

**Vinod Kumar. Vs. the State of Rajasthan.**

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**Court :** Rajasthan Jaipur

**Decided On :** Aug-25-2010

**Judge :** Mr. Justice Narendra Kumar Jain; Dr.Justice Meena V.Gomber, Jj.

**Acts :** Indian Penal Code (IPC) - Sections 302, 304; Code Of Criminal Procedure (CPC) - Sections 313; Evidence Act - Section 27.

**Appeal No. :** D.B.CRIMINAL APPEAL NO.1565/2002.

**Appellant :** Vinod Kumar.

**Respondent :** The State of Rajasthan.

**Advocate for Def. :** Mr.J.R.Bijarnia, Adv.

**Advocate for Pet/Ap. :** Mr.Sanjay Joshi; Ms.Ranjana Sharma; Mr.Banwari Lal Saini, Advs.

**Judgement :**

1. Accused-appellant Vinod Kumar S/O Shukli Ram has preferred this appeal challenging his conviction and sentence recorded by Additional District & Sessions Judge (Fast Track) No.2, Bharatpur in Sessions Case No.11/2002 vide the impugned judgment and order dated 25th September, 2002, whereby he has been convicted and sentenced under Section 302 IPC to imprisonment for life and a fine of Rs.500/-; in default of payment of fine to further undergo two months' additional rigorous imprisonment.

2. Briefly stated the facts of the case are that a typed report (Ex.P1) was lodged by P.W.1 Ramesh at Police Station, Nadbai on 14.3.2002 at 5:15 PM alleging inter alia that on that day in the noon at about 12 O' Clock, Vinod S/o Shukli @ Ramchand came to his brother Suresh's Barber shop situated at Halena Road, Nadbai and thereafter started quarreling with his brother Suresh by abusing him. It was further alleged that accused Vinod inflicted a number of blows by scissors (used for cutting hairs) in the stomach of Suresh, as a result of which, Suresh while screaming fell down on the ground with profuse bleeding. The occurrence has been seen by Kaushalendra and Gheesa. On hearing the screams of Suresh, he and other persons also reached at the place of occurrence but the accused Vinod ran away. Thereafter, he took his brother for treatment to Government Hospital, Bharatpur, where he was declared dead by the doctor.

3. On the basis of above information, a case No.131/2002 was registered under Section 302 IPC. Chalked F.I.R. (Ex.P2) was registered and investigation commenced. Autopsy of the dead body of Suresh was conducted by Dr.B.L.Meena (P.W.15). Accused Vinod was arrested on 15th March, 2002 at 8:45 PM.

4. After completion of investigation, police filed a charge-sheet against the accused-appellant under Section 302 IPC in the court of Additional Chief Judicial Magistrate No.1, Bharatpur, who committed the case for trial to the court of Sessions Judge, Bharatpur, who transferred the same for trial to the court of Additional District & Sessions Judge (Fast Track) No.2, Bharatpur.

5. The trial court framed charge against the accused-appellant under Section 302 IPC. The accused denied the charge and claimed to be tried. Prosecution in support of its case examined P.W.1 to P.W.19 and produced documentary evidence Ex.P1 to Ex.P15. Thereafter, statement of the accused was recorded under Section 313 Cr.P.C., who stated that he has not committed murder of Suresh and has been falsely implicated in the case. In defence accused examined D.W.1 Pooran Singh and produced documentary evidence.

6. Learned trial court after considering the submissions of the parties and examined the record, convicted and sentenced the appellant as mentioned above.

7. Submission of the learned counsel for the appellant is that there are number of serious and material contradictions in the statements of the prosecution witnesses and from their close scrutiny, it is clear that so called eye-witnesses were not present at the spot and it is a case of no evidence. The trial court committed illegality in convicting the accused-appellant under Section 302 IPC. However, during the course of arguments, looking to the overwhelming consistent evidence available on record, he confined his argument to convert the conviction of appellant from Section 302 IPC to Section 304 Part-II IPC only, looking to all the facts and circumstances of the case, particularly that there was no enmity in between the accused and the deceased, incident took place all of a sudden, appellant was running a stall of Barber, scissors used by him was available in ordinary course of nature and he did not bring any other deadly weapon and there was no specific motive. He contended that the case does not travel beyond the scope of Section 304 Part-II IPC. In support of his submissions, he referred to Salim Sahab vs. State of M.P., (2007) 1 S.C.C. Page 699, Vadla Chandraiah vs. State of A.P., (2006) 13 S.c.c. Page 587 and State of U.P. v. Indrajeet alias Sukhatha, 2000 Cr.L.J. Page 4663 (S.C.) . He also contended that since the date of arrest i.e. 15th March, 2002, the appellant is in custody and has already undergone imprisonment of more than 8 years & 5 months, therefore, he can be awarded sentence of imprisonment already undergone by him and he may now be released forthwith.

