2023 SCeJ 0037
SUPREME COURT OF INDIA
Ravindra Bhat,J. Dipankar Datta, J.
S. **Premchand v. State of Maharashtra**
T. Criminal Appeal No. 211 of 2023
U. 03.03.2023

CrPC, S. 313(1)(b) – Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

Held, Is a valuable safeguard in the trial process for the accused to establish his innocence; which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him; when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court; the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences; an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him; the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s); statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case; statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements; any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

CrPC, S. 313 (1) (b), S. 313(5) – In criminal court proceedings, it is the responsibility of the court to carefully review the evidence presented by the prosecution and prepare relevant questions to allow the accused to explain any incriminating circumstances - Prior to the amendment of section 313 in 2009, courts alone were responsible for this task, but the amendment now allows the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing the questions - However, judicial experience has shown that the accused often provide evasive or unhelpful answers, which can harm their case, like with stereotypes like 'false', 'I don't know', 'incorrect', etc. - Nonetheless, if the accused provides a satisfactory explanation or a different version of events, it can provide the court with a different perspective and have an effect on the final outcome. [Para 16]

Held, Court has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare. For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cut-

ting down delays, the Parliament amended section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing such questions [the first part of sub-section (5)]. Ideally, with such assistance (which has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like 'false', 'I don't know', 'incorrect', etc. Many a time, this does more harm than good to the cause of the accused. For instance, if facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it. The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility.

CrPC, S. 313 - A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it - The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful - Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility. [Para 16]

CrPC, S. 313 - Once the accused files a written statement under sub-section (5) of section 313, it must be treated as part of their statement statement under sub-section (1) read with sub-section (4) thereof . and considered in the light of the evidence presented by the prosecution - The contents of the statement should be weighed with the probabilities of the case in favor of or against the accused. [Para 17]

***CrPC,* S. 313(5) - Non-explanation of facts within special knowledge of the accused - Effect of. I**f facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances.

[Para 16]

***IPC,* Section 300, Exception 4 - Sudden fight - Murder of victim - Victim and appellant had no quarrel -** In the normal run of

events, the victim as well as P.W.2 and the appellant were not supposed to interact with each other on 26th September, 2013. If P.W.2 had not opened the shop, the appellant would probably not have met him. It is in the evidence of P.W.2 that he was reading a newspaper sitting in front of the shop of the victim and that the appellant was sitting in the saloon of BS (not examined), which was opposite to the shop of the victim. P.W.2's further version was that the appellant went to his house, fetched a knife and then stabbed P.W.2 on his left shoulder, neck and left-hand finger resulting in serious bleeding injuries. The reason why the appellant suddenly on seeing the septuagenarian P.W.2 would go to his house and return with a knife is not there in the evidence. Then again, the victim who, according to P.W.2, was supposed to be in the field but appeared in the scene from some other place all on a sudden, was the third in the series to be stabbed by the appellant and, thus, was not his target. Though there is no specific admission by the appellant that he had stabbed the victim or the other injured witnesses, reading of the evidence does evince an act of retaliation spurred by sudden provocation resulting in a quarrel as well as a scuffle which ultimately, most unfortunately, cost the victim his life and left some others injured. It was in a sudden quarrel, which could have been provoked by the victim and P.W.2, that blows followed from each side.he appellant too sustained injuries in the scuffle and there is evidence on record that one of the injuries was grievous, yet, the criminal law was surprisingly not set in motion to bring to book those responsible for inflicting such injury. It was in a sudden quarrel, which could have been provoked by the victim and P.W.2, that blows followed from each side. Most importantly, the circumstances in which the incident occurred does clearly negate any suggestion of premeditation in mind. That apart, it cannot be overlooked that while the victim was middle-aged, the appellant was in his late fifties. At the time of the alleged incident, apart from P.W.s 2 and 3, Shankarrao Fartode, Umrao Charde, Ramesh Korde (all three not examined) were present at the spot, as per the version of P.W.2. It is indeed improbable that in the presence of such persons, the appellant wielding a weapon like a knife would come to the spot with an intention to commit the offence of murder overpowering all of them without any sufficient reason or provocation. In our opinion, the trial court lacked in objectivity by not examining the facts and circumstances as to whether the situation was such as is likely to reasonably cause an apprehension in the mind of the appellant that there was imminent danger to his body, of either death or grievous hurt being caused to him, if he did not act in private defence. To impute intention to cause death or the intention to cause that particular injury, which proved fatal, in these circumstances seems to be unreasonable. Exception 4 to section 300, IPC ordains that 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. The explanation thereto clarifies that it is immaterial in such cases which party offers the provocation or commits the first assault. Four requirements must be satisfied to invoke this exception, viz. (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 or unusual manner. Taking an overall view of the matter, we are inclined to the opinion that the appellant was entitled to the benefit of Exception 4 to section 300, IPC. This is not a case where the appellant could be convicted for murder of the victim. His conviction for murder and sentence of life imprisonment are liable to be set aside. It is ordered accordingly. Convict the appellant under section 304, Part II, IPC. Since the appellant has suffered imprisonment for more than nine years and he is presently in his late sixties, we consid-

