

Kalyan Sharma Vs. State

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Court : Delhi

Decided On : May-10-2011

Judge : S. Ravindra Bhat; G.P.Mittal, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 307; Code of Criminal Procedure (CrPC) - Sections 173, 313

Appeal No. : CRL.A No.89/1998

Appellant : Kalyan Sharma

Respondent : State

Advocate for Def. : Mr.Jaideep Malik, Adv.

Advocate for Pet/Ap. : Mr. Rajiv Bajaj; Mr. R.C.S. Bhadoria, Adv.

Judgement :

1. This Appeal is directed against the judgment dated 23.08.1997 and the order on sentence dated 28.08.1997 whereby the Appellant was convicted for the offence punishable under Section 302 Indian Penal Code (IPC) and was sentenced to undergo imprisonment for life and to pay the fine of `1,000/- or in default of payment of fine to undergo simple Imprisonment for three months.

2. Appellant Kalyan Sharma was employed as a security guard at Firdos Farm House (the farm), situated at Bijwasan Road, Najafgarh. On 20.04.1994 at about

5:40 P.M. Sarwan Singh (PW-1) and the Appellant were present at the main gate of the farm. The other security personnel working in the farm were also on duty. Appellant was holding a .315 bore rifle.

3. Lalit Gaili (the deceased) who was working as a Manager in the farm went to the main gate in his Maruti Car No. DL-ICC- 0533 after the office closed. Surrender Pal and another Chowkidar at the farm opened the main gate. Lalit Gaili had a word with Sudershan Singh, Security Officer at the farm while sitting in his Maruti car addressing him as "Boss". Sudershan Singh shook his hand with the deceased.

4. Thereafter, the deceased turned towards the Appellant who was sitting on the other side (of the gate) and addressed him "Mucchad Tera Kya Haal Hain". On hearing this, the Appellant lifted his rifle, went in front of the Maruti car (driven by the deceased) while the car had started moving at a very slow speed. The Appellant fired a shot, which hit the deceased in the chest after piercing the windscreen. The Appellant took out the shell of the fired cartridge from the rifle, placed it in his pocket and replaced a live cartridge from the magazine into the rifle. In order to escape he started running. PW-1 Sarwan Singh chased the Appellant, to capture him. It is alleged that while chasing the Appellant PW-1 also asked the driver of a Maruti car to inform the PCR Gypsy which was stationed near Park at Bambooli.

5. The Appellant was captured by PW-8 ASI S.P.Muthu and other police personnel from inside the service lane near the main road. The PCR team took the Appellant to the spot i.e. in front of the farm gate. PW-8 noticed the deceased lying injured in the Maruti Car. The deceased was shifted to the PCR van and immediately removed to Safdarjung Hospital where he was declared "brought dead" by the doctor on duty at the Casualty ward.

6. Information with regard to the incident was passed on to Police Station Najafgarh which was recorded by DD No.18-A on 20.04.1994. The duty officer at Police Station Najafgarh passed on the message to Police Post Kapashera which was recorded by DD No.13 dated 20.04.1994 (Ex.PW-7/A) at 5:55 P.M.

7. PW-20 SI Rakesh Giri along with Constable Ramesh reached the spot. He found one Maruti car bearing No.DL-1CC-0533 parked there, its windscreen broken; there were blood stains on the drivers seat as well and also on the ground. PW- 20 recorded statement Ex.PW-4/A of complainant Sudershan Singh. He made endorsement Ex.PW-20/A and sent the rukka to the Police Station through Constable Desh Raj for registration of a case under Section 307 IPC. PW-20 prepared the site plan at the instance of PW-4. He lifted blood from four different places including one from the Maruti Car, got the scene of the incident photographed and reached Police Post Kapashera along with the complainant.

8. At about 8:00 P.M,. PW-8 ASI S.P. Muthu of PCR took the Appellant to the Police Post in the PCR van. He was handed over to PW-20 SI Rakesh Giri. PW-8 also produced one rifle along with seven cartridges before PW-20. The Appellant was searched and an empty cartridge was recovered from his pocket. A sketch of the empty cartridge was prepared and was sealed in a packet with the seal „SRT. The rifle and cartridges produced by PW-8 were also sealed with the seal „SRT and seized by memo Ex.PW-4/B. The information regarding the injured being brought dead was received from Safdarjung Hospital. This was also revealed by the PCR personnel.

