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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-34-DB-2012

Date of Reserve:09.05.2024

Date of Pronouncement:21.05.2024

Mandeep

...Appellant

Vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice Gurvinder Singh Gill
Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Sumit Sharma, Advocate, Legal Aid Counsel
for the appellant.

Mr. Munish Sharma, DAG, Haryana.

N.S.Shekhawat J.

1. By way of the present appeal, the appellant has challenged the impugned judgment of conviction dated 12.09.2011 and order of sentence dated 20.09.2011, passed by the Court of Additional Sessions Judge, Karnal, whereby the present appellant has been convicted for the offence punishable under Section 302 of IPC and was sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-, along with default stipulation. In fact, in the present case, three accused namely Sompal, Karam Singh @ Karmu and Mandeep were initially tried by the Trial Court. However, Sompal and Karam Singh @ Karmu were ordered to be acquitted by the Trial Court by extending them the benefit of doubt, whereas, the present appellant was convicted, as indicated above.

2. The prosecution story, as it emanates from the report under Section 173 Cr.P.C, is that the FIR Ex.P-17 in the present case was registered on the



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basis of the statement made by Mange Ram son of Shankar. As per the complainant, he had three sons namely Rakam Singh, Rajbir and Mohinder Singh. His sons Rakam Singh and Rajbir used to live separately with their families near the *Phirni* of the village and his son Mohinder, used to live with him in his house. His son was employed as a servant with Sardar Jasbir Singh son of Amar Singh, resident of the same village. His son used to take meal from the house of his employer Sardar Jasbir Singh and used to take it at his own house daily. At about 09:00 PM on 25.03.2010, his son had kept his meals at home and started saying that he would come back after watering the plants in the field and would take his meals after that. The complainant also followed him and came to the house of his elder son Rakam Singh. His son Mohinder reached near the electric pole adjoining the field of Randhir Singh. Mandeep son of Karam Singh @ Karmu called his son and asked him to go there. On this, his son replied that he would come after watering the plants. His son came on the *kachha* road on the advise of Mandeep and thereafter, Mohinder and Mandeep started scuffling with each other. At that time, Karmu and his both sons namely Sompal and Rohtash came their running. His son ran towards the wheat fields after getting himself freed from Mandeep. All of them caught hold of Mohinder and Mandeep stabbed his son in the stomach. He also reached at the place of occurrence to rescue his son. Sompal gave a *lathi* blow to the complainant, which did not hit him. His grandson Avtar son of Rakam Singh, aged 13 years was also at the place of occurrence. On seeing all the villagers coming towards the place of occurrence, all the assailants fled away from there. His son was crying and saying that he had been stabbed with a knife. The complainant saw that the stabbed wound was deep in the stomach of his son and



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blood was oozing out in the field of wheat and he along with other villagers shifted his son to his house. On reaching the house, his son Mohinder breathed his last due to the injuries caused by knife. His daughter-in-law Rajo wife of Rakam Singh had also witnessed the whole occurrence. He did not know the cause of grudge and on coming to know about it, he would disclose the same and prayed for taking action against them.

3. The statement of complainant was recorded by Ishwar Chander SI, Police Station, Gharunda at about 01:30 AM on 25.03.2010 and on the basis of the statement, the FIR in the present case was registered by Ram Chander, ASI in Police Station Gharaunda.

4. The police inspected the spot, got the proceedings under Section 174 Cr.P.C conducted and the post mortem on the dead body of Mohinder Singh was conducted by PW-4, Dr. Jyoti Sabharwal and other doctors.

5. During the course of investigation, Sompal, Karam Singh @ Karmu were arrested on 26.03.2010 and on 28.03.2010, Mandeep, appellant was arrested and on his disclosure statement about the present occurrence, a knife was got recovered from his possession.

6. After examining the report under Section 173 Cr.P.C and the material appended with it, the Trial Court framed charge under Section 302 of IPC read with Section 34 IPC against the appellant and his other two co-accused and they had pleaded their innocence and claimed that trial may be held against them.

