

(2016) 03 GUJ CK 0204

In the Gujarat High Court

Case No : Criminal Appeal Nos. 131, 291 of 2005, 1556 of 2004 and Criminal Revision Application No. 600 of 2005

Kiransinh Hanumansinh Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Arms Act, 1959 — Section 25(c)

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 300, Section 302, Section 304, Section 323, Section 324, Section 325, Section 335

Citation : (2016) 03 GUJ CK 0204

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : Sunil S. Joshi, Advocate, for the Appellant; Shruti Pathak, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—1. All these appeals are preferred against the judgments and orders dated 10.9.2004 passed by learned Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Godhra in Sessions Case Nos. 188 of 2003 and 389 of 2003. By the impugned judgment, in Sessions Case No. 188 of 2003, accused No. 1 was held guilty for the offence punishable under Section 302 of the Indian Penal Code (for short, "IPC") and ordered to undergo imprisonment for life and to pay fine of Rs. 500/-, and in default of payment of fine, simple imprisonment of 15 days was imposed. Accused No. 1 was also held guilty for the offence punishable under Section 25(c) of the Arms Act and ordered to undergo three years" rigorous imprisonment and to pay fine of Rs. 100/- and, in default of payment of fine, simple imprisonment of five days was awarded. Accused No. 1 was acquitted of all other offences alleged against him. Accused Nos. 2 to 13 were acquitted of all the charges levelled against them. In Sessions Case No. 389 of 2003, accused Nos. 1 and 2 were convicted for the offence punishable under

Section 323 of IPC and ordered to undergo imprisonment for one year and to pay fine of Rs. 250/- and, in default of payment of fine, ten days" simple imprisonment was awarded. Accused Nos. 1 and 2 were also convicted for the offence punishable under Section 325 of IPC and sentenced to suffer imprisonment for five years and to pay fine of Rs. 500/-, and in default of payment of fine, they were ordered to undergo further simple imprisonment for 15 days. Feeling aggrieved by the impugned judgment, accused No. 1 of Sessions Case No. 188 of 2003 has preferred Criminal Appeal No. 131 of 2005, while Criminal Appeal No. 1556 of 2004 is preferred by accused Nos. 1 and 2 of Sessions Case No. 389 of 2003. Criminal Appeal No. 291 of 2005 and Criminal Revision Application No. 600 of 2005 are preferred against acquittal of accused persons of Sessions Case No. 188 of 2003.

2. The facts in brief giving rise to the filing of present appeals are as under:-

2.1 So far as Sessions Case No. 188 of 2003 is concerned, it is the case of the prosecution that on 29.12.2002 at about 9 a.m. in the morning, complainant Arjunsinh Prabhatsinh and his brother Bhopatsinh Prabhatsinh left for Devgad Baria for private work. On their way, they met deceased Somsinh Udesinh and talked to him near the boundary of his field. It is alleged that at that point of time, accused No. 1 with other accused persons came there. It is alleged that accused No. 1 was armed with a licensed gun, while other accused were armed with weapons like lathis, dhariyas etc. The accused started abusing the complainant and others as they belonged to a particular political party. Thereafter, accused No. 1 fired a shot from his gun, which hit the deceased and he fell down. It is also alleged that other accused persons also attacked deceased, complainant and his brother with deadly weapons. Upon hearing their shouts, uncle of the complainant and other persons gathered there and the accused ran away. The deceased was taken to Government Hospital at Devgad Baria, where he succumbed to the injuries. With these allegations, the complaint was filed against the accused persons.

2.2 A cross-complaint was filed for the incident by Bhairavsinh Ganpatsinh Chauhan, accused No. 2 in Sessions Case No. 188 of 2003 alleging that on 29.12.2002 at about 9.30 a.m. in the morning, when he was coming to his house from the boundary of field of Udesinh Hamirsinh, at that time, Somsinh Udesinh, Bhopatsinh, Prabhatsinh and complainant of Sessions Case No. 188 of 2003 were giving abuses and threatening his cousin brother Shankarsinh Kiransinh as they belonged to a particular political party. Upon hearing the shouts, complainant, his uncle and other persons reached there to save Shankarsinh from being beaten up and saw that Somsinh had given a lathi blow on the head of Shankarsinh. It is also alleged that Bhopatsinh Prabhatsinh and Arjunsinh Prabhatsinh had beaten up the complainant and others with lathis. It is alleged that Shankarsinh received serious head injuries. With these allegations, a cross-complaint was filed.

