Sumitra Devi Vs. State

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Court : Delhi

Decided On : Jul-11-2011

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

Acts : Indian Penal Code (IPC) - Sections 302, 304; Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : CRL.A.55/1998

Appellant : Sumitra Devi

Respondent : State

Advocate for Def. : Mr. Lovkesh Sawhney, Adv.

Advocate for Pet/Ap. : Mr. Sumeet Verma, Adv.

Judgement :

1. This judgment will dispose of an appeal directed against a judgment and order of the learned Additional Sessions Judge, Delhi ("Trial Court") dated 22.04.1997, and the order on the point of sentence dated 23.04.1997, in S.C. No. 91/1996. The Appellant was convicted for the offence punishable under Section 302 IPC, and sentenced to undergo life imprisonment and to pay fine of Rs. 1,000/-, with further sentence in the event of default.

2. The Appellant was married to Sardar Singh (the "deceased"). She and her husband, along with three sons and four daughters, born out of the wedlock, lived in House No. 67, Munirka. The prosecution alleged that sometime after the marriage, the couple, along with their children, started living away from the deceased's father (who lived in House No. 47). Apparently, at the material time, the deceased was not employed, and was being maintained by his father, Dalpat Singh, who also arranged for the Appellant's job. The prosecution alleged that there were disagreements and quarrels between the Appellant and her husband, because the former used to get articles from her place of work which was objected to by her husband. The prosecution also alleged that the jewellery brought by the Appellant was taken-away by her father and she also handed-over other jewellery, valued at about Rs. 70-80,000/- to her sister, Murti. The prosecution further stated that in the night of 24/25.06.1992, the Appellant tried to burn her house by setting clothes and mattresses on fire. She and her children went to her parents' house and were brought back to her matrimonial home with the intervention of the police. The prosecution further stated that one Dharampal, the Appellant's relative, came from his native village on 15.10.1992 and slept in her house and allegedly wanted to have some relationship with her. It is further alleged that he was sent to the ground floor of the house at around 02.00/02.30 AM; the Appellant asked her son, Mahender Singh to do so since the deceased wanted Dharampal to be on the ground floor.

3. The prosecution further alleged that on 16.10.1992, the deceased scolded the Appellant and threatened that he would disclose about her misdeeds of the previous night to her children but she entreated him not to do so. The same morning, the deceased asked Dharampal to leave the house. It is alleged that later that day there was a hot exchange of words, between the deceased and the Appellant. The prosecution further stated that on 16.10.1992, the Appellant and the deceased were at home when the children returned from school. Even at that time, the deceased threatened to narrate about her misdeeds to the children but she requested him with folded hands not to do any such thing; this happened at around 02.30 PM on that day. It was alleged that around 02.30 PM on that day, two sons of the Appellant and the deceased were sent out of the house and the daughter and third son of the Appellant went to the market to purchase some

notebooks. Jogender and Vijender, two sons of the Appellant and the deceased were playing in the gali when Tejbhan (PW-4) went to the deceased's house to return an amount borrowed from him. The prosecution alleged that when Tejbhan reached the concerned room, he saw the Appellant strangulating her husband and on seeing him - Tejbhan, she went out of the room. It is alleged that Tejbhan went to the deceased's father's house to inform him about the incident but the latter was not available. Tejbhan searched for him but could not find him that day and later went to his house. The prosecution's case further was that when the Appellant's two sons returned from the market, they found the room where they lived locked. They went to the house of their grandparents and told their grandmother that police had come to their house. The prosecution alleged that the Appellant herself went to the police station and informed that she had quarreled with her husband and strangulated him with a muffler and that he was lying in their house. On receipt of information, the police, along with the Appellant went to her house and found the room to be locked; since no keys were available, the lock was forced open, and the dead body of the deceased Sardar Singh was discovered in the room. The FIR was registered; investigations were conducted, and subsequently, the Appellant was charged with committing the offence punishable under Section 302 IPC. She entered the plea of not guilty and claimed trial.

4. The prosecution examined 22 witnesses and relied on several exhibits in support of its case. After conclusion of its evidence, the Trial Court questioned the Appellant under Section 313 Cr.PC and, further, proceeded to render judgment, convicting the Appellant and sentencing her to undergo life imprisonment for committing the offence.

