Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 2494 OF 2014
(Arising out of S.L.P.(Crl.) No. 2307 of 2012)

K. Ravi Kumar Appellant(s)

Versus

State of Karnataka Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal arises out of a judgment and order dated 27.01.2010 passed by the High Court of Karnataka at Bangalore whereby Criminal Appeal No. 689/2006 filed by the appellant herein arising out of judgment and order dated

01.02.2006 passed by the Additional Sessions Judge, Mysore in S.C. No. 306/2004 has been dismissed thereby upholding the appellant's conviction for the offence of murder punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”) and the sentence of imprisonment for life with a fine of Rs.10,000/- awarded to him. In default of payment of fine, the appellant has been sentenced to undergo rigorous imprisonment for further period of six months. The appellant has also been convicted for the offence punishable under Section 498-A of the IPC and sentenced to undergo rigorous imprisonment for two years with a fine of Rs.2,000/-. In default of payment of fine, the appellant has been sentenced to undergo rigorous imprisonment for further period of two months. Substantive sentence for both the offences are directed to run concurrently.

3. The factual matrix in which the appellant

came to be prosecuted and convicted has been set out in detail by the trial Court as also the High Court in the orders passed by them. Therefore, we need not recapitulate the same all over again except to the extent it is necessary to do so for the disposal of this appeal.

4. Briefly stated, the incident that eventually culminated into the death of the appellant's wife, Padma and the consequent prosecution of the appellant/husband are as follows:

(a) On 22.5.1995, Padma, the daughter of Lakshmi, PW-2 (complainant) was married to the appellant. At the time of marriage, the appellant was a trainee constable in KSRP at Bangalore. On completion of the training, the appellant was posted at Bangalore and started living with his in-laws. In 1996, the couple was blessed with their first child, a son named ‘Nandan’. The appellant with his wife and son (Nandan) shifted to his parental house at Mandya, a nearby village and

started living with his parents. After sometime, the appellant sent his wife to her parents' house for delivery where she gave birth to their second child, a son named 'Keerthan'. In the meantime, the appellant was transferred to Mysore, therefore, he shifted with his family (wife Padma and two sons) to a place called Kurubarahalli and started living there in house bearing No. 1326/A I St. Cross.

(b) On 11.8.2004, around 10.30-11.00 p.m., the appellant got a message that his old father, who was living at Mandya, was seriously ill. The appellant asked Padma to accompany him to leave for Mandya immediately to see his father's condition. However, Padma did not agree to leave immediately but said that they can go the next day. This issue led to heated exchange between them and eventually resulted in appellant loosing his mental balance to the extent that he first alleged to have stabbed Padma with knife and

then poured Kerosene and set her on fire. The appellant then took his two minor sons and locked the house by leaving Padma in the house in injured condition and left for Mandya to see his ailing father. He gave Rs.20/- and Rs.10/- to his sons and told them not to disclose the incident to anyone, which they had noticed. After two days, the appellant with his sons returned from Mandya and, in an effort to make everyone believe that Padma was alone in the house, called the neighbours to open the door. The door lock was then opened with the help of skilled labour. The neighbours, Jvaramma and others, who lived near the house, entered the house with the appellant and found the burnt dead body of Padma. Someone informed the appellant's brother-in-law at Bangalore, that Padma has been taken to K.R. Hospital for treatment for the injuries sustained by her. On receiving the information, PW-2 (Lakshmi) - mother of Padma, rushed to Kurubarahalli along

with her son, Raghu, and younger brother, Basavaraju. On reaching there, they saw the burnt dead body of Padma lying in the room. They made enquiry with the children, who were with the neighbours, as to what actually happened with their mother. Nandan – the elder son of the appellant narrated the entire incident. This led to lodging of the complaint (Ex-P-3) by Lakshmi -PW-2 to Nazarbad Police Station.

(c) S.G. Vijay Kumar- P.W-5 (Police Inspector) registered the complaint (Ex. P-3) against the appellant for the offences punishable under Section 302 read with Section 498-A of the IPC and registered the FIR (Ex-P-5). He got the inquest done of the dead body as per (Ex-P-4), recorded the statements of the sons - Nandan and Keerthan, the neighbours - Ashok and Javaramma during inquest, and sent the dead body for post-mortem. He also prepared the scene of occurrence Panchnama as per (Ex-P-1), seized kerosene tin

(M.O.-1), match box (M.O.-2) and burnt piece of nighty (M.O.-3) along with blood stained cloth.

