

MANUBHAI ATABHAI

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v

STATE OF GUJARAT

JUNE 21, 2007

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

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Penal Code, 1860:

ss.302 and 304 Part I—Deceased was attacked with a knife—Trial Court convicted accused under s.304 Part I—High Court convicted him under s.302—On appeal, held: Injury was caused just below stomach and had affected vital part of the body—Knife had gone as deep as 6cm in the body showing that blow was given with great force—Single blow does not automatically bring in application of s.304 Part I—Order of High Court does not suffer from any infirmity.

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Prosecution case was that there was a dispute regarding construction of wall between the properties of complainant and that of accused persons. Both sides had lodged complaints before the date of incident. On the date of incident, the appellant and his father and brothers who were other accused came to the house of complainant and started giving abuses. The complainant came out of the house and inquired of reasons of his giving abuses. The appellant also came on the spot with an open knife, A-3 came there with an axe and A-4 had an iron pipe in his hand. Deceased, son the complainant also came out of house and tried to pacify them. Appellant gave a knife blow in the stomach of deceased. The complainant intervened and A-3 gave an axe blow on head of complainant and A-4 gave a pipe blow which was received by complainant on his left hand. Thereafter, appellant and accused persons left the place of incident. Deceased was taken to hospital where he was declared dead. Trial Court convicted the appellant under s.304 Part I IPC while acquitting the other accused. High Court convicted appellant under s.302 IPC.

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In appeal to this Court, appellant contended that two facts have been noted by the trial court to record conviction under s.304 Part 1 IPC they are: (1) - a single blow was given and no attempt was made to give second blow. (2) There was a cross case registered and that finding the prosecution version to be

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A inadequate, three accused persons were acquitted by the trial court which was upheld by the High Court.

Dismissing the appeal, the Court

B HELD: 1. The injury was 3cm x 2cm x 6cm about 6 cm. below sternum and 8 cm above umbilicus. There was corresponding internal injury causing incised wound of 2 cm on the interior border of the liver. Doctor had opined that the liver is a vital organ of the body and the injury found on the person of the deceased was sufficient in ordinary course of nature to cause death.

[Para 7] [1118-F-G]

C 2. The nature of intention has to be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon death. The accused had used a knife, the blade of which had a length of 6 inches. The injury was caused just below the stomach and had affected a vital part i.e. liver. Knife had gone as deep as 6 cm. in the body which clearly is indicative of the fact that blow was given with great force and the outcome of the injury was that the deceased expired instantaneously. Merely because a single blow was given that does not automatically bring in application of s.304 Part I IPC.

[Paras 8 and 9] [1118-G-H; 1119-A-B]

E 3. The cross case has really no relevance for determining as to the nature of offence. The order of the High Court does not suffer from any infirmity to warrant interference. [Para 10 and 11] [1119-C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 636-637 of 2002.

F From the Judgment and Order dated 12.06.2001 of the High Court of Gujarat at Ahmedabad in Criminal Appeal Nos. 872 and 1034 of 1995.

Shree Pal Singh and Rahul Singh for the Appellant.

G Abhishek Mishra and Hemantika Wahi for the Respondent.

The Judgment of the Court was delivered by

H DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the judgment of a Division Bench of the Gujarat High Court, disposing of two criminal appeals. The appeal filed by the appellant (for the sake of convenience described as 'A-2') was dismissed; the appeal filed by the State of Gujarat

was allowed altering his conviction for offence punishable under Section 304 part 1 of the Indian Penal Code (in short the 'IPC') to Section 302 IPC while maintaining the conviction for offence punishable under Section 135 of the Bombay Police Act, 1951 (in short the 'Police Act'). The learned Additional Sessions Judge, Amerli in Sessions Case No. 104 of 1992 directed acquittal of Atabhai (A1), Kanubhai (A3) and Rambhai (A4) (hereinafter for the sake of convenient described as 'A1, A3 & A4').

2. As noted above, both the State and the present appellant filed appeal. By order dated 18.4.1996 High Court dismissed the State's appeal so far as A1, A3 & A4 are concerned.

