Ashok Kumar Vs. State

Ashok Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/1125263

Court : Delhi

Decided On : Jan-31-2014

Judge : Kailash Gambhir

Appellant : Ashok Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: January 31, 2014 + CRL.A. 229/2002 ASHOK KUMAR Through: ..... Appellant Mr. Avninder Singh, Advocate. versus STATE Through ..... Respondent Mr. Sunil Sharma, APP with SubInspector Manoj Kumar, Police Station Lodhi Colony, New Delhi. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT
KAILASH GAMBHIR, J1 Challenge in the present appeal is the impugned judgment dated 3rd April, 2001 and order on sentence, dated 4th April, 2001, whereby the appellant has been convicted for the offence punishable under Sections 302 and 307 of Indian Penal Code, 1860 (hereinafter referred to as IPC), and has been sentenced to undergo imprisonment for life together with payment of fine of Rs. 500/- under Section 302 IPC and rigorous imprisonment for a period of 7 years with fine of Rs.500/- under Section 307 IPC. Both the sentences were ordered to run concurrently.

2. The case of the prosecution in brief is as under:- That on 17.11.1997 at about 08:00 p.m. while deceased and his son were sitting in their shop, Ashok Kumar (accused) came there and sat on a table to which PW-1 raised objection on the ground that accused was a man of bad character. At this accused became infuriated and started using filthy language and uttered that he would just teach a lesson to him and having said that he took out a knife from the pocket of his trouser and gave a stab wound injury to PW-1 in his abdomen and when he was questioned by the deceased, he also gave a stab wound on the left side of deceased under the armpit. The deceased fell down profusely bleeding and was immediately removed to hospital, where he was declared brought dead by the doctors.

3. To prove its case the prosecution in all examined 14 witnesses. After the evidence of the prosecution, the statement of the accused was recorded under Section 313, Cr.P.C., in which he denied all the incriminating evidence, as were put to him and pleaded his innocence and false implication in the case. He also claimed that the injury on the person of the deceased- Badle and his son- Vijay were caused by one Rinku and not by him. The accused however, did not lead any evidence in his defence.

4. Addressing the arguments on behalf of the appellant, Mr. Avninder Singh, Advocate strenuously argued that the appellant has been falsely implicated in this case while the actual culprit of the crime namely- Rinku got away from the case scot free. Submissions raised by the learned counsel for the appellant was that Mr. Yasin (PW-2) in his deposition clearly disclosed about the presence of Rinku at the time of the alleged incident but astonishingly, PW-1 not only denied the presence of Rinku at the time of the alleged incident but also denied his acquaintance with him. Learned counsel for the appellant further submitted that because of such a brazen denial on the part of PW-1, about the presence of Rinku at the time of incident, no reliance can be placed on his testimony to inculpate the appellant. Learned counsel for the appellant further argued that the appellant was arrested, when he was present in front of the house, and this fact would again show that the appellant was easily accessible to the police and had never tried to abscond and if he would have committed the crime, then certainly he would not have been

present in his house. Learned counsel for the appellant also argued that the story of the prosecution that the appellant was carrying a dagger of a length of 28.6 cms in his back trousers pocket is highly unreliable as it is impossible to carry such a dagger in a back pocket of the trouser, for it cannot fit into the same. The other contention raised by the learned counsel for the appellant was that the recovery of the weapon of offence, was also highly suspicious as no criminal after committing the crime would keep carrying the weapon of offence with him. Learned counsel for the appellant further argued that no independent witness was joined at the time of the recovery of the dagger from the appellant.

5. Learned counsel for the appellant also argued that even the FSL Report, Ex. PX & PY is also questionable as no blood of the blood group matching the blood group of deceased was found on the clothes of the accused. Learned counsel for the appellant also argued that the prosecution has also failed to disclose any motive on the part of the appellant to carry out the murder of the deceased or to cause any injury to Vijay (PW-1). Inviting attention of this court to the deposition of PW-1, learned counsel for the appellant submitted that in his deposition he merely stated that the present accused came to their shop and sat on a table and when he was asked to get up from the table, he took out a knife from his pocket and gave one blow on the left side under the armpit of his father and one knife blow on the right side of his abdomen. Contention raised by the learned counsel for the appellant was that the mere fact that the accused was asked not to sit on a table could not provoke him to such an extent that he will go on to murder the deceased. Such a version of the prosecution is highly improbable as per the contention raised by the learned counsel for the appellant.

6. Learned counsel for the appellant also argued that the material incriminating evidence, necessary for the conviction of the appellant, under Section 302 IPC, were not put to the appellant while recording his statement under Section 313 of Cr.P.C. and such failure on the part of the court also renders the conviction of the appellant, under Section 302 IPC, untenable.

