

**Bati Kunjami Vs. State**

**Bati Kunjami Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/535746](http://sooperkanoon.com/535746)

**Court :** Orissa

**Decided On :** Dec-06-1995

**Reported in :** 1996CriLJ1431

**Judge :** A. Pasayat and ;P. Ray, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 105; [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302

**Appeal No. :** Jail Criminal Appeal No. 43 of 1992

**Appellant :** Bati Kunjami

**Respondent :** State

**Advocate for Def. :** Sangram Das, Addl. Standing Counsel

**Advocate for Pet/Ap. :** M. Mohanty, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**A. Pasayat, J.**

1. Appellant Bati Kunjami (hereinafter referred to as 'accused') faced trial for having committed murder of his son Kasa Kunjami (hereinafter referred to as 'deceased'). He was found guilty of an offence punishable under Section 302 of

the Indian Penal Code, 1860 (in short, 'IPC') and sentenced to undergo imprisonment for life by the learned Additional Sessions Judge, Jeypore (camp at Malkangiri).

2. Brief reference to the prosecution version would suffice :

On 22-1-1990, in the early evening, accused questioned deceased as to why he was not taking interest in tending cattle and why he returned home early. At this, deceased started quarrelling and gave a slap to the accused. On receiving the slap, accused became angry, went to his house, picked up an axe, bow and arrows, came back and killed deceased by shooting arrows and dealing axe blow. This ghastly occurrence was witnessed by Laxmi Kunjami (P.W. 3), wife of deceased. She immediately went to the house of Pitu Kunjami (P.W. 1), younger brother of deceased, and informed him regarding the incident. Pitu came to the spot along with others and found his brother lying dead on the road with bleeding injuries on his head and chest. On being asked by P.W.I, accused confessed to have killed deceased. Information was lodged at the Malkangiri police station by Pitu (P.W. 1). Investigation was undertaken and on completion thereof charge-sheet was submitted, and accused faced trial.

3. Accused pleaded innocence, and false implication.

4. In order to further its accusations, prosecution examined nine witnesses, of whom P.W. 3 was claimed to be an eye witness as indicated above, P.W. 1 (Pitu), the informant, and P.Ws. 2, 4 and 5 post-occurrence witnesses, before whom accused allegedly made extra-judicial confession, in addition to P.W. 1. P.W. 7, the doctor conducted postmortem examination of the deceased on the identification of constable (P.W. 8). He found one lacerated injury situated over the left side fore-head of size 3' x 1 1/2' x 2 1/2', one lacerated wound of size 1' x 1/2' x 1' situated over 1' posterior to left ear lobe, one lacerated wound of size 1' x 1/2' x 1/2' situated over 1 1/2' above the left ear pinna, and one penetrating wound of size 1 1/2' x 1 x 2 situated over left chest 3 1/2' below the nipple. On dissection he noticed, depressed fracture of frontal bone corresponding to external injury No. 1, and rupture of membrane, injury of brain matter intracranial haemorrhage corresponding to external injury No. 1, damage to the scalp tissues corresponding

to external injury No. 2, injury to the scalp tissues corresponding to external injury No. 3, along with damage to intra-coastal muscale of the pleura corresponding to external injury No. 4.

5. Placing implicit reliance on the evidence of P.W.3, learned trial Judge found accused guilty, convicted and sentenced him as aforesaid.

6. In support of the appeal, Mr. M. Mohanty, learned counsel for the accused-appellant submitted that a case under section 302 IPC is not made out, and even if the prosecution version is accepted in its entirety, the case is one covered under Exception 4 to 300 IPC. With reference to factual aspects highlighted by the prosecution, it is stated that the occurrence took place without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and the accused cannot be said to have acted in a cruel or unusual manner. Mr. Sangram Das, learned counsel for the State, on the other hand submitted that the case is squarely covered by 302 IPC. The fact situation as depicted by the witnesses clearly points out to the fact that there was no suddenness in the action of accused and he had enough time to cool his hot passion, if any, and, therefore, the conviction has been rightly made.

