



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1064 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE **Sd/-**

and

HONOURABLE MR. JUSTICE M. R. MENGDEY **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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ARJUNSINH RAISINH CHAVDA

Versus

STATE OF GUJARAT

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Appearance:

MR. AAMIR S PATHAN(7142) for the Appellant(s) No. 1

MS. KRINA CALLA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

and

HONOURABLE MR. JUSTICE M. R. MENGDEY



Date : 29/04/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)

1. Present Appeal is filed by the convict preferred under Section-374 of the Code of Criminal Procedure, 1973, against the judgment and order dated 17-05-2012 passed in Sessions Case No.71 of 2009 by the Principal Sessions Judge, Bharuch for the offence under Sections-302 of the Indian Penal Code. By the impugned judgment and order, the appellant was convicted for the offence under Sections-302 of the Indian Penal Code and ordered to undergo sentence of life imprisonment and fine of Rs.5,000/-, failing which the sentence of one month of simple imprisonment.
2. The appeal came to be admitted by order dated 13-11-2014.
3. It is the case where the incident took place on 02-08-2009, when the convict was allegedly having fight with his mother; Lilaben. At that time, the deceased; Vikramsingh Chavda (uncle of the appellant) reprimanded for his behavior, because of which the appellant picked up knife in his home and inflicted injury on the stomach of the deceased; Vikramsingh leading to his death.
4. In the connection of such incident, F.I.R. came to be registered. Thereafter, as the appellant pleaded not guilty, the trial proceeded



after following all the necessary procedural formalities and the prosecution examined evidences of 16 witnesses and proved 15 documents. On the basis of such evidence on record, the Sessions Court has recorded conviction.

5. Learned Advocate Mr. Aamir S. Pathan through H.C.L.S. Authority for the appellant has appeared and submitted that the offence of Section-302 cannot be made out in view of the surrounding circumstances, especially where the deceased is uncle of the appellant, who had reprimanded the appellant on account of some personal issue. Thereby, the appellant in the heat of moment inflicted injury by the knife, which is a domestic knife and therefore, there was no premeditation to commit the offence. It is submitted that the incident took place in such a quick succession that the appellant had no time to reflect upon the consequences of his action and the appellant having no other grievance with the deceased and there was no intention. It is submitted that though the evidence of eye-witnesses has been recorded, none of such evidence would indicate any premeditated mind or intention to commit the offence of murder of his own uncle.

6. It is submitted that evidence of the witnesses, cannot be termed to be most reliable, as there are many lapse and contradiction of the



version inter-say the eye-witnesses and when there are contradiction in the version inter-say the witnesses, the truthfulness of such witnesses becomes doubtful. Therefore, conviction cannot be based on the version of such witnesses.

7. Learned Advocate for the appellant has further submitted that the appellant had no intention, can also be gathered from the fact that it is the case of single blow and therefore, also conviction for offence of murder cannot be supported.
8. Lastly, learned Advocate for the appellant has submitted that all the panch-witnesses have been declared hostile and therefore, even circumstances based on discovery of the weapon and finding of blood-stains on cloths and so called weapon, it cannot be said that the prosecution has established those circumstances beyond reasonable doubt.
9. As against this, learned Additional Public Prosecutor supporting the judgment and order of conviction and has submitted that the evidence of the witnesses are reliable, as none of the witnesses is an interested witness and their presence at the scene and at the time of offence is quite natural, as they were at the relevant time, as usual sitting in company with the deceased, when he went to the house of the appellant to reprimand for fighting with his



mother and thereafter, the appellant came over to the deceased and assaulted.

10. Learned Additional Public Prosecutor has drawn attention of this Court to the evidence in the form of F.S.L. Report to indicate that knife, which was recovered as well as cloths of the accused, were found stained with blood-stains of Blood Group-B belonging to the deceased.

11. In rejoinder, learned Advocate for the appellant has submitted that considering the nature of offence and the involvement of the appellant, his case be considered for conviction of lesser offence.

