

(2012) 11 GUJ CK 0043
In the Gujarat High Court
Case No : Criminal Appeal No. 472 of 2007

Abdul Ajij Malek	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313
Penal Code, 1860 (IPC) — Section 201, 300, 302, 304

Citation : (2013) CriLJ 1390

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Mrudulmbarot, for the Appellant; Krina Calla, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—This appeal is at the instance of two convicts for the offences punishable under Sections 302 and 201 of the Indian Penal Code, and is directed against the order of conviction and sentence dated 9th February, 2007 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Surat in Sessions Case No. 222 of 2005. By the aforesaid order, the learned Additional Sessions Judge found the appellant guilty of the offence punishable u/s 302 of the Indian Penal Code, and consequently, sentenced him to suffer life imprisonment, and a fine of Rs. 2000/-. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for two months. The learned Additional Sessions Judge found the appellant guilty of the offence punishable u/s 201 of the Indian Penal Code, and consequently, sentenced him to suffer rigorous imprisonment for two years, and a fine of Rs. 1000/-. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for three months. Case of the prosecution:

The accused was married with the deceased, named, Aminabibi. The accused and his wife, the deceased, were running a tea stall at Salabatpura, Resham Wad,

Surat. The accused and the deceased were being helped to run the tea stall by the complainant named, Nizam khan Ibrahimkhan Pathan. The complainant Nizamkhan happened to be the son of the brother of the deceased. On 3rd July, 2005, which was a Sunday, the accused and his wife, the deceased, had come at their tea stall at around 8 O'clock in the morning, and being a Sunday, they closed the tea stall at 2:30 in the afternoon. The complainant Nizamkhan also retired to his home, no sooner the tea stall was closed. When the accused and the deceased were at their house, the accused demanded Rs. 50/- from his wife, the deceased, for purchasing liquor. The deceased had refused to give Rs. 50/- to her husband, the accused, saying that she hardly had any money to even cook food in the house. The accused felt bad, and went straight in the kitchen, picked up a knife from the kitchen, and hit one blow in the chest of his wife, the deceased, with the knife. As a result of which, his wife, the deceased, collapsed and started bleeding profusely. The son of the accused and the deceased, named, Shahnawaz had witnessed the assault by the accused on his wife, the deceased, and therefore, he immediately rushed to inform Nizamkhan, the complainant, who was sitting with his friends outside his house. On being informed, Nizamkhan came running at the house of the accused, and found that her aunty, the deceased, was lying in a pool of blood. Nizamkhan lifted the deceased and ran to a Hospital, which was at a nearby place. The deceased was admitted in the Hospital, where the Doctor, on examination, declared her to be dead.

2. Thereafter, immediately, at around 19:00 hrs., on 3rd July, 2005, i.e. on the day of the incident itself, within almost one hour, Nizamkhan lodged a First Information Report at the Police Station. On the strength of the First Information Report lodged by Nizamkhan, the investigation had commenced. The inquest Panchnama of the dead body was drawn. Thereafter, the Panchnama of the scene of offence was drawn in presence of the two Panchas. On 4th July, 2005, the accused was arrested, and accordingly, an arrest Panchnama of the person of the accused was drawn. The clothes, worn by the accused, at the time of the incident, were collected and were taken in possession for being sent to the Forensic Science Laboratory for chemical analysis. The statements of the witnesses were recorded. Finally, at the end of the investigation, charge-sheet was filed in the Court of learned Judicial Magistrate First Class at Surat.

3. As the case was exclusively triable by the Sessions Court, the Judicial Magistrate First Class, Surat committed the case to the Sessions Court u/s 209 of the Code of Criminal Procedure, 1973. The Sessions Court framed charge against the accused at Exh. 1, and statement of the accused was recorded. The accused did not admit the charge and claimed to be tried.

