

(2015) 09 GUJ CK 0073
In the Gujarat High Court
Case No : Criminal Appeal No. 1261 of 2005

Brijram

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 154, 25, 26, 27
Penal Code, 1860 (IPC) — Section 120-B, 143, 147, 148, 149

Citation : (2015) 09 GUJ CK 0073

Hon'ble Judges : M.R. Shah, J; Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Chirag B. Patel, for the Appellant; Himanshu Patel, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

M.R. Shah, J—Feeling aggrieved and dissatisfied with the impugned judgment and order dated 2.5.2005 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Vadodara in Sessions Case No. 233 of 1999 convicting the appellant herein - original accused for the offences punishable under Section 302 of the Indian Penal Code and under Section 135 of the Bombay Police Act and imposing sentence of life imprisonment and fine of Rs. 5000/- and in default to suffer one month simple imprisonment for the offence punishable under Sections 302 of the Indian Penal Code and four month simple imprisonment and fine of Rs. 500/- in default three days simple imprisonment for the offence punishable under Section 135 of the Bombay Police Act, the original accused No. 1 has preferred present Criminal Appeal.

2. That on the basis and pursuant to the complaint given by one Ranvijaysinh Rampalsinh Visen (Thakore) PW No. 11, which was registered by the Fatehganj Police Station as CR - No. 26 of 1995. The Investigating Officer of Fatehganj Police Station initiated investigation against the original accused for the offences

punishable under Sections 147, 148, 149, 307, 302, 120-B of the Indian Penal Code and Section 135 of the Bombay Police Act. That the said FIR was given by the original complainant at about 14.05 hours on 28.01.1995 for the offences alleged to have been happened at 11.00 hours on 28.01.1995. It was alleged in the FIR/complaint that there was a quarrel between the accused persons and deceased Mahendramal Gurkha and Suresh Gupta and others. It was alleged that on the date of incident when the complainant and his other friends where at the school the accused came there started quarreling and caused for quarrel was one girl Sonalben who were studying with them. It was alleged that at that time Kaliyo @ Brijram (original accused No. 1) gave knife blow on Mahendramal Gurkha and thereafter on Suresh Gupta. It was further alleged in the complaint that he was knowing all the accused. It was alleged that both the injured were taken to hospital. It was alleged that Mahendramal Gurkha was declared dead by the Doctor and Suresh Gupta who was seriously injured was admitted to hospital. That during the course of investigation, the Investigating Officer of Fatehganj Police Station recorded the statement of the witnesses including the parents of the deceased Suresh etc. That during the course of the investigation, the Investigating Officer also collected the documentary evidence. That during the course of investigation, the Investigating Officer also discovered the knife alleged to have been used by the original accused No. 1 Kaliyo @ Brijram at the instance of all the accused. That the dying declaration of the deceased Suresh Gupta was also recorded by the Executive Magistrate. At this state, it is required to be noted that Suresh Gupta who sustained serious injuries caused by the original accused No. 1 - Kaliyo @ Brijram who was immediately admitted to the Hospital, succumbed to the injuries after approximately a month due to septicemia.

2.1. That after concluding investigation, Investigating Officer filed charge sheet against all the accused for the offences punishable under Sections 143, 147, 148, 149, 302 r/w Section 34 of the Indian Penal Code and Section 135 Bombay Police Act. That as the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the learned Sessions Court, Vadodara. All the accused pleaded not guilty and therefore, they came to be tried by the learned Sessions Court for the aforesaid offences. That learned Sessions Court framed the charge against the accused persons at Exh. 35 for the offences under Section 143, 147, 148, 149, 302 and 34 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2.2. To prove the case against the accused, prosecution examined as many as 25 witnesses as under:

2.3. Through the aforesaid witnesses, prosecution brought on record following documentary evidence:

2.4. That after closure of the evidence on behalf of the prosecution, further statement of the accused came to be recorded under Section 313 of the Code of Criminal Procedure. All the accused denied having committed any offence as alleged.

