

## Jeevan Singh Vs State Of Chhattisgarh

**Court:** Chhattisgarh High Court

**Date of Decision:** Sept. 15, 2023

**Acts Referred:** Indian Penal Code, 1860 " Section 34, 300, 302, 307, 304I, 304II  
Code Of Criminal Procedure, 1973 " Section 313, 374(2)

**Hon'ble Judges:** Sanjay K. Agrawal, J; Radhakishan Agrawal, J

**Bench:** Division Bench

**Advocate:** Vivek Shrivastava, Sameer Uraon

**Final Decision:** Allowed

### Judgement

Sanjay K. Agrawal, J

1. This criminal appeal preferred by the appellant under Section 374(2) of CrPC is directed against the impugned judgment dated 11/12/2017 passed

by learned 2nd Additional Sessions Judge, Manendragarh in Sessions Trial No. 103/12 whereby the appellant has been convicted for offence

punishable under Section 302 of IPC and he has been sentenced to undergo life imprisonment with fine of Rs. 5000/- and in default of payment of fine,

further R.I. for 6 months.

2. Case of the prosecution, in brief, is that on 04/07/2012 at about 5 PM at village Nevri, the appellant herein along with three co-accused persons

namely Ramdayal (A-2), Samund Singh (A-3) and Arjun Singh (A-4) (now acquitted) assaulted appellant's father Awadh Singh with crowbar due to

which he suffered grievous injuries and ultimately died while undergoing treatment on 05/07/2012 and they further assaulted Sahdev Singh (P.W.-2)

and thereby, committed the offence in question.

3. It is admitted position on record that Bhagwanta Singh had three sons namely Awadh Singh (deceased), Ramdayal (A-2) and Samund Singh (A-3);

and Awadh Singh had four sons namely Jeevan Singh (appellant herein), Arjun Singh (A-4) and injured witness Sahdev Singh (P.W.-2) & Bheem

Singh.

4. Further case of the prosecution is that on 04/07/2012 at about 3 PM, Sahdev Singh (P.W.-2) had gone towards the shop while his father Awadh

Singh (deceased) was digging a hole for installing a hook on the field. When Sahdev Singh (P.W.-2) returned from the shop, he saw that cattle were

grazing the crops of maize grown in their field and he scolded her wife and his sister-in-law for not looking after the field and asked them to get the

cattle out of the field but appellant Jeevan Singh and co-accused persons Ramdayal (A-2), Samund Singh (A-3) and Arjun Singh (A-4), who were

drinking liquor in the house of Samund Singh (A-3) thought that he was abusing them, as such, they entered into the house of Awadh Singh and

picked up the crowbar kept therein and assaulted him on his head, chest, arms and legs due to which his head exploded and he became unconscious

and all the four accused persons absconded from the spot. Awadh Singh was escorted to Community Health Center, Manendragarh but he died on the

next day while undergoing treatment. On the basis of the memo of the hospital (Ex. P/15) and statement of Sahdev Singh (P.W.-2), first information

report (Ex. P/16) was lodged against the four accused persons. Merg intimation was registered vide Ex. P/1 and after conducting inquest vide Ex. P/2,

dead body of Awadh Singh was subjected to postmortem which was conducted by Dr. S.N. Gupta (P.W.-6) and as per the postmortem report (Ex.

P/11A), cause of death is said to be coma due to head injury and nature of death is said to be homicidal. Memorandum statement of appellant herein

was recorded vide Ex. P/4 and crowbar was seized vide Ex. P/5 and it was sent for forensic examination and as per the FSL report (at page No. 110

of the paper book), no blood has been found on it. After due investigation, the appellant and the other co-accused persons were charge-sheeted for

offence punishable under Sections 302/34 and 307/34 of IPC which was committed to the Court of Sessions for trial in accordance with law. The

accused persons abjured their guilt and entered into defence.

