

**IN THE HIGH COURT OF MADHYA PRADESH AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 27th OF APRIL, 2022

CRIMINAL APPEAL No. 650 of 2014

Case Number	Cr. A. No.650/2014
Parties Name	<p>(1) RAJENDRASINGH S/O DALPATSINGH ALIAS GANPATSINGH RAJPUT , AGED ABOUT 37 YEARS, OCCUPATION:AGRICULTURE VILL.CHANDANKHEDA (MADHYA PRADESH)</p> <p>(2) SURENDRASINGH S/O DULESINGH , AGED ABOUT 38 YEARS, OCCUPATION: AGRICULTURE VILL-HARMALA, TEH-MANDSAUR (MADHYA PRADESH)</p> <p>(3) PRAKASH BAWRI S/O PRABHULAL PANWAR BAWRI , AGED ABOUT 37 YEARS, OCCUPATION: AGRICULTURE VILL-CHANDANKHEDA, TEH. AND DISTT. MANDSAUR (MADHYA PRADESH)</p> <p>(4) JITENDRASINGH S/O GANPATSINGH RAJPUT , AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE VILL-CHANDANKHEDA, TEH. AND DISTT. MANDSAUR (MADHYA PRADESH)</p> <p>(5) MUKESH S/O BAPULAL BAWRI , AGED ABOUT 27 YEARS, OCCUPATION: AGRICULTURE VILL-CHANDANKHEDA, TEH. AND DISTT. MANDSAUR (MADHYA PRADESH)</p> <p style="text-align: center;">Vs.</p> <p>THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THRU.P.S.NARAYANGARH (MADHYA PRADESH)</p>
Date of Order	27/04/22
Bench	<u>Division Bench:</u>

	Justice Vivek Rusia Justice Amar Nath (Kesharwani)
Judgment delivered by	Justice Vivek Rusia
Whether approved for reporting	Yes
Name of counsel for parties	Shri Virendra Sharma, learned counsel for the appellants. Shri Kamal Kumar Tiwari, learned counsel for the respondent/State.
Law laid down	<p>That before convicting the accused with the aid of Section 149 of the IPC, the Court must give a clear finding regarding the nature of the common object and that the object was unlawful. Before recording a conviction u/s. 149 of IPC, essential ingredients of Section 141 of IPC must be established.</p> <p>The incident which took place in a sudden fight without any premeditation and the act of hitting the deceased was committed in the heat of passion upon a sudden quarrel without having taken undue advantage or acting cruelly or unusually. The case falls within Exception 4 to Section 300 IPC 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's having taken undue advantage or acted in a cruel or unusual manner.”</p>
Significant paragraph numbers	9 to 16

J U D G M E N T

Looking to the long pendency of this criminal appeal instead of hearing the application for suspension of sentence, with the consent of the

parties this criminal appeal is heard finally.

01. The appellants have filed this appeal under Section 374 of Code of Criminal Procedure 1973 (in short “Cr.P.C.”) against the judgment dated 19.04.2014 whereby they have been convicted by 3rd Additional Session Judge, Mandsaur in Sessions Case No.216/12 as under:-

Name of appellant : Rajendrasingh S/o Dalpat Singh Rajput			
Section	Sentence	Fine	Sentence in default of fine
302/149	Life Imprisonment	5000/-	1 year R.I.
323/149 Under 7 heads	1 year R.I.	Rs.500/- seven times thus total Rs.3500/-	2 months R.I.
147	1 year R.I.	500/-	2 months R.I.

Name of appellant : Surendra Singh S/o Dulesingh Rajput			
Section	Sentence	Fine	Sentence in default of fine
302/149	Life Imprisonment	5000/-	1 year R.I.
323/149 Under 7 heads	1 year R.I.	Rs.500/- seven times thus total Rs.3500/-	2 months R.I.
147	1 year R.I.	500/-	2 months R.I.

Name of appellant : Jitendrasingh S/o Ganpat Singh Rajput			
Section	Sentence	Fine	Sentence in default of fine

302/149		Life Imprisonment	5000/-	1 year R.I.
323/149 7 heads	Under	1 year R.I.	Rs.500/- seven times thus total Rs.3500/-	2 months R.I.
147		1 year R.I.	500/-	2 months R.I.

Name of appellant : Prakash S/o Prabhulal Bawri				
Section		Sentence	Fine	Sentence in default of fine
302/149		Life Imprisonment	5000/-	1 year R.I.
323/149 7 heads	Under	1 year R.I.	Rs.500/- seven times thus total Rs.3500/-	2 months R.I.
147		1 year R.I.	500/-	2 months R.I.

Name of appellant : Mukesh S/o Bapulal Bawri				
Section		Sentence	Fine	Sentence in default of fine
302/149		Life Imprisonment	5000/-	1 year R.I.
323/149 7 heads	Under	1 year R.I.	Rs.500/- seven times thus total Rs.3500/-	2 months R.I.
147		1 year R.I.	500/-	2 months R.I.