7. Exception 4 to Section 300 covers acts done in a sudden fight. It deals with a case of provocation not covered by the first exception. The exception is founded upon same principle of absence of premeditation. The distinction is that while in Exception 1, there is total deprivation of self-control, in Exception 4 there is only that heat of passion which clouds a person's sober reason and leads to acts which would not have been otherwise committed. A sudden fight implies mutual provocation and postulates bilateral transaction in which both victim and assailant assault each other.

In order to bring an application of Exception 4, the following essentials are to be established, i.e., death was caused;

(i) without premeditation;

(ii) in a sudden fight;

(iii) in the heat of passion;

(iv) upon a sudden quarrel; and

(v) without the offender having taken undue advantage or acted in a cruel or unusual manner.

In order to bring a case within this exception all the ingredients must be found.

So long as the fight is unpremeditated and sudden, the accused, irrespective of his conduct before the fight earns the mitigation provided for in the Exception 4 subject to the condition that he did not in the course of the fight take undue advantage or act in a cruel or unusual manner. Heat of passion requires that there must be no time for the passion to cool down. While considering whether the exception is applicable to a given set of facts, the first test is not whether the killing was premeditated or not. The test is whether the act of an accused which caused the deceased's death was done without pre- meditation. The distinction is not to be ignored. Even if the killing is not premeditated, but if the act which causes the killing is premeditated, the exception would not apply.

8. The word 'fight' is not defined in the IPC. The word as used in the Exception 4 does not necessarily mean a fight with weapons. A fight is a combat between two or 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. It is not every slight provocation, even by a blow, which will, when the party receiving it strikes with a deadly weapon, bring in application of Exception 4. It depends upon the time elapsing between the blow and the injury and also whether the injury was inflicted with an instrument at the moment in the possession of the party, or whether he went to fetch it from another place. If there was no time and interval sufficient for the passion of a man proved to be of not very strong intellect to cool, and for reason to regain dominion over his mind, then Exception 4 has application. But if the act was that of a wicked, malicious and diabolic mind, then its application is ruled out. The proper test of the applicability of the exception is, whether or not the accused shows, since the onus

is on him, under Section 105 of the Indian [Evidence Act, 1872](#) (in short, 'the Evidence Act'), that he acted solely out of the provocation engendered by the heat of a sudden quarrel followed by a sudden fight. Where the maximum which can be said in favour of the accused is that it is a case of sudden fight without premeditation in the heat of passion upon a sudden quarrel, that by itself shall not be sufficient to bring the case under Exception 4. The last portion of the Exception 4 makes it clear that where the offender takes undue advantage or had. acted in a cruel or unusual manner the benefit of the exception cannot be given to him.

9. The evidence of P.W. 3 shows that after the accused received slap from deceased, he ran to his house, brought several weapons and inflicted various injuries; at least two of which were fatal injuries. Even if it is accepted that the action was not premeditated at the point of time the slap was given by the deceased, yet the fact that accused brought the weapons after running to his house situated at a considerable distance and inflicted several blows is clearly indicative of the intention of accused. It is not a case where heat of passion can be said to have continued for a considerable length of time. Though no general guidelines or principles can be laid down in such matters, factual aspects have to be considered. The nature of injuries is clearly indicative of the intentions of the accused and it cannot be said that he had not acted in a cruel manner. Cruelty is a factor which depends on several aspects, and the nature of injuries, the weapon used are some of the factors which throw sufficient light on the question whether a person has acted with cruelty or not. In order to get benefit of Exception 4 it must be established that the offender did not take undue advantage or act in a cruel or unusual manner. The expression 'undue advantage' as used in the exception means 'unfair advantage'. The question as to what is 'undue advantage' in each particular case is a question of fact. The expressions 'undue advantage' and 'unusual manner' savour of the Rules of chivalry which required adversaries to deliver a challenge, to measure their swords before deigning to strike, which scorned the hitting of an adversary unawares when placed at a disadvantage.

10. So far as the question whether accused acted in unusual manner is concerned, it is to be noted that after receiving slap, the accused got so enraged that he went to his house,, came back with deadly weapons and inflicted several

fatal injuries. The act is certainly unusual.

11. Judged in the aforesaid background, we are of the view that Section 302 IPC has been rightly applied by the learned trial Judge.

12. There is no scope for interference, and the appeal is dismissed.

**P. Ray, J.**

13. I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**