

(2016) 01 GUJ CK 0140
In the Gujarat High Court

Case No : Criminal Appeal (for Enhancement) No. 362 of 2014 and Criminal Appeal No. 459 of 2014

Hasmukh Vinubhai Chavda

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 20-01-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 157, Section 313, Section 377
Penal Code, 1860 (IPC) — Section 302, Section 304, Section 307, Section 324, Section 326, Section 334, Section 376, S

Citation : (2016) 01 GUJ CK 0140

Hon'ble Judges : M.R. Shah and Z.K. Saiyed, JJ.

Bench : Division Bench

Advocate : Parthiv A. Bhatt, Advocate, for the Appellant; Moxa Thakkar, APP, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—1. As the common question of law and facts arise in both these Appeals and as such appeals arise out of the impugned judgment and order passed by the learned trial Court for enhancement of the sentence imposed by the learned trial Court, one by the original complainant and another by State, both these Appeals are heard, decided and disposed of by this common judgment and order.

2. At the outset, it is required to be noted that by impugned judgment and order the learned trial Court has convicted the respondent - original accused for the offence punishable under Section 304 Part-II of the Indian Penal Code and has imposed the sentence of 05 years R.I. with fine of Rs. 1,000/-, in default to undergo further 06 months S.I. The learned trial Court has also convicted the original accused for the offence under Section 334 of the Indian Penal Code and has imposed the sentence of 01 month R.I. with fine of Rs. 100/-, in default to undergo further 03 days S.I. The learned trial Court has also convicted original

accused for the offence punishable under Section 135(1) of the Bombay Police Act and has imposed the sentence of 04 months S.I. with fine of Rs. 500/- and in default to undergo further 01 month S.I.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Additional City Sessions Judge, Court No. 4, Ahmedabad, both the original complainant as well as State has preferred the present Appeals for enhancement of the sentence imposed by the learned trial Court.

4. The prosecution case in nutshell is as under:-

4.1 According to the complainant Hasmukhbhai Vinubhai Sagar (Chavda) marriage of his sister Gita, aged 26 years took place with the accused Sanjaybhai Parsottambhai Ajani, resident of Village : Talda, Dist. Amreli, prior to two years from the date of incident according to Hindu rites and customs. After her marriage, accused Sanjay was harassing her. As he was not doing any work, the sister of the complainant was staying at the house of complainant since last one year. It has been further alleged in the complaint that prior to four months from the date of incident, accused Sanjay came to the house of complainant and told to send Gita with him. At the relevant point of time, father of the complainant refused to send his daughter with him as he was not doing any work and, therefore, Sanjay Ajani gave threat to cause death of father of the complainant. Thereafter on 25.10.2011 at about 8:30 hours at night when complainant was watching television with younger brother and sister and mother of the complainant were preparing meal and father of the complainant was on first floor, at that time accused came with knife and inflicted blow on the stomach of brother of the complainant. At that time, hands of accused were caught by the complainant and his brother, Sanjay and as a result complainant and his brother received injuries. Therefore, on hearing shouts father of the complainant came down and caught accused with knife. It is further alleged that father of the complainant also received injuries on right hand and palm during this scuffle. Hence 108 ambulance was called and they were hospitalized in Sardaben Hospital, where complaint being CR No. I-648 of 2011 was registered for the offence under Section 326 of the Indian Penal Code.

5. That the FIR was investigated by the Investigating Officer of Odhav Police Station. That during the course of investigation, the injured died during treatment on the very next day and, therefore, the report was made for addition of charge for the offence punishable under Sections 302 and 324 of the Indian Penal Code. During the investigation the Investigating Officer recorded the statement of the concerned witness including the injured eyewitnesses and also collected the medical evidence including the postmortem report of the deceased. After concluding the investigation the Investigating Officer filed the charge-sheet against all the accused in the Court of learned Metropolitan Magistrate, Court No. 20, Ahmedabad. As the case was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the learned City Sessions Court, Ahmedabad which was transferred to the Court of learned Additional City

Sessions Judge which was numbered as Sessions Case No. 321 of 2012. The learned Additional City Sessions Judge framed the charge against the accused for the offences punishable under Sections 302, 324 and 506(1) of the Indian Penal Code and under Section 135(1) of the Bombay Police Act. The accused pleaded not guilty and, therefore, he came to be tried by the learned trial Court for the aforesaid offences.

