Court No.48

CRIMINAL APPEAL No.535 of 1987

1. Ram Shankar
2. Onkar
3. Mahadeo (Dead)
4. Rajeshwar
5. Tirath (Dead)
6. Laxmi
7. Ashok
8. Ram Bhabhuti (Dead)
9. Bhadeshwar
10. Parmatma (Dead)

.....Appellants

Vs

State of Uttar Pradesh .....Respondent

For Appellants : Sri S K Dubey, under the authority of Sri S N Singh, Advocate.

For Respondent/State : Sri Amit Sinha, AGA

Hon'ble Pritinker Diwaker, J.
Hon'ble Raj Beer Singh, J.

Per: Pritinker Diwaker, J.

(24.9.2019)

This appeal arises out of impugned judgment and order dated 17.2.1987 passed by Vth Additional Sessions Judge, Basti in Sessions Trial No.222 of 1984, convicting accused no.5-Tirath, accused no.6-Laxmi, accused no.7-Ashok, accused no.8-Ram Bhabhuti, accused no.9-Bhadeshwar and accused no.10-Parmatma under Sections 147, 323 read with Section 149 and Section 302 read with Section 149 of IPC and sentencing them to undergo one month's RI; three months' RI

and imprisonment for life respectively. Further, accused no.1-Ram Shankar, accused no.2-Onkar, accused no.3-Mahadeo and accused no.4-Rajeshwar have been convicted under Sections 148, 323 read with Section 149 and Section 302 read with Section 149 of IPC and sentenced to undergo one year's RI, three months' RI and imprisonment for life respectively.

2. As per prosecution case, there were two groups in the village, one was of '*Pandit*' community, whereas the other group was of '*Harijan*' community. As the later group had stopped working for the first group, there was a dispute between the two and the proceedings under Section 107 of Cr PC were initiated against both the groups. Another outfall of the said dispute was that the second group was not allowed to move freely in the village by the first group nor they were permitted to fetch water from the Well. It is said that on 29.9.1982, deceased Shiv Raj, who belonged to second group, was making some arrangement to have separate Hand Pump and while doing so, he had gone to the well of accused Ram Shankar and there some verbal exchange had taken place. Soon thereafter, accused persons reached to opposite group carrying different weapons with them and upon exhortation being made by first accused Ram Shankar, they caused injuries to Shiv Raj. When Piyare (PW-2) and Hanuman (PW-3) tried to intervene in the matter, they were also subjected to injuries. In the said incident, accused Laxmi and Ashok also suffered minor injuries. After sustaining injuries, Shiv Raj expired at the place of occurrence itself.

3. On the basis of written report Ex.Ka.1 lodged by (PW-1) Ram Dawan, brother of the deceased, on 29.9.1982 FIR Ex.Ka.2 was registered at 9:15 am against ten accused persons, namely, Ram Shankar, Onkar, Mahadeo, Rajeshwar, Tirath, Laxmi, Ashok, Parmatma, Bhadeshwar and Ram Bhabhuti under Sections 147, 148, 149, 323, 324, 504 and 302 of IPC.

4. Injured Hanuman (PW-3) was medically examined vide Ex.Ka.8

and the following injuries were noticed by the Doctor:

> *"(i) Lacerated wound - 5.52 x 1 cm x bone deep on the left side of Head, vertically placed 9 cm above left ear. Bleeding present.*
>
> *(ii) LW - 4 cm x 0.4 cm x muscle deep on the Rt. side of Head, 5 cm above Rt eyebrow. Bleeding present.*
>
> *(iii) Contusion swelling - 6 cm x 4 cm on the Rt. side of face, just below the lower eyelid, Below canthus.*"

Other injured Piyare (PW-2) was also medically examined, vide Ex.Ka.9 and the following injuries were noticed by the Doctor:

> *"(i) LW - 5.52 x 0.52 cm x muscle deep, on the left side of Head, 9 cm above eyelid. Bleeding present.*
>
> *(ii) Traumatic Swelling - 12 cm x all round Rt. forearm, 4 cm below the elbow.*
>
> *(iii) Traumatic Swelling - 10 cm x all around Rt. forearm, 11 cm below injury no.(ii).*"

5. Inquest on the dead body of the deceased was conducted vide Ex.Ka.6 on 29.9.1982 and the body was sent for postmortem which was conducted on 30.9.1982, vide Ex.Ka.7 by (PW-5) Dr A K Mehrotra.