8. Per contra, learned Public Prosecutor contended that appellant inflicted four injuries by scissors on the person of deceased, therefore, learned trial court was right in convicting and sentencing the accused under Section 302 IPC. However, during the course of arguments, he confined to his sole submission that it is a fit case for conviction of appellant under Section 304 Part-I IPC and not under Section 304 Part-II IPC, as argued by the learned counsel for the appellant. In support of his submission, he referred to Surinder Kumar vs. Union Territory, Chandigarh (AIR 1989 SC Page 1094).

9. We have considered the submissions of parties and minutely scanned the impugned judgment and record of the trial court.

10. From the record, it reveals that incident took place on 14th March, 2002 at 12 Noon. Deceased Suresh and accused Vinod both were doing their business of hair cutting. Both were running their barber shops at Halena Road, Nadbai. In report Ex.P1, it has been alleged that accused Vinod came at the shop of deceased Suresh, started abusing him and thereafter inflicted number of injuries in his stomach by scissors. As per report (Ex.P1), there are two eye-witnesses namely Kaushailendra (P.W.4) and Gheesa (P.W.5). Author of report (Ex.P1) Ramesh is also an eye-witness. Prosecution has also examined P.W.7 Bhura as an eye-witness in the case, although his name does not find place in the report (Ex.P1), which was lodged at 5:15 PM i.e. after more than 5 hours.

11. From the statements of all the four eye-witnesses, P.W.1 Ramesh, P.W.4 Kaushailendra, P.W.5 Gheesa and P.W.7 Bhura, it is clear beyond all reasonable doubts that scuffle took place in between Suresh and accused Vinod, Vinod inflicted injuries on the person of deceased by scissors.

12. Accused was arrested on 15th March, 2002 at about 8:45 PM vide arrest memo (Ex.P9). While in custody, accused Vinod furnished information under Section 27 of the Evidence Act (Ex.P14) on 17th March, 2002 at 10:15 AM and in pursuance thereof a bloodstained scissors was recovered vide recovery memo Ex.P7 on 17th March, 2002 at 1:30 PM. Clothes of the deceased were also seized vide seizure memo Ex.P10. Bloodstained scissors as well as cloths of deceased were sent for chemical examination. Ex.P15 is the FSL report and according to it, blood stains found on the scissors, shirt and pant of the deceased, were found to be of human origin with A group blood.

13. P.W.15 Dr.B.L.Meena examined the dead body of deceased Suresh and he proved post-mortem report Ex.P11, wherein following injuries and cause of death were mentioned:-

(1) Oblique incised (stab wound) 1.5 x 1cm. x Chest cavity deep over Lt. Mid chest wall Ant just 6 cm. Below Lt. Nipple. Rt. angle ant Lt. Angle obtuse with clear cut margin & fresh clotted blood over mid clavicle line.

(2) Vertical oblique incised wound 5 x 2.5 cm. x Chest cavity deep over Lt. Costal edge mid Ant over mid clavicle line just 6 cm. Below injury No. one margin clean cut regular. Rt. angle obtuse with Lt. angle acute with fresh clotted blood. (3) Punctured stab wound 1.5 x 1.25 cm. X abd. Cavity deep over Lt. Lumber mid areas with clean cut edge & fresh clotted blood. Oval shape.

(4) Oblique incised (stab wound) 1.5 x 1 cm. X abdominal cavity deep over Lt. Iliac fossa lower part from which part of small intestine and omentum protruding out of it. Rt. upper angle acute & Lt. Lower angle obtuse with clavicle edge fresh clotted blood. Opinion:

The mode of death is acute haemorrhagic shock brought about as the result of Ante mortem injury to heart with cumulative effect of Injury to stomach & small intestine dual effect of injury No. one, two & four which are sufficient to cause death separately in ordinarily course of nature.

14. From the above narration of facts and a close scrutiny of statements of eye-witnesses P.W.1 Ramesh, P.W.4, Kaushailendra, P.W.5 Gheesa and P.W.7 Bhura, Medical Officer P.W.15 B.L.Meena and Investigating Officer P.W.19 Rajendra Singh, S.H.O., it is clearly proved that it was appellant Vinod, who inflicted injuries by scissors on the person of deceased resulting in his death.