(d) The appellant was arrested the same day and was produced before the Court the following day, i.e. on 14.08.2004. P.W.-5, then recorded the statement of witnesses and on receipt of the post-mortem report (Ex-P-6) transferred the case to Mahila Police station for further investigation and for submission of final report. Thereafter, Nirmala Harish, Police Inspector (P.W.-6) registered the case as Crime No. 75/2004 and on receipt of FSL report (Ex-P-9) and additional report of Medical officer (Ex-P-10) filed a charge sheet against the appellant for offences punishable under Sections 302 and 498-A of IPC. The case was then committed to the Additional Sessions Judge, Mysore.

(e) The appellant was explained of the charges against him, which he denied and claimed to undergo a trial. The prosecution examined seven

witnesses (PW-1 to PW-7) and exhibited documents (Ex-P1 to P10) and seized articles (M.O.1 to M.O.3). The statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 was recorded, wherein he denied all material incriminatory statements in the evidence adduced by the prosecution.

(f) By judgment dated 01.02.2006, the learned Additional Sessions Judge, Mysore held the appellant guilty of commission of offences punishable under Sections 302 and 498-A IPC for committing murder of his wife- Padma and the cruelty meted out to her and accordingly while convicting him directed to undergo sentence mentioned above which was to run concurrently.

(g) Aggrieved by the said judgment, the appellant filed appeal being Criminal Appeal No. 689 of 2006 before the High Court. By impugned judgment, the High Court concurred with the judgment of the Additional Sessions Judge, Mysore

and dismissed the appellant's appeal. It is against this concurrent conviction and sentence, the appellant has filed this appeal by way of special leave.

5. Learned Counsel for the appellant while assailing the impugned judgment has urged only one point. According to him, the appellant's case squarely falls within Exception 4 to Section 300 of IPC. Learned Counsel submitted that the incident in question, which eventually led to Padma's death, took place due to sudden fight ensued between the couple without any premeditation and the act of the appellant in allegedly stabbing and pouring kerosene on Padma was an outcome of the heat of passion upon such sudden quarrel. Learned counsel referred to the evidence while supporting his submission and contended that no evidence was adduced by the prosecution to show that either relation between the appellant and his wife was not cordial or/and that they were fighting

intermittently on issues or that some violence or overt act was shown by the appellant towards Padma or any threat was given by the appellant to her or that there was any pre-determined motive in the appellant's mind to kill her. Learned counsel pointed out that during the 9 years of their marriage, the couple was blessed with two children and the appellant never made any demand of dowry from the deceased or her parents. Learned counsel, therefore, contended on the basis of the principles laid down by this Court in several decisions cited at the bar that the benefit of Exception 4 to Section 300 IPC can be given to the appellant while awarding the sentence. Finally, learned counsel urged that since this aspect was not examined by the courts below much less in its proper perspective and hence this Court should examine the same and accordingly grant its benefit by altering the sentence.

6. Though learned counsel for the respondent-State opposed the aforementioned submission of learned counsel for the appellant and contended that no case is made out to interfere in the quantum of punishment much less by taking re-course to Exception 4 to Section 300 IPC and hence this Court should uphold the conviction under Section 302 IPC. We, however, find considerable force in the submissions urged by the learned counsel for the appellant.

7. Before we turn to the facts of this case, it is apposite to take note of the principle of law laid down by this Court as to in which circumstances, the accused is held entitled to claim the benefit of Exception 4 to Section 300 IPC thereby is entitled to seek conversion of the offence committed by him from murder to culpable homicide not amounting to murder. Indeed, the principle of law on this issue remains no longer *res integra* and settled by a series of decisions of this Court. What

has varied is its application to every case.

8. Exception 4 to Section 300 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 –
> .....
> .....
> **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 partly offers the provocation or commits the first assault."