As per Autopsy Surgeon, following injuries were noticed on the body of the deceased:

1. *Lacerated wound 5 cm x 1.5 cm x bone deep on back of skull 2 cm front of site of choti (चोटी). Obliquely present.*
2. *Lacerated wound 5.5 cm x 1.5 cm x bone deep on Rt parieto temporal region of skull 6 cm above right ear. Obliquely present.*
3. *Incised wound with clear cut margins (as seen with lens) on right side front of skull extending to forehead – size 5 cm x 1 cm x bone deep. Flesh of skull bone is seen cut through the wound.*
4. *Lacerated wound – 3.5 cm x 0.6 cm x bone deep on dorsum of the middle finger of left hand.*
5. *Contusion 9 cm x 2.5 cm outer front of right shoulder.*
6. *Multiple contusion on area of 15 cm x 12 cm on back of lower half of the side of chest area. Biggest size of contusion is 9 cm x 2.4 cm and smallest of size 6 cm x 1.6 cm.*
7. *Contusion – 12 cm x 2.5 cm on back of upper inner part of*

right thigh.

8. *Contusion – 7.8 cm x 2 cm on back of left shoulder.*

9. *Contusion 9 cm x 2.2 cm on the back of middle 1/3 of left leg."*

Cause of death of the deceased was shock, haemorrhage and coma as a result of ante-mortem injuries.

6. While framing charge, the trial Judge has framed charge against accused Tirath, Laxmi, Ashok, Parmatma, Bhadeshwar and Ram Bhabhuti under Sections 147, 302/149 and 323/149 of IPC, whereas against accused Ram Shankar, Onkar, Mahadeo and Rajeshwar charge was framed under Sections 148, 302/149 and 323/149 of IPC.

7. So as to hold accused persons guilty, the prosecution has examined eight witnesses, whereas one defence witness has also been examined. Statements of accused persons were also recorded under Section 313 of Cr PC in which, they pleaded their innocence and false implication.

8. By the impugned judgment, the trial Judge has convicted and sentenced the accused persons as mentioned in para 1 of this judgment. During pendency of the present appeal, accused no.7-Ashok has been declared juvenile, whereas accused no.3-Mahadeo, accused no.5-Tirath, accused no.8-Ram Bhabhuti and accused no.10-Parmatma have expired and the appeal in their respect has already been abated. At present, this appeal is confined in respect of accused no.1-Ram Shankar, accused no.2-Onkar, accused no.4-Rajeshwar, accused no.6-Laxmi, accused no.7-Ashok and accused no.9-Bhadeshwar.

9. Counsel for the appellants submits:

(i) that the FIR is ante-dated.

(ii) that motive part has not been proved by the prosecution.

(iii) that (PW-1) Ram Dawan, (PW-2) Piyare and (PW-3) Hanuman are not the reliable witnesses.

(iv) that it is the victim party who was aggressor and, therefore, the accused persons had every right to save themselves from the *marpeet* started by the victim party. Learned counsel submits that the accused persons have caused injury in their self-defence and thus, they cannot be convicted.

(v) that under no stretch of imagination, offence under Section 302 of IPC is made out against the accused persons and, at best, they are liable to be convicted under Section 304 Part II of IPC. It has been argued that the incident occurred in the year 1982, i.e. 37 years back, some of the accused have already expired, remaining accused persons are willing to compensate the victim's family and, therefore, a lenient view be taken while awarding sentence to them.

10. On the other hand, supporting the impugned judgment and order, it has been argued by the State Counsel that the conviction of the accused persons is in accordance with law and there is no infirmity in the same. He submits that (PW-2) Piyare and (PW-3) Hanuman are the injured eye-witnesses and they have duly supported the prosecution case. The prosecution case has been further proved by the medical report of (PW-2) Piyare and (PW-3) Hanuman and likewise, postmortem report of the deceased. State counsel further submits that complainant party was not aggressor and in the evidence, it has come that it is the accused persons who were aggressor. He submits that right of private defence of a person or property is not available to the accused persons once the eye-witnesses have stated that it is they who caused injury first. He submits that even otherwise, the accused persons have exceeded their right and, therefore, it cannot be said that they are not liable to be convicted for any offence.

