Surain Singh vs State Of Punjab on 10 April, 2017

Equivalent citations: AIR 2017 SUPREME COURT 1904, AIR 2017 SC (CRIMINAL) 737, (2017) 2 PAT LJR 374, 2017 ALLMR(CRI) 4345, (2017) 5 MH LJ (CRI) 415, (2017) 4 MH LJ (CRI) 572, (2017) 2 ALLCRILR 750, (2017) 2 CRILR(RAJ) 386, (2017) 3 CURCRIR 13, (2017) 2 DLT(CRL) 969, (2017) 99 ALLCRIC 614, 2017 CRILR(SC MAH GUJ) 386, (2017) 4 SCALE 394, (2017) 173 ALLINDCAS 113 (SC), 2017 CALCRILR 3 66, (2017) 2 JLJR 254, (2017) 3 RECCRIR 406, 2017 CRILR(SC&MP) 386, (2017) 2 MADLW(CRI) 203, (2018) 1 BOMCR(CRI) 105, 2017 (5) SCC 796, (2017) 67 OCR 271, (2017) 2 RAJ LW 976, (2017) 1 UC 792, (2017) 2 BOMCR(CRI) 621, (2017) 2 ALLCRIR 1441, (2017) 2 CRIMES 137, 2017 (3) SCC (CRI) 461, 2017 (4) KCCR SN 472 (SC)

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Bench: A.K. Sikri, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2284 OF 2009

Surain Singh .... Appellant(s)

Versus

The State of Punjab .... Respondent(s)

J U D G M E N T

R.K. Agrawal, J.

1) This appeal has been filed against the judgment and order dated 02.09.2008 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 209-DB of 1998 whereby the Division Bench of the High Court confirmed the order dated 26.03.1998 passed by the court of Additional Sessions Judge, Faridkot in Sessions Case No. 33 of 1995 wherein the appellant herein

was convicted under Sections 302, 307 and 324 of the Indian Penal Code, 1860 (in short 'the IPC') and sentenced to imprisonment for life along with fine.

2) Brief facts:

(a) Prosecution story, in brief, is that there was dispute between one Shri Amrik Singh-the complainant and his relatives on one side and accused persons on the other side regarding their turn of irrigating their fields.

On account of this, earlier also there had been incidents of assaulting each other. In the circumstances, both the parties were facing proceedings under Sections 107/151 of the Code of Criminal Procedure, 1973 (in short 'the Code') before the Executive Magistrate, Faridkot.

(b) On 17.02.1995, when both the parties had come to the court of Executive Magistrate, Faridkot, the complainant (PW-1) along with his family members, viz., Raj Singh (PW-3), Harbans Singh (since deceased), Sukhchain Singh (PW-2), Mander Singh, Santa Singh (since deceased), Gursewak Singh, Banta Singh and others was present in the court premises whereas from the side of accused Surain Singh (the appellant-accused) along with Jhanda Singh, Jasmail Singh, Darshan Singh, Pal Singh, Boota Singh had also come to the court in order to attend the proceedings.

(c) At about 11:00 a.m., both the sides started quarrelling and had a heated exchange of words as Surain Singh (the appellant-accused) objected to the presence of Bhajan Singh, who was relative of Amrik Singh and not a party to the proceedings. Surain Singh-the appellant-accused, took out his Kirpan and gave a blow to Bhajan Singh. When the complainant party tried to stop the appellant-accused, he gave a Kirpan blow to Mander Singh. He also assaulted Harbans Singh (since deceased) with Kirpan. Darshan Singh also took out his Kirpan and started giving blows to Santa Singh (since deceased). The injured were taken to Guru Gobind Singh Medical Hospital Faridkot, where Santa Singh and Harbans Singh succumbed to their injuries.

(d) A First Information Report (FIR) being No. 14 dated 17.02.1995 was registered at Police Station, Faridkot by the complainant under Sections 302, 307, 324, 326, 148, 149 of the IPC and the case was committed to the Court of Sessions as Sessions Case No. 33 of 1995.

