Supreme Court of India
Vadla Chandraiah vs State Of A.P on 7 December, 2006
Author: S.B.Sinha
Bench: S.B. Sinha, Markandey Katju

```
           CASE NO.:
Appeal (crl.)  1288 of 2006

PETITIONER:
VADLA CHANDRAIAH

RESPONDENT:
STATE OF A.P

DATE OF JUDGMENT: 07/12/2006

BENCH:
S.B. SINHA & MARKANDEY KATJU

JUDGMENT:
```

J U D G M E N T (Arising out of SLP(Crl.) No.5281/2006) S.B.SINHA, J.

Delay condoned.

Leave granted.

On 17.10.2000, at about 3.30 p.m., the deceased Manik Rao, a police constable, was walking down the street. P.W.8 (B.Narasimha) was a vendor of guava. Manik Rao picked up four guavas from his vend but did not pay the price thereof. On being asked to do so, he allegedly said that the same would be paid latter. The appellant together with his son were doing some carpentry work on the same street. Apparently, a quarrel took place between P.W.-8 (B.Narasimha) and the said Manik Rao. The appellant and his son intervened. The quarrel continued for 10-15 minutes. Allegedly, Appellant hacked the deceased Manik Rao with a badze (a heavy sharp axe like instrument used in the carpentry work) causing instantaneous death of the deceased. Appellant together with his son were charged for commission of murder of the said deceased Manik Rao. The prosecution, in support of its case, examined four eye witnesses. P.W.1's (V.Narasimha Rao), presence on the scene however, has been doubted by the learned trial judge. Learned Sessions Judge and the High Court have relied upon P.W.-2 to P.W.-4 (V.Damodar Rao, K.Narayana & Kammeta Anjaiah) to arrive at a conclusion that it was the appellant alone who had caused the aforementioned injuries to the deceased Manik Rao. Accused Nos. 1 and 3, who were the father and brother of the appellant, were acquitted. A principal question which arises for our consideration is to whether in the aforementioned peculiar facts and circumstances of this case, the appellant can be said to have committed the offence punishable under Section 302 I.P.C. or under Section 304 Part-II thereof.

In view of the limited notice issued in this case, we would proceed on the basis that the appellant alone who had caused injuries to the deceased Manik Rao. Before, however, we advert to the legal question as regards the nature of offence, we may notice that P.W.-15 (Dr.M.Pavan Kumar) in his

evidence on the basis of post-mortem examination report prepared by Dr.O.Butchi Babu Reddy stated that the following anti-mortem injuries were found on the dead body of Manik Rao :-

"1. Elliptical shaped penetrating incised wound with a length of 6 c.ms on either side, a diametre of 2 1/2 c.m at the centre and a depth of 8 c.ms extending upto the meninges on the left temporal region. Hematoma present below the mesninges. (Diagram was drawn).

2 Elliptical shaped incised wound adjoining the left clavical (with no fracture of clavical) present on the left side of anterior aspect of neck extending upto stomclavical joint on left side of 6 c.ms. on either side and a diametre of 2 1/2 c.m. at the centre and a depth of 10 c.ms. with bleeding cutting through left carodids and all the great vessels of neck on left and also left bronchus. Bleeding extending upto left hilem. 3 A clearly incised triangular shaped injury measuring 7 c.ms., 6 c.ms and 3 1/2 c.ms (triangle) and a depth of 4 c.ms. without the skin collaped and exposing external oblic and deltoid and other mussels groups with blood clots on them on the anterior aspect of left shoulder.

4 Incised wound 6 c.ms. X 2 c.ms. X 2 c.ms. on the left side of back with blood clots in the muscles."

The High Court, in its Judgment, refused to accept the plea of the appellant herein that the offence committed by him would not be one under Section 302 I.P.C. but under Section 304 Part-II thereof in the following words :-

"The learned counsel for the appellant further contends that there is no motive for the appellant/accused no.1 to attack the deceased, and that there is inconsistency in the prosecution evidence i.e. P.W.8, that it was the accused no.2 that interfered first when the deceased refused to pay the price for the guava fruits and so, the case of the prosecution cannot be accepted. This discrepancy is not that much material nor is a ground to disbelieve the prosecution case regarding participation of the appellant/accused no.1. It is not known whether apart from the incident of deceased not paying price for the guava fruits, the accused had any other motive. In Ex.P-1/complaint, it is just referred that on account of grudge, the deceased was attacked. But, there is no clear evidence with regard to the grudge. When there is overwhelming evidence regarding participation of accused no.1, establishment of grudge is of no consequence. Thus, in view of the evidence of P.W. 2 to P.W.4, who are eye witnesses to the incident, and as there is no dispute over the sudden death of the deceased we are not inclined to accept the contention of the learned counsel for the appellant that the appellant/accused no.1 is not responsible for the injuries that caused the death of the deceased."

A bare perusal of the said findings of the High Court would clearly show that there has been a total misappreciation of evidence on its part and a wrong question had been posed. Participation of the appellant was not in dispute. Presence of motive was. Once it was found that there had been no clear evidence with regard to `grudge' the court should have taken the same to its logical end. The question which was thus required to be posed and answered was whether in the absence of any motive and in particular the fact that the appellant was not even known to the deceased, the fight which took place was a sudden one and the injuries were inflicted in heat of passion and thus a case

under Section 304 Part-II I.P.C. was made out or not.

