
(2013) 03 MP CK 0049

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 152 of 2004

Babloo @ Devendra

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Competition Act, 2002 — Section 19(1), 19(4), 19(6), 2(u), 26(1)
Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Evidence Act, 1872 — Section 100, 100, 101, 101, 102
Penal Code, 1860 (IPC) — Section 100, 101, 102, 105, 147

Citation : (2013) CriLJ 4695

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Vikas Saxena and Vivek Saxena, for the Appellant; Irshad, Panel Lawyer for State, for the Respondent

Judgement

G.D. Saxena, J.—This appeal u/s 374(2) of the Criminal Procedure Code 1973 preferred by the accused/appellant is directed against a Judgment dated 3rd March 2004 recorded in Sessions Trial No. 215/2001, by the First Additional Sessions Judge, Shivpuri (M.P.), convicting thereby appellants Babloo and Ratanlal for committing murder of Kalla, son of Balmukund, for an offence punishable u/s 302 and 302 /34 of I.P.C., respectively, and sentencing them to suffer imprisonment for life with a fine of Rs. 2000/-, each, and in default to undergo additional rigorous imprisonment of one year. In addition to above, accused Ratanlal also stood convicted for an offence u/s 323 of I.P.C. and sentenced to suffer six months" rigorous imprisonment for causing simple injuries to Bachhu. However, by the same judgment, the learned trial Judge acquitted other co-accused, namely, Saroj, Sangeeta, Laxmi and Vimala of charges for offences under Sections 147, 148, 302 of I.P.C. or in alternative under Sections 302 /149, 325 /149, and 323 /149 (on three counts) of I.P.C. as levelled against them. In a nutshell, the case of the appellants runs as follows:

Complainant Bachhu, son of Balmukund Kushwah and accused Ratanlal Jatav are

neighboring agriculturists. It is alleged that on 29th June 2001, at around 10 a.m., when complainant Bachhu and his brother Kalla were going to make complaint of the incident of trespassing the tractor by the son of Ratanlal through their agricultural fields to his father accused Ratanlal, near the house of Jagdish Ojha, they and accused met with each other. On raising complaint of the above incident, accused started abusing to them. The complainant asked them not to behave with them in a proper way. Then, accused went to their residences back and again appeared on the spot with firearms and lathis after joining with other female members namely, Saroj, Sangeeta, Laxmi, Vimala and one Manish. Accused Babloo then was alleged to open fire causing injuries to Kalla, brother of complainant, who met with instantaneous death on the spot. Other co-accused Manish, Saroj, Sangeeta, Vimala and Laxmi pelted stones towards the complainant side. The F.I.R. was lodged by the complainant at Police Station Shivpuri Dehat. The investigation was set in motion. The injured were sent for medical examination and treatment. Dead body was sent for postmortem to the District Hospital Shivpuri. Case diary statements of material witnesses were recorded on various dates. Accused were arrested and on their information, the weapons of crime were seized. Weapons with other articles seized from the spot and received after postmortem from the District Hospital Shivpuri were sent for Chemical Examination and Firearms Expert to the State Forensic Science Laboratory Sagar. Marg report was also written and was inquired into. After investigation, charge-sheet was filed. On committal, the Sessions trial was commenced. After trial, the learned Trial Judge convicted the present accused/appellants for the alleged offence, hence this appeal.

2. During pendency of the appeal before this court, accused Ratanlal @ Ratnu, son of Devlal died, hence his name was deleted from the array of appellant and consequently the appeal stood dismissed as abetted so far as it related to accused-appellant No. 2-Ratanlal.

3. The defence of the accused was that the complainant party attacked on them and the persons belonging to accused-party also got injuries in the same incident. On the report of accused Babloo, the crime was registered against complainant party but on the said F.I.R., no investigation was set in motion. So, the accused party filed the complaint against complainant party which was in progress. It is thus submitted that the accused were innocents and were falsely implicated in the alleged crime. To prove the defence, the accused also examined the witnesses.

