

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1125 OF 2011
[Arising out of SLP (Crl.) No. 7194 of 2008]

Guru Dev Singh

.... Appellant

Versus

State of M.P.

...Respondent

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. The present appeal is directed against the judgment and order passed by the Madhya Pradesh High Court convicting the appellant herein under Section 302 read with Section 34 of the Indian Penal Code [for short "IPC"] as also under Section 323 read with Section 34 of IPC sentencing the appellant to undergo imprisonment for life under Section 302/34 for committing murder with a fine of Rs. 5,000/- and in default of payment of

fine further to undergo one year additional rigorous imprisonment.

3. Brief facts leading to the filing of First Information Report and the present case/appeal are that on 18.11.1986 the complainant-Hardev Singh lodged a written complaint which was exhibited in the trial as Exhibit P.1 in the Police Station-Pichhore contending *inter alia* that his brother Bhola Singh alias Kamal who was residing in Village Sarnagat had gone to Janakpur via Village Badera to purchase seeds of *chana* on 17.11.1986 along with Sukhdev Singh and that at about 8.00 p.m. when they reached near the *tapra* of Dilip Singh, Raju, son of Dilip Singh, armed with *kirpan* [sword]; Baldev armed with *lathi* and Chhidda alias Gurudev armed with *lohang* met them. It was also stated therein that accused Baldev and Bhola Singh had enmity towards each other as Bhola Singh wanted the sister of Baldev to marry Lakkha Singh but Baldev did not want the same and because of that the accused persons attacked Bhola Singh and Suveg Singh whereupon both of them were injured. It was alleged that Bhola Singh fell down due to the serious injuries sustained by him whereas Suveg Singh after being injured ran away to save himself and told this

fact to Hardev Singh. Thereupon Hardev Singh alongwith his brother Billa, Bhiru and Suveg Singh returned back to the place of occurrence to save Bhola Singh alias Kamal but they could not find him at the place of occurrence and that only in the morning they could find the dead body of Bhola Singh in the *nala* near the *tapra* of Dilip Singh. The dead body of the deceased was then taken out whereupon it was found that the deceased was injured by sharp edged and hard and blunt objects. Consequently, the First Information Report was lodged by Hardev Singh on the basis of which a criminal case was registered being Crime No. 193/1986. The police after investigation filed challan against the accused persons, viz., Baldev Singh, Chhidda alias Gurudev Singh and Raju for the commission of offence under Section 302 read with Section 34 and under Section 307 read with Section 34 of the IPC.

4. It transpires from the records that the accused persons also lodged a complaint with the police regarding the incident contending *inter alia* that Bhola Singh and Suveg Singh attacked the accused persons and injured them. However, the medical report submitted in support of the said contention

indicates that the injuries suffered by the accused persons in the present case were simple in nature.

5. On the basis of the charge sheet filed as against the appellant and also two other accused persons the case was committed to the Sessions Court. Evidence was adduced by the prosecution, on completion of which, the statement of the accused under Section 313 Cr.P.C. was also recorded.

6. The learned Sessions Judge after perusing the evidence on record passed an order of conviction against the accused for commission of offence under Section 302/34 and Section 307/34 of the IPC and passed an order of sentence to undergo life imprisonment for the offence under Section 302/34 IPC and also imposed fine of Rs. 5,000/- and in default of payment of fine, to further undergo one year additional rigorous imprisonment. The Sessions Court also passed an order of sentence under Section 307/34 of the IPC ordering the accused to undergo rigorous imprisonment for seven years and also imposed fine of Rs. 2,000/- and in default in payment of fine, to further undergo six months' additional rigorous imprisonment.

7. Being aggrieved by the aforesaid judgment and order of conviction passed by the Sessions Judge, Raju and the present appellant filed appeals before the High Court of Madhya Pradesh. We are informed that one of the accused, viz., Baldev Singh had died in the meantime. The High Court took up the appeals filed by Raju and the present appellant for consideration and by a judgment and order dated 03.08.2007 maintained the order of conviction of the accused persons, including the appellant herein, under Section 302/34 IPC and also maintained the sentence of imprisonment passed against them. The High Court, however, set aside the conviction under Section 307/34 IPC and instead the accused persons were convicted under Section 323/34 IPC, for which, no separate sentence was passed as they were already convicted for life under Section 302/34 IPC.

8. As against the aforesaid judgment and order the present appeal is filed only by Gurudev Singh. We are informed at the Bar that accused Raju has not filed any appeal as against his order of conviction and sentence. Therefore, in the present appeal we are concerned only with the order of conviction and sentence passed by the Sessions Judge and confirmed by the

High Court under Section 302/34 of the IPC as against the present appellant, Sri Guru Dev Singh.

9. Counsel appearing for the appellant submitted that the evidence/statements of Suveg Singh [PW-1] and Lakkha Singh [PW-2], who were stated to be eye-witnesses to the said incident, cannot be relied upon as there are vital discrepancies in their evidence. It was also submitted that PW-1 is an interested witness for he was also a party to the fight wherein there was a mutual *maarpit*/fight between the parties in which even the accused persons received injuries for which no explanation has been submitted by the prosecution and, therefore, the order of conviction and sentence passed against the appellant is liable to be set aside. He also submitted that even if the evidence adduced by the prosecution is to be believed, the accused is protected under Exceptions provided under Section 300 IPC for there was provocation from the side of the complainant party and that due to such provocation, the incident occurred due to sudden fight between the parties.

