

(1998) 08 GUJ CK 0010
In the Gujarat High Court
Case No : Criminal Appeal No. 40 of 1991

State of Gujarat

APPELLANT

Vs

Mahendra Mulji Kerai Patel

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 299, 300, 302, 304II, 307

Citation : (1999) CriLJ 768 : (1998) 3 GLR 722

Hon'ble Judges : J.N. Bhatt, J;Arunkumar Kantilal Trivedi, J

Bench : Division Bench

Advocate : G.D. Desai, app, for the Appellant; Jivanlal G. Shah, for the Respondent

Judgement

1. By this acquittal appeal, the appellant State u/s 378 of the Code of Criminal Procedure, 1973 ("the Code") has challenged the acquittal of the respondent-accused of charges under Sections 302 307 and 506(2) of the IPC recorded by the learned Additional Sessions Judge, Kutch, at Bhuj in sessions case No. 21 of 1989 passed on 20-11-1990.

2. What is the travesty of justice? If one peeps into the facts of this case, he would certainly reach a clear conclusion that there can be hardly any better case of travesty of justice than the one on hand.

3. Upon passing the acquittal order, the accused came to be acquitted of serious charges under Sections. 302 307 and 506(2), IPC. The crime which took toll of old lady Kunverba Kanji occurred on 18-12-1989 at about 7 p.m. In the house of the deceased in village Madhapar in Bhuj taluka of Kutch district. The prosecution inter alia contended that the respondent who is the original accused and who is hereinafter referred to as the accused, for the sake of convenience and brevity, came with small dharia ("FAGA") and inflicted blows with the dharia on the deceased and caused her death and thereby committed offence of murder. The accused was further charged that he attacked and caused injuries to complainant

Jasuben Premji and attempted to commit murder of the complainant, daughter of the deceased, u/s 307, IPC. He was also charged of offence u/s 506(2) for threatening to kill P.W. Naran Achar.

4. The accused had entered the house of the deceased and the complainant with deadly weapon like small dharia with intention to cause injuries to the deceased and the complainant. Therefore, he was also charged for offence u/s 452, IPC. Charge was framed by the trial Court on 7-2-1990 at Ex. 1 to which the accused denied and claimed to be tried.

5. To substantiate the charge against the accused, the prosecution placed reliance on the oral evidence of the following witnesses:

P.W. Exh. No. 1. Jasuben Premji, 10

2. Dr. Minal Pancholi, 15

3. Naran Vastabhai, 21

4. Ghanshyam B. Patel, 22

5. Shamji Arjan, 31

6. Govind Kunverji, 32

7. Ravji Vishram, 34

8. Devji Shamji, 35

9. Mavji Jetha, 37

10. Bhagusinh Ramsinh, 38

11. Gaurishankar P. Joshi 40 -----

6. The prosecution also placed reliance on the following documentary evidence to which reference will be made by us as and when required, at an appropriate stage herein after :

Post mortem note, Exh. 16

Medical certificate, 17

Original case paper, 18

Panchnama of scene of offence, 23

Map of scene of offence, 30

Panchnama, 31

FIR, 41

Yadi of muddamal sent to forensic science laboratory, 42

Receipt of above muddamal, 43

Report of forensic science laboratory, 45

Report of serologist, 46

Report on muddamal sent to forensic science laboratory, 47

Junagadh, 48

Station diary, and Certificate of injuries on the person of accused.

7. After considering the facts and circumstances and upon appreciation of the evidence, the trial Court found the accused guilty only for the offence u/s 324, IPC and sentenced him to undergo R.I. for two years and fine of Rs. 2000/- in default, to undergo S.I. for six months. The trial Court also found the accused guilty for, offence u/s 452 and sentenced him to suffer R.I. for one year and fine of Rs. 500/-, in default, to undergo further S.I. for two months. The substantive sentences were ordered to run concurrently. However, while passing the impugned order of acquittal, the trial Court held the accused not guilty for the offence under Sections 302 307 and 506(2), IPC. That, is why, the appellant State has challenged before us, the acquittal recorded by the trial Court by filing this appeal u/s 378 of the Code.

