

(2009) 09 GUJ CK 0049
In the Gujarat High Court
Case No : Criminal Appeal No. 1531 of 2003

Laloo Dahyalal Kuchara and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Bombay Police Act, 1951 — Section 135, 135(1)
Criminal Procedure Code, 1973 (CrPC) — Section 157, 313, 374(2)
Penal Code, 1860 (IPC) — Section 114, 294B, 302, 304, 323

Citation : (2009) 09 GUJ CK 0049

Hon'ble Judges : J.R. Vora, J;H.B. Antani, J

Bench : Division Bench

Advocate : Y.U. Malik and Nikhil S. Kariel, for the Appellant; Public Prosecutor, for the Respondent

Judgement

H.B. Antani, J.—Instant appeal preferred u/s 374[2] of Criminal Procedure Code [Code for short] is filed against the judgment and order of conviction dated 17th October, 2003 passed by Additional Sessions Judge, Court No. 13, Ahmedabad City in Sessions Case No. 117 of 2002 by which the learned Sessions Judge convicted the appellants for the offence punishable u/s 302 of Indian Penal Code [IPC for short] and sentenced them for life imprisonment and fine of Rs. 500/- each, in default, three months" rigorous imprisonment.

2. As per the prosecution case, complaint was filed by Pankajkumar Ramanlal, son of deceased Ramanlal on 18.2.2002. On the basis of the complaint filed by Pankajkumar, police registered an offence against the appellants u/s 302 read with Section 34 of IPC as well as u/s 135 of Bombay Police Act. As per the complaint, deceased Ramanlal was assaulted by the appellants on 18.2.2002 at about 8.00 O'clock in the house of Paniben, mother of appellant No. 1 and sister of appellant No. 2 with a wooden log of cot and iron fist. Pankajkumar, complainant also sustained injuries as a result of the assault committed by the appellants. The police registered offence against the appellants as CR I 47 of 2002 and investigation was carried out by Shivshankar Devkumar Sharma,

P.W.11, who was working as C.P.I. in Shaherkotda Police Station. He recorded statements of witnesses, visited the place of incident and prepared panchnama in the presence of the panch witnesses. Panchnama of the person of the accused was also prepared by him in the presence of the panch witnesses. The appellants were arrested on 19.2.2002 and weapons used in the commission of the offence were recovered in the presence of the panch witnesses and panchnama in respect of the same was prepared. Thereafter, on completion of investigation, the appellants were charge-sheeted on 3.5.2002 and produced before the learned Metropolitan Magistrate, Ahmedabad, who in turn, committed the case to Sessions Court as the case was exclusively triable by the Sessions Court. Learned Additional City Sessions Judge, thereafter, framed Charge against the appellants vide Exh.1 for the offence punishable under Sections 302, 323 and 294B as well as Section 114 of IPC and Section 135[1] of Bombay Police Act and the appellants pleaded not guilty to the Charge levelled against them. Therefore, the matter was set down for full-fledged trial before the learned Additional Sessions Judge.

3. The prosecution, in order to prove the involvement of the appellants in the commission of offence, examined the following witnesses.

PW No

Name of the witness

Exh.

1

Pankajkumar Ramanlal

11

2

Muliben Ramanlal

27

3

Rakeshkumar Ramanlal

28

4

Jayantibhai Shakrabhai

29

5

Vijay Kashinath

30

6

Siddharth Ramanbhai

31

7

Mahipatsinh Dashrathsinh

32

8

Somabhai Ishwarbhai

33

9

Ramanji Manilal Thakor

38

10

Dr. Jayantilal Virjibhai

41

11

Shivshankar Devkumar Sharma

44

12

Ghelabhai Rajabhai

58

13

Dr. Dipakkumar Champaklal

78

4. After completion of oral depositions by the prosecution, three defence witnesses namely, Paniben Dahyabhai, Ashaben Dahyabhai and Dr. Vitthalbhai Naranbhai were examined vide Exhs. 61, 64 and 65 respectively.

5. The prosecution has also produced the following documentary evidence in order to bring home the guilt against the appellants.

Sr. No.

Nature of documentary evidence

Exh.

1.

Complaint

12

2.

Inquest panchnama

13

3.

Panchnama of place of offence.

14

4.

Panchnama of seizure of clothes put on by the deceased.

15

5.

Receipt of handing over of dead body.

16

6.

Report of visit of FSL officer of the place of offence.

17

7.

