SURINDER KUMAR

v.

UNION TERRITORY, CHANDIGARH

MARCH 8, 1989

[S. NATARAJAN AND A.M. AHMADI, JJ.]

Indian Penal Code, 1860—Section 300 Exception 4—Ingredients of—On sudden quarrel person picks up weapon which is handy and inflicts injuries, one of which is fatal—Provision applicable.

The deceased and his brother P.W. 2 were sharing accommodation with P.W. 4 as a tenant on the 1st Floor of a house in Chandigarh. The father of the appellant also occupied two rooms on the same floor as a tenant. As a marriage was scheduled in the family of the appellant's father a request was made to P.W 4 to permit the use of the kitchen for a few days. The possession of the kitchen was delivered on a clear understanding that it would be returned to P.W. 4 after the marriage. The possession of the kitchen was however not delivered to P.W. 4 and that led to the quarrel. The deceased and his brother P.W. 2 had an heated argument with the appellant in regard to the return of the kitchen. P.W. 2 was alleged to have showered filthy abuses in the presence of the appellant's sister, and taken out a pen knife from his pocket and also threatened to throw out the utensils and lock up the kitchen. The appellant got enraged, went into the kitchen and returned with a knife with which he inflicted one blow on the neck of P.W. 2 causing a bleeding injury and also inflicted three knife blows to the brother of P.W. 2 as a result whereof he collapsed on the floor and later died while on the way to the hospital.

The appellant was convicted by the Sessions Judge under Section 302, Indian Penal Code and his conviction having been upheld by the High Court, he preferred an appeal by special leave to this Court. It was contended for the appellant that there was no previous ill-will between the parties, on the contrary the relations were cordial and the appellant was not the one who had started the quarrel but he acted in the heat of passion during a sudden quarrel without any premeditation and hence Exception 4 to Section 300, I.P.C. was applicable. On the other hand counsel for the State argued that the High Court had rightly held that the appellant had acted in a cruel and unusual manner and was not entitled to the benefit of the said Exception, and that the three injuries inflicted showed that the appellant had acted in a cruel manner.

A **Partly allowing the appeal, this Court,**

HELD: To invoke Exception 4 to Section 300 I.P.C. four requirements must be satisfied, namely (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion, and (iv) the assailant had not taken any undue advantage or acted in a cruel
B **manner. The cause of the quarrel is not relevant nor is it 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 important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. [945B-D]**

C **Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly. [945D-E]**

In the instant case, after P.W. 2 and his deceased brother entered
D **the room of the appellant and uttered filthy abuses in the presence of the latter's sister, tempers ran high and on P.W. 2 taking out a pen knife, the appellant picked up the knife from the kitchen, ran towards P.W. 2 and inflicted a simple injury on his neck. It would be reasonable to infer that the deceased must have intervened on the side of his brother P.W. 2 and in the course of the scuffle he received injuries, one**
E **of which proved fatal. Under these circumstances, it is proper to convict the accused under Section 304, Part I, I.P.C. and direct him to suffer rigorous imprisonment for 7 years. [946C-E]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 530 of 1978

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From the Judgment and Order dated 13.9.1978 of the Punjab and Haryana High Court in Criminal Appeal No. 1154 of 1975.

M.L. Verma, S.K. Bagga and Mrs. S. Bagga for the Appellant.

G Tara Chand Sharma and Miss A. Subhashini for tne Respondent.

The Judgment of the Court was delivered by

AHMADI, J. The appellant, having been convicted by the learned Sessions Judge, Chandigarh under Section 302. I.P.C., and his
H appeal against conviction having been dismissed by the High Court of

Punjab & Haryana, has preferred this appeal by special leave. The conviction of the appellant is principally based on the ocular evidence of PW 2 Kesho Gupta and PW 4 Varinder Singh. The facts emerging from the evidence of these two main witnesses coupled with the evidence of the other prosecution witnesses may be stated as follows: A

PW 5 Mangal Dass was the owner of House No. 3220 in Sector 23-D, Chandigarh, consisting of the ground floor and the first floor. The ground floor was occupied by Mangal Dass himself while the first floor consisting of four rooms and a kitchen was tenanted; two rooms and a kitchen were rented to PW 4 while the other two rooms were occupied by Sikander Lal, the father of the appellant and Amrit Lal (the acquitted accused). PW 2 Kesho and his brother Nitya Nand (deceased) belonged to village Narnaul to which PW 4 also belonged. They had come to Chandigarh a couple of years back and were sharing the accommodation with PW 4. As Amrit Lal's marriage was scheduled on December 7, 1974, a request was made to PW 4 by Sikander Lal to permit the use of the kitchen for a few days. Accordingly, the possession of the kitchen was delivered to Sikander Lal on December 4, 1974 on a clear understanding that it would be returned to PW 4 after the marriage. As the possession of the kitchen was not returned immediately after the marriage, PW 2 and his deceased brother Nitya Nand demanded possession thereof from Sikander Lal. They were initially put off but according to the prosecution the possession of the kitchen was delivered on January 1, 1975. However, as the kitchen had to be cleaned it was not occupied by PW 2 and PW 4 till January 3, 1975 on which date the family members of Sikander Lal are stated to have re-entered the kitchen. It may here be mentioned that this part of the prosecution evidence has not been accepted by the learned Sessions Judge. According to the learned Sessions Judge, the possession of the kitchen was not delivered to PW 4 till January 3, 1975 and that led to the quarrel in which PW 2 received a knife injury on the neck and his brother Nitya Nand lost his life. On this aspect of the matter, the High Court has not expressed any opinion. On a perusal of the relevant evidence we are inclined to think that the finding of fact recorded by the learned Sessions Judge in this behalf is correct. B C D E F G

