

**Balwan and Another Vs. State**

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**Court :** Delhi

**Decided On :** Jul-03-2012

**Judge :** Pradeep Nandrajog & Siddharth Mridul

**Appeal No. :** CRL.A. No. 271 OF 1999

**Appellant :** Balwan and Another

**Respondent :** State

**Judgement :**

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment dated May 18, 1999, the appellants (brothers) have been convicted for having murdered deceased "Vijay" and for having attempted to murder "Ashok Kumar" (brother of Vijay) and for the former offence have been sentenced to undergo imprisonment for life and for the latter to undergo RI for 3 years. Whereas appellant Vijender @ Balli has been held to be the principal offender, appellant Balwan has been convicted with the aid of Section 34 IPC.

2. In a nutshell, the case set up by the prosecution against the appellants (as emerging from the testimonies of the police officials and other witnesses associated with the investigation of the present case) was that on 17.07.1996 at about 09.45 P.M. HC Ram Pal, Duty Officer at PS Jahangir Puri, recorded DD entry No.53B Ex.PW-1/A, to the effect that the Police Control Room had informed that a quarrel had taken place in the street where house bearing Municipal No.J-

500, Jahangir Puri is situated. The aforesaid DD entry was marked to SI Nanak Chand PW-15, for investigation who on receipt of the DD entry proceeded to the place of occurrence accompanied by Ct.Sant Ram where he learnt that 2 brothers named Vijay (deceased) and Ashok Kumar who were injured in a quarrel have been removed to Hindu Rao Hospital. Leaving Ct.Sant Ram at the place of occurrence, SI Nanak Chand proceeded to the hospital where he met Ct.Mukesh Kumar PW-2, Duty Constable at Hindu Rao hospital, who informed him that the deceased was declared brought dead at the hospital and that his brother Ashok Kumar is admitted in the emergency ward of the hospital. Thereafter SI Nanak Chand collected the MLCs of the deceased and Ashok Kumar.

3. In the meantime, Ct.Mukesh Kumar PW-2, informed HC Ram Pal PW-1, over telephone regarding Ashok Kumar and Vijay being admitted at the hospital which fact was recorded vide DD No.63B, Ex.PW-1/B at 10.55 PM the same day, and said DD entry was marked to Inspector Ram Singh PW-19 for investigation.

4. On receiving a copy of the DD entry Ex.PW-1/B, Inspector Ram Singh PW-19, accompanied by Ct.Manbir Singh PW-18, proceeded to the hospital where he met SI Nanak Chand PW-15, who handed him over the MLCs of the deceased and Ashok Kumar. Thereafter Inspector Ram Singh met the doctor treating Ashok Kumar, namely Dr.R.P. Mittal PW-13, who informed him that Ashok Kumar is fit for making a statement. Inspector Ram Singh recorded the statement Ex.PW-5/A of Ashok Kumar and made an endorsement Ex.PW- 19/A thereon, and at around 12.45 A.M. on 18.07.1996 forwarded the same to the police station through Ct.Manbir Singh PW-18, for registration of an FIR and HC Ram Pal PW-1, registered FIR No.324/1996, Ex.PW-1/C, at around 2.30 A.M. for offences punishable under Sections 302 and 307 IPC read with Section 34 IPC.

5. In his statement Ex.PW-5/A, Ashok Kumar PW-5, the brother of the deceased and an injured himself, stated as under:-

“I state that I reside at the aforesaid address with my family and am employed as a conductor at Wazirpur Depot III, DTC. Today at around 09.15 P.M., I was present in my house when my brother Vijay came there and told me that he was sitting on a bench lying near a park when Balwan Singh and his brother Vijender @ Balli