4. The prosecution adduced following oral evidence in support of its case.

1. PW 1. Nizamkhan Malek, Exh. 9, (original complainant, nephew of the deceased).

2. PW 2. Munuruddin Nasruddin, Exh. 11, Panch witness,
 3. PW 3. Sajidkhan Yasinkhan Pathan, Exh. 13, Panch witness,
 4. PW 4. Abrar Ahmed Tavakkal, Exh. 16, Panch witness,
 5. PW 5. Dr. Dhaval Jivanlal Patel, Exh. 20, Medical Officer,
 6. PW 6. Dr. Umesh Hasmukhlal, Exh. 23, Medical Officer,
 7. PW 7. Saguftabibi Abdul Aziz, Exh. 25, witness,
 8. PW 8. Shahnawaz Abdul Aziz, Exh. 27, witness,
 9. PW 9. Ibrahim Chandmiya Pathan, Exh. 28, witness,
 10. PW 10. Pinakin Hiralal Parmar, Exh. 29, Police Inspector,
 11. PW 11. Kanubhai Narottamdas, Exh. 31, Investigating Officer,
5. The following pieces of documentary evidence were adduced by the prosecution.
1. Original complaint, Exh. 10,
 2. Inquest Panchnama, Exh. 12,
 3. Scene of offence Panchnama, Exh. 15,
 4. Arrest Panchnama of the accused, Exh. 18,
 5. Report of the officer of the Forensic Science Laboratory at the place of offence, Exh. 39,
 6. Panchnama of seizure of clothes of the deceased, Exh. 19,
 7. Certificate issued by the Hospital, Exh. 24,
 8. Post-mortem report, Exh. 21,
 9. Cause of death certificate issued by the new Civil Hospital, Exh. 22,
 10. Extract of station diary, Exh. 40,
 11. Extract of station diary, Exh. 41,
 12. Dispatch Note, Exh. 45,
 13. Receipt of the Forensic Science Laboratory, Exh. 30,
 14. Forwarding letter of the Forensic Science Laboratory, Exh. 46,
 15. Forensic Science Laboratory, Exh. 47,
 16. Serology report, Exh. 48,
 17. Notification under the Bombay Prohibition Act, Exh. 44,

18. Yadi of police station, Exh. 43,

19. Slip bearing signature of Panchas, Exhs. 17 & 33 to 38.

6. After completion of oral as well as the documentary evidence of the prosecution, the statements of the accused, u/s 313 of the Code of Criminal Procedure, 1973, was recorded, in which, the accused stated that the complaint was a false one and he was innocent.

7. At the conclusion of the trial, the learned trial Judge convicted the accused for the offences punishable under Sections 302 and 201 of the Indian Penal Code, and sentenced him, as stated hereinbefore.

8. Being dissatisfied with, both the accused appellants have come up with this appeal.

Submissions on behalf of the accused appellant.

9. Mr. Mrudul Barot, the learned advocate for the accused submitted that, he is not disputing the incident, which had occurred, but according to Mr. Barot, the learned trial Judge should not have convicted the accused appellant for the offence of murder, but the conviction should have been for the offence punishable u/s 304 Part II of the Indian Penal Code, as the case falls squarely within the Exception 1 to Section 300 of the Indian Penal Code. According to Mr. Barot, the present case is one of culpable homicide not amounting to murder. Mr. Barot submitted that it was the grave and sudden provocation, which led the accused in inflicting the knife injury on the body of his wife, the deceased, as his wife, the deceased, had refused to give Rs. 50/- for the purpose of buying liquor. According to Mr. Barot, the incident occurred at a spur of moment without any preplan or premeditation. Mr. Barot therefore, urged that the conviction of the accused for the offence of murder punishable u/s 302 of the Indian Penal Code be altered to one u/s 304 Part II of the Indian Penal Code by giving benefit of Exception 1 to Section 300 of the Indian Penal Code.