6. To prove the case against the accused the prosecution examined the following witnesses:-

Through the aforesaid witnesses the prosecution brought on record the following documentary evidences:-

Sr. No.

Ex.

Name of the document

1

11

Panchnama of seizure of muddamal weapon and clothes of accused.

2

12, 21, 22

Panchslip

3

14

Inquest panchnama.

4

18

Panchnama of place of offence.

5

20

Panchnama of seizure of clothes of deceased.

6

24

Complaint.

7

31

Yadi for doing postmortem of deceased.

8

32

Report of postmortem.

9

35

Injury Certificate of complainant/injured Hasmukhbhai.

10

36

Injury Certificate of Vinubhai.

11

37

Yadi for treatment of complainant and injured person.

12

39

Yadi written by police to hospital for getting Injury Certificate.

13

40

Injury Certificate of accused Sanjaybhai.

14

43

Report of Section 157 of the Criminal Procedure Code.

15

44

Yadi written to officer of FSL for place of offence and report of FSL.

16

45

Dispatch receipt of muddamal.

17

46

Receipt of F.S.L.

18

47

Report of F.S.L.

19

48

Report of Serological Department of F.S.L.

20

49

Report of Chemistry Department of F.S.L.

21

50

Special Report.

22

51

Report for addition of Section 302 of the Indian Penal Code.

23

52

Notification of prohibition to keep arm.

24

53

Yadi for taking accused to Chotila for examining weapon/knife.

25

54

Letter written to Dy. Police Commissioner, Zone-5 for taking accused to Chotila for investigation.

26

55

Bill of Chamunda Store, Chotila for purchasing of gupti.

That on submitting the closing purshis by the prosecution further statement of the accused came to be recorded under Section 313 of the Criminal Procedure Code. In his further statement he denied having committed any offence. That at the conclusion of the trial on appreciation of the evidence by the impugned judgment and order the learned trial Court has convicted the original accused for the offence under Section 304 Part-II of the Indian Penal Code. From the impugned judgment and order it appears that the learned trial Court has convicted the original accused for the offence under Section 334 of the Indian Penal Code. However, it is required to be noted that there seems to be some typographical mistake in convicting the original accused for the offence under Section 334 of the Indian Penal Code as neither there was any case of the prosecution that accused has committed the offence under Section 334 of the Indian Penal Code. Even there was no charge framed against the original accused for the offence under Section 334 of the Indian Penal Code and the accused was charged for the offence under Section 324 of the Indian Penal Code with Section 302 of the Indian Penal Code. Even it was not the case of the prosecution that the accused voluntarily caused the hurt on grave and sudden provocation. It is required to be noted that as the allegation was that the accused also caused the injury on the injured eyewitness, while the injured eyewitness tried to save the deceased and, therefore, it was alleged that the accused has committed the offence under Section 324 of the Indian Penal Code. Therefore, it appears that there is typographical error while convicting the original accused for the offence under Section 334 of the Indian Penal Code and it should be for the offence under Section 324 of the Indian Penal Code. That by impugned judgment and order the learned trial Court has acquitted the original accused for the offence under Section 506(1) of the Indian Penal Code by giving benefit of doubt. The learned trial Court has also convicted the original accused for the offence under Section 135(1) of the Bombay Police Act. That by convicting the original accused for the offence under Section 304 Part-II of the Indian Penal Code the learned trial Court has imposed the sentence of 05 years R.I. with fine of Rs. 1,000/-, in default to undergo further 06 months S.I. both the original complainant and State have preferred present Appeals for enhancement of sentence imposed by the learned trial Court. At this stage, it is required to be noted that so far as impugned judgment and order of conviction passed by the learned trial Court convicting the original accused for the offence under Section 304 Part-II and for other offence is concerned, no Appeal has been preferred by the accused and the impugned judgment and order of conviction has attained the finality so far as original accused is concerned. At this stage, it is also required to be noted that both these Appeals preferred by the original complainant as well as State under Section 377 of the Criminal Procedure Code for enhancement of the sentence and no Appeal has been preferred either by the complainant or by the State against not convicting the original accused for the offence punishable under Section 302 of the Indian Penal Code or even for the offence under Section 304 Part-I of the Indian Penal Code. Under the circumstances, this Court is only required to consider whether by convicting the original accused for the offence

