

AJIT SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 2094 of 2008)

SEPTEMBER, 01 2011

[HARJIT SINGH BEDI AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860 – ss. 302, 304 Part I – Altercation between parties – Victim hurled abuses at appellant – Appellant asked his servant to get spade and thereafter inflicted blows on the neck of the victim – Victim taken to the hospital and after treatment for three days succumbed to her injuries – Appellant convicted u/s. 302 and sentenced to rigorous imprisonment for life whereas the servant, co-accused convicted u/s. 302/34 – High Court upheld the conviction and sentence of the appellant however, acquitted the co-accused – Appeal before Supreme Court – Held: Per Harjit Singh Bedi, J: Appellant took undue advantage and acted in a cruel and unusual manner which exclude applicability of Exception 4 to s. 300, thus, his case falls within the ambit of s. 302 – Appellant's conviction u/s. 302 does not call for interference – Per Gyan Sudha Misra, J: Incident happened on the spur of the moment and was not a pre-meditated assault on the deceased and the appellant was deprived of the power of self-control on account of grave and sudden provocation, thus, the case would fall u/s. 304 Part I – Sentence of life imprisonment reduced to a period of ten years u/s. 304 Part I – In view of divergence of opinion between the two Judges, matter referred to Larger Bench – Reference to larger bench.

According to the prosecution, over a minor issue appellant reprimanded 'LK' and her companion. As a result there was altercation between the parties and due to the same the appellant got provoked and asked his

A servant 'AK' to bring spade. 'AK' brought the spade and the appellant inflicted two blows on 'LK'. PW 7 (son of 'LK') was present at the place of the incident. He raised an alarm and the entire village reached at the place of incident. Thereafter, 'LK' was taken to the hospital and after three days of the treatment, she died. PW 6 who was near the place of the incident lodged FIR. The trial court convicted the appellant u/s. 302 IPC and sentenced him to rigorous imprisonment for life; and 'AK' (co-accused) was convicted under Section 302/34 IPC. The High Court upheld the conviction and sentence of the appellant however, acquitted the co-accused. Therefore, the appellant filed the instant appeal.

Referring the matter to the larger Bench, the Court

D PER: MISRA, J.

HELD: 1.1 In so far as the genesis and manner of occurrence and the factum of death of 'LD' is concerned, the findings recorded by the courts below that the deceased 'LD' died in the manner and at the place as alleged by the prosecution, is accepted [Para 7] [385-F-G]

1.2 From the prosecution story itself it emerges that when the deceased was cutting the grass for fodder in the field of the appellant, the appellant was not armed with any weapon and it is only when the deceased hurled filthy abuses to the appellant, he directed his servant 'AK' to bring a *Kassi* and ordered him to catch hold of the deceased after which he gave two blows on the neck of the deceased as a result of which she died on the 4th day of the incident. Thus, on perusal of the evidence on record, it is clear that the incident happened on the spur of the moment and was not a premeditated assault on the deceased. Nevertheless, the appellant had inflicted grievous injury on the neck of the deceased but she did

not die instantly and was taken to the hospital where treatment was given to her for three days and finally she succumbed to the injury. Thus, it can be logically and reasonably inferred that the accused-appellant although inflicted grievous injury on the neck of the deceased and gave two blows, the assault was not the result of pre-planning or pre-meditated assault and the same did not result in instantaneous death of the deceased but she was taken to the hospital for treatment where she succumbed to the injury after four days of the incident. [Paras 11 and 12] [487-D-G]

1.3 The appellant no doubt inflicted the injury on the deceased with the intention of causing such bodily injury which could result in her death and in that view of the facts and circumstance, knowledge will have to be attributed to him that he inflicted injury on the deceased to cause death of the victim which was sufficient in the ordinary course of nature to cause death. In that event, he although will have to be held guilty of the offence of murder in view of the ingredients of the offence given out under Section 300 I.P.C., it cannot be ruled out that the case of the appellant in view of the genesis and manner of occurrence would fall under exception 4 of Section 300 and thus, would be liable for conviction under Section 304 Part-I for the reason that it cannot be held with certainty that he undoubtedly had the intention to kill and not merely to cause grievous hurt. [Para 13] [387-H; 388-A-C]

Patel Rasiklal Becharbhai Vs. State of Gujarat AIR 1992 SC 1150 – referred to.

