

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

On 1st of MARCH, 2023

CRIMINAL APPEAL No. 1450 of 2012

BETWEEN:-

**BABLA S/O RATNA PALIA PATLIYA, AGED 30 YEARS, R/O VILL. GAVSAR
PATLIYA FALIYA P.S.RANAPUR, DISTRICT JHABUA (MADHYA PRADESH)
.....APPELLANT**

(BY MS. SHARMILA SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THRU. P.S. RANAPUR, DISTT.
JHABUA (MADHYA PRADESH)**

.....RESPONDENT /STATE

(BY SHRI K. K. TIWARI – GOVT. ADVOCATE)

Reserved on : 13.02.2023

Pronounced on : 01.03.2023

*This appeal having been heard and reserved for judgement,
coming on for pronouncement this day, Hon'ble Shri Prakash Chandra
Gupta pronounced the following:*

JUDGEMENT

The appellant/ accused has filed this appeal U/s 374 of Code Of Criminal Procedure (Cr.P.C.), 1973, being aggrieved by the judgment dated 09/11/2012, passed by Sessions Judge, Jhabua (M.P.) in ST No.24/2012, whereby the learned trial court has convicted the appellant U/s 302 of IPC and sentenced him to undergo imprisonment for life and fine of Rs. 1,000/-, in default, rigorous imprisonment for a period of 1 month.

2. The case of prosecution in brief is that the deceased Ratna was living in village Gavasar Patalia Phalia, O/P Kundanpur, P/S Ranapur, Distt- Jhabua (M.P.), alongwith his family members. On 01/12/2011 at about 08:00 AM, the deceased was cutting bamboo near his under-construction house, at that time his son/appellant Babla came there and told the deceased that he will cut the bamboos for which he asked for axe, to which Ratna asked Babla to go, he will cut the bamboos himself. Then the appellant snatched the axe from the deceased and repeatedly gave blows to the deceased on his vital parts of the body. Wife of deceased Ratni Bai started to cry for help then the appellant had fled away. Kalu (PW-3), Rama (PW-5) and Newala (PW-6) came on the place of incident. Ratni Bai (PW-4) told them about the incident. They had searched the appellant, but he was not traced. On the same day at 09:30 AM ASI P.S. Kayat (PW-1) had lodged an FIR (Ex.P/1) at O/P Kundanpur, against the appellant on the basis of oral

information supplied by Kalu (PW-3). He also lodged a Marg (Ex.P/2). On the basis of FIR (Ex.P/1) and Marg Intimation (Ex.P/2). An FIR (Ex.P/12) and Marg (Ex.P/13) were also registered on the same day at P/S Ranapur.

3. During investigation, on 01/12/2011, SHO Rajesh Singh Baghel (PW-7) proceeded towards place of incident. He called witnesses by notice (Ex.P/6) and prepared a lash punchnama (Ex.P/7). He sent body of the deceased for post-mortem with application (Ex.P/10). On the same day Dr. S.S. Gehlot (PW-9) conducted the post-mortem and gave post-mortem report (Ex.P/15). During post-mortem he preserved and sealed a shirt, a T-shirt, a woolen shawl of the deceased.

4. SHO Rajesh Singh Baghel (PW-7) inspected the place of incident and prepared spot map (Ex.P/9) at the instance of Kalu (PW-3). He seized blood stained soil and plain soil from the spot vide seizure memo (Ex.P/8). On 03/12/2011, he arrested the appellant vide arrest memo (Ex.P/3). He interrogated the appellant and prepared disclosure memo (Ex.P/4). He also seized a blood stained axe at the instance of the appellant, vide seizure memo (Ex.P/5) on 11/12/2011. HC Mahaveer Verma (PW-8), seized a sealed packet containing clothes of the deceased produced by sweeper Dinesh from the CHC Ranapur vide seizure memo (Ex.P/14). Seized articles were sent for chemical examination to

FSL Jhumarghat (Rau), Indore, through letter (Ex.P/11), though FSL report has not been annexed with the records. Statement u/s 161 of CrPC has been recorded. On completion of investigation, charge-sheet has been filed before Judicial Magistrate First Class, Jhabua. The offence is exclusively triable by Court of Sessions. Hence, the case was committed before the Court of Sessions.

