

A SAROJ @ SURAJ PANCHAL & ANR.

v.

STATE OF WEST BENGAL
(Criminal Appeal No. 734 of 2014)

APRIL 3, 2014

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[T.S. THAKUR AND C. NAGAPPAN, JJ.]

Penal Code, 1860 - s.304 Part I r/w s.34 and s.300, First Exception - There was love affair between 'B' and 'S' - On the occurrence night, 'S' went to the house of 'B' to meet her - Annoyed by the presence of 'S' in their house in the night, the father and uncle of 'B' (the appellants) and other accused persons beat 'S' and dragged him through the staircase which resulted in injuries to 'S' and ultimately in his death - Conviction of appellants u/s.302 r/w s.34 IPC - Challenge to - Held: Nobody would tolerate an intruder into their house in the night hours - By no means, can it be held to be a case of pre-meditation - It was a case of grave and sudden provocation and would come under the First Exception to s.300 IPC - Death was caused by the acts of the appellants done with the intention of causing such bodily injury as is likely to cause death - Conviction of appellants accordingly altered to that u/ s.304 Part I r/w s.34 IPC alongwith 7 years RI.

There was love affair between 'S' (the brother of PW1) and 'B' (the daughter of accused no.1). The appellants (accused nos.1 and 3) alongwith two other accused beat 'S' with iron rod and lathi and dragged him through the staircase when he went to the house of 'B' at night to meet her. 'S' died of injuries sustained during the occurrence.

The trial court convicted all the four accused under Section 302 read with Section 34 IPC and sentenced each of them to life imprisonment. In appeal, the High

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Court affirmed the conviction of accused nos.1 and 3, and therefore the present appeal by the said two accused.

The appellants pleaded before this Court that the occurrence took place on account of sudden provocation and the act was committed by them without premeditation and it would fall under First Exception to Section 300 IPC.

Partly allowing the appeal, the Court

HELD: 1. It is not in dispute that there was a love affair between 'B' and 'S' and it was not liked by the family members of 'B'. On the occurrence night at about 8.00 p.m. 'S' went to the house of 'B' to meet her. Annoyed by the presence of 'S' in the night in their house the appellants and other accused persons beat 'S' and dragged him from the first floor to the ground floor through wooden staircase which resulted in injuries. Nobody would tolerate such an intruder into their house in the night hours. By no means, can it be held to be a case of premeditation and it was a case of grave and sudden provocation and would come under the First Exception to Section 300 IPC. [Para 8] [651-A-C]

Mangesh vs. State of Maharashtra (2011) 2 SCC 123: 2011 (1) SCR 72; *State of Punjab vs. Jagtar Singh & Ors.* (2011) 14 SCC 678: 2011 (9) SCR 494 - referred to.

2. Looking at the nature of injuries sustained by the deceased and the circumstances, it can be concluded that the death was caused by the acts of the appellants/accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the first part of Section 304 IPC and the appellants would be liable to be convicted for the said offence. The conviction of the appellants for the offence under Section 302 read with Section 34 IPC

A and the sentence of life imprisonment each imposed on them are set aside and instead they are convicted for the offence under Section 304 Part I read with Section 34 IPC and sentenced to undergo seven years rigorous imprisonment each. [Paras 9, 11] [651-D-E, G-H]

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Case Law Reference:

2011 (1) SCR 72 referred to **Para 8**

2011 (9) SCR 494 referred to **Para 8**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 734 of 2014.

From the Judgment and Order dated 12.05.2008 of the High Court of Calcutta in CRA No. 207 of 2002.

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A.K. Chawla (AC) for the Appellant.

Anip Sachthey, Shagun Matta for the Respondent.

The Judgment of the Court was delivered by

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C. NAGAPPAN, J. 1. Leave granted.

2. This appeal is preferred against the judgment of the High Court of Calcutta in C.R.A. no.207 of 2002.

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3. The appellants herein are accused nos.1 and 3 respectively in Sessions Trial Case no.XXX(April) of 2000 on the file of Fourth Additional Sessions Judge at Howrah and they were tried along with two other accused and all of them were convicted for offence under Section 302 read with Section 34 IPC and each of them was sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for one year. Aggrieved by the conviction and sentence accused nos.1 to 4 preferred appeal in Criminal Appeal no.207 of 2002 and the High Court by impugned judgment dated 12.5.2008 dismissed the appeal preferred by

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accused nos.1 and 3. Challenging the same they have

preferred the present appeal.

