TULARAM

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No. 663 of 2018)

MAY 02, 2018

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Penal Code, 1860 – Exception 4 to s.300 and s.304 Part II – Quarrel between 'Rh' and 'Ru' escalated into altercation and soon they were joined by some other persons – Altercation subsequently turned violent and appellant, uncle of 'Ru', pierced brother of 'Rh' with ballam (spear) on left side of his chest and also injured 'Rh' – Brother of 'Rh' was taken home where he was declared dead – Whether appellant had the intention of causing the death of brother of 'Rh' – Held: No – Facts of the instant case indicate that all the ingredients of Exception 4 to s.300 IPC were present – The fight was sudden and not premeditated (a finding of both the Courts below) and appellant was not found to have taken undue advantage of his carrying a ballam (spear) in the sense of inflicting any other serious injury, except a contusion to 'Rh' – That being the position, it cannot be held that appellant had the intention to murder brother of 'Rh' or to cause him such bodily injury as is likely to cause death – None of the witnesses have given any indication that appellant had intention to cause the death of brother of 'Rh' – During the altercation appellant did pierce the chest of brother of 'Rh' but the intention to kill him is not apparent – However, appellant must be attributed with the knowledge that piercing the left side of the chest with a ballam (spear) would result in a bodily injury that is likely to cause death – Under the circumstances, the conviction of appellant u/s. 302 set aside – Instead, appellant convicted u/s.304 Part II – Appellant has been behind bars for almost 14 years – His sentence altered to the period of incarceration he has already undergone and ordered to be released forthwith – Sentence/ Sentencing.

A **Allowing the appeal, the Court**

HELD: 1. The facts of the present case indicate that all the ingredients of Exception 4 to Section 300 of the IPC are present. The fight was sudden and not premeditated (this is the finding of both the courts) and appellant is not found to have taken undue
B **advantage of his carrying a ballam (spear) in the sense of inflicting any other serious injury, except a contusion to 'Rh'. That being the position, it cannot be held that appellant had the intention to murder brother of 'Rh' (BL) or to cause him such bodily injury as is likely to cause death. Section 304 of the IPC provides the**
C **punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death then the punishment may extend upto imprisonment for life. On the other hand, Part II of Section 304 IPC provides that if the offending act is done with the**
D **knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death then the punishment may extend to imprisonment for 10 years. [Paras 11, 12] [675-F-H; 676-A-B]**

2. The intention to cause death must not be readily inferred.
E **Both the Trial Court as well as the High Court have, on the basis of the mere fact that appellant pierced the chest of 'BL' with a ballam (spear) , assumed that he intended to cause the death of 'BL'. There is nothing on the record to suggest such an intention and none of the witnesses have given any indication of appellant's**
F **intention to cause the death of 'BL'. It is quite clear that during the altercation, appellant did pierce the chest of 'BL' but the intention to kill him is not apparent. However, appellant must be attributed with the knowledge that piercing the left side of the chest with a spear would result in a bodily injury that is likely to cause death. [Para 13] [676-C-D]**

G **3. In view of the evidence on record, the ingredients of murder as explained in Section 300 of the IPC are missing in this case. The intention of appellant was to cause bodily injury to 'BL' and piercing the chest of 'BL' with a spear was such an injury that could possibly cause his death. This knowledge must be**

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attributed to appellant. Under the circumstances, the conviction of appellant of an offence punishable under Section 302 of the IPC is set aside but he is convicted of an offence punishable under the second part of Section 304 of the IPC. The appellant has been behind bars for almost 14 years. His sentence is altered to the period of incarceration he has already undergone. He be released forthwith. [Paras 14, 15] [676-E-G]

Surain Singh v. State of Punjab **(2017) 5 SCC 796 – relied on.**

Case Law Reference

(2017) 5 SCC 796	**relied on**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 663 of 2018.

From the Judgment and Order dated 01.08.2013 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Crl. Appeal No. 935 of 2004.

Ms. Mahalakshmi Pavani, Sr. Adv., Ms. Vanita Mehta, Tomy Chacko, Advs. for the Appellant.

Arjun Garg, Adv. for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. Leave granted.

2. The appellant Tularam was accused and convicted of having committed the murder of Bhadri Lodhi during an altercation that took place on 9th June, 2002.

