Naresh Kumar Vs. State

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Court : Delhi

Decided On : Dec-09-2013

Judge : Kailash Gambhir

Appellant : Naresh Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

09. 12.2013 + CRL.A. 448/1998 & Crl.M.A. No.6136/1998 NARESH KUMAR Through: ..... Appellant Mr.B.SRana, Mr.VijenderBhardwaj, Mr.Nitin Sharma, Advocates versus STATE Through: ..... Respondent Mr. Sunil Sharma, APP for the State. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT
KAILASH GAMBHIR, J.

1. By this appeal filed underSection 374 of Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.

), the appellant seeks to challenge the impugned judgment and order on sentence dated 08.10.1998 and 09.10.1998, respectively, whereby the learned Additional

Sessions Judge, Delhi, has convicted the appellant for committing an offence punishable under Section 302 Indian Penal Code, 1860 (hereinafter referred to as IPC) and sentenced him to undergo life imprisonment together with fine of Rs. 1000/- and in default of payment to further undergo rigorous imprisonment for a period of six months.

2. In brief, the case of the prosecution is as follows:

On 08.12.1995 at about 08:30 p.m., PW-1 and PW-2 were sitting in their outer room. They heard sound of digging in the lane. On coming out they saw Manoj and Naresh standing three. Mother of Naresh was also standing there; she wanted to remove water pipe from which she had taken connection PW-2 requested her to remove pipe after completion of sewer work. Naresh and his mother did not pay heed, and Naresh started abusing PW-1. At this Manoj asked Naresh why are you abusing PW-2. Thereupon Naresh rushed to the Manoj and both grappled each other. PW-2 intervened and pacified both of them. Next day at around 9.15 a.m. PW-1 was sweeping floor. Manoj and Naresh were standing in the gali..as soon as Naresh saw Manoj he said dog, you have again come in front of me and both grappled each other. In the fight, accused took out a knife from his pocket and stabbed on the left side of the chest of Manoj. Naresh fled from the spot.

3. To prove its case the prosecution had examined in all 22 witnesses. After the evidence was led by the prosecution, incriminating evidence were put to the appellant while recording his statement under Section313 Cr.P.C and in reply thereto the appellant claimed his innocence and false implication. No evidence, however, was adduced by the appellant in defence. On behalfof the appellant arguments were addressed by B.S Rana and on behalf of the State Mr. Sunil Sharma, APP for the State advanced his arguments. Brief submissions were also filed by the counsel for the appellant.

4. The main thrust of the argument of the counsel for the appellant was that PW2-Mrs.Kasturi Devi, who was the star witness of the prosecution, during her cross-examination herself hadadmitted that she was a tutored witness having deposed before the Court at the dictates of a police officer. Counsel also pointed out that this witness in her crossexamination also admitted that she did not know anything

about the said incident as she was present in the house and she came out of the house after she was called by the police. She also deposed that as soon as grappling between the accused and deceased started, she went to call mother of the deceased Manoj and when she had returned, she saw Manoj (deceased) in an injured state. Counsel also submitted that PW-2 also did not accompany the victim to the hospital and when she came out at the instance of the police, it is the police who told her that blood was lying in front of her house. Counsel also submitted that PW-2 was a near relative of the deceased and, therefore, she was an interested witness and as per the settled legal position the evidence of an interested witness without further corroboration cannot be relied upon. To support his arguments on this aspect counsel placed reliance on thejudgmentof the Apex Court in State of Rajasthan vs. Shri Teja Singh & Ors. 2001 (1) C.C.Cases ((SC) 134. Contention raised by counsel for the appellant was that the testimony of PW-2 is totally uninspiring and unreliable and it will be travesty of justice if the appellant is held guilty based on the fragile evidence of PW2.

5. Counsel further argued that one of the circumstances, which had been taken as adverse by the learned Trial Court, was that the appellant had absconded immediately after the incident and could be traced only after a gap of 10 days. Placing reliance on the judgment of this Court in Bhagat Bhadur vs. The State 1996 JCC460counsel contended that mere abscondence of accused is not such a vital circumstance to prove guilt of the accused as a person may abscond for valid reasons. Counsel also argued that the alleged recovery ofthe blood stained clothes of the appellant and the alleged recoveryof the weapon of the offence were disbelieved by the learned Trial Court and, therefore, the evidence of PW-2, which was otherwise not corroborated from any other evidence or circumstance cannot by itself form the basis to prove guilt of the accused inthe commission of the said crime.