came there and asked him as to why he is sitting on the bench. On this issue Balwan and Vijender quarreled with his brother and as a result of the said quarrel blood was oozing out of mouth and nose of my brother. He and his brother Vijay were going to the police station to lodge a report in respect of the said quarrel and had reached near the park in the street 500 of J Block when Balwan and Vijender Singh @ Balli came in front of us. Balwan caught hold my brother Vijay and gave an exhortation to Vijender Singh that "Vijay behaves like a leader. Lets finish him off today". Suddenly in front of my eyes Vijender @ Balli inflicted several injuries on stomach, chest and other body parts of my brother with a gupti. The accused persons, with an intention to kill me, also attacked me on the left side of my chest with a gupti the moment I came forward to stop the attack. Thereafter both persons whom I know quite well as they are my neighbors ran away from the spot. The said incident was also witnesses my many other persons. A crowd had gathered at the spot and Arjun and Bunty present in the crowd removed me and my brother in the hospital in separate TSRs. My brother Vijay was declared dead at the hospital. Balwan and Vijender together inflicted injuries on the chest of my brother and murdered him. A legal action be taken against them. (Emphasis Supplied) (Translated Version)"

6. After recording the statement Ex.PW-5/A of Ashok Kumar, Inspector Ram Singh PW-19, proceeded to the place of occurrence where he recorded the statement of Arjun Kumar PW-10, under Section 161 Cr.P.C., wherein he also indicted the appellants as the assailants of the deceased and the ones who had injured Ashok Kumar.

7. Soon thereafter Inspector Ram Singh arrested the appellants at the pointing out of Arjun Kumar. On being apprehended, appellant Vijender led Inspector Ram Singh and SI Nanak Chand to the terrace of his house and got recovered one gupti and the same was seized vide memo Ex.PW-10/B.

8. On 18.07.1996 Dr.C.B.Dabas PW-11, conducted the post-mortem of the deceased and prepared the report Ex.PW- 11/A. The post-mortem report Ex.PW-11/A of the deceased records that following 13 external ante-mortem injuries were found on the person of the deceased:-

- “1. Incised wound 3.5 x 0.8 cm, skin deep situated on R parietal region of head.
  2. Abrasion 1.5 x 1 cm over R temple.
  3. Abrasion 3.5 x 3 cm over R cheek bony (illegible)
  4. Multiple small abrasions in area of 3.5 x 1.5 cm over R cheek.
  5. Abrasion 0.7 x 0.7 cm over Ridge of nose.
  6. Abrasion 0.5 x 0.5 cm under the chin.
  7. Multiple abrasions in area of 8.5 x 2.5 cm over back of R shoulder.
  8. Incised wound 0.5 x 0.5 cm skin deep over middle front of R forearm.
  9. Abrasion 0.8 x 0.5 cm on front of R knee.
  10. Incised wound 1 x 0.5 cm, with abrasion around it in an area of 2.6 x 0.5 cm, situated over L side front of chest, 10 cm outer to midline and 2 cm above L nipple and 138 cm above L heel. The edges of the wound are clear cut and both angles are rounded.
  11. One incised wound 1 cm x 0.5 cm, situated on left lateral aspect of chest in axillary area, 15 cm outer to midline and 29 cm above L heel. Both angles are rounded. Margins are clear cut.
  12. Two parallel bruises each measuring 8.5 x 0.8 cm, separate by an intervening area of normal skin of 2.0 cm width, located on back of left chest in scapular region.
  13. One incised wound 1 x 0.5 cm x 4 cm (deep) situated on left buttock with both angles rounded. Margins clear cut, located at height of 79 cm above L heel.”
9. The post-mortem report Ex.PW-11/A of the deceased further records that the death of the deceased was caused due to shock and hemorrhage consequent to the injuries found on the person of the deceased; injuries Nos.10 and 11 found on the person of the deceased are individually and collectively sufficient to cause

death in ordinary course of nature; injuries Nos.1, 8, 10, 11 and 13 found on the person of the deceased were caused by sharp edged weapon whereas injury No.12 was caused by a stick/lathi and that the remaining injuries found on the person of the deceased were caused by blunt force impact with an object/surface.

10. On 03.09.1996 the police sent the gupti recovered at the instance of appellant Vijender to Dr.R.P.Mittal, the doctor who had prepared the MLC Ex.PW-13/C of Ashok Kumar, for his opinion regarding the weapon of offence. Vide his opinion Ex.PW-13/A Dr.R.P.Mittal opined that the injury found on the person of Ashok Kumar as recorded in his MLC Ex.PW-13/C, is possible to have been caused by the gupti recovered at the instance of appellant Vijender inasmuch as the edges of said weapon are sharp.