4. It is contended by the learned counsel appearing for the appellant that the judgment of conviction and sentence recorded by the trial court is against the peculiar facts, evidence of the case and the law, hence, same is liable to be set aside. It is submitted by the learned counsel for the accused that there was a free fight between the complainant and accused party and in the beginning of the incident, the accused/appellant was not having any kind of arms but after altercations of abuses, at the instigation of his father, Babloo brought 315 bore

firearm from his residence with which he caused injuries on the body of deceased. The statements of the eye-witnesses to the effect that all accused after having firearms reached on the spot are not correct. Further, the prosecution examined only interested witnesses and no independent witness was examined to prove the guilt against the accused-appellant. It is also contended that there were remarkable injuries on the bodies of other members of accused party which were not explained by the prosecution which casts serious doubt on the case. Therefore, according to the learned counsel, the trial Judge failed to appreciate the evidence in proper perspective and wrongly convicted the accused-appellant. Accordingly, it is prayed that by allowing the appeal, the appellant may be acquitted of the alleged charge of murder.

5. The learned Public Prosecutor appearing for the respondent/State, on the other hand, supported the impugned judgment and contended that there is no illegality or perversity in the findings arrived at by the learned trial court and the appeal is liable to be dismissed.

6. Heard the learned counsel for the parties and perused the evidence on record.

7. To prove the charge for commission of offence punishable under Sections 302 read with 34 of I.P.C., the prosecution has examined as many as fourteen witnesses.

8. Eye-witness/complainant Bachhu (PW-9) deposed that near about 8 months ago, at 10 a.m., he and his brother Kalla went to make complaint of passing the tractor from their agricultural field in which they sowed Soyabean crops. When the complainant crossed through front side of the house of Jagdish Ojha, all accused met him. On raising complaint, the accused started quarrelling. He stated that on exhortation of Ratanlal his son Babloo brought a gun of his father and fired two shots at Kalla which caused through & through injuries on the back and ankle of left leg of Kalla. Kalla fell down on the earth and died on the spot. Then, other accused pelted stones towards them which caused injuries to him, his father Balmukund, Hargyan and Laxman. He lodged the F.I.R. (Ex. P/29) at Police Station. The Police reached the spot and during investigation issued notice (Ex. P/21) to witnesses for joining the inquiry, prepared spot-map (Ex. P/23) and seizure memo of the blood stained and simple soil from the spot vide Ex. P/13. In cross-examination he denied the suggestion that he and others caused injuries to the accused-party.

9. Khachhu (PW-6) deposed that prior to 6-7 months ago in the month of Ashad (Hindu calendar month) at about 9 a.m., he heard noise of quarrelling from side of Jagdish Ojha's house. He immediately rushed to the spot and saw accused Ratanlal who was having lathi and exhorting his son Babloo to kill by fire. Babloo brought a gun and fired two shots at Kalla which caused injuries on the back and ankle, causing death of Kalla on the spot. Other accused also caused injuries to Kalla and Bachhu. After lodging the report of the incident by the complainant Bachhu, the police reached the spot and investigated the incident. During

investigation, the police arrested all accused and on their production seized gun from Babloo, lathi from Ratanlal and stones from other accused, namely, Vimalabai, Saroj, Sangeeta and Laxmibai.

10. Hari Ballabh (PW-2), Laxman (PW-14) and Hargyan (PW-10) who as per prosecution were eye-witnesses to the incident turned hostile. They did not mention about the involvement of accused-appellant in the incident.