5. Learned trial Court framed charge against the appellant U/s 302 of IPC. The appellant abjured his guilt and sought trial.

6. The prosecution, in order to prove its case has examined 9 witnesses. After completion of prosecution evidence, the appellant was examined U/s 313 of Cr.P.C. The appellants took defence that he is innocent. All the prosecution witnesses are related, they are lying and are tutored witnesses by brother of appellant, Karan. The appellant has not examined any witness in his defence.

7. Learned trial Court, after hearing the parties convicted and sentenced the appellant for the offence as mentioned above.

8. Learned counsel for the appellant criticizing the impugned judgment submits that there is a sole eye-witness of the incident, Ratni Bai (PW-4), other witnesses Kalu (PW-3), Rama (PW-5) and Nevala (PW-6) are hear-say witnesses. There are material contradictions in the statement of Ratni Bai (PW-4), therefore, her sole statement is not reliable. In alternate, it has also been

submitted that the incident has taken place due to sudden quarrel between the deceased and the appellant. Appellant had no motive to kill the deceased, therefore, act of the appellant is covered under Exception 4 of Section 300 of IPC and is punishable U/s 304 part-II, but the learned trial Court has committed error by convicting and sentencing the appellant U/s 302 of IPC. Learned counsel for the appellant placed reliance on the case of ***Kunwar Singh V State Of M.P. [CRA no. 666/2006, date of judgment 31/08/2015] and Ghapoo Yadav And Ors. V State Of M.P. [(2003) 3 SCC 528]***.

9. Per contra the learned Government Advocate for the respondent/ state opposed the submission of the appellant and supported the impugned judgment.

10. Learned counsel for the parties confined their submissions to the extent indicated above.

11. We have heard learned counsel for the parties and perused the records.

12. It is apposite to consider first that whether the death of deceased was homicidal in nature?

13. Dr. S.S. Gehlot (PW-9) deposed that on 01/12/2011, he was posted as medical officer at CHC Ranapur. Constable Kesar Singh

brought the body of the deceased Ratna for post-mortem. He started post-mortem on the same day at 04:00 PM. He stated that during post-mortem he had found following injuries on the body of the deceased:-

1. Incised wound 3.5" x 1" x deep brain cavity over left eye and left cheek, horizontal in direction, margin of wound was clear cut and everted, clotted blood in wound, muscles and vessels were cut.

2. Incised wound 3.5" x 1" x bone deep over chin, left side and up to front of left ear/ in direction, margin of wound was clear cut and everted, clotted blood in wound, muscles and vessels were cut.

3. Incised wound 3.5" x 1" x bone deep over left side of neck below chin, horizontal in direction, margin of wound was clear cut and everted, clotted blood in wound muscles and vessels were cut.

4. Incised wound 3.5" x 1" x bone deep over left side of neck below the injury No.3, horizontal in direction, margin of wound was clear cut and everted, clotted blood in wound, muscles and vessels were cut.

5. Incised wound 2" x 0.5" x bone deep, left side temporal and neck, vertical in direction, margin of wound was clear cut and everted, clotted blood in wound, muscles and vessels were cut.

6. Incised wound 3" x 0.5"x bone deep over left side of neck, direction was horizontal, margin of wound was clear cut and everted, clotted blood in wound, muscles and vessels were cut.

7. Incised wound 3.5" x 1" x bone deep on left side of neck,

direction was horizontal, margin of wound was clear cut and everted, clotted blood was in wound, muscles and vessels were cut.