11. On 16.09.1996 the police sent the gupti recovered at the instance of appellant Vijender to Dr.C.B.Dabas, the doctor who had conducted the post-mortem of the deceased, for his opinion regarding the weapon of offence. Vide his opinion Ex.PW-11/C Dr.C.B.Dabas opined that the injuries Nos.1, 8, 11 and 13 found on the person of the deceased are possible to have been caused by the gupti recovered at the instance of appellant Vijender.

12. On 23.09.1996 SI Manohar Lal PW-7, prepared the site plan Ex.PW-7/A to scale of the place of occurrence at the instance of Ashok Kumar PW-5.

13. Needless to state, the appellants were sent for trial. Charges were framed against them for having committed the offences punishable under Sections 302 and 307 IPC read with Section 34 IPC.

14. At the trial, the prosecution examined 21 witnesses and suffice would it be to state that the star witnesses were Arjun Kumar PW-10 and Ashok Kumar PW-5, who were cited as eyewitnesses and the fate of the appellants would be decided on the testimony of the said witnesses.

15. We need not note in detail the testimonies of the witnesses associated with the investigation of the case for they have deposed on the lines, of factual narrative, noted by us in foregoing paragraphs, but would be highlighting such testimonies or

other evidence which needs to be brought for evaluating the creditworthiness of the evidence led at the trial.

16. Ashok Kumar PW-5, deposed on similar lines as the contents of his statement Ex.PW-5/A. Additionally, he deposed that he came to know about the factum of the death of the deceased in the morning of 18.07.1996 and was not aware about the condition of the deceased before that time. On being questioned about the locations of his house and the house of the appellants, the place of occurrence and police station Jahangir Puri, he stated (Quote): "Accused lives in one lane while we live in the other lane. It is correct that both the lanes are parallel. It is correct that one can go to the P.S. Jahangir Puri from both these lanes. If one has to go to the police stn. From the street where the house of the accd. person is situated, one has to take a circuitous route.....It is correct that incident took place on the road in front of the house of accd. The distance between the house of accd. And the place where we were stabbed was about 15 ft. Accused might have received injury in that scuffle."

17. We highlight that during cross-examination suggestions were given to Ashok Kumar that Ashok Kumar and the deceased accompanied by some other persons had come to the residence of the appellants at the time of occurrence, attacked them with weapons and sustained injuries in the ensuing scuffle, which suggestions were denied by Ashok Kumar.

18. Arjun Kumar PW-10, deposed that on 17.07.1996 at about 09.15 P.M. he was coming from C-Block, Jahangir Puri after purchasing vegetables. When he reached at the corner of the park in the street where the house bearing Municipal No.J-500, Jahangir Puri was situated he saw that the appellants were quarrelling with the deceased. The relations between the appellants and the deceased were inimical and they had quarreled with each other on several prior occasions. Appellant Balwan caught hold of the deceased by his hairs and appellant Vijender stabbed him with a gupti. Appellant Balwan then gave an exhortation: "Vijay is rascal. Lets finish him off today."Thereafter when the brother of the deceased Ashok tried to save the deceased, appellant Vijender inflicted an injury near his left armpit with the gupti. At that time appellant Balwan told appellant Vijender that

they should also murder Ashok. Thereafter both the appellants ran away from the spot. He removed the deceased to the hospital in a TSR while one Bunty removed Ashok to the hospital in another TSR. On being questioned about the location of the place of occurrence he stated (Quote): "House of the accused persons is about 25 feet away from the place of occurrence".

19. It may be noted that suggestions were given to Arjun Kumar that the deceased and his brother Ashok Kumar had attacked the appellants at the time of occurrence and caused injuries upon the person of appellant Balwan, which suggestions were denied by him.

20. Bunty PW-6, the neighbor of the deceased and appellants, deposed that on 17.07.1996 at about 09.15 P.M. he was standing in front of his house when he heard the noise of a quarrel whereupon he rushed to the place of occurrence where he saw that the brother of the deceased Ashok was lying on the ground in an injured condition and smeared with blood. He removed the deceased to the hospital in a TSR.