2.5. That during the trial, most of the witnesses were declared hostile. However, on appreciation of evidence of rest of the witnesses i.e. (1) Mohanlal Baijnath Gupta - Father of the deceased Suresh (Exh. 84), (2) Ramkaliben Mohanlal Sharma - Mother of the deceased Suresh (Exh. 87), (3) Anadilal Ramsing Saini - concerned officer who was on duty at SSG, Government Hospital, Vadodara at the relevant time, who recorded the first Vardhy (Exh. 69), (4) Varsanbhai Gohaidabhai Rathwa - PW No. 22 - PSO, Raopura Police Station who recorded second Vardhy in the Station diary, (5) Shivprasad Gordhanlal Thada (Marwadi) - PW No. 24 (Exh. 113) and Dr. Sunil Mavjibhai Patel - PW No. 25 - Medical Officer, SSG Government Hospital (Exh. 115) and on appreciation of documentary evidence, more particularly, Hospital Vardhy (Exh. 70) the complaint given by the Ranvijaysinh Rampalsinh Visen (Thakore) (Exh. 65) etc. the learned Sessions Court has held that original accused No. 1 - appellant herein guilty for the offence punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act and has acquitted rest of the accused-original accused Nos. 2 to 5. That by impugned judgment and order, the learned Sessions Court has sentenced the appellant-original accused No. 1 to undergo life imprisonment for the offences under Section 302 of the Indian Penal Code with fine as stated above and/or also sentenced to undergo the sentence as observed herein above for the offence under Section 135 of the Bombay Police Act with fine and in default to undergo further sentence as observed herein above.

2.6. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Sessions Court, the appellant-original appellant has preferred the present Criminal Appeal.

3. Shri B.S. Patel, learned advocate for the original accused No. 1 has vehemently submitted that as such learned trial Court has materially erred in convicting the original accused No. 1 for the offences punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act.

3.1. It is vehemently submitted by Shri B.S. Patel, learned advocate for the original accused that impugned judgment and order of conviction imposed by the learned trial Court is contrary to evidence on record. It is submitted that as such all the witnesses including original complainant were declared hostile. It is submitted that the evidence of the rest of the witnesses as such did not support the case of the prosecution. It is submitted that therefore, the trial Court has seriously erred in convicting the appellant herein.

3.2. It is further submitted that the learned trial Court has seriously erred in ignoring the dying declaration made by the deceased Suresh Gupta which was recorded by the Executive Magistrate, which disclosed four unknown persons and one Sohan and the appellant was not named.

3.3. It is further submitted that the learned trial Court has seriously erred in observing that the accused has tampered with the prosecution witnesses. It is further submitted by Shri Patel, learned advocate for the original accused No. 1

that learned trial Court has seriously erred in relying upon the FIR even though the complainant who was examined as PW No. 11 was declared hostile. It is further submitted by Shri Patel, learned advocate for the original accused No. 1 that as such evidence of the hostile witness cannot be considered unless it can be corroborated on any other proved and valid evidence.

3.4. In the alternative, it is submitted by Shri Patel, learned advocate for the original accused No. 1 that in any case the learned trial Court has erred in holding the original accused No. 1 guilty for the offence punishable under Section 302 of the Indian Penal Code. It is submitted that even considering the evidence on record and case of the prosecution as it is, the case would not fall under Section 302 of the Indian Penal Code. It is submitted that in the facts and circumstances of the case, more particularly, when the incident took place all of sudden and the quarrel took place all of sudden in the hit of the moment, the original accused No. 1 gave knife blow, at the most case may fall either under Section 304 Part I or Section 304 Part II of the Indian Penal Code. It is submitted that so far as deceased Suresh Gupta is concerned, he died after a period of approximately one month and he died due to septicemia, due to injury, relying upon the decision of the Hon"ble Supreme Court in the case of B.N. Kavatakar and Anr. vs. State of Karnataka reported in 1994 (suppl) 1 SCC 304 and in the case of Maniben Vs. State of Gujarat, AIR 2010 SC 1261 : (2009) 12 JT 82 : (2009) 10 SCALE 654 : (2009) 8 SCC 796 : (2009) 12 SCR 753 : (2010) AIRSCW 570 : (2009) 5 Supreme 700 , it is submitted that for the death of deceased Suresh Gupta case at the most would fall under Section 304 Part I of the Indian Penal Code.