6. Based on the above submissions counsel for the appellant pleaded for the acquittal of the appellant and for setting aside of the judgment and order of sentence passed by the learned Trial Court.

7. Refuting the said submissions of counsel for the appellant,Mr. Sunil Sharma, learned APP for the State strongly contended that the conviction of the appellant is based on the testimony of the eye witness duly supported by the testimonies of PW5 and PW6 whose evidence remained consistent on material facts even though they had turned hostile. Counsel thus submitted that ina criminal case the testimony of any eye witness cannot be easily brushed aside as eye witness account is always based on the first-hand account of the incident. Counsel further submitted that motive ofthe crime can be traced from an incident which took place one day prior to the murder of the deceased as on 8.12.1995, a quarrel had taken place between the accused on the one hand and husband of PW2 and the deceased Manoj on the other hand over the removal of the water pipe by the accused and his mother, at the time of digging of the lane for some sewer work. Counsel further submitted that the deceased had lodged a protest with the accused as to why he was abusing his Babuji (PW-1), Mahavir Prasad and on this the accused had rushed towards Manoj and also extended a threat that he would not spare both of them i.e. the deceased as well as his father. Counsel thus submitted that the incident of 9.12.1995, which resulted in the murder of the deceased Manoj was infact an accomplishment of threat given by the accused, a day before the incident. Counsel also argued that the injury inflicted by the appellant was a fatal blow on the vital part of the body of the deceased and therefore, the appellant has been rightlyconvicted under Section 302 IPC and appropriately awarded sentence for life imprisonment. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the records.

8. In the present case, a petty fight ensued between the accused and PW1 and PW2 which led to the murder of the deceased, Manoj. The family of the accused as well as of PW1 and PW2 and even the deceased were the residents of same locality i.e. Uttam Nagar. Disputes arose between the parties when sewer was being laid in their lane and after hearing the sound of digging in the lane PW1 and PW2 came out of their room and saw that the deceased, Manoj and accused, Naresh were standing there. The mother of accused, Naresh was also there. The mother of the accused wanted to remove the water pipe through which water

connection was connected to their house. PW1 made a request to the mother of the accused to remove the water pipe only after the completion of sewer work as removal of the water pipe line while digging work was in progress could cause storage of the water. Not liking this suggestion of PW1, accused Naresh started abusing PW1 and remarked that he was nobody to prevent him. He also insisted on removing the pipe at that very time. Finding the accused Naresh abusing PW1 to whom deceased, Manoj regarded as Babuji, deceased lodged a protest with the accused, accused thereafter rushed towards the deceased Manoj. Immediately PW1 had intervened to pacify both of them and sent them to their respective houses. On the following day i.e. 9.12.1995 at about 9.15 a.m. the accused and the deceased were standing in the gali while PW2 was sweeping floor in front of her house. As soon as accused Naresh saw deceased Manoj he started abusing and said that dog, you have again come in front of me. He also rushed towards deceased, Manoj. PW6,Virender Choudhary and PW-5, Ashok, also arrived there. Both Naresh and deceased, Manoj grappled with each other and in the process Naresh who was already having a knife with him stabbed deceased by causing injury on the left side of his chest. PW2, raised an alarm at which people gathered there. The accused Naresh immediately fled from the spot and Manoj was taken to the hospital in a private van where he was declared brought dead.

9. The first contention raised by Ld. counsel for the appellant was that the testimony of PW2 is totally uninspiring and unreliable as during her cross-examination she herself had admitted that she was a tutored witness having deposed before the Court at the dictates of a police officer. Counsel also pointed out that this witness in her cross-examination also admitted that she did not know anything about the said incident as she was present in the house and she came out of the house after she was called by the police. She also deposed that as soon as grappling between the accused and deceased started, she went to call mother of the deceased Manoj and when she had returned, she saw Manoj (deceased) in an injured state. Counsel also submitted that PW-2 also did not accompany the victim to the hospital and when she came out at the instance of the police, it is the police who told her that blood was lying in front of her house. Counsel also submitted that PW-2 was a near relative of the deceased and, therefore, she was an interested witness and as per the settled legal position the evidence of

interested witness, without further corroboration, cannot be relied upon.

