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BHAGIRATH

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No. 2301 of 2009)

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OCTOBER 23, 2018

**[R. BANUMATHI AND INDIRA BANERJEE, JJ.]**

*Penal Code, 1860 – Exception 4 to s.300 – Death caused in sudden fight without premeditation – Prosecution case was that victim was surrounded by the appellant-accused and other accused persons – In a verbal quarrel between the victim and the appellant-accused, a farsi blow on the right side of skull near ear of the victim was inflicted by the accused-appellant – It was alleged that other accused had also inflicted injuries – Victim died – Trial Court convicted the appellant-accused u/s.302 and other accused u/s.302 r/w. s.149, and sentenced all of them to life imprisonment – High Court confirmed the conviction and sentence of the appellant-accused, however, acquitted all other accused – On appeal, held: The injuries inflicted on the deceased was result of a sudden fight between him and the accused party – There was no premeditation – Appellant-accused had caused one injury to the deceased by farsi blow on the head which indicated that the appellant had not taken undue advantage of the deceased – The manner, the occurrence and the injury inflicted on deceased attracted exception 4 to s.300 – Thus, the conviction of the appellant modified to s.304-I IPC and sentenced reduced to already undergone.*

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**Allowing the appeal, the Court**

**HELD: 1. The case of the prosecution rests upon the evidence of PW-6 an injured eye witness, who has deposed about quarrel between the deceased and the accused party. PW-6 has also spoken about the infliction of farsi blow by the appellant on the right side of the head near the ear of the deceased. When PW-6 tried to rescue the deceased, PW-6 also sustained injuries on his right hand. PW-6 was also injured in the occurrence is supported by the medical evidence and evidence of PW-2-Doctor. PW-6 being injured eye witness, his evidence stands on higher footing. Presence of injuries on the person of PW-6 lends**

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assurance to his testimony. There is no reason to disbelieve the testimony of injured eye witness(PW-6). [Para 6] [606-F-H; 607-A]

2. The fourth exception to Section 300 IPC deals with death committed in sudden fight without premeditation. The sudden fight implies the absence of premeditation. In the instant case, as the injuries inflicted on the deceased was in the sudden fight between the deceased and the accused party. There was no premeditation. One injury was caused to the deceased by *farsi* blow on the head which indicates that the appellant has not taken undue advantage of the deceased. The manner the occurrence and the injury inflicted on the deceased attract Exception 4 to Section 300. In the facts and circumstances of the case, the conviction of the appellant is modified under Section 304 Part-I IPC and the sentence is reduced to the period already undergone. [Para 7] [607-C-E]

*Abdul Sayeed v. State of M.P. (2010) 10 SCC 259:*  
[2011] 12 SCR 718 – referred to.

#### Case Law Reference

[2011] 12 SCR 718                      referred to                      Para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 2301 of 2009

From the Judgment and Order dated 12.01.2009 of the High Court of M.P., Indore Bench in Criminal Appeal No. 309 of 2007.

P. C. Agarwal, Sr. Adv., Ambuj Aggarwal, Nitin Singh, Dr. (Mrs.) Vipin Gupta, Advs. for the Appellant.

Ms. Swarupama Chaturvedi, B. N. Dubey, Advs. for the Respondent.

The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. This appeal arises out of the judgment of the High Court of Madhya Pradesh in Criminal Appeal No. 309 of 2007 in and by which the High Court has affirmed the conviction of the appellant under Section 302 IPC and also the life imprisonment imposed upon him.

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A 2. The case of the prosecution is that on 19.08.2005 at about  
10.00 p.m. the deceased-Bherulal was surrounded by the appellant-  
Bhagirath (armed with *farsi*) and other accused persons (since acquitted)  
viz. Mangu, Sangita Bai, Suma Bai and Ramkunwar. In the wordy quarrel  
between the deceased and the appellant-accused Bhagirath is said to  
have inflicted the *farsi* blow on the right side of skull near ear. When  
B PW-6 (Ramchandra) tried to save the deceased, he also sustained injuries  
on his right hand. Further, case of the prosecution is that all other accused  
(since acquitted) also inflicted injuries on the deceased-Bherulal. On  
completion of investigation, the appellant-accused and other accused  
were charge-sheeted for the offence under Sections 148/325/302 read  
C with 149 IPC.

3. Relying upon the evidence of injured eye witness (PW-6), the  
Trial Court has convicted the appellant-accused under Section 302 IPC  
and other accused under Section 302 read with Section 149 IPC and  
sentenced all of them to undergo life imprisonment. For the conviction  
D under Section 325 read with Section 149 IPC, they were sentenced to  
undergo R.I. for one year.

4. In the appeal before the High Court, the High Court confirmed  
the conviction of the appellant-accused and also sentence of imprisonment  
as aforesaid. So far as the other co-accused are concerned, the High  
E Court acquitted all of them holding that the charges against them have  
not been established beyond reasonable doubt.

5. We have heard Mr. P.C. Agarwal, learned senior counsel  
appearing on behalf of the appellant, as well as Ms. Swarupama  
Chaturvedi, learned counsel appearing on behalf of the State of Madhya  
F Pradesh, and also perused the impugned judgment and the materials on  
record.

6. The case of the prosecution rests upon the evidence of PW-6  
(Ramchandra), an injured eye witness, who has deposed about quarrel  
between the deceased-Bherulal and the accused party. PW-6 has also  
spoken about the infliction of *farsi* blow by the appellant-Bhagirath on  
G the right side of the head near the ear of the deceased. When PW-6  
tried to rescue the deceased-Bherulal, PW-6 (Ramchandra) also sustained  
injuries on his right hand. PW-6 was also injured in the occurrence is  
supported by the medical evidence and evidence of PW-2 (Dr. C.S.  
Gangrade). PW-6 being injured eye witness, his evidence stands on higher  
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footing. Presence of injuries on the person of PW-6 lends assurance to his testimony (See: *Abdul Sayeed v. State of M.P. reported in (2010) 10 SCC 259* ). We do not find any convincing reason to disbelieve the testimony of injured eye witness(PW-6). A

7. The High Court acquitted all the other accused, since fatal blow is attributed to the appellant-accused. The question falling for consideration is to the nature of the offence. As pointed out earlier, the occurrence was at about 10.00 p.m., when there was wordy quarrel between the accused party and the deceased – Bherulal that there was a quarrel between them is established from the evidence of PW-6 also. In the quarrel, the appellant-accused has inflicted injuries on the right side of the head of the deceased measuring 15x2 ½ x 3 c.m. Though there was another injury found on the deceased it was one contusion measuring 10x2 cm on lower portion of right neck. The fourth exception to Section 300 IPC deals with death committed in sudden fight without premeditation. The sudden fight implies the absence of premeditation. Even as per the evidence of PW-6, there was a wordy quarrel and in that quarrel the appellant inflicted *farsi* blow on the head of the deceased.As the injuries inflicted on the deceased in the sudden fight between the deceased and the accused party. There was no premeditation. One injury was caused to the deceased by *farsi* blow on the head which indicates that the appellant has not taken undue advantage of the deceased. The manner the occurrence and the injury inflicted on the deceased attract Exception 4 to Section 300. In the facts and circumstances of the case, the conviction of the appellant is modified under Section 304 Part-I IPC and the sentence is reduced to the period already undergone. B  
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8. In the result, the conviction of the appellant under Section 302 IPC is modified as conviction Section 304 Part-I IPC and sentence of the appellant is reduced to the period already undergone by him. The appellant is ordered to be released forthwith if his presence is not required in any other case. F

9. The appeal is, accordingly, allowed. G