2.3 On complaints being filed, investigation was carried out and the accused came to be arrested. At the end of investigation, charge-sheet was filed against

the accused persons before the Magistrate Court. Since the offence was exclusively triable by the Court of sessions, the case was committed to Sessions Court and charge came to be framed. The accused pleaded not guilty and claimed to be tried.

2.4 During the trial, the prosecution had examined following witnesses in Sessions Case No. 188 of 2003:-

2.5 The prosecution had also produced and relied upon following documentary evidence in Sessions Case No. 188 of 2003:-

2.6 During the trial, the prosecution had examined following witnesses in Sessions Case No. 389 of 2003:-

2.7 The prosecution had also produced and relied upon following documentary evidence in Sessions Case No. 389 of 2003:-

2.8 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and thereafter, passed the impugned judgments and orders. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals as well as revision application are preferred before this Court.

3. At the time of hearing of these appeals, Mr. Sunil Joshi, learned advocate appearing for the appellant of Criminal Appeal No. 131 of 2005-original accused No. 1 in Sessions Case No. 188 of 2003 has taken us through the evidence and tried to establish that the prosecution has miserably failed to prove its case against the appellant. However, after arguing the matter at some length, he fairly conceded that in view of the medical evidence and statements of other witnesses, though the offence against accused No. 1 can be said to have been proved, he is arguing only on the quantum of punishment. He submitted that the incident in question has occurred in the spur of the moment and there was no pre-planning nor there was any intention on the part of accused No. 1 to kill the deceased. He also submitted that as per the cross-complaint filed by the accused, complainant and other persons, including the deceased, were armed with deadly weapons and they caused injuries to him. He further submitted that even the son of the accused and one Bhopatsinh were being beaten up by the complainant side and, therefore, even if the case against accused No. 1 is believed, it can be said that he acted in self-defence and with a view to protect the lives of his son and other persons. He, therefore, submitted that the trial Court has committed an error in convicting the accused No. 1 for offence punishable under Section 302 of IPC and at the most it would fall under Section 304, Part-I of IPC. In support of his submissions, Mr. Joshi has relied upon an unreported decision of this Court rendered in Criminal Appeal No. 1219 of 2006 and allied appeals decided on 4.2.2016, wherein this Court has observed as under:-

"6. We have heard Mr. N.D. Nanavati, learned Senior Advocate appearing for the

appellants-original accused, and Ms. C.M. Shah, learned APP for the State. We have also gone through the evidence on record. We have also perused the medical evidence. The cause of death shown in the report is due to internal hemorrhage due to injury to spleen and stomach. Therefore, it is clear that this injury is the reason for death of the deceased and this is unnatural death. Now coming to the point whether it falls within 302, or 304, part-II, taking into consideration the injury, leaves a room for the accused to argue that this is not a case for offence under Section 302 of IPC. We are of the opinion that the trial Court has not committed any error in convicting the accused persons, however, looking to the nature of the injury, it can be said that the accused are guilty of offence under Section 304, Part II of IPC and not for the offence under Section 302 of IPC.

7. Further, the Hon''ble Apex Court in Vashrambhai Rambhai Barpara (supra) has also considered the similar nature of injuries like the present one and has altered the conviction, the relevant part of which reads thus:

"Having considered the submissions made on behalf of the respective parties, and having regard to the nature of the injuries to the deceased and since there is no explanation as to what had caused rupture of the spleen in the absence of any external injury to the vital parts of the abdomen, we are inclined to agree with Mr. Arora's submissions that the injuries do not attract the provisions of Section 304 Part II, I.P.C. under which provision the High Court has convicted the appellant and has awarded sentence.

Accordingly, we alter the conviction to one under Section 324 of the IPC and also reduce the sentence to a period of one year, and increase the fine to Rs. 10,000/- which is to be paid to the victim's family."

