

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 469 of 1995

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
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

STATE OF GUJARAT
Versus
RAMANBHAI MANIBHAI SOLANKI & ORS.

Appearance:

MR. L.B. DABHI, APP for the Appellant(s) No. 1
ABATED for the Opponent(s)/Respondent(s) No. 1
KISHAN Y DAVE(8293) for the Opponent(s)/Respondent(s) No. 3
MR HM PARIKH(574) for the Opponent(s)/Respondent(s) No. 3
MR RASESH H PARIKH(3862) for the Opponent(s)/Respondent(s) No. 3
MR.MRUDUL M BAROT(3750) for the Opponent(s)/Respondent(s) No. 2

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 13/05/2024

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Here is the Appeal by the State against the judgment and order of acquittal.
2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Nadiad, dated 30.6.1994 acquitting the respondents from the offence punishable under Sections 302 read with Section 34 of Indian Penal Code, State has preferred instant appeal under Section 378 of the Cr.P.C.
3. This Court has heard Mr. L.B. Dabhi, learned State Counsel, Mr. Mrudul Barot, learned counsel and Mr. Rasesh Parikh, for the respective parties.
4. The accused Raman Manibhai Solanki, respondent No.1, has passed away. Hence, appeal against him stands abated.
5. Brief facts giving rise to file the present Appeal are that, accused and deceased Haribhai Maganbhai Solanki, were belongs to same family and have a family agricultural farm, possessed jointly, at Village: Hathipura, Taluka: Borsad, District: Anand. The accused intent to obtain financial aid from the Bank against the said land. The deceased being a co-owner, refused to sign loan papers. The dispute arose between the parties on this aspect, as a result their relations were not cordial. On 7.6.1992, at about 18.00 p.m., the accused Raman Solanki, Pasabhai Solanki and Dariaben Solanki, went to the house of the deceased for obtaining consent to mortgage agricultural land and on denial by the deceased, the

accused who were armed with spear, spade and wooden-logs, have caused the fatal injuries to the deceased. The witness Shantaben , PW-2, wife of the deceased, who was present at home, sustained injuries when she intervened to rescue her husband. It is the case of the prosecution that the accused No.1 Raman Solanki caused injuries over both the legs of the deceased by using weapon Spear, whereas accused No.2 Pasa Solanki gave a blow over the head of the deceased by shovel and accused Dariaben caused injuries by using a wooden-log to the deceased as well as witness Shantaben. During the said scuffle, the witness Maniben PW-3, was residing nearby the house of the deceased, rushed to the scene of the offence and claimed to be a witness to the incident. The deceased was taken to the Primary Health Centre where he succumbed to his injuries. The Anklav Police upon receiving the information, reached to the place of offence. The injured eye-witness PW-1 Shantaben, gave her complaint to the Police. Pursuant to the said complaint, the offence was being registered against the accused for the aforesaid offences. PW-9 R.J. Patil, PSI was entrusted investigation. The accused were arrested. The weapons used in the offence were seized and recovered. On completion of the investigation, the accused were charge-sheeted for the aforesaid offences. The Court of Judicial Magistrate, committed the case to the Court of Sessions and the same was culminated into Sessions Case No. 240 of 1992. The Additional Sessions Judge, Nadiad framed the charges against the accused on 4.5.1994 for the aforesaid offences.

In order to bring home the charges leveled against the accused, the prosecution examined following material witnesses namely,

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| 1. PW-1- | Dr. B.R. Solanki | Exh-11 |
| 2. PW-2 | Shantaben Haribhai | Exh-13 |
| 3. PW-3 | Maniben Harmanbhai | Exh-15 |
| 4. PW-4 | Raman Jagabhai | Exh-16 |
| 5. PW-9 | Mr. R.J. Patil, Investigation officer | Exh-35 |
6. The material documentary evidence proved and produced before the trial court will be referred at the appropriate stage.
7. After recording the evidence of prosecution witnesses was over, the trial court recorded the further statements of accused under Section 313 of Cr.P.C. The accused denied the evidence recorded by the prosecution and pleaded that they have been falsely impleaded because of family dispute. The deceased was killed by unknown persons and the witness Shantaben, wife of the deceased, was not at the home as she went to attend the marriage function in the village. The presence of Maniben was also denied.
8. The learned trial Court after hearing the parties and on appreciation of the evidence held and observed that the prosecution miserably failed to establish the guilt of the accused under Section 302 of the Indian Penal Code. The learned trial Court, vide its judgment and order dated 30.6.1994, convicted the accused, finding them guilty of committing homicidal death not amounting to murder under

Section 304 Part-1 and II.

The accused Raman Solanki was found guilty under Section 304 Part-II, Section 323 read with Section 34 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of 5 years and fine of Rs.2000/- and in default to undergo 3 months simple imprisonment.

The accused Pasabhai Manibhai was found guilty under Section 304 Part-II and Section 323 of the IPC, and sentenced him to undergo rigorous imprisonment for a period of 5 years and fine of Rs.2000/- and in default to undergo 3 months simple imprisonment.

The accused Dariaben Ramanbhai was found guilty for the offence punishable under Section 304 Part-I and Section 323 of the Indian Penal Code and sentenced her to undergo 3 months rigorous imprisonment and fine of Rs.200/- and in default to undergo 5 days simple imprisonment.