The said contention of the appellant was sought to be answered by the High Court stating :-

"It is strenuously argued by the learned counsel for the appellant that even assuming that accused no.1 caused the injuries on the deceased, no offence punishable under Section 302 IPC is constituted and that it was a case of sudden flash, where the appellant/ accused no.1 attacked the deceased, and such being the case, the offence has to fall under Section 304 Part I or II IPC. We are not inclined to accept this contention either, as there was altercation between the deceased and the accused, which went on for about 10 to 15 minutes, and the evidence of P.W.-15, who spoke about the post mortem examination, shows that the deceased suffered as many as four injuries with a heavy weapon like Badze. If it was a case where in a sudden fight the accused attacked the deceased and caused an injury, there was possibility of accepting the contention of the defence that no offence punishable under Section 302 IPC is constituted."

If the quarrel continued for a long time, it would be presumed that there was no premeditation. If on an issue the appellant quarreled with a constable who might have been of the opinion that he was not required to pay for the fruits, tampers run high because of the attitude of the deceased. The issue as to whether the case would fall under Section 302 IPC or under Section 304 Part-II thereof or not should be judged keeping in view the aforementioned factual backdrop. For the said purpose, the term `evidence brought on records' must be considered in its entirety. The deceased Manik Rao was a constable. He took up four guava fruits which P.W.-8 (B.Narasimha) was selling. P.W.-8 (B.Narasimha) and the deceased must have fought for payment of price. Appellant who along with his two sons had been carrying on carpentry work must have come to the rescue of P.W.-8 (B.Narasimha). While doing so, a quarrel must have ensued which even, according to the prosecution witnesses, continued for 10 or 15 minutes. If that be so, the question is if the appellant's being any grudge as against the deceased or there being no cause for sudden provocation would not arise. Appellant was only having his tool. He was not otherwise armed. The tool in his hand was required to be used in his occupation.

It might have been used to cause injuries but sudeen provocation therefor may not be much in doubt.

We may notice that in the post-mortem report, Dr.O.Butchi Reddy did not state that the injuries inflicted on the deceased by the appellant were sufficient in ordinary course of nature to cause death or likely to cause death. In Shivappa Buddappa Kolkar alias Buddappagol Vs. State of Karnataka and Others, (2004) 13 SCC 168, a Division Bench of this Court in a case where there had been no such opinion on the part of the doctor who had conducted the post-mortem examination opined :-

"13. We need not dilate further on this aspect as it is not the prosecution case that the appellant was responsible for causing any injury other than Injury (1). If so, it is fairly clear that the injuries to occipital region as well as the thorax injury which caused damage to the ribs and lungs are both severe injuries and according to the medical evidence both these injuries cumulatively caused death. There is no evidence of the medical expert to the effect that Injury (1) by itself would have caused

instantaneous death as has happened in this case or that Injury (1) by itself was sufficient in the ordinary course of nature to cause death. No doubt Injury (1) is a severe injury on a vital part and in all likelihood, it could cause death. Yet, it is difficult to extricate the impact of an equally severe injury which was found to be present on internal examination. In these circumstances, it is not safe to draw a conclusion that the injury inflicted by the appellant, if at all it was intended to be inflicted, by itself would be sufficient in the ordinary course of nature to cause death. On the state of medical evidence we have, it is not possible to draw such definite conclusion. Considering the nature of the injury and weapons used and the circumstances in which the injury came to be inflicted, we are of the view that the appellant shall be imputed with the knowledge that the injury inflicted by him was likely to cause death. He is therefore liable to be convicted under Section 304 Part II."

We may now examine the ingredients of the provisions of Section 300 of I.P.C. which reads 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."

In this case, Part-I of Section 300 is not attracted as it is beyond any doubt or dispute that the death was not caused with an intention to that effect. Fourthly, appended to Section 300, would be attributed 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 that will attract Section 300 of the Indian Penal Code. In Sukhbir Singh vs. State of Haryana, (2002) 3 SCC 327, wherein two fatal blows were inflicted by the appellant therein by a bhala on the upper right portion of chest of the deceased, this Court opined :- "19. The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given the benefit of such exception. For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. 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."

Again in Sandhya Jadhav (Smt) Vs. State of Maharashtra, (2006) 4 SCC 653, this Court noticed the distinction between Section 300 Exception 1 and Section 300 Exception 4 and came to the conclusion that the Court is bound to consider a large number of factors for arriving at an opinion as to whether the fight was sudden or not and/or whether the deceased has taken undue advantage of the situation in the following words :-

"9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be 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 that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

Again in Pappu Vs. State of M.P., (2006) 7 SCC 391, this Court reiterated the same legal principle.(See also: Kailash vs. State of M.P., (2006) 9 Scale 681) Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the conviction of the appellant should be altered from Section 302 IPC to one under Section 304 Part-II thereof. It is stated by the learned counsel that the appellant has continuously been in jail from 17.10.2000 till date. In view of the statement made by learned counsel for the appellant, we are of the opinion that the ends of justice would be met if we modify the sentence awarded to the appellant as the period already undergone by him. The appeal is allowed to the above extent.

The appellant shall be set at liberty forthwith, if not wanted in connection with any other case.