7. The other alternative plea raised by the learned counsel for the appellant was that, at the best, the appellant may be held guilty for committing an offence

punishable under Section 304 Part II and not under Section 302 IPC. To support his submissions, learned counsel for the appellant submitted that as per the case of the prosecution, it was a single blow that too under the left side of armpit of the deceased, which is not a vital part of the body and therefore, the conviction of the appellant under Section 302 IPC is wholly unsustainable. Learned counsel for the appellant also argued that there was no premeditation on the part of the appellant to carry out the murder of the deceased and the injury caused to the deceased was on account of a sudden fight on the spur of a moment and therefore the evidence of the prosecution is merely suited for a conviction under Section 304 Part II IPC and not under Section 302 IPC. Learned counsel for the appellant also submitted that even the injury caused to PW-1 was simple in nature and this fact would further show that the appellant had no intention to cause any serious harm to PW-1. In support of his arguments, learned counsel for the appellant placed reliance on the following judgments:a) Shivaji Sahabrao Bobade vs. State of Maharashtra, (1973) 2 SCC793b) Ashraf Ali vs. State of Assam (2008) 16 SCC328c) Jagrup Singh vs. State of Haryana (1981) 3 SCC616d) Virsa Singh vs. State of Punjab, AIR 1958 SC465e) Laxman Kalu Nikalje vs. State of Maharashtra, (1968) 3 SCR685f) Dewan Chand vs. State, 1984 Crl.LJ1045g) Smt. Sandhya Jadhav vs. State of Maharashtra, (2006) 4 SCC653h) Bangaru Venkata Rao vs. State of Andhra Pradesh, 2008 (11) SCALE16i) Mahesh Singh @ Rati Ram vs. State of NCT of Delhi (Crl.A.No.1015/2009 - Delhi High Court) citing Tholan vs. State of Tamil Nadu (1982) 2 SCC133j) Ramesh Vithalrao Thakre and Anr vs. State of Maharashtra, (2009) 17 SCC438k) Kandaswamy vs. State of Tamil Nadu, 2008 (10) SCALE315l) Kapur Singh vs. State of Pepsu, AIR 1956 SC654m) Hardev Singh & Anr vs. The State of Punjab, AIR 1975 SC179n) Gokul Parashram Patil vs. State of Maharashtra, AIR 1981 SC1441o) Chanda @ Chanda Ram, Cr. A. 1285 of 2013 (SC) p) Gurmukh Singh vs. State of Haryana (2009) 14 SCC3918. Based on the above submissions, learned counsel for the appellant also strongly urged that the impugned judgment and order on sentence may be set aside or in the alternative, the conviction of the appellant be converted from the offence punishable under Section 302 IPC to the offence punishable under Section 304 Part II IPC.

9. Refuting the above contentions raised by counsel for the appellant, Mr. Sunil Sharma, learned Additional Public Prosecutor for the State submitted that the prosecution case is an open and shut case, leaving no room for any doubt that it was the appellant who had brutally killed the deceased - Badle, without there being any kind of provocation from his side. Learned APP for the State also argued that the appellant had first hit Vijay (PW-1), the son of the deceased on the left side of his abdomen and thereafter he gave a blow to his father on his left side under the armpit. Learned APP for the State further argued that the dagger used by the appellant was of abnormal length and the same caused penetrating deep injuries which pierced intercostals muscle, upper lobe of left lung and pericardium and left ventricle with depth up to 14 cms. Contention raised by learned APP for the State was that the appellant with utmost cruelty inflicted the said single blow and the amount of force deployed by him caused such deep injury with the depth up to 40 cms piercing the intercostals muscle and the left lung of the deceased, resulting in his instant death. Learned APP for the State further submitted that as per the post mortem report proved on record as Ex.14/A the said injury caused by the appellant was sufficient in the ordinary course of nature to cause death and therefore the offence committed by the appellant clearly attracts Section 302 of IPC and should not be scaled down to the offence punishable under Section 304 Part I or Part II IPC. Learned APP for the State further submitted that PW-1 himself had suffered injuries at the hands of the appellant and there can be no reason to disbelieve the testimony of an injured eye witness, whose testimony otherwise remained un-shattered in his cross-examination and whose testimony found corroboration from the testimony of another eye witness PW-2 and the medical and forensic evidence proved on record.

10. Based on the aforesaid submissions, learned APP for the State strongly urged that this court may up held the judgment and order on sentence passed by the learned trial court.

11. 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 Trial Court record.