9. Inspector Jagmal Singh (PW-19), posted as the SHO, Police Station Najafgarh took over further investigation of the case. He reached Safdarjung hospital and obtained the deceaseds MLC Ex.PW-17/A.

10. PW-19 conducted the inquest proceedings and prepared the inquest report Ex.PW-19/B. He (PW-19) prepared brief facts and sent the dead body for postmortem examination; sealed pullandahs were sent to CFSL Chandigarh; the report Ex.PX was received later. After completion of the investigation, a report under Section 173 Cr.P.C. was filed in the Court.

11. On Appellants pleading not guilty, the prosecution examined 20 witnesses to the Appellants guilt.

12. PW-1 Sarwan Singh, PW-4 Sudershan Singh are the eye witnesses of the incident. PW-8 ASI S.P. Muthu is another material witness (he was In- charge of

the PCR van) who apprehended the Appellant; PW-11 ACP Chaudhary Ram Narain Singh was ACP (Licensing). He proved the link evidence to the effect that the armed licence No.NEBP 120030 for rifle number 88 AB 1650 was issued in the name of Kalyan Singh son of Shri Chottey Lal resident of J-323, Gali No.9, Kartar Nagar, Delhi (i.e. the Appellant). He testified that the licence was initially issued in favour of Kalyan Singh by the District Magistrate, Gwalior on 24.02.1989 and thereafter it was transferred to Delhi on the basis of change of residence and the licence was valid upto 04.11.1994.

13. PW-20 SI Rakesh Giri is the first Investigating Officer of the case. He reached the spot immediately on receipt of information regarding the incident by DD No.13 (Ex.PW-7/A) at Police Post Kapashera and conducted the initial part of the investigation.

14. PW-19 Inspector Jagmal Singh is the second Investigating Officer. He took up the investigation on receipt of information regarding death of the deceased and deposed about the part played by him after investigation was entrusted to him.

15. After closure of the prosecution evidence, the Appellant was examined under Section 313 Cr.P.C. to enable him to explain the incriminating evidence appearing against him. He denied the prosecution allegations and pleaded false implication. The Appellant denied that there was any conversation between him and the deceased (Lalit Gaili) or that he opened fire at the deceased. He was vague about his apprehension by PW-8 ASI S.P. Muthu and arrest by PW-20 SI Rakesh Giri. The Appellant took the defence that he had no knowledge how Lalit Gaili was killed. He (the Appellant) was not on duty on the day of incident. His rifle was deposited with the Security Officer and, therefore, there was no question of firing on Lalit Gaili by him. He deposed having been made a scapegoat by his employer who had a doubt of Lalit Gailis having illicit relations with his (the employers) wife. The Appellant did not produce any evidence in defence.

16. By the impugned judgment, the learned Additional Sessions Judge (ASJ) found the testimonies of two eye witnesses PWs 1 and 4 to be credible and consistent and all evidence to be reliable. The learned ASJ found the defence version to be not proved for want of any material elicited during cross-examination

of the prosecution witnesses or by leading any defence evidence. Thus, relying upon the eye witnesses coupled with the circumstantial evidence consisting of the attempt of the Appellant to escape from the spot to the recovery of rifle Ex. P-1 and cartridges Ex. P-4/1 to 7, the post mortem report Ex.PW-12/A, CFSL report Ex.PX, reached the conclusion that the prosecution had proved its case under Section 302 IPC against the Appellant beyond reasonable doubt. The Appellant was held guilty and convicted accordingly.

17. We have heard Mr. Rajiv Bajaj learned counsel for the Appellant, Mr. Jaideep Malik, learned Additional Public Prosecutor (APP) for the State and have perused the record.