1.4 In order to hold whether an offence would fall under Section 302, or 304 Part-I, I.P.C., the courts have to be extremely cautious in examining whether the same falls under Section 300 I.P.C. which states whether a

- A culpable homicide is a murder, or it would fall under its five exceptions which lays down when culpable homicide is not murder and in this category further lays down that culpable homicide is not murder if the offender whilst deprived of the power of self-control by giving sudden provocation causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident. [Para 14] [388-E-G]

- 1.5 While examining the case of the appellant in the light of the settled legal position that culpable homicide would not amount to murder if the offender was deprived of the power of self-control on account of grave and sudden provocation, the appellant's case will have to be treated to be a case falling under the 4th exception of Section 300 and thus, would be a case under Section 304 Part I, I.P.C. for more than one reason deduced from the evidence on record. In the first place, the deceased had been cutting grass for fodder in the field of the appellant and when the appellant reprimanded the deceased and her companion not to spoil his crop, the deceased started altercation with the appellant and abused him which provoked the appellant to order his companion 'AK' (since acquitted) to bring *Kassi* (spade) which instruction was carried out by 'AK' and thereafter, the appellant inflicted two blows on the deceased 'LD'. However, she did not die instantly and was taken to the hospital where she underwent treatment for four days and finally succumbed to the injuries. From this it can be safely inferred that although the appellant had the intention and knowledge to cause grievous injury on the deceased which could have resulted into the death of the deceased, yet it cannot be inferred without doubt that the intention of the appellant was necessarily to cause death and not merely to cause grievous hurt as he did not inflict repeated blows on the deceased and the deceased in fact had survived for four days after the assault. It has also

come in evidence that PW-6/informant had chased the appellant but the appellant did not pursue by entering into further scuffle with the prosecution party. Besides this, the case of the prosecution regarding common intention to commit murder already stands negated by the High Court as the plea of common intention to commit murder is no longer existing since the co-accused was acquitted of the charge under Section 302/34 I.P.C. by the High Court. Thus, the common intention to kill the deceased will have to be treated as missing in the prosecution case and only individual liability of the appellant giving fatal blows would determine whether the charge would be sustained under Section 302 I.P.C. or it would fall under Section 304 Part-I I.P.C. [Para 15] [388-G-H; 389-A-H]

1.6 On an analysis of the case of the prosecution in the light of the evidence on record, the appellant's conviction and sentence under Section 302 I.P.C. cannot be sustained but considering the intensity and gravity of the assault which led finally to the death of the victim, he would certainly be held guilty under Section 304 Part-I, I.P.C. and thus, it is just and appropriate to set aside the conviction and sentence of the appellant under Section 302 I.P.C. and the same is altered to under Section 304 Part I, I.P.C. The sentence of life imprisonment shall be reduced to a period of ten years under Section 304 Part-I, I.P.C. [Para 16] [390-A-C]

PER: BEDI, J.

1. Exception 4 s. 300 IPC presupposes several conditions for its applicability; they being (i) that the incident happened without premeditation, (ii) in a sudden fight, (iii) in the heat of passion, (iv) upon a sudden quarrel and (v) without the offender having taken undue advantage or acted in a cruel or unusual manner. [Para 2] [390-G-H; 391-A]

A 2. The appellant took undue advantage and has
acted in a cruel and unusual manner which excludes the
applicability of Exception 4. The facts show that there had
been a sudden quarrel between the appellant and the
deceased (a woman and therefore, the weaker sex) and
B after she was immobilized he had caused as many as
nine injuries on her person. All the injuries are on the face
or neck of the deceased and that injury Nos. (i), (iii), (iv),
(viii) and (ix) were very extensive leading to her death. It
cannot be said that the case could be covered by
C Exception 4 to Section 300 IPC in the facts brought out
in the course of the evidence. The case clearly falls within
the ambit of Section 302 IPC and the appellant's
conviction under Section 302 calls for no interference.
[Paras 1, 2 and 3] [390-E-F; 391-A-B; 392-C-D]

D Case Law Reference:

Per: Misra, J.