5. In order to bring home the offence, prosecution examined as many as 18 witnesses and brought on record 25 documents. The statements of the

accused persons was taken under Section 313 of CrPC wherein they denied guilt, however, they examined none in their defence and neither brought

any document on record.

6. Learned trial Court, after appreciation of oral and documentary evidence on record, finding the death of deceased Awadh Singh to be homicidal in

nature and further finding the appellant to be the author of crime in question, proceeded to convict him for offence punishable under Section 302 of

IPC and sentenced him as aforesaid and acquitted the three co-accused persons.

7. Mr. Vivek Shrivastava, learned counsel for the appellant, would submit that even though there are as many as three eye witnesses i.e. Sahdev

Singh (P.W.-2), Smt. Rambai (P.W.-3) and Smt. Ramkali (P.W.-4) but the manner in which the incident is alleged to have happened, the evidence of

these witnesses is improbable and suffers from various contradictions. They are all interested witnesses as they are related to the deceased. In

alternative, he would submit that out of sudden anger and in heat of passion, the appellant assaulted the deceased Awadh Singh and he had no

premeditation or intention of causing his death, as such, his case would fall within Exception 4 to Section 300 of IPC and therefore, his conviction for

offence punishable under Section 302 of IPC is liable to be converted to Section 304 Part I or II of IPC and since he is in jail from 05/07/2012, he be

sentenced to the period already undergone.

8. Per contra, Mr. Sameer Uraon, learned State counsel, would submit that prosecution has been able to bring home the offence beyond reasonable

doubt and as such, the trial Court is absolutely justified in convicting the appellant for offence punishable under Section 302 of IPC, therefore, this

criminal appeal deserves to be dismissed.

9. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost

circumspection.

10. The first question for consideration would be whether the death of deceased Awadh Singh was homicidal in nature ?

11. Learned trial Court has recorded an affirmative finding in this regard and held the death of deceased Awadh Singh to be homicidal in nature

relying upon the expert medical opinion of Dr. S.N. Gupta (P.W.-6) who has proved the postmortem report (Ex. P/11A) in which cause of death is

said to be coma due to head injury and nature of death is said to be homicidal. Considering the statement of Dr. S.N. Gupta (P.W.-6) as well as the

postmortem report (Ex. P/11A) and the injury suffered by the deceased on his head, we are of the considered opinion that the trial Court has rightly

held the death of deceased Awadh Singh to be homicidal in nature. We hereby affirm the said finding recorded by the trial Court particularly when it

has been not been seriously questioned by learned counsel for the appellant.

12. The next question for consideration would be, whether it is the appellant who assaulted his father Awadh Singh with crowbar on account of which

he suffered grievous injury on his head and died ?

13. Taking into consideration the statements of eye-witnesses Sahdev Singh (P.W.-2), Smt. Rambai (P.W.-3) and Smt. Ramkali (P.W.-4) and further

considering that pursuant to the memorandum statement of the appellant, recovery of crowbar has been made from him which has been proved by

Ramprasad (P.W.-5), we are of the considered opinion that the trial Court has rightly held that it is the appellant who assaulted his father Awadh

Singh with crowbar and caused severe injury on his head due to which he died.

14. Now, what requires consideration is, whether the trial Court has rightly convicted the appellant for offence punishable under Section 302 of IPC or

his case would fall within Exception 4 to Section 300 of IPC, as contended by learned counsel for the appellant ?

15. In order to consider the plea raised by learned counsel for the appellant, it would be appropriate to notice Exception 4 to Section 300 of IPC, which

states as under :-

“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.”