8. Before we examine the merits of the appeal and challenge against the order on facts, we would like to highlight the powers of this Court u/s 378 of the Code. Undoubtedly, the appellate Court while exercising powers u/s 378 of the Code, cannot interfere with the impugned judgment and order of the trial Court merely on the ground that a different view could have been reached or was possible. The principles are very well settled as to when the appellate Court can interfere with acquittal in such appeal.

9. Upon assessment of evidence and the evaluation of proved facts, if the appellate Court finds that the impugned acquittal judgment is perverse or is based on misreading of facts or law or is tainted with of mind, the appellate Court has to put such impugned order in the correct perception and in right legal shape.

10. After having, dispassionately examined the entire testimonial collections and documentary evidence and dispassionately hearing both the sides, our conscience is not only shocked but very much startled by reading the impugned judgment and the manner and mode in which the facts are incorrectly marshalled and the wrong type and quality of appreciation of the facts in the light of relevant law.

11. No doubt, the prosecution ought to be able to prove its case beyond reasonable doubt so as to succeed in criminal trial and more so in capital charge of murder. The Court is required to Marshall the facts and reach a reasonable conclusion on appreciation of facts. It is true that it is the duty of the prosecution to prove the complicity of the accused beyond reasonable doubt. If a doubt is

shown or seen in assessment or evaluation of the evidence, and if it is shown to affect the main substratum of the prosecution case, the benefit of doubt should go to the accused.

12. Though there is a forensic philosophy and juristic principle and policy behind the concept of doctrine of benefit of doubt, it must be noted that benefit of doubt cannot be taken as passport to heaven of acquittal or even charter to acquittal. Benefit of doubt should be of reasonable man and not of a timid, vacillating man afraid of legal consequences. Principle of benefit of doubt is required to be appreciated in light of the facts and its extent and degree. It is rightly said that doubt of doubting Thomas or of a weak man is not a road to reach logical rational and legal value.

13. It should be remembered that minor discrepancy or insignificant contradictions should not constitute a launching pad to veto the whole prosecution story. It is very well known that because of different perception and human behavioural science, there may be different versions amongst two persons even they saw the something. What should be the anxiety of Court is to see that the main substratum of the prosecution case or the heart of the prosecution story is successfully established beyond reasonable doubt or not.

14. Some discrepancy here or some contradiction there cannot be said to be unusual. Court cannot, therefore, embark upon or to grant an acquittal on the basis of micro-level discrepancy and insignificant contradictions. Such aspects, as such, do not cast serious cloud or doubt on the main theme of prosecution case which cannot be characterised as efficient and sufficient to dislodge the whole story of prosecution. We are constrained to say that the trial Court has failed to appreciate this fundamental principle of criminal jurisprudence while dealing with serious and capital charge for passing the impugned acquittal order.

15. In our opinion, the prosecution has successfully established the offence of murder punishable u/s 302, IPC for causing death of the deceased and for offence of attempt to commit murder punishable u/s 307 beyond reasonable doubt. The grounds which weighed with the trial Court for recording acquittal and finding the accused guilty only for the offence punishable under Sections 452 and 324, IPC instead of Sections 302 and 307 are radiating an imprint of non-application of mind to the vital facts and total misreading of relevant proposition of law.

16. It would, therefore, be appropriate at this stage to highlight the relevant evidence of prosecution. PW No. 1 Jasuben, complainant is examined at Ex.10, Her evidence fully inspires our confidence. Despite searching cross-examination, her testimony has remained unimpeachable. The following aspects have emerged unquestionable and without any doubt in the testimony of her evidence who is also an injured eye-witness :

(i) on the day of the incident, i.e. on 18-12-1989 at about 6.45 to 7.00 p.m. when she was returning home, her mother deceased Kunverba Kanji was

cleansing utensils;

(ii) at that time, she saw that accused was inflicting dharia blows on her mother. The size of the dharia (FAGA) was small and she saw 2 to 3 dharia blows given by the accused on the person of the deceased;

(iii) she has also clearly identified the muddamal article No. 8 Dharia and has stated in her evidence that the accused did inflict same weapon on the person of her mother on the day of the incident. She has clearly identified the accused;

(iv) on seeing profuse bleeding and serious injuries resulting into fall of her mother, she raised shouts for help, as a result of which, the accused Mahendra rushed to attack on her. She, therefore, came out of her house in the street and started shouting loudly being frightened;