AIR 1992 SC 1150 Referred to Para 13

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2094 of 2008.

From the Judgment & Order dated 11.03.2008 of the High
Court of Punjab & Haryana at Chandigarh in CrI. Appeal No.
F 300-DB of 1999.

Amarendra Sharna, Vinay Kumar Garg, Sanchit Guru,
Sumesh Chandra Jha for the Appellant.

G Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey,
Mohit Mudgil for the Respondent.

The Judgment of the Court was delivered by

H GYAN SUDHA MISRA, J. 1. The Indian Penal Code was
enacted in the year 1860 under which the offences within the

territory of India have been tried ever since it was enacted dealing with countless number of cases leading either to acquittal or conviction. Yet, the task of the decision making authorities/courts whether an offence of culpable homicide is murder or culpable homicide does not amount to murder in the prevailing facts and circumstances of the case is a perennial question with which the courts are often confronted. We are well aware in view of Section 300 of the I.P.C. that all murders are culpable homicide but all culpable homicide does not amount to murder and this leads the courts quite frequently to consider as to whether an accused charged of an offence of culpable homicide is guilty of murder or he has committed culpable homicide not amounting to murder. When the evidence discloses a clear case of murder or makes out a finding of culpable homicide not amounting to murder, the task of the courts to record conviction or acquittal is generally an easy one. But this task surely becomes an undaunted one when the accused commits culpable homicide/murder but the circumstances disclose many a times that it is done without premeditation or pre-planning, may be to cause grievous hurt, yet it is so grave in nature that it results into death and the role of the factum causing death without premeditation becomes a secondary consideration due to which the decision of the courts in such cases often hinges on discretion while considering whether the case would fall under Section 302 I.P.C. or it would be under 304 Part I or even Part II, I.P.C.

2. On a plain reading of Sections 299, 300, 302 and 304 of the Indian Penal Code, it appears that a given case can be conveniently classified into two categories viz. culpable homicide amounting to murder which is 302 I.P.C. or culpable homicide not amounting to murder which is 304 I.P.C. But when it comes to the actual application of these two sections in a given case, the courts are often confronted with a dilemma as to whether a case would fall under Section 302 I.P.C. or would fall under Section 304 I.P.C. Many a times, this gives rise to conflicting decisions of one court or the other giving rise to the

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A popular perception among litigants and members of the Bar that a particular court is an acquitting court or is a convicting one. This confusion or dilemma often emerges in a case when the question for consideration is whether a given case would fall under Section 302 I.P.C. or 304 I.P.C. when it is difficult to decipher from the evidence whether the intention was to cause merely bodily injury which would not make out an offence of murder or there was clear intention to kill the victim making out a clear case of an offence of murder.

3. In the instant appeal by special leave, once again the aforesaid situation arises which has been preferred against the judgment and order dated 11.3.2008 passed by the Division Bench of the High Court of Punjab and Haryana in Criminal Appeal No.300-DB of 1999 whereby the High Court had been pleased to dismiss the appeal and thus upheld the order of the Additional Sessions Judge, Hoshiarpur convicting the appellant-Ajit Singh for offence under Section 302, I.P.C. sentencing him to undergo rigorous imprisonment for life as also to pay a fine of Rs.2,000/- in default of which he is to undergo further imprisonment for six months. However, the High Court while upholding the conviction and sentence of the appellant herein under Section 302 I.P.C., was pleased to acquit the co-accused-Anil Kumar of the charge and conviction under Section 302/34 I.P.C.