11. Dr. C.S. Tripathi (PW-11) states that at the relevant time, he was posted and discharging his duty as Senior Medical Officer in the District Hospital Shivpuri. On 29th June 2001, at 2.45 p.m., he performed autopsy on the body of Kalla, which was brought by Police Constable No. 231, namely, Kailash of Police Station Dehat Shivpuri. He found the following gunshot injuries on the body of the deceased:-

(1) Gunshot Injury- (i) Wound of Entry- 8 cm. x 4 cm. x muscled deep, margins of wound charred with blackening of skin. underlying tissues, vessels and bones exposed with fracture of lateral malleolus. Wound is downwards obliquely towards sole on left leg with passage of 2 cm. x 1 cm. below lateral malleolus (ii) Wound of Exit- 4 cm. x 3 cm. situated on left sole near heel underlying muscles subcutaneous tissue blackened and charring of surrounding skin, bleeding present.

(2) Gunshot Injury-(i) Wound of Entry- 2 1/2 cm. x 1 1/2 cm. x piercing abdomen. Situated at the level of left iliac crest, surrounding skin of wound blackening and charring present. On passing the probe direction is obliquely horizontal. O/D of wound Haemoperitoneum present impotently clotted blood present in abdomen with laceration of large intestine 30 cm. in length and laceration of small intestine 10 cm. in length and fracture of lumbar vertebra 4 & 5 in pieces spinal cord fully damaged. Internal vessels lacerated. (ii) Wound of Exit- 4 cm. x 3 cm. situated on right iliac crest, bleeding present. Metal cap of bullet found inside intact in muscles and bone. Sealed and sent for examination.

12. The injuries described above, as per the doctor, were ante-mortem. Injury No. 1 was grievous in nature and Injury No. 2 was sufficient to cause death in the ordinary course of nature. As per opinion of the doctor, the cause of death was shock as a result of injury to spinal cord (vital organ) due to firearm. The duration of death was 8 to 18 hrs. since postmortem examination. The said report is Ex. P/36 written and signed by him.

13. Dr. C.S. Tripathi (PW-11) further deposed that on that day, he examined injured Bachhu son of Balmukund and found:-

(i) Contusion of size 6 cm. x 4 cm. on left forearm just below left elbow; and

(ii) Abrasion measuring 2 1/2 cm. x 1/2 cm. on part of right leg below knee.

He stated that both injuries were caused by hard and blunt weapon. He advised X-ray for injury (i). Injury (ii) was found to be simple in nature as per report Ex. P/32.

14. On the same day, Dr. C.S. Tripathi (PW-11) examined Laxman son of Paddu and found a lacerated wound of size 1 cm. x 1/4 cm. x skin deep on middle of forehead, caused by hard and blunt weapon. His medical report is Ex. P/33.

15. He further examined Hargyan son of Paddu and found a lacerated wound of size 2 1/2 cm. x 1/2 cm. x muscle deep on left cheek below left eye. Injury was simple in nature and caused by hard and blunt weapon. Injury report is Ex. P/34. He also examined Balmukund son of Kalju. During examination of the injured, no injury was dictated on his body. Because he was unconscious at the time of examination, so he was admitted in a Male Medical Ward and was referred to Medical Specialist. The said report is Ex. P/35. Injuries mentioned above caused to injured as per prosecution were attributed to accused Ratanlal (deceased).

