

DILIP KUMAR MONDAL & ANR.

v.

STATE OF WEST BENGAL
(Criminal Appeal No. 82 of 2015)

JANUARY 14, 2015

[T.S. THAKUR AND R. BANUMATHI, JJ.]

Penal Code, 1860: ss.302/34 – Allegation that PW-3, the brother of deceased was working with his sons PW-11 and PW-12 in his field – Deceased and his son PW-10 on bullock cart crossed the field of appellants-accused to which appellants objected resulting in altercation – One appellant inflicted injuries in the abdomen of the deceased with the pasli and other appellant attacked him with a dau – When PW-10 tried to rescue his father, he was also badly beaten by the accused – PWs11 and 12 were also assaulted – Courts below convicted the appellant u/ss.302/34 – Held: The contradiction pointed out in the evidence of the witnesses and the discrepancies in the prosecution case were duly considered by the courts below – The contradictions so pointed out by the appellants did not create infirmity in the prosecution case – The defence plea that the false case was foisted on the accused due to political rivalry was not substantiated – On the evidence of injured witnesses and other, the courts below had correctly recorded concurrent findings of fact that the appellants inflicted fatal injuries on the deceased – The entire evidence and the facts and circumstances of the case showed that there was no premeditation on the part of the appellants and the incident was a sudden fight and the scuffle between the parties led to the causing of injuries to the deceased – Considering the injuries, it cannot be said that accused took undue advantage of the situation – Offence fall u/s.300 Exception 4 – Conviction of the appellants modified and altered to one u/s.304 Part I.

A Disposing of the appeal, the court

B HELD: 1. The contention was raised by the defence that the details of attack with *dau* were not mentioned in the complaint. By and large, people cannot be expected to have a photographic memory of the incident to recall the minute details of the incident. Immediately after the incident, PW-3 must have been under shock and in such disturbed mental condition, while he was narrating the incident to Pradhan of village to reduce the complaint into writing, PW-3 might have omitted to mention that second appellant caused hurt to the deceased with *dau*. Such omission, would not affect the credibility of evidence of PW-3. Evidence of PW-11 amply corroborated the evidence of PWs 3 and 10. Evidence of injured witnesses PWs 10 and 11 lent credence to their testimony and their evidence is entitled to great weight. Despite searching cross-examination, nothing substantial was elicited from PWs 10 and 11 to discredit their evidence. PW-6 who was doing agricultural work in his field had also stated that he had heard one *jhamela* and when he went to the place of incident, a *maramari* took place. PW-6 had spoken about the overt act of each of the appellants and causing injuries to the deceased and others. The contradiction pointed out in the evidence of the witnesses and the discrepancies in the prosecution case were duly considered by the courts below. [Paras 11 to 14] [913-E-F; 914-F-H; 915-A-B]

G 2. Having agreed with the findings of the courts below that the appellants inflicted fatal injuries on the body of the deceased, it is to be ascertained whether or not it was a result of pre-meditation and whether the conviction of the appellants under Section 302 IPC is sustainable. The accused persons were objecting to the entry of the bullock cart in their field and before the attack, there was a wordy altercation. The totality of the facts and H circumstances of the case showed that the incident was

not a premeditated one. The accused had been objecting to the ingress and egress of the bullock cart in their field and no sooner did the deceased try to enter their field, than a free fight ensued between the parties. Insofar as the contention of the prosecution, that the accused were already armed with deadly weapons to pounce upon the deceased-complainant party, it appears to be not acceptable as the accused party were proceeding to their fields for carrying out their agricultural work and, therefore, it is quite normal for them to possess such agricultural instruments which are used as weapons in this case. Upon consideration of the entire evidence and the facts and circumstances of the case, there was no premeditation on the part of the appellants and the incident was a sudden fight. [Paras 18, 23] [916-C-E; 919-F-H; 920-A-B]

