

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL No. 188 of 1999****HONOURABLE MR.JUSTICE R.P.DHOLAKIA****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be  
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair  
copy of the judgment ?

4 Whether this case involves a substantial  
question of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**IFTEKHARHUSSAIN SABDARHUSAIN - Appellant(s)****Versus****STATE OF GUJARAT & 1 - Opponent(s)**

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**Appearance :**

MR KJ SHETHNA for Appellant(s) : 1 - 4.

MR HL JANI, APP, for Opponent(s) : 1,

MR ASHWIN V BHATT for Opponent(s) : 1,

MR MG SHAIKH for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**

**and**

**HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 29/02/2008**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)**

1.0 This appeal is directed against the judgement and order of conviction and sentence dated 18<sup>th</sup> January 1999 passed by the learned Additional Sessions Judge, Ahmedabad, in Sessions Case No. 309 of 1997, whereby the learned Sessions Judge has convicted the appellants under section 302 read with section 34 of IPC and ordered to undergo rigorous imprisonment for life and fine of Rs.250/-, in default to undergo rigorous imprisonment for one month and convicted under section 307 of IPC and ordered to undergo rigorous imprisonment for seven years and fine of Rs.250/-, in default to undergo rigorous imprisonment for one month. It was ordered that both the sentences should run concurrently.

2.0 The prosecution case, in short, is as under:

2.1 According to the prosecution, the accused were having some dispute about their flat with the deceased since long time and civil proceedings were also going on between the parties in the Civil Court in respect of a flat which is situated near the scene of offence.

2.2 On 18<sup>th</sup> August 1997 at about 11.00 AM Mohammad Shakil had operated electric motor meant for supply of water in the common overhead tank situated on top of the building. At that time since the water taps were kept open by accused no.1 in his house the water could not reach to the tank. Mohammad Shakil had therefore requested accused no.1 to close the tap so that water can reach to the tank at the top of the building, but the accused no.1 did not do the same and he came down and started altercation with the Mohammad Shakil and both started shouting at each other. Thereupon the other accused joined them who are real brothers of accused no.1 and there was hot exchange of words in connection with the water supply.

2.3 According to the prosecution case, at that time upon hearing

the altercation Shamimbanu, Adilahmed and Zaidahmed also came there. Accused nos.1 and 2 went into their house and accused no.1 came out with a big knife and accused no.2 with a gupti in his hand and accused nos.3 and 4 caught hold of Mohammad Shakil. Accused no.2 had given one gupti blow on the abdominal part and accused no.1 had given knife blow on the forehead of Mohammad Shakil. At that time witnesses Shamimbanu, Adilahmed and Zaidahmed intervened and accused no.1 had asked his brother i.e. accused no.2 to give blows to Adilahmed. Accused nos.3 and 4 caught hold of Adilahmed and accused no.2 had given gupti blow to him. Thereafter they had left the scene of offence as many persons gathered there.

2.4 The wife of Mohammed Shakil viz. Shamimbanu had rushed to bring a rickshaw where she met Shahnawajkhan Habiburrehmankhan Pathan who was friend of his son and had asked him to come with rickshaw and accordingly rickshaw was brought and Mohammed Shakil and Adilahmed were taken to V.S. Hospital. Witness Zaidahmed had gone to Gaikwad Haveli Police Station and informed about the incident. Simultaneously duty Constable at V.S. Hospital also reported to police station.

2.5 On receiving the telephone Wardhy by Gaikwad Haveli Police Station, P.I. Raol had deputed P.I. Makwana to go and inquire into the matter. In pursuance of that PI Makwana rushed to V.S. Hospital where he came to know that Mohammad Shakil was succumbed to injury and Adil was admitted in the hospital for treatment. Thereafter P.I. Makwana has recorded the complaint of Shamimbanu, wife of the deceased victim and thereafter he has sent the same to Gaikwad Haveli Police Station for registering the offence. In pursuance of that PSO of Gaikwad Haveli Police Station has registered the offence against the accused as Gaikwad Haveli Poice Station I C.R. No.146/1996 for the alleged commission of offence under sections 302, 307, 34, etc. Thereafter the PSO has prepared the report and handed over the further investigation to P.I. Makwana. P.I. Makwana kept the report in the investigation file and started further investigation in the matter. As Mohammad Shakil has succumbed to the injuries he has called panchas and prepared inquest panchnama and also filled up the Marnotar form and sent the dead body of Mohammad Shakil for postmortem. Thereafter he has gone to the scene of offence and prepared panchnama of scene of offence and also called the FSL expert to the