er incarceration for such period as adequate punishment. The appellant shall be released from custody forthwith, unless required in connection with any other case. [Para 23-27]

IPC , Section 300 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 - The explanation thereto clarifies that it is immaterial in such cases which party offers the provocation or commits the first assault. Four requirements must be satisfied to invoke this exception, viz. (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 or unusual manner. [Para 24]

Judgment

Dipankar Datta, J.

1. This appeal, by special leave, calls in question the judgment and order dated 06th August, 2019 of the High Court of Judicature at Bombay, Bench at Nagpur, whereby Criminal Appeal No 211 of 2016 carried by the appellant assailing his conviction under section 302, Indian Penal Code, 1860 (for brevity 'IPC') and sentence of life imprisonment with a fine of Rs.6,000.00 and a default sentence of one year as well as sentence of seven years of rigorous imprisonment and fine of Rs.4,000.00 for the offence punishable under section 307, IPC was dismissed.

2. The prosecution case was that Nandkishor Korde (for brevity 'the victim') was murdered on 26th September, 2013 at around 5:00 pm by the appellant. The other three victims, namely Namdeo Korde (P.W.2), Vilas Charde (P.W.3), and Kunal Babhulkar (P.W.4) received stab injuries caused by a knife, also inflicted by the appellant.

A report was lodged soon thereafter by the mother of the victim Rekhabai Korde, (P.W.1), leading to registration of an F.I.R. under sections 302 and 307, IPC. The post-mortem report dated 27th September, 2013 (Ext.35) recorded "stab injury to neck" of the victim as the probable cause of death.

3. Consequent to the registration of the F.I.R., Police Inspector Bharat Thakre (P.W.8) took up the investigation, visited the spot of the incident and prepared spot panchnama. He found the spot of the incident stained with blood and recovered a blood-stained knife, a wooden stick stained with blood, three pairs of chappals, two spectacles, and a blue dot pen. P.W.8 arrested the appellant and since he too had received injuries, he was referred to the Rural Hospital, Katol for his medical examination.

4. Upon completion of the investigation, a charge sheet under sections 302 and 307, IPC was filed before the concerned court against the appellant. Upon committal, charges for the above-said offences were framed to which the appellant pleaded not guilty and claimed to be tried.

5. The prosecution examined 8 (eight) witnesses to support of its case. None was examined on behalf of the defence. However, the appellant filed a written statement, which we propose to refer to at a later part of this judgment. The Additional Sessions Judge largely relied on the statements of P.W.2, P.W.3, and P.W.4 to convict the appellant.

