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**(1980) 03 GUJ CK 0015**  
**In the Gujarat High Court**

Lohana Govind Jamnadas

APPELLANT

Vs

The State of Gujarat

RESPONDENT

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**Date of Decision :** 31-03-1980

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 300, 302

**Citation :** (1981) CriLJ 917

**Hon'ble Judges :** Thakkar, J;Shukla, J

**Bench :** Division Bench

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## Judgement

Thakkar, J.—The only question which arises for decision in this appeal by a 28 year old convict found guilty for an offence u/s 302 of the Indian Penal Code and sentenced to suffer imprisonment for life is as to whether the learned Additional Sessions Judge, Junagadh at Porbandar was right in taking the view that the facts established at the trial in Sessions Case No. 45/78 would constitute the offence of murder as defined u/s 300 of the Indian Penal Code and in negating the plea of the defence that (1) that appellant had acted in exercise of a right of private defence or in the alternative (2) the offence would fall under Explanation (Exception?) 4 to Section 300 inasmuch as it would be culpable homicide not amounting to murder.

2. The incident occurred at about 10 O'clock in the morning of June 26, 1978 at village Madhavpur, at a short distance from the shop of deceased Manu Dhanji aged about 25 who was running a hotel in the said premises. P. W. 4 Bhikha was sitting at the hotel of the deceased. The appellant arrived there and asked P. W. 4 to lend him his pipe as he wanted to have a smoke. P. W. 4 stated that he did not have a pipe. There was an altercation between the two. The deceased who was running the hotel reprimanded both of them and told them not to quarrel. He asked the appellant to accompany him to the police station as the appellant did not stop abusing P. W. 4. As they were proceeding towards the police station the appellant brought out a knife and stabbed the deceased. The injury caused on the victim has been described by P. W. 6 Dr. Moradia as under:

Transverse incised wound 4 cm long x 1.5 cm. broad x 10 cm. deep situated at the intercostals space between 2nd and 3rd rib, anterior aspect of chest 2.5 cm. on the right side to mid sternal line of the chest. The wound margins were smooth and clean cut. They were also well defined and overt. Red and freathy blood was oozing from the wound.

It is the prosecution case that P. W. 3 a fruit vendor, and P. W. 5. an employee of the deceased, were at the shop and had witnessed the incident. P. W. 3. P. W. 4 and P. W. 5 have fully supported the prosecution version. The prosecution case has been challenged mainly in so far as the circumstances in which the actual assault with the knife was made. The appellant does not dispute that it was he who had stabbed the deceased. The evidence of P. W. 4 on this point is not questioned. Nor does he challenge the evidence of P. W. 4 on the point of the conversation regarding the pipe and the altercation which broke out between the two. The version of the appellant, however, is that when he was being taken to the police station, the deceased caught hold of the collar of his shirt and when there was a scuffle between the two the deceased brought out a knife. The appellant caught hold of the hand in which the deceased was holding the knife and there was a scuffle. At that point of time, such is the version of the appellant the deceased caused the injury on his eyebrow with the knife. The appellant felt apprehensive about his own life. He snatched the knife from the deceased and gave him a blow. The evidence of P. W. 4 negatives the defence version. No contradiction with reference to his previous statement has been elicited under cross-examination. There is no improbability in his version. The version of the defence does not appear to us to be probable. If the deceased was taking the appellant to the police station, it was the appellant who would have felt annoyed. There was no occasion for the deceased to get annoyed and to bring put his knife. The question cannot be resolved merely on the basis of a statement made by the appellant which does not accord with the probabilities of the case. Once the evidence of P. W. 4 is accepted, the defence version must go overboard. It is difficult to visualize a case in which an assailant who has administered a knife blow cannot say in his defence version that it was the victim who was armed with the knife, it was he who had assaulted him, and that he in his turn had merely snatched away the knife and stabbed him in self defence. It requires no imagination or ingenuity to say so. The matter must however, be examined in a down-to-earth realistic manner and not in a fanciful manner. The following questions will have to be asked and answered in order to test the plea:

- (1) Who had the motive, cause, or occasion to assault ? The accused or the victim?
- (2) Who was likely to have taken the aggression, (on probabilities) in the circumstances of the case?
- (3) Would the accused not have sustained serious injuries if the other side was the aggressor having regard to the advantage of surprise, of taking first initiative, of being armed with a weapon, and being better prepared. which the

other side would have had being the aggressor.

From the facts and circumstances of the case at hand the defence version seems to be an afterthought. Counsel for the appellant has contended that the arrest panchnama shows that there was an abrasion on the eyebrow of the appellant (see Ex. 20). Under cross-examination P, W. 11 P. S. I. Mehta has admitted in paragraph 11 that there was an abrasion on the eyebrow of the appellant and that the fact was mentioned in the panchnama. It was a very trivial injury and having regard to the facts and circumstances of the case we are not prepared to believe that it was caused by the deceased in the manner suggested by the defence. The plea does not stand the aforesaid tests. We are, therefore, not prepared to uphold the plea that the appellant had acted in exercise of right of private defence.

3. It was then contended that having regard to the facts of the case, in any view of the matter. Exception 4 to Section 300 would be attracted inasmuch as the offence was committed without premeditation in a sudden fight in heat of passion, upon a sudden Quarrel. No doubt there was no premeditation. All the same, in our opinion, Exception 4 will not be attracted because it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. In the present case it emerges that the victim was an unarmed person. In fact the initial quarrel was between the appellant on one hand and P. W. 4 on the other. The victim was not in the picture at all. It cannot be gainsaid that if an assailant carries a dangerous weapon like a knife, and uses it on an unarmed person with whom he has a sudden quarrel, it would constitute taking undue advantage of the victim. To take any other view would be to empty the expression "to take undue advantage" of all meaning and content. and to countenance murderous assault with equanimity. We. therefore, refuse to accede to the argument addressed by counsel on this point. Learned counsel for the appellant placed reliance on Babulal Vs. The State of Rajasthan, . In that case in the course of a sudden quarrel an article which came to hand. as it was lying within the reach of the assailant, was used by him at the time of the sudden quarrel. It happened to be a pair of scissors. Three points emerge: (1) A pair of scissors which is ordinarily used for innocent purposes was used (2) it was not carried by the assailant but it came to his hands as it was lying near about. (3) It was not being carried by him for being used for a violent purpose. This decision rendered on its own facts cannot buttress the case of the appellant. On the other hand, Narayanan Nair Raghavan Nair Vs. The State of Travancore-Cochin, on which reliance is placed by the learned public prosecutor lends support to the view which commends itself to us. Under the circumstances, we are unable to accede to the argument urged on behalf of the appellant.

4. There is no substance in the appeal. It fails and is dismissed.