under Section 304 Part-II of the Indian Penal Code the learned trial Court is justified in imposing the sentence of 05 years R.I. with fine of Rs. 1,000/-, in default to undergo further 06 months S.I. only and whether the sentence imposed by the learned trial Court can be said to be adequate and commensurate with the gravity of the offence committed by the accused.

7. Ms. Moxa Thakkar, learned APP appearing on behalf of the State and Mr. Parthiv Bhatt, learned advocate appearing on behalf of the original complainant have vehemently submitted that the sentence imposed by the learned trial Court while convicting the original accused for the offence under Section 304 Part-II of the Indian Penal Code can be said to be inadequate and non-commensurate with the gravity of the offence committed by the accused.

8. Learned advocates appearing for the respective appellants have vehemently submitted that as such no convincing and cogent reasons have been assigned by the learned trial Court while imposing the sentence of only 05 years R.I. while convicting the accused for the offence under Section 304 Part-II of the Indian Penal Code.

8.1 It is further submitted by the learned advocates appearing on behalf of the original appellant that while imposing the sentence the learned trial Court has not properly appreciated the fact that as such the accused went to the place of the deceased and without any instigation by the deceased and/or his family members straightway gave two blows by knife upon the deceased and also caused the injury on the injured eyewitness i.e. brother of the deceased. It is submitted that when the accused went to the place of the deceased with knife and thereafter gave two blows that itself is suggestive of his intention, motive, preparation and conduct to commit the offence.

8.2 It is submitted that even the learned trial Court has not properly appreciated the fact that the blows on the deceased were given by the accused with such a force that the deceased succumbed to the injuries within 24 hours.

8.3 It is further submitted that even the conduct on the part of the accused of causing self injury by the knife on his hand shows the mind set and mens rea of the accused. It is submitted that therefore while imposing the sentence the learned trial Court has not exercised the discretion judiciously and has as such not applied its mind in its proper perspective while imposing the punishment/sentence. Relying upon the following decisions of the Hon''ble Supreme Court and recent decision of the Division bench of this Court in the case of State of Gujarat vs. Jaydip Damjibhai Chavda, rendered in Criminal Appeal No. 762 of 2011, it is requested to allow the present Appeals and to impose the maximum sentence provided under Section 304 Part-II of the Indian Penal Code.

9. Shri Mrudul Barot, learned advocate appearing on behalf of the original accused has tried to oppose the present Appeals by submitting that as such the accused was disturbed as his wife was not sent by his in-laws. It is submitted that therefore with such an upset mind when the accused committed the offence

the learned trial Court has rightly shown the leniency and has rightly imposed the sentence of 05 years R.I. It is submitted that in the facts and circumstances of the case the learned trial Court has exercised the discretion judiciously while imposing the punishment/sentence which can be said to be adequate punishment commensurate with the offence committed by the accused, the same is not required to be interfered with by this Court in exercise of appellate jurisdiction.

9.1 It is further submitted that even the accused also sustained the injuries, meaning thereby at the time of incident there was scuffle and quarrel and, therefore, it can be said that the offence was committed by the accused in grave and sudden provocation and, therefore, the learned trial Court has rightly imposed the sentence of 05 years R.I. Making the above submissions it is requested to dismiss the present Appeal.

