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**(2004) 03 MP CK 0057**

**In the Madhya Pradesh High Court**

**Case No : Criminal Appeal No. 697 of 2001**

Mukesh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 10-03-2004

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 300, 304

**Citation :** (2004) 3 MPHT 64

**Hon'ble Judges :** S.L. Kochar, J; Ashok Kumar Tiwari, J

**Bench :** Division Bench

**Advocate :** Sonali Gupta, for the Appellant; Girish Desai, Dy. A.G., for the Respondent

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## **Judgement**

S.L. Kochar, J.—The appellant has preferred this appeal against the judgment dated 15th March, 2001, delivered by the learned Additional Sessions Judge, Indore, in Sessions Trial No. 23/1999, thereby convicting him u/s 302 of the IPC and sentencing him to suffer life imprisonment with fine of Rs. 2,000/-, in default of payment of fine, to suffer additional RI for 2 years.

2. Briefly stated the prosecution case before the Trial Court was that on 9-11-1998 Meharsingh (P.W. 8), Lakhansingh (P.W. 9), Ranveer (P.W. 10), deceased Balveersingh and their companion Lakhn came with their truck at Indore. They stayed near the Hotel (Dhaba) of acquitted co-accused Balram and cooked vegetable by their own. For the purposes of preparation of Roti (Chapati) they had given flour to Balram for which they were required to pay 30 rupees as labour charges. When they received Roti, the same were in burnt condition on which deceased Balveersingh and his companions Meharsingh (P.W. 8), Lakhansingh (P.W. 9) and Ranveer (P.W. 10) went to Balram and complained about preparation of Roti. On this complaint they entered into verbal quarrel during which Balram abuses filthy to the witnesses and when deceased Balveersingh objected filthy abuses, Balram called his servants and other persons who all reached on the spot including the present appellant. Deceased

Balveersingh was caught by some persons and appellant struck a blow by knife (Chhura) which landed on the left side of the chest of the deceased who fell on the ground. Witnesses were also assaulted by other accused persons by Lathi and Rod. Witness Meharsingh and other persons immediately took the deceased to Life Line Hospital and got him admitted where he was admitted and ultimately died in the night at 1.20 AM before performance of operation. The other injured persons were also medically examined. They all had received simple injuries. From the Hospital message was sent to the police station which was recorded as Ex. P-4 and ASI Nain (P.W. 5) reached on the spot. ASI Nain tried to take the statement of Balveersingh but he was not in a fit state of mind. Dr. Patidar gave report (Ex. P-11) to this effect. During this period, Station House Officer of Lasudiya Police Station, Indore and other police officers reached at the hospital where Dehati Nalishi (Ex. P-13) was lodged by Meharsingh (P.W. 8) and the same was sent to the police station through Constable Munnasingh Tomar (P.W. 2) where crime was registered vide First Information Report (Ex. P-3). The dead body was sent for performance of post-mortem. The post-mortem was conducted by Dr. Dubey (P.W. 1) on 10-11-1998 who found one stab injury at the left side of the chest which has damaged to the heart. Deceased died because of this injury. According to the opinion of this doctor death was homicidal. Post-mortem report is Ex. P-1.

3. After investigation, charge-sheet was filed against 8 persons. They all had denied the charges. Their defence was that deceased and other truck drivers, his friends, under the influence of liquor were misbehaving and molesting the modesty of women of Bapu Gandhi Nagar area because of which the persons of the said locality pelted stones and assaulted them but thereafter on suspicion the appellant and acquitted co-accused have been falsely implicated. The prosecution has examined in total 14 witnesses in its favour; whereas accused persons had not examined any witness. The learned Trial Court convicted the appellant for commission of offence of murder of deceased Balveersingh and acquitted all other 7 accused persons. Hence, appellant Mukesh has filed this appeal.

4. We have heard learned Counsel for appellant Smt. Sonali Gupta, Deputy Advocate General, Shri Girish Desai for respondent/State, and also perused the entire record carefully.