(v) it is, therefore, clearly testified by her that thereafter the accused inflicted one blow of dharia on her head and second blow on the right shoulder from behind which also resulted into profuse bleeding to her. Therefore, she had to cover her head with handkerchief;

(vi) she has clearly stated that had she not run away for the help from the house in the street, she would have been finished by the accused. After having received blows wielded by the accused, she could flee away towards northern side of her house;

(vii) it is also very clear from her evidence that P.W. 3 Naran Vasta, the neighbour came running at the venue of the offence near her house who was also threatened by the accused that he should keep himself away, otherwise, he will also be killed;

(viii) the accused thereafter fled away towards the southern side of the house along with blood stained dharia on his Moped;

(ix) insofar as the motive is concerned, it is clearly stated by her in her evidence, para 7, that the accused was harassing her daughter Jyoti who was studying in 12th Std.. in Indrabai School at the relevant time.

(x) 12 days prior to the incident, the accused had come to the house of the complainant and asked for relationship of her daughter for marriage with him. The accused thus wanted to marry her daughter Jyoti. The accused, therefore, persistently requested mother, Jasuben and grand mother Kunverba to which they refused and asked the accused to stop harassing Jyoti. Thereafter, the accused stated to them that video cassette in respect of minor Jyoti can be given to them. In reply to that, Jasuben said that let the cassette be given to them but wanted the accused not to further disturb and harass her daughter. The motive part is thus clearly established in her evidence;

(xi) it may be mentioned at this stage that the motive is also corroborated by the factum of production of love letters exchanged between minor Jyoti and the accused;

(xii) the injuries sustained by witness Jasuben are also clearly established and supported by medical evidence.

17. After having examined the entire testimony of injured eye-witness Jasuben. We are satisfied that her testimony is quite reliable and trustworthy. In fact, no infirmity or material contradiction is spelt out from her testimony. The evidence of Jasuben as such ns like knife going to butter. Presence of P.W. 1 Jasuben and her reliable testimony, who is an injured eye-witness is ipso facto sufficient to transfix the culpability of the accused for the offence punishable u/s 302 for causing murder of deceased Kunverba and for attempt to commit murder of the complainant herself. It cannot be gainsaid that conviction can be founded upon the sole testimony of a witness who is found reliable and trustworthy.

18. Not only that, presence of the complain-ant-injured eye-witness Jasuben is fully reinforced by the evidence of Dr. Minal Pancholi, Ex. 15 who was working as medical officer at Bhuj who conducted the autopsy and examined the injured complainant. P.M. report in respect of deceased Kunberba conducted by Dr. Pancholi is produced at Ex. 16. The medical case papers of injuries sustained by the complainant are produced at Ex.18. The evidence of Dr. Pancholi fully supports the prosecution case and the testimony of injured eye-witness.

19. P.W. No. 2 Dr. Pancholi in her evidence at Ex. 15 has clearly stated that deceased Kunverba had sustained as many as four external injuries. In view of evidence of Dr. Pancholi and P. M. note Ex. 16, the deceased had also sustained internal injuries and the injuries sustained by the deceased on her head were sufficient in the ordinary course of nature to cause death as per opinion of Dr. Pancholi. The internal injuries Nos. 1, 2 and 3 were possible by a sharp cutting instrument like small dharia, Article 8 and Internal injury No. 4 was possible by hard blunt substance. The medical evidence unequivocally lends the material reinforcement to the testimony of eye-witness Jasuben.

20. It becomes also crystal clear from the medical evidence that complainant Jasuben had also sustained injuries as under:

1. incised wound 1 cm. x 2 cm on posterior aspect of skull;
2. abrasion on right upper frontal portion 1 cm x 2 cm.

21. Injury No. 1 as aforesaid was possible by a sharp cutting instrument like muddamal dharia at Art. No. 8 as per the medical evidence of Dr. Pancholi. The medical certificate and medical case papers prepared at the relevant time are also produced at Ex. 18.

22. The evidence of injured eye-witness Jasuben is found quite reliable and trustworthy and her testimony is also fully supported by medical evidence of Dr. Pancholi at Ex. 15 and the medical case papers. The medical evidence clearly goes to show that the deceased had sustained three grievous injuries which were possible by muddamal dharia art. No. 8. The internal injuries also correspond to external injuries and they were sufficient in ordinary course of nature to cause

death, as per the medical evidence.