7. In support of the prosecution case, Ishwar Singh, Patwari was examined as PW-1, who had prepared the scaled site plan with correct foot notes as Ex.P-2, after visiting the place of occurrence in Village Panori on



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03.06.2010. The prosecution further examined PW-2, Mange Ram, complainant (father of Mohinder), who reiterated the version as mentioned in the FIR. However, in his cross-examination, he stated that houses of his sons Rakam Singh and Rajbir were adjacent to each other. Still further, there was a street in between the house of the accused and his house and there are 6/7 houses in the street, where house of Rakam Singh is situated. He further admitted that Mandeep, appellant and his son Mohinder, since deceased remained scuffling for a short while, however, he could not tell the exact period of their scuffle. He further admitted that appellant and Mohinder, since deceased were close friends and they used to sit together regularly. They also used to take meals together. Field of Rampal was adjoining to the house of his son Rakam Singh. In his cross-examination, he denied the suggestion that the appellant had inflicted injuries to Mohinder Singh in self-defence from domestic knife, which was lying in the room, where they were enjoying the meal and liquor etc. Rajo Devi wife of Rakam Singh, sister-in-law (Bhabhi) of Mohinder (deceased) was examined as PW-3 and she supported the statement of PW-2, Mange Ram. However, in her cross-examination she also stated that she knew the fact about the friendship of accused Mandeep, appellant and Mohinder, since deceased, since childhood. The prosecution further examined PW-4, Dr. Jyoti Sabharwal, who along with Dr. Dinesh Dahiya had conducted the post mortem examination on the dead body of Mohinder Singh on 25.03.2010. She stated that the time of death as per the police papers was at 12:00 mid night and cause of death as per the police papers was injury by knife. She found the following injuries and stated as under:-

1. *Spindle shape incised wound with size 2 x 0.75 cm on*



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right side of abdomen. 15 cm below, right nipple and 9 cm right to the midline.

2 Contusion 4 x 0.5cm obliquely placed 1.5cm below right nipple on right side of chest.

3. Contusion 2 x 0.5cm horizontally placed on front of neck in middle.

4 Contusion 1 x 0.5 cm on front of left shoulder.

5. 3 contusions of size 2 x 1 cm, 1 x 0.5 cm, 1.5 x 0.5cm on right shoulder.

On dissection corresponding, injury No.1 haematoma was present in intercostal muscle of 8th intercostal space right side, rent in underneath diaphragm was present, laceration of size 2 x 1 x 6cm over front of right lobe of liver was present.

Scalp, skull and vertebra were healthy. Brain was healthy. Plural cavity was full of blood, larynx and trachea healthy, right and left lung place and healthy, pericardium healthy, heart both sides empty, large vessels were healthy. Peritoneal cavity full of blood. Stomach contained semi digested particles. Small intestine containe chyme and gases. Large intestine containe fecal matter and gases. Liver as described earlier, Spleen and kidney were pale and healthy, bladder empty. Organ of generations healthy.

In our opinion, the cause of death in this case was haemorrhage and shock following injury to vital organs as described.

All injuries were ante-mortem in nature and sufficient to cause death in normal course of time.

PW-4, Dr. Jyoti Sabharwal further stated as under:-

“On the police application dated 12.04.2010 regarding weapon, I opened a sealed parcel brought by police and contents were taken out. There was a knife without handle with dimension 15cm in length and 2.2cm in width (maximum) with one sharp



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surface and one blunt surface. The whole metallic part was covered with scattered rust. In my opinion the possibility of injuries sustained on the body of Mohinder Singh son of Mange Ram with the above mentioned weapon brought by police cannot be ruled out. The opinion is Ex. P9, which bears my signatures. (At this stage a sealed parcel is opened and knife without handle is taken out). The knife is Ex.MO2. It is the same knife which was shown to me by the police at the time of taking my opinion.

In her cross-examination, she stated that it was not necessary in case, weapon having both sharp edge is used in inflicting injuries, it would cover spindle shape injury. It was not necessary that spindle shape injury was caused only having both sharp edges. She had further given the opinion that it was not necessary that the edges of the weapon should be sharp on both the sides. She further admitted that there were two cuts close to each other.

8. The prosecution further examined PW-5 ASI Ram Kumar, who had arrested Mandeep, appellant in the present case on 28.03.2010. As per him, in pursuance of the disclosure statement Ex.P-10 suffered by the appellant, the appellant got recovered one knife, which was taken into possession vide a recovery memo Ex.P-11, after converting the same into parcel and sealed the same with the seal IC. The prosecution further examined EHC Ram Narain as PW-6, ASI Rajbir Singh as PW-7, EASI Narain Dutt as PW-8 and ASI Subhash Chand as PW-9 and their testimonies were formal in nature. The prosecution further examined Pritam Singh, SI/SHO as PW-10, who had prepared the report under Section 173 Cr.P.C. Megh Raj son of Shree Chand was examined as PW-11, in whose presence the appellant had got recovered a knife without handle from the heap of woods from the field of Randhir Singh. The