5. Learned amicus appearing on behalf of the Appellant urged that the Trial Court has based its judgment principally on the testimony of the so-called eye witness account of PW-4, Tejbhan. It is submitted that the testimony of Tejbhan is utterly untrustworthy and incapable of credence. Learned counsel pointed out that PW-4's deposition was wholly unnatural. Even if it were assumed that the witness visited the deceased's premises and had witnessed his strangulation by his wife, the prosecution was unable to explain why that witness did not intervene and try to save the deceased. It is further submitted that the subsequent conduct of the

witness is unnatural because he claimed to have gone to inform the deceased Sardar Singh's father and upon not finding him, went back home. It is submitted that normal human conduct, even in the case of strangers witnessing a crime as heinous as murder would be to report the matter to the concerned authorities in the police. However, PW-4 did not do so. It was further submitted that the prosecution did not offer any explanation as to how they became aware that PW-4 Tejbhan was an eye witness and the circumstances under which he narrated the facts to them. The prosecution story was that the Appellant, after committing the crime, had taken some valuables and articles, and left them with a neighbour and, thereafter, proceeded to the police station. Subsequently, the statement of the deceased's father was recorded, as also of the deceased's sons. Under what circumstances did the police become aware of PW-4 being an eyewitness was an unexplained circumstance which casts not only grave doubts to the credibility of PW-4's testimony but also raises a question as to whether he was present at all as alleged by the prosecution.

6. It is submitted that the prosecution story cannot also be believed because there were injuries on the Appellant, which were noted in the MLC (PW-19/A) and corroborated by the deposition of PW-19, the doctor who had examined her. This clearly disclosed that the attack was not homicidal, and having regard to the previous case of the prosecution about frequent quarrels between the couple; the alleged incident of the previous night and the morning of 16.10.1992, on account of disagreement between them, (due to Dharampal staying overnight in their house), which was further reflected in the deceased slapping the Appellant in front of their children and their being asked to go-out later, the possibility of serious assault by the deceased upon the Appellant could not be ruled-out. Having regard to these, and the further circumstance that the alleged weapon of offence, i.e. the muffler was never recovered, the Appellant was entitled to be acquitted on the ground that she had exercised her right to private defence. In this connection, Learned counsel relied upon the decisions reported as Satyanarayan Anand v. Gajanand AIR 2008 SC 3284 and Surender v. State of Maharashtra 2006 (11) SCC 434. It was submitted that the right of self-defence is a valuable one and serves a social purpose. The Courts have to be sensitive to the facts apparent to them on the basis of evidence placed and while considering whether an accused

had acted in self-defence, situations have to be seen from the subjective view point (of accused) and the surrounding excitement and confusion of the moment. It is argued that even in the absence of a specific plea, the Court is not precluded from concluding that an accused had in fact acted in self-defence.

7. The learned amicus further submitted that the evidence in the form of testimonies of PW- 7 and PW-8 showed that Dharampal, a close relative of the Appellant, used to frequently visit their house. Often he used to stay overnight. On that particular day, i.e. the night intervening 15/16.10.1992, the deceased had objected to Dharampal (who was by that time drunk) sleeping at a particular place, as a result of which he had to shift to the ground floor. The deceased left for duty and came back within half an hour and asked Dharampal to leave the house, which he did, at 08.00 AM. Thereafter, the deceased and the Appellant had arguments. When the children returned home after school, the couple quarreled again and the deceased slapped the Appellant. All the four children went to different places. What transpired between the husband and wife had to, therefore, to be considered from the immediately preceding events which pointed to the deceased objecting to Dharampal's presence and even threatening to tell the children something which the Appellant would have been ashamed of. Seen cumulatively, there was every possibility that when the couple was alone, the deceased again assaulted the Appellant and inflicted blows upon her, which were confirmed by Ex. PW-19/A, the MLC. The nature of the assault and the suddenness was such that the Appellant acted in self-defense. It was alternatively argued that the facts did not reveal any pre-meditation or deliberation on the part of the Appellant to commit the murder of the deceased and that the sudden quarrel occurred, which resulted in both parties getting injured and ultimately resulted in the death of the deceased. It is argued that the conviction of the Appellant could have at best been under Section 304 Part-II IPC.

8. The learned APP opposed the submission on behalf of the Appellant. It was urged that whatever be the manner in which PW-4 joined the investigation, his presence could not be doubted because PW-7, the minor son of the deceased, corroborated the visit by PW-4 and even stated that he returned immediately and went towards his grandfather's house. It is submitted that even the Appellant, in

the course of a statement made under Section 313 Cr.PC, admitted to Tejbhan going to her house to return the money, in answer to Question No. 31.