23. Moreover, from evidence also, we have found that those injuries sustained by the deceased were grievous and which were caused by the accused by wielding muddamal dharia, art. No. 8. The injuries were also sustained" by eye-witness Jasuben who could escape the major mishap. But for timely running away from the venue of offence and the intervention of P.W. Naran Vasta, she would have also become the victim of the accused. The complainant though had received two blows was lucky to escape from the venue. The manner and mode in which the blows were given on her person leaves no manne of doubt that the accused made an attempt to commit her murder also but did not succeed in his murderous acts because of the fact that Jasuben could immediately run away and arrival and intervention of P.W. Naran Vasta who was also threatened seriously by the accused. Simply because the mother and grand mother of minor Jyoti refused to oblige the accused to have minor Jyoti given to him in matrimony, the accused had threatened them earlier and the said incident had preceded only 12 days before the murderous attack by the accused.

24. It will also be interesting to note that evidence of injured eye-witness Jasuben is also corroborated by the complaint lodged by her and produced at Ex. 48. It was lodged without loss of time by her before the PSI of Bhuj taluka police station in the Civil Hospital at about 8.15 p.m. The venue of offence Madhapar is 4 kms. away from the Civil Hospital and thus the FIR came to be lodged by the complainant within one and half hours time. Thus the FIR which was lodged at the earliest fully corroborates the version of the eye witness and prosecution case.

25. P. W. 3 Naran Vasta, Ex. 21 who is the neighbour of the complainant has clearly testified that he had seen the accused with a dharia, muddamal art. No. 8 and giving one blow on the head of injured complainant Jasuben. He was also threatened to be killed by the accused when he tried to intervene. He found the accused running away along with muddamal Article 8 and the comlainant ran away on the other side. The evidence of this witness has remained .unshaken. His presence at the venue of offence is quite natural and probable being a neighbour and he is a disinterested person who has supported the prosecution case and the evidence of injured eye-witness Jasuben.

26. The trial Court has found the accused guilty for the offences punishable under Sections 324 and 452, IPC holding that the accused is the author of the crime, though the trial Court has clearly held that deceased Kunverba died a homicidal death and the prosecution has successfully established without any doubt, an offence. It is also clearly held by the trial Court that the accused had inflicted dharia blows and the injuries on the person of the deceased had resulted into her death. The finding of the trial Court is also very clear that P. W. No. 1 Jasuben had sustained injuries caused by the accused with muddamal art. No. 8. The trial Court has also clearly held that the accused had committed criminal trespass in the house of the complainant with intention to cause murderous

injuries and commit offence. Therefore, the accused is also convicted and sentenced for the offence punishable u/s 452, IPC.

27. However, the trial Court acquitted the accused of the charge of Sections 302 and 307, IPC. The grounds are stated in support of the conclusion that the accused is guilty of offences u/s 324 for causing death of Kunverba and also causing injuries to Jasuben in para 38 of the impugned judgment. We have dispassionately and seriously considered the grounds and also the contentions raised on behalf of the respondent accused and we have found ourselves unable to accept those reasons. We are at great loss to understand as to how and on what basis the trial Court has held that the injuries sustained by the deceased were not grievous. In fact, the precise observation by the trial Court in para 38 of the judgment is that deceased Kunverba does not seem to have sustained any grievous injuries. However, the trial Court has held that those injuries were caused by a sharp cutting instrument, but the said injuries are not grievous injuries. In our opinion, these observations are devoid of settled legal proposition and testimonial version on record.

28. There is no iota of doubt in our mind that the trial Court has, with due respect, unfortunately misread the evidence and has failed to examine the relevant provisions of law.

29. Section 320, IPC prescribes what is grievous hurt which reads as under :

The following kinds of hurt only are designated as grievous : First Emasculation.

Secondly- permanent, privation of the sight of either eye;

Thirdly- permanent privation of the hearing of either ear;

Fourthly- Privation of any member or joint; Fifthly- Destruction or permanent impairing of the powers of any member or joint;

Sixthly- Permanent disfiguration of the head or face;

Seventhly-Fracture or dislocation of bone or tooth;

Eightly- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

30. It is very clear from clause Eightly that any hurt which endangers life or Which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits of life, is grievous hurt. Unlike Section 312, which also defines the expression "hurt", Section 320 enumerates hurt describes as grievous. Clause eighty in Section 320 is enumerative and includes all injuries which endanger life or which cause the sufferer to be during the space of 20 days in severe bodily pain unable to follow his ordinary pursuits of life. On a conjoint reading of provisions of Section 320 and nature and number of injuries sustained by the deceased, there can hardly be any controversy about

the nature of injuries.