place of scene of offence and also called panchas and muddamal weapons have been seized as described in the panchnama. He has also informed about the same to his superior officer and also recorded the statement of witnesses Jahid Ahammad, Adil Ahammad, Dilofarbanu, Mahammadkhalif, etc. and also searched for accused. On 23.8.1997 the accused were arrested and arrest panchnama has been prepared. One of the accused i.e. Iftekhar had received injuries in the crime in question and therefore with Yadi he had been sent to the hospital for treatment and also sent yadi for blood sample of the accused. During the course of further interrogation the accused no.2 Safakathussain has shown willingness to produce the Gupti which has been used in the crime in question and therefore he has called panchas and panchas, police personnel and accused went in police vehicle as directed by the accused and thereafter he has found out and produced the muddamal gupti and knife and the same have been seized by discovery panchnama. In the meanwhile he has also sent the accused into judicial custody and collected the injury certificate of the victim and accused and also collected postmortem note and sent the muddmal to FSL and on receiving the report the same has been kept in the investigation file. At the end of investigation he

has submitted the chargesheet in the court of learned Metropolitan Magistrate.

2.6 On receiving the chargesheet by the learned Metropolitan Magistrate against the present appellant-original accused for the offence under section 302 and 307 read with section 34 of IPC, as the charges levelled against the accused was exclusively triable by the Sessions Court, the learned Metropolitan Magistrate has committed the same to the City Sessions Court, Ahmedabad, under the provisions of section 209 of CrPC. On receiving the same it has been numbered as Sessions Case No.309 of 1997 and the said case has been handed over to learned Additional Sessions Judge, Court No.10, Ahmedabad.

2.7 It is required to be noted that after recording the complaint of wife of the victim the accused who was sent to V.S. Hospital for treatment had also lodged complaint against three persons and out of three Mohammad Shakil has succumbed to the injuries and investigation has been carried out against Adil Mohammad and Zahid Mohammad. Zahid being a juvenile, he had been chargesheeted before the Juvenile Court wherein chargesheet has

been submitted in the court of learned Metropolitan Magistrate under section 326 of IPC.

2.8 On production of accused, learned Additional Sessions Judge, framed charges against the accused and the accused pleaded not guilty to the charges and prayed for trial.

3.0 To prove the guilt against the accused the prosecution has examined 12 witnesses as under:

1. Shamimbanu Mohammad Shakil – Complainant/eye witness who is wife of the victim (PW1-Exh.19).
2. Adil ahammad Mahammad Shakil – Injured eye witness, son of victim (PW2-Exh.22).
3. Zahid Ahammad alias Raju Mahammad Shakil – Younger son of victim – (PW3-Exh.23)
4. Shahnavaazkhan Habib Rahmankhan Pathan (PW4-Exh.24).
5. Nizamuddin Kamruddin -Panch witness (PW5-Exh.25).
6. Altafhussein Mahammad Hussein – Panch witness of Recovery of weapon (PW6-Exh.27).
7. Dr. Ravindra Shrikrishna Bhise – Doctor who performed postmortem of victim (PW7-Exh.29).
8. Ghanshyamdas Jamnadas Mehta – PSO, Gaikwad Haveli Police Station (PW8-Exh.31).



9. Amarabhai Khoyabhai- H.C at V.S. Hospital (PW9- Exh.34).
10. Dr. Raju Karsanbhai Parmar – Doctor who treated PW 2 injured witness (PW 10-Exh.36).
11. Dharmendrasinh Ratansinh Raol P.I. And Inquiring Officer (PW 11-Exh.39).
12. Dahyabhai Dhulabhai Makwana- PSI, Gaikwad Haveli Police Station. (PW 12-Exh.42).