Yadi of muddamal sent to FSL for analysis.

18

8.

Receipt issued by FSL

19

9.

Letter of FSL.

20

10.

Report of FSL

21

11.

Serological report of FSL

22

12.

Letter of FSL

23

13.

Report of FSL of physical examination

24

14.

Notification of prohibition of arms issued by Police Commissioner.

25

15.

Map of place of offence.

26

16.

Report regarding registration of offence.

34

17.

Wardhi given on telephone to police station.

35

18.

Post-mortem report.

42

19.

Death certificate.

43

20.

Slips containing signatures of panchas.

45 to 57

6. On conclusion of the trial before the learned Additional Sessions Judge, further statements of the appellants were recorded u/s 313 of the Code and the appellants denied their involvement in the commission of crime.

7. Learned Additional Sessions Judge, on the basis of the oral depositions and documentary evidence, framed issues and held that death of deceased Ramanlal was caused by the appellants with the help of wooden log of cot and iron fist and thereby they had committed an offence punishable u/s 302 of IPC. The learned Judge held that the prosecution has examined PW1 Pankajkumar Ramanlal who is the complainant and injured eye witness and son of deceased Ramanlal vide Exh.11; eye witness Muliben Ramanlal, PW 2 vide Exh.27; eye witness Rakeshkumar Ramanlal, PW 3 vide Exh.28; eye witness Jayantibhai Shakrabhai, PW 4 vide Exh.29; eye witness Vijay Kashinath, PW 5 vide Exh.30 and independent eye witness Siddharth Ramanbhai, PW 6 vide Exh.31, and proved the involvement of both the appellants in the commission of offence. The learned Judge held that depositions adduced by the witnesses were consistent and on perusal of the depositions adduced by the eye witnesses there was no lacuna or discrepancy in the said depositions and thus the prosecution has established involvement of both the appellants in the commission of crime. Learned Judge further held that the depositions adduced by the eye witnesses were corroborated by the deposition given by Medical Officer Dr. Jayantilal Virjibhai PW 10 vide Exh.41, who conducted post-mortem on the dead body of Ramanlal. The prosecution has further examined PW 8 Somabhai Ishwarbhai vide Exh.33 who was working as Police Sub Inspector in Shaherkotda Police Station on the date of the incident. He conducted the investigation and recorded the complaint given by Pankajkumar. PW 7 Mahipatsinh Dasharathsinh is examined vide Exh.32. He was working as Assistant Sub Inspector in Shaherkotda Police Station and he arrested both the accused persons and recovered wooden log and iron fist from the pocket of appellant No. 1 Naresh. Thus, depositions adduced by PW 8 Somabhai Ishwarbhai vide Exh. 33 and PW 7 Mahipatsinh Dashrathsinh vide Exh.32 further corroborate the prosecution story of inextricable involvement of the appellants in the commission of offence. Shivshankar Devkumar Sharma, PW 11 examined vide Exh.44 conducted the investigation. Thus, learned Judge held that the depositions given by PW 11 Shivshankar D. Sharma vide Exh. 44, PW 7 Mahipatsinh Dashrathsinh vide Exh.32 and PW 8 Somabhai Ishwarbhai vide Exh.33 provide corroboration to the prosecution story indicating the involvement of the appellants in the commission of offence. The learned Judge exhaustively discussed the documentary evidence i.e. complaint at Exh.12, inquest panchnama Exh.13, panchnama of place of incident Exh.14, panchnama of seizure of clothes put on by the deceased Exh.15, report of FSL Exh. 21, serological report vide Exh. 22, FSL report with regard to analysis of muddamal article on which reliance is placed by the prosecution and held that the

prosecution, on the strength of oral depositions as well as documentary evidence on record of the case has proved involvement of the appellants in the commission of offence beyond all reasonable doubt and, therefore, the learned Additional Sessions Judge convicted the appellants for the offence punishable u/s 302 read with Section 34 of IPC and sentenced them to life imprisonment and fine of Rs. 500/- each, in default, rigorous imprisonment for three months.

