

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO. 120 OF 2001**

Sahebrao Munjaji Ingole,  
Age: 27 years, Occ.: Agriculture,  
R/o Tembhurni, Taluka Basmath,  
District Parbhani.

... **Appellant**

Versus

The State of Maharashtra  
through APP High Court  
Bench at Aurangabad

... **Respondent**

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Mr. S.S. Bora, Advocate for the Appellant.  
Mrs. A.V. Gondhalekar, APP for respondent-state.  
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**CORAM : S.V. GANGAPURWALA &  
MANGESH S. PATIL, JJ.**

**RESERVED ON : 18.08.2017  
PRONOUNCED ON : 12.10.2017**

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**JUDGMENT:** (*Per Mangesh S. Patil, J.*)

. This is an appeal by the accused against his conviction by the learned Sessions Judge, Parbhani in Sessions Trial No. 200 of 2000, whereby, the learned Sessions Judge has convicted him under Section

302 of the Indian Penal Code and sentenced to suffer life imprisonment and fine of Rs. 1,000/- in default, further R.I. for one month. For the sake of convenience the appellant is hereinafter referred to as the 'Accused' and the witnesses are referred by their names and numbers in the Trial Court.

2. Shorn of details, the prosecution case is to the effect that the deceased Vilas was resident of village Tembhurni. The accused is also resident of the same village. Since about a year before the incident there was dispute between both of them on the ground of control over local Devasthan. On 05.06.2000, Vilas had gone to Basmath. At about 6.00 to 6.30 p.m. a quarrel ensued between him and the accused near Golai Chowk situated in the vicinity of Nagar Parishad building of Basmath. Sahadu (PW-2) and Kerba (PW-3) attempted to separate both of them, but the scuffle continued in which, the accused, all of a sudden took out a button knife from his pocket and stabbed deceased Vilas number of times on the chest and abdomen region. The accused then ran away with the knife. Vilas collapsed on the spot in the pool of blood. He was shifted to the Rural Hospital at Basmath which was also nearby the spot of incident.

3. Sahadu (PW-2) lodged a report in the police station at about 7.00 p.m. In pursuance thereof Crime No. 75 of 2000 was registered under Section 307 of the Indian Penal Code. PSI Munde (PW-10) took over the investigation.

4. Unfortunately, Vilas died in the Civil Hospital at Nanded. An inquest panchnama was drawn and Dr. Kagne (PW-1) performed the post-mortem examination, as per the Post-Mortem Report (Exhibit-8). He certified the cause of death as shock due to stab injuries. He found following injuries:

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| 17. Surface wounds and Injuries- Their nature, position, dimensions (measured) and directions to be accurately stated – their probable age and causes to be noted.                                                                             | 1. Stab wound of 2 cm. x 1 cm. Cavity deep (on dissection) involving Rt. Upper lobe of lung. Located 4 cm above & lateral to nipple (Rt) betn. 2 <sup>Nd</sup> & 3 <sup>rd</sup> rib (2 <sup>nd</sup> ICS). Oblique & directed medially downwards. Elliptical in shape. Reddish.                                                                                                                  |
| If bruises be present what is the condition of the subcutaneous tissues?<br><br>(N.B.)- When injuries are numerous and can not be mentioned – within the space available they should be mentioned on a separate paper which should be signed). | 2) Stab wound of 2 cm. x 2 cm. x cavity deep. Directed medially downwards. Located betn 5 <sup>th</sup> & 6 <sup>th</sup> ribs (5 <sup>th</sup> ICS); 4.5 cm. meidally below Rt. Nipple, oblique, elliptical in shape, involving the liver after cutting pleura and diaphragm. Reddish.<br><br>3) Incised wound of 2 cm. x 1 cm. x muscle deep over Rt. Side of abdomen 12 cm. below injury no.2; |

|  |                                                                                                                                                                                                                                           |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>Reddish.</p> <p>4) Incised wound at Right hand palmer aspect of middle &amp; ring finger, transversly placed at 1.5 cm x 0.5 cm x muscle deep 1.5 cm x 0.5 cm x muschel deep. Reddish E/o venisection at left ankle medial aspect.</p> |
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5. Dr. Tambhade (PW-12) recorded history by making inquiry with Vilas. With some difficulty Vilas stated that one Saheb Munjaji Ingole – son of Pahilwan had caused the injuries by using Khatkyacha Chaku (button knife). Dr. Tambhade (PW-12) recorded the statement in the M.L.C. register (Exhibit-39). He then prepared case paper and written the history narrated by Vilas thereon. When the police solicited opinion from Dr. Tambhade (PW-12), about condition of Vilas in writing, he certified that Vilas was not in a position to give statement. Dr. Tambhade (PW-12) then referred Vilas to Civil Hospital at Nanded.