8. Further, in the case of Babu Kava (supra), this Hon''ble Court has also taken the similar view by quashing and setting aside the conviction of the accused under Section 304, Part-II of the IPC and instead of that, accused are convicted for commission of offence under Section 323 of the IPC. Relevant discussion made by the Hon''ble Court reads thus:

"13. In this connection, adverting to the evidence of Dr. Ravindra Shrikrishna Bhise, P.W. 4, Ex. 25, who has performed the autopsy in a panel of two doctors, has inter alia in his examination in chief testified that weight of the spleen of the deceased was 900 grams measuring 20 c.m. x 15 c.m. x 5 c.m. According to him, cause of death of the deceased was shock following intraabdominal haemorrhage due to injuries sustained and according to him injury caused to spleen of the deceased in the ordinary course of nature was sufficient to cause death. He has also admitted that the said injury was possible by a blow with a hard and blunt substance or if the spleen came into contact with hard and blunt substance. In cross-examination he has admitted that weight of a healthy spleen varies from 250 grams to 300 grams and pursuant to suffering from malaria, tumor or cancer, the weight of the spleen can be more. It is also testified by him

that measurement of healthy spleen is 12.5 c.m. x 7.5 c.m. x 2 c.m. He has also admitted that while performing autopsy he has not inquired why the weight of spleen of the deceased was more as he did not find it necessary. He has also not inquired whether the deceased was suffering from chronic malaria. He has issued autopsy report at Ex. 26 wherein in column 21 it is mentioned that the weight of the spleen is 900 grams, enlarged upto 11 c.ms. below costal margin surrounded by bloodclots, uniformly, grossly, enlarged ruptured spleen; measuring about 20 x 15 x 5 c.ms. in size. Irregularly linear tear present on the gastric surface of the spleen, size 4 x 3 x 2 c.ms.

14. In view of the aforesaid evidence of Dr. Ravindra S. Bhise at Ex. 25 and autopsy report produced by him at Ex. 26 there is no manner of doubt that the deceased was having an enlarged and diseased spleen weighing at least three times more and size was almost double and if this is so we have to decide which offence is proved against the accused, i.e., murder, culpable homicide not amounting to murder, grievous hurt or hurt.

15. As per Modi's Medical Jurisprudence and Toxicology, the normal spleen in an adult measures 12 x 8 x 4 c.ms. In some cases, the spleen decomposes earlier than the stomach and the intestines, especially if it is swollen and hypepraemic from an acute infectious disease or enlarged from chronic malaria. However, it may resist putrefaction longer, if it happens to be firm and comparatively bloodless. Owing to putrefaction, the spleen becomes soft, pulpy, greenish-steel in colour, and it may be reduced to a diffuent mass within two to three days in summer. On account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force, such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height; in such cases it is usually associated with injuries to other solid organs and to the ribs overlying the spleen. A normal spleen may sometimes be ruptured by the broken ends of a rib, which may be fractured by a severe kick or by a blow from a blunt weapon. A spleen subjected to traction forces may be torn from its pedicle. An enlarged spleen becomes softened and brittle. Hence it is liable to rupture from a fall or from violence of a very slight degree. In such cases, the abdominal wall may not show any external mark of injury.

16. As per Dr. Jhala & Raju's Medical Jurisprudence, normally the spleen is very high up in the abdomen and well protected by the ribs. Thus, unless enlarged to double its size, it is not directly exposed to external injury. Penetrating injuries can certainly involve the organ. When enlarged, it is clearly vulnerable even to direct blows like kicks. Furthermore, such an enlarged organ is friable in structure and hence likely to bleed profusely. Such profuse bleeding may prove fatal and that too rapidly so. On the other hand when the spleen is of normal size and texture and found to be lacerated, the overlying side and abdominal wall must show signs of blunt injury viz., contusion. A kick on an enlarged spleen resulting in fatal haemorrhage amounts to a milder offence even of simple hurt

depending on circumstantial evidence.