11. We have heard learned counsel for the parties and perused the record.

12. (PW-1) Ram Dawan, is a brother of the deceased and lodger of FIR, Ex. Ka.2. While supporting the prosecution case, he has stated

that on the date of incident at about 8:00 am, deceased had gone to fetch water from the well of accused no.1 Ram Shankar. However, he was not allowed to do so and was abused by Ram Shankar. He states that deceased Shiv Raj returned to his place after abusing the other group. He further states that soon thereafter, all the accused persons reached there carrying different weapons with them and upon being exhorted by accused no.1 Ram Shankar and accused no.8-Ram Bhabhuti, other accused persons chased the deceased Shiv Raj and after surrounding him, caused number of injuries to him. To save Shiv Raj, (PW-2) Piyare and (PW-3) Hanuman and other persons rushed to him, however, they too had suffered injuries. After sustaining injury, Shiv Raj expired at the place of occurrence itself. In paragraph no.3, he has stated that there were two groups in the village, one belongs to the appellants party, whereas the other was of Harijan group and that there was tension in the village over payment of wages to the second group after which, proceedings under Section 107 Cr PC were also initiated. In the lengthy cross-examination, this witness has remained firm and has reiterated as to the manner in which the incident occurred.

13. (PW-2) Piyare, is an injured witness to the incident, has duly supported the prosecution case and his statement is almost similar to that of (PW-1) Ram Dawan. He states that in the local body election, one Jagdev, from the side of accused persons, defeated one Ram Sahai Chaudhary. He has further stated that on the date of incident when the accused persons were cutting their crops, it is his group who made assault and from the side of accused, Laxami and Ashok suffered injuries and when the accused persons were trying to save themselves, from the side of complainant some persons suffered injuries. He further states that in a cross case, he has also been joined as an accused.

14. (PW-3) Hanuman, is the other injured eye-witness to the incident, has also duly supported the prosecution case.

15. (PW-4) Wakar Husain, is the Investigating Officer, has duly supported the prosecution case.

16. (PW-5) Dr. A.K. Mehrotra, did the postmortem of the deceased vide Ex. Ka. 7.

17. (PW-6) Lal Bahadur Singh and (PW-7) Gomti Prasad assisted during investigation.

18. (PW-8) Dr. G.P. Agarwal, did MLC of (PW-2) Piyare and (PW-3) Hanuman, vide Ex. Ka. 8 and 9 respectively. He further states that accused Laxmi and Ashok had also suffered minor injuries.

19. According to (DW-1) Dr. S.K. Srivastava, accused Laxmi has suffered fracture of metacarpel.

20. Close scrutiny of the evidence makes it clear that there were two groups in the village, Chapiya Majhariya, one headed by the accused persons and the other was of Harijans, of which deceased Shiv Raj was a member. There was a dispute in the village over payment of wages to the second group and the legal proceedings were also initiated against both the parties. On the date of incident, deceased Shiv Raj had gone to fetch water from the well of accused no.1-Ram Shankar and they abused each other. Soon thereafter, accused persons apprehended Shiv Raj and there was an incident of *marpeet* between two groups. In the incident, from the second group, Shiv Raj (deceased), Piyare (PW-2) and Hanuman (PW-3) suffered injuries, whereas from the side of accused persons, accused Laxmi and Ashok also suffered injuries. The incident has been witnessed by (PW-1) Ram Dawan, (PW-2) Piyare and (PW-3) Hanuman and all three witnesses have duly supported the prosecution case and we have no reason to disbelieve their statements. Likewise, injured Laxmi and Ashok had also suffered injuries and their injuries have also been admitted by the doctor who treated them.

Considering the statements of witnesses, complicity of the accused persons in commission of offence has been duly proved and thus, they are liable to be convicted for the murder of Shiv Raj and

injuries to Hanuman and Piyare.

21. The next question which arises for consideration of this Court is as to whether the act of accused persons would fall within the definition of 'murder' or it would be 'culpable homicide not amounting to murder'. Before proceeding further, it is relevant to refer to the provisions of Section 300 of IPC, which read as under:

> "**300. Murder. –** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-
>
> *Secondly*. – 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 -
>
> *Thirdly*. – 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 -
>
> *Fourthly*. - 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*. - **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.
>
> The above Exception is subject to the following provisos:-
>
> *First.* - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
>
> *Secondly.* - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
>
> *Thirdly.* - That the provocation is not given by anything done in the lawful exercise of the right of private defence.
>
> *Explanation*. - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.
>
> *Exception 2.* - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

> *Exception 3*. - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.
>
> *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.
>
> *Explanation*. - It is immaterial in such cases which party offers the provocation or commits the first assault.
>
> *Exception 5*. - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception itself. The exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The fourth exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of 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 mens' 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 an equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole

blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties 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".