21. HC Ram Pal Singh PW-1, deposed that he had recorded DD entries Ex.PW-1/A and Ex.PW-1/B and the FIR Ex.PW-1/C registered in the present case. On being questioned about the delivery of the FIR Ex.PW-1/C to the Area Magistrate, he stated (Quote): "I sent the copy to the senior officer and to the Magistrate immediately after recording the same. I had concluded the recording of the FIR by 2.30 A.M. The copies were sent through constable Surinder Kumar No.2181-NW."

22. SI Manohar Lal PW-7, deposed that he had prepared site plan Ex.PW-7/A to scale of the place of occurrence. On being questioned about the locations of the house of the deceased and appellants, place of occurrence and police station Jahangir Puri he stated (Quote): "It is correct that there is straight road from the house of the deceased to P.S. Jahangir Puri".

23. Appellants on being examined under Section 313 Cr.P.C pleaded innocence and in support of their defence examined B.K.Arora and Narender Kumar as DW-1 and DW-2 respectively. Mr.B.K.Arora DW-1, Statistical Investigator, Central Jain Hospital, Tihar Jail deposed that appellant Balwan was admitted in the Central Jail

Hospital, Tihar Jail on 19.07.996 and proved the admission and summary record sheet Ex.DW-1/A of appellant Balwan which records two injuries on his person being:- CLW (illegible over scalp) and small abrasion over L chest.

24. Narender Kumar DW-2, Metropolitan Magistrate, Delhi deposed that on 18.07.1996 at about 10.15 A.M. Ct.Surender Kumar delivered the copy of the FIR Ex.PW-1/C registered in the present case to him in his court i.e. the testimony of DW-2 establishes a considerable delay in the stated time when the FIR was recorded and received by DW-2.

25. Holding that Ashok Kumar PW-5 and Arjun Kumar PW- 10, are creditworthy witnesses, the appellants have been convicted as afore-noted.

26. During arguments in appeal, learned counsel for the appellants conceded a physical duel having taking place, but not as projected by the prosecution. Learned counsel urged that the physical duel was the result of the deceased and Ashok Kumar having come to the house of the appellants to quarrel with them and they i.e. the deceased and Ashok Kumar bringing the gupti with them and unfortunately or rather fortunately for the appellants, when appellant Balwan was assaulted with the gupti and received one injury therewith he managed to snatch the gupti from Ashok Kumar and the retaliatory assault, though lethal, was in self protection; albeit excessively. Learned counsel urged that evidence probabalizes the defence version. In any case, learned counsel urged that it is a case where the deceased and Ashok Kumar had caused a sudden quarrel to ensue and thus the fourth exception to Section 300 IPC stood attracted.

27. In view of the arguments advanced before us in appeal and it not being in dispute that Vijay died a homicidal death, we embark upon our further journey by revisiting the conceptual distinction between the offence of "murder" punishable under Section 302 IPC and the offence of "culpable homicide not amounting to murder", punishable under Section 304 Part I or Part II IPC which was explained in the decision of Supreme Court reported as State of A.P. v R. Punnayya AIR 1977 SC 45. The said decision guides that when a Court is confronted with the question: Whether the offence is "murder" or "culpable homicide not amounting to murder" on the facts of the case, it will be convenient for it to approach the problem in three

stages. The question to be considered at the first stage would be: Whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering: Whether the act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is, prima facie, found in the affirmative, the stage for considering the operation of Section 300, of Penal Code is reached. This is the stage at which the court should determine: Whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300 IPC. If the answer to this question is in the negative, the offence would be “culpable homicide not amounting to murder”, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be “culpable homicide not amount to murder”, punishable under the First Part of Section 304 of the Penal Code.

28. It is settled law that mere fact that the accused did not claim the benefit of any of the exceptions to Section 300 IPC is not enough to deny the accused the benefit of any of the exceptions to Section 300 IPC, if the court can cull out materials from the evidence on record pointing to the existence of the circumstances leading to an exception.

29. Exception 4 to Section 300 IPC reads as follows:-

“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.”

30. The Jurisprudence behind the philosophy of fourth exception is that where an unexpected event clouds a man’s sober reason and urges him to deeds which he would not otherwise do, the criminality of the act is lowered and not that it is taken that the man has committed no offence. The act would still be an offence but of a lower degree.