(e) Learned Additional Sessions Judge, vide order dated 26.03.1998, convicted the appellant-accused under Sections 302, 307 and 324 of the IPC and sentenced him to undergo rigorous imprisonment (RI) for life along with fine for the murder of Harbans Singh and Santa Singh. The appellant herein was further sentenced to rigorous imprisonment (RI) for 1 (one) year for the offence under Section 324 of the IPC with the direction that all the sentences shall run concurrently. Since we are not concerned with the conviction and sentence passed against the other accused in the present case, we refrain from referring to the same.

f) Being aggrieved by the order dated 26.03.1998, the appellant herein preferred an appeal being Criminal Appeal No. 209-DB of 1998 before the High Court. The Division Bench of the High Court, vide order dated 02.09.2008, partly allowed the appeal of the appellant-accused while maintaining

the conviction and sentence with regard to murder of Harbans Singh under Section 302 of the IPC, infliction of injury to Sukhchain Singh under Section 307 of the IPC and infliction of injuries on the person of Bhajan Singh and Mander Singh under Section 324 of the IPC and acquitted him of the charge under Section 302 of the IPC for the commission of murder of Santa Singh.

g) Aggrieved by the order dated 02.09.2008, the appellant-accused has filed this appeal by way of special leave before this Court.

3) Heard learned counsel for the parties and perused the material on record.

4) The only point for consideration before this Court is whether the appellant-accused has made out a case for conviction under Section 304 Part II instead of Section 302 of the IPC?

5) Since the point for consideration is very limited in the instant case, there is no need to traverse all the factual details rather those having a bearing on the present appeal.

6) Before proceeding further, it is relevant to produce Section 300 which is as under:-

> "300.Murder--.Except in the case 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.
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> ……x…..xx…..xx….. x…….
>
> ……x…..xx…..xx….. x…….
>
> ……x…..xx…..xx….. x…….

> 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.
>
> ....."
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> 7) 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 men's 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".

8) In State of A.P. vs. Rayavarapu Punnayya and Another (1976) 4 SCC 382, this Court while drawing a distinction between Section 302 and Section 304 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 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.
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> 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."

9) In Budhi Singh vs. State of Himachal Pradesh (2012) 13 SCC 663 this Court has 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 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....."

10) In Kikar Singh vs. State of Rajasthan (1993) 4 SCC 238, this 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 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...."
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> 11) Now, we have to consider the facts of this case on the touchstone of Section 300 Exception 4 in order to find out whether the case falls under the same or not. During the course of hearing, learned counsel for the appellant-accused strenuously contended before this Court that the High Court recorded a categorical finding that "an inescapable conclusion that can be drawn is that it was a case of sudden fight where the attack was without pre-meditation." He further contended that despite holding so, the High Court erroneously convicted the appellant-accused under Section 302 of the IPC instead of Section 304 Part II on the ground that the appellant-

accused had acted in cruel manner and had caused injuries to six persons and a death.

12) The appellant-accused, at the relevant time, was wearing Kirpan and he took out the same and gave 3 or 4 blows on the left side of the chest of Bhajan Singh. When the other side came to his rescue, the appellant- accused gave a blow on the back side of the waist of Mander Singh. The appellant-accused was further found to have given a blow on the backside of the left shoulder of Amrik Singh-the complainant and also two blows each using Kirpan on the right flank of Sukhchain Singh and Harbans Singh.

13) In view of the above, it is relevant to quote the statement of Dr. Sarabjit Singh Sandhu (PW-4), who conducted the autopsy on the body of Harbans Singh, which is as under:-

> "On the same day, at 4.50 p.m. I also conducted the post mortem examination on the dead body of Harbans Singh S/o Mandir Singh R/o Pakhi Khurd 27 years age, male brought by ASI Sukhdev Singh and HC Parson Singh No. 1432 of P.S. City Faridkot. Body was identified by Bohar Singh S/o Ajmer Singh and Tej Singh S/o Kartar Singh. Length of the body was 5'9". It was dead body of moderately built and moderately nourished young man wearing Sweater, Shirt, Jarsi, Paint, Kachha, Turban, Short Kirpan with black thread, White metallic kara in right forearm. P.M. staining as present series of marked patches at the back of trunk and lower limbs. Rigor mortis was present in the neck muscles and upper limbs. Absent in lower limbs (developing stage) clothes were blood stained and corresponding holes were present with clothes.