22. The Apex Court in **State of A.P. vs. Rayavarapu Punnayya and Another**[1] while drawing a distinction between Section 302 and Section 304 of IPC held as under:

> "**12.** In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable

1 (1976) 4 SCC 382

> homicide" *sans* "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The *first* is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The *second* may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.
>
> **21**. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", on the facts of a 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 causal connection between the act of the accused and the death, leads to the second stage for considering whether that 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 the 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. 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 the 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 amounting to murder", punishable under the first part of Section 304, of the Penal Code."

In **Budhi Singh vs. State of Himachal Pradesh**[2], the Supreme Court held as under:

> **18.** The doctrine of sudden and grave provocation is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to

2 (2012) 13 SCC 663

> reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts done by the deceased to the accused resulting in inflicting of injury.
>
> **19.** Another test that is applied more often than not is that the behaviour of the assailant was that of a reasonable person. A fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of self-control and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once there is premeditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder....."

In **Kikar Singh vs. State of Rajasthan**[3] the Apex Court held as under:

> **"8.** The counsel attempted to bring the case within Exception 4. For its application all the conditions enumerated therein must be satisfied. The act must be committed without premeditation in a sudden fight in the heat of passion; (2) upon a sudden quarrel; (3) without the offender's having taken undue advantage; (4) and the accused had not acted in a cruel or unusual manner. Therefore, there must be a mutual combat or exchanging blows on each other. And however slight the first blow, or provocation, every fresh blow becomes a fresh provocation. The blood is already heated or warms up at every subsequent stroke. The voice of reason is heard on neither side in the heat of passion. Therefore, it is difficult to apportion between them respective degrees of blame with reference to the state of things at the commencement of the fray but it must occur as a consequence of a sudden fight i.e. mutual combat and not one side track. It matters not what the cause of the quarrel is, whether real or imaginary, or who draws or strikes first. The strike of the blow must be without any intention to kill or seriously injure the other. If two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such weapon must be held to have taken an undue advantage denying him the entitlement to Exception 4. True the number of wounds is not the criterion, but the position of the accused and the deceased with regard to their arms used, the manner of combat must be kept in mind when applying Exception 4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the Exception 4 engrafted to Section 300 is excepted

3 (1993) 4 SCC 238

> and the offences committed would be one of murder.
>
> **9.** The occasion for sudden quarrel must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset. This is specially so where the attack is made with dangerous weapons. Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, Exception 4 is not attracted and commission must be one of murder punishable under Section 302. Equally for attracting Exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4...."

23. All the above three cases were considered by the Apex Court in **Surain Singh v The State of Punjab**[4] and ultimately, it has been held by the Apex Court in that particular case, that the accused was liable to be convicted under Section 304 Part II of IPC and not under Section 302 of IPC.

24. In **Ranjitham v Basavaraj**[5]., the Supreme Court, while dealing with the similar issue, observed in paragraphs 28, 29, 30 and 31 as under:

> "**28**. In *Hari Ram vs. State of Haryana*, (1983) 1 SCC 193, there was an altercation between the appellant and the deceased. The appellant had remarked that the deceased must be beaten to make him behave. He thereafter ran inside the house, brought out a jelly and thrust it into the chest of the deceased. This Court observed that in the heat of altercation between the deceased on the one hand, and the appellant and his comrades on the other, the appellant seized a jelly and thrust it into the chest of the deceased. This was preceded by his remark that the deceased must be beaten to make him behave. Therefore, it does not appear that there was any intention to kill the deceased. This Court, therefore, set aside the conviction of the appellant under Section 302 IPC and instead convicted him under Section 304 Part II IPC and sentenced him to suffer rigorous imprisonment for five years.
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> **29**. In *Jagtar Singh vs. State of Punjab*, (1983) 2 SCC 342, in a trivial quarrel the appellant wielded a weapon like a knife and landed a blow on the chest of the deceased. This Court observed that the quarrel had taken place on the spur of the