Making above submissions and relying upon the above decisions, it is requested to alter the conviction from Section 302 of the Indian Penal Code to either under Section 304 Part I or Section 304 Part II of the Indian Penal Code. He has submitted that looking to the age of the original accused No. 1 at the relevant time and more than 20 years have passed after the incident, it is requested to not to impose the maximum punishment as provided under Section 304 Part I of the Indian Penal Code or 10 years for the offences punishable under Section 304 Part II of the Indian Penal Code.

4. Present appeal is opposed by Shri Himanshu Patel, learned Additional Public Prosecutor for the respondent State. Shri Patel, learned Additional Public Prosecutor appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case no error has been committed by the learned trial Court in holding the original accused No. 1 guilty for the offences punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act.

4.1. He has vehemently submitted that in the facts and circumstances of the case and on appreciation of evidence, the learned trial Judge has rightly not believed and/or discarded the dying declaration by deceased Suresh Gupta recorded before the Executive Magistrate. It is vehemently submitted that even

the Executive Magistrate in its cross examination has specifically admitted that he did not record the opinion of the Doctor, when he recorded the dying declaration that the patient/Suresh Gupta was conscious and/or fixed state of mind. It is submitted that there are other evidence on record, more particularly, deposition of the Ramkaliben Mohanlal Sharma-Mother of the deceased Suresh (PW No. 19) and Shivprasad Gordhanlal Thada (Marwadi) (PW No. 24), it has come on record that after the deceased Suresh Gupta was brought to the hospital, he was unconscious for three days. It is submitted that therefore, the learned trial Judge has rightly not believed dying declaration of the deceased Suresh Gupta recorded before the Executive Magistrate.

4.2. It is further submitted by Shri Patel, learned APP that in the present case as such there was discovery of weapon - knife at the instance of the accused and the knife was discovered at the instance of the accused, more particularly, original accused No. 1 and knife was having the blood stain. Therefore, relying upon the decision of the Hon"ble Supreme Court in the case of Raja @ Rajinder vs. State of Hariyana reported in JT 2015 (4) SC 57 as well as in the case of State of Maharashtra Vs. Damu Shinde and Others, AIR 2000 SC 1691 : (2000) CriLJ 2301 : (2000) 5 JT 575 : (2000) 4 SCALE 8 : (2000) 6 SCC 269 : (2000) AIRSCW 1617 , it is submitted that as held by the Hon"ble Supreme Court in the aforesaid decisions if accused gives information which relates to discovery of fact in consequence of information received from him, same is admissible and therefore, the learned Judge has rightly accepted that part of disclosure statement which led to recovery. In the aforesaid decision, Hon"ble Supreme Court has observed that if an accused person gives a statement that relates to the discovery of a fact in consequence of information received from him is admissible. It is further held that recovery made at the instance of the accused has the relevant consideration which can be accepted and it is admissible in the evidence.

4.3. It is further submitted by Shri Patel, learned Additional Government Pleader for the respondent State that in the present case as such there are three dying declarations before the different witnesses including the PW No. 24-Shivprasad Gordhanlal Thada (Marwadi) in which the name of original accused No. 1 - Kaliyo came to be disclosed. It is submitted that both the aforesaid witnesses are as such thoroughly cross examined by the defence, however both of them have fully supported the case of the prosecution.

4.4. It is further submitted by Shri Patel, learned Additional Public Prosecutor appearing on behalf of the State that even in the first Vardhy which was recorded by the concerned police officer of Ravpura Police Station, which was immediately recorded in the station diary, the name of the original accused No. 1 - Kaliyo was mentioned and it was stated that the it was the Kaliyo-appellant herein - original accused No. 1 who gave knife blow on the deceased Mahendramal Gurkha and Suresh Gupta. It is submitted that in view of the above overwhelming evidence on record and on appreciation of evidence when the learned trial Court has held

the appellant herein - original accused No. 1 guilty for the offence under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, the same is not required to be interfered with by this Court.