10. Now let us examine the evidence of PW-2. PW-2 is one of the eye witnesses in the present case. It is on her statement only that the FIR was registered. In her statement before Police Ex.PW2/A, she stated that there was some sewer work in progress in their lane. At the same time accused Naresh decided to remove the water pipe. At this,her husband asked him not to do so and at that time mother of the appellant as well as the mother of the deceased was also present there. She further deposed that when her husband asked Naresh to not to do it, Naresh started abusing him, at which the deceased Manoj asked Naresh that why are you abusing Babuji. Thereupon both the accused and deceased grappled with each other, however, both were pacified at that time. On the next date, i.e. on the morning of 9thDecember, 1995 at about 9.15 a.m., accused Naresh and Manoj again grappled with each other. PW2- Kasturi Devi who was sweeping the floor in front of her house could witness both of them grappling with each other and accused Naresh stabbing Manoj with a knife. PW-2also raised alarm whereafter people gathered at the site and seeing the people, the accused immediately fled away from the scene of crime. In her cross-examination, PW-2 deposed that Police officer who had recorded her statement had come to the court on that date and asked her to say whatever she had stated to him. He had also readover the statement to PW2. This deposition of PW-2, in her cross-examination, has been castigated by the counsel for the appellant to be that of a tutored witness. We do not find any merit in this contention raised by the counsel for the appellant as by mere fact that an illiterate witness was reminded by the police that she should depose only on the lines of the statement made by her before the police at the time of recording her statement under Section 161 Cr.P.C., Such a reminder cannot be dubbed to say the least that a witness was being tutored by the police on some dotted lines. Before the court of law every witness is expected to deposetruthfully about the correct facts even though the same may not be in line with the statement of such a witness recordedby the police under Section 161 Cr.P.C. The police is also expected not to coerce or put any pressure upon any witness to tow the line of prosecution or to depose exactly in the manner as per the statement of such witness recorded under Section 161 Cr.P.C. Such a conduct of the police can cause serious interference in the administration of justice but to

say that a witness cannot even be reminded that she should depose in the same manner in terms of the statement given by her to the police, is an argument worth outright rejection.

11. It is a settled legal position that the statement of any witness recorded by the police officer during the course of investigation is not a substantive piece of evidence and the same can be used only for the limited purpose of contradicting prosecution. No sanctimony has been attached to the statement of a witness recorded by the police during the course of investigation as before the police witness issusceptible to all kinds of pulls and pressures to follow a particular line and therefore, ultimately it is deposition of a witness before the court of law which is held to be sanctimonious. PW-2 in the facts of the present case remained firm and consistent so far as she deposed that she had seen both accused and deceased grappling with each other and accused stabbing deceased, Manoj with a knife. Thus, under no circumstances, PW-2 can be held to be a tutored witness.

12. We also do not find any merit in the contention raised by the counsel for the appellant that PW-2 in her cross-examination had admitted that she did not know anything about the said incident as she was present in the house and came out after she was called by the police. Such an inference drawn by the counsel for the appellant from the crossexamination of PW-2 is illogical and without any basis. PW-2, in her cross-examination where she said that I do not know about this matter, at the same very moment she immediately clarified that about this matter she meant regarding inquiry made by the police official when she was in her house. The said line in the cross-examination cannot be interpreted to mean that she had never witnessed the said incident. Her ignorance was of the period later in time when the police had reached there and they started making inquiry from the people gathered at the site and by that time PW-2 came back to her house. The said contention raised by the counsel for the appellant is devoid of any force and thus rejected.

13. Counsel for the appellant also raised a contention that PW-2 had gone to call the mother of the deceased when she saw the deceased and accused grappling with each other and therefore, she did not witness the crime. This contention

raised by the counsel for the appellant also lacks any merit as PW-2 in her cross-examination unequivocally stated that she went to call the mother of deceased, Manoj immediately after the occurrence. PW-2 having not accompanied the deceased to the hospital is also of no consequence as she had already informed the mother of the deceased about the said incident and the mother of the deceased in fact had reached at the spot of the crime. As far as some other discrepanciesare concerned we think that the learned Trial Court was right in observing that PW2 wasan illiterate woman and when such an illiterate woman is cross-examined by a skilled lawyer then she is not expected to understand the finer nuances of legal proceedings and therefore, the statement of PW2 need not be literally construed. Such minor discrepancies as pointed out by the learned counsel for the appellant thus, cannot and should not discredit the intrinsicworth of the testimony of PW2 on the material facts concerning the incident of 8.12.1995 and 9.12.1995.