The prosecution has also produced the following documents to prove the case of prosecution:

01. Vardhy received from V.S. Hospital (Exh.33)
02. Complaint lodged by Shamimbanu Mohammad Sha8ikh (Exh.21).
03. Report of reporting crime (Exh.40).
04. Report of F.S.L. Officer of the scene of offence. (Exh.11)
05. Inquest Panchnama (Exh.12).
06. Panchnama of Scene of offence (Exh.26).
07. Pancnama of clothes of injured witness Adil Ahmed Shakil (Exh.13).
08. Panchnama of clothes of deceased Shri Ahammad Shakil (Exh.14).
09. Arrest Panchnama of accused (Exh.15).
10. Recovery panchnama of weapons of accused nos.1 and 2 (Exh.28).

11. Postmortem Note (Exh.30).
12. Injury certificate of PW2 Adil Mohammad Shakil (Exh.37).
13. Letter forwarding muddamal for inspection (Exh.16).
14. Receipt for receiving muddamal for inspection (Exh.17).
15. FSL Report (Exh.18).

3.1 On submission of closing pursis, learned Additional sessions Judge has recorded further statement of accused under section 313 of Code of Criminal procedure. After giving opportunity to the learned Advocates for the respective parties, the learned Additional Sessions Judge has delivered the judgement and convicted the appellants-accused as mentioned above which has given rise to the present appeal.

4.0 Mr. Shethna, learned Advocate for the appellant submitted that the quarrel was with regard to supply of water and there cannot be any question of intention or pre-meditation in the present case. He therefore submitted that the inference should be that it is an incident which happened all of a sudden and therefore there cannot be any question of common intention.

4.2 He submitted that in the cross-examination Dr. Bhise stated that external injuries no.2, 4 and 6 are possible by hard and blunt substance like pipe. Injury no.6 is possible not by two weapon shown to him and these weapons were knife and gupti.

4.3 Mr. Shethna submitted that there are various contradictions in the evidence of witnesses and therefore the evidence of those witnesses should not have been accepted.

4.4 He submitted that there are residential flats near the scene and if the deceased had grievance about supply of water to the overhead tank, then other residents on the upper storeys should also have similar grievance, but no such evidence is led. He submitted that in such circumstances independent evidence was though available, no independent witnesses are examined. Therefore adverse inference should be drawn against the prosecution.

4.5 He submitted that the deceased wanted to be in possession of the premises of which accused no.1 was in possession and therefore

a concocted story has been made to falsely implicate all the brothers and all the male members of the family.

4.6 He submitted that the deceased was declared dead at about 12 noon and police on duty at V.S. Hospital must have known that it was homicidal death. In that event immediately the police should have come to know the names of the assailants when the widow of the deceased and her son Adil were injured and were in the hospital itself. He, therefore submitted that the appeal deserves to be allowed.

5.0 Mr.H.L.Jani, learned APP for the state submitted that the learned Additional Sessions Judge has rightly convicted the appellants and the case against the appellants has been proved beyond doubt.

5.1 He submitted that in the present case the presence of the appellants, use of lethal weapon, and attack on Mohammad was established by appropriate evidence. The evidence of injured eye witness could not be shaken even in the cross examination. He submitted that all the chain of circumstances have been established.

All the accused are known to the eye witnesses and they have been identified in Court. Muddamal weapons were recovered at the instance of the accused and it is established that the injuries are possible with those weapons.

5.2 He further submitted that the homicidal death is established and according to the doctor in ordinary course the injuries are sufficient to cause death of the injured.

5.3 He lastly submitted that there is no discrepancy or contradiction in the evidence on record and the learned Sessions Judge has rightly convicted the appellant and therefore the appeal deserves to be dismissed.

6.0 We have gone through the oral as well as documentary evidence which has been shown to us by the learned Advocates for the respective parties along with the judgement delivered by the court below and for the purpose of deciding this appeal the evidence of prime witness Shamimbanu Mohammad Shakil (PW1-Exh.19) is required to be evaluated. She has deposed that Iftexhar Safdarhussain Shaikh and his brothers are staying in the same flat

where she and her family are staying. She deposed that all the accused were present in court and she identified them. According to her, earlier also there was quarrel with them in connection with the flat and thereafter about the water. She deposed that on 18.8.1997 the incident in question has occurred. On that day husband of this witness had gone down to operate the electric motor. However, since the tap in the flat of the accused was on, even after the motor was operated, the water was not going up. The husband of this witness therefore requested Iftekhar to close the tap, but he refused to do so. Therefore there was a quarrel between them and thereupon three brothers of Iftekar came there. Thereafter Iftekar went inside the flat and came out with a big knife and Shafakatahussein came with a Gupti. Ezajhussain and Shaukathussain caught hold of her husband and Iftekar inflicted a knife blow and Shafakathussein inflicted a gupti blow on the abdomen as a result of which bleeding started from body of victim. At that time the sons of this witness and the deceased intervened and Iftekar told that they will also be killed. Shafakathussein inflicted a gupti blow on the back of Adilahmed. The witness has started shouting as a result of which many persons came there. All the accused ran away from the scene of offence along with