9. It is argued that the Appellant cannot take advantage of normal discrepancies in the testimonies and adopt an entirely new line of defence. It is submitted that the question of the Appellant exercising the right to self-defence was never even argued, nor indicated by her in reply to any question under Section 313 Cr.PC. It is submitted that in reply to Question No. 72, the Appellant had stated that her father Dalpat wanted to molest her in June 1992 and that on the fateful day, i.e. 16.10.1992, when Tejbhan visited their house, the deceased demanded Rs. 50,000/- from him. She stated that Tejbhan hit her when she tried to intervene and stop the quarrel between him and the deceased. She even stated that the bite marks suffered by her were inflicted by Tejbhan. Therefore, the Court ought not to accept any submission with regard to the so-called exercise of right of private defence by the Appellant.

10. Learned counsel argued that there was nothing on the record to indicate that any sudden provocation was given by the deceased which led the Appellant to take the law into her own hands and inflict such injuries which ultimately resulted in the deceased's death. Rather, the evidence clearly showed that the couple quarreled on the fateful day on more than one occasion and the deceased even threatened to expose the Appellant to her children. The couple asked the children to move out and thereafter the Appellant seized the opportunity and with deliberation and in cold blood, strangulated the deceased. Having regard to these circumstances, argued the APP, the Trial Court's judgment deserved to be confirmed.

11. A reading of the impugned judgment would show that the findings recorded were primarily based on the testimony of PW-4. The Appellant's counsel argued that the said witness is unreliable, because his conduct in not immediately reporting the matter to the police was unnatural, and that the prosecution did not explain how he was joined in the investigation. The Trial Court noted, and in our opinion correctly, that the Appellant had herself mentioned that this witness went to her house, to return money borrowed from the deceased. She however, said

that both had quarreled, and he had attacked the deceased. The manner by which this witness joined the investigation is not, in the opinion of this court of much relevance. PW-7, interestingly mentioned having seen PW-4 going up to his house, but almost immediately going away. Having regard to all these testimonies, the possibility of PW-4 having chanced upon the scene of crime cannot be ruled out. However, that itself cannot be conclusive, because of his subsequent conduct in not reporting the matter to the police, but returning home, after finding out that the deceased's father was not in his house.

12. A reading of the testimonies of PW-7 and PW-8 show that there was altercation between the deceased and the Appellant; the latter had even tried to set their house on fire in June, 1992. The appellant said that the reason for this was the alleged advances made by her father in law. On the night previous to 16.10.1992, Dharampal, a relative of the Appellant visited her house, as he used to do occasionally, and stayed overnight. Apparently on this occasion, he was drunk, and the deceased objected to the place where he was sleeping; he was instructed to go down and sleep on the ground floor. The deceased was perturbed, and even though he left early morning, he soon returned, and asked Dharampal to leave, which he did at 8:00 AM. The deceased and the Appellant fought, with the former apparently alleging something objectionable about the behavior and relationship between the Appellant and Dharampal. The children left for their school. When they returned they noticed that the parents fought again, and the deceased slapped the Appellant. He later threatened to expose the Appellant and disclose her misdeeds to her children; she entreated him not to do so, with folded hands. Later, the children left in groups of two each. It was apparently at this time, that the incident which led to the death of Sardar Singh, took place.

13. PW-19/A is the MLC of the Appellant; this was proved by PW-19, who stated that upon examination, it was found that she had two injuries - one on her left breast, and the other, on the left shoulder. The doctor also stated that the injuries were caused by a sharp object, and could not have been self inflicted. The Appellant's argument that the prosecution, had, under the circumstances, the obligation to explain the injuries on her, are substantial, in this context. In Subramani v. State of T.N., (2002) 7 SCC 210, the Supreme Court held as follows:

"It is well settled that the onus which rests on the accused person under Section 105 of the Evidence Act to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged, beyond reasonable doubt. In the instant case, though the appellants had suffered injuries on vital parts of the body, even though simple, the prosecution failed to give any explanation for such injuries. We are not persuaded to accept the submission of learned counsel for the State that the injuries being simple, the prosecution was not obliged to give any explanation for the same. Having regard to the facts of the case the omission on the part of the prosecution to explain the injuries on the person of the accused may give rise to the inference that the prosecution is guilty of suppressing the genesis and the origin of the occurrence and had thus not presented the true version. It may well be that the prosecution witnesses were lying on a material point and, therefore, render themselves unreliable, or it may be that the defence version explaining the injuries on the person of the accused is probably the true version of the occurrence which certainly throws a serious doubt on the prosecution case."