14. As far as adjudging the evidentiary value of the eye witness is concerned, the Hon'ble Apex Court in State of U.P. vs. Smt. Noorie alias Noor Jahan and others, AIR 1996 SC3073 held that "While assessing and evaluating the evidence of eye witnesses the court must adhere to two principles, namely whether in the circumstances of the case it was possible for the eye witness to be present at the scene and whether there is anything inherently improbable or unreliable."

15. Applying the aforesaid dicta in the circumstances of the present case, we have no hesitation to believe that PW-2 was present at the site of crime and also that there is no inherent improbability or unreliability in the said statement. The testimony of PW2 also finds corroboration from the testimonies of PW-1, PW5 and PW6 on material aspects.

16. PW-1 in his testimony before the court confirmed that there ensued an altercation between accused and deceased on 08.12.1995. Thus the evidence of this witness confirmed the cause as well as the time of dispute between the parties, which is again a relevant fact.

17. In the present case PW5 and PW-6, had turned hostile. However it is a settled legal position that merely because a witness was declared as hostile, there is no

need to reject his evidence in toto. In other words, the evidence of hostile witness can be relied upon at least to the extent, it supported the case of the prosecution. In the matter of Sathya Narayanan vs. State Rep. by Inspector of Police reported in (2012) 12 SCC627t was held by the Honble Supreme Court as under:

It is settled law that corroborated part of evidence of hostile witness regarding commission of offence is admissible. The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness, normally; it should look for corroboration with other witnesses. Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. To make it clear that evidence of hostile witness can be relied upon at least up to the extent; he supported the case of the prosecution. The evidence of a person does not become effaced from the record merely because he has turned hostile and his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution.

18. Now let us examine the evidence of PW-5. PW-5 in his examination in chief had admitted the fact that when he was returning after buying some medicine for his wife at about 9-10 a.m. on 9.12.1995 he saw a crowd gathered at the site after some fight and after he enquired from people, he was informed that a fight took place between the deceased Manoj and the accused Naresh and the deceased Manoj was taken to the hospital. The testimony of PW-5 clearly proves the date and time of occurrence involving the accused and the deceased and to this extent he fully supports the deposition of PW-2.

19. PW-6 is the second eye witness of the incident in this case. So far as his testimony before the court is concerned, he remained consistent in deposing that he had seen the accused, Naresh stabbing Manoj on the left side of his chest and

after stabbing him he ran away into a gali. PW6 however refused to identify the accused Naresh when he was present in court. The testimony of PW6, therefore, cannot be ignored merely because in cross-examination he refused to identify the accused in the Court. Any statement made by any witness either in his chief or in crossexamination, which the court finds to be patently false can be easily ignored. In the present case, PW6 is also resident of the same locality where the accused, PW1, PW2 and the deceased were residing and, therefore, it cannot be believed that PW6 could not remember the accused especially after stating in his deposition that he knew the assailant, Naresh who was living in the same gali in which the deceased was living. Thus, it is amply clear from the evidence of PW-6 that it Wasaccused above who had stabbed the deceased, and none else.

20. The second contention raised by the Counsel for the appellant was that PW-2 was a near relative of the deceased and, therefore, she was an interested witness and as per the settled legal position the evidence of interested witness and thus cannot be relied upon without further corroboration. To support his argument on this aspect counsel placed reliance on the judgment of the Apex Court in State of Rajasthan vs. Shri Teja Singh & Ors. 2001 (1) C.C.Cases ((SC) 134.

21. It is a settled legal position that just because a witness is an interested witness, it cannot be a ground to reject her testimony. In the matter of Harijana Narayana v. State of Andhra Pradesh, reported in AIR 2003 SC2851 it was held by the Honble Apex Court as under:

The evidence in each case has to be considered from the point of trustworthiness and from the angle as to whether is inspires confidence in the mind of the Court to accept and the question of credibility and reliability of a witness is to be decided with reference to the way he fared in crossexamination and the nature of impression created in the mind of the court. There is no universal rule as to warrant rejection of the evidence of a witness merely because the witness was related to or interested in the parties of either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances of the case to be true, it can provide a good and sound basis for

conviction. But where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and very careful too in weighing such evidence.