6. Mr. Nikhil Karriel, learned advocate appearing on behalf of the appellants submitted that the judgment rendered by the learned Additional Sessions Judge is not based on the evidence on the record of the case and is contrary to law and therefore, it requires to be quashed and set aside. Learned advocate submitted that on perusal of the depositions of the eye witnesses adduced by the prosecution, namely, Pankajkumar Ramanlal, PW 1 vide Exh.11; Muliben Ramanlal, PW 2 vide Exh.27; Rakeshkumar Ramanlal, PW 3 vide Exh.28; Jayantibhai Shakrabhai, PW 4 vide Exh.29; Vijay Kashinath, PW 5 vide Exh.30 and Siddharth Ramanbhai, PW 6 vide Exh.31, same cannot be banked upon to convict the appellants for the offence punishable u/s 302 read with Section 34 of IPC. Learned advocate submitted that the prosecution has misled the trial court by suppressing the injuries sustained by Paniben and Ashaben and also the alleged injuries sustained by the complainant and his brother Rakeshkumar. Learned advocate further submitted that the prosecution has tried to suppress the so-called complaint of Rakeshkumar regarding previous quarrel which took place at about 7.30 on 17.10.2003 which was followed by the assault on the deceased. Learned advocate submitted that the incident of assault had taken place inside the house of Paniben, mother of appellant No. 1 and sister of appellant No. 2. Deceased Ramanlal and his son-complainant Pankajkumar armed with sticks had gone to assault Paniben and Ashaben and while doing so, they committed criminal trespass. They committed assault on Paniben and Ashaben inside the house of Paniben. Paniben and Ashaben, with a view to save the appellants, raised their hands and both the deceased Ramanlal and Pankajkumar, who were armed with sticks assaulted Paniben and Ashaben, as a result of which, they sustained injuries on the hand. Paniben filed complaint with the police station for the injuries sustained by her and her daughter Ashaben. But the police took only N.C. complaint and did not register the offence though the offence was u/s 325 of IPC and the police tried to suppress those injuries suffered by Paniben and Ashaben and did not examine the doctor who gave treatment to Paniben and Ashaben in S.G. Hospital. Learned advocate submitted that this aspect was not taken into consideration by the learned Judge while convicting the appellants for the offence u/s 302 read with Section 34 of IPC. The deceased and the complainant were equally responsible for assaulting Paniben and Ashaben and that fact is recorded in the N.C. complaint given by Paniben vide Exh.86 as well as injury certificate given to Paniben and Ashaben and produced vide Exh.63 by Shardaben General Hospital, Ahmedabad. Even Paniben has given deposition vide Exh.61, wherein she has narrated as to in what manner the incident took place and how they were assaulted by deceased

Ramanlal and Pankajkumar. Likewise, Ashaben, daughter of Paniben is examined vide Exh.64. She has also narrated in her deposition about the manner in which the assault was committed by deceased Ramanlal and Pankajkumar who were armed with sticks. The doctor who gave injury certificates to Paniben and Ashaben has been examined vide Exh.65. He has narrated in his deposition about the injuries sustained by Paniben and Ashaben. Thus, considering the oral depositions adduced on behalf of the defence side and the deposition of Dr. Vitthalbhai Patel vide Exh.65, the defence side has proved that the assault was committed by the appellants by way of private defence and as deceased Ramanlal and Pankajkumar assaulted Paniben and Ashaben as well as the appellants, they also, in turn, assaulted Ramanlal and Pankajkumar, as a result of which, Ramanlal sustained fatal injuries and Pankajkumar also sustained injuries. Thus, learned advocate submitted that if the entire evidence is perused in its proper perspective, then, it would become clear that the appellants, with a view to save Paniben and Ashaben assaulted Ramanlal and Pankajkumar with wooden log and iron fist and caused injuries. Therefore, the case of the appellants would not fall u/s 302 of IPC, but u/s 304 Part I of IPC. It is submitted that considering the right of private defence which was used by the appellants, lesser punishment be inflicted on the appellants u/s 304 Part I of IPC. Even the depositions adduced by the prosecution witnesses do not inspire necessary confidence of the Court to convict the appellants for the offence u/s 302 read with Section 34 of IPC. On bare perusal of the depositions adduced by the witnesses, it becomes clear that there are many loopholes and flaws in the depositions adduced by the prosecution witnesses, which was not considered by the Court while imposing severe punishment on the appellants u/s 302 of IPC. Thus, learned advocate for the appellant submitted that considering the entire oral depositions and documentary evidence on the record of the case, the prosecution has miserably failed to prove the involvement of the appellants in the commission of offence beyond all reasonable doubt and, therefore, the appellants are required to be acquitted for the offence u/s 302 read with Section 34 of IPC. Learned advocate, in the alternative, submitted that considering the right of private defence, at the most, the case of the appellants would fall u/s 304 Part I of IPC and provisions of Section 302 of IPC cannot be invoked in the facts and circumstances of the case and, therefore, the appellants can be punished, in the alternative, for the offence u/s 304 Part I of IPC.