15. The next question for consideration before us is whether the accused-appellant has rightly been convicted under Section 302 IPC by the trial court or he should be convicted under Section 304 Part-II IPC, as contended by the learned counsel for the appellant or he should be convicted under Section 304 Part-I IPC, as contended by the learned Public Prosecutor.

16. There are four eye-witnesses in the present case namely P.W.1 Ramesh, P.W.4 Kaushailendra, P.W.5 Gheesa and P.W.7 Bhura. P.W.1 Ramesh Chand, who is brother of deceased stated that Suresh was running a barber shop. Vinod also installed a chair for hair cutting business nearer to the chair of Suresh. Suresh raised an objection and thereafter both started abusing each other and altercation took place between them. He stated as under:- "??? ????? ??? ??-??, ???-??? ?? ???"

17. It is relevant to mention that from the statement of P.W.1, it is clear that there was no previous enmity in between the deceased and accused Vinod and incident took place all of a sudden on installing chair for hair cutting business by accused Vinod nearer to the chair of deceased Suresh.

18. P.W.4 Kaushailendra also stated that while he was sitting with Suresh and Ramesh, they were talking with each other, there was a quarrel in between deceased Suresh and accused Vinod and scuffle took place, Vinod took his scissors and inflicted 4-5 injuries on the person of Suresh, He stated as under:-  
"????? ?? ?????? ??? ?????? ?????-??????? ?????? ?? ?????? ?????? ???  
?? ?????? ?? 4-5 ??? ?????? ???"

In his cross examination, P.W.4 specifically admitted that there was no scuffle but abusing in between both of them on installing a chair by Vinod. He stated as under:-

"????? ??? ?????? ??????? ??????? ??? ?????? ?? ??? ?????? ?????? ??? ???  
????????? ?????? ??? ???"

19. It is also relevant to mention that P.W.4 Kaushailendra has not stated that there was any previous enmity in between deceased and accused or any motive to commit murder of deceased Suresh.

20. P.W.5 Gheesa also stated that on 14th March, 2002 a quarrel took place in between Suresh and Vinod. In his cross examination, he admitted that they were quarrelling on the issue that Vinod installed his shop adjacent to Suresh and not at some distance. He stated as under:- "?? ?????? ??? ??? ?? ??? ?? ?? ?????? ?? ??  
?????? ?????? ?? ?????? ?????? ??, ??? ?????? ??????"

21. P.W.7 Bhura, in his examination in chief, stated that he had gone to the shop of Suresh at about 12 O' Clock (Noon) and he saw that a quarrel was going on in between Vinod and Suresh. Suresh was telling that as to why he has put his chair in his side, whereas earlier to it, he was putting his chair at some distance. The quarrel was started on this issue. He stated as under P.W.7 in his cross examination also admitted as under:-

22. All the four eye-witnesses have not stated that there was any previous enmity in between deceased Suresh and accused Vinod or there was any motive to commit murder of deceased Suresh. All the above quoted portions of statements of all the four eye-witnesses make it clear that incident took place all of a sudden on the issue that Vinod installed his chair for hair cutting of his customers just nearer to the chair of deceased Suresh. Suresh was raising an objection and was telling Vinod to put his chair at some distance and on this reason a quarrel took place in between them. Deceased and accused both are barbers and were doing their business of hair cutting and there was no premeditation in the case. Accused Vinod did not come armed with any deadly weapon. Scissors is usually kept by all barbers in their shop or their table-chair, where they cut the hairs of their customers. When quarrel took place in between both, then all of a sudden accused Vinod inflicted injuries with scissors on the person of deceased. As per post-mortem report Ex.P11, accused inflicted injuries on the chest and stomach of the deceased. The cause of death was cumulative effect of injuries No.s 1, 2 and 4.

23. In Salim Sahab's case (supra) the Hon'ble Apex Court considered the case where facts of the case were that, while grappling with deceased Salim, the accused took out a pair of scissors, with which he assaulted the deceased in his abdomen and chest with the result that the deceased fell down unconscious, and there was profuse bleeding from his wounds. The Hon'ble Apex Court considered its earlier various judgments and also the fourth exception of section 300 and held that during a quarrel between the deceased and the accused, they were grappling and during that quarrel, the accused attacked the deceased with a pair of scissors. It was not a very big sized weapon though it was certainly having a sharp-edged point and altered the conviction of appellant from Section 302 to Section 304 Part-II IPC. Paras 17 & 18 of the judgment are reproduced as under:-

17. The factual scenario shows that during a quarrel between the deceased and the accused, they were grappling and during that quarrel, the accused attacked the deceased with a pair of scissors. It was not a very big-sized weapon though it was certainly having a sharp-edged point.

