
(2019) 01 GUJ CK 0066
In the Gujarat High Court
Case No : R/Criminal Appeal No. 481 Of 2017

Jagdish @ Jago Madhabhai Molariya	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Gujarat Police Act, 1951 — Section 135(1)
Indian Penal Code, 1860 — Section 135(1), 299, 300, 302, 304
Code of Criminal Procedure, 1973 — Section 313

Citation : (2019) 01 GUJ CK 0066

Hon'ble Judges : J.B.Pardiwala, J; A.C. Rao J

Bench : Division Bench

Advocate : Sb Tolia, Harshit S Tolia, Parth S Tolia, Shirishchandra, Hk Patel

Final Decision : Partly Allowed

Judgement

1. This Appeal is directed by the appellant herein - original accused against the judgement and order dated 09.09.2015 passed by the 3rd Additional Sessions Judge, Jamnagar, in Sessions Case No.34 of 2012, by which, the appellant - Jagdish @ Jago Madhabhai Molariya is convicted for the offence punishable under Section 302 of the Indian Penal Code (for short "the IPC") and sentenced to undergo life imprisonment with fine of Rs.10,000/- and in default, he is to further undergo 3 months rigorous imprisonment. He is also convicted for the offence punishable under Section 135(1) of the Gujarat Police Act (for short "the G.P. Act") and sentenced to undergo 4 months rigorous imprisonment. Both the sentences were directed to run concurrently.

2. The prosecution case in brief is as under :

2.1 The deceased - Kumarsinh Mathubha Jadeja was a labourer in brick-kiln. At about 6.30 p.m. on 20.02.2012, the deceased Kumarsinh had a quarrel with the appellant - accused. On seeing the quarrel, the complainant - father of the deceased shouted at them and asked his son to proceed towards his house and the deceased proceeded towards his house, while the appellant was already

there near the house of the deceased. Suddenly, the deceased shouted that he was assaulted by the knife by the accused and he had proceeded towards the complainant. But, after few steps he stumbled and the complainant found wound on left thigh of his son. The complainant called an ambulance. After half an hour, the ambulance arrived and after examination by the doctor, his son was declared dead. The complaint was registered before the City "A" Division Police Station. After conclusion of the investigation, charge-sheet came to be filed against the appellant accused and Sessions Case No.34 of 2012 was committed to the Sessions Court, Jamnagar for the offence punishable under Section 302 of the IPC and Section 135(1) of the G.P. Act.

2.2 Record of the case shows that the charge for the offence under Section 302 of the IPC and 135(1) of the G.P. Act had been framed against the appellant accused for intentionally committing the death of the deceased Kumarsinh Mathubha Jadeja. After the trial, the Trial Judge convicted the appellant accused under Section 302 of the IPC and Section 135(1) of the G.P. Act and sentenced him as stated above. Against the aforesaid judgement and order of conviction and sentence, passed by the Sessions Judge, this Appeal has been filed by the appellant accused.

2.3 On perusal of the record, it appears that all together 11 witnesses have been examined on behalf of the prosecution.

2.4 PW-1 - Anvarbhai Alibhai and PW-2 - Rameshbhai Mohanbhai Parmar, both discovery panch witnesses are declared hostile. PW-3 - Bahadursinh Halaji Chudasama, PW-4 - Pravinsinh Shivubha Chauhan and PW-5 - Sumitaben Girdharbhai Bariya are the witnesses to the incident, who have been declared hostile. While PW-6 - Mathubha Khodubha - the complainant and solitary witness to the incident, has supported the prosecution case. According to his deposition, his son shouted and told him that the appellant accused had inflicted a wound on his left thigh with a knife. He had also seen the accused running from the place of the offence and his son had stumbled due to the injuries. He had also found that the left thigh of his son was injured with a knife and it was bleeding. Thereafter, he called the ambulance, where the doctor had declared his son dead. The cross-examination of the said witness was not helpful to the defence and the complainant had stucked to his deposition.

2.5 PW-7 - Bharatsinh Mathubha, is the brother of the deceased. He reached the place of incident after some time. He had asked his brother how he sustained injuries. The deceased had told that the accused had inflicted wound with a knife. He had seen left thigh of his brother injured. He had also seen his father - the complainant at the place of incident. According to him, his father had called the ambulance and the doctor, after examination, had declared his brother dead. Thereafter, his father had given the complaint to the police. He had also identified the accused, the knife and the clothes worn by the deceased at the relevant time.

2.6 PW-8 - Dr. Ketan Prakachbhai Balas, had performed the Post-mortem of the deceased. PW-9 - Bhimabhai Hardasbhai Keshwala is the P.S.I. of "A" Division Police Station. He had received the phone call from P.I. - Sarvaiya. He had visited the place of offence. In his presence, the complaint was registered and he had signed as 'before me'. He had also prepared the Inquest Panchnama and the Yaadi to the hospital. He had also collected the knife, chappal and blood samples. The Panchnama of the said was prepared, which is at Exh.-13 on the record of the case and further inquiry was given to P.I. - G.A. Sarvaiya.