7. Learned APP Ms. Chetna M Shah, appearing for the respondent State submitted that the prosecution has examined total 13 witnesses with a view to bring home the guilt against the appellants. Complainant Pankajkumar Ramanlal who gave complaint has been examined vide Exh.11. He has deposed in his testimony at Exh.11 that the incident took place on 18.2.2002 at about 8.00 O'clock when he was taking dinner with his father. On hearing shouts from the neighbourhood, he came out of the house and at that material point of time, the appellants came to his house and started abusing them. When an attempt was made to pacify the appellants, appellant No. 1 gave blows with iron fist on the

face of his father and appellant No. 2 gave blows with wooden log and as he tried to intervene in the scuffle, appellant No. 1 gave blow with iron fist to him and appellant No. 2 gave blow with wooden log on the right portion of the hand and thereafter, both the appellants dragged his father in the house and thrashed him in the house and subsequently, he was brought out of the house and again he was beaten by appellant No. 1 as well as by appellant No. 2. As his father had sustained serious injuries, he was taken to Civil Hospital, Ahmedabad, where, ultimately, he succumbed to the injuries. Pankajkumar who gave complaint has been examined vide Exh.11 and has reiterated in the deposition as to in what manner assault was committed by the appellants on 18.2.2002 at about 8.00 O'clock. Thus, the version given by Pankajkumar in the complaint is corroborated by him in his deposition vide Exh.11. Likewise, Muliben Ramanlal, PW 2 has been examined vide Exh.27. She has narrated the incident which took place on 18.2.2002 and reiterated the involvement of appellant Nos. 1 and 2 in the commission of offence. Appellant No. 1 was armed with iron fist and appellant No. 2 was armed with wooden log and both the appellants gave deadly blows to her husband Ramanlal on 18.2.2002. She identified the muddamal articles which were shown to her during the course of her deposition. Rakeshkumar, PW 3 has been examined vide Exh.28. He is the son of deceased Ramanlal. He has also supported the version given by Pankajkumar, PW 1 vide Exh.11 and Muliben Ramanlal, PW 2 vide Exh.27, indicating the involvement of the appellants in the commission of crime which took place on 18.2.2002. Jayantibhai Shakrabhai, PW 4 is the witness from the neighbourhood and he is examined by the prosecution vide Exh.29 in order to prove that deceased Ramanlal sustained fatal injuries. Vijay Kashinath, PW 5 is examined vide Exh.30 by the prosecution with a view to prove that the incident which took place was seen by the independent eye witness on 18.2.2002, wherein, both the appellants were involved. Siddharth Ramanbhai, PW 6 Exh.38 is also an independent eye witness who has been examined by the prosecution to prove that he had seen deceased Ramanlal who had sustained fatal injuries in the scuffle which took place on 18.2.2002. Thus, learned APP submitted that the depositions given by the eye witnesses support the prosecution story about the assault committed by both the appellants on deceased Ramanlal and complainant Pankajkumar. The prosecution has examined Medical Officer Dr. Jayantilal Virjibhai PW 10 vide Exh.41, who conducted post-mortem on the dead body of Ramanlal. Learned APP submitted that the doctor has narrated internal as well as external injuries sustained by the deceased and also mentioned in his exhaustive report the cause of death as due to shock as a result of multiple injuries over skull and brain with ruptured Lt. temporal region of brain with fracture, Rt. radius ulna with massive haemorrhage. Learned APP submitted that the Investigating Officer Shivshankar Devkumar who conducted the investigation is examined vide Exh.44 and investigation was conducted in meticulous manner and all necessary care was taken while conducting the investigation which would further corroborate the prosecution story about the involvement of the appellants in the commission of offence. Learned APP submitted that oral depositions adduced by the prosecution

get further corroboration from the documentary evidence such as complaint Exh.12 given by the complainant wherein he has narrated the incident in question and in what manner the assault was committed by both the appellants. Panchnama of place of incident Exh.14 makes it abundantly clear as to the exact place where the incident took place. The prosecution has produced panchnama of seizure of clothes put on by the deceased vide Exh.15 and detailed report of FSL vide Exhs. 21, 22 and 24, which support the prosecution version about the involvement of the appellants in the commission of crime. Detailed report of post-mortem which was carried out on the deceased is produced vide Exh.42 and certificate of death is produced vide Exh.43. These documents also provide necessary corroboration to the prosecution story. Thus, the learned APP submitted that the prosecution, on the basis of oral depositions and documentary evidence, has established the involvement of the appellants in the commission of offence beyond all reasonable doubt. It is submitted that as the prosecution has proved the entire link connecting the appellants with the commission of crime, the learned Judge has rightly convicted the appellants for the offence u/s 302 read with Section 34 of IPC and there is no reason to disturb the findings given by the learned Judge and the appeal deserves to be dismissed.