weapons. Thereafter the injured were taken to the hospital. Upon reaching hospital it was declared that the husband of this witness has expired. This witness has been thoroughly cross-examined by the other side and special question has been asked which has been reproduced by the court in question and answer form wherein it has been specifically asked whether at the time of assault, to save himself her husband has tried to escape from the custody of the accused and whether he had any opportunity to escape from the custody. To this question she has specifically stated that two accused have caught hold of her husband and therefore he could not move. Thereafter she has been asked as to in what manner they have caught hold of her husband and blows were inflicted to which she replied that her husband has been caught hold with his hand and thereafter two blows were given to him.

6.1 The prosecution has examined Adilahmed Mohammad Shakil (PW2) at Exh.22. He is son of Mohammad Shakil and the complainant Shamimbanu. This witness has also identified the appellants-accused in court. He stated that there was quarrel between the father of this witness and the accused about property and also with regard to water. He has deposed that his father after

operating the motor called Iftekhar and asked him to close water tap as the water was not reaching up and since he has refused there was quarrel and at that time the other three brothers of Iftekhar viz. Shafakathussein, Ejazhussein and Shaukathussein came there. They were abusing the father of this witness and Iftekhar went inside his house and came out with a knife and Shafakathussein came with a Gupti. Ezaj and Shaukt caught hold of father of the complainant and Iftekhar inflicted knife blow and Shaukath inflicted a blow with Gupti on the abdomen of Mohammad. This witness, his brother and mother intervened and then Iftekhar shouted to kill this witness and his brother. Thereupon Shaukat and Ezaj left the father and caught hold of this witness and Shafakathussein and inflicted a gupti blow on his back. His brother and mother shouted for help as a result of which many persons came there and the accused run away with weapons. Thereafter the injured were taken to hospital. This witness has completely supported the version of the complainant (PW1 Exh.19). He has identified the knife and explained the injuries sustained by his father. This witness was also cross-examined and same question has been put to him by the advocate for the applicant in court below. To this he has replied that his father has tried to escape from their clutch but he could not



move. He said that in his case also the same thing has happened.

6.2 The prosecution has examined Zahid Ahmed Mohammad Shakil. He is the son of Mohammad Shakil and complainant Shamimbanu. He has also narrated the incident as stated by Adilahmed (PW2-Exh.22) and the complainant (PW1 Exh.19). He has described the weapon used and the injuries caused by the accused. This witness has gone to Gaikwand Haveli Police Station and gave the first information. In the cross examination he has stated that his father was caught hold of and injuries were caused.

6.3 Prosecution has examined Shanvazkhan Habib Rehmankhan Pathan (PW4-Exh.24). He is a friend of Adilahmed. On the day of the incident he stated that Adil and his mother Shamimbanu came running and on inquiry he was told that father of Adil was injured and he was asked to get a rickshaw immediately. Therefore he brought a rickshaw and all have gone to Vadilal Hospital. At Vadilal Hospital the police has taken statement of this witness.

6.4 Nizammuddin Kamaruddin (PW5) was examined at Exh.25. He is the panch witness of the articles like soils, etc. collected from the scene of offence. He has proved the panchnama of scene of

offence.

6.5 Althaf Hussain Mahammadhusain (PW6) was examined at Exh.27. He is the panch witness of the discovery panchnama. The police had told him that the accused had attacked the husband of complainant Shamimbanu and the accused wanted to show the weapons and therefore he should act as a panch witness to which he has agreed. Accordingly Shaukathusain took the police and panch witness to his house and he has taken out the knife and gupti kept under stones. Thereafter panchnama was prepared. He has identified the muddamal articles.