31. In our opinion, all the three external injuries corresponding with internal injuries are covered by the definition of Section 320. Looking to the size, type, length of the situs of the first three external injuries which correspond to internal injuries Nos. 1, 2 and 3, it is clear that they are serious and in reality, they are grievous. How could be said even for a moment that such injuries on the vital part of the body with a dangerous weapon like dharia produced at muddamal art. No. 8 causing clotting of blood in the brain and resultant death were simple injuries? We are sorry to say that the learned trial Judge has misdirected himself and has failed to appreciate the evidence in the real perception and provisions of Section 320 299 300 302 and 307, IPC to which we shall shortly refer for determining the real character of culpability of the accused in causing injuries on the person of the deceased and also causing serious injuries on the person of Jasuben.

32. It may also be noted at this stage that any hurt which endangers life or which causes severe bodily pain to the sufferer to be during the space of 21 days or unable to follow his ordinary pursuits of life, as employed in clause Eighthly in Section 320 undoubtedly would include injuries sustained by the deceased on her head which led to her death. In fact, these words cannot apply to cases in which life was not merely endangered but actually had taken away. In the present case, those injuries sustained by the deceased on her head which culminated into her final voyage death show that not only injuries caused by the accused were dangerous but they were injuries which were caused by a dangerous weapon and which proved fatal.

33. The line between culpable homicide not amounting to murder and grievous hurt is subtle but must be seriously appreciated by the Court while dealing with such cases. Injuries caused on vital part of the body like head and that too bone-deep with a sharp cutting instrument like small dharia, art. No. 8 would not only endanger life but as such, in reality, have culminated into death of the deceased. Even the medical evidence of Dr. Pancholi at Ex. 15 is unequivocal on this point. It is clearly testified by him that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. The blows were so serious, so grievous on the vital portion of the body of the deceased that she succumbed to the same very soon after infliction of blows.

34. Despite dear prosecution evidence and unequivocal testimony of medical officer and the post mortem version, the trial Court has observed that the injuries sustained by the deceased were not sufficient in the ordinary course of nature to cause death. It is, therefore, held by the trial Court that benefit of doubt should be given to the accused because the injuries sustained by the deceased did not seem to be sufficient in ordinary course of nature to cause death. By giving benefit of doubt, the trial Court, therefore, held that offence of murder is not proved by the prosecution beyond doubt. It is, therefore, held that the deceased had sustained simple injuries with a sharp cutting instrument and

the author of such injuries was the accused. Therefore, the trial Court reached the conclusion that the prosecution has established the case for conviction and sentence only u/s 324, IPC.

35. Section 324 reads as under :

Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

36. In our opinion, the trial Court has committed a serious error of law in applying provisions of Section 324. By no stretch of imagination, it can be said from the proved facts that culpability spelt out from the record of the case and established by the prosecution would fall under Sections 324 and not 302. This finding of fact is not only manifestly perverse but also demonstrably unsustainable. In our opinion, the entire approach of the trial Court in giving benefit of doubt and acquitting the accused of the charge of Sections 302 and 307 is palpably unjustified and unwarranted based upon misreading of evidence and misconception of law. It is therefore, incumbent upon us and permissible to interfere with that part of acquittal and findings, and convict the accused appropriately for criminality succinctly established by the prosecution without any doubt.

37. Section 299 defines as to what is culpable homicide, Section 300 defines culpable homicide amounting to murder. In our opinion, homicidal death, the author of which is held to be the accused by the prosecution is a case of culpable homicide amounting to murder. The injuries caused on the deceased by the accused and also on the person of the complainant, were intentional. There are proved set of facts from which a safe inference can be drawn that such injuries were caused by the accused intentionally. He was the only author of the injuries to the deceased and injured complainant.