Submissions on behalf of the State

10. Mrs. Krina Calla, the learned Additional Public Prosecutor vehemently submitted that the trial court rightly found the accused guilty of the offence of murder of his wife, punishable u/s 302 of the Indian Penal Code, and there is no merit in the plea raised by the defence seeking benefit of Exception 1 to Section 300 of the Indian Penal Code. According to Mrs. Calla, there is not an iota of evidence even to remotely suggest that there was any provocation at the end of the deceased while refusing to give Rs. 50/- to the accused for buying liquor. According to Mrs. Calla, the accused, on being refused by his wife, the deceased, to give him Rs. 50/- very quietly, went in the kitchen, brought a knife from the kitchen, and inflicted a forceful blow in the chest resulting in the death of the deceased, within minutes from the time of the incident. Mrs. Calla therefore, urged that there being no merit in this appeal, the same be dismissed.

11. We have gone through the oral evidence on record, more particularly, the evidence of the PW 1, the complainant, Nizamkhan Pathan and the PW 8 Shahnawaz Abdul Aziz, the son of the accused and the deceased.

12. From the evidence on record, the picture, that emerges, is that on 3rd July, 2005, the accused and his wife had gone to their tea stall at 8 o'clock, in the morning, as per their daily routine and being Sunday, they returned home together at 2:30 in the afternoon. After closing the tea stall, the PW 1. Nizamkhan also retired to his home. At around 6 o'clock, in the evening, the accused demanded Rs. 50/- from his wife, the deceased, for purchasing liquor. The wife of the accused refused to give Rs. 50/, saying that there was hardly any money to even cook food in the house. On this trivial issue, the accused went inside the kitchen and brought a knife, and straightway inflicted injury on the chest of his wife, as a result of which, she bled profusely.

13. The PW 8, Shahnawaz, son of the accused and the deceased, who witnessed the incident, ran to inform the PW 1, Nizamkhan, who immediately, on being informed, reached the house, and found that his aunt, the deceased, was in a pool of blood. The PW 1, Nizamkhan immediately inquired with his aunt, the deceased, as to what had happened, and in reply, the deceased made an oral dying declaration that her husband demanded Rs. 50/- for liquor, and on refusing to give him Rs. 50/-, the accused got enraged and brought a knife from the kitchen, and inflicted injuries. At that point of time, the daughter of the deceased, Saguftabibi, was also present in the house. The daughter of the deceased, named, Saguftabibi i.e. PW 7, had also witnessed the incident. All the eye-witnesses have, very consistently, deposed about the incident, and Mr. Barot has also not disputed the factum of assault by the accused on his wife, the deceased. The evidence of the two eyewitnesses is also fully corroborated by the medical evidence on record. PW 5, Dr. Dhaval J. Patel, in his evidence, has deposed that the post-mortem of the dead body, revealed the following injuries.

External injuries:

(1) Stab wound seen present over left side of front of chest of size 2.5 c.m. x 0.8 c.m. x cavity deep situated 3 c.m. left to mid line. 2 c.m. below the inner end of clavicle & from inner to left nipple, & lower end acute & upper end comparatively blunt, directed upwards, inwards & backwards.

(2) Reddish colour abrasion over left side of upper part of neck, 1 x 0.2 c.m. in size.

No evidence of any palpable fracture.

Internal injuries:

Corresponding to external injury No. 1, after cutting skin, subcutaneous tissue enters in to the 7th intercostal space, & injures also lower end of 7th & upper end of 8th rib make a 4 c.m. long cut. After coming out from chest enters into diaphragm make injury of 2 c.m. & by piercing the lower lobe of left lung through

& through & enters into lower portion or anterior surface of right ventricle (1.5 c.m. cut). Diaphragm show extravasation.

Extravasation of blood present surrounding the injured tissues.

Pleura & pericardium correspondingly on chest cavity contains 1000 c.c. of blood. Both lungs pate weight R 380 gms L 350 gms.

14. The cause of death assigned was shock and hemorrhage due to a stab injury over the heart. However, according to Mr. Barot, the conviction could not have been for the offence of murder, as the assault by the accused on his wife was due to grave and sudden provocation.

15. Having heard the learned counsel for the respective parties, and having gone through the evidence on record, the only question, that falls for our consideration in this appeal, is as to whether the conviction of the appellant deserves to be altered from section 302 of the Indian Penal Code to one u/s 304 of the Indian Penal Code giving benefit of Exception 1 to Section 300 of the Indian Penal Code.