12. Having considered the rival submissions of the parties and having perused the documents on record, it appears that in connection with the incident as narrated in the preceding paras, vide Exh-5, the charge was framed and gist of which is that *the accused had come to Mandir wala Falia at 9:00 o'clock at night on 02/08/2009. the appellant was quarreling with his mother, Lilaben - widow of Raysinh Bhimsinh Chavda outside the house and entered into verbal spat with her. At that time, the deceased Vikramsinh Himatsinh Chavda scolded and keeping grudge against him, the appellant went to the house and brought a knife and at 9:00 o'clock at night on 02/08/2009 and stabbed into his stomach part*



beside navel with the knife, which pierced though skin of the deceased and started bleeding. As the deceased started shouting, Mahendrasinh Harisinh Sidha called 108 ambulance to take Vikramsinh to hospital and as it was bleeding profusely from the stomach, a blanket was tied around his stomach and on arrival of ambulance, two sons of the deceased, namely Melubha and Mangubhai took Vikramsinh to Jambusar Government hospital for treatment. From there, as it was referred to take the deceased to S.S.G. hospital, Vadodara, he was taken to S.S.G. hospital, where he died during treatment.

13. It would be pertinent to first taken into consideration the Postmortem report vide Exh-31, for which Dr. Vinayakrav Patil; PW-13 vide Exh-30 was examined. In the Postmortem Note, fatal injury is reflected in Para-17 as stab-wound over the anterior abdominal, 2 cms. lateral and 1 cm. above the umbilicals. The wound length is 3.5 cms. and 1 cm. in breadth and penetrating deep in abdominal cavity going medially downwards. Except for this, there is no other injury on the body of the deceased and the cause of death is stated to be shock and haemorrhage following stab injury over the abdominal region.

14. In the deposition also, this witness has opined that Muddamal

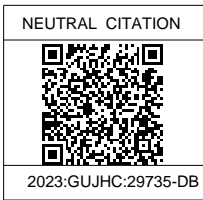


Article No.6 (knife) can cause fatal injury, caused to the deceased.

15. Therefore, in the opinion of the Court, the prosecution was successful in establishing homicidal death of the deceased.

16. The prosecution has proved at Exh-35, the discovery panchnama of the knife used in the offence being Muddamal Article No.6. Two panch-witnesses though have not supported the panchnama, but the panchnama is proved through the Investigating Officer. The content of the panchnama would indicate that knife was discovered from the residential premises of the appellant from the heap of agricultural produce, place adjacent to the wall on the western side of the house. Serological Report by the F.S.L. Exh-39 does indicate that blood-stains of Blood Group-B are found on the knife as well as on T-shirt and Pant both of the deceased and the appellant. It would be pertinent to observe that Blood Group of both the deceased as well as the appellant are the same i.e. Blood Group-B. To that extent, the prosecution has been able to establish the use of knife to inflict the fatal injury on vital part of the body of the deceased and discovery of the weapon at the behest of the appellant.

17. However, to make out a case of murder under Section-302, it would be necessary for the prosecution to establish mens-rea,



intention as well as premeditation to commit the offence. The Apex Court in a situation similar to the present one, has examined whether to consider non-premeditated assault be convicted under Section-302.

18. The Apex Court in case of *Shivappa Buddappa Kolkar v/s. State of Karnataka and others* reported in *AIR 2004 SC 5047*, had adverted to the facts in question, where incident appeared to have taken place at the spur of the moment when the bullock cart of the accused persons was obstructed from the proceeding further by the deceased leading to confrontation situation and the assault. Likewise in the present case, where there was fighting between the appellant and his mother, which is the case of the prosecution that the deceased had reprimanded the appellant and in reaction to that by using domestic knife, the injury was inflicted on the stomach. As it is observed that it is the case of single blow and therefore, the act did not indicate any premeditated action on the part of the appellant, but reacted to the intervention of the deceased.

19. The Most relevant aspect is that the deceased was uncle of the appellant and nothing is on record to indicate that there was any previous animosity, which would have inspired the appellant to commit the offence and therefore, the Court is of the view that



similar mode be adopted as laid down by the Apex Court in case of *Shivappa Buddappa Kolkar (supra)*.