16. Jai Singh Parihar (PW-13), the Investigating Officer deposed that on 29th June 2001 while he was posted as Sub Inspector/In-charge of the police station Dehat Shivpuri, he wrote F.I.R. (Ex. P/29) on an oral instructions of Bachhu Kushwah against accused and registered Crime No. 123/2001 for offence under Sections 147, 148 and 302 /149 of I.P.C. Thereafter he sent injured persons for their medical examination and treatment. He with police force departed for village Raishree for making investigation. On the spot he issued notice (Ex. P/20) to the witnesses for joining investigation. He prepared a spot map (Ex. P/23) and memo of dead body (Ex. P/12). He also seized the blood stained soil and simple soil from the spot and prepared their seizure memo (Ex. P/13). He recorded the case diary statements of injured witnesses and other material witnesses. On the same day, he arrested accused namely, Laxmi, Ratan, Vimlabai and Babloo by arrest memos (Ex. P/2 to Ex. P/5). After arrest he made an inquiry from arrested accused and on their information he recorded the memorandums vide Ex. P/7, P/8, P/9 and P/10 u/s 27 of the Evidence Act and on their production seized the weapons by seizure memos (Ex. P/12, P/14, P/15 and P/16). He seized the Mauser gun with two live cartridges and two empty cartridges by Ex. P/15 from accused Babloo and also seized a lathi on production by accused Ratanlal and stones on production by accused Laxmibai, Vimala and Sangeeta. He also deposed that after seizure of the Mauser gun from accused Babloo, he sent the same alongwith its live cartridges and fired cartridges for examination by Firearm Expert of the State of Forensic Science Laboratory. On perusal of the arrest memos of accused Babloo (Ex. P/5), Vimalabai (Ex. P/4), Ratanlal (Ex. P/3), and Laxmibai (Ex. P/2) dated 29th June 2001, no injury on bodies of accused were mentioned in their arrest memos.

17. On report of the Chemical Examiner dated 19th February 2002, it appears that presence of human blood was found on one stone seized from accused Laxmibai and clothes of deceased but no report of Firearm Expert was exhibited before the learned trial Judge.

18. Defence put forth by the appellant is that on the day of incident, accused Ratanlal and Babloo went for cultivation and sowing crops in their agricultural fields by a hired tractor of one Amritlal Kachhi, which was being driven by

Mohanlal, son of Amritlal Kachhi. It was said that on the said agricultural field, their neighboring farmer Naktu Kachi informed that their enemy party collecting near about 32 persons in a group was hiding themselves in a Nala for making joint assault and causing injuries to them. So they left the tractor and also returned back through alternate way to their residence. In the mid way, near residence of accused Ratanlal, the enemy party surrounded them and thereafter caused injuries by stones, lathis and other weapons on the body of all persons belonging to accused side. All accused got injuries on the spot. Accused Babloo lodged the F.I.R. of this incident vide Ex. D/2 at the Police Station Dehat Shivpuri which was written by Head Constable Rakesh Kumar.

19. On inquest memos from Police Station Dehat Shivpuri, the injured-accused were medically examined on 29th June 2001 by Dr. S.K. Kumara (DW-9) and Dr. P.K. Duby (DW-10). Dr. S.K. Kumara (DW-9) at the relevant time was posted as Medical Officer in the District Hospital Shivpuri. During examination of injured accused Laxmibai he found one lacerated wound of size 0.5 cm. x 0.2 cm. x 0.5 cm. on the lower 1/3rd part of right arm, posteriorly placed surrounded by diffused swelling around right elbow joint, movement of which was restricted and painful. Said injury was caused by hard and blunt weapon within 24 hours. He also examined injured-accused Babloo s/o Ratanlal and during his examination found:-

- (i) Lacerated wound inverted T shaped of size 3 cm. x 0.5 cm. x 0.3 cm. in vertical limb and 2.5 cm. x 0.5 cm. x 0.3 cm. in horizontal limb, present on the parieto-occipital region of scalp, oozing present;
- (ii) Lacerated wound of size 1 cm. x 0.2 cm. x 0.2 cm. on the post aspect of the upper 1/3rd of left forearm;
- (iii) Contusion of size 5 cm. x 2 cm. in size on the anterior aspect of right arm;
- (iv) Abrasion of size 0.3 cm. x 0.2 cm. to 0.5 cm. x 0.3 cm. present on the lateral aspect of right little, ring and middle finger;
- (v) Abrasion of size 3.5 cm. x 0.2 cm. on the medial aspect of right index finger.

As per the doctor, all the injuries described above were simple in nature and caused by hard and blunt object within 24 hrs. of the examination. The injury report is Ex. D/3 written and signed by him.