2.7 PW-10 - Hitendrasinh Ravubha Jadeja was the PSO at Jamnagar City "A" Division Police Station, who had registered the complaint. PW-10 - Ghanshyamsinh Anopsinh Sarvaiya, was the P.I., Porbandar, who had conducted a further inquiry. He had arrested the appellant accused. He had also prepared the Panchnama of the clothes of the deceased with bloodstains on it. He had recorded the statement of the witness. PW-11 - Samir Motilal Joshi, is the P.I. who had conducted further inquiry after PW-10. He had also prepared the Panchnama of the clothes of the deceased, which were collected from the doctor, who had performed the Post-mortem and according to him, there was sufficient evidence against the appellant accused. He had filed the charge-sheet. Further Statement of the accused was recorded under Section 313 of the Cr.P.C. by the court and after the conclusion of the trial, the learned trial Judge has convicted the appellant accused and imposed sentence as stated above.

2.8 Apart from the aforesaid oral evidence, following documentary evidence has been produced by the prosecution :

- :: Documentary Evidences ::-

Sr. no.

Details

Exhibit no.

1

Panchnama of the local place of incident - Original.

13

2

Inquest Panchnama - Original.

14

3

Panchnama of the cloth seized from the dead body of the deceased - Original.

18

4

Office copy of the yaadi forwarded to perform the P.M. of the deceased Kumarsinh

39

5

Office copy of the police report to be sent for Inquest.

40

6

Post-mortem Report of the dead body of the deceased - Original.

41

7

Complaint of the complainant - Original

44

8

Yaadi forwarded to P.S.O. - City - 'A' Div. - Jamnagar to register the offence. - Original.

45

9

Primary Report of the local place of incident of F.S.L.- Mobile Van - Jamnagar. - Original.

46

10

True Copy of entry no. 35 of Station Diary.

48

11

True Copy of entry no. 27 of Station Diary.

49

12

Office copy of the yaadi regarding inviting F.S.L.- Jamnagar for investigation at the local place of offence.

50

13

Panchnama of the arrest of the accused as well as seizure of his clothes. - Original.

52

14

Yaadi forwarded to F.S.L. - Rajkot to carry out the analysis of Muddamal, Muddamal Dispatch note and Certificate of Authority.

58

15

Receipt of Muddamal received from F.S.L.-Jamnagar. - Original.

59

16

Photocopy of the Notification of prohibition to keep arms.

60

17

Forwarding letter of F.S.L.- Rajkot along with Muddamal Analysis Report - Original.

61

18

Muddamal Analysis Report and Sirological Analysis Report of F.S.L. - Rajkot - Original

62

3.At the time of argument, Mr. S.B. Tolia, the learned advocate appearing with Mr. Harshit S. Tolia, the learned advocate appearing on behalf of the appellant accused has contended that the deceased and the appellant accused were friends. There was no intention on the part of the appellant accused to kill the deceased.

3.1 It is further contended that as per the statement of the complainant, sudden verbal scuffle had happened between the deceased and the appellant and eventually stabbing was allegedly done by the appellant. There was no prior enmity between the deceased and the appellant. It is contended that the prosecution story is highly improbable as the statements of only interested witnesses i.e. the father and the brother of the deceased, are considered. The prosecution has failed to present single witness other than the interested witnesses and statements of witnesses declared as hostile has not been given

sufficient consideration. It is contended that only one blow of knife was inflicted on the left thigh of the deceased. It is not a vital part of the body and therefore, the appellant accused cannot be convicted under Section 302 of the IPC and contended that the punishment may be altered under Section 304 Part-I.

3.2 The learned advocate for the appellant has relied on the judgement of Harjinder Singh Vs. Delhi Administration reported in 1967 Law Suit (SC) 308, wherein in paragraph 10, it is held as under :

"Nevertheless, the deceased was in a crouching position when the appellant struck him with the knife. Though the knife was 5" to 6" in length including the handle it was nonetheless a dangerous weapon. When the appellant struck the deceased with the knife, he must have known that the deceased then being in a bent position the blow would land in the abdomen or near it a vulnerable part of the human body and that such a blow was likely to result in his death. In these circumstances it would be quite legitimate to hold that he struck the deceased with the knife with the intention to cause an injury likely to cause death. We are, therefore, of the opinion that the offence falls under Section 304 Part 1."

4. While opposing this appeal, Mr. H.K. Patel, the learned APP appearing on behalf of the State has contended that the order of the trial court is just and legal and it does not require any interference. The case of the prosecution is supported by the complainant. The deceased has died due to injury inflicted by the accused. The presence of the complainant at the place of incident is natural. He has rushed to the place of incident within a spur of moment. The deceased had given the name of the appellant accused. The case of the prosecution is established before the trial court.

5. After considering the rival submissions and the facts of the case, it is observed that culpable homicide is a generic term. The offence will amount to murder if the conditions laid down in Section 300 are satisfied. If the offence comes under Section 299 or under one or other of the exceptions to Section 300, it will be culpable homicide not amounting to murder.