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prosecution further examined PW-12, Vinod son of Asha Ram, who had identified the body of Mohinder Singh, deceased at General Hospital, Karnal. Ishwar Chander, ASI, In Charge Police Post Salwan was examined as PW-13, who had conducted the initial investigation in the present case. Inspector Balraj was examined as PW-14, who was posted as SHO in Police Station, Gharaunda at the relevant time and had conducted part of the investigation in the present case. The prosecution further examined HC Ramesh Chand as PW-15 and his testimony was formal in nature. Mohan Handa, Photographer was examined as PW-16, who had taken the photographs of the dead body from different angles as well as of the fields.

9. After the prosecution had concluded its evidence, the entire incriminating evidence was put to the appellant in the shape of his statement under Section 313 Cr.P.C and he had taken up the following defence:-

“I am innocent. I have been falsely implicated in this case. True facts of the case are that I and deceased Mohinder Singh were very close friends and we used to sit together regularly. I and deceased Mohinder Singh used to take meal and liquor together in routine manner. On the day of occurrence i.e 24.03.2010 at about 10/10.30PM, I and deceased Mohinder Singh were enjoying liquor and meal etc. inside the house of Rakam Singh, real brother of deceased. I asked to deceased Mohinder Singh to return my mobile and on this, a quarrel took place between us. Mohinder Singh gave a slap to me and inflicted grievous injury to me on the various parts of my body and in self defence, I inflicted injury to Mohinder Singh deceased from the domestic knife, which was lying in the said room, where we were enjoying liquor and meal etc. At that time, my father Karam Singh @ Karmu and my brother Som Pal were present. Even no body was also present from the complainant side in the house. Later on,



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the police had concocted a false story and eye witnesses were introduced. I was inflicted injuries by the deceased Mohinder and I remained admitted in CHC, Gharaunda and then I was referred to GH, Karnal but police had not collected my MLR etc from CHC. Gharaunda or from GH, Karnal. My brother Rohtash is missing for the last six years.

10. In defence, the accused had examined Dr. Nirmal Singh Sidhu as DW-1, who had medico-legally examined Mandeep, appellant on 24.03.2010 at about 11:00 PM. As per him, the patient was conscious, oriented to time, place and person and his BP was 130/80 mm Hg. Even the smell of alcohol from his mouth was present and he found the injuries on his person and stated as under:

- “1. A lacerated wound 1 cm x 8cm skin deep over left side of chest in upper part.
2. Abrasion 1 cm x 7cm present over left side of chest crossing injury No.1.
3. A lacerated wound 2 cm x 4 cm present over left side of face.
4. A lacerated wound 1 cm x 1cm present over left ear pinna.
5. A lacerated wound 2 cm x 2 cm muscle deep present over left side of chest 3 cm above the left nipple.

Injuries No.1,2,3 and 5 surgery opinion was advised and for injury No.4, ENT opinion was advised. All the injuries were kept under observation. All the injuries were caused by blunt weapon and duration was within six hours. Patient was brought by Som Pal son of Taram Singh of village Panori.(At this stage, learned defence counsel states that the original ruqua and carbon copy of MLR is in the police file, which may be got produced through the witness. Heard and allowed). I have brought the original MLR No.GHD/NS/09/10, which bears my signatures and copy of the same is Ex.DA. I had sent ruqua regarding medical examination of patient Mandeep Singh. Ruqua is Ex.DB. On the same day, patient



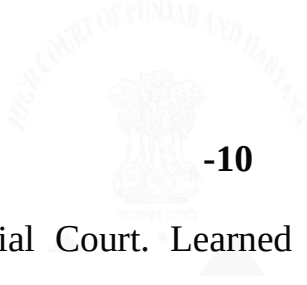
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was referred to GH, Karnal by me. I have seen accused Mandeep present in the court, who is same person, who was examined by me.

In his cross-examination he stated that injuries No.2 to 4 were on the external parts of the body of Mandeep and the injury No.1 was skin deep and injury No.5 was muscle deep. The possibility of the injuries No. 1 to 4 being self-inflicted could not be ruled out. He could not say whether injuries No. 1 to 5 were simple or grievous in nature, because thereafter, the patient did not come to him with the surgeon's opinion. He admitted that all the injuries were blunt in nature.