In the present case too, the prosecution has not cared to explain the injuries on the Appellant, which were not self inflicted, according to their witness, PW-12. These injuries add an altogether different dimension to the case. If indeed the assault had been pre-meditated, and cold blooded, as is alleged by the prosecution, there would have been no question about any injury marks on the Appellant.

14. The other aspect of the matter is that having regard to the events which preceded during the day, i.e disagreement about the visit of Dharampal, the two occasions when the deceased quarreled (and even slapped the Appellant,

threatening to disgrace her before the children) the possibility of a quarrel having erupted between the two, again, when left together, after the children left their house cannot be ruled out. Even if PW-4 saw something, his testimony is by no means complete, because he did not see the origin of the incident, or stay back to prevent any further assault. The probability of the Appellant being involved in a sudden quarrel with the deceased, is strong. It is in such cases that Exception 4 to Section 300 IPC comes into play. The provision prescribes that 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. The explanation to the provision instructs that it is immaterial in such cases which party offers the provocation or continues the first assault. The precise details of the quarrel in this case are unknown. Both PW-7 and PW-8 stated that the two parties (the deceased and the Appellant) were quarrelling. The conspectus of circumstances in this case point to the absence of intention to kill the deceased by the Appellant.

15. The Supreme Court has, in Shaikh Majid & Anr. V. State Of Maharashtra & Ors 2008- (114)-CRLJ -1062 -SC explained the true position on this aspect as follows:

> **"For bringing in operation of Exception 4 to S. 300, I.P.C., it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.**
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> **The Fourth Exception to S. 300, I.P.C. 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 men's sober reason and urges them to 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 in such cases could 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. As 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 offender 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 S. 300, I.P.C. is not defined in I.P.C. 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 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. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and that 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."

In Mahesh v State of Madhya Pradesh 1996-(102)-CRLJ -4142 - SC, the Supreme Court observed:

"At the spot, there was an altercation between the parties and in the sudden fight, after the deceased objected to the grazing of the cattle, when possibly hot words or even abuses were exchanged between the parties, the appellant gave a single blow with the pharsa on the head of the deceased. The statement of the appellant and the suggestions given on his behalf to the prosecution witnesses that there was an attempt to assault the deceased with a Parena, which was with the deceased, does not appear to be improbable. Thus, placed as the appellant and the deceased were at the time of the occurrence, it appears to us that the appellant assaulted the deceased in that sudden fight and after giving him one blow took to his heals. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault P.W. 2 or P.W. 6 who were also present along with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of P.W.1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception 4 to Section 300, I.P.C. is

clearly attracted to the case of the appellant and the offence of which the appellant can be said to be guilty would squarely fall under Section 304 (Part-I) I.P.C. The trial Court, under the circumstances, was justified in convicting him for the said offence and the High Court, in our opinion, fell in error in interfering with it and that too without dispelling any of the reasons given by the trial Court. The judgment of the High Court convicting the appellant for an offence under Section 302, I.P.C. cannot be sustained and we accordingly set it aside and instead convict the appellant for the offence under Section 304 (Part-I) I.P.C."

Again, in Sandhya Jadhav v. State of Maharashtra, (2006) 4 SCC 653 it was held that: "...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 men's sober reasons and urges them to 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 in such cases could 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 offender 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 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."

16. In the present case, having regard to the proved surrounding circumstances, and contemporaneous facts, the Appellant does not appear to have pre-planned and executed the attack. The prosecution witnesses have deposed that she and the deceased had quarrelled 2-3 times on the same day. The Appellant also suffered two injuries - though of a minor nature; the doctor ruled out the possibility of their self infliction. A quarrel appears to have snowballed into a major incident, on account of a "sudden fight" between the deceased and the Appellant. The Explanation to Exception (4) of Section 300, in the opinion of the court, is attracted to the facts of this case.

17. For the above reasons, the appeal is entitled to partially succeed. The conviction of the appellant is substituted - from the existing one, under Section 302, IPC, to Section 304, Part I, IPC. The sentence is accordingly altered to seven years' rigorous imprisonment. The Appeal is allowed in the above terms.