He also recorded that all these injuries were anti-mortem. Since the incident had occurred within the jurisdiction of Basmath Police Station, the inquest and the post-mortem report were forwarded to the Basmath Police Station.

6. The Investigating Officer P.S.I. Munde (PW-10) went to the spot on the next day i.e. 06.06.2000, drew the spot panchnama (Exhibit-22). He then recorded the statement of Kerba (PW-3) and other witnesses, seized the clothes of the deceased Vilas and arrested the accused on the same day.

7. According to the prosecution, on 07.06.2000 the accused produced his blood stained clothes which he was wearing at the time of incident which were seized from his house at Tembhurni under a panchnama. The accused then agreed to discover the knife used by him in the crime. Accordingly his statement was recorded in presence of panchas and he then discovered the knife from his hut in his field. The knife was having blood-stains and it was also seized under panchnama.

8. All the articles were forwarded for chemical analysis. Further investigation was carried out and the offence punishable under Section 302 of the Indian Penal Code was registered and in due course of time the accused was charge-sheeted. Subsequently, the matter was committed to the Sessions Court. After conducting the trial the learned sessions Judge by his impugned judgment and order convicted and

sentenced the accused as mentioned herein-above.

9. We have heard the learned Advocate for the accused, as well as, the learned Assistant Public Prosecutor, at sufficient length.

10. Before proceeding to discuss the evidence, it will not be out of place to mention here that neither during the course of trial nor before us any dispute has been raised as regards the cause of death, being homicidal one. The evidence of Medical Officer Dr. Kagne (PW-1) and his opinion in the post-mortem report (Exhibit -8), make it abundantly clear that there were multiple incise injuries sustained by deceased Vilas and he had succumbed to those injuries, which were all ante-mortem. We, therefore, do not find it necessary to deal with this aspect of the matter any more.

11. According to the learned Advocate for the accused Mr. Bora, there is no sufficient and clinching evidence, as regards the actual incident. The evidence as regards the spot of incident is also inconsistent. In spite of the fact that the incident having occurred in a busy place, no independent witness was examined. The two eye witnesses Sahadu (PW-2) and Kerba (PW-3) are related to the deceased and Sahadu (PW-2) has turned hostile to the prosecution and except

admitting his signature on the F.I.R., he has not supported it. The conduct of Kerba (PW-3) in not approaching the police or informing his own family members about the incident improbabilises his presence at the spot. The C.A. report is inconclusive. The discovery under Section 27 of the Indian Evidence Act has also not been duly established. Additionally, the learned Advocate vehemently objected to the procedure followed by the learned Sessions Judge in admitting the evidence in the form of M.L.C. register (Exhibit-39), without there being any explanation as to why such a clinching material was not gathered by the Investigating Officer during the course of investigation. According to the learned Advocate this circumstance needs to be totally discarded. Thus according to the learned Advocate, the prosecution has miserably failed to bring cogent and reliable evidence, to bring home the guilt beyond reasonable doubt.

12. Per contra, the learned Assistant Public Prosecutor submitted that though the complainant Sahadu (PW-2) has turned hostile to the prosecution, he has admitted his presence at the spot as also his signature on the F.I.R. (Exhibit-14). Besides Kerba (PW-3) has witnessed actual incident and his subsequent conduct is compatible with the conduct of a man of ordinary prudence. Except the fact that he is related

to the deceased Vilas, nothing could be brought on record to discredit his version.

13. As regards the statement of deceased Vilas recorded by Dr. Tambhade (PW-12) is considered, according to the learned A.P.P., no fault can be found with the Medical Officer in bringing on record such material in the form of history of the patient recorded by him during the ordinary course of his duties. Even if it can be said that the Investigating Officer could have conducted the investigation in more prudent manner, any lapses on his part cannot be taken aid of in dislodging this circumstance, wherein, deceased Vilas had narrated the incident, wherein he attributed authorship of the injuries to the accused. The learned A.P.P. also pointed out that such evidence was allowed to be brought on record by the accused without any objection. When the prosecution was leading evidence and attempted to bring such documents on record, in the form of extract of M.L.C. register, no objection was taken by the defense and it is for the first time that the objection is being raised in this appeal. Thus, according to the learned A.P.P., though, there are some infirmities in the investigation and in the evidence brought on record, the evidence which is available is sufficient enough to justify conviction.

