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MAHINDRA MULJI KERAI PATEL
v.
STATE OF GUJARAT
(Criminal Appeal No. 925 of 2001)

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OCTOBER 14, 2008

[DR. ARIJIT PASAYAT AND C. K. THAKKER, JJ.]

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Penal Code, 1860 – ss. 304 Part (II), 302 and 307 – Homicidal death of one and injuries to other – Refusal of grand mother and mother of the girl to the marriage proposal given by boy-accused – One injury inflicted which lead to the death of grand mother and serious injuries caused to other – Conviction u/ss. 302 and 307 by High Court – Correctness of – Held: There was pre-mediation over exchange of words – Considering the evidence, nature of injury inflicted, the weapon used and surrounding factors, conviction altered to one u/s. 304 Part-(II) – Conviction u/s. 307 maintained – Occurrence took place 20 years ago – Accused was aged 19 years at relevant time – In the interest of justice, custodial sentence of six years awarded.

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According to the prosecution case, the deceased-grand mother of the girl and the complainant-mother of the girl refused the marriage proposal given by the appellant. As a result, the appellant inflicted single injury to the deceased leading to her death and caused serious injuries to the complainant. Investigation was carried out. Appellant was tried for offences punishable u/ss. 302, 307 and 506(2) IPC. The trial court convicted and sentenced the appellant-accused u/ss. 324 and 452 IPC and imposed imprisonment for two years and one year respectively with fine. Respondent-State challenged the acquittal of accused in respect of offences punishable u/ss. 302 and 307 IPC. High Court analysed the evidence of PW1-complainant and PW 2-doctor and convicted the accused u/ ss. 302 and 307 IPC. Hence the present appeal.

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Disposing of the appeal, the Court

HELD: 1.1 Considering the evidence, and taking note of the nature of the injury that was inflicted the appropriate conviction would be u/s. 304 Part-(II) IPC. The background facts show that there was pre-meditation over exchange of words, one injury leading to the death was inflicted. Though in all cases the number of injuries is not the determinative factor for attracting s. 302 IPC, in the instant case, considering the nature of weapon used and surrounding factors, the convictions is altered. The conviction of the High Court u/s. 307 IPC does not warrant any interference and is accordingly upheld. [Para 2] [435-B-C]

1.2 As regard the question of sentence, the occurrence took place on 18.12.1989 that too over a matter concerning the refusal of the deceased and the informant to the marriage proposal. He was about 19 years of age at the relevant point of time. Considering the peculiar facts of the case, the custodial sentence of six years would meet the ends of justice. [Para 2] [435-E]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 925 of 2001

From the final Judgment and Order dated 7.7.1998/ 11.18.1998 of the High Court of Gujarat at Ahmedabad in Crl. Appeal No. 40 of 1991

S.K. Dholakia, Ashish Dholakia, Adarsh Priyadarshini and Promila for the Appellant.

Hamantika Wahi, Pinky, K. Enatoli Sema and Somanath for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Gujarat High Court. The appellant faced trial for offence punishable under Sections 302, 307 and 506 (2) of Indian Penal Code, 1860 (in short ,IPC') for

A having caused homicidal death of one Kunverba Kanji (herein-
after referred to as the 'deceased') and causing injuries to
B Jasuben Premji, the complainant. The occurrence took place on
18.12.1989 at about 7 p.m. The background of the occurrence
was that the appellant was supposedly in love with the grand-
daughter of the deceased i.e. the daughter of the complainant
C Jasuben Premji. As the two ladies objected to the proposal of
marriage given by the accused, he took out his anger on the
two ladies and took the life of one and caused serious injuries
to the other. After investigation, the Investigating Officer filed
charge sheet, the trial was held as the accused pleaded inno-
D cence. Learned Additional Sessions Judge, Kutch at Bhuj was
of the view that the accused was guilty of offence punishable
under Section 324 IPC and was sentenced to undergo impris-
onment for two years and pay fine of Rs. 2,000/- in default to
undergo S.I. for six months. The accused was also found guilty
E of offence punishable under Section 452 and was sentenced to
undergo imprisonment for one year and fine of Rs. 500/-, in
default, to undergo S.I. for two months. Questioning the correct-
ness of the order, the State preferred an appeal in terms of Sec-
tion 378 of the Code of Criminal Procedure, 1973 (in short
F 'Code'). Primary challenge was to the acquittal of the accused
in respect of offences punishable under Section 302 and 307
IPC. The High Court on analysis of the evidence, more particu-
larly that of PW1, the complainant and PW2, the Doctor, came
to hold that the trial court was not justified in directing the ac-
quittal of the accused in respect of offence punishable under
Section 302 IPC. The High Court also said that the accused
was guilty of offence punishable under Section 307 IPC. Questioning the correctness of the order passed by the High Court, the present appeal has been filed.

G Learned counsel for the appellant submitted that while
convicting the appellant for offence punishable under Sections
302 and 307 IPC the High Court lost sight of the fact that the
H weapon which was purportedly used was a small dharia (FAGA).
The medical evidence also does not make out a case for con-

viction in terms of Section 302 IPC. Reference is made to the evidence of the Doctor PW2 to contend that there was no definite opinion as to whether the injury inflicted could have caused death in the ordinary course. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

2. Considering the evidence, and taking note of the nature of the injury that was inflicted, we are of the considered view that appropriate conviction would be under Section 304 Part-(II) IPC. The background facts show that there was pre-,meditation over exchange of words, one injury leading to the death was inflicted. Though in all cases the number of injuries is not the determinative factor for attracting Section 302 IPC, in the instant case, considering the nature of weapon used and surrounding factors, the conviction is altered. The conviction of the High Court under Section 307 IPC does not warrant any interference and is accordingly upheld. Coming to the question of sentence , it needs to be noted that occurrence took place on 18.12.1989 that too over a matter concerning the refusal of the deceased and the informant to the marriage proposal. He was about 19 years of age at the relevant point of time. Considering the peculiar facts of the case, we are of the view that the custodial sentence of six years would meet the ends of justice. The appellant was released pursuant to the order dated 10.05.2002. He shall surrender to custody forthwith to serve remainder of sentence.

3. The appeal is disposed of accordingly.

N.J.

Appeal disposed of.