

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL NO. 719 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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**VINODBHAI DEVJIBHAI RANA....Appellant(s)****Versus****STATE OF GUJARAT....Opponent(s)/Respondent(s)**

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**Appearance:****MR VD PARGHI, ADVOCATE for the Appellant(s) No. 1****MS CM SHAH APP 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 : 30/09/2013**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE K.J.THAKER)**

1. The appellant-Accused has preferred this appeal under sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 27.2.2006 passed by the learned Addl. District & Sessions Judge, Gandhinagar in Sessions Case No. 91/2005, whereby, the learned trial Judge has convicted the appellant- Accused under sec. 341 of IPC and sentenced him to undergo imprisonment for one month and to pay a fine of Rs. 500/-, in default, to undergo S/I for seven days. The appellant is also convicted under section 302 of IPC and sentenced to undergo R/I for life and to pay a fine of Rs. 25,000/-, in default, to undergo S/I for three years. The appellant is convicted under section 309 of IPC and sentenced to undergo S/I for one year and to pay a fine of Rs. 1000/-, in default, to undergo S/I for one month. The appellant is convicted under sec. 135 of the Bombay Police Act and sentenced to undergo R/I for four months and to pay a fine of Rs.1000/-, in default, to undergo S/I for one month, which is impugned in this appeal.

2.1 The case of the prosecution is that on 21.5.2005, in the evening at 5.00 O'clock, daughter of the complainant went to her uncle's house and while she was returning to home at about 5.00 O'clock, the accused caught hold of the hand of the victim and took her to the nearest hut situated in Sector-24, Gandhinagar, where the accused was residing. It was alleged that the accused had told to the victim that the marriage of the victim is arranged with a boy of the same caste of the victim on 26.5.2005 and asked her to stop her marriage at any cost otherwise he will see to it that the marriage will not be solemnised and if the marriage is performed, he will kill her and also commit suicide. That a quarrel also took place between the accused and the victim. Therefore, the appellant had inflicted knife blows on the abdomen, backside and on other parts of the body of victim and has committed the murder of deceased Bhartiben and has also tried to commit suicide by inflicting knife blow on his body. Therefore, a complaint was lodged.

2.3 The appellant accused came to be arraigned for committing murder. The investigation being complete, the charge-sheet was laid against the present appellant. The case being exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions, which was

given number as Sessions Case No. 91/2005.

2.4 Thereafter, the Sessions Court framed the charge below Exh. 4 against the appellant for commission of the offence under section 302, 341, 309 of IPC and under sec. 135 of the Bombay Police Act. The appellant-accused has pleaded not guilty and claimed to be tried.

2.5 To prove the case against the present appellant, the prosecution has examined the following witnesses whose evidence is read before this Court by the learned advocate for the appellant.

1. PW-1 Manjibhai Chelaji Ex. 8
2. PW-2 Khanabhai Nathubhai Parmar Ex. 11
3. PW-3 Mahendra Jetha Sindhav Ex. 15
4. PW-4 Dr. Bhairavi Balvant Panday Ex. 18
5. PW-5 Dr. Mukesh Becharbhai Patel Ex. 20
6. PW-6 Prahladbhai Ranaji Ex. 23
7. PW-7 Salimbhai Mahmadbhai Ex. 25
8. PW-8 Nasirbhai Kadarbhai Ex. 26
9. PW-9 Arvindbhai Prahaladbhai Ex. 27
10. PW-10 Balvantbhai Mohanbhai Ex. 29
11. PW-11 Hamidbhai Ibrahimbhai Ex. 30
12. PW-12 Narsinhji Laxmanji Ex. 32
13. PW-13 Janakben Khanjibhai Ex. 35
14. PW-14 Babubhai Shankarbhai Jadav Ex. 36
15. PW-15 Ishvarbhai Karmashi Desai Ex. 39
16. PW-16 Pravinsinh Modbhai Gadhavi Ex. 49

17. PW-17 Rajendrabhai Vishrambhai Ex. 51

2.6 The prosecution also relied upon the following documentary evidences so as to bring home the charges against the appellant-accused.

1. Panchnama of scene of offence Ex. 9
2. Panchnama of person of accused Ex. 10
3. Complaint Ex. 12
4. Marriage card Ex. 13
5. Marriage card Ex. 14
6. Panchnama of clothes of deceased Ex. 16
7. Inquest panchnama Ex. 17
8. PM Note Ex. 19
9. Certificate given by Civil Hospital, gandhinagar about the treatment given to deceased Ex. 21
10. Medicate certificate of accused Ex. 22
11. Panchnama of scene of offence Ex. 24
12. Panchnama of clothes of accused Ex. 28
13. Discovery panchnama Ex. 31
14. Despatch note Ex. 40
15. Case papers of deceased Ex. 33
16. Receipt of FSL Ex. 41
17. Notification Ex. 42
18. Letter Ex. 43
19. Muddamal Analysis Report Ex. 44
20. Serological report Ex. 45
21. Report of physics Ex. 46
22. Statement of Bhartiben before IO Ex. 47
23. Copy of Janvajog Entry No. 93/05 Ex. 48

## 24. Message form Ex. 53

3. Thereafter, after examining the witnesses, further statement of the appellant-accused under sec. 313 of CrPC was recorded in which the appellant-accused has denied the case of the prosecution.