11. Learned counsel for the appellant vehemently argued that in the present case, the appellant and Mohinder Singh, deceased were close friends from childhood and used to sit together for taking meals and drinks etc. at the house of Rakam Singh, brother of deceased. He further admitted that the factum of close friendship had already been admitted by Mange Ram, PW-2 and Rajo Devi, PW-3, who are the family members of Mohinder, since deceased itself. Even they had admitted that they were close friends since childhood and were neighbours also. On the date of incident, both were sitting together and taking meals and all of a sudden there was a scuffle over a mobile phone of the appellant, which was given by the appellant to Mohinder. He further contends that when the appellant asked him to return mobile, Mohinder had caused injuries to the appellant and at the spur of the moment, the appellant inflicted a single injury with knife, which was lying there. Therefore, the appellant had no intention to kill the deceased and he was liable to be acquitted by this Court. He further contends that in the present case, none of the witness was present at the place of occurrence and the presence of all the prosecution witnesses has been



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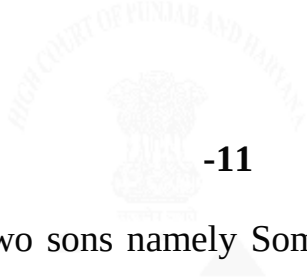
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dis-believed by the Trial Court. Learned counsel for the appellant further submitted that keeping in view the facts and circumstances of the present case at the worst, the act attributed to the present appellant would constitute a lesser offence, that is culpable homicide not amounting to murder, which is punishable under Section 304 Part II of IPC as the case of the appellant fell within the Exception No.4 of Section 300 of IPC.

12. On the other hand, learned State counsel has controverted the submissions made by learned counsel for the appellant by submitting that in the present case, the appellant had brutally killed Mohinder, since deceased by inflicting knife blow on the vital organs of his body. Learned State counsel has placed reliance on the testimonies of PW-2, Mange Ram and PW-3, Rajo Devi to contend that both the witnesses had been cross-examined at length by learned defence counsel and their testimonies clearly proved that the appellant was involved in the present case. Even during the course of investigation, sufficient material was collected against the present appellant and he was liable to be convicted by this Court.

13. In the present case, we have given the holistic view to the aforesaid rival contentions raised on behalf of the parties.

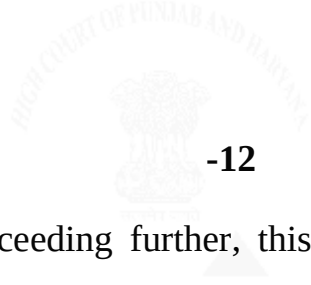
14. In the present case, the prosecution case primarily rests on the testimonies of PW-2 Mange Ram, PW-3 Rajo Devi and PW-4 Dr. Jyoti Sabharwal. As per PW-2, Mange Ram at about 09:00 PM on 24.03.2010, his son had returned home and instead of taking his meals, he was going to the fields. He stated that he would return after changing the flow of water in the field and would take his meals. In the meantime, on the way, there was a scuffle between him and the appellant. As per PW-2, three more accused namely



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Karam Singh and his two sons namely Sompal and Rohtash also came at the spot. However, on his seen, the appellant gave injury with knife on the person of Mohinder and ultimately, Mohinder succumbed to the injuries. However, in cross-examination, he admitted that Mandeep, appellant and his son Mohinder, deceased remained scuffling for a short while, however, he could not give the exact time of scuffle. He admitted that the appellant and Mohinder, deceased were close friends and they used to sit together regularly. They also used to take their meals together. Similarly, PW-3, Rajo Devi also admitted that she knew the fact about the friendship of appellant and Mohinder, deceased since childhood. Still further, it is the admitted case of the parties that both the parties were neighbours and there was no prior enmity between both the families, prior to the date of occurrence. Further, from the testimony of PW-4, Dr. Jyoti Sabharwal, it is apparent that Mohinder, since deceased had suffered only spindle shape incised wound of the size 2 x 0.75 cm on the right side of the abdomen. As per her, Mohinder had suffered four more injuries, however, all the four injuries were contusions of very small sizes on chest, neck and left as well as right shoulder of Mohinder. She further stated that the injuries were caused with a knife without handle, which had the dimension of 15 cm in length and 2.2 cm in width (maximum) with one sharp surface and with one blunt surface. Thus, it is apparent that the length of the knife was about 6 inches and the width was 2.2 cm maximum. It is also apparent from the statement of PW-5, ASI Ram Kumar that Mandeep, appellant was arrested in the present case on 28.03.2010 and in pursuance of the said disclosure statement, the appellant had got recovered the knife, which was used in the commission of crime in the present case.



