CASE NO.:
Appeal (crl.) 12 of 2008

PETITIONER:
Ramesh Krishna Madhusudan Nayar

RESPONDENT:
State of Maharashtra

DATE OF JUDGMENT: 07/01/2008

BENCH:
Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No.4630 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of Bombay High Court, Aurangabad Bench, dismissing the appeal of the appellant who faced trial for alleged commission of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short \021IPC\022) and was sentenced to imprisonment for life by learned Additional Sessions Judge, Ahmednagar.

3. Background facts in a nutshell are as follows:

The complainant Sajay Vithal was serving as a Waiter in Sanjog Hotel for 2-1/2 months prior to the incident. Pradip Panjabi is the owner of the said hotel. Business in the hotel is conducted from 5 p.m. to 11 p.m. After closure of the hotel, complainant Sanjay alongwith 5 workers of the hotel used to reside in a staff room. Hotel was closed on 3.11.1999 at 11.30 p.m. Pradip Panjabi and other staff members went out at about 1 a.m. Thereafter on 4.11.1999 around 1.30 a.m. in the night, altercations took place between Ramesh Nayar and Anna Devraj (hereinafter referred to as the \021deceased\022) on the point of switching off the lights. Both used to reside in the staff room. At that time, complainant, Kundlik Chavhan and Chhotu intervened. Thereafter complainant and Anna Devraj slept in the staff room. At about 8.30 a.m. complainant heard loud noise relating to a quarrel and got up. He saw the accused and the deceased quarrelling and accused inflicting two blows by a wooden log on the head of Anna Devraj. Ramesh Nayar threatened the complainant that if he disclosed anything to anybody, he will teach him a lesson. Hence complainant went out of the room. He disclosed the incident to the persons in the hotel working as gardeners in the morning. At that time, Anna Devraj was not speaking anything. He was lying unconscious and moaning. Thereafter owner of the hotel was informed on phone. He came and the deceased was shifted to Civil Hospital for treatment. His right ear was bleeding. Thereafter, the complainant and hotel owner went to Tophkhana Police Station and reported the matter to police as per Exh.26. A.S.I. Puri registered the offence as Crime No.227/99 under Sections 307, 506 of IPC and handed over investigation to PW.7. P.S.I. Jyoti Madhav Karandikar. After completion of investigation, charge sheet was placed and accused-appellant faced trial as he denied the occurrence and pleaded false implication. The trial Court

placed reliance on the evidence of Sanjay Diwate (PW-5). It is to be noted that certain other persons i.e. Dhirendera Suryavanshi (PW-2), Ashok Palve (PW-3) and Datta Pingale (PW-6) were claimed to be eye-witnesses, but they made departure from the statements given during investigation. The trial Court found the evidence of PW-5 to be credible and cogent and recorded his conviction and imposed the sentence of imprisonment for life.

4. The conviction and sentence were challenged before the High Court, which as noted above, dismissed the appeal.

5. In support of the appeal, leaned counsel for the appellant submitted that the conviction could not have been recorded solely on the testimony of one alleged eye-witness PW-5. Alternatively, it is submitted that Section 302 IPC has no application to the facts of the case in view of the factual scenario highlighted. According to him in course of a sudden quarrel the incident happened. In other words, according to him Exception 4 to Section 300 IPC applies.

6. Learned counsel for the respondent-State on the other hand supported the judgment of conviction and sentence.

7. Coming to the question whether on the basis of a solitary evidence conviction can be maintained, a bare reference to Section 134 of the Evidence Act, 1872 (in short \023the Evidence Act\024) would suffice. The provision clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of a single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond all possible criticism and the court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained.

8. For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

9. 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\022s sober reasons and urges them to 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 \021sudden fight\022 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\022s 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 \021fight\022 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 \021undue advantage\022 as used in the provision means \021unfair advantage\022.

10. The aforesaid aspects have been highlighted in Sridhar Bhuyan v. State of Orissa (JT 2004 (6) SC 299), Prakash Chand v. State of H.P. (JT 2004 (6) SC 302), Sachchey Lal Tiwari v. State of Uttar Pradesh (JT 2004 (8) SC 534), Sandhya Jadhav v. State of Maharashtra [2006(4) SCC 653] and Lachman Singh v. State of Haryana [2006 (10) SCC 524].

11. Considering the factual background the inevitable conclusion is that the appropriate conviction would be under Section 304 Part I, IPC and not Section 302 IPC. Custodial sentence of 10 years would meet the ends of justice.

12. The appeal is allowed to the aforesaid extent.