10. Heard the learned advocates for the respective parties at length. As observed hereinabove, in both these Appeals the only question which is required to be considered by this Court as to whether in the facts and circumstances of the case by convicting the original accused for the offence under Section 304 Part-II of the Indian Penal Code the sentence imposed by the learned trial Court of 05 years R.I. with fine of Rs. 1,000/-, in default to undergo further 06 months S.I. can be said to be adequate sentence commensurate with the gravity of the offence committed by the accused?

11. From the evidence on record it emerges that there was some dispute between the accused and his wife and that his wife went to her parental house and left the accused as the accused was not doing any work. It also emerges that on the date of incident the accused went to the place of his in-laws with knife and straightway without any quarrel and/or provocation by anybody he inflicted two blows on the body of the deceased; one in the abdomen and second on the thigh. It also emerges that the deceased died while taking treatment within 24 hours i.e. on the very next date. That the accused also inflicted the injuries on the injured eyewitness, brother of the deceased while he was trying to save the deceased. It also emerges from the record/evidence on record that the deceased sustained following fatal injuries;

"(1) Oblique stitch wound of 2.5 cm size on left hypochondrium just below costal margin between anterior axillary line and mid clavicular line 15 cm below left nipple directed downwards and medially on opening wound, it is 2 x 0.5 cm x abdomen cavity deep. Margin easily gets separated. Its interomedial angle is acute and superolateral angle is broad margins are clean out suggestive of stab injury.

(2) Vertical midline surgical stitch wound of 19 cm size on front of abdomen, extending 15 cm above umbilicals and 4 cm below umbilias. It is left paramedian to umbilias.

(3) Transverse surgical drainage wound of 1.5 x 0.5 cm abdomen cavity deep on left side front of abdomen, 7 cm superolateral and left to umbilius as a part of

treatment.

(4) Transverse surgical drainage wound of 1.5 x 0.5 abdomen cavity deep on right side of front of abdomen. 7 cm superolateral and right to umbilicus of a part of treatment.

(5) Oblique stitch wound of 2 cm size directed upwards and laterally seen on upper and posterolateral part of right thigh 20 cm above right popliteal fossa and 21 cm below and postero medial to right anterior superior iliac spine. On opening stitch wound, it is 2 x 1 cm deeply directed upwards and medially and communicating with injury No. 6. Margins of wound easily gets separated. Its intero medial angle is acute and superolateral angle is broad margins are clean cut.

(6) Oblique 5.5 cm stitch wound directed downwards and laterally on upper and postero medial part of right thigh, 4 cm below gluteal groove and 4 cm supero medial to injury No. 5 on opening stitch wound margins are clean cut and easily gets separated. Its interolateral angle is acute and supero medial angle is broad. Both injury No. 5 and 6 are communicating with each other suggestive of perforating injury from injury No. 5 to injury No. 6. On opening injury No. 5 it is 5 x 1.5 cm size."

12. The cause of death shown in the postmortem report is shock and hemorrhage due to stab injuries sustained upon the body. Considering the aforesaid facts and circumstances which emerges from the evidence we fail to appreciate the impugned judgment and order passed by the learned trial Court acquitting the original accused for the offence under Section 304 Part-2 of the Indian Penal Code only and not convicting the original accused for the offence punishable under Section 302 or even for the offence under Section 304 Part-I of the Indian Penal Code. However, unfortunately neither the original complainant nor even State have preferred any Appeal against the impugned judgment and order acquitting the original accused for the offence punishable under Section 302 of the Indian Penal Code or not convicting the original accused for the offence under Section 304 Part-I of the Indian Penal Code. Therefore, considering the provisions of Section 377 of the Code of Criminal Procedure this Court is required to consider the adequacy of the sentence imposed by the learned trial Court only. Considering the aforesaid facts and circumstances of the case and the reasonings given by the learned trial Court while imposing the sentence of 05 years R.I. only it appears that the learned trial Court has not exercised the discretion judiciously while imposing the adequate punishment. While convicting the original accused for the offence under Section 304 Part-II of the Indian Penal Code imposing the sentence of 05 years R.I. with fine of Rs. 1,000/-, in default to undergo further 06 months S.I. can be said to be absolutely inadequate and not commensurate with the gravity of the offence committed by the accused. At this stage few decisions of the Hon'ble Supreme Court on imposing the adequate suitable punishment deserves to be considered which are as under:-