The Court concluded that the appellant committed the murder of the victim with the knife (Art.1) and also attempted to commit the murder of P.W.2, P.W.3 and P.W.4. The defence of the appellant appeared to the Court to be false and the prosecution was held to have proved its

case beyond reasonable doubt. This was followed by the convictions and sentences, noted above.

6. The aforesaid judgment having been challenged before the High Court, the relevant Division Bench was of the view that the findings did not warrant any interference and that the appeal was devoid of any merit; hence, it was dismissed.

7. The first limb of the arguments advanced by learned counsel for the appellant is that the courts below clearly erred in convicting the appellant. According to him, the following points deserve consideration:

a. Firstly, the courts below failed to appreciate that none of the other persons present at the site of the occurrence, namely Shankarrao Fartode, Umrao Charde, and Ramesh Korde (as per the version of P.W.2) were examined as prosecution witnesses. The courts ought to have inferred that had they been produced they would not have supported the prosecution case and, thus, were deliberately withheld. Non-examination of such independent witnesses, therefore, should be held to be fatal to the prosecution case.

b. Secondly, having regard to the age of the appellant (he was 58 years old on the date of the incident), it is quite improbable that he could freely inflict stab injuries on the victim and the others without anyone of the injured as well as the others present at the site (Shankarrao Fartode, Umrao Charde, and Ramesh Korde) even making an attempt to resist the appellant from inflicting injuries as also to save anyone of the others.

c. Thirdly, it was necessary to establish, by examining these independent witnesses, that it was the appellant who came with the knife and holding it was on a stabbing spree resulting in the death of the victim and injury to the others.

d. Fourthly, all eyewitnesses (P.W.2, P.W.3 and P.W.4) who deposed against the appellant were interested witnesses and, therefore, not credible and their testimony ought not to have been relied upon.

e. Fifthly, the courts below failed to take note that P.W.2 and P.W.3 were both interested witnesses and it was a clear case of false implication by suppressing the original story of the actual incident.

f. Sixthly, it is surprising that although P.W.4 claimed to have snatched the knife from the appellant, there is no injury on his hand; on the contrary, there is no explanation from the side of the prosecution with regard to the six injuries suffered by the appellant.

g. Seventhly, no motive could be established for the appellant to assault the victim and P.W.2 as the dispute between the parties arising out of unauthorized construction made by P.W.2 on the ground floor of the building of the appellant relates back to the year 2003.

h. Seventhly, the knife was not recovered at the instance of the appellant under section 27 of the Indian Evidence Act, 1872 but seizure has been shown to have been made at the site. There being contradictory statements of P.W.2 and P.W.4, it is unclear as to who introduced the knife in the scuffle.

i. Finally, the appellant was a permanent resident of Nagpur whereas the place of the incident is Katol, a tehsil place situated about 50 kms. from Nagpur. There could hardly be any reason for the appellant to travel such distance and murder the victim, and that too with a knife in broad daylight and in the presence of a host of people.

8. The second limb of the arguments of learned counsel is that even if it be assumed that death of the victim occasioned at the hands of the appellant, as per the prosecution case the victim was initially away from the place of incident and was the last to join the scuffle. There was, thus, no premeditation on the part of the appellant as such and the victim seems to have got injured unintentionally in the scuffle

between the appellant on the one side and the victim, P.W.s 2, 3 and 4 on the other.

Therefore, clearly, the victim was not the target. He contended that conviction of the appellant under section 302, IPC was erroneous on facts and in the circumstances and that the evidence at best made out a case punishable under section 304, Part II, IPC. The appellant has been behind bars for nine years and it is only fair, just and proper that this Court upon consideration of the materials on record directs his release by converting the conviction from section 302, IPC to section 304, Part II, IPC and sentencing him to the period already spent in custody.

9. Learned counsel appearing for the State, on the other hand, supported the judgment of conviction and order of sentence of the Sessions Judge. He also submitted that the High Court took pains to reappraise the evidence and finally concurred with the Sessions Judge. No case having been set up by the appellant for interference, he urged this Court to dismiss the appeal.