3. In order to invoke Exception 4 to Section 300 IPC, it must be further shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The appellants are said to have inflicted injuries with *henso* and *dau*. A perusal of post-mortem certificate showed that the deceased sustained one incised injury on the back which has caused injury to scapula and spinal cord and another incised wound over the back just below the right scapula causing injury to the right lung and pleura. PW-10 was discharged from the hospital after giving first aid treatment indicating thereby that the injury was not grievous. Considering the injuries, it cannot be said that the accused had taken undue advantage of the situation. The incident was not premeditated and the scuffle between the parties led to the causing of injuries to the deceased and considering the circumstances of the case, the offence would fall under Section 300 IPC Exception 4 and the conviction of the appellants is modified and altered under Section 304 Part I IPC. [Para 24] [920-C-F]

A *Sridhar Bhuyan v. State of Orissa* (2004) 11 SCC 395 :
2004 (3) Suppl. SCR 395 – relied on.

Case Law Reference:

B 2004 (3) Suppl. SCR 395 Relied on Para 22
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
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C From the Judgment and Order dated 13.02.2012 of the
Division Bench of Calcutta High Court in C.R.A. No. 747 of
2008.

Pijush K. Roy, Ms. Kakali Roy, Mithilesh Kumar Singh for
the Appellants.

D Shagun Matta (For Anip Sachthey) for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

E 2. This appeal arises out of the judgment of the Calcutta
High Court dated 13.2.2012 passed in C.R.A. No.747/2008,
in and by which, the High Court confirmed the conviction of the
appellants under Section 302/34 IPC and the sentence of life
imprisonment imposed upon them and set aside the conviction
of the appellants under Section 326 IPC.

F 3. Briefly stated case of the prosecution is as under:-
Complainant – PW 3 –Fatik Chandra Debnath is the brother
of the deceased Nripen Debnath. On 22.11.1998 at about
10.00 A.M. the complainant along with his two sons namely,
G PW-11 Ranjit Debnath and PW-12 Santosh Debnath was doing
agricultural work in his field—collecting harvested paddy crops
and tying the same. Deceased Nripen Debnath, brother of the
complainant and his son Nikhil Debnath (PW-10) proceeded
H towards the field in a bullock cart for bringing the bundles of
harvested paddy crops. The only way to reach their field was

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through the field belonging to the accused persons and as soon as the bullock cart touched the border of the field of the accused, the accused took exception to the same, which resulted in a wordy altercation between the parties and injuries were inflicted by the appellants on the deceased and witnesses. Appellant Dinesh inflicted injuries in the abdomen of Nripen Debnath with the *pasli* and the appellant Dilip attacked him with a *dau*. The other two accused also assaulted the deceased. When Nikhil Debnath (PW-10) tried to rescue his father, he was also badly beaten by the accused. On seeing the incident, PW-3 –Fatik Chandra Debnath rushed to the place of incident and raised alarm. In the process, PW 11–Ranjit Debnath and PW-12–Santosh Debnath also sustained injuries. On hearing hues and cries, the villagers gathered at the place and the accused fled away.

4. All the four injured persons were immediately taken to Godhanpara Hospital wherein PW-10–Nikhil Debnath and PW-11 –Ranjit Debnath were discharged after first aid. As the condition of Nripen Debnath and PW-12 Santosh Debnath was precarious, they were referred to N.G. Hospital, Berhampore. Nripen Debnath succumbed to the injuries on his way to the hospital.

5. Law was set in motion by PW-3 Fatik Chandra Debnath by lodging a complaint at Police Station Raninagar, District Murshidabad. On the basis of the complaint, a case was registered under Section 302/34 IPC and 326/34 IPC against the accused persons. PW-14 Dr. Gobinda Banerjee conducted autopsy on the body of Nripen Debnath and PW-14 opined that the death was due to shock and haemorrhage and issued Ex P6-Post mortem certificate. After completion of due investigation, chargesheet was filed against the appellants and two other accused under the above stated provisions. To prove the charges against the accused, prosecution has examined 16 witnesses and exhibited a number of documents and material objects. The accused were questioned under Section

A 313 Cr.P.C. about the incriminating evidence and the circumstances but the accused denied all of them and pleaded innocence. The accused have stated that they have been falsely implicated due to political rivalry and they have been victimized

