

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 581 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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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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THAKOR MERAJI CHANDUJI....Appellant(s)

Versus

STATE OF GUJARAT & 1....Opponent(s)/Respondent(s)

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Appearance:

MR ASHISH M DAGLI, ADVOCATE for the Appellant(s) No. 1 - 4

PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI
and

HONOURABLE MR.JUSTICE K.J.THAKER**Date : 31/07/2013****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE K.J.THAKER)**

1. Four accused persons, the appellants herein, were convicted for the offences punishable u/s.302, 324, 323 r/w. Section 34 of Indian Penal Code and Section 135 of Bombay Police Act, by judgment and order dated 06.02.2007 passed by the learned Addl. Sessions Judge & Presiding Officer, Fast Track Court No.2, Ahmedabad (Rural), Mirzapur, Ahmedabad in Sessions Case No.34 of 1999.

For conviction u/s. 302 r/w. Section 34 IPC, the appellants were sentenced to undergo rigorous imprisonment for life and fine of Rs.1000/- each and in default, they were ordered to undergo rigorous imprisonment for a further period of one year.

For conviction u/s. 324 r/w. Section 34 IPC, the appellants were sentenced to undergo rigorous imprisonment for one year and fine of Rs.500/- each and in default, they were ordered to undergo rigorous imprisonment for a further period of six months.

For conviction u/s. 323 r/w. Section 34 IPC, the appellants were sentenced to undergo rigorous

imprisonment for four months and fine of Rs.500/- each and in default, they were ordered to undergo rigorous imprisonment for a further period of three months.

Whereas, for conviction u/s. 135 of BP Act, the appellants were sentenced to undergo rigorous imprisonment for four months and fine of Rs.100/- each and in default, they were ordered to undergo rigorous imprisonment for a further period of one month.

All the sentences were ordered to run concurrently. The appellants were also given the benefit of set-off. Out of the total amount of fine that may be received from the accused, an amount of Rs.5000/- was ordered to be paid to the widow of deceased Natvarji Halaji.

2. The genesis of the offence and the incident is as narrated in the complaint at Exhibit-117. The deceased Natvarji Halaji Thakore, before breathing his last, gave the graphic picture and the FIR. On the basis of the said FIR, the investigation was started. The FIR, having been lodged, all the four accused persons, the appellants herein, were arrested. The accused were, therefore, arraigned for the commission of the said offences. They were committed to the Sessions Court, Ahmedabad (Rural), who convicted them on 06.02.2007, by passing the impugned judgment

and order.

3. We have gone through the prosecution evidence where about 22 witnesses were examined. They are as under;

Prosecution Witness No.	Name of Witness	Exhibit
1	Motisinh Mahida	40
2	Manubhai Valjibhai Vaghela	42
3	Labhubhai Solanki	44
4	Sanjivkumar Tiwari	46
5	Takhatsinh Bihola	47
6	Jasubhai Thakor	48
7	Bhikhaji Thakor	50
8	Amratben Natvarji Thakor	51
9	Dr. Rajendrakumar Jani	56
10	Dr. Jayantilal Satapara	62
11	Dr. Hasumatiben Patel	66
12	Pujaji Thakor	70
13	Gandaji Thakor	71
14	Dhanaji Thakor	73
15	Keshaji Thakor	74
16	Pratapsinh Bihola	75
17	Rameshwar Rathod	76
18	Iqbalbhai Desai	81
19	Ramabhai Tadv	98

20	Ramanbhai Dabhi	100
21	Sureshchandra Pandey	106
22	Suraj Visandas Tahelramani	114

4. The prosecution had also relied upon several documentary evidence, more particularly, the complaint at Exhibit-117, the panchnama of scene of offence at Exhibit-41, the inquest panchnama of Budhaji Natvarji at Exhibit-38, discovery panchnama at Exhibit-43, the inquest panchnama of Natvarji Halaji at Exhibit-53, injury certificates of witness – Bhikhaji Natvarji and witness – Amratben Natvarji at Exhibits – 58 & 59, post mortem report of deceased Budhaji Natvarji at Exhibit-68, post mortem report of deceased Natvarji Halaji at Exhibit-64, FSL Report at Exhibit-103 and Serological Report at Exhibit-104.