5.1 With the intention of causing such bodily injury as is likely to cause death. With the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

5.2 The offence is culpable homicide if the bodily injury intended to be inflicted is likely to cause death, it is murder, if such injury is sufficient in the ordinary course of nature to cause death. The distinction is fine, but appreciable. It is a question of degree of probability. We think that it will generally resolve itself into a consideration of the nature of the weapon used. A blow from the fist or a stick on a vital part, may be likely to cause death, a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

5.3 It is for the court to ascertain, on the facts of each case, whether the offence

committed is murder or only culpable homicide not amounting to murder. That clause could be invoked only if the intended bodily injury is sufficient in the ordinary course of nature to cause death. What is the injury intended to, be inflicted by the accused can be ascertained, unless the accused admits that he intended to inflict a particular injury, only by the nature of the weapon or weapons used, by the seriousness of the injury caused and by the parts of the body on which the wounds are inflicted. Whether such injuries are likely to cause death or sufficient in the ordinary course of nature to cause death, would depend again on the different degrees of probability. If death was the most probable result, it would be murder.

6. In the case of Chacko alias Aniyam Kunju and others Appellants v. State of Kerala Respondent, reported in AIR 2004 SUPREME COURT 2688, the Hon'ble Supreme Court has observed and held as under:-

"10. 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 Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences :

Section 299 & Section 300

A person commits culpable homicide if the act by (which) the death is caused is done - Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done - INTENTION

(a) with the intention of causing death; or (1) with the intention of causing death, or

(b) with the intention of causing such bodily injury as is likely to cause death; or (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or (3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or KNOWLEDGE

(c) with the knowledge that the act is likely to cause death. (4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

11. 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 offender's 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.

12. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death of a first-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

13. 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 intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant Singh v. State of Kerala* (AIR 1966 SC 1874) is an apt illustration of this point.

14. In *Virsa Singh v. State of Punjab* (AIR 1958 SC 465), Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 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 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 was 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.

15. The ingredients of clause "thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows :

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 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."

16. The learned Judge explained the third ingredient in the following words (at page 468) :

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

17. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case (supra) for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300, IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done

with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

18. Thus, according to the rule laid down in Virsa Singh case (supra) even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

19. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

20. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages.

21. The position was illuminatingly highlighted by this Court in State of A. P. v. Rayavarapu Punnayya (1976 (4) SCC 382) and Abdul Waheed Khan alias Waheed and Ors. v. State of A.P. (2002 (7) SCC 175)."

7. In the case of State of A.P Appellant v. Rayavarapu Punnayya and another Respondents, reported in AIR 1977 SUPREME COURT 45, the Hon'ble Supreme Court has observed and held as under :-

"14. Clause (b) of Section 299 corresponds with cls (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 intentional 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 offender's 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.

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under Clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In Clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Sec. 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of 'probable' as distinguished from a mere possibility. The words 'bodily injury.... sufficient in the ordinary course of nature to cause death' mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

17. 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 intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant v. State of Kerala*, AIR 1966 SC 1874 is an apt illustration of this point.

18. In *Virsa Singh v. State of Punjab*, 1958 SCR 1495 = (AIR 1958 SC 465) Vivian Bose J. speaking for this Court, explained the meaning and scope of Clause (3), thus (at page 1500) (of SCR) = (at page 467 of AIR):

"The prosecution must prove the following facts before it can bring a case under Sec. 300, "3rdly". 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. It must be proved that there was an intention to inflict that particular 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 was 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."

19. Thus, according to the rule laid down in Virsa Singh's case (AIR 1958 SC 465) (Supra), even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Sec. 300 clearly brings out this point.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that cl. (4), of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general - as distinguished from a particular person or persons- being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the

matters involved in the second and third stages."

8. Keeping in mind the ratio laid down in the abovestated judgements coupled with the fact that there was a single injury and it was not on the vital part of the body of the deceased, the deceased and the accused were friends and the quarrel took place within a spur of moment and taking totality of the evidence into consideration and special features, it would be appropriate to convict the accused under Section 304 Part-I instead of Section 302 of the IPC. The accused has already undergone a sentence of 7 years and therefore, it would be in the interest of justice to reduce the sentence to the period already undergone.

9. In view of the aforesaid discussion, the present appeal is hereby partly allowed. The impugned judgment and order of conviction and sentence dated 09.09.2015 passed by the 3rd Additional Sessions Judge, Jamnagar, in the Sessions Case No. 34 of 2012, is modified and, the conviction of the appellant for the offence punishable under Section 302 of the IPC is altered to one under Section 304 Part-I of the IPC and the sentence is reduced to the period already undergone, without disturbing the order regarding fine, default sentence and sentence imposed for the offence punishable under Section 135(1) of the G.P. Act. The applicant convict is ordered to be released from jail forthwith, unless otherwise required in connection with any other offence. Bail bond stands cancelled. The record and proceedings be sent back to the concerned trial court forthwith.