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4. The prosecution case in brief is as follows : Accused no.1 Saroj @ Suraj Panchal is the elder brother of accused no.3 Anil Panchal. Accused no.2 Tapan Panchal and accused no.4 Swapan Panchal are sons of accused no.1 Saroj @ Suraj Panchal. PW1 Srikant Ray and PW9 Sameer Ray are brothers of deceased Sukumar Ray. All of them are residents of Bangalpur village and their houses were nearby. There was a love affair between Sukumar Ray and Kumari Bandana Panchal aged about 20 years, daughter of accused no.1 Saroj @ Suraj Panchal. On 10.7.1990 at about 8.00 p.m. a hue and cry was heard from the first floor of the house of accused no.1 Saroj @ Suraj Panchal and PW1 to PW4, PW9 and PW12 went there and saw accused nos.1 to 4 beating Sukumar Ray with iron rod and lathi and dragging him by tying his hands and legs through wooden staircase from the first floor to the ground floor and left him in the dange of Gobinda Mondal. PW11 Tapan Kumar Pramanik took the injured Sukumar Ray to the Bagnan Hospital by his trolley van. PW1 Srikant Ray lodged a written complaint at 23.25 hrs. on 10.7.1990 in Bagnan Police Station. Exh.2 is the G.D. Entry. PW13 the sub-Inspector of the Police registered the case against the accused and Exh.3 is the F.I.R. Sukumar Ray died at 1600 hrs. on 11.7.1990.

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5. PW14 Dr. Kumud Ranjan Chatterjee conducted the post-mortem and found the following :

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- i) One abrasion 2"x2" over left leg;
- ii) One bruise mark over left temple region with black eye;
- iii) One lacerated wound 4"x1" X bone deep over left occipital region;
- iv) One lacerated wound 2"x ½" X bone deep over right temporal region;

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A On dissection he found multiple diffused and spotted haematoma on the scalp present, depressed fracture over right temporal occipital region with haemorrhage inside the brain tissue.

B He opined that death was caused due to injuries sustained particularly the head injury. After completing investigation the final report came to be filed against the accused persons 1 to 4. In order to prove its case the prosecution examined PW1 to PW19 and marked documents. No evidence was let in on the side of the defence. The Trial Court found accused nos.1 to 4
C guilty of the charge of murder and sentenced them as narrated above. On appeal the conviction and sentence imposed on accused nos.1 and 3 were confirmed. Challenging the same they preferred appeal and this Court by order dated 19.10.2012
D issued notice on the question of the nature of offence and sentence only.

E 6. During the occurrence appellants herein/accused nos.1 and 3 along with two other accused beat Sukumar Ray with iron rod and lathi is established by the testimonies of the eye witnesses namely PW1 to PW4, PW9 and PW12. Sukumar Ray died of injuries sustained during the occurrence is also proved by the medical evidence let in by the prosecution in the case.

F 7. The learned counsel for the appellants contended that the occurrence took place on account of sudden provocation and the act was committed by the appellants without premeditation and it would fall under First Exception to Section 300 IPC and the first appellant is 80 years old and the second appellant is 76 years old. Per contra the learned counsel
G appearing for the respondent State submitted that the conviction and sentence imposed on the appellants are proper.

H 8. It is not in dispute that there was a love affair between Bandana Panchal and Sukumar Ray and it was not liked by the family members of Bandana Panchal. On the occurrence night

SAROJ @ SURAJ PANCHAL & ANR. v. STATE OF 651
WEST BENGAL [C. NAGAPPAN, J.]

at about 8.00 p.m. Sukumar Ray went to the house of Bandana Panchal to meet her. Annoyed by the presence of Sukumar Ray in the night in their house the appellants and other accused persons beat Sukumar Ray and dragged him from the first floor to the ground floor through wooden staircase which resulted in injuries. Nobody would tolerate such an intruder into their house in the night hours. By no means, can it be held to be a case of premeditation and it was a case of grave and sudden provocation and would come under the First Exception to Section 300 IPC. The fact situation bears great similarity to that in the decisions in *Mangesh vs. State of Maharashtra* (2011) 2 SCC 123 and *State of Punjab vs. Jagtar Singh & Ors.* (2011) 14 SCC 678.

9. Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above it can be concluded that the death was caused by the acts of the appellants/accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the first part of Section 304 IPC and the appellants would be liable to be convicted for the said offence. The conviction of the appellants/accused nos.1 and 3 under Section 302 read with Section 34 IPC is liable to be set aside.

10. We are of the considered view that imposition of seven years rigorous imprisonment on each of the appellants for the conviction under Section 304 Part I IPC would meet the ends of justice.

11. In the result the Criminal Appeal is partly allowed and the conviction of the appellants for the offence under Section 302 read with Section 34 IPC and the sentence of life imprisonment each imposed on them are set aside and instead they are convicted for the offence under Section 304 Part I read with Section 34 IPC and sentenced to undergo seven years rigorous imprisonment each.

B.B.B.

Appeal partly allowed. H