Making above submissions and relying upon the above decisions, it is requested to dismiss the present Appeal.

5. The submission of Shri Patel, learned advocate for the original accused that most of the witnesses have turned hostile and has not supported the case of the prosecution and therefore, also the learned trial Court ought to have discarded their evidence. This aspect may not be accepted in light of the decision of the Hon"ble Supreme Court in the case reported in AIR 2014 SC 1505 and because there are certain relevant parts which were admissible in law under Section 154 of the Indian Evidence Act. Therefore, the relevant parts of the complaint and the conversation of hostile witnesses where the names of the present appellant-accused is disclosed before them and not one by the qualitative analysis will permit this Court to hold that evidentiary value of the said witnesses. Hence, we place reliance on decision of the Apex Court in the case of Veer Singh and Others Vs. State of U.P., (2013) 12 AD 528 : (2014) 1 CCR 102 : (2014) CriLJ 1083 : (2014) 1 RCR(Criminal) 863 : (2013) 15 SCALE 162 : (2014) 2 SCC 455 : (2014) 3 SCJ 718 .

6. It is cardinal principle of law that even that part of the evidence of the hostile witness can be considered and/or admissible in evidence which supports the case of the prosecution and to that extent, the same can be relied upon. In the present case, though the original complainant is declared hostile, however before he is declared hostile there are certain admission by him in the examination in chief. It is required to be noted that as such he has specifically admitted having given the complaint (Exh. 65) and that he had signed the said complaint. He has not disputed the contents of the complaint given by him. Thus, complaint given by him, which was registered as FIR has been proved.

7. Heard the learned advocates for the respective parties at length. We have gone through the entire judgment and order passed by the learned trial Judge. We have re-appreciated the entire evidence on record so as to satisfy ourselves whether the learned trial Judge is justified in convicting the appellant herein - original accused No. 1 for the offences punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act or not?

8. The question which is required to be considered by this Court is whether death of the deceased Mahendramal Gurkha and Suresh Gupta were homicidal death or not. On re-appreciating the evidence on record, more particularly, the deposition of the Dr. Sunil Mavji Patel - PW No. 25 (Exh. 115) and the postmortem report and the injuries mentioned in the postmortem report and the cause of death mentioned in the postmortem report there cannot be any doubt in holding that death of Mahendramal Gurkha and Suresh Gupta were homicidal death. The cause of death mentioned in the postmortem report of the deceased

Mahendramal Gurkha reads as under:

"Shou & hemorrhage following stab injury to the vital organ heart."

The cause of death so far as deceased Suresh Gupta and so mentioned in the postmortem report is as under:

"Septic Peritonitis following injury."

8.1. Under the circumstances, learned trial Judge has rightly held that death of deceased Mahendramal Gurkha and Suresh Gupta were homicidal death.

9. At the outset, it is required to be noted that in the present case as such it can be said that there are three oral dying declarations by the deceased Suresh Gupta, in which, name of the appellant herein - original accused No. 1 has been disclosed. One before the mother of the deceased Suresh Gupta i.e. Ramkaliben Mohanlal Sharma; second before the Shivprasad Gordhanlal Thada (Marwadi) - PW No. 24. Ramkaliben Mohanlal Sharma - mother of the deceased Suresh Gupta has been examined as PW No. 19 at Exh. 87. She has categorically stated that after three days Suresh become conscious and at that time Suresh told her that Kaliyo (Appellant herein-original accused No. 1) has beaten him. She has also categorically stated that she came to know that one tailor had brought Suresh to hospital. That the defence has cross examined her but has fully supported the case of the prosecution.