12.1 In the case of *Sumer Singh vs. Surajbhan Singh and others*, , (2014) 7 SCC 323, the Hon''ble Supreme Court had an occasion to consider the principle of sentencing proportionality and adequacy of sentence. In the aforesaid decision while emphasizing the need for appropriate punishment in paragraph-36 the Hon''ble Supreme Court has observed and held as under:-

"36 Having discussed about the discretion, presently we shall advert to the duty of the court in the exercise of power while imposing sentence for an offence. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society. Therefore, striking the balance we are disposed to think that the cause of justice would be best subserved if the respondent is sentenced to undergo rigorous imprisonment of two years apart from the fine that has been imposed by the learned trial Judge."

12.2 Again in the case of *Narinder Singh and others vs. State of Punjab and another*, , (2014) 6 SCC 466, the Hon''ble Supreme Court had an occasion to consider the sentencing policy, the purpose/jurisprudential justification of awarding sentence (deterrence, retribution or rehabilitation) vis-a-vis nature of crime. In para 14, 16 and 17 the Hon''ble Supreme Court has observed as under:-

"14. The Law prohibits certain acts and/or conduct and treats them as offences. Any person committing those acts is subject to penal consequences which may be of various kind. Mostly, punishment provided for committing offences is either imprisonment or monetary fine or both. Imprisonment can be rigorous or simple in nature. Why those persons who commit offences are subjected to such penal

consequences? There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.

16. What follows from the discussion behind the purpose of sentencing is that if a particular crime is to be treated as crime against the society and/or heinous crime, then the deterrence theory as a rationale for punishing the offender becomes more relevant, to be applied in such cases. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. Thus, even when there is a settlement between the offender and the victim, their will would not prevail as in such cases the matter is in public domain. Society demands that the individual offender should be punished in order to deter other effectively as it amounts to greatest good of the greatest number of persons in a society. It is in this context that we have to understand the scheme/philosophy behind Section 307 of the Code.

19. We would like to expand this principle in some more detail. We find, in practice and in reality, after recording the conviction and while awarding the sentence/punishment the Court is generally governed by any or all or combination of the aforesaid factors. Sometimes, it is the deterrence theory which prevails in the minds of the Court, particularly in those cases where the crimes committed are heinous in nature or depicts depravity, or lack morality. At times it is to satisfy the element of "emotion" in law and retribution/vengeance becomes the guiding factor. In any case, it cannot be denied that the purpose of punishment by law is deterrence, constrained by considerations of justice. What, then, is the role of mercy, forgiveness and compassion in law? These are by no means comfortable questions and even the answers may not be comforting. There may be certain cases which are too obvious namely cases involving heinous crime with element of criminality against the society and not parties inter se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases of murder, rape or other sexual offences etc. would clearly fall in this category. After all, justice requires long term vision. On the other hand, there may be, offences falling in the category where "correctional" objective of criminal law would have to be given more weightage in contrast with "deterrence" philosophy. Punishment, whatever else may be, must be fair and conducive to good rather than further evil. If in a particular case the Court is of the opinion that the settlement between the parties would lead to more good; better relations between them; would prevent further occurrence of such encounters between the parties, it may hold settlement to be on a better pedestal. It is a delicate balance between the two

inflicting interests which is to be achieved by the Court after examining all these parameters and then deciding as to which course of action it should take in a particular case."

