



## ANALYSING THE FOURTH EXCEPTION OF MURDER

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- **Facts:**

Appellant-Nandlal Baviskar and one Dilip Waman Baviskar are close family members. In the year 2005, Dilip developed a wall dividing the middle of his premises and the place of the Appellant. As Dilip had acquired all costs of the development of the dividing wall, he requested half the portion of the costs from the Appellant which was declined by him. This turned into the purpose behind regular squabbles between the gatherings. On 16.05.2006 at around 04:00 PM., there was a trade of maltreatment between Dilip, his spouse Sakhubai-PW-4 and the Appellant. Ganesh-PW-5-child of Dilip called Gopichand Waman Baviskar-PW-1. As needs be, Gopichand and his sibling Lakhichand (deceased) who was physically debilitated went to the place of Dilip and they attempted to assuage the circumstance. In that course, Lakhichand had additionally manhandled the Appellant. Being irritated, the Appellant assaulted Lakhichand with stick on his back. On observing the said assault on his sibling, Gopichand gave a stick blow on the head of the Appellant. The Appellant from there on disappeared from the spot and rushed to his home and returned back alongside Parshuram and his child Sanjay-Accused No. 2 and 3 individually. As of now, the Appellant was outfitted with a gupti, while Parshuram was purportedly furnished with ballam and Sanjay was

equipped with a stick. When Gopichand, Dilip and Lakhichand saw the Appellant drawing closer towards them alongside two different people, having weapons in their grasp, it is affirmed that Gopichand and Dilip went at one side but since of physical handicap, Lakhichand was not fast enough to move. The Appellant assaulted Lakhichand with gupti to his left side armpit. Parshuram assaulted Lakhichand with ballam; while Sanjay assaulted him with stick. Because of assault, Lakhichand continued draining wounds on his chest, left armpit and got oblivious there. From there on, the Appellant and the other Accused people fled from the spot. Gopichand-PW-1 alongside his sister in law Sakhubai-PW-4 and others took Lakhichand to Government Hospital, Adawad—where on assessment, he was pronounced dead.

- **Arguments advanced by the Appellant:**

Setting dependence upon *Surain Singh v. Territory of Punjab*<sup>1</sup>, the scholarly Counsel for the Appellant presented that the episode happened in an abrupt squabble and after the Appellant was assaulted by Gopichand-PW-1, the Appellant went to his home and returned and in an unexpected battle assaulted the deceased and that there was no aim with respect to the Appellant to submit murder of deceased Lakhichand and thus, the case falls inside Exception 4 to Section 300 Indian Penal Code.

- **Arguments advanced by the State:**

Mr. Nishant Ramakantrao Katneshwarkar, learned Counsel showing up for the Respondent-State. Disproving the conflict, the scholarly Counsel for the Respondent-State presented

<sup>1</sup> *Surain Singh v. Territory of Punjab*  
MANU/SC/0399/2017 : (2017) 5 SCC 796.



that a blow was inflicted on Gopichand in the first incident and from there on, the Appellant fled from the spot and went to his home and came back with a gupti in his grasp alongside Accused No. 2 and 3 and in this manner, the event can't be supposed to be an instance of "sudden fight". It was additionally presented that the Appellant's lead in heading off to his home and bringing the gupti and assaulting the deceased Lakhichand obviously shows that the event was not in the heat of sudden fight and along these lines the offense was plainly an instance of homicide falling Under Section 302 Indian Penal Code and not falling under any of the exceptions.

- **Held by the Court:**

In the outcome, this appeal is partially permitted and the conviction of the Appellant Under Section 302 Indian Penal Code is changed as conviction Under Section 304 Part II Indian Penal Code and the Appellant is sentenced to undergo imprisonment for a period of twelve years. The court perceived the case as follows, the deceased abused the Appellant who got irritated and first assaulted Lakhichand and on observing this, Gopichand gave a stick blow on the head of the Appellant and from that point, the Appellant went to his home arranged nearby and returned with a gupti. Causing a fatal injury to the deceased is a part of the same incident and cannot be supposed to be a separate part to hold that the demonstration was planned and purposeful. As appropriately battled by learned Counsel for the Appellant, the occurrence was in an unexpected fight and there was no deliberation. One of the conditions of Exception 4 is that the offender should not have taken the "undue advantage" or acted in

a barbarous or irregular way. The Appellant delivered a solitary blow injury with gupti on the left armpit which punctured through the upper finish of the left arm and afterward entered the chest fracturing the fourth rib and touched the lung causing break of left lung vasculature. However, the gupti was a perilous weapon, the Appellant-Accused caused a solitary physical issue which penetrated into the lung. Having received a stick blow from Gopichand-PW-1, in the abrupt squabble and in the heat of passion, the Appellant dispensed the injury on the deceased Lakhichand. Putting in consideration the facts and circumstances of the case, in our view, the case falls under Exception 4 to Section 300 Indian Penal Code. The conviction of the Appellant-Accused Under Section 302 Indian Penal Code is liable to be adjusted as Section 304 Part II Indian Penal Code.

- **Cases referred by the State:**

In the judgment referred to by Mr. Nishant Ramakantrao Katneshwarkar, learned Counsel showing up for the Respondent-State in Criminal Appeal Nos. 286-288 of 2019, Asif Khan v. State of Maharashtra<sup>2</sup> and Anr. dated 05.03.2019, the Accused consequently disappeared from the scene of occurrence on the bike and he returned following ten to fifteen minutes and afterward assaulted the deceased and in such realities and conditions, it was held that both are two separate episodes. Regardless of the battle being unpremeditated and unexpected, if the weapon or way of retaliation is lopsided to the offense and if the Accused had taken the, 'undue advantage' of the deceased, the Accused can't be protected under Exception 4 to Section 300 Indian

<sup>2</sup> Asif Khan v. State of Maharashtra, (2019) 5 SCC 210.



Penal Code. Considering the extent of Exception 4 to Section 300 Indian Penal Code, in *Sridhar Bhuyan v. Territory of Orissa*<sup>3</sup> MANU/SC/0594/2004 : (2004) 11 SCC 395.

- **Conclusion:**

The fourth exception of Section 300 Indian Penal Code covers acts done in an unexpected fight. The said exception manages an instance of prosecution not secured by the very first exception, after which its place would have been more appropriate. There is no past consideration or assurance to fight. A fight unexpectedly happens, for which the two parties are pretty much to be accused. It might be that one of them begins it, yet on the off chance that the other had not played along by his own lead, then it would not have taken the genuine turn it did. There is then common incitement and aggravation, and it is hard to allocate the portion of blame which appends to every fighter. The assistance of Exception 4 can be summoned if demise is caused: (a) without premeditation; (b) in an 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 inside Exception 4 all the ingredients referenced in it must be found. It is to be noticed that the "fight" happening in Exception 4 to Section 300 Indian Penal Code isn't defined in Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no an time for the passions to cool down and for this situation, the gatherings have worked themselves into a rage by virtue of the verbal fight initially. A fight is a battle among two and more people whether with or without

weapons. It is not possible to expect to articulate any general Rule with respect to what will be esteemed to be a sudden quarrel. It is an issue of fact and whether a fight is abrupt or not should essentially rely on the demonstrated realities of each case. For the use of Exception 4, it isn't adequate to show that there was an unexpected quarrel and there was no deliberation. It should additionally be indicated that the offender has not taken undue advantage or acted in a cruel or abnormal way. The expression "undue advantage" as used in the arrangement signifies "unfair advantage".

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<sup>3</sup> *Sridhar Bhuyan v. Territory of Orissa*  
MANU/SC/0594/2004 : (2004) 11 SCC 395.