17. In view of the above referred to authoritative passages on Science of Medical jurisprudence it cannot be gainsaid that enlarged and diseased spleen itself is sensitive and it is vulnerable and susceptible to rupture by a slightest force. Now, therefore, the question which requires to be considered is as to whether the accused have committed the offence of culpable homicide not amounting to murder punishable under Section 304 Part II of IPC or grievous hurt punishable under Section 325 of the IPC or hurt punishable under Section 323 of the IPC.

18. A similar question arose before the Calcutta High Court way back in 1920 in the case of *Emperor v. Sabeali Sarkar*, AIR 1920 Calcutta 401. In that case, the accused, having found that a young man had approached his kept mistress for the purpose of having sexual intercourse with her, thought that he would be justified in teaching him a lesson by giving him a good thrashing. He accordingly sent for the brother of the young man, and in the presence of the villagers gave him a good beating by kicks and blows, which resulted in his death. The deceased was of a weak constitution and had an enlarged spleen, and it appeared that when the villagers told the accused that he was about to kill the young man by his kicks and blows, he observed that the deceased was merely pretending and gave him some more strokes with a cane. The accused was thereupon charged with an offence under S. 304. The jury found him guilty under S. 323. The Sessions Judge disagreed with the jury and being of opinion that the accused was guilty under S. 325, referred the matter to the High Court under Section 307 of the Old Code. In the aforesaid fact situation, the High Court held that in the circumstances of the case it was doubtful whether the accused had either intended or knew it to be likely that he would cause grievous hurt and as the case seemed to be on the border line between Ss. 323 and 325 the accused might be given the benefit of the doubt and should be convicted of an offence under S. 323.

19. In the case of *Ramakrishna Panicker v. State of Kerala*, , AIR 1959 Kerala 372, before Kerala High Court the victim was having a spleen of diseased condition which got ruptured. In the said fact situation, Kerala High Court held that when the injury is not serious and there was no intention to cause death or grievous hurt, nor did the accused have knowledge that it was likely to cause grievous hurt or death, he is guilty of causing hurt and not death even though death is caused. It was further held that therefore where from the circumstances of the case it is impossible to draw an inference that the accused would have intended to give the deceased anything more than a beating or thrashing to teach him a lesson for using foul language to him, a police officer, it would not be possible to attribute to him the requisite intention or knowledge merely because of the diseased condition of the spleen of the deceased which got ruptured. In such circumstances his conviction under S. 304 cannot stand.

20. A similar question arose before a Division Bench of Allahabad High Court in the case of *Sri Prakash v. The State*, , 1990 Cr.L.J. 486. In that case, the beating

given by the accused to a child has resulted into the death of the child. However, there was no visible injuries found on the dead-body. Beating given to the child, therefore, could not be severe. On medical evidence, spleen of the child was found to be ruptured and, therefore, enlarged spleen could only be the reason of death. The accused was not knowing of the enlarged spleen of the deceased. On the fact situation, the Division Bench held that the accused could not be held guilty under Section 304 of IPC and further held that conviction will be proper under Section 323 and not under Section 325 of IPC.

21. Applying the principles laid down by three High Courts in the above referred to judgments and the passages quoted by us from the Medical jurisprudence of Dr. Modi and Dr. Jhala and Raju to the facts of the present case, it cannot escape from the conclusion that the deceased Gordhanbhai died in an ordinary incident which has resulted into quarrel between the complainant and the accused, the accused got excited and gave fist blows to the deceased whose spleen as per the medical evidence was ruptured as it was enlarged and diseased. Therefore neither intention nor knowledge can be attributed to the accused for causing murder or culpable homicide not amounting to murder of deceased Gordhanbhai. At the most the offence under section 323 of IPC is proved as all of them gave fist blows to deceased as well as A-2 has given fist blows to complainant Vimlaben.

22. In aforesaid view of the matter, conviction under section 304 Part II recorded against all the accused cannot be sustained and therefore it deserves to be quashed and set aside by holding that all the accused have committed offence under section 323 of IPC only by giving fist blows to the deceased Gordhanbhai as well as to the complainant Vimlaben. They are, therefore, convicted of the offence punishable under Section 323 of the IPC."

9. Thus, in light of the above and in light of the discussions made herein above, all these appeals are required to be allowed by holding the accused guilty for offence under Section 304, Part II of IPC and not for offence under Section 302 of IPC and sentence imposed upon them is required to be reduced to five years imprisonment."

