

A LAVGHANBHAI DEVJIBHAI VASAVA

v.

THE STATE OF GUJARAT

(Criminal Appeal No. 253 of 2018)

B JANUARY 10, 2018

**[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]**

*Penal Code, 1860 – s.302 – Conviction under – If justified – Deceased died during treatment after being hit by appellant-accused (deceased’s husband), when an altercation took place between them in connection with preparation of food – Appellant convicted by trial court u/s.302 – Conviction upheld by High Court – Held: It is the case of prosecution itself that the incident took place in the spur of moment – Delay in preparing lunch by the deceased was the reason of the sudden altercation when the appellant picked up a wooden object and hit the deceased – It is also an admitted case of prosecution that only one single blow was inflicted – Medical evidence shows that not much force was used in inflicting the blow to the deceased – Prosecution did not set up any case suggesting that relationship between the deceased and the appellant was not cordial – Thus, it was an offence which would be covered by s.304 Part-II and not s.302 – While maintaining the culpability of the appellant, his conviction altered to s.304 Part-II instead of s.302 – Appellant has already served 9 years and 3 months of imprisonment approximately – In the facts of the case, sentence of appellant reduced to the period already undergone and he be released forthwith, if not wanted in any other case.*

*Penal Code, 1860 – ss.302, 304 – Parameters to be taken into consideration while deciding the question as to whether a case falls u/s.302 or u/s.304 – Discussed.*

**Partly allowing the appeal, the Court**

**G HELD: 1. The prosecution case itself proceeded that the incident took place in the spur of moment. On 15.03.2008, when the deceased along with her mother went for labour work in agricultural field and she returned home around noon, she was preparing lunch in kitchen when, as per the prosecution story, the appellant came to the house and questioned the deceased**

H



A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 253 of 2018

From the Judgment and Order dated 29.09.2015 by the High Court  
of Gujarat at Ahmedabad in Criminal Appeal No. 978 of 2011.

B Dr. Sushil Balwada, Jai Wadhwa, Sandiv Kalia, Advs. for the  
Appellant.

Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Mamta Singh, Ms.  
Shodhika Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

**A. K. SIKRI, J.** 1. Leave granted.

C 2. We have heard learned counsel for the parties at this stage.

D 3. The appellant herein has been convicted by the Trial Court for  
an offence under Section 302 of the Indian Penal Code, 1860 (IPC) and  
sentenced to undergo life imprisonment and pay a fine of Rs.500/-, in  
default, to undergo simple imprisonment for three months. This conviction  
and sentence has been upheld by the High Court vide impugned judgment  
dated 29.09.2015.

E 4. In the Special Leave Petition filed by the appellant against the  
said judgment, notice was issued on the limited aspect as to whether the  
conviction under Section 302 IPC is justified or it should be converted  
into one under Section 304 IPC. The matter has been considered focusing  
on this aspect. We may now recapitulate the facts in brief.

F 5. According to the prosecution case, original complainant of this  
case namely, Shantaben @ Dhaniben Somabhai, is the mother of  
deceased Shakuben. She lodged a complaint before Nabipur Police on  
15.03.2008 that her daughter deceased Shakuben was married to accused  
Lavghanbhai Devjibhai Vasava in Fichwada village about eight years  
ago. Deceased Shakuben and the accused had been living in Navinagri  
of Shahpura, the village of the complainant, for about one year and  
maintaining themselves by doing labour work. In the morning on the day  
G of the incident, deceased Shakuben and her mother Shantaben had gone  
for labour-work of weeding in the farm of Patel of the village where  
crop of ladies' finger had been cultivated. They returned home at about  
1200 hrs. in noon for having their meal and her daughter went to her  
house. When the complainant was at her house, Vishnu, aged 6 years,  
son of deceased Shakuben came to her house and told that his mother  
H has been hit with leg of a cot on her head and she was bleeding. Therefore,

she immediately went to the house of the deceased. At that time, deceased Shakuben was lying near hearth in the house in an unconscious state and a blood stained leg of cot was lying there. It was known from the people gathered there that an altercation took place between the deceased and the accused in connection with preparing food. As the accused got instigated, he hit leg of cot on the head of the deceased and ran away. As the deceased was bleeding from her head, Kaliben daughter of the complainant, Lalo Amir Vasava resident of her street and Dinesh Kashibhai Vasava took deceased Shakuben to a hospital at Bharuch in an auto rickshaw of Pravinbhai Gopalbhai, resident of the village. The complainant returned to her house. Pravinbhai returned home with his rickshaw in evening and told that the deceased has been sent to Vadodara from Bharuch for further treatment. Thus, under such circumstances, the original complainant Shantaben lodged a complaint before the police.

6. As aforesaid, on the conclusion of the trial and after appreciating the oral and documentary evidence, the Trial Court returned a finding of guilt against the appellant and convicted and sentenced him under Section 302 IPC. As far as event/occurrence is concerned, that stands proved and to that extent judgments of the courts below are without any infirmity. As mentioned above, the only question is as to whether it was a case for conviction under Section 302 IPC or 304 IPC.

7. We have perused the evidence in this behalf. We find that the prosecution case itself proceeds that the incident took place in the spur of moment. On 15.03.2008, when the deceased along with her mother went for labour work in agricultural field and she returned home around noon, she was preparing lunch in kitchen when, as per the prosecution story, the appellant came to the house and questioned the deceased about delay in cooking lunch. On this, altercation took place between the appellant and his wife. At that stage, the appellant got furious and in a rush of moment, he picked a wooden object lying near the place of incident and inflicted injury to the deceased. It is also an admitted case of the prosecution that only one single blow was inflicted. The death of Shakuben took place 10 days after the said incident while she was undergoing treatment at Baroda Hospital. This is the case of the prosecution itself.

8. This Court in the case of *Dhirendra Kumar versus State of Uttarakhand* [ 2015 )3) SCALE 30] has laid down the parameters which are to be taken into consideration while deciding the question as to whether

- A a case falls under Section 302 IPC or 304 IPC, which are the following:
- (a) The circumstances in which the incident took place;
  - (b) The nature of weapon used;
  - (c) Whether the weapon was carried or was taken from the spot;
- B
- (d) Whether the assault was aimed on vital part of body;
  - (e) The amount of the force used.
  - (f) Whether the deceased participated in the sudden fight;
  - (g) Whether there was any previous enmity;
- C
- (h) Whether there was any sudden provocation.
  - (i) Whether the attack was in the heat of passion; and
  - (j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.

D 9. Keeping in view the aforesaid factors it becomes evident that the case of the appellant would fall under Section 304 IPC as the incident took place due to a sudden altercation which was a result of delay in preparing lunch by the deceased. The appellant picked up a wooden object and hit the deceased. The medical evidence shows that not much force was used in inflicting blow to the deceased. The prosecution has not set up any case suggesting that relationship between the the husband and wife was not cordial, otherwise. Manifestly, the incident took place due to sudden provocation and in a heat of passion the appellant had struck a blow on his wife, without taking any undue advantage. We are, therefore, of the opinion that it was an offence which would be covered by Section 304 Part-II IPC and not 302 IPC.

E

F 10. This is appeal is, thus, partly allowed. While maintaining the culpability of the appellant, his conviction is altered to Section 304 Part-II IPC instead of Section 302 IPC. The appellant has already served 9 years and 3 months of imprisonment approximately. In the facts of this case, we are of the opinion that the sentence of the appellant be reduced to the period already undergone. Ordered accordingly.

G 11. The appellant shall be released forthwith, if not wanted in any other case.