B 6. Upon consideration of oral and documentary evidence, the Sessions Court convicted the appellants under Sections 302/34 IPC and 326/34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2000/- with default clause. For the offence under Section 326 IPC, the accused were sentenced to undergo imprisonment for three years and to pay a fine of Rs.1000/- with default clause. Accused Arjun Mondal was acquitted of all the charges giving him the benefit of doubt. Fourth accused-Vipad died pending trial. Aggrieved by the conviction, the appellants preferred appeal before the High Court of Calcutta which by the impugned judgment has confirmed the conviction of the appellants under Section 302/34 IPC and the sentence of life imprisonment imposed on them. Their conviction under Section 326 IPC was set aside. Being aggrieved, the appellants have preferred this appeal by special leave.

F 7. Assailing the conviction of the appellants, learned counsel for the appellants contended that the testimony of the witnesses suffered from serious contradictions and inconsistencies and they could not be said to be reliable. It was submitted that the appellants had been falsely implicated in the case on account of political rivalry, which aspect was not properly considered by the courts below.

G 8. Contrariwise, learned counsel appearing for the respondent-State contended that there is no material contradiction in the testimony of the witnesses affecting their veracity. It was contended that the accused were already armed with deadly weapons with which the appellants inflicted injuries on the deceased and the complainant party. It was submitted H that after inflicting fatal injuries on the deceased, appellant Dilip

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rushed to hospital, just only to evade arrest. It was urged that there is no political rivalry between the parties and courts below rightly negated the defence put forth by the appellants. A

9. We have given our thoughtful consideration to the contentions urged by the counsel for the parties and perused the impugned judgment and the materials on record. B

10. PW-3—Fatik Chandra Debnath, brother of the deceased, has deposed that at the relevant time he was busy in the field with his sons in collecting the harvested paddy and he witnessed the incident from his field which is adjacent to the place of incident. PW-3 stated that the appellants assaulted his brother Nripen Debnath in the abdomen and when his nephew Nikhil, PW-3 rushed with his sons PW-11 Ranjit Debnath and PW-12 Santosh Debnath to rescue his brother, his sons PWs 11 and 12 were also assaulted. PW-3 being the eye-witness, his evidence was relied upon as creditworthy by the courts below. C
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11. Evidence of PW-3—Fatik Chandra Debnath is assailed contending that in the complaint lodged by him, it is not mentioned that Dilip caused hurt to Nripen Debnath with *dau* and the only fact that is mentioned there is that appellant Dinesh chopped the stomach of the deceased and other accused also joined in the assault. Additionally, it was submitted that PW-3 had rushed to the place of occurrence only after the fight had started, so there arose doubt as to the veracity of PW-3. Insofar as the contention that the details of attack with *dau* are not mentioned in the complaint, by and large, people cannot be expected to have a photographic memory of the incident to recall the minute details of the incident. Immediately after the incident, PW-3 must have been under shock and in such disturbed mental condition, while he was narrating the incident to Pradhan of village to reduce the complaint into writing, PW-3 might have omitted to mention that Dilip caused hurt to Nripen Debnath with *dau*. Such omission, in our considered view, does not affect the credibility of evidence of PW-3. Insofar as the plea E
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A that PW-3 could not have witnessed the assault as he reached the scene after the fight started is not sustainable for the reason that the place of occurrence is just adjacent land within a short distance. Obviously, even from his field, PW-3 must have seen the attack before he rushed to the rescue of his brother Nripen
B Debnath.

12. PW-10 Nikhil Debnath son of deceased Nripen Debnath has also sustained injuries while he was trying to rescue his father and PW-10 had spoken about the incident. PW-10 Nikhil Debnath deposed that on 22.11.1998 at about
C 10.00 A.M. while he was proceeding with his father on a bullock cart towards the field where his uncle PW-3—Fatik Chandra Debnath was collecting harvested paddy crops, the accused persons who were in their landed property shouted that no one
D could enter the landed property and immediately after their entering the land of the accused, the appellants attacked his father and inflicted injuries on him and when PW-10 tried to rescue his father, they also assaulted him. PW-11 —Ranjit Debnath son of PW-3 —Fatik Chandra Debnath who also sustained injuries had deposed that the accused threatened the
E deceased as soon as bullock cart entered the land of the accused saying “*saladarka aj sosana pathabo*” which means “we will send the rascals to the crematory”. PW-11 further stated that Nripen Debnath came down from the bullock cart, appellant-Dinesh caused injuries with *henso* and Dilip attacked
F him with a *dau* and when PW-11—Ranjit Debnath and PW-12—Santosh Debnath tried to intervene, the accused (Arjun and Bipad) attacked them with a lathi. Evidence of PW-11 amply corroborates the evidence of PWs 3 and 10.