22. In State of Uttar Pradeshvs. Jagdeo & Ors., AIR 2003 SC660it has been held by the Honble Supreme Court that where the evidence of an eye-witness is consistent and tallies with each other, there is no reason to discard such evidence on the ground that they were related to the deceased as such were interested witnesses.

23. In the present case the testimony of PW-2 was consistent throughoutthat she saw accused and deceased grappling each other and also that she saw accused, Naresh stabbing the deceased on the left side of his chest. Apart from this,her testimony also found support from the testimony of PW1, PW5 as well as PW6. In view of such circumstances and above stated legal position we do not find any merit in the contention raised by the Counsel for the appellant that since PW2 is an interested her testimony cannot form the basis of conviction of the accused.

24. Dealing with the next argument raised by the Counsel for the appellant that one of the circumstances, which had been taken as adverse by the learned Trial Court was that the appellant had absconded immediately after the incident and could be traced only after a gap of 10 days. Placing reliance on the judgment of this Court in Bhagat Bhadur vs. The State 1996 JCC460counsel contended that mere abscondence of accused is not such a vital circumstance to prove guilt of the accused as a person may abscond for valid reasons.

25. Under Section 8 of Indian Evidence Act, 1872, the conduct of the accused influenced by a fact in issue, is itself a relevant fact. In the present case the testimony of both PW2 and PW6, sufficiently proved on record that the accused absconded after stabbing the deceased, Manoj. Thereafter it is not a disputed fact that the accused remained absent for almost a period of ten days. Thus the conduct of the accused i.e. abscondence, is definitely a relevant fact against the accused, though it may not be the sole basis for conviction.

26. This brings us to the last issue whether the offence committed by the appellant would only be culpable homicide amounting to murder under Section 300 IPC or would be culpable homicide not amounting to murder, under Exception 4 section 300 IPC. Let us first reproduce the said provision which reads as under:

Exception 4 to Section 300 of the Code, reads as follows: 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.

27. In the landmark judgment of Virsa Singh v. State of Punjab reported in (1958) 1 SCR1495 the Honble Supreme Court held that the following are the four steps of inquiry involved in the offence of Murder under section 300 IPC, clause thirdly::

i. ii. iii. iv.

28. first, whether bodily injury is present; second, what is the nature of the injury; third, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended; and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature.

In the present case all the above elements are fulfilled, there is an injury on the body of the accused; it is a fatal injury; the injury is the one which the accused intended to inflict and also the injury has been proved to be sufficient to cause death in the ordinary course of nature.Thus it has sufficiently been proved that the accused has committed murder of the deceased under Section 300 IPC. To this extent we do not find any infirmity in the decision of Learned Trial Court.

29. In order to bring the offence under this exception IV of Section 300 IPC, four things shall be proved by the accused: I. II. That the act was without premeditation. There was a sudden quarrel III. IV.

30. In the heat of passion upon a sudden quarrel there was a sudden fight. Offender did not take undue advantage or acted in a cruel or unusual manner. In Pappu v. State of Madhya Pradesh reported in (2006) 7 SCC391he Honble Apex Court almost exhaustively dealt with the parameters of Exception IV to Section 300 of the Code. The relevant paras of the judgment are reproduced as under:

13...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 Indian Penal Code is not defined in 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 cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage". It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 Indian Penal Code is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors. 31. For this purpose let us examine the facts of the case once again. As per the case proved by the prosecution, a petty fight on a very trivial issue took place a day before the incident, between PW1, and the accused, Naresh Kumar on the issue that accused, Naresh intended to remove a water pipe which was opposed by PW-1 and when PW-1 asked accused, Naresh for deferring his decision to take out the water pipe accused, Naresh started abusing him. The deceased questioned the accused, Naresh as to why he was abusing PW-1 and at this accused, Naresh

grappled with the deceased, however PW-1 intervened and pacified both at that time. Thus, this incident of08.12.1995was the genesis of the quarrel on the morning of 09.12.1995.Further it has been proved that on the next dayaccused and deceased were found grapplingwith each other and during that grappling the accusedin the heat of passion stabbed the deceased.