12. Human life is considered to be the most precious gift of God but in the eyes of criminals, like the appellant, human life has no value and can be done away with as a routine affair without realising that the death of any person can play havoc on the life of other family members due to host of reason. In the present case, the deceased is an unfortunate victim of the provocation of the appellant - accused who due to a quarrel for a minute with the son of the deceased went on to give a blow to the deceased which caused a stab wound injury as deep as 14 cms. and took away the life of the deceased, without there being any previous enmity or rivalry between him and the accused.

13. Dealing with the first contention raised by the counsel for the appellant that the appellant has been falsely implicated in this case while the actual culprit of the crime namely- Rinku got away from the case scot free. In the present case PW-1, Vijay denied the presence of any person namely Rinku on the spot at the time of the alleged incident. However PW-2, in his testimony alleged that some person namely Rinku was present on the spot, however he has not attributed any other role to him and he has been categorical in stating that he saw the accused first hitting PW-1 and thereafter the deceased, thus corroborating PW-1 on material facts. More so even the accused did not adduce any evidence in his defence to prove that the alleged offence was committed by one Rinku and not him. Apart from this, it is pertinent to mention that PW-1 in the present case was not just an eye witness but also an injured witness and therefore his testimony cannot be discarded so easily. In has been held by the Honble Supreme Court in the matter of Suresh Sitaram Surve v. State of Maharashtra, AIR 2003 SC344that the evidence of injured eye witnesses, in toto, cannot be discarded on the ground of inimical disposition towards the accused or the improbability of narrating the details of actual attack. True, their evidence has to be scrutinized with caution taking into account the factum of previous enmity and the tendency to exaggerate and to implicate as many as possible. But on a perusal of the evidence tested in the light of the broad probabilities, if the evidence appears to be reliable, then they should be relied upon. Thus in view of these facts and circumstances we are not convinced with the contention raised by the Counsel for the appellant that the offence was actually committed by one Rinku and not the accused, as we do not find any reason why PW-1, being an injured himself, would falsely name the

accused as a person who committed the offence and not the real culprit.

14. Dealing with the second contention raised by the counsel for the appellant that the appellant was arrested, when he was present in front of the house, and this fact would show that the appellant was easily accessible to the police and did not abscond and if he would have committed the crime, then certainly he would not have been in front of his house. In the matter of Baboo and others vs. State of Madhya Pradesh reported in AIR 1994 SC171, the Honble Supreme Court held that the circumstance that the accused did not abscond cannot be stretched to the extent of rejecting the evidence of the eye-witnesses. Thus we are not persuaded by this contention of the counsel for the appellant, as merely because the accused got apprehended from his house itself, the evidence indicating his guilt cannot be put into cold storage and it cannot be concluded that the accused has not committed the said offence.

15. While dealing with the third contention raised by the counsel for the appellant that the recovery of the weapon of offence, which was a dagger of the length of 28.6 cms, from the pocket of the appellant, was highly suspicious as no criminal, after committing the crime, would keep carrying the weapon of offence with him, we find our self in conformity with the findings arrived at by the learned trial court that it is not totally impossible for a dagger to fit into the right pocket of a trouser as being argued, especially in the light of the fact that it has not been stated by PW-13 that the dagger was totally inside the pocket so as to be not visible to others from outside.

16. Dealing with the fourth contention raised by the counsel for the appellant that no independent witness was joined at the time of recovery of dagger from the appellant. As per the testimony of PW-13, as soon as he apprehended the accused, he took a casual search and one dagger was recovered from right side pocket of the accused, pursuant to which a personal search memo (Ex. PW1-13/J) was also prepared. During the cross examination, the defence could not create any dent in the testimony of PW-13. Thereafter during the examination in chief, PW-1 was confronted with the said dagger and he recognized it as a dagger with which accused had attacked him and his father, deceased. Further the statement

of these witnesses was also corroborated by the FSL report being Ex. PX & PY as well as the post mortem report Ex. PW-14/A. As per the FSL report, human blood of blood group AB, being the blood group of deceased, was also detected on this dagger, indicating a link between the said dagger and the alleged incident. Further as per the post mortem report, the depth of the injury inflicted upon the deceased is approx. 14 cms, direction going downwards, medially & forward, which clearly shows that the accused must be carrying a weapon which is sharp edged and has long length. All these evidence clearly show that the said dagger was the same dagger, with which the accused committed the alleged offence. Thus merely on the ground that no independent witness has joined the search with police officers, the recovery of weapon of offence cannot be discredited.

