

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 953 of 1986

with

CRIMINAL APPEAL No 955 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
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? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ISHWARGAR GOVINDGAR

Appearance:

1. Criminal Appeal No. 953 of 1986
MR AJ DESAI Ld. APP for Petitioner No. 1
MR JM PANCHAL for Respondent No. 1
 2. Criminal Appeal No. 955 of 1986
MR AJ DESAI Ld. APP for Petitioner No. 1
..... for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 30/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

For the incident which took place on 5.7.1985 at 5.00p.m. at village Shapar, three accused persons; (i) Govindgar Kashigar, (ii) Batukgar Govindgar and (iii) Ishwargar Govindgar, were tried for the offence under sec. 302 IPC for committing murder of deceased Rameshchandra Babulal Patel by causing injuries on the head of the deceased with iron strip. Accused no. 3 Ishwargar Govindgar, was also tried for the offence under sec. 323 IPC, for causing simple injury to witness Gitaben with iron strip. All of them were tried by the ld. Addl. Sessions Judge, Gondal, in Sessions Case No. 51/1985. The ld. Judge, by judgment and order dated 16.4.1986, acquitted accused no. 1 -Govindgar Kashigar and accused no. 2 -Batukgar Govindgar for the offence for which they were charged on the ground that the prosecution failed to prove its case beyond reasonable doubt. However, the ld. Judge found the accused no. 3 - Ishwargar Govindgar, guilty not for the major offence under sec. 302 IPC, but for the lesser offence under sec. 326 IPC, in causing death of deceased Rameshchandra. However, taking into consideration the tender age of accused no. 3 -Ishwargar, who was aged 21 years, the ld. Judge, sentenced him to suffer two years R/I and to pay fine of Rs. 1000/-, in default, to further undergo 2 months S/I for the offence under sec. 326 IPC.

Against the aforesaid impugned judgment and order dated 16.4.1986, passed by the ld. Addl. Sessions Judge, Gondal, accused - Ishwargar Govindgar has not preferred any appeal and accepted the order of conviction and sentence. Thus, he has already completed the sentence and the order in question is already complied with. However, the State of Gujarat being aggrieved by the impugned order of sentence of only two years for the offence under sec. 326 IPC, preferred Criminal Appeal No. 953/1986 for enhancement of sentence. Simultaneously, the State of Gujarat has also filed Criminal Appeal No. 955/1986 acquitting two other accused - Govindgar Kashigar and Batukgar Govindgar, for the offence under sec. 302 IPC read with sec. 114 IPC and respondent no. 3 also, for the major offence under

sec. 302 IPC.

Criminal Appeal No. 955/1986 filed against the impugned judgment and order of acquittal passed by the ld. judge against all the three accused for the offence under sec. 302 IPC read with sec. 114 IPC, came up for admission before the Division Bench of this Court on 1.4.1987, which was straightway dismissed at the admission stage against respondents no. 1 and 2 Govindgar Kashigar and Batukgar Govindgar, for the offence under sec. 302 IPC read with sec. 114 IPC. Therefore, this appeal is not required to be decided against two respondents - accused Govindgar Kashigar and Batukgar Govindgar. However, the said appeal was admitted by granting leave only against respondent no. 3 - Ishwargar Govindgar. Therefore, the said appeal is required to be decided only against Ishwargar Govindgar along with Criminal appeal No. 953/1986 filed by the State of Gujarat for enhancement of sentence against respondent -accused- Ishwargar Govindgar.

Ld. APP Mr. AJ Desai has taken us through the evidence led by the prosecution in this case and also reasons assigned by the ld. Judge in his impugned judgment and order.

As stated earlier, the Division Bench at the time of admission, has dismissed the acquittal appeal against remaining two accused, namely, Govindgar Kashigar and Batukgar Govindgar. Therefore, we are not required to deal with the appeal against them. The said appeal was admitted against respondent- accused no. 3 - Ishwargar Govindgar, as he was not convicted by the ld. Judge for the major offence under sec. 302 IPC and convicted for the lesser offence under sec. 326 IPC.

Mr. Desai has taken us through the discussion from para-40 onwards of the judgment of ld. Judge. From the evidence of the witnesses and from the reasons assigned by the ld. Judge for convicting the respondent - accused no. 3 for lesser offence under sec. 326 IPC, it cannot be said that the ld. Judge has committed any error which calls for interference by this court in this acquittal appeal. On the peculiar facts and circumstances of the case, we are of the considered opinion that the ld. Judge has rightly acquitted the respondent no. 3 for the major offence under sec. 302 IPC. Hence, acquittal appeal is required to be dismissed and it is dismissed.

This bring us to the appeal for enhancement of sentence. Sentence of two years R/I for the offence

under sec. 326 IPC, where a person lost his life is too less. In ordinary circumstances, we would have definitely interfered with the order of sentence provided the appeal had come up for hearing early. However, almost a period of 17 years have passed after the commission of the offence and that the respondent-accused has already undergone the sentence of two years long back. Looking to his tender age at the time of the offence, at this stage, we are not inclined to interfere with the impugned order of sentence passed by the ld. Judge. Hence, appeal for enhancement of sentence filed by the State of Gujarat is also required to be dismissed and accordingly, it is dismissed.

In view of the above discussions, both the appeals are failed and are hereby dismissed.

(B.J. SHETHNA, J.)

(J.R. VORA, J.)

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