14. Dr. S.S. Gehlot (PW-9) stated that all aforementioned injuries were caused by sharp object like axe, which appeared to have been caused within 24 hours of the post-mortem. The injuries were ante-mortem in nature.

15. This witness has further stated that in internal examination he found that there were fractures in left orbital bone, zygomatic bone, temporal bone and left lower jaw bone. He also stated that he preserved and sealed a blood stained shirt, a blood stained T-shirt and a woolen shawl of the deceased and handed over to the concerning constable for further examination.

16. On the basis of aforesaid examination, Dr. S.S. Gehlot (PW-9) opined that cause of death of the deceased was shock due to head and neck injuries. Death of deceased was homicidal in nature and the injuries were sufficient to cause death in ordinary course of nature. The witness stated that he prepared post-mortem report (Ex.P/15). Statement of this witness is not disputed in cross-examination by the appellant. Therefore, there is no reason to disbelieve the statement of this witness. Hence, statement of this witness is reliable and it is clear that the death of the deceased was homicidal in nature.

17. The next question arises that whether the appellant Babla inflicted injuries on the body of the deceased by means of axe to cause his death?

18. The learned trial Court has relied on the statement of Ratni Bai (PW-4), Kalu (PW-3), Rama (PW-5) and Newala (PW-6). Ratni Bai (PW-4) is eye-witness of the incident and she is wife of the deceased and mother of the appellant. Kalu (PW-3), Rama (PW-5) and Newala (PW-6) had arrived at the place of incident after hearing cry of Ratni Bai (PW-4) and they had seen the deceased in injured state. Kalu (PW-3), Rama (PW-5) and Newala (PW-6) are nephews of the deceased.

19. Ratni Bai (PW-4) stated that at the time of incident deceased was cutting bamboo situated near her new house. The appellant came from behind and asked for axe from the deceased to cut bamboo himself. Thereafter, the appellant snatched axe from his father/deceased Ratna and gave blows on neck, cheek and below eye of the deceased by means of axe, the witness cried for help that 'the appellant is assaulting the deceased.' Kalu (PW-3), Rama (PW-5) and Newala (PW-6) came there. Kalu (PW-3), and Newala (PW-6) have also stated that at the time of incident they were present in their house. Rama (PW-5) stated that at the time of the incident, he was irrigating his field. Rama (PW-5) and Newala (PW-6) have stated that they had heard cry of Ratni Bai

(PW/ 4) that appellant is beating the deceased by means of axe. Kalu (PW-3) also stated that at the time of incident he had heard cry of Ratni Bai (PW-4), thereafter, aforesaid witnesses went to the place of incident and had seen that there were several injuries on the body of the deceased.

20. ASI P.S. Kayat (PW-1) stated that on 01/12/2011, he lodged an FIR (Ex.P/1) at O/P Kundanpur, P/S Ranapur on the basis of information given by Kalu (PW-3). He also lodged a Marg (Ex.P/2). HC Mahaveer Verma (PW-8) stated that on 01/12/2011, he lodged an FIR (Ex.P/12) and Marg (Ex.P/13) on the basis of (Ex.P/1) and (Ex.P/2) respectively. On perusal of record, it appears that within 1.30 hrs. of the incident FIR (Ex.P/1) was lodged at O/P Kundanpur against the appellant. SHO Rajesh Singh Baghel (PW-7) stated that on 01/12/2011, he visited the place of incident and prepared a spot map (Ex.P/9) at the instance of Kalu (PW-3). Kalu (PW-3) also stated that the police had prepared spot map (Ex.P/9) at his instance.

21. In Paragraph 5 of cross-examination, Ratni Bai (PW-4) has admitted that the deceased is lying on ground was told to her by Rugla, Newala (PW-6) and Kalu (PW-3) but on the basis of aforesaid admission it cannot be inferred that she had not seen the incident.