18. It is urged on behalf of the Appellant that deceased Lalit Gaili had an affair with the owners wife and while getting rid of the deceased, with the assistance of PWs 1 and 4, who were employees at the farm, the owner got rid of Lalit Gaili and the Appellant was made a scapegoat. It is argued that no independent witness from any nearby farm house deposed in support of the prosecution. Others present at the time of the incident were not examined. The owners wife and the son, who were present in the farm house at the time of the incident did not reach the spot (as admitted by PW-4) which belies the incident. They were not examined during investigation nor produced during trial. The evidence of PWs 1 and 4, alleged eye witnesses is discrepant as PW-4 stated that he was present at the gate whereas PW-1 deposed that he (PW-4) was in his office at the time of the incident. It is argued that PW-1 claimed that the accused ran away (after opening fire on the deceased). It is improbable that the Appellant would ran just for 500 yards considering that he was apprehended after 20-25 minutes of the incident.

19. It is submitted that according to PW-1 the car was moving when the Appellant came in front of it. It is highly improbable that anyone would risk his life risk by going in front of a moving car.

20. Lastly, it was contended that if the prosecution version is accepted as it is, the case falls under Exception I and IV to Section 300 IPC and the Appellant cannot be convicted under Section 302 IPC. At best he is guilty of an offence under Section 304 Part-II IPC. Learned counsel for the Appellant relies on A. Maharaja v.

State of Tamil Nadu, 2008 (17) SCC 173 and a decision of this Court in Ram Saran @ Balli v. State, Criminal Appeal No.19/1998 decided on 21.03.2011.

21. On the other hand, learned APP for the State argues that the investigation in the case proceeded very quickly. The incident took place at about 5:45 P.M., DD No.13 Ex.PW-7/A was recorded at PP Kapashera regarding the apprehension of the Appellant at 5:55 P.M., PW-20 SI Rakesh Giri reached the spot immediately and completed the statement of PW-4 Ex.PW-20/A at 6:50 P.M. and sent the same to the Police Station and the FIR No.143 was recorded by DD No.18-A at 7:40 P.M. in the Police Station.

22. Before adverting to the contentions raised, we would briefly refer to the testimonies of the two eye witnesses. PW-1 Sarwan Singh deposed that on 20.04.1994 at 5:40 P.M. he and accused Kalyan Sharma were present at the main gate of the farm house. He was holding a 12 Bore rifle while the Appellant was holding .315 Bore rifle. After the office hours, their Manager Lalit Gaili went to the main gate in his Maruti Car bearing No. DL-0533. Surender Pal, another chowkidar of the farm opened the door of the main gate. Their Security Officer Sudershan Singh (PW-4) was also present in the cabin adjacent to the main gate at that time. Lalit Gaili asked Sudershan as to how he was and addressed him as "Boss". Sudershan shook his hand with Lalit Gaili. Thereafter, Lalit Gaili asked Kalyan Sharma "Mucchad Tera Kya Haal Hain". On hearing this, the Appellant lifted his rifle and went in front of Maruti car driven by Lalit Gaili. The latter thought that he (the Appellant) was going to shake hands with him. The vehicle by that time started slowly. The Appellant fired a shot at Lalit Gaili from his rifle on the windscreen of the car as a result of which the wind screen smashed and Lalit Gaili's chest was pierced by a bullet. The Appellant took out the shell of the fired cartridge from the rifle, placed it in his pocket and replaced the live cartridge from the magazine in the rifle and ran away from the spot. This witness then deposed about following the Appellant and his apprehension by the policeman of a PCR Gypsy.

23. Testimony of PW-4 Sudershan Singh shows that the witness corroborated PW-1 on all material aspects. He testified that the Appellant was working in the

farm house as a gun man. On 20.04.1994 at 5:45 P.M. he was present at the gate of the farm house on duty, as a security officer. The Appellant was sitting on the left side on a chair with a rifle of .315 Bore. A chowkidar, Surender Bahadur was also present besides Sarwan Singh gunman (PW-1). Deceased Lalit Gaili reached the gate driving a Maruti Car. He (Lalit Gaili) had a word with him (PW-4) and waved at him saying "Ok Boss Main Chalta Huin". PW-4 also responded accordingly. He (PW-4) deposed that while sitting in the car, the deceased turned left where the Appellant was present and addressed him "Mucchad Tera Kya Haal Hain". On hearing this, the Appellant got up from the chair, went in front of the car and fired at the windscreen. The gun shot hit Lalit Gaili on the left of his chest. The Appellant, thereafter, ran away. He directed Sarwan Singh (PW-1) to chase the Appellant who was running (to escape). He requested a person in the car passing by to inform the PCR. The PCR van reached the spot after apprehending the Appellant.