10. Shivprasad Gordhanlal Thada (Marwadi)- PW No. 24 who took the Suresh to hospital and before whom Suresh told that it was Kaliyo who has beaten him has been examined as PW No. 24 at Exh. 113. He was the person who had taken Suresh to the Hospital may be along with Ranvijaysinh Rampalsinh Visen - original complainant. He had specifically stated that Suresh told him that there was quarrel with respect to school girl and he further told that Kaliyo had beaten him. From the entire evidence on record, it appears that initially when Suresh sustained injuries by Knife inflicted by Kaliyo and while he was being taken to hospital, he was conscious and thereafter he become unconscious and remained unconscious for approximately three days. The aforesaid witness Shivprasad Gordhanlal Thada has been cross examined by the defence however, he has fully supported the case of the prosecution, more particularly, prosecution case that it was the Kaliyo alone and alone who caused the injuries on the deceased Suresh by knife. In view of the aforesaid overwhelming evidence in the form of oral dying declaration before the aforesaid two witnesses it cannot be said the learned trial Judge has committed any error in holding that it was the appellant herein - original accused No. 1 alone and alone who caused the injuries on the deceased Suresh by knife.

11. At this stage, it is required to be noted that knife has been discovered at the instance of the accused person, more particularly, original accused No. 1 having blood stains of the deceased. At this stage, decision of the Hon'ble Supreme Court in the case of Raja @ Rajinder (supra) is required to be considered. The

case before the Hon"ble Supreme Court was on circumstantial evidence and there was a recovery of knife, blood-stained clothes and the ashes of the burnt blanket. The accused pleaded that disclosure statement made before the police custody and case were planted by the Investigating Agency. Not accepting the aforesaid plea of the accused, relying upon the decision of the Hon"ble Supreme Court in the case of Deoman Upadhyaya (supra) and Damu (supra), the Hon"ble Supreme Court has held that if an accused give information which relates to discovery of facts in consequence of information received, only that much of the information is admissible. In para 12 to 15, the Hon"ble Supreme Court has observed and held as under:

"12. Another circumstance that has been proven is about the recovery of knife, blood-stained clothes and the ashes of the burnt blanket. The seizure witnesses Sukha, PW-7 and Nanak, PW-9 have proven the seizure. It is submitted by the learned counsel for the appellant that police had recorded the confessional statement of the accused-appellant at the police custody and thereafter, as alleged, had recovered certain things which really do not render any assistance to the prosecution, for the confession recorded before the police officer is inadmissible. That apart, the accused had advanced the plea that the articles and the weapon were planted by the investigating agency. To appreciate the said submission in proper perspective, we may profitably reproduce a passage from State of U.P. v. Deoman Upadhyaya:

"The expression, "accused of any offence" in Section 27, as in Section 25, is also descriptive of the person concerned i.e. against a person who is accused of an offence, Section 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable insofar as it distinctly relates to the fact thereby discovered. Even though Section 27 is in the form of a proviso to Section 26, the two sections do not necessarily deal with the evidence of the same character. The ban imposed by Section 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By Section 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered."

13. In State of Maharashtra v. Damu, while dealing with the fundamental facet of Section 27 of the Evidence Act, the Court observed that the basic idea embedded in the said provision is the doctrine of confession by subsequent events, which is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. It further stated

that the information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information and, therefore, the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.

14. Thus, if an accused person gives a statement that relates to the discovery of a fact in consequence of information received from him is admissible. The rest part of the statement has to be treated as inadmissible. In view of the same, the recovery made at the instance of the accused-appellant has been rightly accepted by the trial Court as well as by the High Court, and we perceive no flaw in it.

15. Another circumstance which has been taken note of by the High Court is that the blood-stained clothes and the weapon, the knife, were sent to the Forensic Science Laboratory. The report obtained from the Laboratory clearly shows that blood stains were found on the clothes and the knife. True it is, there has been no matching of the blood group. However, that would not make a difference in the facts of the present case. The accused has not offered any explanation how the human blood was found on the clothes and the knife. In this regard, a passage from *John Pandian v. State* is worth reproducing:

"The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart [pic] from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

15.1 In view of the aforesaid, there is no substantial reason not to accept the recovery of the weapon used in the crime. It is also apt to note here that Dr. N.K. Mittal, PW-1, has clearly opined that the injuries on the person of the deceased could be caused by the knife and the said opinion has gone unrebutted."