22. In Paragraph 21 of impugned judgment, learned trial Court

has found that an axe was recovered by SHO Rajesh Singh Baghel (PW-7) before Jhitara (PW-2) at the instance of appellant vide disclosure statement (Ex.P/4) and seizure memo (Ex.P/5). From the statement of SHO Rajesh Singh Baghel (PW-7) and Jhitara (PW-2), it appears that SHO Rajesh Singh Baghel (PW-7) had seized blood stained soil and simple soil from the spot vide seizure memo (Ex.P/8). From the statement of HC Mahaveer Verma (PW-8), it also appears that he seized sealed packets of clothes of the deceased which was produced by sweeper Dipesh from CHC Ranapur vide seizure memo (Ex.P/14). It further appears from the letter (Ex.P/11) that seized articles were sent to FSL Jhumarghat (Rau), Indore for chemical examination, but it has been mentioned in Paragraph 22 of the impugned judgment that prosecution has not filed FSL report in the case, therefore, seizure of aforementioned articles do not support the case of prosecution. The case of prosecution depends upon the statement of eye-witness, therefore, non-production of FSL report in the case does not adversely affect the case of prosecution.

23. On the basis aforesaid discussion, it appears that Ratani Bai (PW-4) had seen that at the time of the incident the appellant had repeatedly given blows to the deceased by means of an axe. Kalu (PW-3), Rama (PW-5) and Newala (PW-6) had reached on the spot after hearing the cry of Ratni Bai (PW-4) and they had also seen the deceased in injured state. Statement of Ratni Bai (PW-4)

is supported by FIR (Ex.P/1) and statement of Dr. S.S. Gehlot (PW-9) and post-mortem report (Ex.P/15). There is nothing in cross-examination of the witnesses to show that they are interested to falsely implicate the appellant in the case. Therefore, their statement is reliable and it appears that the appellant Babla inflicted injuries on the body of the deceased by means of axe to cause his death.

24. The next question is whether the appellant had intention to cause death of deceased?

25. In the case of **Ghapoo Yadav (Supra)**, the apex court has held as under:-

“11. In the case at hand, out of the seven injuries, only Injury 2 was held to be of grievous nature, which was sufficient in the ordinary course of nature to cause death of the deceased. The infliction of the injuries and their nature proves the intention of the accused-appellants, but causing of such injuries cannot be termed to be either in a cruel or unusual manner for not availing the benefit of Exception 4 to Section 300 IPC. After the injuries were inflicted the injured had fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused-appellants had come prepared and armed for attacking the deceased. The previous disputes over land do not appear to have assumed the characteristics of physical combat. This goes

to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in a cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable. The fact situation bears great similarity to that in Sukhbir Singh v. State of Haryana¹. The appellants are to be convicted under Section 304 Part I IPC and custodial sentence of 10 years and fine as was imposed by the trial court would meet the ends of justice. The appeal is allowed to the extent indicated above.”

26. The coordinate bench of this court, in the case of **Kunwar Singh (Supra)** has observed as under:-

9. *In the case of Surinder Kumar v/s. Union of Territory, reported as (1989) 2 SCC 217, the Apex Court on the same issue held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. The Apex Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300, Hon'ble Supreme Court observed:*

"7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the

provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly....." (Emphasis supplied)

10. *In the case of **Ghappo Yadav & Ors. vs. State of M.P.** reported as (2003) 3 SCC 528, the Apex Court held that in a heat of passion there must be no time for the passion to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite:*

"10. The help of Exception 4 can be invoked if death is caused:

(a) without premeditation; (b) in a sudden fight; (c) without the 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 300 IPC is not defined in the Indian Penal Code. 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 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. 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 used in the provision means "unfair advantage".

"11.....After the injuries were inflicted the injured had fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused-appellants had come prepared and armed for attacking the deceased. This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in a cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable. (emphasis supplied).