3.1 Considering all these circumstances, he prayed to allow this appeal and the offence alleged against the accused No. 1 may be converted to one punishable under Section 304, Part-I from Section 302 of IPC.

4. Mr. L.R. Pathan, learned advocate appearing for the appellants of Criminal Appeal No. 1556 of 2004 has also taken us through the evidence adduced in Sessions Case No. 389 of 2003 and submitted that the trial Court has committed an error in convicting the accused persons for the offences punishable under Sections 323 and 325 of IPC. He submitted that the prosecution has failed to prove its case against the accused persons. He also submitted that there are contradictions in the evidence of the prosecution witnesses and relying upon them accused could not have been convicted for the offence alleged against

them. He further submitted that names of the assailants were not disclosed by the complainant and injured, though they were conscious. He also submitted that since the accused belong to rival political parties and since the injured has some axe to grind, they have been falsely implicated in the present case. He further submitted that the injuries caused in the present case cannot be said to be grievous hurt, therefore, accused persons cannot be held guilty under Section 325 of IPC. He further submitted that looking to the fact that the incident in question is of 2002 and more than 14 years have passed, this Court may show some leniency towards the accused persons. In view of all these submissions, it is prayed that this appeal may be allowed.

5. On the other hand, Ms. Shruti Pathak, learned APP appearing for the State has submitted that the order of conviction recorded against the appellant-accused No. 1 of Sessions Case No. 188 of 2003 and accused Nos. 1 and 2 of Sessions Case No. 389 of 2003 is just and proper and she has supported the conviction recorded by impugned judgment. Learned APP has contended that taking into consideration the medical evidence, evidence of the complainant and other witnesses, the view taken by the trial Court is just and proper and no interference is called for by this Court. She also submitted that the learned trial Judge has not committed any error while imposing the sentence on the accused persons. So far as accused No. 1 of Sessions Case No. 188 of 2003 is concerned, she has taken us through the medical evidence. She submitted that as per the postmortem report, reason for death of the deceased is shock due to intra-abdominal haemorrhage due to injury to spleen which was caused by fire arm pellets. She submitted that since the accused was belonging to the rival political party, there was some enmity between the accused and the complainant side. She, therefore, submitted that the trial Court has not committed any error in convicting accused No. 1 of Sessions Case No. 188 of 2003 for the offence punishable under Section 302 of IPC. She also submitted that only because one injury is the cause for death of the deceased, sentence imposed upon accused No. 1 cannot be reduced. In support of her submission, Ms. Pathak, learned APP has relied upon the decision of the Supreme Court in Bhavisetti Kameshwara Rao alias Babai v. State of Andhra Pradesh reported in , (2008) 15 SCC 725, wherein it is observed as under:-

"13. It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of a single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screw driver, the learned counsel

urged that it was only the accidental use at the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screw driver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

14. In *State of Karnataka v. Vedanayagam* [, (1995) 1 SCC 326] this Court considered the usual argument of a single injury not being sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury, However, after the detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the reported decision in *Virsa Singh v. State of Punjab* [, AIR 1958 SC 465], the court set aside the acquittal under Section 302 IPC and convicted the accused for that offence. The Court relied on the observation by Justice Bose in *Virsa Singh*'s case to suggest that:-

"16. With due respect to the learned Judge he has linked up the Intent required with the seriousness of the injury, and that, as we have shown is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."

The further observation in the above case were:

"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. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.

17. It is true that in a given case the enquiry may be linked up with the seriousness of the injury, For example, if it can be proved, or if the totality of the

circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

(Emphasis supplied)

15. Their Lordships then referred to the decision of this Court in *Jagrup Singh v. State of Haryana* [, (1981) 3 SCC 616] where this Court observed:

"6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause 1stly or clause 3rdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."

(Emphasis supplied)

Their Lordships also referred the case of *Tolan v. State of T.N.* [, (1984) 2 SCC 133].