12. In the aforesaid decision, the Hon"ble Supreme Court has held that if chain of circumstance is so completed that it unerringly pointing towards guilt of the accused, even in a case of circumstantial evidence, the accused can be held guilty. In view of the aforesaid and the oral dying declaration referred to herein above and when the knife used in committing the offence has been discovered at the instance of the accused, who alone and alone had knowledge about the place where the weapon is kept, it cannot be said that learned trial Court has committed any error in convicting the appellant.

13. This takes us to the next issue as to whether the case would fall within the purview of Sections 299 and 300 or Section 304 Part I of the Indian Penal Code. Looking to the evidence on record, more particularly, medical evidence as well as recovery of weapon i.e. knife and even considering the allegation in the complaint which was given by the complaint, presence of the accused has been

proved, who had given knife blow on the chest of the deceased Mahendramal Gurkha and also gave knife blow on the deceased Suresh. However, from the evidence on record, it cannot be said that accused had any intention and/or motive to do away with the deceased, however, he had a knowledge looking to the injuries, it cannot be said that he had no knowledge that the danger cause proximate to a practical certainty and such knowledge on the part of the accused was of the higher degree. As observed herein above, offence having committed by the accused is proved beyond reasonable doubt.

13.1 The residual question which arise before us whether section 302 of IPC has its application or it would be falling within section 304 of IPC.

13.2. This bring us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and murder its specie. All 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 the generic offence, the IPC practically recognize 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 punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

13.3. The academic distinction between murder and culpable homicide not amounting to murder has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Section 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

13.4. Clause (b) of section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the intention to cause death is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offenders knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to

section 300.

13.5. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the internal bodily injury or injuries sufficient to cause death in the ordinary course of nature.

13.6. The ingredients which are required are that there should be no motive. We are of the opinion that the culpable homicide is there, but it would fall within the provisions of section 304 Part-I and not part-II of IPC, as submitted by the learned advocate for the appellant. The factual scenario and the manner of assault, in our considered view, the appropriate conviction shall be under section 304 Part-I of IPC, and to that extent, the appeal requires to be partly allowed.

14. At this stage, it is required to be noted that considering the postmortem report and the cause of death, death of the deceased Suresh was due to septicemia. Under the circumstances, considering the decision of the Hon''ble Supreme Court in the case of Raja @ Rajinder (supra) & State of Maharashtra (supra), for the death of deceased Suresh, case would fall under Section 304 Part I of the Indian Penal Code.

15. Even with respect to the death of deceased Mahendramal Gurkha from the evidence on record, it emerges that there was quarrel took place all of sudden and in the hit of moment the accused cause the injury by knife on the chest. As observed herein above, there was as such no motive and/or intention of all the accused to kill the deceased Mahendramal Gurkha. Under the circumstances, even for the death of deceased Mahendramal Gurkha, the case would fall under Section 304 Part I of the Indian Penal Code and therefore, to that extent impugned judgment and order passed by the learned trial Court is required to be modified and the conviction is required to be altered.

16. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment and order passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Vadodara dated 02.05.2005 passed in Sessions Case No. 233 of 1999 is hereby modified and conviction is altered to for the offence under Section 304 Part-I of the Indian Penal Code and appellant herein original accused No. 1 is hereby sentenced to undergo 10 years RI with a fine imposed by the learned Sessions Judge including the default sentence. The impugned judgment and order passed by the learned trial Court in so far as convicting the appellant original accused No. 1 for the offence under Section 135 of the Bombay Police Act is hereby maintained. However, both the sentence may undergo concurrently. It goes without saying that appellant original accused No. 1 shall be entitled to set off for the period he remained in jail. As it is reported that the accused No. 1 is on bail during the pendency of the appeal, his bail bond shall stand canceled. Time to surrender to undergo remaining sentence is hereby granted upto 11.10.2015. Present appeal is disposed of accordingly.