6.6 Dr. Ravindra Shrikrishna Bhise (PW7) was examined at Exh.29. He has performed the postmortem of the dead body of Mohammad Shakil along with panel Doctor Dr.M.C. Shah. He has noticed the following injuries:

1. Abrasion on the right wrist on palmer aspect near the joint, 1 cm x 0.2 cms red in colour.
2. Abrasion with contusion on ulnar aspect of left forearm in mid of its length extending upwards and medially size 8 cms x 3 cms, red in colour.
3. Contusion on right great toe on tip 2 cms x 1 cm red in colour.

4. Abrasion with contusion on left side on midscapular region on back, 5 cms x 0.5 cms red in colour.

5. Stab wound on right hypochondriac region on abdomen below the costal margins, 10 cms lateral and above the umbilicus, size 1.5 cms x 0.5 cms cavity deep, vertically situated with upper angle semilunar and lower angle acute passive oozing of blood is present from the wound.

6. Contused lacerated wound on right side of forehead extending from medial end of right eyebrow going vertically upwards and medially 3 cms x 0.7. cms.

6.7 This witness has opined that the injuries were anti mortem in nature and the death was due to shock and hemorrhage as a result of injuries sustained. He deposed that the above injuries were sufficient in ordinary course of nature to cause the death. According to him stab wound is possible by sharp edged weapon and CLW is possible by hard and blunt substance. He has also stated that injury no.5 is possible by muddamal article Gupti which is shown to him.

6.8 Ghanshyamdas Jamnadas Mehta (PW8) was examined at Exh.31. At the relevant time he was serving as Police Constable at Gaikwad Haveli Police Station. On the day of the incident he received a phone call from Head Constable Amrabhai from V.S. Hospital and a Vardhy was given. Accordingly he has made an entry

in the Vardhy book and a copy thereof was given to Police Inspector Makwana of Gaikwad Haveli Police Station. He has proved the entry made in respect of the information given from V.S. Hospital.

6.9 Amrabhai Khoyabhai (PW9) was examined at Exh.34. At the relevant time he was serving as Head Constable, Ellisbridge Police Station. On the day of the incident he was on duty in V.S. Hospital. According to him on that day one boy named Adilhamad Shakil and Mohammad Shakil were brought to the hospital. At about 11.40 the doctor declared that Mohammad Shakil has expired. He has accordingly made an entry in his Vardhy book and the same has been sent to Gaikwad Haveli Police Station. The first entry was made at 12.15 noon and the second entry was made at 12.35 pm.

6.10 Dr. Raju Karshanbhai Parmar (PW10) was examined at Exh.36. At the relevant time he was serving as RMO with V.S. Hospital. He stated that Dr. Sanghvi was working as Resident doctor with V.S. Hospital, but he had left and his whereabouts are not known. He stated that he is sure that one medical certificate has been issued by him which is in the name of Adil Mohammad dated 1.9.1997, which is at mark 10/13 Exh.37 which bears his signature. He has also verified the medical certificate of

Iftekarhussein Sabdarhussein and he stated that he might be on leave on that day and therefore it appeared to have been signed by the person who was holding his charge. He has also stated that it has been signed by Dr. D.S. Chandana who was working with him since long.

6.11 The prosecution has examined Dharmendraisnh Ratansinh (PW 11) at Exh.39. At the relevant time he was serving as Senior Police Inspector at Gaikwad Haveli Police Station. He deposed that the original complaint was taken by Mr. Makwana and he narrated the procedure followed in the case and stated that on 24.8.1997 accused no.2 Shafakathussein showed willingness to show the muddamal article and has shown the knife and gupti for which discovery panchnama was made. In the cross examination he has admitted that on that day at about 12.10 noon accused no.1 Iftekharhussain had gone to the police station for lodging a complaint which was registered as C.R.I No.148/97. He has deposed that chargesheet has been filed against two sons of deceased viz. Adil and Jahid Ahmed.

6.12 Dahyabhai Dhulabhai Makwana (PW12) was examined at Exh.42. At the relevant time he was serving as Inspector in Gaikwad

Haveli Police Station. According to him on 18.8.1997 at about 12.15 noon a Vardhy came to the police station and he was asked by Shri Raval, Senior P.I. to attend the said Vardhy. He has identified the said Vardhy. Accordingly he had gone to V.S. Hospital. At V.S. Hospital Shamimbanu Mohammad has lodged the complaint. Thereafter report was prepared to register the case. He has made arrangements to prepare the inquest panchnama of dead body of Mohammad Shakil.

