

**2022 LiveLaw (SC) 664**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

***B.R. GAVAI; J., PAMIDIGHANTAM SRI NARASIMHA; J.***  
**CRIMINAL APPEAL NO. 822 OF 2018; AUGUST 04, 2022**

**YATENDRASINGH AJABSINGH CHAUHAN *versus* THE STATE OF MAHARASHTRA**

**Indian Penal Code, 1860; Section 300 Exception 1 - Whether there was a grave and sudden provocation which would lead an accused to lose his power of self-control would depend upon the facts and circumstances of each case. It cannot be disputed that how a person responds to a particular situation would depend upon the temperament of a particular person. A hot-tempered person may react differently as compared to a cool-headed person. (Para 8)**

**Indian Penal Code, 1860; Section 300, 302 - Whether the accused had an intention to commit the murder of the deceased or not would depend upon a combination of several factors. There cannot be a straight-jacket formula for deciding whether there was intention to commit the murder or not. Referred to Pulicherla Nagaraju Alias Nagaraja Reddy v. State of A.P. (2006) 11 SCC 444. (Para 7-8)**

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*For Respondent(s) Mr. Rahul Chitnis, Adv. Mr. Sachin Patil, AOR. Mr. Aaditya A. Pande, Adv. Mr. Geo Joseph, Adv. Ms. Shweta Shepal, Adv.*

**J U D G M E N T**

**B.R. GAVAI, J.**

1. The appeal challenges the judgment dated 23<sup>rd</sup> June 2016 passed by the High Court of Judicature at Bombay in Criminal Appeal No.616 of 2009, thereby dismissing the appeal filed by the appellant challenging the Order dated 4/5<sup>th</sup> May 2009 passed by the Additional Sessions Judge, Mumbai (hereinafter referred to as “the trial court”) convicting the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short “IPC”) and sentencing him to undergo life imprisonment and fine of Rs.5,000/- and, in default, to suffer simple imprisonment for one month.

2. The prosecution story in brief is thus:

The appellant was working in a company known as “Top Security” and he was posted as a security guard at Mannat Bungalow owned by a film star, namely, Shahrukh Khan. The deceased Chandrapratap Singh and other security guards were also deployed at the said bungalow. On the night of 14<sup>th</sup> August 2006, deceased Chandrapratap Singh questioned the accused as to why was he sitting in the chair and whether his revolver was filled with bullets or not. He also asked the accused as to whether his fire arm was working or not. The accused in anger held Chandrapratap Singh with collar and then pulled the trigger of the revolver which was pointed at his chest due to which Chandrapratap Singh fell down. Sandeep Dharmaji Lakhan, another security guard posted at the same bungalow, lodged the First Information Report, on the basis of which, C.R. No. 398 of 2006 came to be registered. After completion of investigation, charge-sheet came to be filed in the Court of Additional Metropolitan Magistrate, 9<sup>th</sup>

Court, Mumbai. Since the case was exclusively triable by the Sessions Judge, it came to be committed to the learned Sessions Judge.

Charges were framed for the offence punishable under Section 302 of the IPC. The accused pleaded not guilty and came to be tried. At the conclusion of the trial, the trial court convicted the appellant and passed an order of conviction and sentenced as aforesaid. In appeal, the High Court confirmed the same.

3. Mr. S.R. Singh, learned Senior Counsel appearing on behalf of the appellant submits that, from the perusal of the prosecution witness itself, it would reveal that the appellant did not have any intention to commit the murder of the deceased. He submits that in an altercation between the appellant and the deceased, the appellant on being provoked by the deceased lost his control and unintentionally shot the deceased.

4. Mr. Singh therefore, submits that the present case at the most would fall under Part II of Section 304 of the IPC.

5. Mr. Rahul Chitnis, learned counsel appearing on behalf of the State of Maharashtra vehemently opposes the appeal. He submits that the security guard who was armed with a licensed revolver is expected to exercise due caution. He further submits that on mere asking by the deceased as to whether his revolver was working or not, the security guard was not expected to shoot point blank at one of his colleagues. He relied on the judgment of this Court in the case of ***Pulicherla Nagaraju Alias Nagaraja Reddy v. State of A.P.***<sup>1</sup>

6. It would be relevant to refer to the judgment in the case of ***Pulicherla Nagaraju*** (supra) on which Mr. Chitnis relies:

“29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.”

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<sup>1</sup> (2006) 11 SCC 444

- 7.** The perusal of the judgment itself would reveal that the intention to cause death can be gathered generally from a combination of a few or several of the factors. The Court has given 11 factors which are illustrative in nature. The Court has observed that the list is not exhaustive and there could be several other special circumstances with reference to individual cases which may throw light on the question of intention.
- 8.** It could thus be seen that, as to whether the accused had an intention to commit the murder of the deceased or not would depend upon a combination of several factors. There cannot be a straight-jacket formula for deciding whether there was intention to commit the murder or not. Similarly, as to whether there was a grave and sudden provocation which would lead an accused to lose his power of self-control would depend upon the facts and circumstances of each case. It cannot be disputed that how a person responds to a particular situation would depend upon the temperament of a particular person. A hot tempered person may react differently as compared to a cool headed person.
- 9.** A perusal of the material placed on record would clearly reveal that there was no premeditation and that there was an altercation between the deceased and the appellant. The deceased questioned the appellant as to whether his revolver was filled with bullets or not. He also questioned as to whether his fire arm was working or not. The possibility of the appellant being short tempered and responding in an unfortunate manner cannot be ruled out. Unfortunately, a loaded weapon was provided to the appellant by his employer. There is no doubt that the appellant should have exercised caution and controlled himself. However, as already discussed hereinabove, the response to a particular situation may differ from person to person.
- 10.** We are, therefore, of the view that the case would fall under Exception 1 of Section 300 of the IPC. As such the conviction under Section 302 of the IPC is not maintainable.
- 11.** The appeal is partly allowed accordingly. The conviction under Section 302 IPC is converted to Part I of Section 304 of the IPC.
- 12.** The appellant has already served the sentence for more than 8 years. We find that the said sentence would be sufficient for the offence punishable under Section 304 Part I of the IPC.
- 13.** The appellant is directed to be released forthwith, if not required in any other case.
- 14.** Pending application(s), if any, shall stand disposed of in the above terms.