4 Criminal Appeal No.2284 of 2009, decided on April 10, 2017.
5 Criminal Appeal No.1453 of 2005 (decided on 28.11.2011)

> moment. There was exchange of abuses. At that time, the appellant gave a blow with a knife which landed on the chest of the deceased and therefore, it was permissible to draw an inference that the appellant could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death but since there was no premeditation, no intention could be imputed to him to cause death. This Court, therefore, convicted the appellant under Section 304 Part II IPC instead of Section 302 IPC and sentenced him to suffer rigorous imprisonment for five years.
>
> **30**. In *Hem Raj v. The State (Delhi Administration)*, 1990 Supp. SCC 291, the appellant and the deceased had suddenly grappled with each other and the entire occurrence was over within a minute. During the course of the sudden quarrel, the appellant dealt a single stab which unfortunately landed on the chest of the deceased resulting in his death. This Court observed that (SCC p. 295, para 14) as the totality of the established facts and circumstances show that the occurrence had happened most unexpectedly, in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury to the deceased, he could not be imputed with the intention to cause death of the deceased, though knowledge that he was likely to cause an injury which is likely to cause death could be imputed to him. This Court, therefore, set aside the conviction under Section 302 IPC and convicted the appellant under Section 304 Part II IPC and sentenced him to undergo rigorous imprisonment for seven years.
>
> **31**. In *V. Subramani*, (2005) 10 SCC 358, there was some dispute over grazing of buffaloes. Thereafter, there was altercation between the accused and the deceased. The accused dealt a single blow with a wooden yoke on the deceased. Altering the conviction from Section 302 IPC to Section 304 Part II IPC, this Court clarified that it cannot be laid down as a rule of universal application that whenever death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case. Thus, the part of the body on which the blow was dealt, the nature of the injury and the type of the weapon used will not always be determinative as to whether an accused is guilty of murder or culpable homicide not amounting to murder. The events which precede the incident will also have a bearing on the issue whether the act by which death was caused was done with an intention of causing death or knowledge that it is likely to cause death but without intention to cause death. It is the totality of circumstances which will decide the nature of the offence."

25. Applying the above principle of law in the present case, it is apparent that the offence has been committed without there being any

premeditation in a sudden fight in the heat of passion upon a sudden quarrel. Facts also disclose that the accused persons have not taken any undue advantage or acted in a cruel or unusual manner. Thus, the case of the accused persons would fall under Exception 4 of Section 300 of IPC, i.e.'culpable homicide not amounting to murder'.

26. The next question, which arises for consideration of this Court, is as to whether the accused persons are liable to be convicted under Section 304 Part-I or Part-II of IPC.

Considering the fact that at the spur of moment, the incident occurred and as a result thereof, injuries have been caused to the deceased as well as the injured and further considering the statements of three eye-witnesses, it can safely be held that the accused persons are liable to be convicted under Section 304 Part-II of IPC.

27. Another question, which arises for consideration of this Court, is as to what would be the appropriate sentence to be imposed upon the accused appellants.

Having considered the facts that the incident occurred 37 years back; out of 10 accused persons, four have already expired and one has been declared juvenile and the accused appellants are willing to compensate the family of the deceased, we are of the considered view that, in the peculiar facts and circumstances of the case, ends of justice would be served, if the accused appellants, except accused no.7-Ashok, are sentenced to five years rigorous imprisonment. Order accordingly.

However, looking to the provisions of Section 357 of Cr PC and the judgment of the Apex Court in **Ankush Shivaji Gaikwad v State of Maharashtra**[6], we are of the view that the accused-appellants are liable to compensate the victim's family by paying a total compensation of Rs.1,50,000/- (One Lakh Fifty Thousand Only) under Section 357 of Cr PC. Accordingly, accused-appellants, Ram Shankar, Onkar, Rajeshwar, Laxmi and Bhadeshwar are directed to pay

6 (2013) 6 SCC 770

monetary compensation of Rs. 30,000/- each to the victim's family.

Let this amount be deposited before the concerned Court below within two years from today. After depositing the aforesaid amount before the concerned Court below, it shall be paid to the wife of deceased Shiv Raj, if surviving, or to his legal heirs. In case, the accused appellants fail to deposit the said amount of compensation within the aforesaid time, they shall undergo additional jail sentence of one year and the Court below shall proceed to recover the amount of compensation in the light of judgment of the Apex Court reported in **Kumaran Vs State of Kerala and another**[7].

28. So far as the question of sentence to be imposed upon accused no.7-Ashok is concerned, his case is referred to the concerned Juvenile Justice Board to pass appropriate orders, as he has already been declared a juvenile by the Board.

29. Since the accused-appellants are reported to be on bail, they be taken into custody forthwith for serving remaining sentence in terms of this judgment.

30. Let a copy of this judgment be sent to the concerned trial Court forthwith for compliance.

31. The appeal is **partly allowed.**

Date:24.9.2019
RKK/-A.Tripathi

(Raj Beer Singh, J) (Pritinker Diwaker, J)

7 (2017) 7 SCC 471