31. Discussing Exception 4 and its interplay with Exception 1, an illuminative reasoning is to be found in the decision of the Supreme Court reported as Ramesh Krishna Madhusudan Nayar v State of Maharashtra JT 2008 (1) 187 as also the decision reported as Shaikh Majid and Anr v State of Maharashtra and Ors. JT 2008 (1) SC 640, which decisions, we note, have highlighted the aforesaid positions with reference to an earlier decision of the Supreme Court reported as Sandhya Jadhav v State of Maharashtra 2006 (4) SCC 653. The discussion reads as under:-

“For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of persecution 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 cases there is absence of premeditation. But while in the case of Exception 1 there is total deprivation of selfcontrol, in case of Exception 4, there is only that heat of passion which clouds men’s sober reasons 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 been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have been 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's having taken undue advantage or acted in 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 the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for 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".

32. In the backdrop of the afore-noted legal position, we proceed to consider the twin submissions urged by learned counsel for the appellants, and as noted hereinabove.

33. Ashok Kumar PW-5, the brother of the deceased, deposed that on 17.07.1996 at about 09.15 P.M. he was present in his house when the deceased came there and informed him that the appellants had quarreled with him and that he sustained injuries on his mouth and nose in said quarrel. Thereafter he i.e. Ashok Kumar and the deceased proceeded towards police station Jahangir Puri to lodge a report in respect of said quarrel. On their way to the police station the deceased and Ashok Kumar were attacked by the appellants.

34. Let us pause here.

35. Before proceeding further, let us again note the statements made by Ashok Kumar during cross-examination:-

“Accused lives in one lane while we leave in the other lane. It is correct that both the lanes are parallel. It is correct that one can go to the P.S. Jahangir Puri from both these lanes. If one has to go to the police stn. From the street where the house of the accd. person is situated, one has to take a circuitous route.....It is correct that incident took place on the road in front of the house of accd.”  
(Emphasis Supplied)

36. It is also important to note that SI Manhor Lal PW-7, the police officer who prepared the site plan Ex.PW-7/A to scale, also stated in his cross-examination that “It is correct that there is straight road from the house of the deceased to P.S. Jahangir Puri”.

37. From the afore-noted portions of the statements made by PW-5 and PW-7 during cross-examination, it stands established that the occurrence took place on the road in front of the house of the appellants; there was a straight road from the house of the deceased and Ashok Kumar leading to PS Jahangir Puri and that one had to take a circuitous route to go the police station Jahangir Puri from the house of the appellants.

38. If the claim of Ashok Kumar that he and the deceased were going to PS Jahangir Puri at the time when they were attacked by the appellants is indeed correct, then the question which arises is that how come the deceased and Ashok Kumar happened to reach the road in front of the house of the appellants at the time of occurrence when there was a straight road from the house of the deceased and Ashok Kumar leading to PS Jahangir Puri.

39. Ashok Kumar deposed that the deceased had come to the house and told him of being assaulted by the appellants which led the two to proceed to the police station and lodged an FIR. If this is true, we see no reason for Ashok Kumar and the deceased to take a circuitous route to the police station which would take them past the house of the appellants and not the straight road to the police station. They did not do so. What could be the reason? The answer prima-facie is that neither Ashok Kumar nor the deceased left their house to lodge an FIR, but left their house to take revenge from the appellants and this motive or intention led them to the house of the appellants. Ex.DW-1/A, the summary record sheet

pertaining to Balwan when he was lodged at the Central Jail, Tihar records he having received two injuries being; (i) a cut lacerated wound over the scalp and an abrasion over the left chest.

40. Unfortunately, the learned Trial Judge has ignored the aforesaid vital evidence which highly probabalizes that Ashok Kumar and the deceased had reached the house of the appellants and had picked up a quarrel which turned physical. Ashok Kumar and his brother had indeed assaulted Balwan with an object which could result in a cut and lacerated wound on the scalp and this object could well be the gupti in question; suffice would it be to state that whereas the prosecution has to prove its case beyond reasonable doubt, the defence has the onus much below i.e. of probabalizing its defence on the anvil of preponderance of probability.