16. In the present case we do not have any reason to take any different view of the matter. Here was the case where a long screw driver having a sharp end was plunged into the abdomen of the deceased with such savage force that it caused injury which was 12 c.m. deep cutting liver and spleen. This is apart from the fact that the deceased also suffered other injuries. The deceased was unarmed and there was a heated exchange of words before the incident. After the incident also the deceased was chased. Therefore, we find that this is not the case where conviction could be for the offence committed under Section 304, Part-II IPC.

17. We also do not accept the contention of the learned counsel for the defence which was raised only by way of a desperate argument that the incident was sudden and it was without any pre-meditation, thereby the learned counsel wanted to bring the evidence under Section 304 Part-I. In short the counsel aimed at Exception I of Section 300 IPC. Exception 4 was also brought to be relied upon. We do not think the evidence available would warrant the offence covered by Exception 1 as there was no such grave and sudden provocation on the part of the deceased. Similarly it was not a case of sudden fight in the heat

of passion nor was it a case of sudden quarrel when the offender having taken undue advantage or acted in a cruel or unusual manner. There is evidence on record to suggest that there was a previous altercation and the accused persons were seething in anger to take the revenge of the incident which had taken place on 27th of the same month. Further it was only after the deceased came in front of the shop of the accused on his motorbike, first there was an exchange of abuses and it was then that the incident took place where not only the accused but even the second accused is proved to have attacked the deceased. This could not, therefore, be a case of a sudden fight. Therefore, the question of application of Section 304 Part-I is also ruled out.

18. Under the circumstances, we would be constrained to hold that the Courts below were right in convicting this accused-appellant for an offence under Section 302. We, therefore, find no reason to take any different view and confirm the conviction and sentence of this accused also."

6. So far as accused Nos. 1 and 2 of Sessions Case No. 389 of 2003 are concerned, she has relied upon medical certificate at Exh. 34 and submitted that it is clear from this certificate that the injuries caused by the accused were grievous in nature and the trial Court has not committed any error in convicting them. She, therefore, submitted that no interference is called for in the present appeals and both these appeals may be dismissed.

7. So far as Criminal Appeal No. 291 of 2005 and Criminal Revision Application No. 600 of 2005 are concerned, both these matters are preferred against acquittal of the accused of Sessions Case No. 188 of 2003 from charges levelled against them. Ms. Shruti Pathak, learned APP has taken us through the evidence and contended that the trial Court has committed an error in acquitting the accused persons inspite of voluminous evidence against them and contended that the trial Court ought to have convicted them for offences alleged against them. She also submitted that as per the evidence of the witnesses, presence of the accused persons at the scene of offence is established. She also submitted that since cross-complaints are filed in the present case and since accused on both sides have been convicted by the trial Court, their presence at the scene of offence cannot be disputed. She further submitted that the prosecution has successfully established its case against the accused persons and the trial Court has committed an error in acquitting them of the charges levelled against them. She also submitted that the prosecution has proved the motive behind the incident and medical evidence also supports the case of the prosecution and, therefore, the accused should have been convicted by the trial Court. She also submitted that the trial Court has committed an error in not believing the version of the complainant and other witnesses. She, therefore, submitted that Criminal Appeal No. 291 of 2005 may be allowed and the accused persons be convicted for the offences alleged against them. Mr. L.R. Pathan, learned advocate appearing for the complainant accepted the submissions of learned APP and prayed to allow Criminal Revision Application No. 600 of 2005.