38. There was deep seated motive which is established. The accused had made not only unreasonable but illegal demand of the daughter of the complainant and grand daughter of the deceased in marriage as he appeared to be in deep love with her. Manifestly, there are love letters produced on record. The incident of 18-12-1989 caused murder of the deceased and resulted into serious injuries to Jasuben got preceded by not only unreasonable but illegal demand of minor daughter Jyoti of the complainant who was minor in marriage.

39. The mother who is the complainant and the deceased, both had scolded and rebuked the accused. He was also warned by them not to create any harassment to the minor who was studying in 12th Std. at the relevant time. So, the accused

had entertained a serious grudge and grievance against the deceased as well as injured complainant Jasuben. The prosecution has succinctly established this motive. Apart from that, the manner and mode in which the accused made criminal trespass with criminal intention to cause hurt and commit serious offence with dangerous dharia produced at art. No. 8 and giving three successive blows on the person of the deceased Kuverba who was undefended, unarmed, helpless, aged, clearly demonstrates his intention.

40. Not only that, on seeing Jasuben coming back home, he rushed towards her for attacking Jasuben who could manage to run out of the house in street where she was inflicted serious dharia blow on her head which is supported by medical evidence and by the evidence of P. W. Naran Vasta, the neighbour and independent eye-witness. But for his timely intervention, P. W. Jasuben also would have been finished by the accused who had refused to have hand of minor Jyoti as he desired. We have, therefore, no hesitation in finding that the assault and resultant injuries inflicted on the person of the deceased by the accused with the help of muddamal dharia were deliberate wanton and intentional. We have no hesitation in finding that the attack on the P.W. Jasuben was nothing but an attempt to commit murder. But for her active help to herself in managing to escape, she would have also been finished. The manner and method in which dharia was wielded on her head and the manner and mode in which intervening neighbour Naran Vasta was threatened to be killed leaves no room for doubt that the accused wanted to kill injured Jasuben but she could manage to escape from the venue and on account of raising of forceful shouts by the injured, timely intervention of Naran Vasta and thereafter other witnesses, the accused was left with no alternative but to run away and actually he ran away takings stained muddamal dharia on his moped.

41. Before concluding, learned advocate for the respondent has submitted that alternatively, in light of the injuries and attendant circumstances, there will not be, in any case, offence u/s 302. He, therefore, submitted that at best, the offence will be u/s 304-II. In support of this contention, he placed reliance on the observations made by the Honourable Supreme Court in State of Andhra Pradesh Vs. Rayavarapu Punnayya and Another, and in Baijnath Gupta and Others Vs. The State of Madhya Pradesh, . After having examined the aforesaid decisions of the Apex Court, we are of the opinion that the said decisions are not attracted to the facts of the present case.

42. In light of the aforesaid facts and circumstances, we have no hesitation in finding that the accused is guilty of offences of culpable homicide amounting to murder as the injuries caused on the deceased were intentional and therefore he is liable to be punished and sentenced u/s 302, IPC. Similarly in light of analysis of the evidence and true appraisal of prosecution version emerging on record, it becomes explicit and manifest that the accused had intention to commit murder of Jasuben and he also in fact gave dangerous grievous blow on her head with deadly weapon like dharia. But for the intervention of Narain Vasta and active

action for escaping from the venue of offence by the injured, the accused could not accomplish his heinous crime to kill her.

43. Section 307 provides for punishment in case of attempted murder. In fact, in order to punish accused for the offence u/s 307, it is not imperative that injury as such should be caused. Whereas, in the present case, the accused did cause serious injuries with deadly weapon. There are proved set of facts which lead us to unerring inference that it was nothing but attempt to murder injured complainant Jasuben. Therefore, we are satisfied that the accused is also guilty for offence punishable u/s 307, I.P.C.

44. In light of the entire testimonial collection and documentary evidence referred to above, and catalogue of events and considering the relevant proposition of law, we are fully convinced that the impugned order of acquittal of the accused of the charge u/s 302 for committing murder of deceased Kunverba and charge of causing serious injuries and making an attempt to commit murder of Jasuben is manifestly illegal, unjustified and totally perverse. Therefore, the acquittal is required to be reversed. Instead of conviction u/s 324 as held by the trial Court, the respondent in this appeal is held guilty for offence punishable u/s 302 for causing and committing murder of deceased Kunverba.

45. The accused is also held guilty for offence punishable under-Section 307 for making an attempt to commit murder and murderous assault on Jasuben. The conviction u/s 452 shall stand confirmed.