16. In the scheme of the Penal Code, culpable homicide is a genus and murder is specie. Every murder is culpable homicide, but not vice versa. Speaking generally, culpable homicide sans special characteristics of murder is culpable homicide not amounting to murder. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognizes three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the gravest form of culpable homicide which is defined in Section 300 as murder. The second may be termed as culpable homicide of the second degree. This is punishable under the first part of Section 304. Then there is culpable homicide of the third degree. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishment provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304. After setting out the four mental conditions, Section 300 lays down five exceptions which reduce the offence of murder again to culpable homicide which may be said to be culpable homicide not amounting to murder. These exceptions, thus, lay down the circumstances which mitigate the offence of murder. The exceptions specified in this Section are special exceptions which must be distinguished from the general exceptions specified in Chapter IV of the Penal, Code. The general exceptions rebut the prima facie liability of the offender and he is completely exonerated from blame. But the special exceptions specified in this Section do not completely exonerate him, but only mitigate the offence committed by him, and deduce his liability. The defence of provocation rests upon the fact that provocation was grave and sudden by reason of which the accused was deprived of his power of self control. One of the conditions for the operation of this exception is that the accused must have used force in consequence of grave and sudden provocation. It is notes that provocation is an external stimulus which can be objectively measured. But loss of self control is a subjective phenomenon.

To peep into the mind of the accused is seldom possible. The state of mind can be inferred from the surrounding circumstances. It is the temporary loss, and not the permanent or utter absence of reason or self control, which is contemplated by this Exception and, what is more such loss of self control must be shown to have been caused by grave and sudden provocative act or conduct of the victim. The following conditions are to be satisfied under the Exception:

- (i) there must be provocation to the accused
- (ii) the provocation must be grave;
- (iii) the provocation must also be sudden;
- (iv) the provocation must have deprived the accused of his power of self control;
- (v) the offence must have been committed giving loss of self control; and
- (vi) the person killed must have been the person giving provocation or another by mistake or accident.

17. These aspects were highlighted by the apex Court in *K.M. Nanavati Vs. State of Maharashtra*, . In applying the test, it is of particular importance to consider whether sufficient interval had elapsed, since the provocation to allow a reasonable man to cool; and to take into account the instrument With which the homicide was effected, because a retort in the heat of passion induced by provocation by a simple blow is very different thing from one by making use of a deadly weapon like a concealed dagger. It is also to be noticed that the provocation must be grave which means that it must be serious enough to influence the mind of the person provoked. If the provocation is not immediate and grave, but is the culmination of a long period of swaggering and insult, which finally makes an accused loose his temper, the benefit of Exception I cannot be given to him. A provocation, however grave which is not sudden, but is a chronic one, will not satisfy the requirements of this Exception. As observed by the Supreme Court in *K.M. Nanavati Vs. State of Maharashtra*, mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence, but that is, in itself, insufficient to invoke the provisions of Exception I. The word "sudden" involves two elements. First, the provocation must be unexpected, and secondly the interval between the provocation and the homicide should be as brief as possible. Provocation must be distinguished from resentment. Whether the provocation in a given case was grave and sudden is a question of fact. Each case has to be considered according to its own facts and the Court has to take into account the particular circumstance of the case. In the case at hand the narration of the fact situation as made above clearly rules out the applicability of the Exception. It is not a case where it can be said that there was any grave and sudden provocation which deprived the accused of his self-control.