02. As per prosecution case, on 06.07.2012, the complainant- Veeram Lal S/o Kaarulal gave information to the police that they are in possession of the agriculture land situated at Jharda-Fatehpur since last so many years. Today his father- Karulal, brother and son were on this agricultural field,

all the accused persons came there with sticks on a tractor and motorcycle and started cultivating the agricultural field and when we objected to this, they assaulted us. Upon this information, an F.I.R. was registered at Crime No.216/12 for the offence under Sections 147, 148, 149, 323 and 506 of IPC. The injured persons as well as these appellants all were medically examined by Dr. K.K. Patidar, Medical Officer, PHC, Narayangarh and all of them were found with injuries of contusions, abrasions and depression etc. Since, Veeram Lal sustained head injuries hence he succumbed, therefore, police have added Section 302 and 307 of IPC.

03. After completion of the investigation, a charge-sheet was filed. The trial was committed to the learned session court where charges against the accused were framed. The appellants denied this by submitting that they are the actual owners and on the date of the incident in fact they were cultivating the land and the complainant party came there and started cultivating the field. They were the aggressor and assaulted the appellants. In right of defence, one of the injuries was caused by one of the appellants turned fatal, therefore, they are innocent and liable to be discharged. The prosecution has examined 19 witnesses and in defence, the appellants have examined 3 witnesses.

04. After evaluating the evidence that came on record, the learned trial court did not give a specific finding that out of 4 appellants who caused the fatal head injury to the deceased and accordingly, the learned Additional Session Judge has convicted all the appellants/accused under Section 302/149 with the aid of 149 of IPC. Hence, this criminal appeal.

05. Learned counsel for the appellants submits that he is not assailing most of the findings on merits but confines his submission for alteration of

conviction from Section 302 to 304 Part-II I.P.C. .

06. Shri Sharma, learned counsel submits that there was a free fight which is not in dispute and members of both the parties sustained injuries and cross F.I.Rs. were registered against members of both the parties. It is also not in dispute that the appellants are the owner of the land and they were cultivating the field and the deceased and other injured came and started cultivating the land illegally. Therefore, this is not a case of unlawful assembly and common intention. The appellants were not armed with lethal weapons and the possession of sticks by the village dweller is very common. There was no common intention to cause injuries to them, therefore, it is a case of an offence under Section 304 Part-1 of IPC for which the appellants have already undergone the period of incarceration i.e. 8 ½ years and they are not hardcore criminals and the dispute arose all of a sudden due to intervention by the complainant party.

07. Learned Government Advocate for the respondent/State submits that the appellants with common intention came to the field and assaulted the deceased and other injured of the complainant party, therefore, they have rightly been convicted by the trial court.

08. Heard the learned counsel for the parties and examined the record.

09. After perusal of the record, we have found that the dispute occurred in the agricultural field of the appellants. The members of both complainant as well as accused parties have assaulted each other and all sustained the injuries simple in nature. In paragraph No.60, learned Additional Session Judge has held that the appellants have also sustained the injuries and the Court has also not recorded that the who caused fatal injury was. The scuffle or assault started suddenly without any

premeditation or pre-planned. The appellants are not hardcore criminals but poor agriculturists and they are in jail since their date of arrest. They all are members of one family.

10. The Apex Court in the case of *Vijay Pandurang Thakre V/s. State of Maharashtra : (2017) 4 SCC 377* has examined the common object under section 149 of the IPC and held that the expression “in the prosecution of the common object” occurring in this section postulates that the act must be one which has been done with a view to accomplish the common object attributed to the members of the unlawful assembly. In the case of *Joseph V/s. State of Tamil Nadu : AIR 2018 SC 93*, the Apex Court has held that the accused along with two others carrying bombs while other accused persons carrying sickles and sticks attacked the deceased, no evidence showing other accused persons had common object to kill the deceased nor they had knowledge that the offence of murder was likely to be committed, hence the conviction of other accused u/s. 302 read with Section 149 of the IPC is liable to be set aside. In the case of *Kuldip Yadav V/s. State of Bihar : AIR 2011 SC 1736*, the apex Court has held that before convicting the accused with the aid of Section 149 of the IPC, the Court must give a clear finding regarding the nature of the common object and that the object was unlawful. Before recording a conviction u/s. 149 of IPC, essential ingredients of Section 141 of IPC must be established. Therefore, in view of the aforesaid judgments passed by the Apex Court, the conviction of the present appellants with the aid of Section 149 of the IPC is unsustainable.

11. So far as the alteration of conviction from section 302 to section 304 -Part II I.P.C. is concerned, it is not the case of the prosecution that the

appellant came to the spot in furtherance of the common intention to kill the deceased. they all were cultivating the land, there was a free fight between two groups and all sustained injuries, there was no preplanning or deliberation to kill one of them. Therefore it was culpable homicide without amounting to murder. It fulfils the ingredients of exception IV of section 300 of I.P.C. . We find support from the following verdict given by the Supreme Court of India.