3. On that date, a quarrel took place between Ramnath and Raju at about 6 p.m. in the flourmill of Ramnath. The details of this quarrel are not available on record but it appears that subsequently at about 7.30 p.m. after Ramnath closed his flourmill and was returning home, he was accosted by Raju. A quarrel again ensued between the two and in the midst of that quarrel, they were joined by Bipatlal Lodhi, the grandfather of Raju who came with a lathi, Santu, the nephew of Ramnath and Bhadri Lodhi, brother of Ramnath. The quarrel escalated into the altercation and these persons were joined by Tularam, uncle of Raju who came with a ballam (this is a wooden or bamboo stick with a spear

A attached at the end). Another person Sakharam (also an accused but not before us) joined the fray carrying a lathi. During the course of the altercation which turned violent, Tularam pierced Bhadri Lodhi with the ballamon the left side of his chest and he fell down. Bhadri Lodhi was thereafter taken home where he was declared dead.

B 4. Some other persons involved in the altercation sustained injuries including Sakharam who was accused of having dealt a lathi blowson Santu.

5. During the trial that took place as a result of the altercation and the death of Bhadri Lodhi, the prosecution examined several eye C witnesses including Ramnath (PW1), Maltibai (PW-3), Mahasingh (PW-5), Shanta Bai (PW-7), Singh Singh Gond (PW-8) Jogi Lodhi PW-10) and Hori Lal (PW-11). Each of these witnesses confirmed the altercation and the fact that Tularam had piercedBhadri Lodhi on the left side of the chest with a ballam. The injuries were confirmed after an autopsy by Dr. S.N. Bhaskar (PW17) and the post mortem report is D Exh.P.32. This shows one penetrating wound having a size of 3" x ½" x ¼" on the left 5th intercostal space, medial to left nipple.

6. On these broad facts of which there is no dispute, Tularam was convicted of an offence punishable under Section 302 of the Indian Penal Code for having murdered Bhadri Lodhi.

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7. We have gone through the record of the Trial Court as well as of the High Court and the only limited issue before us is whether Tularam had the intention of causing the death of Bhadri Lodhi.

8. Section 299 of the IPC explains culpable homicide as causing F death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death or the likelihood of causing death while the third category confines itself to the knowledge that the act complained of is likely to cause death. On the facts of this G case, the offence of culpable homicide is clearly made out.

9. Section 300 of the IPC explains what is murder and it provides that culpable homicide is murder if the act by which the death is caused is done with the intention of causing death or the act complained of is so imminently dangerous that it must in all probability cause death or "such H bodily injury as is likely to cause death."There are some exceptions

when culpable homicide is not murder and we are concerned with Exception 4 which reads:

> "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.

10. Recently in ***Surain Singh v. State of Punjab***[1] it was observed that:

> "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…… 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".

11. The facts of the present case indicate that all the ingredients of Exception 4 to Section 300 of the IPC are present. The fight was sudden and not premeditated (this is the finding of both the courts) and Tularam is not found to have taken undue advantage of his carrying a ballam in the sense of inflicting any other serious injury, except a contusion to Ramnath. That being the position, it cannot be held that Tularam had the intention to murder Bhadri Lodhi or to cause him such bodily injury as is likely to cause death.

[1](2017) 5 SCC 796

A 12. Section 304 of the IPC provides the punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death then the punishment may extend upto imprisonment for life. On the other hand, Part II of Section 304 provides that if the offending act is done with the B knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death then the punishment may extend to imprisonment for 10 years.

13. The intention to cause death must not be readily inferred. We are afraid that both the Trial Court as well as the High Court have, on C the basis of the mere fact that Tularam pierced the chest of Bhadri Lodhi with aballam, assumed that he intended to cause the death of Bhadri Lodhi. There is nothing on the record to suggest such an intention and none of the witnesses have given any indication of Tularam's intention to cause the death of Bhadri Lodhi. It is quite clear that during the D altercation Tularam did pierce the chest of Bhadri Lodhi but the intention to kill him is not apparent. However, Tularam must be attributed with the knowledge that piercing the left side of the chest with a spear would result in a bodily injury that is likely to cause death.

14. In view of the evidence on record, we are satisfied that the E ingredients of murder as explained in Section 300 of the IPC are missing in this case. The intention of Tularam was to cause bodily injury to Bhadri Lodhi and piercing the chest of Bhadri Lodhi with a spear was such an injury that could possibly cause his death. This knowledge must be attributed to Tularam.

F 15. Under the circumstances, the conviction of Tularam of an offence punishable under Section 302 of the IPC is set aside but he is convicted of an offence punishable under the second part of Section 304 of the IPC. The appellant has been behind bars for almost 14 years. His sentence is altered to the period of incarceration he has already undergone. He be released forthwith.

G 16. The appeal is allowed in the aforesaid terms.

Ankit Gyan Appeal allowed.