24. Thus, it is apparent that both the witnesses were consistent and corroborated each other on all material aspects of the incident. There is no contradiction on any major point. The discrepancy in the testimonies of PWs 1 and 4 regarding the presence of PW-4 pointed out by the learned counsel for the Appellant is misconceived. PW-1 stated that PW-4 was present in his office, whereas PW-4 stated that he was present at the gate of the farm house on duty as a security officer. It was not got clarified from either of these witnesses as to where the office of PW-4 was. Normally, the security personnel have their office at the gate. In the absence of any clarification elicited by the defence, we are not inclined to consider the testimonies of PWs 1 and 4 to be discrepant to each other on this point.

25. The learned counsel for the Appellant took us through the testimonies of PWs 1, 4 and 8. PW-1 deposed that he had requested a person driving a Maruti Car to inform the PCR Gypsy about the occurrence. To the same effect is the testimony of PW-4, whereas PW-8 ASI S.P. Muthu testified that the information regarding the incident was given to him by a person on a two wheeler scooter. This, in our opinion, again is not a discrepancy. PWs 1 and 4 might have made request to a person driving a Maruti Car in their own way and any scooterist noticing the incident might of his own have informed the PCR van about the incident.

26. The contention raised on behalf of the Appellant that nobody would come in front of a moving car at his peril also fails to impress us. PW-1 was categorical that the vehicle started moving at a very slow speed. When a vehicle starts moving while it is stationary, it does not have any momentum and thus there is hardly any peril in coming in front of such a vehicle. Moreover, mental frame and attitude of different persons differ from each another.

27. It is argued that prosecution version about the Appellant being apprehended at a distance of 500 yards is improbable and unbelievable as it is not possible that he would run just for 500 yards in 20-25 minutes. We do not find much substance in this contention for more than one reason. Firstly, the witnesses do not have a photographic memory; they gave the distance only on rough estimation. Secondly, it is a matter of record that after some distance the Appellant ran towards the field. Thus, it is not improbable that the Appellant could run at a distance of about 500 yards from the spot. This contention, therefore, does not affect the merits of the case.

28. This is the time to turn to the argument that other persons present in the farm were not examined and that PWs 1 and 4 are interested witnesses.

29. We have been taken through the testimonies of PWs 1 and 4. PW-1 deposed in his cross-examination that 7-8 persons were working in the office on the day of the incident. He stated that at the time of the incident office had just closed and people were coming and going. PW-4 Sudershan Singh stated in his cross-examination that Parshant Suleman, owners son was present at the Kothi in the farm. Smt. Chander Rekha Suleman, Parshants mother (owners wife) was present in the Kothi along with the staff numbering 3-4 persons. 3-4 persons of the office had left whereas 1-2 persons were still inside the farm. In cross- examination PW-4 admitted that many persons collected at the spot after the incident.

30. In our view, out of the three persons present at the gate two were cited and examined by the prosecution. Some of persons working in the farm were present in the office. Parshant Suleman and his mother Chander Rekha Suleman were also present in the Kothi inside the farm. They were not witnesses to the incident and thus, their non-examination does not affect the prosecution case. It is the

quality and not the quantity of evidence which matters. PWs 1 and 4 presence at the spot was natural as they were on duty at the time of the incident. The fact that the deceased sustained injury at the gate is spoken about not only by PWs 1 and 4 but also corroborated by recovery of blood stains from inside the car as well as the spot outside the car and the seizure of the car with a broken windscreen by memo Ex.PW-1/B. The learned counsel for the Appellant tried to project PWs 1 and 4 as interested witnesses on the ground that they were employees at the farm. Their employment at the farm does not make them interested witnesses. In *Sahib Singh v. State of Haryana*, 1997 (7)SCC 231, it was held that term „interested postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. No suggestion was given to PWs 1 and 4 to show that they had any axe to grind against the Appellant or they were interested in his conviction for any ulterior motive. PWs 1 and 4, therefore, cannot be labeled as interested witnesses. We are convinced that as far as the incident is concerned, the two eye witnesses produced by the prosecution are credible, reliable and trustworthy.