46. However, there will be a statutory pause so as to afford an opportunity of hearing on the quantum of sentence for offences for which he is held guilty by us. The accused is on bail. How-ever, instead of immediately passing any order for issuance of warrant for arrest, upon the request of learned advocate for the accused, the matter is adjourned to 14th July 1998, as he assured us to intimate the accused to remain present in the meantime. Hence, adjourned to 14-7-1998.

11/8/1998

47. FURTHER ORDER:

Reversing back to the sentencing of the accused for the offences he is found guilty, we have heard on the quantum of punishment for the offences u/s 302 307 and 452 IPC. The respondent accused was also heard by the trial court before passing the order of sentence. The trial Court found him guilty for offence u/s 324, IPC and directed him to undergo R. I. for two years and to pay fine of Rs. 2,000/- and in default, to undergo S. I. for six months and also for the offence u/s 452, the trial Court sentenced the accused to undergo R. I. for one year and fine of Rs. 500/- in default, to undergo S. I. for two months. Both the sentences were ordered to run concurrently. The trial Court imposed the aforesaid sentences after hearing the accused and learned advocate for the accused and the learned Public Prosecutor.

48. By way of additional fact, it has been submitted on behalf of the respondent-

accused that the accused has a child and young wife and old mother. Thus, the accused is shouldering the responsibility for maintaining them.

49. Section 302, IPC prescribes punishment for murder. The accused is found to have committed the murder and he is held guilty for the offence punishable u/s 302. Under that section, the accused can be punished for death or imprisonment for life and he is liable to fine. Thus, the minimum sentence provided for the offence u/s 302, is imprisonment for life. In light of the facts and circumstances of the present case and in the backdrop of settled proposition of law, we do not find special reasons for imposing death sentence. In our opinion, this is not a case falling within the category of rarest of rare case as expounded in the catena of judicial pronouncements. Death sentence is to be imposed or awarded in respect of offence of murder when it is found to be rarest of rare case. The learned Additional Public Prosecutor has also, rightly not pressed for extreme penalty of death. We, therefore, deem it expedient to impose the minimum sentence of imprisonment for life u/s 302, IPC.

50. The trial Court, while imposing sentence for the offences under Sections 324 and 452 noted the following aspects after hearing the accused and learned advocates :

- (i) the accused is a young man of 21;
- (ii) his antecedents;
- (iii) he is not habitual offender;

Additionally, during the course of hearing on the question of sentencing, the learned advocate appearing for the accused has also placed the following aspects:

- (i) the accused has old mother of 61;
- (ii) he has young wife of 29;
- (iii) a minor child;
- (iv) he is coming from poor class of society as he is working as a driver.

No doubt, learned Additional PP has pointed out from the record that the contention of the accused that he was working as a driver and he is coming from poor strata of the society is not correct and acceptable. According to him, as per the record, the accused was living in joint family and the joint family was doing quarry business.

51. After having taken into consideration all the relevant facts and circumstances and submissions referable to the question of sentence, since the accused has already been sentenced to undergo imprisonment for life u/s 302, the quantum of sentence awarded by the trial Court for the offence u/s 324 is modified and instead of Section 324, the accused is awarded the same sentence as that awarded by the trial Court, for the offence u/s 307. We do not deem it expedient to modify the quantum of sentence awarded by the trial court insofar as offence

u/s 452, IPC is concerned. Therefore, the order of sentence passed by the trial court insofar as offence u/s 452 is concerned, will remain unchanged and we confirm it.

52. In the net result, the appeal is partly allowed and the accused is held guilty for the offence u/s 302 and is directed to undergo rigorous imprisonment for life for committing murder. For the offence u/s 307, he is directed to undergo R. I. for two years and to pay fine of Rs. 2,000/- and in default, to undergo S. I. for six months. Conviction and sentence recorded by the trial Court for offence u/s 452 is confirmed.

53. Since the accused was enjoying benefit of bail order granted by this Court, the non-bailable warrant came to be issued against him which has remained unexecuted for the reason that he is not traceable and/or absconding presumably to evade the sentence. Therefore, the warrant of arrest, already, issued shall continue to stand until it is executed and the accused is arrested so as to serve the remaining part of the sentence imposed by us. as here in above.