. Then also, the fight must be with
 the person who is killed."

This view on *Exception 4* to Section 300, IPC, has also been
 taken by this Court in *Kikar Singh v. State of Rajasthan* (AIR
 1993 SC 2426) wherein it has been held:

C "Where the deceased was unarmed and did not cause any
 injury to the accused even following a sudden quarrel if the
 accused has inflicted fatal blows on the deceased,
 exception 4 is not attracted and commission must be one
 D of murder punishable under S. 302."

Thus, in a case where a man stabs another person, unless
 it is established that there was some threat from that person
 to the offender, the Court cannot possibly hold that the offender
 E by stabbing that person has not taken any undue advantage or
 has not acted in a cruel or unusual manner.

7. In this case, the conviction of the appellants for the
 offence under Section 302 read with Section 34, IPC, is based
 on the evidence of PW-1 and PW-2, the two eye witnesses. If
 F we read their evidence, we find that PW-1 has stated:

G "Disputes arose between me and A-2 with regard to
 collection of empty wine bottles between the children of A-
 2 and collected from a Raja Deluxe theater and that A-2
 used to abuse in filthy language. The disputes arose prior
 to 4 months of the incident and disputes were continued.
 On 18.04.2004 at about 9.30 p.m. A-1 came to house in
 drunken condition and started abusing me in filthy
 language by saying Maake Loude. On that I along with my
 H husband and children came down to ground floor. My

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deceased husband chastised A-1 by saying that he should not abuse me as I am his sister in law and he did not stop abusing me. A

A-1 instructed A-2 to bring a knife. On that A-2 went inside the house and brought a meat cutting knife and gave it to A-1 and instigated A-1 to stab my husband. Then A-1 stabbed my husband on the left side of chest, when A-1 removed the knife from injury my husband fell down on the ground and we noticed blood was oozing from injury.” B

Similarly, PW-2 has deposed: C

“The disputes arose between family of accused and our family with regard to collection of empty wine bottles from the wine shop situated by the side of Rolex Café, Musheerabad. The disputes were going on for the last four months prior to the date of incident. While I was about to leave the house of PW-1 after taking meals, at 9.30 p.m. A-1 came to house in drunken condition and started abusing PW-1. He abused PW-1 by saying “*Maake Loude*”. On hearing the abusive words, I along with my father, PW-1 and others came to ground floor. D E

My father questioned A-1 as to why he was abusing PW-1. A-1 replied that he will abuse PW-1 like that only. My father told A-1 not to abuse PW-1 as she is his sister-in-law. On that A-1 instructed A-2 to bring a knife from his portion of house. A-2 went inside the portion and brought a knife and gave it to A-1. Then A-1 stabbed my father on the left side of chest on the instigation of A-2. It was a mutton cutting knife. After stabbing accused removed the knife and went away. My father received bleeding injury and he fell down on the floor. After the incident both the accused went inside their portion and some time thereafter they escaped from the house. I lifted my father to Sagarlal Hospital 10 minutes after his admission, doctors informed me about the death of my father. I came H

A back to the house of PW-1 and informed her about the death of my father on that she became unconscious and fell down”.

B 8. It will be clear from the evidence of the two eye witnesses quoted above that the deceased was unarmed and there was absolutely no physical threat from the deceased to the appellants and the appellant no 1 after being provided with a knife by the appellant no.2 stabbed the deceased on the left side of the chest on the instigation of the appellant no.2 and because of these injuries the deceased died. This was, thus,
 C a case where the appellants have taken undue advantage and have acted in a cruel or unusual manner and the case did not fall within *Exception 4* to Section 300, IPC. In *Naveen Chandra v. State of Uttranchal* (supra) cited on behalf of the appellants, this Court has clearly held:

D “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”

F 9. In our considered opinion, therefore, the case of the appellants does not fall within *Exception 4* to Section 300, IPC, and the trial court and the High Court have rightly held the appellants guilty of the offence of murder under Section 302 read with Section 34, IPC. The appeal has no merits and is accordingly dismissed.

K.K.T.

Appeal dismissed.