5. It is submitted by learned counsel Mr. AM Dagli appearing for the appellants that it cannot be said that this is a case of double murder. He has submitted that deceased Natvarji Halaji Thakor, who was aged about 65 years, died on account of Cancer and other illness. As against this, learned APP submitted that this is a case of double murder.

Deceased Natvarji Halaji Thakor had sustained injuries on vital part of the body, which resulted into his death. He drew our attention to the medical evidence on record, which supports his submission insofar as deceased Natvarji Thakor is concerned.

6. It is further submitted by learned counsel Mr. Dagli for the appellants that the prosecution has failed to prove that cause of death of deceased Natvarji Thakor was due to the weapons allegedly used by the appellants. He further submitted that none of the weapons, which are alleged to have been used, could have caused death of Natvarji Thakor. He has referred to the evidence of Doctor and the Post mortem Reports of deceased.

7. Mr. Dagli further submitted that as far as the death of Budhaji Thakor is concerned, he died only on account of single injury, which was caused by a sharp-edged weapon, which, if at all, is proved, was used by original accused no.1. He submitted that the Panchas have not supported the prosecution case. None of the injuries on the body of deceased Budhaji Thakor were such that it would cause death under normal circumstances. The post mortem report of deceased Budhaji Thakor speaks about the nature of

injuries. He, therefore, submitted that no overt act is attributed on the part of original accused no.2 to 4.

8. We have heard learned counsel for the respective parties and have perused the entire oral as well as documentary evidence on record. In light of the above facts, the first aspect that we are required to decide is whether deceased Natvarji Thakor died a homicidal death caused by the injuries sustained or he died on account of some disease. We could gather the answer from the post mortem of deceased Natvarji Thakor (Exhibit-64) and the medical evidence of the Doctor, who performed the autopsy. Even from the complaint, which was given by deceased Natvarji Thakor, the prosecution has not been able to bring on record that deceased Natvarji Thakor died on account of the injuries sustained by him. We find the answer in **Moti Singh and another v. The State of Uttar Pradesh, AIR 1964 SC 900**, which has been relied upon by the Division Bench of this Court in **State of Gujarat v. Madha Bhana, 1984 (2) GLR 900** wherein, in Para-9 the following observations are relevant;

“9.The Medical Officer, Dr. Modi Ex.8 has stated that on internal examination he found that there was

pus in both the lungs and the cause of death was pus having circulated in the blood which caused shock resulting in death. He has further stated that the main cause of death was pus formation in the blood. The evidence of Dr. Modi does not show that the pus formation was on account of the bed-sores which Baliben had developed. The evidence of the Medical Officer does not even show that the pus formation was on account of bed-sores which Baliben had developed or that there was pus formation at the site of the injuries sustained by Baliben. In absence of any such medical evidence to connect the pus formation with the injuries sustained by Baliben or to the bed-sores which she developed on account of being bed-ridden in the hospital for a long time, it is difficult to say that the statements made by Baliben are relevant u/s. 32(1) of the Indian Evidence Act. The result is that all these statements alleged to have been made by Baliben that Madha Bhana had given her knife blows have to be kept out of consideration.”

9. In this case, therefore, death of Natvarji Halaji Thakor cannot be said to have been caused of the injuries sustained by him. It is not conclusively proved that death occurred only due to the bodily injuries sustained by him. Even in the post mortem report (Exhibit-64), there are certain body parts which had developed pus. The lungs were damaged and the body was found to be suffering from Cancer. The prima faice view of the Doctor was that Natvarji Thakor died on account of Cancer. Therefore, we are unable to accept

the submission of learned APP that death was on account of the bodily injuries since it is not conclusively proved that death was caused only on account of bodily injuries.

10. As far as the death of Budhaji Thakor is concerned, as narrated above, the injury was on the vital part of the body by the weapon used by original accused no.1. There was no overt act on the part of original accused no.2 to 4 to cause death and therefore, the sentence imposed upon them cannot be sustained in the eyes of law. Considering the principle laid down by the Apex Court in **Budhi Lal v. State of Uttarakhand, AIR 2009 SC 87**, the original accused no.1 cannot be said to have committed the offence of murder. In that case, the Apex Court has discussed the distinction between bodily injury likely to cause death and bodily injury sufficient to cause death. Insofar as accused no.2 to 4 are concerned, they cannot be said to have committed the offence of murder. Both the deceased had sustained bodily injuries.