I found the following injuries on his person:-

1. An onlique stab wound 3 x 0.5 cm was present on the lateral side of right side of chest in mid Axiliary line 22 cm below the Axillary apax. C.B.P. it was bone deep.

2. A transverse stab wound 2.0 x 5 cm was presentation the right side back of abdomen, 8 cms below and lateral of injury no. 1 on exploring, it was going medially and in words cutting subcutaneous tissue, muscles, right kidney. Peritoneum and large intestine.

Peritoneum cavity contained above 1000 C.C. of fluid and clotted blood. Stomach contained about 150 C.C. of semi digested food. All other organs were healthy.

All the injuries were anti mortem in nature. The cause of death in this case in my opinion was due to right kidney (hemorrhage and shock) and large intestine, as a result of injury no. 2 which was sufficient to cause death in ordinary course of nature."

14) In the instant case, it is evident from the materials on record that there was bitter hostility between the warring factions to which the accused and the deceased belonged. Criminal litigation was going on between these factions. It is also proved from the material on record that the attack was not premeditated and preplanned. Both the parties were present in the Court of Executive Magistrate, Faridkot at the relevant time with regard to the proceedings under Section 107/151 of the Code. When the appellant-accused objected the presence of a member of the opposite side, the scuffle started between the parties which resulted into death of two persons. The conduct of the appellant-accused that he at once took out his Kirpan and started giving blows to the opposite party proves that the attack was not premeditated and it was because of the spur of the moment and without any intention to cause death. The occasion for sudden fight must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset.

15) The weapon used in the fight between the parties is 'Kirpan' which is used by 'Amritdhari Sikhs' as a spiritual tool. In the present case, the Kirpan used by the appellant-accused was a small Kirpan. In order to find out whether the instrument or manner of retaliation was cruel and dangerous in its nature, it is clear from the deposition of the Doctor who conducted autopsy on the body of the deceased that stab wounds were present on the right side of the chest and of the back of abdomen which implies that in the spur of the moment, the appellant-accused inflicted injuries using Kirpan though not on the vital organs of the body of the deceased but he stabbed the deceased which proved fatal. The injury intended by the accused and actually inflicted by him is sufficient in the ordinary course of nature to cause death or not, must be determined in each case on the basis of the facts and circumstances. In the instant case, the injuries caused were the result of blow with a small Kirpan and it cannot be presumed that the accused had intended to cause the inflicted injuries. 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. It is clear from the materials on record that the incident was in a sudden fight and we are of the

opinion that the appellant-accused had not 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.

16) Thus, if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not intention to cause murder and bodily injury then the same would fall under Section 304 Part II. We are inclined to the view that in the facts and circumstances of the present case, it cannot be said that the appellant- accused had any intention of causing the death of the deceased when he committed the act in question. The incident took place out of grave and sudden provocation and hence the accused is entitled to the benefit of Section 300 Exception 4 of the IPC.

17) Thus, in entirety, considering the factual scenario of the case on hand, the legal evidence on record and in the background of legal principles laid down by this Court in the cases referred to supra, the inevitable conclusion is that the act of the appellant-accused was not a cruel act and the accused did not take undue advantage of the deceased. The scuffle took place in the heat of passion and all the requirements under Section 300 Exception 4 of the IPC have been satisfied. Therefore, the benefit of Exception 4 under Section 300 IPC is attracted to the fact situations and the appellant-accused is entitled to this benefit.

18) Thus, considering the factual background and the legal position set out above, the inevitable conclusion is that the appropriate conviction of the appellant-accused would be under Section 304 Part II IPC instead of Section 302 IPC. Hence, the sentence of imprisonment for 10 years would meet the ends of justice.

19) The appeal is disposed of in the abovesaid terms.

.....J. (A.K. SIKRI) .....J. (R.K. AGRAWAL) NEW DELHI;

APRIL 10, 2017.