10. We have heard the parties, considered the evidence led by them before the trial court and perused the judgment and order of the trial court and the High Court.

11. Any detailed discussion of the oral evidence of the prosecution witnesses is considered unnecessary in view of the "WRITTEN STATEMENT" dated 31st March, 2016 (Ext.96) of the appellant [Annexure 'P-16' to the paperbook], which was filed by him before the trial court in his defence, in terms of sub-section (5) of section 313 Code of Criminal Procedure, 1973 (for brevity 'Cr. P.C.). It is also noted that while replying to Q. No.79 in course of examination under section 313(1), the appellant had referred to such a statement.

12. The gist of Ext. 96, to the extent relevant for the purpose of a decision on this appeal, is that the appellant used to come to Katol from Nagpur for collecting rent every 2-3 months; that the appellant came to Katol on 26th September, 2013 for collecting rent; that while the appellant was returning from a credit society after withdrawing money and climbing the stairs of his house, the victim spit on him and threatened him by saying "Aaj tere ko fitate hai, tera game bajate hai"; that while the appellant was leaving his house, P.W.2 gave a signal to the victim and P.W.4 by saying "Ala re ala"; on seeing the appellant, the victim took out a knife and P.W.4 took out a 'fighter' belonging to P.W.3 and started beating him; that the appellant could take the knife with both his hands and in the meantime P.W.2 and P.W.3 came forward to beat the appellant; that while the appellant tried to save himself, the victim and P.W.s 2 to 4 sustained injuries; that the appellant too suffered serious injuries on the fingers of both his hands, knife wounds on his chest and injuries on his chest and right shoulder having been beaten by a wooden stick.

Immediately after such incident, the appellant went to the police station for lodging a complaint against his assailants but the same was not received. He was made to wait in the police station till 10.00 pm without his injuries being treated. He also stated that P.W.s 2, 3 and 4 had strained relations with him and that is the reason why they tried to seriously injure him.

13. There is a plethora of judicial pronouncements on consideration of section 313, Cr. P.C., a few of which need to be noted at this stage.

14. A bench of three Hon'ble Judges of this Court in State of U.P. vs Lakhmi1 has extensively dealt with the aspect of value or utility of a statement under section 313, Cr. P.C. The object of section 313, Cr. P.C. was explained by this Court in Sanatan Naskar vs. State of West Bengal2. The rationale behind the requirement to comply with section 313, Cr. P.C. was adverted to by this Court in Reena Hazarika vs. State of Assam3. Close on the heels thereof, in Parminder Kaur vs. State of Punjab4, this Court

restated the importance of section 313, Cr. P.C. upon noticing the view taken in Reena Hazarika (supra) and M. Abbas vs. State of Kerala5.

15. What follows from these authorities may briefly be summarized thus:

a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;

b. section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;

c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;

d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;

e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;

f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);

g. statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;

h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and

i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;

j. any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

16. Bearing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of section 313 in 2009, the courts alone had to perform this task.

Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare. For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, the Parliament amended section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing such questions [the first part of sub-section (5)].

Ideally, with such assistance (which has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time

and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like 'false', 'I don't know', 'incorrect', etc.

Many a time, this does more harm than good to the cause of the accused. For instance, if facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face crossexamination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it.

The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility.

17. Once a written statement is filed by the accused under subsection (5) of section 313, Cr. P.C. and the court marks it as an exhibit, such statement must be treated as part of the accused's statement under subsection (1) read with sub-section (4) thereof. In view of the latter sub-section, the written statement has to be considered in the light of the evidence led by the prosecution to appreciate the truthfulness or otherwise of such case and the contents of such statement weighed with the probabilities of the case either in favour of the accused or against him.