On January 3, 1975, at about 7.15 p.m., PW 2 and his deceased brother had an heated argument with the appellant and his brother Amrit Lal in regard to the return of the kitchen. In the course of this heated exchange PW 2 is alleged to have showered filthy abuses. Although PW 2 denies this fact, PW 4 has admitted the same. PW 2 also threatened to throw out the utensils and lock the kitchen. Since H

A PW 2 was uttering filthy abuses in the presence of the appellant's sister and Nitya Nand did not restrain him, the appellant got enraged, went into the kitchen and returned with a knife with which he inflincted one blow on the neck of PW 2 causing a bleeding injury. In the melee the appellant inflicted three knife blows to Nitya Nand; one on the shoulder, the other on the elbow and the third on the chest, as a result B whereof Nitya Nand collapsed to the floor and later died while on the way to the hospital. The fact that Nitya Nand died a homicidal death is not in dispute.

The appellant's defence was that on the date of the incident PW 2 and his deceased brother had demanded vacant possession of the kitchen and on being told that PW 4 had permitted them to continue to C occupy it they uttered filthy abuses in the presence of his sister and on being asked to desist from using such language PW 2 began to throw out the utensils from the kitchen. When the appellant tried to stop him from doing so, PW 2 took out a knife from his pant pocket whereupon the appellant took shelter behind a door. PW 2 rushed towards him D with the kinfe but in the meanwhile Nitya Nand moved in between and sustained the injuries in question. The courts below have, however, concluded, and in our opinion rightly, that the appellant had in the course of the quarrel given stab wounds to PW 2 and the deceased Nitya Nand.

E The learned Advocate for the appellant submitted that there was no previous ill-will between the parties, on the contrary the relations were cordial and the appellant was not the one who had started the quarrel but he acted in the heat of passion during a sudden quarrel without any premeditation and hence Exception 4 to Section 300, IPC was clearly attracted. On the other hand the learned counsel for the F State argued that the High Court had rightly held that the appellant had acted in a cruel and unusual manner and was not entitled to the benefit of the said exception. He submitted that the appellant had attacked an unarmed person and had caused as many as three injuries which showed that he had acted in a cruel manner. The appellant's counsel countered by pointing out from the evidence of PW 1 Dr. G Goyal that the appellant had a deformity in the left leg which restricted his movement and he would ordinarily not venture to attack unless he was forced by circumstances to use the weapon to contain PW 2.

Exception 4 to Section 300 reads as under:

H "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. A

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault." B

To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it 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 important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. In the present case, the deceased and PW 2 had entered the room occupied by Sikander Lal and his family members and had demanded vacant possession of the kitchen. When they found that the appellant was disinclined to handover possession of the kitchen, PW 2 quarrelled and uttered filthy abuses in the presence of the appellant's sister. On the appellant asking him to desist he threatened to lock up the kitchen by removing the utensils, etc., and that led to a heated argument between the appellant on the one side and PW 2 and his deceased brother on the other. In the course of this heated argument it is the appellant's case that PW 2 took out a knife from his pant pocket. This part of the appellant's case seems to be probable having regard to the antecedents of PW 2. It is on record that PW 2 was convicted at Narnaul on two occasions under Section 411, IPC and his name was registered as a bad character at the local police station. It was presumably because of this reason that he had shifted from Narnaul to Chandigarh a couple of years back and had started to live in the premises rented by PW 4. When the appellant found that PW 2 had taken out a pen knife from his pocket he went into the adjoining kitchen and returned with a knife. From the simple injury caused to PW 2 it would appear that PW 2 was not an easy target. That is why the learned Sessions Judge rejected the case that Amrit Lal had held PW 2 to facilitate an attack on him by the appellant. It further C D E F G H

A seems that thereafter a scuffle must have ensued on Nitya Nand intervening to help his brother PW 2 in which two minor injuries were suffered by the deceased on the left arm before the fatal blow was inflicted on the left flank at the level of the 5th rib about 2" below the nipple. It may incidentally be mentioned that the Trial Court came to the conclusion that the injury found on the neck of PW 2 was a self-
B inflicted wound and had therefore acquitted the appellant of the charge under Section 307, IPC, against which no appeal was carried. We have, however, proceeded to examine this matter on the premise that PW 2 sustained the injury in the course of the incident. From the above facts, it clearly emerges that after PW 2 and his deceased brother entered the room of the appellant and uttered filthy abuses in
C the presence of the latter's sister, tempers ran high and on PW 2 taking out a pen knife the appellant picked up the knife from the kitchen, ran towards PW 2 and inflicted a simple injury on his neck. It would be reasonable to infer that the deceased must have intervened on the side of his brother PW 2 and in the course of the scuffle he received in-
D juries, one of which proved fatal. Taking an overall view of the incident we are inclined to think that the appellant was entitled to the benefit of the exception relied upon. The High Court refused to grant him that benefit on the ground that he had acted in a cruel manner but we do not think that merely because three injuries were caused to the deceased it could be said that he had acted in a cruel and unusual manner. Under these circumstances, we think it proper to convict the
E accused under Section 304, Part I, IPC and direct him to suffer rigorous imprisonment for 7 years.

In the result, this appeal partly succeeds. The order of conviction and sentence passed under Section 302, IPC is set aside and the fine, if paid, is directed to be refunded. The appellant is convicted under
F Section 304 Part I, IPC and is directed to suffer rigorous imprisonment for 7 years.

S.K.A. Appeal allowed.