20. Dr. P.K. Duby (DW-10) deposed that on 29th June, 2001 he was posted as Medical Officer in the District Hospital, Shivpuri when injured Vimlabai and Ratanlal were brought by constable Kailash for their examination. On examination of injured Vimalabai, wife of accused Ratanlal he found following injuries vide Ex. D/2:-

- (i) Contusion with abrasion of size 3 cm. x 2 cm., size of abrasion 1/2 cm. x 1/4 cm. on lower lateral side, left forearm. Clotted blood present;
- (ii) Contusion of size 6 cm. x 5 cm. on right ankle red in colour;

- (iii) Contusion of size 4.3 cm. x 3 cm. on upper 2/3rd of nose. Red in colour;
- (iv) Contusion of size 4 cm. x 3 cm. on right side of scapular region.

All the injuries were caused by hard and blunt object within 24 hours and were simple in nature except Injury No. (ii), (iv) and (v).

21. On the same day, Dr. Duby (DW-10) also examined Ratanlal and found following:-

- (i) C/o pain and tenderness on lower side of right thigh/knee;
- (ii) Abrasion of size 1/2 cm. x 1/2 cm. on dorsal between right thumb and index finger.

Above injuries were caused by hard and blunt object within 24 hours. Said injury report (Ex. D/4) was written and signed by him.

22. Dr. Govind Singh (DW-11) was posted as Medical Officer and In-charge of the X-ray Department in the District Hospital Shivpuri on 30th June 2001. On examination of X-ray plates of Vimlabai, Ratanlal, Laxmibai and Babloo, he found no bony injuries on the persons of above injured. He admitted that though in certified copies of X-ray reports of above referred persons, there were crept in some over writings but in original X-ray reports there was nothing while mentioning "no bony injury".

23. Thus, on perusal of the statements of eye-witnesses examined by prosecution and defence side of the case, it transpires that on the day of incident in the morning the tractor of Amritlal driven by Mohanlal on hire was engaged by accused Ratanlal and Babloo @ Devendra for sowing crops in their fields. It is alleged that the tractor which was driven crossed through the fields of complainant in which crops of Soyabean were sown. When the complainant and his brother Kalla went to make complaint of rather than quarrelling with the accused to the fields of accused party, on previous information of preparation for making assault by the complainant party, the accused and their family members anticipating the attack on them returned back to their residences. When the said two persons reached and passed from the front side of the house of Jagdish Ojha, the accused met them. Then there quarrel took place between complainant party and accused party. Members of both the parties attacked by stones and other blunt objects and caused injuries to the members belonging to each side. In the quarrel, on instigation of accused Ratanlal (since deceased), accused Babloo brought the licensed gun of his father from his residence and fired from it two shots which hit Kalla who died on the spot. The persons from both sides also got injuries. Both parties lodged the F.I.Rs in Police Station. On the report of Babloo, the crime was registered against complainant party but on the said F.I.R., no investigation was set in motion. So, the accused party filed the complaint against complainant party which was in progress. It clearly indicates that the incident happened due to passing of the tractor through the agricultural land in which the Soyabean crops were sown and due to passing of the said

tractor by the accused through the field of the complainant, it caused damage to the sowing crops of the complainant. This gave rise to the quarrel all of a sudden in which family members from both sides got injured and one person from accused side died on the spot.

24. Thus, the evidence on record supported the fact that the incidence of violence between both the groups arose on passing of the tractor through the field of complainant side which caused damage to the sowing crops and gave rise to the incident of joint assault in which family members from both the sides got injured and one person from accused side died on the spot. At this juncture it would be relevant to refer the case of Ranveer Singh Vs. State of M.P., wherein the Hon. Apex Court has held as under:-

Only question which needs to be considered is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression "right of private defence". It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. u/s 105 of the Indian Evidence Act, 1872 (in short "the Evidence Act"), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See *Munshi Ram and Others Vs. Delhi Administration*, ; *State of Gujarat Vs. Bai Fatima and Another*, ;

State of U.P. Vs. Mohammad Musheer Khan and Others, , and Mohinder Pal Jolly Vs. State of Punjab, . Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body u/s 97, that right extends u/s 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft-quoted observation of this Court in Salim Zia Vs. State of Uttar Pradesh, runs as follows:

It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence.