G 13. Evidence of injured witnesses PWs 10 and 11 lends credence to their testimony and their evidence is entitled to great weight. Very much convincing ground is essential to discard the evidence of the injured witnesses PWs 10 and 11. Despite searching cross-examination, nothing substantial was elicited from PWs 10 and 11 to discredit their evidence.
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14. PW-6 Anil Kumar Mondal who was doing agricultural work in his field had also stated that he had heard one *jhamela* and when he went to the place of incident, a *maramari* took place. PW-6 had spoken about the overt act of each of the appellants and causing injuries to the deceased and others. PW-8 Mastoram Debnath labourer who was working in the field of the deceased at that time had also deposed that an altercation crept up between the parties.

15. As far as evidence of PW-2—Abul Kasim Sk is concerned, the courts below have rightly recorded him unworthy of credit as he stated that Nripen Debnath was lying dead on a village road. As pointed out by the courts below, it appears that PW-2 has just deposed whatever he heard from others. PW-4 —Intajul Haque, an agricultural labourer had deposed the incident and the overt act of the appellants in causing hurt to Nripen and that while PW-10 —Nikhil Debnath attempted to save his father, Dilip caused hurt to Nikhil with *dau* and that all the accused attacked sons of PW-3 Fatik Chandra Debnath with bamboo split. During investigation, statement of PW-4 was not recorded by the investigating officer under Section 161 Cr.P.C. and the High Court rightly declined to take notice of the evidence of PW-4. Likewise, High Court has also rightly rejected the testimony of PW-5 Karuna Krishna Sarkar who had stated that he saw the accused running through his house and that he witnessed the incident from his garden.

16. The contradiction pointed out in the evidence of the witnesses and the discrepancies in the prosecution case were duly considered by the courts below. The contradictions so pointed out by the appellants do not create infirmity in the prosecution case. The core of the prosecution story remains the same that Nripen Debnath and his son PW-10 Nikhil Debnath along with two sons (Ranjit Debnath and Santosh Debnath) of PW-3 Fatik Chandra Debnath were assaulted by the accused on their landed property. The defence plea that the false case has been foisted on the accused due to political

A rivalry is not substantiated by the appellants.

B 17. On the evidence of PW-3—Fatik Chandra Debnath, injured witnesses PWs-10 to 12 – Nikhil Debnath, Ranjit Debnath and Santosh Debnath and other witnesses PWs 6 and 8, the courts below have recorded concurrent findings of fact that the appellants have inflicted fatal injuries on the deceased Nripen Debnath and the concurrent findings so recorded are unassailable.

C 18. Having agreed with the findings of the courts below that the appellants inflicted fatal injuries on the body of the deceased, it is to be ascertained whether or not it was a result of pre-meditation and whether the conviction of the appellants under Section 302 IPC is sustainable. So far as this question is concerned, facts and circumstances of the case and the statement of the witnesses are to be examined. As pointed out earlier, the accused persons were objecting to the entry of the bullock cart in their field and before the attack, there was a wordy altercation. PW-6 Anil Kumar Mondal had also deposed that he heard *jhamela* and when he rushed to the place of offence, he noticed a *maramari* took place and the appellants inflicted injuries on Nripen and PW-10 Nikhil Debnath. PW-10 son of deceased himself deposed that accused persons were guarding their landed property so that no one enters their land and as he along with his father Nripen entered their land in their bullock cart, the accused persons restrained them saying “*sala toder gari jete debo na*”. PW-11—Ranjit Debnath, another injured witness had also spoken that there was fight between the parties.