16. With regard to the issue in hand, in the matter of Felix Ambrose D'Souza v. State of Karnataka (2009) 16 SCC 361, the Supreme Court has held in

paragraph 7 as under :-

“7. The learned counsel for the appellant in the alternative has made a submission that, at any rate, the facts even held proved, could not be

considered to be just and sufficient to warrant a conviction under Section 302 IPC and if at all conviction under Section 304 Part II IPC alone could

have been rendered possible. Though the learned counsel for the respondent State strongly insisted that keeping in view the gravity of the offence and

the brutal manner in which it has been committed with the background of animosity and ill-will there was no need for altering the nature of offence

and that the finding of the High Court in this regard may not call for any interference. As noticed earlier and having regard to the materials and the

evidence on record as spoken to even by the prosecution witnesses there does not appear to be any premeditated plan or intention to either put an end

to the life of the deceased or cause any injury with the intention of causing his death or causing such bodily injury which within the knowledge of the

accused was likely to cause his death even in the ordinary course of nature. Irrespective of the silent nature of ill feelings which existed between the

parties, it appears to have surfaced with a violent turn on the fateful day due to sudden quarrel which even according to the prosecution witnesses,

commenced with an altercation and attempts to break open the lock which was said to have been placed on the door of the storeroom by the appellant

in addition to the one part by the father and the deceased. In the tussle and altercation and an attempt to break the lock by the deceased with a

hammer in his hand and attempts made by the appellant to physically prevent the deceased from doing so, and use of physical force in the process,

passions seem to have flared up beyond proportion all of a sudden, perhaps, neither anticipated nor intended by either of them. The prosecution version

itself lends credence and support to the plea of sudden provocation on the spur of the moment. Therefore, we are of the view that the High Court was

not right in arriving at the conclusion to convict the appellant under Section 302 IPC. In our considered view, on the proved facts the only offence that

could reasonably be said to have been made out and for which the appellant could be convicted would be under Section 304 Part II IPC and to this

extent we partly allow the appeal and set aside the order of conviction under Section 302 IPC and instead convict him under Section 304 Part II

IPC. ¶

17. The Supreme Court in the matter of Arjun v. State of Chhattisgarh (2017) 3 SCC 247 has elaborately dealt with the issue at hand and observed in

paragraphs 20 and 21, which reads as under :-

¶“20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh

[(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under : (SCC p. 220, para 7)

¶“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was

done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not

relevant nor its relevant who offered the provocation or started the assault. 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. 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. ¶

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances

Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

¶“9. ¶“18. 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 Penal Code, 1860. 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 or

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 provisions means

"unfair advantage".

18. In the matter of Arjun (supra), the Supreme Court has held that when and if there is intent and knowledge, the same would be case of Section 304

Part-I IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then same would be a case of Section 304

Part-II IPC.

19. Bearing in mind the principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments (supra), it is quite vivid that

in the instant case, appellant is the son of deceased Awadh Singh and on the date of incident, since cattle had come and grazed the crops of maize

grown in the field of Sahdev Singh (P.W.-2), he scolded his wife and sister-in-law as to why they were not looking after the field but appellant herein

and other co-accused persons thought that he was abusing them, so they went to his field and jumped over the walls of his house and the appellant

herein picked up the crowbar kept therein and assaulted his father Awadh Singh on his head due to which he suffered grievous injuries and died while

undergoing treatment on the next day. This goes to show that there was no premeditation or intention on the part of the appellant to cause the death of

the deceased and he only assaulted his father out of sudden anger and in heat of passion, however, looking to the injury suffered by the deceased on

his head, the appellant must have had the knowledge that his act would likely cause the death of the deceased. As such, the case of the appellant

would be covered with Exception 4 to Section 300 of IPC and his conviction for offence punishable under Section 302 of IPC is hereby altered to

Section 304 Part II of IPC. Since the appellant is in jail from 05/07/2012 i.e. for more than 10 years, we hereby sentence him for the period of 10

years of rigorous imprisonment which he has already undergone. However, the fine sentence as imposed by the trial Court shall remain intact. He be

released forthwith, if his detention is not required in any other case.

20. Accordingly, this criminal appeal is allowed to the extent indicated herein-above.

21. Let a certified copy of this judgment be sent to the concerned trial Court as well as the jail authorities for information and compliance.