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15. Before proceeding further, this Court would first address to the issue as to whether the present case would fall within the definition of “Murder” or “Culpable Homicide” not amounting to murder. Section 300 is reproduced below for ready reference:-

300.Murder- *Except in the cases hereinafter excepted, culpable homicide a murder,if the act by which the death is caused is done with the intention of causing death, or*

2ndly.- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly.- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.- xxxx xxxx xxxx

Exception 2.- xxxx xxxx xxxx

Exception 3.- xxxx xxxx xxxx

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.

Exception 5.- xxxx xxxx xxxx

16. The main contention on behalf of the appellant in the present case was that at the worst, the case of the appellant fell within the Exception No.4 to Section 300 of IPC. To invoke the said exception, four requirements have to be satisfied, normally:-



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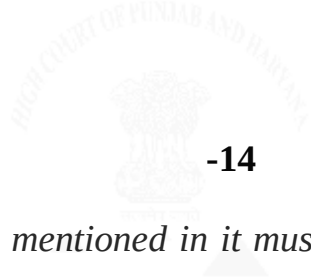
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- (i) it was a sudden fight:-
- (ii) there was no pre-meditation;
- (iii) the act was done in a heat of passion; and
- (iv) the assailant had not taken any any undue advantage or acted in a cruel manner.

The cause of quarrel is not relevant nor it is relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor, but what is more important is that the occurrence must have been sudden and un-premeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken in any undue advantage or acted in a cruel manner. The Hon'ble Supreme Court has held in catena of judgments that in a heat of passion there must be no time for the passions to cool down and that the parties in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from that incident being the result of a sudden quarrel without pre-meditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception No.4 to Section 300 IPC. These observations of this Court find support from the law laid down by the Hon'ble Supreme Court in the matter of **"Ghapoo Yadav and Ors. Vs.State of M.P,2003(1) RCR (Criminal) 827:2003(3) SCC 528, wherein the Hon'ble Supreme Court held as follows:-**

"...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



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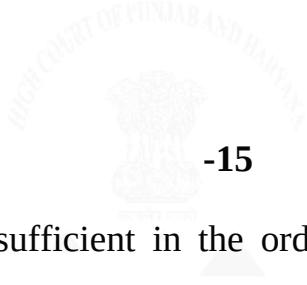
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ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300. IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions 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 'un- fair advantage'."

xxx xxx xxx xxx

...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused appellants had come prepared and armed for attacking the deceased.... This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable..."

17. In the matter of **Sukhbir Singh Vs. State of Haryana,2002(2) RCR (Criminal) 57: 2002 (3)SCC 327**, as per the case set up by the prosecution the appellant had caused two *bhala* blows on the person of the



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deceased, which were sufficient in the ordinary course of nature to cause death. In such a case also, the Hon'ble Supreme Court held that all the fatal injuries resulting in death could not be termed as cruel or unusual for the purposes of Exception No.4 of Section 300 IPC. In cases, where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. While discussing the same, the Hon'ble Supreme Court observed as under:-

"...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner."

18. The Hon'ble Supreme Court also held in the matter of "**Mahesh Vs. State of M.P., (1996) 10 SCC 668**" as follows:-

... 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 heels. 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 PW-2 or PW-6 who were also present also with the deceased and who had also requested the appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any



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premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300 IPC 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) IPC..."

19. In the present case, the next question which would arise for the consideration of this Court is whether the case would fall under Part-I or Part II of Section 304 IPC. The Hon'ble Supreme Court has laid down the distinction between the said provisions in the matter of "**Alister Anthony Pareira Vs. State of Maharashtra, 2012(1) RCR (Criminal) 524:2012(1) Recent Apex Judgments 43:2012(2) SCC 648** in the following words:-

"...For punishment under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death...."

20. The Hon'ble Supreme Court, while drawing a distinction between motive, intention and knowledge, held in the matter of "**Basdev Vs. The State of Pepsu , AIR 1956 SC 488** by observing as under:-

"....Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating



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line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things.