8. We have heard Mr. Sunil Joshi and Mr. L.R. Pathan, learned advocates for the appellants-convicted accused and Ms. Shruti Pathak, learned APP for the State. We have also gone through the impugned judgments as well as evidence on record. Considering the evidence on record, it is clear that the motive for the incident is the political rivalry as both the sides were belonging to different political parties. From the evidence on record, it is clear that the accused were armed with deadly weapons and they had attacked the deceased. It has come on record that accused No. 1 had fired a shot from his gun and due to this injury the deceased died. Therefore, it is clear that the deceased died an unnatural death. The cause of death shown in the postmortem report is shock due to intra-abdominal haemorrhage due to injury to spleen which was caused by fire arm pellets. Therefore, it is clear that this injury is the reason for death of the deceased and this is unnatural death. However, since learned advocate for accused No. 1 has argued the matter only on the quantum of punishment, we are not discussing the evidence in detail and we have considered the matter only on this limited point. Therefore, we are now required to consider the submission of learned advocate for accused No. 1 as to whether the offence falls within Section 302 or 304, Part-I of IPC. Taking into consideration evidence, it is clear that both the sides were belonging to rival political parties and since the incident happened in the spur of the moment, it leaves a room for us to consider that this is not a case for Section 302. Since the deceased died due to firearm injury, the trial Court has not committed any error in convicting the accused No. 1, however, it is a fact that complainant and other persons, including the deceased, were armed with deadly weapons and they had also caused injuries to the accused. We are also required to consider the fact that son of the accused and one Bhopatsinh were also being beaten up by the complainant side and with a view to protect their lives, the accused acted in the spur of the moment. Therefore, it can be said that the accused No. 1 is guilty of offence under Section 304, Part I of IPC and not for the offence under Section 302 of IPC. We are also required to consider the facts that the incident in question had taken place in 2002 and thirteen years have passed and considering the fact that the incident had happened in the spur of the moment and there was no intention on the part of the accused No. 1 to commit the offence, in our opinion, Criminal Appeal No. 131 of 2005 is required to be allowed by holding the accused No. 1 guilty for offence punishable under Section 304, Part I of IPC and not for offence under Section 302 of IPC and sentence imposed upon him is required to be reduced to ten rigorous years imprisonment instead of life imprisonment.

9. As far as Criminal Appeal No. 1556 of 2004 is concerned, which is preferred by accused Nos. 1 and 2 against the judgment passed in Sessions Case No. 389 of 2003, we have gone through the evidence on record. For the purpose of deciding this appeal, it is necessary to refer to Section 325 of IPC, which reads as under:-

"325. Punishment for voluntarily causing grievous hurt.-Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to

seven years, and shall also be liable to fine."

10. Considering the evidence on record, particularly, Exh. 34, medical certificate, it is clear that injury caused to the victim was grievous hurt. Not only that, from the evidence of other witnesses, it is clear that accused Nos. 1 and 2 had caused injuries to the victim. Therefore, it is rightly found by the learned trial Judge that the accused had attacked the victim and thereby caused the injuries and, therefore, accused Nos. 1 and 2 are rightly convicted by the trial Court and we do not find any reason to interfere with the impugned judgment. However, taking into consideration the fact that the incident is of 2002 and more than 15 years have passed, we deem it proper to reduce the sentence imposed upon accused Nos. 1 and 2 for the offence punishable under Section 325 of IPC. Accordingly, this appeal is required to be partly allowed.

11. As far as Criminal Appeal No. 291 of 2005 and Criminal Revision Application No. 600 of 2005 filed against acquittal of the accused in Sessions Case No. 188 of 2003 are concerned, we have gone through the evidence on record. We find that the trial Court has not committed any error in acquitting the accused persons from the charge of offences alleged against them. Not only that, it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court, against an order of acquittal passed by the trial Court, have been very succinctly explained by the Apex Court in a catena of decisions. In the case of *M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr.*, , (2006) 6 S.C.C. 39, the Apex Court has narrated the powers of High Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

"54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate Court should not interfere with the finding of acquittal recorded by the Court below."

11.1 Further, in the case of *Chandrappa Vs. State of Karnataka*, , (2007) 4 S.C.C. 415, the Apex Court laid down the following principles:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:

[1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, substantial and compelling reasons, good and

sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

[4] An appellate Court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

[5] If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

11.2 Thus, it is a settled principle that while exercising appellate power, even if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

11.3 Even in the case of *State of Goa V. Sanjay Thakran & Another*, (2007) 3 S.C.C. 75, the Apex Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision, the Court has observed as under:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

11.4 Similar principle has been laid down by the Apex Court in the cases of *State of Uttar Pradesh Vs. Ram Veer Singh & Ors.*, 2007 A.I.R. S.C.W. 5553 and in *Girja Prasad (Dead) by LRs Vs. State of M.P.* reported in , 2007 A.I.R. S.C.W. 5589. Thus, the powers, which this Court may exercise against an order of acquittal are well settled.