4. The prosecution case recorded in the First Information Report which led to the conviction of the appellant-Ajit Singh was lodged on 22.10.1996 on the basis of the complaint made by Jagdish Kumar, PW-6 who stated that he was running a private middle school in village Terkiana and on the date of the incident he was not feeling well due to stomach upset and hence had come home early at about 12.30 noon. He (PW-6) further stated that he had gone to attend the call of nature towards the field of the accused appellant Ajit Singh who had planted Kinnu plants in his field. One Laxmi Devi (the deceased) and her son Rajiv @ Raju (PW- 7) along with Nirmal Kaur were

cutting fodder in the field of the appellant-Ajit Singh where Ajit Singh and his servant Anil Kumar were also working. According to the informant PW-6, the appellant was having an altercation with the deceased Laxmi Devi as the appellant complained that she had caused damage to his field which the PW-6 heard while he was proceeding towards the field. Soon the appellant and the deceased started abusing each other due to which the appellant got enraged and asked his servant Anil Kumar to bring *Kassi* (spade) to finish them once for all. At this Anil Kumar brought the *Kassi* (spade) with which he was digging the plants. But the deceased Laxmi Devi continued hurling abuses. The appellant-Ajit Singh is then alleged to have taken the *Kassi* from Anil Kumar and asked him to catch hold of her so that he may do away with her life. The deceased was given a push due to which she fell down on the ground in a straight posture and Anil Kumar caught her by her arms. Ajit Singh is then alleged to have given two blows with the *Kassi* (spade) on the neck of the deceased after which Nirmal Kaur and Rajiv raised alarm. PW-6 thereafter claims to have run towards the appellant but the appellant went towards his kothi situated in the garden along with spade smeared with blood and Anil Kumar too ran away from the spot. Further case of the prosecution is that the body of the Laxmi Devi (deceased) was smeared with blood and Rajiv- PW-7 ran towards government colony raising alarm as a consequence of which the entire village collected at the place of incident and a conveyance was arranged on which the deceased was taken to Civil Hospital, Dasuya and PW-6 also went to the police station to lodge the formal report. But S.I. Samsher Singh (PW-15) met him on the way and recorded his statement on the basis of which a formal First Information Report was lodged for offence under Section 307/34, I.P.C. and PW-15 took up the investigation. Subsequently, as Laxmi Devi died, the case was converted into a case under Section 302/34, I.P.C.

5. The doctor who conducted post-mortem found the following injuries on the body of the deceased:

- A “(i) 6 cm long stitched wound bearing 13 black cotton stitches on front left side of bearing part of neck extending from the middle of left lower jaw up to middle of neck, muscle deep and obliquely placed.
- B (ii) 3 cm long stitched wound bearing 7 black cotton stitches placed obliquely and 2 cm below injury no.1 on its lateral half and muscle deep.
- (iii) 7 cm long stitched wound bearing 9 black cotton stitches on front and right side of neck, 4 cm below middle of lower jaw, obliquely placed and muscle deep.
- C (iv) 6 cm long stitched wound bearing 12 black cotton stitches placed horizontally on front of neck in the middle and lateral side extending across the middle and 1 cm to the right on dissection, underlying subcutaneous tissue and muscle are clear cut and gapping was present. Underlying laryngopharynx was repaired with the nylon stitches. On removal of stitches the wound was 5 cm x 2 cm surrounding muscle on the lateral side were also cut.
- D (v) 3 cm long curved stitched wound on left side and 2 cm below injury No.4 wearing 4 black cotton stitches and was skin deep.
- E (vi) Brownish scabbed linear superficial abrasion 6 cm long on left side of neck and 1 cm below injury no.5.
- F (vii) Brownish scabbed linear curved abrasion 6 cm long and 2 cm below injury No. 6.
- G (viii) Incised wound 3 cm x 2 cm in the lower part of the neck in the mid line. 6 cm above upper end of sternum underlying muscle cut and there is hole 1.5 cm x 1.5 cm in the interior wall of trachea (Tracheotomy wound).
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- (ix) 5 cm long stitched wound on the lateral half of right eyebrow wearing 5 stitches on dissection margins were clear cut and it was bone deep.”

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In the opinion of the doctor the cause of death was due to throat cut injury, cerebral edema and nasal ganlia which were ante mortem and sufficient to cause the death in the ordinary course of nature.