18. This is a case where it does not appear from the records that the written statement (Ext. 96) engaged the attention of both the trial court as well as the High Court. Applying the principles noted above and for the reasons discussed below, there can be no quarrel that non-consideration of Ext. 96, to a limited extent, in relation to recording of conviction and consequently imposition of sentence, has rendered it vulnerable to interference.

19. Ext. 96 refers to inculpatory admissions as well as seeks to bring out exculpatory circumstances. The statement has to be read in its entirety. The inculpatory admissions emerging from this statement against the appellant are (i) his presence at the spot and (ii) sustaining of injuries by the victim and the other prosecution witnesses while the appellant, as claimed, was attempting to save himself from getting injured.

The exculpatory circumstances sought to be established are (i) the appellant's description of the act complained of as involuntary, which was compelled by inevitable circumstances and not guided by choice and, (ii) sustaining of injury by him in the same transaction.

20. In view of the inculpatory admissions appearing from Ext.96, the trial court, and the High Court while concurring with the trial court, need not have laboured much to convict the appellant as the person instrumental for the homicidal death of the victim by discussing the evidence led in course of the trial in details. The appellant's presence at the spot and the victim and the injured witnesses sustaining injury in course of the scuffle could be held to have been established from Ext.96 itself.

However, by not looking into Ext. 96 with the other evidence on record, what the trial court omitted to consider is, whether the prosecution was justified in claiming that the offensive act amounted to culpable homicide amounting to murder or whether the appellant being guilty of culp-

able homicide not amounting to murder, deserved punishment under section 304, Part II, IPC.

True it is, the trial court considered the arguments advanced on behalf of the appellant that (i) he had "exercised his right of private defence", and though (ii) "he exceeded such right", (iii) the present case at the most would fall under section 304, Part II, IPC; but, it proceeded to overrule such arguments by relying on the oral testimony of P.W.s 2 to 4. In the process, the trial court failed to appreciate the defence version as spelt out in Ext.96, which appears to us to be plausible.

A senior citizen who visits Katol from Nagpur, his place of residence, for collecting rent, having the intention of murder would possibly not attempt to do so in broad daylight and in the presence of witnesses, and that too with a weapon such as a knife. Reading Ext.96 as it is, we do find it probable that there could have been provocation at the instance of the victim, who allegedly indulged in spitting on the appellant coupled with verbal abuse, whereafter P.W.2 and later P.W.s 3 and 4 sprang into action, resulting in a scuffle where both parties indulged in inflicting injuries on each other resulting in an unwanted loss of life.

21. Regrettably, pointed attention of the High Court does not appear to have been drawn to Ext.96 by counsel on behalf of the appellant, as a consequence whereof the Court went on to hold that the "act could not be shown to have come in any of the exceptions enumerated in Section 300 of IPC", that "it is neither the result of sudden provocation nor done in the heat of passion during quarrel", and that it had "no hesitation to hold that the death of Nandkishor is culpable homicide amounting to murder".

22. Be that as it may, we have no difficulty in proceeding to record our conclusions resting on the evidence on record as well as Ext.96, which the appellant voluntarily filed before the trial court as his response to the incriminating materials appearing in the evidence against him while being questioned under section 313, Cr. P.C, for whatever it is worth. It appears to us to be a fair and proper disclosure of the appellant's version as to what transpired on that fateful evening. The offensive act committed by the appellant has to be appreciated in the surrounding circumstances noted below.

23. In the normal run of events, the victim as well as P.W.2 and the appellant were not supposed to interact with each other on 26th September, 2013. P.W.2 opened the shop of the victim because the victim had not returned from the field. If P.W.2 had not opened the shop, the appellant would probably not have met him. It was by chance that the appellant and P.W.2 met each other. The victim and the appellant had no quarrel with each other; whatever was there, it was between the appellant and P.W.2.