18. In view of the factual position as noted above the applicable provision would be Section 304 Part II IPC and not Section 302 IPC. The conviction is accordingly altered. Custodial sentence of seven years' rigorous imprisonment would suffice.

24. In *Vadla Chandraiah's case*(supra) where 'appellant (carpenter) and his son intervened. The quarrel continued for 10-15 minute. Allegedly, the appellant hacked the deceased with a badze ( a heavy sharp axe like instrument used in the carpentry work) causing instantaneous death of the deceased'. There were four injuries on the person of deceased by sharp edged weapon. The Apex Court considered the question 'whether in the absence of any motive and the fight, which took place was a sudden one, a case under Section 304 Pat-II IPC was made out against the appellant or not'. Hon'ble Apex Court considered its earlier various judgments and also the fourth exception of Section 300 IPC and came to a conclusion that conviction of appellant may be altered from Section 302 to one under Section 304 Part-II IPC.

25. In *State of U.P. vs. Indrajeet* (Supra), the Hon'ble Apex Court observed that in absence of intention to cause death coupled with the lack of knowledge that death would be inevitably caused on account of the injury would make the offence fall only under Section 304, Part II, IPC, and not under Section 302, IPC. Hon'ble Apex court observed as under:- There is no clinching circumstance or evidence to reasonably establish the culpability of the accused for a charge of murder. Absence of intention to cause the death coupled with the lack of knowledge that death would be inevitably caused on account of the injury would make the offence fall only under Section 304, Part II, IPC, and not under Section 302, IPC. Consequently, in the absence of any motive or intention to kill and having regard to the type of weapon used and the number as well as the nature of injuries found inflicted, the case on hand could not appropriately be said to be one warranting the application of Section 302, IPC.

26. In *Surinder Kumar's case* (supra), the Hon'ble Apex Court considered the facts that the possession of the kitchen was not delivered to PW 4 till January 3, 1975 and that led to the quarrel in which PW 2 received a knife injury on the neck and his brother Nitya Nand lost his life. There were 3 injuries by knife. The trial court

and the High Court both convicted the accused under Section 302 IPC. By taking an over all view of the incident, the Apex Court observed that accused is entitled to the benefit of the exception fourth of Section 300 IPC and convicted the accused under Section 304 Part-I IPC. Hon'ble Apex Court observed as under:- Taking an overall view of the incident we are inclined to think that the appellant was entitled to the benefit of the exception relied upon. The High Court refused to grant him that benefit on the ground that he had acted in a cruel manner but we do not think that merely because three injuries were caused to the deceased it could be said that he had acted in a cruel and unusual manner. Under these circumstances, we think it proper to convict the accused under S. 304, Part I, I.P.C.

27. Now, we will consider, whether exception 4 of Section 300 IPC is attracted in the present case or not. Exception 4 to Section 300 IPC 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 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.

28. To invoke Exception fourth of Section 300 IPC, four requirements must be satisfied namely; (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailants had not taken any undue advantage or acted in a cruel manner.

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

30. Looking to the evidence of the present case, we find that before the date of incident, there was no enmity in between the deceased, there was no motive on the part of the accused to kill the deceased, the incident took place all of a sudden in the Noon at about 12 O' Clock of 14th March, 2002, a chair was put by accused Vinod for cutting hairs of his customers near to the chair of deceased. From the statements of all the four eye-witnesses, it is clear that quarrel took place all of a sudden, therefore, it is case of sudden fight and there was no premeditation. Deceased and accused were abusing each other, accused took his scissors, which is always available at the shop of barbers and inflicted injuries on the person of deceased. Although there were four injuries on the person of deceased, but merely because of four injuries, it cannot be said that accused acted in a cruel and unusual manner, as held by Hon'ble Apex Court in Surinder Kumar's case(supra). Therefore, exception 4 to Section 300 IPC is fully attracted in the facts & circumstances of the present case.

31. Therefore, looking to the facts and circumstances of the case, we are of the view that learned trial court committed an illegality in convicting the accused appellant under Section 302 IPC. In our view, the accused is entitled for benefit of Exception fourth of Section 300 IPC and he is liable to be convicted under Section 304 Part-I IPC.

32. Consequently, we allow the appeal of appellant in part. His conviction and sentence Under Section 302 IPC is altered to one under Section 304 Part-I IPC to a period of imprisonment of 8 years', 5 months' and 10 days already undergone by him. The impugned

## **JUDGMENT / ORDER**

of the trial court is modified to the above extent. The appellant is in Jail. Therefore, he be released forthwith, if his custody is not required in any other case.

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