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6. After compliance of the due formalities of investigation, submission of charge sheet and committal proceeding, the trial of the two accused persons was conducted by the Additional Sessions Judge, Hoshiarpur who was pleased to convict the appellant and the co-accused Anil Kumar (since acquitted) under Section 302/34 I.P.C. and sentenced them as already indicated hereinafter. As already stated, the conviction and sentence of the appellant Ajit Singh was maintained under Section 302 I.P.C. but the co-accused Anil Kumar was acquitted. Hence, this appeal has now been preferred by the sole appellant Ajit Singh and this court is seized with consideration of the question whether the conviction and sentence of the accused-appellant Ajit Singh is fit to be sustained or not.

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7. In so far as the genesis and manner of occurrence and the factum of death of deceased Laxmi Devi is concerned, the counsel for the parties have been heard at some length and the evidence have been scrutinized but I am unable to accept the contention that the incident did not take place in the manner as alleged by the prosecution and I fully agree with the findings recorded by the courts below that the deceased Laxmi Devi died in the manner and at the place as alleged by the prosecution.

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8. The only ground which now needs to be considered in this appeal is whether on the existing facts and circumstances emerging out of the genesis, manner and place of occurrence, the conviction of the appellant is fit to be sustained under

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A Section 302, I.P.C. or it would be a case of conversion of
conviction and sentence under Section 304 Part- I of the I.P.C.
Although, we are all aware of the ingredients of Section 300
defining culpable homicide amounting to murder, it would be
worthwhile to recollect the exceptions therein specially exception
B 4 to Section 300 I.P.C. which lays down when culpable
homicide does not amount to murder and may be quoted for
facility of reference:

C “Exception 4 to Section 300. –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.”

D 9. It is undoubtedly true that application of exception 4
depends upon the facts and evidence in a given case and
although there are innumerable case laws and commentaries
on the subject, the courts more often than not have to keep
wondering into the wilderness of facts as to whether a given
case would fall under Section 302, I.P.C. or would fall under
E Section 304 Part-I or II of the I.P.C.

F 10. The question under the facts of this case once again
arises whether the conviction of the appellant-Ajit Singh is fit
to be sustained under Section 302 of the I.P.C. or it would be
a fit case of altering the conviction and sentence from 302 I.P.C.
to 304 Part-I. In this context, it is noticed that the deceased
Laxmi Devi and her son Rajiv @ Raju PW-7 along with Nirmal
Kaur were cutting fodder from the field of appellant-Ajit Singh
when Ajit Singh and Laxmi Devi started quarrelling with each
other as Ajit Singh complained that they have been illegally
G entering into his field for cutting fodder causing damage to his
field and spoiling the Kinnu crops. Even as per the case of the
prosecution, the deceased started to abuse Ajit Singh which
provoked him to order his servant Anil Kumar to bring *Kassi*
(spade) to finish them. The place of incident thus admittedly is
H of Ajit Singh wherein Ajit Singh ordered Anil Kumar to bring

Kassi and then asked him to catch hold of Laxmi Devi so that he may do away with her life. Ajit Singh after giving the deceased a push, is alleged to have given two blows on the neck of the deceased at which the informant PW-7 raised an alarm shouting "mar ditto mar ditto". PW-6 thereafter chased the appellant who is said to have run towards the accused-appellant but the appellant went towards his kothi situated in the same garden along with the spade smeared with blood and his servant Anil Kumar (since acquitted) also ran away from the spot. The deceased thereafter was taken to the hospital and after three days of treatment died on 25.10.1996 at about 4.35 p.m.

11. Thus, from the prosecution story itself it emerges that when the deceased was cutting the grass for fodder in the field of Ajit Singh, Ajit Singh was not armed with any weapon and it is only when the deceased hurled filthy abuses to the appellant, he directed his servant Anil Kumar to bring a *Kassi* and ordered him to catch hold of the deceased after which he gave two blows on the neck of the deceased as a result of which she died on the 4th day of the incident.