3. Background facts in a nutshell are as under:

Complainant Samnatbhai Thobhanbhai stays in Harijan- Vankarvas at Kodinar. He had only one son namely Danabhai and they were staying together. The accused, his father and brothers were the neighbours of the complainant. They had some dispute regarding construction of a wall between their respective properties. Both sides had lodged complaints prior to the incident. The accused had planned to construct a wall and apprehending some civil litigation had also lodged a caveat in the court and had then proceeded with construction of the wall. On June 9, 1992, at about 6.30 7.00 a.m., Atabhai Tabhabhai came to their house and started giving abuses. The complainant, therefore, went out and inquired of Atabhai Tabhabth the reason for giving abuses. This provoked Atabhai Tabhabhai and he started giving more and more abuses and picked up a quarrel. Around that time, Manubhai Atabhai, the appellant, came to the spot with an open knife, Kanubhai Atabhai came there with an axe and Rambhai Atabhai had an iron pipe in his hand. By the time these developments took place, Danabhai, son of the complainant (hereinafter referred to as the 'deceased') came out from the house and tried to cool down Atabhai Tabhabhai. However, Atabhai Tabhabhai and his sons Manubhai Atabhai, Kanubhai Atabhai and Rambhai Atabhai got annoyed. Upon provocation of Atabhai Tabhabhai, Manubhai Atabhai gave a knife blow in the stomach of Danabhai the deceased. The complainant intervened and therefore Kanubhai Atabhai gave an axe blow on the head of the complaint and Rambhai Atabhai gave a pipe blow which was received by the complainant Samatbhai Thobhanbhai on his left hand. Atabhai Tabhabhai had caused injury on the left thigh of the complaint with a stone. Wife of Danabhai namely Valiben and Samatbhai Thobhanbbai and Girdharbbai Govindbhai also reached the place of incident soon thereafter and the

A assailants, therefore, went away. Deceased Danabhai, Samatbhai and the complainant were taken to the hospital where the deceased Danabhai was declared dead. On the basis of the FIR lodged by Samatbhai Thobhanbhai, offence was registered at C.R.No.85/92 at Kodinar Police Station, the case was investigated upon and charge sheet was filed. Accused persons pleaded false implication.

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4. The trial court placed reliance on the evidence of the eye witnesses and recorded conviction, as noted above, of A2, the present appellant while directing acquittal of A1, A3 & A4. High Court found that the case is clearly one to which Section 302 IPC is applicable and on erroneous premises the trial court had convicted the appellant under Section 304 part I IPC.

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5. In support of the appeal learned counsel for the appellant submitted that two facts have been noted by the trial court to record conviction under Section 304 Part 1 IPC they are : (1) —a single blow was given and no attempt was made to give second blow. (2) There was a cross case registered. It is also submitted that finding the prosecution version to be inadequate, three accused persons were acquitted by the trial court which was upheld by the High Court.

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6. In response, learned counsel for the State submitted that the trial court's judgment was clearly unsustainable and it had proceeded on erroneous premises and, therefore, High Court had rightly direct conviction of the appellant under Section 302 IPC. The distinction between Sections 302, 304 Part 1 and 304 Part II IPC has been highlighted by this Court in several cases. The confusion is caused if courts loose sight of the true scope and meaning of the terms used by the legislature in Sections 300 and 304.

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7. In the instant case the injury was 3cm x 2cm x 6cm about 6 cm. below sternum and 8 cm above umbilicus. There was corresponding internal injury causing incised wound of 2 cm on the interior border of the liver. Doctor had opined that the liver is a vital organ of the body and the injury found on the person of the deceased was sufficient in ordinary course of nature to cause death.

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8. The nature of intention has to be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon death. In the instant case the accused had used a knife. the blade of which had a length of 6 inches. The injury was caused just below the stomach and had affected a vital part i.e. liver. Knife

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had gone as deep as 6 cm. in the body which clearly is indicative of the fact that blow was given with great force and the outcome of the injury was that the deceased expired instantaneously. The deceased as it is admitted was trying to pacify the parties and there was no part played by him in the exchange of words which was taking place. A

9. Trial court's conclusions are very confusing. For recording conviction under Section 304 Part I IPC, the High Court recorded that it was a case of exercise of right of private defence and only one blow was given and there was a counter case. If it was really a case of exercise of right of private defence, there could not have been any conviction much less under Section 304 Part I IPC. Merely because a single blow was given that does not automatically bring in application of Section 304 Part I IPC. B C

10. Trial court did not consider the various aspects highlighted by this Court in cases relating to single blow. The cross case has really no relevance for determining as to the nature of offence. D

11. Above being the position the order of the High Court does not suffer from any infirmity to warrant interference. D

12. Appeals are dismissed.

D.G.

Appeals dismissed. E