

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL APPEAL NO. 156 of 2011**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE ANANT S. DAVE**

**and**

**HONOURABLE MR.JUSTICE Z.K.SAIYED**

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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 or any order made thereunder ?	

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JAYANTIBHAI SABURBHAI PARMAR....Appellant(s)

Versus

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

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Appearance:

MR YV BRAHMBHATT, ADVOCATE for the Appellant(s) No. 1

MS JIRGA JHAVERI ADDL. PUBLIC PROSECUTOR for the

Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE ANANT S. DAVE**  
**and**  
**HONOURABLE MR.JUSTICE Z.K.SAIYED**

**Date : 31/08/2015**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE ANANT S. DAVE)**

1. This appeal under Section 374 of the Code of Criminal Procedure, 1973 is filed by the appellant/original accused against the judgment of conviction and order of sentence passed by Additional Sessions Judge and Fast Track Court NO.2 at Nadiad in Sessions Case No. 11 of 2008 on 7.8.2010, by which, the appellant is convicted for offence under Section 302 of Indian Penal Code and sentence to undergo life imprisonment and also to pay fine of Rs.5,000/- and in default of fine further ordered to suffer R.I. for 1 year and also ordered to suffer R.I. for six months and also ordered to pay fine of Rs.500/- and in default of fine further order to R.I. for one year for the offences punishable under Section 504 of Indian Penal Code and also ordered to suffer R.I. for six months and fine of Rs.500/- and in default of fine further ordered R.I. for one month for the offences punishable under Section 135 of Bombay Police Act.

2. Brief facts of the case of the prosecution are as under:

2.1. On the day of incident which took place on 25.11.2007 around 5:30 in the evening at Village:Chapatiya of Taluka: Thasra when the ceremony of sacred fire was organized at the temple of Bhathiji on the eve of Dev Diwali for which fund of Rs.350/- was collected from villagers. The complainant and another person named Dilipbhai both had gone to nearby town Thasra for bringing items for ceremony and after the ceremony was

completed around 5:30 p.m. Ganpatbhai, deceased came at temple and inquired about account of money collected for the ceremony. At that time complainant, Bhalabhai Chaturbhai Parmar brother of Ganapatbhai assured him that he would give account for money collected for the ceremony later on and then took him to his residence. Mean while however, Jayantibhai Saburbhai Parmar, accused/convict, the appellant herein came at the scene of offence before Ganpatbhai deceased was taken to the residence of the complainant and hit exchange of words took place in which both the persons deceased as well as accused used filthy language but thereafter Ganpatbhai was taken by complainant to his residence. The appellant herein thereafter went to his residence brought out a stick went to the residence of Ganpatbhai and inflicted blows on back and on parietal region, over head and also on pelvis and thereafter Ganpatbhai fell down and succumbed to injuries. Upon shouting all neighbours gathered at the scene of offence, lathi was snatched by one Hareshbhai Bhathibhai and accused run away and accordingly complaint was lodged at Sevaliya Chowky and investigation was carried out. At the end of investigation the charge-sheet was filed and case was committed and registered as Sessions Case No.11 of 2008 and upon appreciation of evidence on record namely 14 prosecution witnesses and 13 documentary evidence, the accused appellant came to be convicted as recorded above.

3. Learned advocate for the appellant has taken us to the record of the case including the judgement, in which, analysis of evidence, oral as well as documentary is

carried out by learned trial Judge. According to learned advocate number of anomalies appeared in the form of contradiction, improvements and embellishment in the testimonies of eye witnesses and Bhalabhai, the complainant who claims to be an eye witness admits in his deposition and in his cross that he had not seen the offence actually committed by the appellant. Likewise, the case of other eye witness, barring one Kokilaben, wife of the complainant PW-8 who was partly true to her version having seen the incident but failed to describe nature of injuries and therefore, her conduct is unnatural, particularly, when she had not tried to rescue the deceased or interfered in the scuffle. It is also submitted that there was no blood stain on the scene of offence and nobody had seen the incident in question including Dilipbhai PW-6, Hareshbhai, who is alleged to have snatched away stick from the appellant. Other witnesses, Amrutben PW-9 has also not fully supported the case of the prosecution. That other set of evidence in the form of injuries in the context of possibility of all injuries being simple except, injury No.1 and that deceased was suffering from 'Hernia'. The evidence on the part of investigating officer receiving information at Police Chowky Savaliya or at Thasra Police Station, there appeared to be inconsistency and when muddamal weapon was not recovered and sent for FSL the case of prosecution become doubtful. Learned advocate for the appellant submitted that it was a case of sudden and grave provocation and further there was no premeditation or planning and preparation to kill the deceased. It is submitted that in absence of any motive and intention in

the backdrop of a single blow of lathi which was found fatal even as per medical evidence, the applicant ought not to have been convicted for 302 of Indian Penal Code and awarding sentence of life imprisonment and fine. However, at the end of the argument, it was conceded by learned advocate for the appellant that even if entire evidence is re-appreciated the case of the appellant would fall under Section 304 (Part-I) and at least sentence of life imprisonment require to be modified and reduced to that of 10 years as the accused had undergone 7 years of imprisonment pursuant to the conviction so ordered.

4. Learned APP has supported the judgement and order of conviction and sentence so imposed by the trial Judge and submitted that the appellant had not only quarreled at the first instance with the deceased and abused but went back to his residence so as to bring out the stick and thereafter had gone to the residence of deceased where he had inflicted severe fatal blows on head which caused fracture and has internal injury noticed in postmortem report and deposed by medical officer was of severe hemorrhage is also a cause of death. Thus, intention of appellant convict was clear to kill the deceased and theory of single blow will not come to the help of the appellant. Besides, all eye witnesses fully supported case of the prosecution and result thereof, conviction and sentence order do not deserve any alteration and accordingly the appeal be rejected.

5. We have carefully gone through following evidences:

**Oral Evidence:**

<b>P.W.</b>	<b>Name</b>		<b>Exh .</b>
1	Pravinbhai Vechatabhai Parmar	Panch	20
2	Bhalabhai Chaturbhai Parmar	Complainant	24
3	Ravjibhai Desaibhai Parmar	Panch	33
4	Jakirhusain Rasulmiya Malek	Panch	41
5	Munirhusain Jahirkhan Malek	Panch	43
6	Dilipbhai Raysinghbhai Parmar		44
7	Natubhai Bhaijibhai Rathod	Panch	47
8	Kokilaben Bhalabhai Parmar		51
9	Amrutben Rajeshbhai Parmar		54
10	Govindrai Sanmukrai Darji	Talati	64
11	Dr. Jitendrabhai Premjibhai Parmar		70
12	Ranjitsinh Sardarsinh Dodiya		73
13	Amarsingh Umedbhai	ASI	78
14	Chimanbhai Ranchoodbhai		80

**Documentary Evidence:**

Inquest Panchnama	Exh.21
Complaint	25
Panchnama of place of offence	34
Panchanama of Muddamal Weapon	35
Panchanama of physical condition of accused	42
Panchanam of cloth of deceased	48
Map of scene of offence	65
P.M. Note	72

Panchanama of handing over the dead body	74
Map of scene of offence	75
Notification under Prohibition Act	76
Death Form	77
Copy of telephonic Vardhi	81

6. Upon perusal of record of the case, submissions made by learned advocate for the parties and nature of evidence, oral as well as documentary surfaced on record, we find that evidence of PW-2 that he reached near body of the deceased which was lying and checked his body, appears to be contradictory when in his testimonies it is revealed that he had not informed PW-1 immediately as he was not knowing the assailants and his presence was far away from the incident in question. Even complainant PW-2 in his deposition at Exh. 24 cannot be said to be eye witness and admits about reaching at the place of scene of offence only after it was over. There were of course no external injuries or blood as such was found from the body of the deceased but injury No.1 was fatal and Column No.17 and 19 of injuries external as well as internal read as under;

“17. (i) Behind Lt. Ear from mid point laceration of 1.5 cm x 1 cm and coinciding to the lacerated part there was bruise roughly of about 10 cm x 3 cm brownish in colour going downwards and medically towards c 3 vertebrae.

(ii) LT shoulder upper part laceration 3 in number 1x1 cm, 1x1 cm, 0.5x0.5 cm roughly

round in shape pinkish brown colour skin with some swelling of the concerned part.

(iii) Lt side on back from T 12 obliquely towards going down upto Lt. superior iliac spine 1.2 cm x 3 cm long in size tapering on both ends with swelling of the concerned part

(iv) Bruise on Lt. side 10 cm x 2 cm above the above mentioned. Bruise injury in no.(iii)

(v) Bruise on Rt shoulder on mid scapular region 1x1 cm roughly round in shape

(vi) Swelling on the Lt. inguinal region 7 cm x 5 cm. No signs of any bruise or laceration over the swelling.

Lt lower part of the occipital bone fractured.

As shown in 17(i) concerned underneath skin congested with active bleeding on incision.

Oblique fractures seen on Lt. Lower part of occipital bone-from lower end of Ltd. ear obliquely going downwards towards C3 vertebral fracture is of depressed fractured type.

Huge hemorrhage is seen under the fractured occipital bone with depressed brain mater."

Sections 300 and 304 of IPC is reproduced as under:

**"Section 300 Murder.-** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

**Secondly.-**If it is done with the intention of causing



such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

*Thirdly.*-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

*Fourthly.*-If the person committing the act knows that it is no imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

***Exception 1.- When culpable homicide is not murder.***-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

***304.Punishment for culpable homicide not amounting to murder.***- Whoever, commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

Or with imprisonment of either description for a

term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

6.1. Thus, even if case of the prosecution is believed to the extent that the appellant took upon the quarrel with deceased it is surfaced on record that filthy language was used by both of them and the accused though went back to his residence which was just opposite of Bhathiji temple and had no time to calm down lost power of control and picked up a stick, the fact remains that even as per version of eye witnesses and deposed by Doctor at Exh.70 single fatal blow was given on head resulting into huge hemorrhage, a cause of death, for which, intention can be attributed to the appellant to cause death of the deceased. At the same time inflicting repeated blows were not on any vital part of the body and therefore, we are inclined to accept submissions of learned advocate for the appellant that case against the appellant falls under Section 304 (Part-I) and accordingly the sentence is required to be reduced from life imprisonment to R.I. for 10 years.

7. For the foregoing reasons and considering totality of circumstances as on record, this appeal under Section 374 of Code of Criminal Procedure, 1973 is partly allowed. The conviction of the appellant-original accused under section 302 of Indian Penal Code vide judgment and order dated 7.8.2010 arising from Sessions Case No.11 of 2008 passed

by the additional Sessions Judge and Fast track Court No.2 at Nadiad is altered to conviction under Section 304 (Part-I) of Indian Penal Code. However the conviction and sentence of the appellant-original accused under Section 504 of IPC and under Section 135 of B.P. Act is upheld.

8. The appellant-convict is ordered to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.5,000/- in default, rigorous imprisonment for one year under Section 304 (Part-I) of IPC instead of life imprisonment as awarded by the trial court under Section 302 of IPC.

9. The period of sentence already undergone shall be considered for remission of sentence qua appellant-original accused.

10. R & P to be sent back to the trial Court forthwith.

**(ANANT S.DAVE, J.)**

**(Z.K.SAIYED, J.)**

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