

MAHINDRA MULJI KERAI PATEL

v.

STATE OF GUJARAT

(Criminal Appeal No. 925 of 2001)

OCTOBER 14, 2008

[DR. ARIJIT PASAYAT AND C. K. THAKKER, JJ.]

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Gujarat High Court. The appellant faced trial for offence punishable under Sections 302, 307 and 506 (2) of Indian Penal Code, 1860 (in short ,IPC') for having caused homicidal death of one Kunverba Kanji (hereinafter referred to as the ,deceased') and causing injuries to Jasuben Premji, the complainant. The occurrence took place on 18.12.1989 at about 7 p.m. The background of the occurrence was that the appellant was supposedly in love with the grand-daughter of the deceased i.e. the daughter of the complainant Jasuben Premji. As the two ladies objected to the proposal of marriage given by the accused, he took out his anger on the two ladies and took the life of one and caused serious injuries to the other. After investigation, the Investigating Officer filed charge sheet, the trial was held as the accused pleaded innocence. Learned Additional Sessions Judge, Kutch at Bhuj was of the view that the accused was guilty of offence punishable under Section 324 IPC and was sentenced to undergo imprisonment for two years and pay fine of Rs. 2,000/- in default to undergo S.I. for six months. The accused was also found guilty of offence punishable under Section 452 and was sentenced to undergo imprisonment for one year and fine of Rs. 500/-, in default, to undergo S.I. for two months. Questioning the correctness of the order, the State preferred an appeal in terms of Section 378 of the Code of Criminal Procedure, 1973 (in short ,Code'). Primary challenge was to the acquittal of the accused in respect of offences punishable under Section 302 and 307 IPC. The High Court on analysis of the evidence, more particularly that of PW1, the complainant and PW2, the Doctor, came to hold that the trial court was not justified in directing the acquittal of the accused in respect of offence punishable under Section 302 IPC. The High Court also said that the accused was guilty of offence punishable under Section 307 IPC. Questioning the correctness of

the order passed by the High Court, the present appeal has been filed.

Learned counsel for the appellant submitted that while convicting the appellant for offence punishable under Sections 302 and 307 IPC the High Court lost sight of the fact that the weapon which was purportedly used was a small dharia (FAGA). The medical evidence also does not make out a case for conviction in terms of Section 302 IPC. Reference is made to the evidence of the Doctor PW2 to contend that there was no definite opinion as to whether the injury inflicted could have caused death in the ordinary course. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

2. Considering the evidence, and taking note of the nature of the injury that was inflicted, we are of the considered view that appropriate conviction would be under Section 304 Part-(II) IPC. The background facts show that there was pre-,meditation over exchange of words, one injury leading to the death was inflicted. Though in all cases the number of injuries is not the determinative factor for attracting Section 302 IPC, in the instant case, considering the nature of weapon used and surrounding factors, the conviction is altered. The conviction of the High Court under Section 307 IPC does not warrant any interference and is accordingly upheld. Coming to the question of sentence , it needs to be noted that occurrence took place on 18.12.1989 that too over a matter concerning the refusal of the deceased and the informant to the marriage proposal. He was about 19 years of age at the relevant point of time. Considering the peculiar facts of the case, we are of the view that the custodial sentence of six years would meet the ends of justice. The appellant was released pursuant to the order dated 10.05.2002. He shall surrender to custody forthwith to serve remainder of sentence.

3. The appeal is disposed of accordingly.