4. After considering the oral as well as documentary evidence and after hearing the parties, learned trial Judge vide impugned judgment and order dated 27.2.2006 held the present appellant- original accused guilty of the charge levelled against him under sec. 302, 341 and 309 of IPC and under section 135 of the Bombay Police Act, convicted and sentenced the appellant-accused, as stated above.

5. We have heard at length learned advocate Mr V.D. Parghi learned advocate for appellant and M CM Shah learned APP for the respondent-State.

6. The learned advocate for the present appellant has contended that the trial court has committed an error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective, and hence, the present appellant deserves to be given the benefit of doubt and be acquitted.

7. On the other hand, learned APP has strongly opposed the contentions raised by the learned advocate for the present appellant and has submitted that the trial court has passed the impugned judgment and order after taking into consideration the facts and circumstances of the case as well as the material, in the form of oral and documentary evidence, produced before it and hence, no interference is called for and the appeals deserve to be dismissed.

8. Having gone through the medical evidence and the evidence on record, we are convinced that the complaint is fully proved the guilt of the accused. The oral testimony of all the witnesses are scrutinised by us. We have been convinced that the postmortem report and the ocular version of PW-5 Dr. Mukesh Becharbhai Patel Ex. 20, Medical Officer, Civil Hospital, Gandhinagar, and the injuries mentioned in col. 17 of the postmortem report received by the deceased, who was going to her uncle's home, was done to death by the accused. This is a homicidal death proved beyond reasonable doubt.

9. Ex. 55 are the written submissions before the learned trial Judge which have been extensively dealt with by the learned trial Judge. As per the

case of the prosecution, on 21.5.2005, in the evening at 5.00 O'clock, daughter of the complainant went to her uncle's house and while she was returning to home at about 5.00 O'clock, the accused caught hold of the hand of the victim and took her to the nearest hut situated in Sector-24, Gandhinagar, where the accused was residing. It was further the case of the prosecution that the accused had told the victim that the marriage of the victim which is fixed with a boy of same caste of the victim on 26.5.2005 be stopped at any cost otherwise he will see to it that the marriage will not be solemnised, and if the marriage is performed, he will kill her and also commit suicide, and a quarrel also took place between the accused and victim. Therefore, the appellant had inflicted knife blows on the abdomen, backside and on other parts of the body of victim and committed murder of deceased Bhartiben and also tried to commit suicide by inflicting knife blow on his body. It was also stated in the complaint that the clothes worn by the deceased was full of blood and immediately they called an auto rickshaw and went to the Gandhinagar Civil Hospital. The complainant's wife and his neighbour Babubhai Shankarhai Jadav went along with her to the hospital. It was further stated in the complaint that after the first aid treatment, for further

better treatment, deceased was sent to the Civil Hospital, Ahmedabad, where she was sent for some operation, and during treatment the victim died.

10. Therefore, having gone through the evidence of PW-2 Khanabhai Nathubhai Parmar Ex. 11, before whom the deceased had orally stated the name of the accused to have given blows to her. She was conscious at the time when she was taken to the hospital. This witness has seen her bleeding. The evidence of this witness is corroborated by the evidence of PW-3 Mahendra Jethabhai Sindhav Ex. 15, which shows blood stains on the clothes of the deceased. The inquest panchnama and the postmortem report shows the injury, and therefore, we have no hesitation in holding that it was a case of homicidal death and the author of the said death was none else but the accused himself. The evidence of PW-13 Janakben Khanjibhai Ex. 35 and PW-15 Ishvarbhai Karmashi Desai Ex. 39 shows the presence of the accused. PW-14 Babubhai Shankarhai Jadav Ex. 36 and PW-13 Janakben Khanjibhai Ex. 35 before whom the accused had inflicted the injuries. Though the deceased had requested to leave her but he inflicted the knife blows on the stomach and on the spine region which proved fatal. Therefore, we have no hesitation in holding that it was accused alone who had committed murder of the

deceased. His motive was very clear and intention is also there and we are unable to persuade ourselves that this is not a case of murder and would fall within any of the other definitions of sec. 301, 304-I or 304-II.

11. This takes us to the charge under section 309 of IPC. The injuries on the accused are evidence and which shows that he has tried to commit suicide. He had produced the knife and therefore, he having tried to commit suicide is also proved by the FSL report which are at page 221 of the paper-book. Thus, we hold that he is guilty of the offence punishable under section 302 for commission of the murder of the deceased. He had tried to commit suicide, and therefore also, he is convicted under section 309 of IPC. He has tried to restrain the deceased and PW-13, and therefore, the learned trial Judge has rightly convicted him under section 341 of IPC. This takes us to the last charge that the commission of the offence under section 135 of the Bombay Police Act. Notification was properly proved and he knowing that such a promulgation was there, he breached the same by keeping deadly weapon with him and therefore, the conviction under section 135 of the Bombay Police Act requires to be confirm.

12. We are in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence.

13. In the result, this appeal is dismissed. The impugned judgment and order of conviction and sentence dated 27.2.2006 passed by the learned Addl. District & Sessions Judge, Gandhinagar in Sessions Case NO. 91/2005, is confirmed. R & P to be sent back to the trial court, forthwith. However, it is clarified that life would not mean till last breath and his case may be considered after 14 years by the appropriate authority.

**(K.S.JHAVERI, J.)**

**(K.J.THAKER, J)**

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