

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 579 of 2010****With****CRIMINAL APPEAL NO. 686 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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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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ANDABHAI RAIMAL BHAI CHAUDHARY....Appellant(s)**Versus****STATE OF GUJARAT....Opponent(s)/Respondent(s)**

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Appearance:**MRTUSHARCHAUDHARY, ADVOCATE for the Appellant(s) No. 1****MS SANDHYA D NATANI, ADVOCATE for the Appellant(s) No. 1****MR MRUDUL BAROT, ADVOCATE for the Respondent no.2(CRA No.686/10)****MS HANSA PUNANI, APP for the Opponent(s)/Respondent(s) No. 1**

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 30/09/2013

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These appeals arise out of the same judgement dated 15.2.2010 rendered by the learned Sessions Judge, Patan in Sessions Case No.36/2009. Briefly stated, prosecution version was that the accused Andabhai was living with his family at village Odhva, District Patan. His brother Hirabhai wanted to marry one Joitiben who already had a son aged about 12 years. The mother of the accused did not mind it. The accused himself agreed to the marriage but not to bring the son along. Such quarrel was going on in the family. On 24.2.2009, the accused after a quarrel assaulted the mother with a dhariya causing fatal injury on the head. He was charged with offence punishable under section 302 of the IPC.
2. Learned Sessions Judge convicted the accused for offence under section 304 Part-II of the IPC and sentenced him to five years of rigorous imprisonment. Fine was also imposed. He has filed Criminal Appeal No.579/2010 questioning his conviction and sentence. The State has preferred Criminal Appeal No.686/2010 arguing that conviction should have been under section 302 of IPC and sentence should have been higher.
3. When the appeals were taken up for hearing, learned APP stated under instructions that the convict has already served out the sentence as imposed by the trial Court in

the impugned judgement. He is also released from jail. Learned counsel Shri Chaudhary for the appellant did not seriously press the conviction appeal. Counsel Shri Mrudul Barot appearing for the accused in the State Appeal, however, submitted that this was not a case for any further enhancement.

4. We have perused the record with this limited purpose in mind. We notice that majority of the witnesses had turned hostile. Though there were supposed to be certain eyewitnesses present when the alleged incident took place, none of these witnesses who were near relatives or neighbour supported the prosecution. The prosecution however, strongly relied on other circumstances including discovery of the murder weapon at the instance of the accused. When we are not re-appreciating the entire evidence in the context of conviction of the accused, it is not necessary to go into detail all such evidence. With a limited purpose of ascertaining, whether sentence was adequate or not, we may refer to the relevant evidence.

5. Hirabhai Raymalbhai Chaudhary, PW-4, exh.15, deposed that the accused Andabhai was his younger brother. He was married to one Bhikhiben. The two brothers and mother Ratanben lived together. Hirabhai himself was unmarried. He wanted to marry one Joitiben Thakker. The mother was agreeable to such relation. Andabhai however, objected to Joitiben bringing along her son. The witness thereafter, turned hostile. But to the incident, the cause for dispute in the family, his deposition can be relied upon.

6. The incident happened on 24.2.2009. Ratanben was done to death in her house with head injury. Dr. Nitinkumar Atmarambhai Patel, PW-1, exh.8, carried out the postmortem. In his deposition, as well as in the postmortem report exh.9, he had mentioned the following injuries :

“Incised wound 26cm long beginning from Rt. mastoid process to lt. mastoid process. Inverted curve shaped over occipital region. Dotted bld. Two part fracture of occipital bone. Rupture of whole cerebrum. Collection of dark red bld. into occipital cavity.”

6.1. According to him the cause of death was due to shock due to head injury. He stated that such injuries could have been caused with a sharp cutting weapon. He was shown muddamal article dhariya and agreed that such weapon could have caused the injury.

6.2. In the cross examination, he agreed that the injury was caused with a single blow and it was not as a result of multiple blows.

7. From the above evidence, it can be clearly seen that the incident took place because of the family dispute. The brother of the accused desired to get married at a late stage. He himself was aged about 48 years. The lady, he proposed to marry already had a son aged about 12 to 13 years. The accused objected to the lady bringing the son along. The mother did not mind the proposal. As a sequel to the quarrel, the accused on the date of the incident, lost control and gave one dhariya blow to the mother. Clearly

the intention to cause death was totally missing. If the accused desired to cause the death, there was nothing stopping him from giving multiple blows with a weapon as dangerous as dhariya. The learned Judge therefore, correctly convicted the accused for offence under section 304 Part-II of the IPC. When we are holding that conviction under section 304 Part-II was justified, the sentence of five years of rigorous imprisonment would not call for any further enhancement. The accused did not have a criminal record. It is not even the case of the prosecution that he had any criminal antecedents. Under the circumstances, we find no substance in the State appeal.

8. Criminal Appeal No.579/2010 is disposed of as infructuous. Criminal Appeal No.686/2010 filed by the State is dismissed.

R&P be transmitted back to the concerned trial Court.

(AKIL KURESHI, J.)

(R.P.DHOLARIA,J.)

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