11.5 In the case of Luna Ram Vs. Bhupat Singh and Ors., , (2009) SCC 749, the Apex Court in paras-10 and 11 has held as under:

"10. The High Court has noted that the prosecution version was not clearly believable. Some of the so called eye witnesses stated that the deceased died because his ankle was twisted by an accused. Others said that he was strangled. It was the case of the prosecution that the injured witnesses were thrown out of the bus. The doctor who conducted the postmortem and examined the witnesses had categorically stated that it was not possible that somebody would throw a person out of the bus when it was in running condition.

11. Considering the parameters of appeal against the judgment of acquittal, we are not inclined to interfere in this appeal. The view of the High Court cannot be termed to be perverse and is a possible view on the evidence."

11.6 Even in a recent decision of the Apex Court in the case of Mookkiah and Anr. Vs. State, rep. by the Inspector of Police, Tamil Nadu, , AIR 2013 SC 321, the Apex Court in para 4 has held as under:

"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led in by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be re-appreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal. [Vide State of Rajasthan vs. Sohan Lal and Others, , (2004) 5 SCC 573]"

11.7 It is also a settled legal position that in acquittal appeal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of State of Karnataka Vs. Hemareddy, , AIR 1981, SC 1417, wherein it is held as under:

"... This Court has observed in *Girija Nandini Devi V. Bigendra Nandini Choudhary* (, (1967) 1 SCR 93 : AIR 1967 SC 1124) that it is not the duty of the Appellate Court on the evidence to repeat the narration of the evidence or to reiterate the

reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

11.8 Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower Court, then the discussion of evidence is not necessary. Therefore, we find that the accused are rightly acquitted by the learned trial Judge from the charges of offence alleged against them. Moreover, learned APP or learned advocate for the complainant is not in a position to show any evidence on record so as to take a contrary view in the matter or to conclude that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored material evidence while acquitting the accused. Hence, we are of the considered opinion that the Court below has not committed any error in acquitting the respondents-accused from the charge of offences alleged against them. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below in the impugned judgment and, therefore, find no reasons to entertain these appeal as well as Criminal Revision Application and both are required to be dismissed.

12. For the foregoing reasons, Criminal Appeal No. 131 of 2005 is partly allowed. The impugned judgment and order dated 10.9.2004 passed by learned Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Godhra in Sessions Case No. 188 of 2003 is modified and instead of offence punishable under Section 302 of IPC, the appellant-original accused No. 1 is held guilty for the offence punishable under Section 304, Part-I of IPC and ordered to undergo ten years" rigorous imprisonment. The period of sentence already undergone by accused No. 1 be given set off to him. The accused shall surrender before the jail authorities on or before 8th July 2016 to serve out the remaining period of sentence. Remaining part of the impugned judgment shall remain unaltered.

13. So far as Criminal Appeal No. 1556 of 2004 is concerned, the same is partly allowed. The impugned judgment and order dated 10.9.2004 passed by learned Additional Sessions Judge, 3rd Fast Track Court, Panchmahals at Godhra in Sessions Case No. 389 of 2003 is modified and the sentence imposed upon the appellants herein-accused Nos. 1 and 2 for the offence punishable under Section 325 of IPC is reduced to three and a half years" imprisonment. The appellants-original accused Nos. 1 and 2 of Sessions Case No. 389 of 2003 shall surrender before the jail authorities on or before 8th July 2016 to serve out the remaining period of sentence. Remaining part of the impugned judgment shall remain unaltered. The period of sentence already undergone by the accused be given set off to them.

14. Criminal Appeal No. 291 of 2005 as well as Criminal Revision Application No. 600 of 2005 are dismissed. The impugned judgment and order dated 10.9.2004 passed by learned Additional Sessions Judge and 3rd Fast Track Court, Panchmahals at Godhra in Sessions Case No. 188 of 2003 acquitting accused No. 1 from the charge of offences punishable under Sections 147, 148, 149, 323,

504 and 506(2) of IPC as well as acquitting accused Nos. 2 to 13 from all the charges levelled against them is hereby confirmed.

15. Bail bond, if any, of the accused stands cancelled. Registry to return the R & P to the concerned trial Court forthwith.