8. We have heard the learned advocate Mr. Nikhil Kerriel, appearing for the appellants and Ms. Chetna M. Shah, learned APP representing the State at length and in great detail. We have also perused the reasonings given by the learned Judge for convicting the appellants for the offence punishable u/s 302 read with Section 34 of IPC. We have re-appreciated and re-evaluated the entire evidence on the record of the case.

9. The prosecution, in order to prove inextricable involvement of the appellants in the commission of offence has examined 13 witnesses and produced documentary evidence in support thereof. The incident in question took place on 18.2.2002 at 8.00 O'clock. Complaint in that regard was given by Pankajkumar Ramanlal which is produced vide Exh.12. On perusal of the complaint given by Pankajkumar PW 1, it becomes clear that appellant No. 1 who was armed with iron fist and appellant No. 2 who was having wooden log of cot, assaulted deceased Ramanlal and the complainant. The incident happened when the complainant and his father were taking dinner in their house at about 8.00 O'clock. Even though efforts were made to persuade the appellants to resist them from assaulting, they committed the assault on the father of the complainant as well as the complainant. After assaulting the father in fatal manner, he was dragged inside the house and again he was beaten and subsequently, he was brought outside the house and further beaten by both the appellants. Complaint given by Pankajkumar is corroborated by his own deposition vide Exh.11. He has reiterated in his deposition as to the manner in which the assault was committed by both the appellants and how deadly blows were given to his father Ramanlal. He has narrated in his cross-examination that Paniben and Ashaben sustained minor injuries, but he could not say as to how they had sustained the injuries. PW 2 Muliben is the wife of the deceased. She

has been examined vide Exh.27. In her testimony, she has deposed that the incident in question took place on 18.2.2002. They were taking dinner on the date of the incident and as they heard shouts from the neighbourhood, they came out of their house. The appellants were proceeding towards their house and using abusing language. Her husband and son Pankajkumar made an attempt to persuade the appellants, but it was in vain. Appellant No. 1 was armed with iron fist. Appellant No. 2 was having wooden log of cot in his hand. After committing the assault, they took her husband inside the house and thrashed him severely. Appellant No. 2 gave deadly blows to her husband with wooden log of cot which was in his possession. Appellant No. 1 was having iron fist and he gave fatal blows to her husband. Her husband was immediately taken to Civil Hospital where he succumbed to the injuries. She had identified the muddamal articles during the course of her deposition. Nothing turns out from the cross-examination of this witness so as to dislodge her version given in the examination-in- chief. Rakeshkumar Ramanlal PW 3 is examined vide Exh.28. He has deposed in his testimony that the incident in question took place on 18.2.2002 at 8.00 p.m. He was beaten by appellant No. 1 after using abusive language. He was beaten on the face as well as on the nose. Likewise, Jayantibhai Shakrabhai, PW 4 is examined vide Exh.29. He has been examined by the prosecution with a view to prove that deceased Ramanlal sustained serious injuries in the scuffle which took place at 8.00 p.m. on 18.2.2002. Vijay Kashinath, PW 5 is examined vide Exh.30. He has supported the say of the complainant Pankajkumar PW 1 and Muliben, PW 2. He has indicated the involvement of appellants in the commission of offence. Siddharth Ramanbhai, PW 6 is examined vide Exh.31. He has deposed in his testimony that the incident took place on 18.2.2002. He had seen deceased Ramanlal near his house in bleeding condition. He had accompanied deceased Ramanlal to Civil Hospital where he was pronounced dead. Thus, witnesses have narrated the incident which took place on 18.2.2002 at 8.00 p.m, wherein, both the appellants armed with weapons committed assault on deceased Ramanlal and complainant Pankajkumar. Mahipatsinh Dashrathsinh, PW 7 is examined vide Exh.32. He has been examined by the prosecution in order to establish that the weapon which was used in the commission of offence was seized from appellant No. 1 and the same was identified by this witness during the course of his deposition in the Court. Somabhai Ishwarbhai, PW 8 has been examined by the prosecution vide exh.33. He has been examined by the prosecution with a view to prove the complaint given by Pankajkumar Ramanlal about the incident. He had identified the report prepared u/s 157 of the Code and forwarded to higher officer during the course of the deposition. Inquest panchnama, as per the say of this witness was prepared in his presence as well as in the presence of panch witness. Ramanji Manilal Thakor, PW 9 examined vide Exh.38 is a panch witness, who has turned hostile and not supported the prosecution case. Dr. Jayantilal Virjibhai, PW 10 is examined vide Exh.41. He has deposed in his testimony that on 19.2.2002, dead body of Ramanlal was brought to the hospital for the purpose of post-mortem. Post-mortem was carried out on 19.2.2002 at 8.00 a.m. Certificate