G 19. The High Court had referred to the evidence and the defence put forth by the appellants that the incident was a sudden fight between the parties. The High Court declined to invoke Exception 4 to Section 300 on the grounds that:- (i) the defence plea of sudden fight was not clearly put forth by the accused during their questioning under Section 313 Cr.P.C.;

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(ii) even assuming that there was a sudden fight, and that four accused persons were injured, there is nothing to suggest that the complainant party were the aggressors, the injuries must have been inflicted on the accused only to prevent the complainant party from entering the field of the complainant party and in self defence.

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20. Learned counsel for the appellants contended that the defence emerging from the evidence is that the appellants have been objecting to the user of any part of their field for the purpose of ingress and egress of the bullock cart and inspite thereof the complainant party armed with deadly weapons tried to pass their bullock cart through their field as a result whereof, a free fight ensued in which the appellants and two other accused persons sustained injuries and while so the High Court failed to appreciate that there was no premeditation and the entire incident was due to a sudden fight and the High Court ought to have invoked Exception 4 to Section 300 IPC.

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21. Exception 4 to Section 300 IPC reads as under:-

“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.”

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In order to invoke the applicability of Exception 4 to Section 300 IPC, the following conditions are to be satisfied namely:

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- (i) that the incident happened without premeditation;
- (ii) in a sudden fight;
- (iii) in the heat of passion;
- (iv) upon a sudden quarrel and
- (v) without the offender having taken undue advantage

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A or acted in a cruel or unusual manner.”

22. This Court in *Sridhar Bhuyan vs. State of Orissa* (2004) 11 SCC 395, reaffirmed the same and held as under:-

B “For bringing in operation of Exception 4 to Section 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.

C The fourth exception of 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
D 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
E 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
F 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
G 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
H 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

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aggravated it by his own conduct it would not have taken **A**
the serious turn it did. There is 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 **B**
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 **C**
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 and 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 **D**
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. **E**
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 **F**
used in the provision means "unfair advantage".

23. Considering the totality of the facts and circumstances
of the case, we are unable to agree with the view taken by the
courts below that the incident was a premeditated one. As
discussed earlier, the accused had been objecting to the **G**
ingress and egress of the bullock cart in their field and no
sooner did the deceased try to enter their field, than a free fight
ensued between the parties. Insofar as the contention of the
prosecution, that the accused were already armed with deadly
weapons to pounce upon the deceased-complainant party, it **H**

A appears to be not acceptable as the accused party were proceeding to their fields for carrying out their agricultural work and, therefore, it is quite normal for them to possess such agricultural instruments which are used as weapons in this case. Upon consideration of the entire evidence and the facts
B and circumstances of the case, in our view, there was no premeditation on the part of the appellants and the incident was a sudden fight.

24. In order to invoke Exception 4 to Section 300 IPC, it must be further shown that the offender has not taken undue
C advantage or acted in a cruel or unusual manner. The appellants are said to have inflicted injuries with *henso* and *dau*. By a perusal of Ext. P6 post-mortem certificate, it is seen that the deceased sustained one incised injury on the back which has caused injury to scapula and spinal cord and another incised
D wound over the back just below the right scapula causing injury to the right lung and pleura. Insofar as the injuries caused to Ranjit Debnath and Santosh Debnath, there is no sufficient evidence as to the alleged injuries caused to them. As far as
E PW-10–Nikhil Debnath is concerned, he was discharged from the hospital after giving first aid treatment indicating thereby that the injury was not grievous. Considering the injuries, in our view, it cannot be said that the accused have taken undue advantage of the situation. The incident was not premeditated and the scuffle between the parties led to the causing of injuries to the
F deceased Nripen Debnath and considering the circumstances of the case, in our view, the offence would fall under Section 300 IPC Exception 4 and the conviction of the appellants is to be modified and altered under Section 304 Part I IPC.

25. In the result, the conviction of the appellants under
G Section 302/34 IPC is altered to one under Section 304 Part I IPC and the appellants are sentenced to undergo imprisonment for a period of ten years. The appeal stands allowed to the above extent.