18. Even assuming for a moment, though there is no evidence in that regard that

some altercation might have taken place between the accused and his wife, the deceased, at the relevant point of time, still each and every quarrel, before a murderous assault, would not give right to the assailant to plead that the killing had been done while being deprived of the power of self control due to grave and sudden provocation offered by the deceased. The test to determine whether the accused acted under grave and sudden provocation is whether the provocation given in the circumstances was likely to cause a normal and reasonable person belonging to the same class of society to which the accused belonged and placed in the situation in which the accused was placed to lose his self control to the extent of inflicting injuries that he did inflict. Words and gestures may also, under certain circumstances, cause grave and sudden provocation. In determining, whether the provocation was grave and sudden and of such a nature as to deprive the accused of the power of self-control, the condition of mind, in which the offence was at the time of provocation, should be taken into account. The provocation must be such as would upset not merely a hasty or hot tempered or hypersensitive person, but upset also a person of ordinary sense and calmness. The law does not take into account the abnormal creatures reacting abnormally but contemplates the acting of normal beings in given situation. In a marital life, wear and tear between the husband and wife is very mundane, and by chance, if there is any altercation between the two on any trivial issue, then it could not be said that there was provocation at the end of the wife, which led the husband in taking the extreme step of causing her death by inflicting injuries with a knife.

19. We have no doubt in our mind that the present case is not one, which attracts Exception 1 to Section 300 of the Indian Penal Code. There was no provocation worth the name, by the wife of the accused, the deceased. The accused wanted Rs. 50/- for consuming liquor, and his wife refused to give him Rs. 50/-, saying that there was no money even to cook food. Such was the apathy of the deceased, and in such circumstances, the accused, very mercilessly, killed his own wife by inflicting a forceful blow in the heart with a knife, which he had brought from the kitchen.

20. The Supreme Court in *Virsa Singh Vs. The State of Punjab*, , considered the provisions of S. 300 I. P. C. While considering Thirdly of S. 300 I. P. C.; their Lordships of the Supreme Court at page 467 of the report (AIR) stated the law thus:--

To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly";

First, it must establish quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that

some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

14. Illustration (c) to S. 300 I.P.C. reads thus:

(c) A intentionally gives Z a sword cut or club wound sufficient to cause the death of a man in the ordinary course of nature. Z dies, in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

As has been mentioned in Illustration (c) to S. 300 I.P.C., it is not necessary for the prosecution to prove that the accused had intended to cause the death of the victim. The prosecution has only to prove that the accused intentionally caused injuries sufficient to cause the death of the victim in the ordinary, course of nature, and on such proof the provisions of Thirdly of S. 300 I.P.C. are satisfied and thereby the offence committed would be murder punishable under S. 302 I.P.C. Their Lordships of the Supreme Court again considered the provisions of S. 300 I.P.C. in *Kalarimadathil Unni Vs. State of Kerala*, . At page 1878 : (1966 Cri LJ 1509 at p. 1519) of the report their Lordships laid down the law thus:

The third clause [that is Thirdly of S. 300 I.P.C.] discards the test of subjective knowledge. It deals with acts done with the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this clause the result of the intentionally caused injury must be viewed objectively. If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary way of nature

the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not. As was laid down in Virsa Singh Vs. The State of Punjab, for the application of this clause it must be first established that an injury, is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established.

(The square bracketed portions supplied).

Applying these tests to the facts of the present case, the prosecution has satisfactorily proved that the respondent-accused did cause the injuries found on the person of deceased Bharati; that the accused intentionally inflicted those injuries; and that the injuries were sufficient in the ordinary course of nature to cause death and the death was actually caused. Therefore, the requirements of Thirdly of S. 300 I.P.C. are fully satisfied and the offence committed is that of murder punishable under S. 302 I.P.C.

21. Applying the aforesaid tests to the facts of the present case, the prosecution has satisfactorily proved that the accused did cause the injuries found on the person of the deceased; that the accused intentionally inflicted those injuries; and that the injuries were sufficient in the ordinary course of nature to cause death and the death was actually caused. Therefore, the requirements of Thirdly of Section 300 of the Indian Penal Code are fully satisfied, and the offence committed is that of murder punishable u/s 302 of the Indian Penal Code. In our opinion, the case is not covered even by Exception 4 to Section 300 of the Indian penal Code. The accused mounted an assault on heart with the knife, and inflicted two serious injuries on the vital parts of the body. In the circumstances, in which the deceased was assaulted and done to death by the accused, her own husband, it cannot be said that the accused had not taken undue advantage or had not acted in a cruel or unusual manner in causing injuries found on her person. Consequently, Exception 4 to Section 300 of the Indian Penal Code is not attracted.