10. The aforesaid contentions of the counsel appearing for the appellant were refuted by the counsel appearing for the State who contended *inter alia* that the injuries received by the

accused were very simple in nature whereas the injuries inflicted on the deceased were very serious in nature and were inflicted on the vital parts of the body of the deceased and, therefore, there was a clear intention on the part of the accused persons to kill and murder the deceased and that even the injuries received by PW-1 were also serious in nature but he could save himself from the vital blows by fleeing away from the place of occurrence.

11. There was also a contention on behalf of the appellant regarding the delay in filing the First Information Report. The said contention was also refuted by the counsel appearing for the respondent contending *inter alia* that the deceased was not traceable and, therefore, the complainant and his relations were busy throughout the night trying to locate Bhola Singh alias Kamal and that the First Information Report was lodged only after the dead body of the deceased was found in the morning of 18.11.1986 from the *nala* near the *tapra* of Dilip Singh. Therefore, it was submitted that there was sufficient explanation for the delay in filing the aforesaid First Information Report.

12. We have considered the aforesaid submissions put forward by the counsel appearing for the parties in the light of the documents placed on records.

13. Suveg Singh [PW-1] is an injured witness and, therefore, an eye-witness to the occurrence. He has given vivid description as to how the incident has taken place. He has clearly stated that there was no provocation on the part of complainant party, and that the provocation in fact came from the side of the accused persons. He clearly stated that when he along with Bhola Singh alias Kamal was returning back from the shop where they had gone to purchase seed of *chana* and when they reached near the *tapara* of Dilip Singh at about 8.00 p.m. they found accused Baldev Singh armed with *lathi*, Chhidda alias Gurudev armed with *lohangi* and Raju armed with *kirpan*. It was also stated by him that all the three accused persons surrounded him and Bhola Singh alias Kamal and Baldev Singh told that his sister was engaged in Village-Salaiya and Bhola Singh was mediator in the said engagement. He has also stated in his evidence that all the accused persons were opposing the proposed engagement and so they asked Bhola Singh alias Kamal to cancel the marriage which Bhola Singh refused,

whereupon Chhidda alias Gurudev, Raju and Baldev Singh attacked both Bhola Singh and him and caused vital injuries on different parts of the body of the deceased as also on his body.

14. There is a categorical statement of PW-1, the eye-witness, that the present appellant-Chhidda alias Gurudev Singh and other accused persons caused serious injuries on the head and body of the deceased by inflicting injuries by weapons like *lohang*, *kirpan* and *lathi* which they were carrying with them. It was also stated by him that Chhidda alias Gurudev Singh, the present appellant, gave PW 1 a blow of *lathi* on his hand while Baldev gave him a blow of *lathi* on his waist/back and the third blow was given by Chidda on his back, after being so hit and on the realizing that the accused persons would kill him he ran away from the place of occurrence and reported the matter to his father Pyarasingh who came along with him and other persons to the place of occurrence but they could not find Bhola Singh after searching throughout the night. They could find the dead body of Bhola Singh only on the morning of 18.11.1986 in a *nala* near the *tapra* of Dilip Singh whereupon they returned back to Janakpur and lodged the report.

15.Lakkha Singh [PW-2], who is also an eye-witness to the said occurrence, has clearly stated that all the three accused persons hit Bhola on his head, hands and legs and also hit Suveg Singh [PW-1] when he tried to rescue Bhola Singh whereupon Suveg Singh ran away from the spot. He also stated that Baldev Singh, Gurdev Singh and Raju lifted Bhola Singh and took him towards the *nala*. This eye-witness has further stated that he further followed them stealthily by remaining 8-10 steps behind them and then the accused persons threw Bhola Singh in the *nala* and at that time also Bhola Singh was crying and pleading with the accused persons but Baldev Singh again beat Bhola Singh there with *lathis* and accused Chidda alias Gurdip Singh beat Bhola Singh with *lohangi*. Thereafter accused Raju said that Bhola Singh is dead now and thereupon all the accused persons left the body of Bhola Singh there and went away towards their *tapras*. Thereafter he [PW-2] returned back to his Village-Sarnagat and on the next day he went to the Village-Janakpur and narrated the facts to Hardev Singh.

16.The aforesaid statement of the two eye-witnesses, viz., PWs 1 & 2, are also supported by the proved medical evidence of Dr. B.D. Sharma [PW-7] in the present case. The post mortem

report of the dead body was conducted by Dr. B.D. Sharma on 18.11.1986 which indicates that there were as many as 21 injuries on the deceased which are in the nature of lacerated wounds as well as contusion on the skull and other parts of the body. The injuries caused on the skull which are in the nature of lacerated wound and also contusion over skull are all very deep. Other injuries were also found to be very serious in nature and were caused by sharp cutting hard and blunt weapon. It is thus established from the aforesaid post mortem report that the deceased would have received injuries from sword as also from *lathi* and *lohangi*. The nature of the injuries caused to the deceased would prove and establish that the aforesaid injuries were caused with the intention of killing the deceased.