12. Thus on perusal of the evidence on record, it is clear that the incident happened on the spur of the moment and was not a premeditated assault on the deceased. Nevertheless, the appellant had inflicted grievous injury on the neck of the deceased but she did not die instantly and was taken to the hospital where treatment was given to her for three days and finally she succumbed to the injury. Hence, it can be logically and reasonably inferred that the accused-appellant although inflicted grievous injury on the neck of the deceased and gave two blows, the assault was not the result of pre-planning or premeditated assault and the same did not result in instantaneous death of the deceased but she was taken to the hospital for treatment where she succumbed to the injury after four days of the incident.

13. Thus, the appellant no doubt inflicted the injury on the

A deceased with the intention of causing such bodily injury which could result in her death and in that view of the facts and circumstance, knowledge will have to be attributed to him that he inflicted injury on the deceased to cause death of the victim which was sufficient in the ordinary course of nature to cause death. In that event, he although will have to be held guilty of the offence of murder in view of the ingredients of the offence given out under Section 300 of the I.P.C., it cannot be ruled out that the case of the appellant in view of the genesis and manner of occurrence would fall under exception 4 of Section 300 and hence would be liable for conviction under Section 304 Part-I for the reason that it cannot be held with certainty that he undoubtedly had the intention to kill and not merely to cause grievous hurt. In support of this view, it would be relevant to refer to the case of *Patel Rasiklal Becharbhai Vs. State of Gujarat*, AIR 1992 SC 1150, wherein this Court had been pleased to hold that inflictment of the injury on the vital part of the body with the agricultural instrument by the enraged accused in a sudden quarrel cannot be held to have been caused intentionally.

14. In order to hold whether an offence would fall under Section 302, or 304 Part-I of the I.P.C., the courts have to be extremely cautious in examining whether the same falls under Section 300 of the I.P.C. which states whether a culpable homicide is a murder, or it would fall under its five exceptions which lays down when culpable homicide is not murder and in this category further lays down that culpable homicide is not murder if the offender whilst deprived of the power of self-control by giving sudden provocation causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

15. While examining the case of the appellant in the light of the settled legal position that culpable homicide would not amount to murder if the offender was deprived of the power of self-control on account of grave and sudden provocation, I am of the view that the appellant's case will have to be treated to

be a case falling under the 4th exception of Section 300 and hence would be a case under Section 304 Part I of the Indian Penal Code for more than one reason deduced from the evidence on record. In the first place, the deceased Laxmi Devi had been cutting grass for fodder in the field of the appellant-Ajit Singh and when Ajit Singh reprimanded the deceased and her companion not to spoil his Kinnu crop, the deceased started altercation with the appellant and abused him which provoked the appellant-Ajit Singh to order his companion Anil Kumar (since acquitted) to bring *Kassi* (spade) which instruction was carried out by Anil Kumar and thereafter Ajit Singh inflicted two blows on the deceased Laxmi Devi. However, she did not die instantly and was taken to the hospital where she underwent treatment for four days and finally succumbed to the injuries. From this it can be safely inferred that although the appellant-Ajit Singh had the intention and knowledge to cause grievous injury on the deceased which could have resulted into the death of the deceased, yet it cannot be inferred without doubt that the intention of the appellant-Ajit Singh was necessarily to cause death and not merely to cause grievous hurt as he did not inflict repeated blows on the deceased and the deceased in fact had survived for four days after the assault. In addition to this, it has also come in evidence that PW-6/informant had chased the appellant but the appellant did not pursue by entering into further scuffle with the prosecution party. Besides this, the case of the prosecution regarding common intention to commit murder already stands negatived by the High Court vide the impugned judgment and order as the plea of common intention to commit murder is no longer existing since the co-accused Anil Kumar was acquitted of the charge under Section 302/34 I.P.C. by the High Court. Thus, the common intention to kill the deceased will have to be treated as missing in the prosecution case and only individual liability of the appellant giving fatal blows will determine whether the charge would be sustained under Section 302 I.P.C. or it would fall under 304 Part-I of the I.P.C.

