

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1340 OF 2008

ASHOKKUMAR MAGABHAI VANKAR

APPELLANT

VERSUS

STATE OF GUJARAT

RESPONDENT

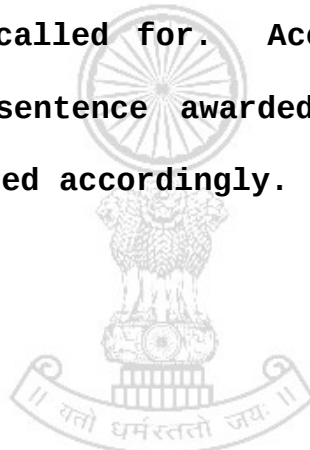
O R D E R

The High Court of Gujarat at Ahmedabad in Criminal Appeal No.301 of 1998 has affirmed the judgment and order passed by the Additional Sessions Judge, Sabarkantha at Himatnagar in Sessions Case No.32 of 1996. Being aggrieved by these judgments and orders, the appellant is before us in this appeal. The learned counsel appearing for the appellant, initially, would submit that the conviction and sentence awarded by the Trial Court under Section 302 of the Indian Penal Code (for short 'I.P.C.') requires to be converted into an offence under Section 304 Part II of I.P.C. In support of that submission, learned counsel has taken us through a portion of the evidence and the conclusions reached by both the Trial Court and the High Court. In our view, it would be suffice to refer only to para 31 of the judgment of the High Court to find out whether the submission of the learned counsel for the appellant requires to be accepted. Para 31 of the judgment of the High Court reads as under :

"31. Viewed in the light of the aforesaid decision, in the instant case it is true that the respondent had dealt one single blow on the head of the deceased with a wooden pestle. The said wooden pestle was 39½ inches in length and was thick at the lower end and narrow at the upper end. The circumference of the upper end (handle) of the pestle was about 4½ inches. There was a steel ring fitted on it at the lower end. The act of the respondent, though solitary in number had caused multiple fractures on the skull of the deceased leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with such a weapon would cause death. The injury sustained by the deceased not only exhibits the intention of the accused in causing the death of the victim but also the knowledge of the accused as to the likely consequence of such attack which could be none other than causing the death of the victim. In the circumstance, the contention raised by the learned Advocate for the accused that this was a case of a solitary blow and therefore, intention to kill was not established so as to bring the accused within the scope of exception to Section 300 IPC cannot be accepted. Accordingly, there being no question of taking any other view, the decisions relied upon by the learned counsel for the appellant in support of the proposition that when two views are possible, the view that favours the accused ought to be considered do not render any assistance to the case of the appellant...."

It is the case of the Prosecution that P.W.4, with the help of a bamboo stick had meddled with a live wire and thereby, had caused the disappearance of the electricity supply to the house of the accused. It is further the case of the Prosecution that the accused came out of his house with a long pestle and was quarreling with P.W.4. At this juncture, Maganbhai Khemabhai (since deceased) appeared in the scene and tried to pacify P.W.4

and the accused. The accused was not happy because of the intervention of Maganbhai Khemabhai (since deceased), therefore, he had pushed him. Further, the accused caught hold of the pestle, which had fallen down and he used it with such force that the head of the deceased person was broken into pieces. These aspects of the matter have been taken note of by both the Sessions Court as well as by the High Court to convict and sentence the accused person for an offence under Section 302 of the I.P.C. In our opinion, we do not see any error or legal infirmity in the findings and conclusions reached by both the Courts. Therefore, no interference in the said orders and judgments is called for. Accordingly, while affirming the conviction and the sentence awarded by the Trial Court, we reject this appeal. Ordered accordingly.



JUDGMENT

.....J.  
(H.L. DATTU)

.....J.  
(CHANDRAMAULI KR. PRASAD)

NEW DELHI;  
NOVEMBER 03, 2011