7.0 For the purpose of deciding this appeal, oral evidence of wife of the victim Shamimbanu Mohammad Shakil (PW1-Exh.19), son of deceased Adil Ahammad Mahammad Shakil (PW2-Exh.22) and Zahid Ahmmad alias Raju Mahammad Shakil (PW3-Exh.23) and Shahnavaazkhan Habib Rahmankhan Pathan (PW4-Exh.24) are required to be appreciated. The above referred witnesses are the witness of the incident. It is also required to be noted that out of four witnesses, three witnesses are the family members of the deceased and they are staying in the flat which is situated at the place of the incident. The incident in question has taken place on the ground floor. It is also required to be noted that PW1 is wife of deceased, PW2 and 3 are sons and PW 4 is the friend of their son

and it is established by the prosecution that at the time of initial stage altercation has taken place between the deceased and Iftexhar and thereafter during the course of altercation family members of victim as well as brothers of accused nos.2 and 3 also came there. During that altercation accused no.1 and his brother went inside the house, came along with knife and gupti respectively and accused nos.3 and 4 caught hold of the deceased and accused no.1 and accused no.2 have given knife and gupti blow respectively on various parts of the body of the victim which included vital part of the body and accused could not even move to save himself from the clutches of the accused. During that incident the wife and sons of the deceased have tried to intervene and in that process wife of the deceased as well as son of the deceased have also received injuries. In fact the son was also caught hold of by both accused nos.3 and 4 and assaulted by accused nos.1 and 2 with knife and gupti and he has also received severe injuries. It is also required to be noted that the above referred witnesses have been thoroughly cross-examined by the learned Advocate for the respective parties in the court below and nothing contrary has come out which has shaken their evidence. Not only that a question has been put to both these witnesses i.e. wife and son of the deceased that whether the

deceased has tried to escape from the clutches of the accused and both deposed that the deceased had tried to escape, but he was not able to do so . In short, as per the evidence on record it is found that they had a dispute regarding usage of water as well as dispute of flat for which civil litigation was going on.

8.0 During the incident Shahnazkhan Habib, friend of the son of the deceased had reached the scene of offence and he had brought an auto and the victim, his wife and son have been shifted to V.S. Hospital where the deceased has succumbed to injuries whereas the son has been admitted in the hospital as an indoor patient. The complaint has been lodged at the earliest opportunity and the same has been proved as Exh.21 and it is established that the complaint is fully corroborated with the evidence of the witnesses. In the complaint the complainant has given detailed account regarding the incident in question along with the role played by all the four accused and has also described the weapon which they were having in their hands and also the role which has been played by them including the assault. The complaint has been lodged at the earliest and therefore question of falsely involving all the accused in the crime in question does not arise at all. It is also



required to be noted that all the witnesses have identified the accused in the court along with the weapon. It is further required to be noted that the witnesses, victim and the accused are staying in the same building in different flats. They had civil dispute since long and the incident in question has taken place in broad day light at about 11 AM and prior to that altercation has taken place and therefore the question of misidentification would not arise at all. Over and above, they are known to each other. Furthermore, two witnesses have also received severe injuries and therefore their presence cannot be disputed at the time of incident. In fact they were shifted to hospital immediately along with the victim. Furthermore cross complaint has also been filed wherein name of the present accused has been shown. Therefore, presence of both the sides are established. The motive is proved and in view of the overall facts and circumstances of the case we are of the opinion that the deceased Mohammad Shakil has been assaulted by accused nos.1 and 2 with their deadly weapons i.e. knife and gupti and during that process accused nos.3 and 4 caught hold of accused in such fashion that the deceased could not even move. Not only that when son of deceased intervened the accused nos.2 and 3 caught hold of him and accused no1 shouted stating "kill him, kill him"

and he was assaulted by the accused in which he has suffered severe injuries. The muddamal weapons were identified and postmortem note supports the say of the prosecution and also supports the oral evidence of witnesses. Not only that, in the incident the accused no.1 was also injured and when the accused no.1 was arrested he was having injuries and therefore he was also admitted in the hospital and his injuries have been explained by the prosecution and presence of all the accused has been established along with their respective role. The same has got support by way of evidence of other witnesses and also expert opinion i.e. FSL report, Post mortem note, etc. As far as the homicidal death is concerned the same has not been disputed by the other side and therefore we are not dealing with the same. But we have gone through the same along with the evidence of the doctor who has performed the postmortem, injury certificate, inquest panchnama, etc. and we are of the opinion that the death of the deceased is a homicidal one and the injury received by him was sufficient to cause death.