12.3 While considering the discretion vested in the court while awarding the sentence less than the minimum provided under Section 376 of the IPC and the direction on the judges to levy the appropriate sentence the Hon"ble Supreme Court in the case of Shimbhu and another vs. State of Haryana, , (2014) 13 SCC 318, has observed in para 11, 19 and 22 as under:-

"11. The crucial stage in every criminal proceeding is the stage of sentencing. It is the most complex and difficult stage in the judicial process. The Indian legal system confers ample discretion on the Judges to levy the appropriate sentence. However, this discretion is not unfettered in nature rather various factors like the nature, gravity, the manner and the circumstances of the commission of the offence, the personality of the accused, character, aggravating as well as mitigating circumstances, antecedents etc., cumulatively constitute as the yardsticks for the Judges to decide on the sentence to be imposed. Indisputably, the sentencing Courts shall consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the crime committed.

19. Thus, the law on the issue can be summarized to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

This is yet another opportunity to inform the subordinate Courts and the High Courts that despite stringent provisions for rape under Section 376, IPC, many Courts in the past have taken a softer view while awarding sentence for such a heinous crime. This Court has in the past noticed that few subordinate and High Courts have reduced the sentence of the accused to the period already undergone to suffice as the punishment, by taking aid of the proviso to Section 376(2), IPC. The above trend exhibits stark insensitivity to the need for proportionate punishments to be imposed in such cases."

13. Applying the law laid down by the Hon"ble Supreme Court in the aforesaid decisions to the facts of the case on hand imposing the punishment/sentence of 05 years R.I. only with fine of Rs. 1,000/- in default to undergo further 06 months S.I. while convicting the original accused under Section 304 Part-II of the Indian Penal Code cannot be said to be adequate and/or suitable punishment commensurate with the gravity of offence committed by the accused. It appears that while imposing the punishment/sentence the learned trial Court has not

exercised discretion judiciously and has not applied the mind properly while exercising the discretion judiciously. Even the reasonings given by the learned trial Court while imposing the punishment/sentence cannot be said to be cogent reasons. What is observed by the learned trial Court while imposing the sentence is that looking to the age of the accused and his inclination and that there is a strong possibility of rehabilitation of the accused in the society. However, the learned trial Court has not appreciated the fact that even the deceased was also brother in-law of the accused and that too he was aged 21 years of age. In the facts and circumstances of the case narrated as above, we are of the opinion that in the present case imposing maximum punishment/sentence provided under Section 304 Part-II of the Indian Penal Code can be said to be an adequate punishment/sentence commensurate with the gravity of the offence. In the facts and circumstances of the case, therefore, we are of the opinion that this is a fit case to interfere with the impugned judgment and order in so far as imposing the sentence is concerned, as we are of the opinion that imposing the punishment/sentence of 05 years R.I. while convicting the original accused for the offence under Section 304 Part-II of the Indian Penal Code has resulted into miscarriage of justice.

14. In view of the above and for the reasons stated in the judgment both these Appeals succeed. The impugned judgment and order 18.1.2014 passed by the learned Additional City Sessions Judge, Court No. 4, Ahmedabad in Sessions Case No. 321 of 2012, whereby the learned trial Judge has imposed the sentence of 05 years R.I. while convicting the original accused for the offence punishable under Section 304 Part-II of the Indian Penal Code, is hereby modified to the extent that the respondent - original accused is hereby sentenced to undergo 10 years R.I. for the offence punishable under Section 304 Part-II of the Indian Penal Code. Rest of the judgment and order including the fine imposed is hereby confirmed except observing that there is typographical error in convicting the original accused for the offence punishable under Section 334 of the Indian Penal Code.

15. It is reported that at present the respondent - original accused is undergoing the sentence and is in District Jail Junagadh, therefore, the present judgment and order be communicated to the respondent - original accused and the concerned jail authority for the accused to undergo the sentence as per the present judgment and order.

16. Both these Appeals are allowed accordingly.