17. Dealing with the next contention raised by the counsel for the appellant that even as per the FSL Report, no blood of the blood group matching the blood group of deceased was found on the clothes of the accused. This contention of the counsel for the appellant is worth outright rejection as the FSL report clearly states that the blood of the blood group AB was detected on the clothes of the appellant seized vide Parcel No.8.

18. Dealing with the next contention raised by the counsel for the appellant that the prosecution has also failed to disclose any motive on the part of the appellant. It is a fairly well settled law that failure to establish the motive for the crime does not throw over board the entire prosecution case. In a case where the prosecution succeeds in proving its case with cogent and convincing evidence, the absence of establishing motive will not prove fatal to the case of the prosecution. Moreover the present case is based on the eye witness testimony, corroborated in material terms by the other evidences and therefore we cannot accept the argument of the Counsel for the appellant that because of the failure of the prosecution to prove the motive, the appellant could not have been held guilty for committing the said crime. In the matter of Bipin Kumar Mondal Vs. State of West Bengal reported in AIR 2010 SC3638the Honble Apex Court held as under:

In case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness.

Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye- witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy.

Thus we do not find any merit in the contention raised by the Counsel for the appellant.

19. Dealing with the next contention raised by the counsel for the appellant that the material incriminating evidence, necessary for conviction of the appellant, under Section 302 IPC, were not put to the appellant while recording his statement under Section 313 of Cr.P.C. This argument of the counsel is also devoid of any merit as the examination of the accused under section 313 Cr.P.C clearly shows that all the evidences were duly put to him for his explanation.

20. Dealing with the core issue whether the offence committed by the appellants would only be culpable homicide amounting to murder under Section 300 IPC clause thirdly 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:Section 300 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, or2ndly.-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. or3rdly.-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, or4thly.-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.

21. 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.

16. 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. 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.

17. In the present case as per the post mortem report of the deceased (Ex. PW-14/A), following injuries were inflicted on the deceased by the accused persons:

External Injuries:

1.

2.

18. Stab wound over left chest lateral aspect in mid auxiliary line, placed obliquely in 3rd ICS size 4.2 X12 cm, angles acute, on dissection pericardium intercostals muscles, and upper lobe left lung, pericardium & left ventricle. Depth- approx. 14 cms, direction going downwards, medially & forward. Left Haemothorax- approx. 2.5 litre of blood, Hemopericardium approx. 500 ml of blood present. Abrasion over right flank 6 X7cms.

The cause of death as opined by the doctor (PW-14) who conducted the post mortem of the deceased was haemorrhagic shock consequent to stab injury on the left side under the armpit, sufficient to cause death in the ordinary course of nature.

19. Thus all the above elements are fulfilled, there is an injury on the left side under the armpit of the deceased; 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.

20. In order to bring the offence under this exception IV of Section 300 IPC, four things shall be proved by the accused: i. ii. iii. iv.

21. That the act was without premeditation. There was a sudden quarrel 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 the matter of Pappu v. State of Madhya Pradesh reported in (2006) 7 SCC391 the 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:

22. 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.

22. For this purpose let us recapitulate the facts of the present case once again. As per the case proved by the prosecution, accused Ashok, came to the shop of deceased and his son and sat on a table outside the shop. As per PW-1, when he told the accused to go away from his shop, he took out a knife from his pocket and gave a stab wound in his abdomen and a stab wound under left armpit of his father, deceased. His statement was corroborated in material terms by PW-2 but PW-2 additionally stated that when PW-1 asked the accused to get up and that he would see him tomorrow, the accused told PW-1 why to wait for tomorrow, he would see him now only and then the accused took out a knife from his pocket and gave a blow to PW-1 in his abdomen and when the deceased questioned the accused as to why he was hitting his son, the accused also gave a blow on the left side under the armpit of the deceased. Therefore the entire incident happened on the spur of a moment. The presence of the accused was also accidental. There arose a situation in which PW-1 first threatened the accused and then the accused, in the heat of passion gave a blow to PW-1, causing him simple injury, however when he was questioned by the deceased raising his arm, he went on and gave a blow to the deceased also and unfortunately the injury inflicted by this blow turned out to be fatal and led to the death of the deceased.