11. Looking to the facts of the case and the principle rendered in Budhi Lal's case (supra), the conviction of original accused no.1 u/s. 302 IPC is altered to one punishable u/s. 304 Part I IPC and other offences r/w.

Section 34 IPC whereas, looking to the overt act of original accused no.2 to 4, they are convicted for the offences punishable u/s.324, 323 r/w. Section 34 IPC. Hence, the impugned judgment and order deserves to be modified accordingly.

12. For the foregoing reasons, the appeal is partly allowed and the impugned judgment and order dated 06.02.2007 is modified as under;

A. The conviction of appellant no.1 herein, original accused no.1, u/s. 302 r/w. Section 34 IPC is altered to one punishable u/s.304 Part-I r/w. Section 34 IPC without disturbing the conviction u/s.324, 323 r/w. Section 34 IPC and Section 135 of Bombay Police Act. Whereas, the conviction of appellants no.2 to 4 herein, original accused no.2 to 4, u/s. 302 r/w. Section 34 IPC is quashed and set aside and they are convicted only for the offences punishable u/s. 324 and 323 r/w. Section 34 IPC and Section 135 of Bombay Police Act.

B. Considering the principle rendered by Apex Court in **Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCALE 778** and the request made by learned

counsel Mr. A.M. Dagli to grant similar benefit to the accused herein, under instructions of original accused no.3 who is present in the Court, we are inclined to grant the benefit of the provision of Section 357 of Code of Criminal Procedure to the accused in this case.

C. The appellant no.1, original accused no.1 is imposed the sentence whereby, the period of imprisonment already undergone by him is ordered to be treated as sufficient sentence for conviction u/s.304 Part-I r/w. Section 34 IPC and to pay fine of Rs.1.30 Lacs [Rupees One lac thirty thousand only] within a period of Twelve Weeks from today; and on making such payment, he is ordered to be set at liberty forthwith, if he is not required in connection with any other case;

C-1 The appellant no.1, original accused no.1, is in jail and therefore, he is ordered to be released. He shall furnish bail of twelve weeks from the date of his release in the sum of Rs.5000/- [Rupees five thousand only] to the satisfaction of jail authority in order to enable him to arrange the finances, if he so desires. It

is made clear that if appellant no.1, original accused no.1, fails to deposit the amount of fine of Rs.1.30 Lacs within the stipulated period, he shall have to undergo rigorous imprisonment for a period of five years from the date he again surrenders to custody; And, if the accused does not make payment of fine as aforesaid and also fails to surrender within the above period, the investigating agency shall be at liberty to take necessary action against him in accordance with law.

D. Insofar as appellants no.2 to 4 herein, original accused no.2 to 4, are concerned, the conviction and sentence imposed upon them by the Court below u/s.324, 323 r/w. Section 34 and Section 135 of Bombay Police Act stands confirmed. However, the said sentences shall stand suspended and all the three original accused no.2 to 4 are ordered to pay fine of Rs.40,000/- each [Rupees Forty thousand only] within a period of Twelve Weeks from today. It is made clear that if appellants no.2 to 4 herein, original accused no.2 to 4, fail to deposit the amount of fine as aforesaid, they shall have to undergo rigorous imprisonment for a further period of two years over and above the sentence imposed by the Court below;

And, if the accused do not make payment of fine as aforesaid and also fail to surrender within the above period, the investigating agency shall be at liberty to take necessary action against them in accordance with law.

E. The amount of fine already paid earlier shall go to the State Government. The amount now ordered to be paid by the accused persons as aforesaid shall be paid as compensation to the widows of deceased-Budhabhai and deceased-Natvarji in the ratio of 60 : 40 respectively, by way of "Account payee cheque", after due verification. Rest of the impugned judgment and order stands confirmed.

12.1 The appeal stands disposed of accordingly. R & P, if lying with this Court, be transmitted to the Court below forthwith.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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