21. Still further, in view of the law laid down by this Court and the Hon'ble Supreme Court, this Court has to tread cautiously to decide the pivotal questions of intention and knowledge, which would finally determine as to whether the present case would fall under Section 302 IPC or Section 304 Part-I or Section 304 Part-II. In the present case, as per PW-2, Mange Ram and PW-3 Rajo Devi, both the appellant as well as Mohinder, deceased were neighbours. There was no history of enmity between both the parties. PW-3 Rajo Devi, who is sister-in-law(Bhabhi) of Mohinder, deceased stated that she was well aware about the friendship of appellant and Mohinder, deceased, since childhood. Similarly, PW-2 Mange Ram also admitted that Mandeep, appellant and his son Mohinder were close friends and they used to sit together regularly. They also used to take meals together. Apart from that, it is also apparent that in the present case, the occurrence had taken place at about 10/11 P.M. on 24.03.2010 and the appellant was medico-legally examined by DW-1 Dr. Nirmal Singh at about 11:00 PM on 24.03.2010 and he found the following injuries on his person:-

- “1. *A lacerated wound 1 cm x 8cm skin deep over left side of chest in upper part.*
2. *Abrasion 1 cm x 7cm present over left side of chest crossing injury No.1.*
3. *A lacerated wound 2 cm x 4 cm present over left side of face.*
4. *A lacerated wound 1 cm x 1cm present over left ear pinna.*
5. *A lacerated wound 2 cm x 2 cm muscle deep present over left side of chest 3 cm above the left nipple.*



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Injuries No.1,2,3 and 5 surgery opinion was advised and for injury No.4, ENT opinion was advised. All the injuries were kept under observation. All the injuries were caused by blunt weapon and duration was within six hours. Patient was brought by Som Pal son of Taram Singh of village Panori.(At this stage, learned defence counsel states that the original ruqua and carbon copy of MLR is in the police file, which may be got produced through the witness. Heard and allowed). I have brought the original MLR No.GHD/NS/09/10, which bears my signatures and copy of the same is Ex.DA. I had sent ruqua regarding medical examination of patient Mandeep Singh. Ruqua is Ex.DB. On the same day, patient was referred to GH, Karnal by me. I have seen accused Mandeep present in the court, who is same person, who was examined by me.

22. As per DW-1, Dr. Nirmal Singh Sidhu, injury No.1 on the person of appellant was skin deep, whereas injury No.5 on the person of the appellant was muscle deep. Even the appellant was examined by DW-1, within few minutes of the occurrence and there is no possibility of manipulating the injuries by him in such a short time. Still further, as per PW-1, the weapon of offence i.e knife in the present case had the dimension of 15 cm (about 06 inches) in length and 2.2 cm in width (maximum) with one sharp surface and one blunt surface. In fact, such kind of knives are easily available in every house for cutting vegetables etc. and the said knife was used in the commission of crime. Consequently, it is apparent that by causing an injury with such a knife, the present appellant had no intention to commit the murder of Mohinder, deceased. However, this knife was used with such a force that the person had met his death; knowledge has to be imputed to the appellant and in that situation, the present case would fall in Part II of Section 304 IPC. Even in the



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present case, Mohinder, deceased had suffered a spindle shaped incised wound and the PW-4, Dr. Jyoti Sabharwal had stated in her cross-examination that there were two cuts close to each other, however, the same would not make any difference in the present case and the case would be covered by the ratio of the law laid down by the Hon'ble Supreme Court in the matter of **Sukhbir Singh Vs. State of Haryana(supra).** In the present case also, the appellant had admittedly not acted in a cruel or unusual manner and it was a fight, which had taken place at the spur of the moment.

23. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the appellant had committed the offence under Section 304 Part-II and not under Section 302 of IPC.

24. In the present case, the occurrence had taken place on 25.03.2010 and the appellant has already face the agony of trial/appeal for the last about 14 years. Even, at the time of commission of crime, he had not acted in a cruel or unusual manner. Apart from that, as per the custody certificate, the appellant has already undergone 06 years of actual sentence and had undergone total sentence of 08 years 08 months and 02 days with remissions. Thus, the ends of justice will be suitably met, if the sentence imposed on the present appellant is reduced to the period already undergone by him. However, the amount of fine shall remain unaltered in the present case.

25. In view of the above, the present appeal is partly allowed and the impugned judgment of conviction is ordered to be upheld and order of sentence is modified to the extent that the sentence imposed on the present appellant is reduced to the period already undergone by him and the amount of fine shall



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remain unaltered.

26. With these directions, the appeal stands disposed off.

27. All pending application(s), if any, are also disposed off, accordingly.

**(GURVINDER SINGH GILL)
JUDGE**

**(N.S.SHEKHAWAT)
JUDGE**

21.05.2024

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No