13. Keeping in view the decisions of the Apex court for giving benefit of Exception 4 to Section 300 IPC in cases mentioned above and applying the same to the facts of the case, we are inclined to give benefit to Exception 4 to

Section 300 IPC to the appellant by altering his sentence awarded to the appellant punishable under Section 304 Part II IPC. This we say so in the facts of this case for more than one reason. Firstly, even according to the prosecution, there was no premeditation in the commission of crime. Secondly, there is not even a suggestion or we may say conclusive evidence that the appellant had any predetermined motive or enmity to commit the offence against the deceased leave alone a serious offence like murder. Thirdly, incident that occurred was due to sudden quarrel which ensued between the appellant-accused and the deceased – Bhuribai. Fourthly, no conclusive evidence was adduced by the prosecution to prove any kind of constant quarrel ever ensued in so many years between the couple and that too for a cause known to others which could lead to killing Bhuribai or whether any unsuccessful attempt was ever made by the appellant to kill her in past.

27. The apex court in the case of **Chherturam v. State of Chhattisgarh**, [(2022) 9 SCC 571] in para 12 and 13 has held as under:-

*12. On the issue of the nature of offence, the learned counsel for the State relied upon the judgment in **Surain Singh v. State of Punjab** [(2017) 5 SCC 796] to make out a case under Exception 4 of Section 300 IPC. Section 300 reads as under:*

*“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be*

inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

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.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.”

13. In order to make out a case under Exception 4 aforesaid, it was pleaded that there were two essential ingredients:

- (i) the accused did not act with premeditation, and*
- (ii) the accused did not act in a cruel or brutal manner taking advantage of the situation.*

Hence, the nature of injuries is an important factor in determining whether the death was caused due to a sudden fight.

28. In the view of principle laid down in the aforementioned judgment, the main ingredient of Exception 4 of Section 300 of IPC is the incident being the result of a sudden quarrel, without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of exception.

29. On perusal of statement of Ratni Bai (PW-4), it appears that the appellant is son of the deceased. There was no old animosity between the appellant and the deceased, it also appears that at the time of the incident the appellant had gone on the spot without carrying any weapon. The deceased was cutting bamboo by an axe, the appellant asked for axe to cut the bamboo himself to which the deceased had denied, then the appellant snatched the axe from the hands of deceased and gave 7 brutal blows on the upper vital parts of the body of deceased. Due to injuries on vital part, the deceased died. Therefore, it appears that there was sudden quarrel between the appellant and the deceased in furtherance of cutting bamboo and appellant had no premeditation to cause death of the deceased, but it is clear that the appellant inflicted injuries on the neck, face and head of the deceased and muscles and vessels were cut in all the injuries. There were fractures in left orbital bone, zygomatic bone, temporal bone and left lower jaw bone, therefore, it is clear that the appellant had taken undue advantage and acted in a cruel manner. The appellant had repeatedly given 7 blows on the vital part of the body of the deceased, hence, it is clear that the appellant caused injuries on the body of the deceased with an intention to cause his death. Hence, death of the deceased comes under culpable homicide amounting to murder and is punishable under Section 302 of IPC. Therefore, act of the appellant does not come under Exception 4 of Section 300 of IPC.

30. In the view of foregoing discussion, it is clear that the prosecution has succeeded to prove the offence U/s 302 of IPC against the appellant beyond reasonable doubt. Learned trial Court has properly assessed the statement of prosecution witnesses and has rightly relied on their statement. The learned trial Court has not committed any error in convicting the appellant for the offence. The appellant has been given minimum sentence by the trial Court, hence, conviction and sentence of the appellant deserves to be maintained.

31. Resultantly, the appeal is **dismissed** and the conviction and sentence of the appellant is hereby affirmed. The appellant is in jail, be intimated about the outcome of this appeal through the jail superintendent concerned. A copy of this order alongwith record of the case be sent back to the trial Court for intimation and compliance.

(S. A. DHARMADHIKARI)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE