

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1022 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P.P.BHATT****and****HONOURABLE MR.JUSTICE B.N. KARIA**

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 ?	

PRAVINBHAI BACHUBHAI NAYAK**Versus****STATE OF GUJARAT****Appearance:****HCLS COMMITTEE(4998) for the PETITIONER(s) No. 1****MR PV PATADIYA(5924) for the PETITIONER(s) No. 1****MR KL PANDYA APP(2) for the RESPONDENT(s) No. 1****CORAM: HONOURABLE MR.JUSTICE P.P.BHATT****and****HONOURABLE MR.JUSTICE B.N. KARIA****Date : 30/06/2018****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE P.P.BHATT)**

1. The present appeal under Section 374 of the Code Criminal Procedure Code is preferred by the accused-appellant herein against the judgment and order of conviction and sentence dated 14.10.2013 passed by the learned 3rd Additional Sessions Judge, Chhotaudepur, in Sessions Case No.27 of 2013, whereby the appellant original accused was ordered to undergo rigorous imprisonment of life imprisonment for the offence punishable under Section 302 of the Indian Penal Code with a fine of Rs.500/-.

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

2.1 According to prosecution case, on 05.04.2009 at around about 7:00 at night, one Madkiben Kanubhai Nayka made phone call to the complainant that the appellant had made assault on father of the complainant namely Jagdishbhai Makdabhai by giving axe blows on head and mouth. Thereafter, the complainant and his uncle reached to the place of offence. The complainant thereafter, called 108 Ambulance for taking the injured to Jetpur Hospital and the injured had expired during the course of medical treatment. It is also the case of prosecution that the appellant and said Madkiben, who is sister-in-law (Bhabhi) of the appellant and the deceased had doubt that the deceased and said Madkiben had illicit relationship. In this view of the above, the offence is committed by the appellant under Section 302 of the Indian Penal Code and offence is registered as C.R. I No.18 of 2013 with Jetpur Police Station.

3. Upon investigation being carried out, charge-sheet was filed in the Court of Judicial Magistrate First Class, against the accused for the above referred offences. Since the offence is triable exclusively by the Court of Sessions, the case was

committed to the Sessions Court. Thereafter, charge was framed against the accused and the accused pleaded not guilty to the charge and claimed to be tried.

4. During trial, the prosecution has examined as many as 9 witnesses and also produced documentary evidence on record. After completion of trial, learned Judge convicted the accused for the offences, as aforesaid, and imposed the sentence as referred to in earlier paragraph.

5. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 14.10.2013 passed by learned 3rd Additional Sessions Judge, Chhotaudepur, in Sessions Case No.27 of 2013, present appeal is preferred by the appellant-accused challenging the impugned judgment and order.

6. Heard learned advocate Mr. P.V. Patadiya for the appellant and Mr.K.L.Pandya, learned APP for the respondent-State.

7. It is submitted by learned advocate for the appellant that the judgment and order passed by learned Sessions Judge dated 14.10.2013 in Sessions Case No.27 of 2014 convicting present appellant is bad in law, illegal and liable to be quashed and set aside. It is further argued that there are major contradictions in deposition of witnesses and the evidence of the prosecution about the place of committing offence. It is also argued that one of the witness i.e. P.W.8 Nimisha Kanubhai Rathwa, who is child witness and evidence of said child witness is to be taken with great caution and there should be close scrutiny of the evidence of child witness before

accepting the same by a Court of law. In the present case, if the testimony of said child witness is perused carefully, the same does not inspire confidence. It is also submitted that one eye witness Madkiben Kanubhai Dhanuk, P.W.2, examined at Exhibit 19, is an interested witness and therefore, same is not believable. This witness has stated in her evidence that present appellant is her brother-in-law and she has no relation with her in-laws after the death of her husband. From the complaint also, it appears that the appellant had doubt that the said Madkiben had an illicit relation with deceased Jagdishbhai and due to altercation between the deceased and the appellant, the appellant had inflicted axe blow on the deceased. It is further submitted that the witnesses viz. PW 3 -Nareshbhai Jagdishbhai Rathwa, complainant, examined at Exhibit 20 and PW 6 – Hareshbhai Jagdishbhai Rathwa Exhibit 27 are also interested witnesses. No independent witness has been examined by the prosecution. Even no medical evidence is supporting the case of the prosecution. It is also submitted that the ingredients of alleged offences are not attracted to the appellant. Therefore, it is requested by learned advocate to quash and set aside impugned judgment and order passed by learned Sessions Judge. Alternatively, he has fairly submitted that if this Court is not satisfied to quash and set aside the impugned judgment, he could not claim clean acquittal or could not claim benefit of doubt and tried to persuade to the Court that conviction under Section 302 may be modified and the present appellant may be convicted under Section 304, Part-I, of the Indian Penal Code. Learned advocate placed reliance on the decision delivered by the Division Bench of this Court (Coram: Mr. A.J. Desai and Mr. R.P. Dholaria, JJ.) in Criminal Appeal No.1884 of 2012 dated 03.02.2018 and the

same is squarely applicable to the present case. Learned advocate for the appellant is pressing this appeal for reduction of sentence by converting the offence as stated above. It is also submitted that the appellant has undergone 5 years 2 months and 18 days upto 28.06.2018.

8. On the other hand, learned APP, Mr. Pandya has strongly opposed the contentions raised by learned advocate for the appellant. It is submitted that trial Court has passed the impugned judgment and order taking into consideration the facts and circumstances of the case as well as material, in the form of oral and documentary evidence produced before it and, hence, no interference is called for and the appeal deserves to be dismissed. Learned APP has further contended that it is the case of brutal murder and, therefore, no leniency should be shown to the accused since the injuries are on the vital part of the body. Hence, no interference is called for and appeal deserves to be dismissed.

9. Having gone through the material on record and the impugned judgment and order passed by the concerned Sessions Court as well as submissions, more particularly, the submissions of learned advocate for the appellant that he is pressing this appeal for only reduction of sentence as the appellant has undergone 5 years, 2 months and 18 days as per the jail remarks produced on record by the learned APP. It is an undisputed fact that some quarrel took place at about 8:30 p.m. on the date of incident at the house of the Madkiben. It also appears from the depositions and from the cross examination of the witnesses that due to some altercation, quarrel took place between the parties, pursuant to which the

appellant took out an axe and inflicted blows to the deceased. Considering the injuries sustained by the deceased, which is a result of blow of axe and considering the back ground of the incident, we are of the opinion that the case would fall for acceptance of Section 300 of Indian Penal Code, and therefore, offence cannot be treated as murder and can be treated as culpable homicide and therefore, the appellant is required to be punished under Section 304 of the Indian Penal Code. We have also perused the case cited by the learned advocate for the appellant, wherein the Division Bench of this Court has taken view to modify the judgment and order of conviction passed by the lower Court and converted the sentence for the offence punishable under Section 302 to Section 304 (Part-I) of Indian Penal Code, for a period of 10 years rigorous imprisonment. However, in our opinion, the bodily injury to the deceased who was aged about 42 years would fall in first part of Section 304 of Indian Penal Code.

10. Hence, the Appeal is allowed in part. The judgment and order of conviction dated 14.10.2013 passed by learned 3rd Additional Sessions Judge, Chhotaudepur in Sessions Case No.27 of 2013 is hereby modified to the extent that the sentence imposed upon the appellant is hereby converted into offence punishable under Section 304 (Part-I) and therefore, now the appellant ordered to undergo the rigorous imprisonment for the offence punishable under Section 304(Part I) of the Indian Penal Code for a period of 10 years instead of rigorous life imprisonment for the offence punishable under Section 302 of Indian Penal Code. Record and Proceedings be sent back to the trial Court forthwith.

11. This Court deems it just and proper to consider the victim compensation angle. The State Government has formulated Victim Compensation Scheme under Section 357 (A) of the Criminal Procedure Code so as to provide compensation to the victim who has suffered loss or injury on account of offence against body. The Victim Compensation Scheme is introduced with a laudable object of rehabilitation of the victim/his dependents. Considering the fact that Nareshbhai and Hareshbhai, both the sons of deceased Jagdishbhai Rathwa, who was aged about 42 years at the time of incident, have lost their father at the hands of the accused. Therefore, we are of the opinion that they should be compensated with a view to support them to live the remaining life. In our opinion, she should be awarded Rs.2 Lacs under the Victim Compensation Scheme. Therefore, the Secretary, State Legal Services Authority, is directed to take necessary steps for providing compensation to the victim under the Victim Compensation Scheme. The action taken report be placed before this Court within a period of one month..

(P.P.BHATT, J)

(B.N. KARIA, J)

YNVYAS