23. There was no enmity between the accused and PW-1 and deceased from before and thus there was no motive. Although the accused was carrying knife with him from before, but since there was no motive on the part of the accused to cause injury to either of them, a mere fact that he was already carrying knife would not lead to an inference that the accused had a premeditation to cause the death of the deceased. In almost similar facts in Mohd. Sultan vs. State reported in 2011 Cri.LJ4680 where also the accused had gone to his brother's factory nearby the same gali and within a gap of 2-3 minutes between the heated exchange of words, he brought the weapon and murdered the deceased, the Division Bench of this

court took a view that the case is clearly of culpable homicide not amounting to murder and will fall under exception 4 of Section 300 IPC. Relevant paragraph of the judgment is reproduced as under:24. It is clear from the testimonies of P Ws 8, 9 and 10 that there was no previous enmity between the Appellant Mohd. Sultan @ Kallu and Yamin and his brothers and cousin. It is also apparent from their testimonies that a theft had taken place in the night intervening 17/18.09.1992 in the factory of Mohd. Farukh and his brothers. There was a heated exchange of words on the next night around 9:15 pm between Mohd. Sultan @ Kallu and PW8 Mohd. Farukh, in which the Appellant Mohd. Sultan is said to have questioned Mohd. Farukh as to why the former's name was being dragged in connection with the theft of the previous night. The altercation between the two escalated and resulted in Mohd. Sultan @ Kallu slapping Mohd. Farukh 2/3 times. On the intervention of the other brothers and cousin Mumtaz, Mohd. Sultan left the premises threatening to teach them a lesson. He went to his brother's factory nearby in the same gali and returned with a knife within 2-3 minutes and immediately thereupon stabbed Yamin who was standing outside the factory with PW9 Yasin. This incident was, of course, seen by PW9 Yasin. Immediately thereafter, Mohd. Sultan @ Kallu ran away from the scene. This is clearly a case of culpable homicide. It would not be murder and would fall under Exception 4 if it was 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. There is no doubt in our minds that the incident took place without premeditation and the time gap between the heated exchange of words and the second incident of stabbing is only of 2-3 minutes, which clearly indicates that it was a sudden fight and there was no time for the tempers to have cooled so as to allow in the concept of premeditation. The tempers had not cooled and, therefore, in our view, the stabbing incident has to be regarded as in the course of a sudden fight in the heat of passion upon a sudden quarrel.

25. A similar situation had arisen in the case of Sukhbir Singh v. State of Haryana reported in AIR 2002 SC1168. In that case also there was no enmity between the parties. The occurrence had taken place when Sukhbir Singh got mud splashes on account of sweeping of a street by Ram Niwas and a quarrel ensued. The

deceased slapped the Appellant for no fault of his. The quarrel was sudden and on account of the heat of passion. The accused went home and came armed in the company of others without telling them of his intention. The time gap between the quarrel and the fight was a few minutes only. The Supreme Court observed that it was, therefore, probable that there was insufficient lapse of time between the quarrel and the fight which meant that the occurrence was sudden within the meaning of Exception 4 of Section 300 IPC.

26. In the matter of Krishna Tiwary and Anr. Vs. State of Bihar, reported in AIR 2001 SC2410 where also 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 Hon'ble Apex Court held that the case was covered by Exception 4 to Section 300 of the IPC; the accused was convicted under Section 304I of the IPC. Relevant paragraphs 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 304I 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 304I of the IPC.

27. It is pertinent to mention that the injury inflicted by the accused to the deceased went 14 cms deep and proved to be fatal. Thus it is required to examine as to whether the act of the accused will be called cruel or unusual. It is a settled position of law that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. In the matter of Sukhbir Singh vs. State of Haryana (Supra), the Honble Supreme Court held as under:

The infliction of the injuries and their nature proves the intention of the appellant But causing of such two injuries cannot be termed to be either in a cruel unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual

for the purposes of not availing the benefit of Exception 4 of Section 300IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. it is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injures at random and thus did not act in a cruel or unusual manner

28. In the present case, the accused was already in the process of hitting PW-1, and when he was questioned by the deceased, he also caused a blow to the deceased. It shall also be noted that the accused did not hit the deceased on the vital part of the body rather under the left armpit, however in the heat of passion the injury caused by the accused proved fatal and caused the death of the deceased. After inflicting this injury, the accused did not attempt to cause any other injury. Thus in such circumstances, it cannot be said that the accused has acted in unusual or cruel manner.

29. 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 PW-1, on which a sudden fight ensued between them and in that transaction only the accused caused the deceased, a bodily injury. Although, the injuries inflicted proved to be fatal, but it was inflicted in the heat of passion without there being any premeditation, and also without the accused taking undue advantage or acting in a cruel or unusual manner.

30. In the view of the aforesaid, the judgment and the order of the learned Additional Sessions Judge dated 3rd April, 2001and 4th April, 2001, 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 the sentence of life imprisonment is reduced to the sentence for a period of ten years.

31. Appellant is on bail. His bail be cancelled and he be taken into custody forthwith.

32. A copy of this order be sent to jail superintendent for information and further compliance.

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

SUNITA GUPTA, J.

JANUARY31 2014 pkb