9. In **Surinder Kumar v. Union Territory, Chandigarh**, (1989) 2 SCC 217, this Court on the same issue held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was

important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300, this Court observed:

> "7. 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……."** (Emphasis supplied)

10. In **Ghapoo Yadav and Ors. v. State of M.P.**, (2003) 3 SCC 528, this Court held that in a heat of passion there must be no time for the passion to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the

verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, 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 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite:

> "10. ..... 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 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 Indian Penal Code. 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 a cruel or unusual manner.** The expression "undue advantage" as used in the provision means "unfair advantage".(Emphasis supplied)
> xxx xxx xxx
>
> "11..... **After the injuries were inflicted the injured had 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 a cruel or unusual manner. That being so, Exception 4 to Section 300 IPC is clearly applicable....."(Emphasis supplied)

11. In **Sukbhir Singh v. State of Haryana**, (2002) 3 SCC 327, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High

Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 to Section 300 IPC. In cases where after the injured had fallen down, the appellant-accused 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. This Court observed:

> "19.....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."(Emphasis supplied)

12. In **Mahesh v. State of M.P.**, (1996) 10 SCC 668, where the appellant had assaulted the deceased in a sudden fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by this Court to be sufficient to bring

the case under Exception 4 to Section 300 of IPC. This Court held:

> "4. **.....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** along 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 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....." (Emphasis supplied)

13. The law laid down in the aforesaid cases was considered and applied recently by this Court in the case reported in ***Ankush Shivaji Gaikwad*** vs. ***State of Maharashtra***, (2013) 6 SCC 770. In this case also, the appellant-accused while passing on the field of the deceased on a spur of moment indulged in heated talk with the deceased

which resulted in hitting a blow by the appellant-accused to the deceased with the rod causing death of the deceased. Justice T. S. Thakur, speaking for the Bench, accepted the plea raised by the appellant-accused and accordingly altered the sentence falling under Section 304 Part II IPC by giving him the benefit of Exception 4 of Section 300 IPC. It was held by this Court as under:

> "27..... we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II IPC."

14. Keeping in view the approach of this Court for giving benefit of Exception 4 to Section 300 IPC in cases mentioned above and applying the same to the facts of this case, we are inclined to give benefit of Exception 4 to Section 300 IPC to the

appellant by altering his sentence awarded to the appellant punishable under Section 304 Part II IPC. This we say so in the facts of this case for more than one reason. Firstly, even according to the prosecution, there was no premeditation in the commission of crime. Secondly, there is not even a suggestion or we may say conclusive evidence that the appellant had any pre-determined motive or enmity to commit the offence against the deceased leave alone a serious offence like murder. Thirdly, incident that occurred was due to sudden quarrel which ensued between the appellant-accused and the deceased-Padma on the issue of going to village Mandya to see the ailing appellant's father. The appellant, on receiving this news, had become upset and, therefore, his insistence to see his ailing father immediately was natural and at the same time, Padma's refusal to leave could lead to heated exchange of words between them. True, it is that it

reached to its extreme inasmuch as the appellant in heated exchange of words lost his mental balance and poured kerosene on Padma setting her to burn. However, the fact remains that it was an outcome of sudden outburst and heated exchange with no predetermined motive *per se* to kill her. Fourthly, no conclusive evidence was adduced by the prosecution to prove any kind of constant quarrel ever ensued in the last 9 long years between the couple and that too for a cause known to others which could lead to killing Padma or whether any unsuccessful attempt was ever made by the appellant to kill her in past and lastly, we have not been able to see from the post-mortem report that any stab injury on Padma's body was caused nor prosecution was able to prove that any blood stained knife from the place of occurrence was recovered at the instance of the appellant or of any witness.

15. In the light of the aforementioned reasons,

which, in our opinion, emerge from the evidence on record, we are of the considered view that these reasons are sufficient to give benefit of Exception 4 to Section 300 IPC to the appellant and enables the Court to hold that the offence in question was not murder but it was an offence of culpable homicide not amounting to murder as specified in Exception 4 to Section 300 and hence punishable under Section 304 part II IPC

16. In the result, we allow the appeal but only to the extent that instead of Section 302 IPC, the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and accordingly sentenced to undergo rigorous imprisonment for a period of 10 years. The conviction and sentence imposed under Section 498-A as also the fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered which shall run concurrently.

17. The appeal is accordingly disposed of in above terms in modification of the orders passed by the courts below.

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
November 28, 2014