20. In another decision of the Apex Court in case of *Kalabai v/s. State of Madhya Pradesh* reported in **2019 (20) SCC 502**, the Apex Court has taken into consideration the fact that the appellant therein had no intention to kill the deceased and the quarrel had taken place between two all of a sudden and in the heat of moment, the appellant had thrown a burning stove on the deceased. In the facts of that case, the conviction of the appellant under Section-302 was converted to conviction under Section-304, Part-II of the Indian Penal Code and reducing the sentence from rigorous imprisonment for life to rigorous imprisonment for 5 years.

21. In the present case Oral evidence of the eye-witnesses namely PW-1; Mahendrasinh Harisinh Sindha vide Exh-7, PW-2; Arvindsinh Balavantsinh Chauhan vide Exh-10 and PW-3; Dilipsinh Chatrasinh; vide Exh-11 have consistently deposed that while they were in the company of the deceased, they heard commotion, as if the appellant was having fight with his mother and therefore, the deceased had gone to the house, which was just across, where they were sitting and reprimanded the appellant and therefore, immediately the appellant assaulted with knife lying from in his



house. This sequence of incident appears to have been clouded thought process of the appellant so as to realize the consequences of his such act, that may result into death of his uncle. None the less, use of knife in inflicting the wound on the vital part of the body would necessarily be an act, which would clearly fall under Section-304, Part-I of the Indian Penal Code.

22. In the recent decision of the Apex Court in case of *Stalin v/s. State represented by the Inspector of Police passed in Criminal Appeal No.577 of 2020 dated 09-09-2020*, the Apex Court has also, after referring to several decisions on the issue, converted the conviction from Section-302 of the Indian Penal Code to conviction under Section-304, Part-I of the Indian Penal Code and inflicted sentence to undergo for 8 years of rigorous imprisonment.
23. From the Jail report, submitted by the State, it appears that the appellant has already undergone imprisonment for 13 years, 3 months and 26 days and therefore, based on the evidence on record, the Court deems it fit to convert the conviction from Section-302 of the Indian Penal Code to conviction under Section-304, Part-I of the Indian Penal Code.
24. In view of the aforesaid, the impugned judgment and order dated 17.05.2012 passed by the Principal Sessions Judge, Bharuch in



Sessions Case No.71 of 2009 is hereby modified. Taking into consideration the totality of the facts of the present case, this Court deems it proper to alter the conviction to one under Section 304 of the Indian Penal Code. Taking into consideration the fact that the appellant-accused has already undergone imprisonment for 13 years, 3 months and 26 days, is not required to be committed to prison any further and the imprisonment already suffered is treated as sufficient imprisonment. The appellant is therefore directed to be set free, if not required in any other offence.

25. Though a peculiar situation has arisen, where upon converting the conviction and reducing the sentence, which is already undergone still the appellant will be coming out in the Society after period of 13 years, which is a long period during which the Society has changed to which, the appellant would not be aware of including benevolent schemes and available with the Government assist a Citizen to earn his income by employment or self employment under Scheme. Chances are less that after being released, the appellant on his own will be equipped enough to get any benefit out of the scheme. The State Legal Aid Services Authority is periodically holding camp and coming to aid of citizen in this regards. The Court finds one such case, where the Court may like



to direct that the District Legal Services Authority may play a proactive role in guiding the appellant to identify any benevolent scheme of the Government to generate income, so as to help appellant in rehabilitation in the Society. Therefore, upon release of the appellant, the District Legal Services Authority, Bharuch to call upon the appellant to attend the affair of District Legal Services Authority, Bharuch and implement the direction given in preceding paras. This last part of this judgment is to be implemented through the State Legal Services Authority of High Court of Gujarat. The Registry to communicate this order to the State Legal Services Authority.

26. ***The appeal is partly allowed.*** Record and Proceedings be sent back to the trial Court.

Sd/-
(A.Y. KOGJE, J)

Sd/-
(M. R. MENGDEY, J)

PARESH SOMPURA