31. Moreover, there is no reason why PWs 1 and 4 would falsely depose against their colleague, the Appellant.

32. A feeble attempt was made by learned counsel for the Appellant to support the defence versions that there was an affair between the deceased and farm owners wife. Except a vague suggestion given to PWs 1 and 4 nothing was brought on record by the Appellant which could lead this Court to draw an inference that there was any affair between the two as claimed.

33. If the owners wife had any affair with the deceased and the owner wanted to get rid of her there was no difficulty for the owner to terminate the services of the deceased. It appears that this plea was taken as no other defence was available to the Appellant.

34. Under these circumstances, we are of the view that PWs 1 and 4 cannot be termed interested witnesses.

35. The next issue is to deal with the Appellants contention that his case is covered under Exception I and IV to Section 300 IPC.

36. For a culpable homicide to become murder, the case, subject to the exceptions must fall in any of the four clauses of Section 300 IPC. In this case, the Appellant went in front of the deceaseds car and fired at him. The bullet injury pierced his chest. PW-12 Dr. Chander Kant noted a fire arm injury on the middle of the chest 9 cm away from left nipple. The injuries as given in the post mortem report Ex.PW-12/A are extracted hereunder:-

"(i) One fire arm entry wound in the middle of chest, 10 cms below from supra sternal notch, 9 cm away from left nipple towards middle of chest and 16 cms away from right nipple, irregular in shape with lacerated and inverted margins. No tattooing present. No blackening was present. No scorching was present, size of the wound 4 cm x 4.1 cm direction antero-posterior (from front of chest to posterior wall), lacerated heart piece was coming out from the wound of entry.

(ii) Circular shape abrasions on the left nipple area size 1.8 cm x 2 cm."

37. As per opinion of PW-12 Dr. Chander Kant death was due to shock hemorrhage and injuries to vital organs.

38. A person who commits an act is presumed to know its natural consequences. It is not the case of the Appellant that he did not intend to inflict injuries on the chest of the deceased or that the bullet landed the chest accidentally. Therefore, even if it is argued on behalf of the Appellant that he did not have any intention to cause death of the deceased, what cannot be lost sight of is that he did have the intention of causing bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient to cause death in the ordinary course of nature. Thus, the Appellant would be guilty of murder under Clause III of Section 300 unless his case falls under any of the Exceptions to which we shall advert hereafter.

39. It is argued by the learned counsel for the Appellant that the Appellant had inflicted single blow on account of sudden provocation as the Appellant was addressed as "Mucchad". There was no premeditation on the part of the Appellant to inflict an injury. The Appellant cannot, it is argued, be said to have acted in a cruel or unusual manner or having taken undue advantage of his position. In support of his contention, the learned counsel for the Appellant places reliance on A. Maharaja v. State of Tamil Nadu, 2008 (17) SCC 173; Arun Raj v. Union of India, (2010) 6 SCC 457; Mangesh v. State of Maharashtra, (2011) 2 SCC 123; Jagriti Devi v. State of H.P. (2009) 14 SCC 771; a division bench decision of this Court in Ram Saran @ Balli v. State, Criminal Appeal No.19/1998 decided on 21.03.2011; Joginder Singh & Anr. v. State (2011) III AD (Delhi) 81.

40. The distinction between the Exception I and IV to Section 300 IPC was understood by the Supreme Court in A. Maharaja (supra) relied upon by the learned counsel for the Appellant. Thus, in case of Exception I, there is total deprivation of self control. But the provocation must be such that it should not only upset a hot headed hyper sensitive person, but a person of calm nature and ordinary prudence. In Arun Raj v. Union of India, (2010) 6 SCC 457, the Supreme Court quoted with approval a passage from the Appeal Court in Mancini v. Director of Public Prosecutions, 1942 AC 1 : (1941) 3 ALL ER 272 (HL), where it was held as under:-

"It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control, as the result of which he commits the unlawful act which causes death. .. The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in R. v. Lesbin (1914) 3 KB 1116 (CCA) so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance (1) to consider whether a sufficient

interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

41. The Appellant was employed as a gunman/security guard at the farm. The deceased was working as a Manager in the farm. It is not the case of the Appellant that there was regular history of hurling insults upon him (the Appellant) by consistently using the word "Mucchad". Thus, if we apply the test approved in Arun Raj (supra) it cannot be said that the Appellant was deprived of the power of self-control by grave and sudden provocation caused by the deceased to open fire on the deceased. Thus, the case is not covered under Exception I to Section 300 IPC.