22. We shall now deal with the three decisions, which have been relied upon by Mr. Barot, in support of his submissions as regards Exception 1 to Section 300 of the Indian Penal Code is concerned. In Gaya Prasad Vs. State of M.P. and Others, , the Supreme Court altered the conviction of the accused from Section 302 of the Indian Penal Code to Section 304 Part II taking a note of the fact that the incident had occurred in the year 1986 and the accused had no intention to kill the deceased. In the said case, a quarrel had ensued between the accused and the deceased, who was in a drunken state, at the house of the accused. The accused had asked the deceased to go home, but the deceased refused to accede to the request of the accused. The accused had brought the deceased from his house on the road by lifting him but he had fell down. The accused hit the deceased with a spade on his head, as a result, the deceased had sustained

injuries on his head and had become unconscious. In the facts of that case, the Supreme Court took the view that the case was one falling in the category of culpable homicide not amounting to murder, as even according to the prosecution one blow alone was caused by the accused that too in a quarrel between the accused and the deceased inside the house of the accused, and the deceased had consumed liquor and was adamant not to leave the house of the accused which had necessitated the accused to drag him out of his house. The Supreme Court held that the accused had no preplan or intention to kill the deceased and his main worry was to get the deceased out of his house, who had consumed excessive liquor. As such, no principle of law could be said to have been laid down by the Supreme Court, but in the peculiar facts of the case, the Supreme Court thought fit to alter the conviction u/s 304 Part II of the Indian Penal Code. This decision, in our opinion, would not help the accused in any manner.

23. In *State of Andhra Pradesh Vs. Thummala Anjaneyulu*, , the Supreme Court altered the conviction of the accused from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code, holding that there was no intention on the part of the accused to cause the very injury, which he had caused and ultimately led to the death of the deceased. In the said case, the accused had developed intimacy with a girl, named, Suguna, daughter-in-law. The father-in-law, one day, found the accused and his daughter-in-law in a cattle shed, and that too in a compromising condition. The father-in-law raised an alarm on which the respondent ran away leaving behind a lungi and underwear belonging to him. On the next day, the deceased had gone to the house of a witness for the purpose of organizing a Panchayat with respect to some agricultural land. During the Panchayat proceedings, the deceased suspected that the accused was casting an evil eye on his wife. He, thereupon, had confronted the accused and had asked him as to why he was looking at the ladies whereupon the accused took out a knife and stabbed the deceased on the left side of his chest which resulted in a serious injury to the deceased. The Supreme Court considered the fact that the deceased and the accused and the witnesses had gathered outside the house to organize a Panchayat to settle a dispute between one Kistaiah and Ramulu, who were not, in any manner, connected with either party and it was at that stage that the accused was apparently provoked by the remarks of the deceased that he should not cast an evil eye on his wife and one Manemma, on which, he had suddenly taken out a knife which he was carrying and caused one injury in the chest. Even in this case, no principle of law could be said to have been laid down by the Supreme Court, and in the facts of the case, the Supreme Court thought fit to alter the conviction bringing the accused without culpable homicide not amounting to murder. This decision would also not help the accused of the present case in any manner.

24. In the case of *Mangesh Vs. State of Maharashtra*, , the Supreme Court altered the conviction of the accused from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code, taking into consideration that it

was not the case even in any of the dying declarations that the accused had premeditated or preplanned his action, or was having any information prior to the incident that the deceased would be found with his sister at the place of occurrence. Their meeting, according to the Supreme Court, might have been taken by the appellant as temerity. The Supreme Court held that it was a clear cut case of loss of self-control and in the heat of passion, the appellant had caused the injuries to the deceased. This decision also does not lay down any principle of law, which could be made applicable to the facts of the present case. This decision would also not help the accused of the present case in any manner. For the foregoing reasons, we do not find any merit in this appeal, and the same is, accordingly, dismissed. The order of conviction and sentence, imposed by the learned Sessions Judge against the accused appellant, is hereby confirmed.