12. The Hon'ble Supreme Court has held in **Gurpal Singh v. State of Punjab, AIR 2017 SC 471**. Para 10 of the judgment reads thus:

“10. However, in the singular facts of the case and noticing in particular, the progression of events culminating in the tragic incident, we are inclined to reduce the sentence awarded to him. Incidentally, the occurrence is of the year 2004 and meanwhile twelve years have elapsed. Further, having regard to the root cause of the incident and the events that sequentially unfolded thereafter, we are of the comprehension that the appellant was overpowered by an uncontrollable fit of anger so much so that he was deprived of his power of self-control and being drawn in a web of action reflexes, fired at the deceased and the injured, who were within his sight. The facts do not commend to conclude that the appellant had the intention of eliminating any one of those fired at, though he had the knowledge of the likely fatal consequences thereof. Be that as it may, on an overall consideration of the fact situation and also the time lag in between, we are of the view that the conviction of the appellant ought to be moderated to one under Sections 304 Part 1 IPC and 307 IPC. Further, considering the facts of the case in particular, according to us, it would meet the ends of justice, if the sentence for the offences is reduced to the period already undergone. We order accordingly.”

13. The Hon'ble Supreme Court has laid down in **Prabhakar Vithal Gholve v. State of Maharashtra, AIR 2016 SC 2292** that if the assault on the deceased could be said to be on account of the sudden fight without premeditation, in heat of passion and upon a sudden quarrel, Conviction of the appellant cannot be sustained under S. 302 and altered to one under Section 304 Part-I of IPC. In **Sikandar Ali Vs. State of Maharashtra,**

AIR 2017 SC 2614, the Court altered the conviction u/s 302 IPC to one u/s 304 part-2 IPC in the following circumstances:

“7. We have no doubt about the complicity of all the accused in the homicide of Sarfraj. A-1 attacked the deceased with the knife and caused injury on his neck which resulted in his death. The other accused assisted him in committing the crime by holding the hands of the deceased. However, the only question that falls for our consideration is whether the accused are liable to be punished for an offence under Section 302 IPC. After considering the submissions made by the counsel for the Appellants and scrutinising the material on record, we are of the opinion that the accused are not liable to be convicted under Section 302 IPC.

14. In Chand Khan Vs. State of M.P. reported in **2006(3) M.P.L.J. 549**, the Division Bench of this Court has also converted the conviction of the appellant in attaining facts and circumstances of the case. Para -10 & 11 of the judgment are relevant which reads thus: -

“10. If the present case is considered in the light of the aforesaid decisions of the Supreme Court, it would show that the appellants caused single injury on the head of the deceased by farsa, which is a sharp edged weapon, but unfortunately Aziz Khan (PW-11) and Ishaq Khan (PW-13) have stated that he gave lathi blow on the head of the deceased. Even after considering this contradictory evidence it has to be taken into consideration that it is a case of single farsa blow inflicted by only appellant Chandkhan and appellant Naseem inflicted only lathi blow on the nonvital part of the body and in the absence of this evidence that the injury no.(i) was sufficient to cause death in the ordinary course of nature and also looking to the various other circumstances like that the accused as well as the deceased are close relatives and the deceased was a person of criminal background and the incident started because of the abuses made first by the deceased himself, we find that the case will not fall within the purview of section 300, Indian Penal Code but it will fall under section 304 Part II, culpable homicide not amounting to murder.

11. consequently, appeal is partly allowed. Conviction of appellants under section 302/34 Indian Penal Code, is set aside and instead they are convicted under section 304 part II, Indian Penal Code,

15. In the case of Ankush Shivaji Gaikwad v. State of Maharashtra, reported in **(2013) 6 SCC 770** the Supreme Court of India has held as under:-

10. On behalf of the appellant it was contended that the appellant's case

fell within Exception 4 to Section 300 IPC which 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's having taken undue advantage or acted in a cruel or unusual manner.”

11. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons:

11.1. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their jaggery crop in their field at around 10 p.m. when their dog started barking at the appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head.

11.2. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels—a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4.

11.3. Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 IPC.

16. In view of the above discussion and verdicts of the apex court, the

criminal appeal is partly allowed. We hereby confirm all the findings given by the learned Additional Session Judge except the conviction which is hereby altered to section 304 Part II of IPC, instead of Section 302 of IPC and accordingly sentence is reduced from LIFE IMPRISONMENT to the period already undergone. The fine amount is maintained imposed by the trial court. The appellants be set free after depositing the fine amount if they are not required to keep in jail in any other case.

Record of the trial court be sent back along with a copy of this judgment.

Certified copy as per rules.

**(VIVEK RUSIA)
JUDGE**

**(AMAR NATH (KESHARWANI))
JUDGE**

N.R.