32. It shall be noted that accused, Naresh was having no previous animosity with the deceased. Further nothing was proved on record to indicate that accused, Naresh ever intended or had any premeditation to cause any injury to deceased assuming transmission of malice is inferable.

33. In the matter of Krishna Tiwary and Anr Vs. State of Bihar, reported in AIR 2001 SC2410 where the accused had inflicted knife blows in the heat of passion without any premeditation and without any intention that he would cause that injury, the Honble Apex Court held that the case was covered by Exception 4 to Section 300 of the IPC; the accused was convicted under Section 304-I of the IPC. Relevant paragraph of the said judgment is reproduced as under:

the accused had inflicted knife blows in the heat of passion without any premeditation and without any intention that he would cause that injury, his case was covered within Exception 4 to Section 300 of the IPC; he had been convicted under Section 304-I of the IPC. 21 Applying the test laid down in this case, there is no reason as to why the appellants should also not be accorded the benefit of Explanation 4 of Section 300 of the IPC. The conviction of the appellants for the offence of murder is accordingly modified for the offence of culpable homicide not amounting to murder. They are all accordingly convicted under Section 304-I of the IPC.

34. In State of H.P. vs. Wazir Chand and others reported in AIR 1978 SC315dealing with the sudden fight between two groups wherein one person in such fight was vitally wounded by the appellant by knife, the Honble Apex Court took a view that this case falls in exception 4 of Section 300 as there was no pre-meditation. Relevant paras of the said judgment are as under:

Therefore, when Parshottam Lal appeared there was a sudden fight upon a sudden quarrel flowing from the earlier incident and in this both sides attacked each other. All the ingredients to attract Exception 4 to Section 300, I.P.C. are established. There is no premeditation. Parshottam Lal left the theatre and came over there. There was a fight that ensued in a sudden quarrel. The previous incident between Om Parkash alias Pashi and accused No.3 Joginder was the cause and in that heat of passion and sudden quarrel parties grappled and attacked each other and it cannot be said in the circumstances that any undue advantage was taken. It may be recalled here that Parshottam Lal was a hefty well built fellow and if accused No.1 alone was to attack him he could not have escaped with few abrasions. Therefore, all the ingredients to attract Exception 4 of Section 300, I.P.C. are fully established.

26. As injury No.1 was fatal in the ordinary course of nature and accused No.1 had wielded a dangerous weapon and caused an injury on the vital part of the body and the blows were repeated inasmuch as four injuries were caused the offence but for the application of Exception 4 would be one under Section 302, I.P.C. but as Exception 4 is attracted, it would be reduced to Section 304, Part I, I.P.C. and the conviction of accused No.1 would be modified to one under Section 304, Part I, I.P.C. maintaining the sentence as awarded by the High Court as in our opinion that is adequate.

35. In the view of the facts and circumstances stated above we find that it has been sufficiently proved on record that there was a sudden quarrel between the accused and the deceased, on which a sudden fight ensued between the parties and in that transaction only the accused caused the deceased, a bodily injury. Although, the injury inflicted provedto be fatal, but it was inflicted in the heat of passion and without any premeditation, and also without the accused taking undue advantage or acting in a cruel or unusual manner.

36. In view of the aforesaid discussion, we find that it is a clear case of culpable homicide not amounting to murder falling under Exception 4 of Section 300 IPC, as the act was committed without premeditation, in a heat of passion upon sudden quarrel and without the offender having taken undue advantage or acted in a cruel

or unusual manner.

37. Accordingly, the judgment and the order of the learned Additional Sessions Judge dated 08.10.1998 and 09.10.1998, respectively, convicting the appellant for the offence punishable under Section 302 IPC is modified to the extent that the appellant is convicted under Section 304 Part I IPC and accordingly the sentence of life imprisonment imposed upon him by the Ld. trial court is converted to the Sentence of imprisonment for a period of ten years. He is on bail. His bail be cancelled and he be taken into custody forthwith.

38. It is ordered accordingly. KAILASH GAMBHIR, J.

INDERMEET KAUR, J.

DECEMBER09 2013 v