17. It was also established from the records that the sword as also the *lohangi* and *lathi*, the weapons used during the incident, have been recovered at the instance of the accused persons and on the basis of the statements made by the accused persons leading to their discovery which are cogent and admissible evidence in the present case.

18. When the aforesaid medical evidence of PW-7 is read along with post mortem report and the statements of PWs 1 & 2, who were stated to be eye-witnesses, as also the statements of the accused persons leading to the discovery, which are admissible in evidence, it is clearly established that the deceased received serious injuries on account of the blows of the sword, *lathi* and *lohang*i used by the accused persons due to which Bhola Singh died.

19. Dr. B.D. Sharma [PW-7] has stated in his evidence that he found 21 injuries on the body of the deceased and that in his opinion 8 injuries were on the head of the deceased, which resulted in Subdural Hematoma and Coma. He clearly stated in his evidence that the deceased died due to the head injuries and that the said injuries were sufficient to cause death in normal course of nature.

20. So, all the aforesaid injuries proved through the medical evidence are also supported by the oral testimony of two eye-witnesses, viz., PWs 1 & 2.

21. Gurmej Singh [PW-4], who is a witness to the recovery of *lathi*, *lohang*i and *kirpan* has clearly stated that on the basis of the statements made by the accused persons the aforesaid

weapons were recovered from the places shown by the accused persons. Therefore, the aforesaid evidence also proves the allegation made against the accused persons including the present appellant.

22.The defence that was also raised by the counsel appearing for the appellant was that the aforesaid incident had taken place as a result of provocation on the part of deceased and PW-1 because of which a sudden fight had developed and thus the appellant is protected under one of the exceptions provided under Section 300 of the IPC.

23.With regard to this plea of the accused it seems that Exceptions I and IV to Section 300 of the IPC are sought to be taken advantage of by the accused in this case. For dealing with such plea raised on behalf of the accused person we may extract the said exceptions to Section 300 IPC, which are as under: -

“Exception 1: When culpable homicide is not murder. Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

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.”

24. With regard to law dealing with Exception I to Section 300 we may refer to the case of **K. M. Nanavati v. State of Maharashtra** reported in **AIR 1962 SC 605** in which this Court held that following conditions must be complied with for the application of Exception I to Section 300 of the IPC: - (1) the deceased must have given provocation to the accused, (2) the provocation must be grave, (3) the provocation must be sudden, (4) the offender, by reason of the said provocation, shall have been deprived of his power of self-control, (5) he should have killed the deceased during the continuance of the deprivation of the power of self-control and (6) the offender must have caused the death of the person who gave the provocation or that of any other person by mistake or accident.

25. With regard to Exception IV to Section 300 we may refer to the case of **Kulesh Mondal v. The State of West Bengal** reported in **(2007) 8 SCC 578** in which this Court

“12. The residuary plea relates to the applicability of Exception 4 of Section 300 IPC, as it is contended that the incident took place in course of a sudden quarrel.

13. For bringing it in operation 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.”

26. In the case of **Babulal Bhagwan Khandare & Anr. v. State of Maharashtra** reported in **(2005) 10 SCC 404** this Court detailed the law relating to Exception I and IV to Section 300 IPC in following terms: -

“17. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution (sic provocation) 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.

18. 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 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 had 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 a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

19. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In Kikar Singh v. State of Rajasthan it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the head it must be held that by using the blows with the knowledge that they were likely to cause death he had taken undue advantage."

27. The defence of accused that his case is covered under one of the above Exceptions to Section 300 is not corroborated by the evidence on record. On going through the evidence on record we find that the provocation came from the side of the accused and not from the deceased or PW-1. It was also not a sudden attack as it was proved that the accused persons were armed with deadly weapons like, *lohangi* and *kirpan* at the time of occurrence and in fact they surrounded the deceased and the injured eye-witness, PW-1, and started giving blows of sword, *lathi* and *lohangi* on the vital parts of the body with the intention of killing Bhola Singh. Therefore, the argument that one of the above Exceptions to Section 300 of the IPC is attracted in the instant case cannot be accepted on the face of the evidence on record.

28. So far the submission with regard to delay in filing the first information report is concerned, we are satisfied that there is proper explanation given by the informant for the delay in filing such report. As the deceased was not found at the place of occurrence, the informant with PW1 was trying to locate the deceased throughout the night and only after tracing him out in the nala and being sure of his death filed the information

immediately thereafter. The aforesaid explanation appeals to us as reasonable.

29. Considering the entire evidence on record, we are satisfied that the appellant is guilty of the offence committed under Section 302/34 of the IPC as also under Section 323 /34 of the IPC and, therefore, the order of conviction and sentence passed by the High Court of Madhya Pradesh against him is found to be justified. We, therefore, find no merit in this appeal which is dismissed.

.....J

[Dr. Mukundakam

Sharma]

.....J

[Anil R. Dave]

New Delhi,
May 10, 2011.

JUDGMENT