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A 16. On an analysis of the case of the prosecution in the
 light of the evidence on record, I am clearly of the view that the
 appellant's conviction and sentence under Section 302, I.P.C.
 cannot be sustained but considering the intensity and gravity
 of the assault which led finally to the death of the victim Laxmi
 B Devi he would certainly be held guilty under Section 304 Part-
 I, I.P.C. and hence I deem it just and appropriate to set aside
 the conviction and sentence of the appellant under Section 302,
 I.P.C. and the same is altered to his conviction under Section
 304 Part I, I.P.C. Accordingly, the sentence of life imprisonment
 C shall be reduced to a period of ten years under Section 304
 Part-I of the I.P.C. Thus, the appeal stands partly allowed to this
 extent.

HARJIT SINGH BEDI, J.

D 1. I concur with the judgment of my learned sister to the
 extent that the appellant's conviction ought to be affirmed. I am,
 however, unable to accept that the case could be covered by
 Exception 4 to Section 300 in the facts which have been
 brought out in the course of the evidence. Exception 4 reads
 E thus:

"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
 F undue advantage or acted in a cruel or unusual manner."

2. It will be seen that this Exception presupposes several
 conditions for its applicability; they being (i) that the incident
 happened without premeditation, (ii) in a sudden fight, (iii) in
 the heat of passion, (iv) upon a sudden quarrel and (v) without
 G the offender having taken undue advantage or acted in a cruel
 or unusual manner. I am of the opinion that the appellant herein
 has taken undue advantage and has acted in a cruel and
 unusual manner which excludes the applicability of Exception
 4. The facts show that there had been a sudden quarrel
 H between the appellant and the deceased (a woman and

therefore the weaker sex) and after she had been immobilized he had caused as many as nine injuries on her person. The injuries are re-produced herein below: A

"(i) 6 cm long stitched wound bearing 13 black cotton stitches on front left side of bearing part of neck extending from the middle of left lower jaw up to middle of neck, muscle deep and obliquely placed. B

(ii) 3 cm long stitched wound bearing 7 black cotton stitches placed obliquely and 2 cm below injury no.1 on its lateral half and muscle deep. C

(iii) 7 cm long stitched wound bearing 9 black cotton stitches on front and right side of neck, 4 cm below middle of lower jaw, obliquely placed and muscle deep.

(iv) 6 cm stitched wound bearing 12 black cotton stitches placed horizontally on front of neck in the middle and lateral side extending across the middle and 1 cm to the right on dissection, underlying subcutaneous tissue and muscle are clear cut and gapping was present. Underlying laryngopharynx was repaired with the nylon stitches. On removal of stitches the wound was 5 cm x 2 cm surrounding muscle on the lateral side were also cut. D E

(v) 3 cm long curved stitched wound on left side and 2 cm below injury No.4 wearing 4 black cotton stitches and was skin deep. F

(vi) Brownish scabbed linear superficial abrasion 6 cm long on left side of neck and 1 cm below injury No.5.

(vii) Brownish scabbed linear curved abrasion 6 cm long and 2 cm below injury No.6. G

(viii) Incised wound 3 cm x 2 cm in the lower part of the neck in the mid line. 6 cm above upper end of sternum underlying muscle cut and there is hole 1.5 cm x 1.5 cm in H

A the interior wall of trachea (Tracheotomy wound).

(ix) 5 cm long stitched wound on the lateral half of right eyebrow wearing 5 stitches on dissection margins were clear cut and it was bone deep.”

B 3. We see that all the injuries are on the face or neck of the deceased and that injury Nos. (i), (iii), (iv), (viii) and (ix) were very extensive leading to her death. To my mind, the case clearly falls within the ambit of Section 302 of the IPC and the appellant’s conviction under this provision calls for no
C interference. The Criminal Appeal is dismissed.

ORDER

D In view of the divergence in views, the Registry is directed to place the matter before the Hon’ble Chief Justice of India for placing the matter before a larger Bench.

N.J.

Matter referred to Larger Bench.