with regard to cause of death issued by Dr. Jagani and produced vide Exh.43 was identified by this witness during the course of his deposition. The prosecution has examined Shivshankar Devkumar Sharma, PW 11 vide Exh.44, who was Investigating Officer, in order to prove that investigation which was entrusted to him was carried out in most scrupulous manner. Thus, on perusal of the depositions adduced by the prosecution witnesses, the prosecution, in our considered view has established the involvement of both the appellants in the commission of offence which took place on 18.2.2002 at 8.00 p.m. The prosecution has also examined Dr. Dipakkumar Champaklal, PW 13 vide Exh.78 who carried out the post-mortem on the dead body of deceased Ramanlal.

10. It has been strenuously urged by the learned advocate on behalf of the appellants that even though in a scuffle which ensued between the complainant on one side and appellants, Paniben and Ashaben on the other side, wherein both Paniben and Ashaben sustained injuries and though N.C. complaint was given on 18.2.2002 in Shaherkotda Police Station, Ahmedabad, the same has not been considered by the Investigating Officer and no complaint was taken. The said fact is reflected in the depositions given by Paniben vide Exh.61 and Ashaben vide Exh.64 in the present case. The injuries sustained by Paniben and Ashaben have been elaborately narrated by Dr. Vitthalbhai Naranbhai Patel who has been examined vide Exh.65. We have carefully perused the injury certificates given to Paniben and Ashaben and produced vide Exh.63. However, injuries sustained by either Paniben or Ashaben have not been successfully established by the defence side nor through the documentary evidence produced by the defence side. It is true that N.C complaint was given which is produced vide Exh.86 to the present case. Paniben and Ashaben, both sustained minor injuries during the scuffle which ensued between both the sides.

11. We have also considered the documentary evidence which has been heavily relied upon by the prosecution in order to prove the entire link connecting the appellants with commission of crime. On perusal of the documentary evidence, i.e. complaint given by Pankajkumar at Exh.11, panchnama of the place of incident at Exh.14, inquest panchnama at Exh.13, panchnama of seizure of clothes put on by the deceased at Exh.15 as well as report of post-mortem at Exh. 42 carried out on the dead body of the deceased and death certificate at Exh.43, they corroborate the prosecution case indicating involvement of the appellants in the commission of offence.

12. However, considering the overall evidence on record of the case, it becomes clear that both the appellants were armed with iron fist and wooden log of the cot and assaulted deceased Ramanlal and complainant Pankajkumar. In the scuffle that ensued, Paniben and Ashaben sustained minor injuries which is reflected in the N.C. complaint produced at Exh.86. Thus, there was an attempt to interfere or prevent the appellants from causing serious injuries to Ramanlal and the complainant, as a result of which they also sustained minor injuries. Considering the aforesaid facts and circumstances of the case and the provisions

contained in Section 304 Part I of IPC, we are of the considered view that ends of justice would be met if the appellants are convicted for the offences punishable u/s 304 Part I of IPC.

13. Therefore, the appeal is partly allowed. Judgment and order dated 17th October, 2003 passed by Additional Sessions Judge, Court No. 13, Ahmedabad City, convicting the appellants u/s 302 of IPC is hereby quashed and set aside and instead, both the appellants are convicted for the offences punishable u/s 304 Part I read with Section 34 of IPC and imposed sentence of 10 [Ten] years" rigorous imprisonment and fine of Rs. 500/- each, in default, rigorous imprisonment for further three months. Muddamal be disposed of in terms of the order passed by the learned Sessions Judge.