The inter se quarrel between the two had long subsided. There is a missing link in the prosecution case as to the motive of the appellant to inflict the blow on P.W.2 first. It is in the evidence of P.W.2 that he was reading a newspaper sitting in front of the shop of the victim and that the appellant was sitting in the saloon of Baburao Sawarkar (not examined), which was opposite to the shop of the victim.

The appellant, as per P.W.2, was unarmed initially. P.W.2's further version was that the appellant went to his house, fetched a knife and then stabbed P.W.2 on his left shoulder, neck and left-hand finger resulting in serious bleeding injuries. The reason why the appellant suddenly on seeing the septuagenarian P.W.2 would go to his house and return with a knife is not there in the evidence. We shall, for the present, assume that there were heated exchanges and that the appellant gave a blow to P.W.2 first, and thereafter to the others one by one.

Then again, the victim who, according to P.W.2, was supposed to be in the field but

appeared in the scene from some other place all on a sudden, was the third in the series to be stabbed by the appellant and, thus, was not his target. Though there is no specific admission by the appellant that he had stabbed the victim or the other injured witnesses, reading of the contents of Ext.96 does evince an act of retaliation spurred by sudden provocation resulting in a quarrel as well as a scuffle which ultimately, most unfortunately, cost the victim his life and left some others injured.

The appellant too sustained injuries in the scuffle and there is evidence on record that one of the injuries was grievous, yet, the criminal law was surprisingly not set in motion to bring to book those responsible for inflicting such injury. It was in a sudden quarrel, which could have been provoked by the victim and P.W.2, that blows followed from each side. Most importantly, the circumstances in which the incident occurred does clearly negate any suggestion of premeditation in mind. That apart, it cannot be overlooked that while the victim was middle-aged, the appellant was in his late fifties.

At the time of the alleged incident, apart from P.W.s 2 and 3, Shankarrao Fartode, Umrao Charde, Ramesh Korde (all three not examined) were present at the spot, as per the version of P.W.2. It is indeed improbable that in the presence of such persons, the appellant wielding a weapon like a knife would come to the spot with an intention to commit the offence of murder overpowering all of them without any sufficient reason or provocation.

In our opinion, the trial court lacked in objectivity by not examining the facts and circumstances as to whether the situation was such as is likely to reasonably cause an apprehension in the mind of the appellant that there was imminent danger to his body, of either death or grievous hurt being caused to him, if he did not act in private defence. To impute intention to cause death or the intention to cause that particular injury, which proved fatal, in these circumstances seems to be unreasonable.

24. Exception 4 to section 300, IPC ordains that 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. The explanation thereto clarifies that it is immaterial in such cases which party offers the provocation or commits the first assault. Four requirements must be satisfied to invoke this exception, viz.

(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 or unusual manner.

25. Taking an overall view of the matter, we are inclined to the opinion that the appellant was entitled to the benefit of Exception 4 to section 300, IPC.

26. The upshot of the above discussion is that this is not a case where the appellant could be convicted for murder of the victim. His conviction for murder and sentence of life imprisonment are liable to be set aside. It is ordered accordingly.

27. However, we think it proper to convict the appellant under section 304, Part II, IPC. Since the appellant has suffered imprisonment for more than nine years and he is presently in his late sixties, we consider incarceration for such period as adequate punishment. The appellant shall be released from custody forthwith, unless required in connection with any other case.

28. Since the appellant has already served the sentence imposed for commission of offence under section 307, IPC, based on a conviction which is highly suspect, we allow it to rest.

29. The appeal stands allowed to the extent indicated above. No costs.

30. Before parting, we observe that this is a case where the police should have investigated the injuries suffered by the appellant too. The appellant also did not pursue any available remedy to right the wrong.

However, in view of little less than a decade having passed since the incident took place, any direction to investigate at this distance of time may not yield any fruitful result. We, therefore, refrain from issuing such direction.

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1 (1998) 4 SCC 336

2 (2010) 8 SCC 249

3 (2019) 13 SCC 289

4 (2020) 8 SCC 811

5 (2001) 10 SCC 103