5. Learned Counsel for appellant has not disputed the homicidal death of deceased Balveersingh, even otherwise same is duly proved on the basis of the evidence of Dr. Dubey (P.W. 1) who found ante-mortem stab injury on the left side of the chest which has damaged the heart and deceased died because of the said injury. The incident was also witnessed by 3 eye-witnesses namely Meharsingh (P.W. 8), Lakhansingh (P.W. 9) and Ranveer (P.W. 10). Their presence on the scene of occurrence could not be doubted because they have also received injuries in the same incident. The learned Counsel has placed for consideration only point that offence would fall u/s 304 Part I of the IPC because the incident had taken place all of a sudden on a trivial issue in which without premeditation

and pre-plan the appellant Mukesh gave a solitary knife blow on the chest of the deceased who succumbed to this injury. According to the learned Counsel for appellant even if the complete prosecution case is accepted, offence would be sort of murder.

6. As against this, learned Deputy Advocate General for State had supported the judgment and finding arrived at by the Trial Court.

7. We have perused Dehati Nalishi (Ex. P-13) lodged by Meharsingh (P.W. 8) and statements of all the 3 eye-witnesses. The total situation emerged like this that deceased Balveersingh alongwith witnesses and other truck drivers stayed near the Hotel of Balram where they prepared vegetable by their own and contract for preparing Roti was given to owner of the Hotel named Balram. Balram charged 30 rupees for cooking Roti for them. When Roti supplied to the deceased and the witnesses, they found the same in burnt condition. Therefore, they went to Balram and complained this fact on which there was verbal altercation between them and during this period Balram, his servants and other inhabitants of that area started assaulting by pelting stones, Lathi and Rod to the witnesses and other truck drivers. During this incident of MARPIT, the present appellant Mukesh caused a solitary blow on the left side of the chest of the deceased and damaged his heart, ultimately resulting into his death.

8. Meharsingh (P.W. 8) and Ranveer (P.W. 10) have specifically stated in Paragraphs 77 and 17 respectively that incident had occurred all of a sudden, they were not having any previous enmity and they had not expected such event. This is also very clear that appellant has caused only one injury. Therefore, his act would fall u/s 300, Exception 4 reads thus :--"Culpable homicide is not murder if it is committed without pre-meditation 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." The ingredients of Section 300, Exception 4 are fully present in the present case. There was no pre-meditation and the fight had occurred all of a sudden when the deceased party went to the Hotel for complaint about burnt Rotis and improper preparation of the same. At that time some verbal altercation took place between them and in a heat of passion, out of so many persons who also assembled there, including the servants of the Hotel owner, sudden quarrel had ensued and the present appellant Mukesh dealt a solitary knife blow which landed at the left side of the chest of the deceased Balveersingh. None of the prosecution witnesses has stated that appellant aimed the blow on the left side of the chest and thereafter hit the same. Therefore, appellant had also not taken any undue advantage or acted in a cruel or unusual manner.

9. The medical evidence of Dr. Dubey (P.W. 1) is also disclosing only one injury on the left side of the chest of the deceased Balveersingh and deceased died in the Hospital after giving him first-aid and some treatment before his operation. Thus, on the basis of the screening of the prosecution evidence, we are of the opinion that the appellant is guilty of commission of culpable homicide not

amounting to murder falling under Exception 4 of Section 300 punishable u/s 304, Part I of the IPC. We, therefore, set-aside his conviction u/s 302 of the IPC and instead thereof alter the same u/s 304, Part I of the IPC and sentenced to undergo RI for 7 years. {See judgments passed by the Supreme Court in the cases of State of Madhya Pradesh Vs. Ghanshyam Singh, and Mukesh v. State of Madhya Pradesh [JT 2002 (6) SC 310]}.

10. In the result, the appeal is partly allowed, in the terms as indicated above.