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject-matter of right of private defence. The plea of right of self-defence may relate to the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.

Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In Jai Dev Vs. The State of Punjab, , it was observed that as soon as

the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Similar view was expressed by this Court in *Biran Singh and Others Vs. The State of Bihar*, (See: *Wassan Singh Vs. State of Punjab*, *Sekar @ Raja Sekharan Vs. State rep. by Inspector of Police, T. Nadu*,

As noted in *Buta Singh Vs. The State of Punjab*, , a person who is apprehending death or bodily injury cannot weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation which is commensurate with the danger apprehended to him where assault is imminent by use of force. It would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper-technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact-situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negatived. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. (See *Vidhya Singh Vs. State of Madhya Pradesh*, Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a Court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.

25. Considering the above, the question that calls for consideration is whether the offence committed by the accused falls within the category of Murder ?

26. To answer the question as to whether the offence, on the facts of the case, is "murder" or "culpable homicide not amounting to murder", we must see whether the case is squarely covered within Clause Thirdly of Section 300 of I.P.C. or the accused are entitled to the benefit of Exception 4 of Section 300 of I.P.C. It would be preposterous to assume any proposition in law that in a case of solitary blow on a vital part of the body that results the death, the offence must necessarily be reduced to culpable homicide not amounting to murder.

27. In the case of Laxminath Vs. State of Chhattisgarh, the Hon. Apex court held:-

In the scheme of the IPC 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 the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest 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.

28. Again, in the case of A. Maharaja Vs. State of Tamil Nadu, , the Apex court held:

8. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution 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 do 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 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 in such cases could 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 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 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 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 cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage."

29. In the light of the aforesaid discussions on the factual and legal aspects of the matter, it appears from the ocular and medical evidence of prosecution and defence on record that on the date of incident firstly there was a quarrel took place between the complainant party and accused party on passing the tractor through the agricultural field in which Soyabean crops were sown by the complainant and thereafter both parties caused injuries to each other by blunt object. It was on the instigation by accused Ratanlal, his son Babloo brought the licensed gun of his father and in the heat of passion but without anticipating his action caused injuries on the body of deceased Kallo who died on the spot. Thus, it appears that the accused Babloo due to grave and sudden provocation was deprived of self-control and therefore fired shots. It is well settled in law that where there is no evidence on record suggesting that the accused had the intention to cause such bodily injury as he knew to be likely to cause death, he cannot be convicted for murder within the meaning of Section 300 of I.P.C. In the facts and circumstances of the present case, the appellant Babloo is proved to have committed the offence of culpable homicide without premeditation in a sudden fight and in the heat of passion, which is punishable u/s 304 Part-I of I.P.C.

30. Accordingly, the conviction of the appellant Babloo is altered from Section 302 of I.P.C. to Section 304 Part-I of I.P.C. The findings of the trial court in holding the appellant guilty of offence of murder punishable u/s 302 of I.P.C. are

eventually set aside and the appellant is held guilty for the commission of offence of culpable homicide not amounting to murder, punishable u/s 304 Part-I of I.P.C. and sentenced to undergo rigorous imprisonment of ten years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand only). The fine amount shall be deposited within a period of one month from the date of this judgment and in case of failure to deposit the same within the period prescribed above, the appellant shall suffer additional rigorous imprisonment of six months. It is further directed that the fine amount, if any, deposited by the appellant in the trial court, shall be adjusted against the amount imposed by this court. The period of detention, if any undergone by the accused during investigation, inquiry or trial of the case and before the date of such conviction shall be set off against the term of sentence of imprisonment imposed on him by this court. In the result, the appeal stands partly allowed in the manner indicated above.