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**(2001) 10 SC CK 0096**

**In the Supreme Court Of India**

**Case No : Criminal Appeal No's. 75 and 76 of 2000**

Mochi Raju

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision : 16-10-2001**

**Acts Referred:**

Bombay Police Act, 1951 — Section 135, 37(1)  
Penal Code, 1860 (IPC) — Section 302, 304  
Probation of Offenders Act, 1958 — Section 6

**Citation : (2002) 1 ACR 390**

**Hon'ble Judges : A. S. Anand, C.J.; R. C. Lahoti, J; P. Venkatarama Reddi, J**

**Bench : Full Bench**

**Final Decision : Allowed**

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## **Judgement**

A.S. Anand, C.J.I., R.C. Lahoti and P. Venkatarama Reddi, JJ.—These appeals call in question, judgment and order of the High Court of Gujarat at Ahmedabad, whereby the High Court accepted an appeal filed by the State and set aside an order of the trial court vide which the appellant had been convicted for an offence u/s 304, Part II, Indian Penal Code but given the benefit of Probation of Offenders Act. The High Court reversing the order of the trial court convicted the appellant for offences u/s 302, Indian Penal Code and Section 37(1) read with 135 of the Bombay Police Act and sentenced him to suffer life imprisonment for the offence u/s 302, Indian Penal Code

2. We have carefully gone through the judgments of the trial court and the High Court and have heard learned Counsel for the parties.

3. That an incident took place on 30th October, 1984, in which deceased Balubhai Nathalal received a fatal injury by a knife on his chest, has been amply established on the record. It has also been established that the injury was caused with a knife by the Appellant and none else. The background of the incident which has been detailed both by the trial court as well as by the High Court is that on the fateful day, at about 6.15 p.m. while the Appellant, who was

working as an employee of P.W. 4, emptied a vessel by throwing water on the side of the hand-cart of the deceased and a few drops of water accidentally fell on the deceased, resulting in an altercation between the Appellant and the deceased. Abuses were exchanged between the two. The deceased abused the Appellant in the name of his mother and sister. On the same day at about 7 p.m., the Appellant was seen chasing deceased Balubhai Nathalal and during the chase also, there was exchange of abuses. When the deceased reached near Delux Chowk, a scuffle and a quarrel ensued between the two. At that point of time, it is the evidence of P.W. 3, that the Appellant took out a knife from his pocket and inflicted a blow on the chest of Balubhai who later on succumbed to the injury. According to the medical evidence, the injury suffered by the deceased was sufficient in the ordinary course of nature to cause death.

4. After noticing evidence of the eye-witnesses and the manner of assault, the trial court found that the offence fell u/s 304, Part II, Indian Penal Code. The High Court, as would appear from para 14 of the judgment, also noticed the manner in which incident took place but went on to say, "there is absolutely nothing on the record to show that there was a scuffle between the two and that "no witness" had stated that there was a scuffle between the deceased and the Appellant at the time of the occurrence and on that basis, opined that the case against the Appellant fell u/s 302, Indian Penal Code and not u/s 304, Part II, Indian Penal Code

5. Our independent analysis of the evidence on the record shows that the findings of the High Court are based on misappreciation of evidence. The statement of P.W. 3 - Govindbhai Bharwad clearly shows that there was a "quarrel" between the two at the time of the incident during which Appellant took out a knife from his pocket and stabbed the deceased. Even the statement of Hemant Kumar - P.W. 7, shows that at the time of the incident at 7 p.m. both the deceased and the Appellant were "fighting hand to hand". This evidence apparently has been overlooked by the High Court while returning the finding that there was "no scuffle".

6. On the basis of the material on record, it stands established that there was, apart from an earlier incident of 6.15 p.m., when abuses had been exchanged between the deceased and the Appellant, a further scuffle and quarrel between the two again ensued during exchange of abuses at about 7 p.m. when the Appellant took out a knife from his pocket and gave an injury to the deceased on his chest, in the occurrence which took place more than fifteen years ago. In this fact situation, the trial court was perfectly justified in holding that the injury had been caused by the Appellant at the spur of the moment during a scuffle during which abuses had been exchanged. The submission that the attack was premeditated and the Appellant came armed with a knife to stab the deceased is not based on any evidence. Had the drops of water not fallen on the deceased at about 6.15 p.m. and had the deceased not abused the Appellant in the name of his mother and sister, perhaps no incident would have taken place. There is no

material, no record to show that the Appellant armed himself with the knife after that incident and chased the deceased. On the other hand, evidence led by the prosecution shows that when the two started "fighting" during the quarrel at the chowk, the Appellant took out the knife from his pocket and gave only one injury to the deceased. He stopped thereafter. There is nothing on the record to show that the injury was deliberately aimed at the chest. The High Court was, therefore, not justified in setting aside the well reasoned order of the trial court. It did so by overlooking vital evidence available on the record which established the manner in which the occurrence took place. The conviction of the Appellant, in the facts and circumstances of the case for an offence u/s 302, Indian Penal Code was not warranted. In the established facts and circumstances of the case, the offence of which the Appellant could be convicted would squarely fall u/s 304, Part II, Indian Penal Code and the trial court rightly convicted him for the said offence.

7. Coming now to the question of sentence, the trial court while holding the Appellant guilty of offences u/s 304, Part II, Indian Penal Code and Section 37(1) read with 135 of the Bombay Police Act, 1951, gave him the benefit of Section 6 of the Probation of Offenders Act, 1958. This certainly was not a proper case in which recourse should have been taken to giving benefit to the Appellant under Probation of Offenders Act.

8. It, therefore, appears appropriate to us, while convicting the Appellant for offences u/s 304, Part II, Indian Penal Code and Section 37(1) read with 135 of the Bombay Police Act, 1951 to sentence the Appellant for an offence u/s 304, Part II, Indian Penal Code to undergo R.I. for a period of five years and we make an order accordingly. We do not pass any separate sentence for offence u/s 37(1) read with Section 135 of the Bombay Police Act.

9. With this modification in the conviction and sentence of the Appellant the appeals are disposed of.