41. Keeping in view the fact that there was a previous quarrel involving the deceased and the appellants a few minutes prior to the unfortunate incident and the fact that there was a straight road leading to the police station from the house of the deceased and Ashok Kumar and yet the two took the circuitous route and led them to the house of the appellants clearly establishes that the deceased and Ashok Kumar did not leave their house to go to the police station and instead proceeded to return and avenge the previous assault upon the deceased statedly made by the appellants.

42. On the factual matrix we conclude by noting that the weight of the evidence leans in favour of the truth being as afore-noted i.e. the deceased and Ashok Kumar returning to fight and in all probability they were the ones who had carried the gupti with them. Further assuming the possibility of the two not carrying the gupti with them and the same being used by appellant Vijender, but with the backdrop that the deceased Ashok Kumar retriggered a fight by returning after some time of the alleged first assault upon the deceased by the appellants, we have to take into account the law on the subject and the five stab wounds inflicted upon the deceased keeping in view that appellant Balwan had also received one cut lacerated wound.

43. Having concluded that it was the deceased and Ashok Kumar who had initiated the physical fight, under either circumstance i.e. of Ashok Kumar and his

brother carrying the gupti with them or the gupti being used by Vijender, the fact of the matter would remain that it was the deceased and Ashok Kumar who triggered the incident and it would then be a case of the appellants acting upon a sudden quarrel.

44. It is true that five stab wounds were inflicted upon the deceased but a closer look at the post-mortem report Ex.PW- 11/A of the deceased would reveal that 2 out of the said 5 wounds were life threatening and that the remaining wounds were inflicted on the non-vital body parts of the deceased. In the decision reported as Surinder Kumar v Union Territory of Chandigarh AIR 1989 SC 1094 the act of the accused of inflicting 3 stab wounds upon the deceased was held by the Supreme Court to be culpable homicide not amounting to murder in view of the facts that the stab wounds were inflicted by the accused upon a sudden quarrel and there was no pre-meditation on the part of the accused to cause death of the deceased. It would be relevant to note the following observations made by the Supreme Court regarding fourth exception to Section 300 in the said decision:-

“To invoke this exception 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 appellant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor it is relevant who offered the provocation or who started the quarrel. The number of wounds caused during the quarrel 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. Where, on a sudden quarrel, a person in the heat of 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.” (Emphasis Supplied)

45. In the decision reported as Prakash Chand v State of HP 2004 (11) SCC 381, a verbal altercation triggered by the dogs of the accused entering the kitchen of the deceased ending in the accused taking out a gun and firing a shot from a distance of 35 feet causing death of the deceased was held attracting the offence punishable under Section 304 Part I IPC. In the decision reported as Amrithalanga

Nadar v State of Tamil Nadu AIR 1976 SC 1133, commencing with a scuffle and followed by a chase; a 9 inch long knife used to inflict stab injuries on the neck of the deceased was held to be an act punishable for the offence punishable under Section 304 Part I IPC.

46. In view of above discussion, we hold in favor of the appellants that their acts are punishable for the offence under Section 304 Part I IPC.

47. The nominal roll of appellants would show that appellant Vijender, when admitted to bail by this Court, had suffered incarceration for a period of 7 years and 1 month and as regards appellant Balwan he had suffered incarceration for a period of 6 years and 9 months. The nominal rolls of the appellants show that their jail conduct was satisfactory. There is no evidence of the two being involved in any criminal activity and that the incident in question was the solitary brush which they had with law.

48. The date of crime is 17.07.1996 and today is 03.07.2012. 16 years have gone by. Appellants Vijender and Balwan were aged about 21 years and 34 years respectively when they acted rashly. Today the two would be aged about 36 years and 49 years respectively. They were admitted to bail in the year 2002 and the year 2003 respectively. Accordingly, we hold that it would be adequate sentence to be imposed upon the appellants to sentence them to undergo imprisonment for the period they have already undergone for having committed the offence punishable Sections 304 Part I IPC.

49. The appeal accordingly stands disposed of by partially allowing it. The conviction of the appellants for the offence of having murdered the deceased is modified to the offence of having committed culpable homicide not amounting to murder punishable under Section 304 Part I IPC and as regards the sentence it would be as per para 48 above.

50. In view of the sentence imposed, the bail bonds and surety bonds furnished by the appellants are discharged.