9. Aggrieved with the judgment and order of acquittal under Section 302 of the Indian Penal Code, the State has come up before this Court by preferring this Appeal.
10. Mr. L.B. Dabhi, learned Additional Public Prosecutor, assailing the judgment and order of acquittal, has submitted that, the findings of acquittal qua, under Section 302 are contrary to law and evidence on record and the finding thereof are palpably erroneous and based on the irrelevant material. The judgment of acquittal under Section

302 suffers from patent perversity and the same is based on a mis-reading / omission to consider the material evidence as well as settled position of law. He would urge that the trial Court has believed and accepted testimonies of the eye-witnesses. The trial Court while examining the evidence of the eye-witnesses, also considered the medical evidence, arriving at the conclusion that the accused caused the fatal injuries to the deceased. In such circumstances, having regard to the role played by the accused as well as the use of the weapons and the injuries suffered by the deceased, the act was done with the intention of causing death and the injuries were sufficient in the ordinary course of nature to cause death.

11. In view of the aforesaid contention, Mr. Dabhi, learned Additional Public Prosecutor has submitted that the case of the accused would not fall under any of the exception under Section 300 of the Indian Penal Code. Thus, therefore, he would urge that the acquittal of the accused under Section 302 is not sustainable in law and the findings on the sentence are also contrary to the settled principles of penology, which has resulted into mis-carriage of justice and thus, the findings and ultimate conclusion and resultant order of acquittal under Section 302 warrants interference.
12. Mr. Parikh and Mr. Mrudul Barot, learned Counsels appearing on behalf of the respondents herein have submitted that, based on the evidence on record, trial Court was justified in arriving at the conclusion that the accused were guilty of the offence punishable under Section 304 Part -I and II instead of Section 302 of IPC; that

the trial Court has rightly considered the relations of the parties and the dispute, as raised, because, the deceased had refused to cooperate the accused in obtaining the loan, as a result, without pre-meditation, suddenly the incident happened as narrated by the trial Court and, thus, the act of the accused likely to cause death but it was done without any intention to cause death or to cause bodily injury as is likely to cause death.

13. In view of the aforesaid contention, it is submitted that the findings and conclusion, of the trial Court found guilty of the accused under Section 304 Part-I and II of the IPC are based on the evidences and documents on record and considering the peculiar facts and circumstances, the trial Court by assigning proper reasons, awarded just and proper sentence, which does not warrant any interference.
14. In the facts of the present case, the two eye-witnesses namely Shantaben PW-2 and Maniben PW-3 Exh-15 were examined before the trial Court and relying on their testimonies, the Court was of the opinion that the prosecution is able to prove the charge for the offence punishable under Section 304 Part-I and II of the IPC. In such circumstances, the issue falls for consideration as to whether the act of the accused is culpable homicide amounting to murder or not?
15. It is not in dispute that death of the deceased is homicidal death. PW-1 Dr. B.R. Solanki Exh-11, who had conducted the Post-mortem of the deceased, found compound fracture in occipital region and there were punctured wounds at both the legs and rest

of the injuries, either external or internal, were in the nature of clw, abrasions, bruises, etc. The cause of death as per the Medical Officer was due to shock and hemorrhage and multiple injuries found on different parts of the body. On careful examination of the testimony of the Doctor, he has not opined that the injuries mentioned in the Column Nos.17 and 19 were sufficient in the ordinary course of nature to cause death.

16. In such circumstances, based on the ocular version and expert evidence, the learned trial Court came to the conclusion that the accused did not act with pre-meditation and considering the nature of injuries and weapon used and the injuries suffered by the deceased, it could not be said that the accused had intention to cause such injuries to the deceased so as to cause his death. Upon re-analysis of the oral as well as documentary evidence, we are of the view that due to land dispute, more particularly getting the finance from the Bank, the consent of the deceased was necessary for which the dispute arose and, therefore, the occurrence can be said to be in a fit of anger and, therefore, the learned trial Court has rightly held that the act of the accused is culpable homicide not amounting to murder. In the case of Ajmal v. State of Kerala, (2022) 9 SCC 773, the Hon'ble Supreme Court on the identical issue has observed and held that, Section 300 of IPC which defines "Murder", however, refrains from the use of the term "likely", which reveals absence of ambiguity left on behalf of the accused. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is subtle distinction of intention and

knowledge involved in both the crimes. This difference lies in the degree of the act. There is very wide variance of degree of intention and knowledge among both the crimes.

17. It is profitable to refer the decision of Pulicherla Nagaraju v. State of M.P, (2006) 11 SCC 444, wherein by illustration, the Apex Court explained how and under what circumstances the Court has to determine whether the case falls under Section 302 or Section 304 PartI/II. In Para-18, the following observations are made, which read as under:

“18. 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 a 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 pre-meditation. 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 pre-meditation; (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”.

18. In light of the settled legal position of law and applying the same to the facts of the present case and considering the scope and ambit of appeal against acquittal, there is no substantial reasons to alter the findings of the trial Court as we did not found that the findings so recorded for not convicting the accused under Section 302 are perverse. Thus, the conclusion, convicting the accused under Section 304 Part-I and II of the

IPC are in consonance with the statutory provisions and evidence on record, which do not warrant any interference.

19. In the result, the present appeal is hereby dismissed. R&P to be sent back to the trial Court. Bail bond, if any, stands cancelled. Surety, if any given, stands discharged.

(ILESH J. VORA,J)

(NIRAL R. MEHTA,J)

SAJ GEORGE