8.0 Learned Advocate for the appellant has relied upon a decision in the case of Bagdi Ram Vs. State of M.P. Reported in AIR 2004 SC

387 ((2004)12 SCC 302). In this case the Apex Court held that the appellant was entitled to benefit of exception IV to section 300 and sentence of RI was reduced from 8 years to 3 years. However, in this case the finding is that the accused did not repeat the blow which indicated that he did not intend to cause death. Moreover, the attack was all of a sudden by picking up “gainti” lying on the spot. However, on the facts of this case the accused have gone inside the house brought the weapons, caught hold of Mohammad and attacked him. Therefore the ratio laid down in this decision would not be of no help to the applicant.

8.1 Learned Advocate for the appellant has relied upon a decision in the case of State of U.P. Vs. Shyam Veer and others, reported in (2005)10 SCC 611 (2005 SCC Cri) 1643, 2005 CriLJ 2606) wherein also sentence was altered on the ground that the attack was under a grave and sudden provocation. On the facts of this case the ratio laid down in this decision also would not be available to the appellants.

8.2 In the case of Sandhya Jadhav Vs State of Maharashtra, reported in (2006)4 SCC 653 (2006 (2) SCC (Cri) 394, 2006 CrLJ

2111) wherein the case was of sudden quarrel with the deceased without the offender having taken undue advantage and not having acted in a cruel or unusual manner and in this case the knife blow was on the back of the deceased. Therefore we are of the opinion that the ratio laid down in this decision would not be applicable to the appellants.

8.3 In the case of Lachman Singh Vs. State of Haryana, reported in AIR 2006 SC 2763 [(2006)10 SCC 524 (2007(1) SCC (Cri) 123, 2006 Cri LJ 4041] the Apex Court observed that the Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. If we look at the facts of the present case, the appellants were having full knowledge that they were going to inflict blows with lethal weapon which may cause death. Therefore even this decision would not be of any assistance to the applicant.

8.4 In the case of K.M. Nanavati V. State of Maharashtra, reported in 1962 SC 605 [1962 Supp(1) SCR 567, 1962(2) SCJ 347, 1962(1) CrLJ 521], the Apex Court held that whether a reasonable person in the circumstances of a particular case

committed the offence under provocation which was grave and sudden is a question of fact for the jury to decide. When we look at the facts of the present case it is clear that with specific intention the accused went inside, came out with weapons, caught hold of Mohammad and inflicted injuries. Therefore it cannot be said that this is a case where the attack was due to sudden provocation.

8.5 Learned Counsel for the appellant has relied upon a decision in the case of Jawahar Lal V. State of Punjab, reported in AIR 1983 SC 284 [1984(4) SCC 159, 1983 crLJ 429, 1983(1) scale 1] wherein deceased was not a party to the quarrel and no attempt to inflict second blow. We are therefore of the opinion that this decision would not be applicable to the facts of the case.

8.6 In the case of Tholan V. State of Tamil Nadu, reported in AIR 1984 SC 759 [1984(2) SCC 133, 1984 CrLJ 478] wherein also the incident has occurred on a spur of moment. In the said case it was held that in the circumstances of the case though requisite intention to commit murder could not be attributed to the accused, he wielded a weapon like a knife and therefore he could be attributed with knowledge that he was likely to cause an injury which was

likely to cause death. Even this decision would not be of any assistance to the applicant.

9.0 In view of the fact that the case against the appellants has been proved by the prosecution beyond reasonable doubt, we do not find that any illegality or irregularity has been committed by the learned additional Sessions Judge warranting interference by this Court in the impugned judgement and order of conviction and sentence. We are in complete agreement with the reasonings adopted and findings arrived at by the learned Additional Sessions Judge.

10.0 In the result, the appeal is dismissed. The appellant No.3 Ezajhussain Sabdarhussain and Appellant N.o.4 Shaukathussain Sabdarhussain are on bail and hence their bail bond shall stand cancelled. They are directed to surrender before the Jail Authorities within eight weeks from today.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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