

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 765 of 1994

with

CRIMINAL APPEAL No 948 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

VANKAR PREMABHAI SADABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 765 of 1994
Mr.A.D.Shah for Mr. Vijay H.patel for the appellant.
Mr. S.A.Pandya, APP for Respondent No. 1

2. Criminal AppealNo 948 of 1994
Mr.S.A.Pandya,APP for the appellant .
Mr.A.D.Shah for Mr. Vijay H.Patel for the
Respondent.

CORAM : MR.JUSTICE K.J.VAIDYA and

Date of decision: 30/09/96

ORAL JUDGEMENT

PER:K.J.VAIDYA,J.

PER:K.J.VAIDYA,J.

These two appeals ,first one by Vankar Premabhai Sadabhai against the order of conviction and sentence under sections 323, 452 and 304, Part II of the Indian Penal Code and ,the second one by the State of Gujarat against the order of acquittal under section 302 of the Indian Penal Code arise out of the common judgment and order dated 11-7-1994 rendered in Sessions Case No. 182/91 passed by the learned Additional Sessions Judge,Mehsana . Originally four accused viz Vankar Premabhai Sadabhai and three others came to be tried for the alleged offences punishable under sections 302, 323 and 452 of the Indian Penal Code. At the end of the trial, the learned trial Judge was pleased to record the order of conviction and sentence as under :

1.1 Accused No.1, the appellant of Criminal Appeal No. 765 of 1994 came to be convicted under sections 323, 452 , 304, Part II of the IPC and was sentenced to suffer in all R.I.for five years and various amounts of fines as stated in detail in the impugned order. The sentences were ordered to run concurrently. So far as accused Nos. 2 to 4 were concerned, they were convicted for offences punishable under sections 323 and 337 IPC and each one of them was sentenced to suffer S.I. for various periods and fines as stated in detail in the impugned judgment. All the accused were acquitted for the offence punishable under section 302 of the Indian Penal Code.

2. To briefly narrate the prosecution case, the incident in question took place on 29-10-1990 at 7.30 p.m. in Vankarvas of village Sipor near the house of the complainant where , on Maniben receiving kick and fist blows on her abdomen, succumbed to death and the other two witnesses PW 4 Magan Ratna and PW 5 Pravin Ratna received injuries with sticks. On the basis of these allegations, PW 3 Haresh Ratna filed the FIR (Ex.52) before PW 10 Gopalsinh Chhaguji of Sipor Outpost under sections 302, 323 and 456 of the Indian Penal Code. After the investigation was over, the accused came to be chargesheeted for the aforesaid offences before the Sessions Court at Mehsana. At the trial, all the accused pleaded not guilty and claimed to be tried. The learned Additional Sessions Judge, accepting and relying upon the

evidence of the prosecution witnesses, convicted all the accused as stated above in paras 1 and 1.1 of this judgment giving rise to the present two appeals .

3. Heard Mr. Ashok Shah, learned Advocate for the accused and Mr. S.A. Pandya, learned APP for the State. On appreciating the evidence of the prosecution witnesses, we feel it important to note that in this case, cross complaint by Premabhai Sadabhai-the appellant of Criminal Appeal No. 765/94, has been filed against PW 4 Magan Ratna and PW 5 Pravin Ratna for the alleged offences punishable under sections 323, 302 and 337 IPC. Not only that, it also further appears from the medical evidence of PW 1 Dr. Dineshbhai Chandubhai Patel that Premabhai and Daliben received the injuries. From the medical certificate, it appears that there was C.L.W. on head occipital region of 1"x1/2"x 1/4" deep on Prema Sada. Similarly Daliben Premabhai had received C.L.W.on frontal region 1"x1/2"x1/4" deep. It may also be stated that the injuries to the accused Premabhai and Daliben are not explained.

4. We have been carefully taken through the evidence of all the witnesses and in particular PW 3 Haresh Ratna and PW 6 Kapila and from their evidence it is very clear that the injuries caused to accused Prema and Dali have not been explained. From the nature of the prosecution evidence, it appears that there was a sudden quarrel on spilling of water two days prior to the date of the incident. Nobody could have remotely even thought that it will result into the death of Maniben. It also appears from the evidence of PW 3 Haresh that at the time of the incident, Maniben was abusing Premji .So Premji appeared with a stick. Now, if , in fact, Premji had the intention to severely assault Maniben , then, in that case, he would have surely resorted to the handy stick in his hand rather than giving some kick and fist blows. So, ex-facie, there does not appear to be any intention to commit the murder.

5. The matter does not rest here.It cannot be ruled out that, looking to the injuries to Premji and Daliben, the prosecution side initiated the quarrel. In any case, since the injuries are not explained, the whole genesis of the prosecution case is rendered doubtful.In absence of any other independent material available on the record, it would be simply hazardous to jump to the conclusion that Premji had an intention to kill Maniben on the alleged matter of the quarrel over the spilling of water. PW 6 Kapila, though she claimed to be present at the time of the incident, does not utter a word as to in

what manner Maniben received the injuries. In this view of the matter, having regard to the facts and circumstances of the case, since a reasonable doubt arises as to who could be the aggressor, in absence of the corroboration coming from the independent source, it will be simply risky and hazardous to straight way accept the prosecution case. We believe that this is one of the fittest cases where the accused deserve benefit of doubt and we accordingly readily give.

6. In this case, though the other three accused , who were convicted, and were released on probation for a period of two years, have not preferred any appeal, at the same time, since this is a matter on the basis of which no conviction even under sections 323 and 337 of the IPC also can be maintained, the order of conviction and sentence against them also requires to be quashed and set aside.

7. In view of the aforesaid discussion, there is no alternative left with this Court but to reverse the impugned judgment and order of conviction and sentence recorded against all the accused persons. This automatically spells the dismissal of the State appeal.

8. In the result, Criminal Appeal No. 765 of 1994 is allowed. The impugned judgment and order of conviction and sentence against all the four accused is hereby quashed and set aside. The appellant Vankar Premabhai Sadabhai is ordered to be set at liberty forthwith, unless his presence is required in Jail in connection with any other pending proceedings. Fine, if paid, shall be refunded to the respective accused.

Criminal Appeal No. 948 of 1994 stands dismissed.

D.S.permitted.

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