42. To consider whether the case of the Appellant falls under Exception IV, we would like to extract Para 10 of the report in A. Maharaja (supra), relied upon by the learned counsel for the Appellant hereunder:-

"10. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds mens sober reason and urges them to do deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the

origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A „sudden fight implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offenders 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 IPC is not defined in IPC. 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".

43. Thus, to bring a case within Exception IV it has to be proved that the death is caused :-

(a) Without premeditation,

(b) In a sudden fight,

(c) Without the offender having taken undue advantage or acted in a cruel or unusual manner and

(d) A fight must have been with the person killed.

44. It takes two persons to have a fight. Normally, there has to be some type of grappling or exchange of blows in order to constitute a fight, which is missing here. Of course, there was no premeditation in the commission of an act by the Appellant. Yet, in the circumstances of the case, it cannot be said that the Appellant had not acted in a cruel or unusual manner.

45. In Mangesh (supra) the deceased was found by the Appellant talking to his sister Sandhya at the place of occurrence and the injuries had not been inflicted on vital parts of the body. Therefore, the Supreme Court held that the case would be covered under Exception IV to Section 300 IPC, which is not the case here.

46. In Jagriti Devi (supra) the deceased was sleeping in the verandah outside the house. The incident took place at about 6:00 A.M. It was observed that if the Appellant had any intention to kill the deceased, she could have done the same during the night and would not have waited till the day light. It was noticed that there was an altercation between the Appellant and the deceased, in consequence of which the deceased took out a Khukri, which she had kept under the pillow, and attacked the Appellant with the same. But, luckily, the Appellant received injuries including on her head and did not receive any serious injuries. In order to save herself from further assault, she snatched the Khukri from the deceased and gave

a few blows to him. It was under these circumstances that the Appellant was held to have committed culpable homicide and was convicted under Section 304 Part II IPC. The facts of the cited case are not applicable to the case in hand and are clearly distinguishable.

47. In Ram Saran @ Balli (supra), the Court found that there was no intention to cause death of the deceased Jaggu Ram nor was there any intention to cause bodily injury which was sufficient to cause death in the ordinary course of nature.

48. In Joginder Singh (supra), one Kailash was proceeding to the house of Om Prakash. The meat shop of the Appellant Vinod (who was known to him (Kailash) earlier) was on the way, which he had to pass. Vinod used expletive language against Kailash resulting into an altercation. While raising the objection, Kailash provoked Vinod who gave him 3-4 slaps. Kailash went and complained to Om Prakash who was relaxing in his jhuggi. He told his wife to fetch his slippers and wearing the same he and Kailash returned to settle a score. A verbal fight turned ugly resulting in pushing and jostling, followed by Vinod using a knife and inflicting injuries. It is clear that there was no premeditation and unexpected events overtook the deceased and the injured. It was upon a sudden quarrel that the accused lost control resulting in the unfortunate death of Om Prakash and injuries upon Kailash. Thus, it is evident that in that case there was a sudden fight and the Appellants did not act in a cruel or unusual manner.

49. Thus, the authorities cited by the learned counsel for the Appellant are not applicable to the facts of the present case and are clearly distinguishable.

50. The case of the Appellant, in our view is not covered under Exception IV to Section 300 IPC.

51. We do not find any error or infirmity in the impugned judgment and order. The Appeal is devoid of any merit. The Appeal is bound to fail and is dismissed in the above terms. The Appellant shall surrender before the Trial Court on 23rd May, 2011 to serve the remainder of his sentence. The Registry shall transmit the Trial Court records and this judgment, forthwith, to ensure compliance.