14. As was done before the learned Sessions Judge, the learned Advocate for the accused submitted that Sahadu (PW-2) having turned hostile to the prosecution, his evidence is of no avail. True it is that Sahadu (PW-2) has turned hostile to the prosecution and has not supported it for proving the contents of the F.I.R. (Exhibit-14). But then there is an entry in respect of such lodging of F.I.R. taken in the station diary at the police station. The learned Sessions Judge has taken necessary precaution in directing the prosecution, to produce the station diary. After going through the extract of the station diary (Exhibit-47), we can safely conclude that in fact the F.I.R. (Exhibit-14) was registered at the instance of none other than Sahadu (PW-2) at about 7.00 p.m. on the very date of incident which occurred only about half an hour prior thereto. Therefore even though this witness has turned hostile to the prosecution, to the limited extent of lodging of the F.I.R. (Exhibit-14) under his signature on the above mentioned date and time stands duly established.

15. This takes us to the other eye witness Kerba (PW-3). In consonance to the prosecution case he has stated about having witnessed the incident. He has stated that he had gone to Basmath for purchasing seeds and he saw that a quarrel was going on between the

accused and deceased Vilas at about 6.00 p.m. In that scuffle the accused gave two to four stabs of knife on the chest and hand of Vilas. He then stated about having accompanied Sahadu (PW-2) to the Police Station and thereafter police having reached the spot and Vilas having been shifted to the Government Hospital at Basmath. True it is that he has admitted his relationship with deceased Vilas. However, it is trite that simply because a witness happens to be related to the deceased or victim one cannot ipso facto discard his evidence. What is necessary is, his evidence has to be appreciated with circumspection and not with cynicism. In this respect following cases were cited before the learned Sessions Judge on the point of appreciation of evidence of an interested witness:

- 1) Ram Ashrit vs. State of Bihar 1981 Cri. Law Journal, Page 484.
- 2) Krishna and others vs. State 2000 Cri. Law Journal, Page 4956.
- 3) Panda Nana vs. State of Maharashtra 1979 Cri. Law Journal, Page 640.
- 4) Anil Phukan vs. State of Assam 1993 Cri. Law Journal, Page 1796.
- 5) Ramaji Surjya vs. State of Maharashtra 1983 Cri. Law Journal, Page 1105.

Suffice for the purpose to observe that we are satisfied by the

manner in which the learned Sessions Judge has borne in mind the principles laid down in this decisions while appreciating the evidence of Kerba (PW-3).

16. Incidentally, Kerba (PW-3) is the only eye witness, the complainant Sahadu (PW-2) having turned hostile. Name of Kerba (PW-3) appears in the F.I.R. as an eye witness. As is observed above though Sahadu (PW-2) has disowned it, the station diary entry clinchingly proves about the F.I.R. having been lodged promptly within short span of time, within half an hour after occurrence of the incident. There could not have been any possibility of any concoction or fabrication having entered in lodging the F.I.R. Thus presence of Kerba (PW-3) on the spot, at the time of incident has been established to be natural. His conduct in not disclosing the incident to his family members and instead rushing to inform the incident to the father of deceased Vilas, Babarao (PW-4) is also quite natural.

17. Some attempt was made on behalf of the accused to point out that the evidence of Kerba (PW-3) as regards the spot of incident is not compatible with the spot mentioned in the F.I.R. Even during the course of trial a request was made on behalf of the defense to the

learned Sessions Judge to personally inspect the spot of the incident. The learned Judge conceded to the request and visited the spot, for appreciating the evidence. He duly recorded notes of inspection and has prepared a sketch. On the basis of such visit, the learned Sessions Judge has duly appreciated the fact that apparently Kerba (PW-3) has stated about the incident having occurred in front of Nagar Parishad Basmath and the spot panchnama reads the place to be in front of Vaibhav Medical Store. He has noticed that there is not much of distance between the two places. The learned Judge has correctly appreciated that villagers like Kerba (PW-3) would refer to the spot with reference to a more renowned place rather than the names of stores or shops. We therefore are satisfied in the manner in which the learned Sessions Judge has appreciated these facts and has concluded that no capital can be made out of such discrepancy.

18. We have independently scrutinized the evidence of Kerba (PW-3) in the light of submission made before us and find no reason but to concur with the observations and conclusions of the learned Sessions Judge in accepting the testimony of Kerba (PW-3) while concluding that his evidence is sufficient to attribute all the fatal injuries on the person of deceased Vilas to the accused.

19. This takes us to the principal argument advanced by the learned Advocate for the accused, assailing the manner in which M.L.C. register extract (Exhibit-39) was allowed to be brought on record by the learned Sessions Judge and the alleged statement recorded by Dr. Tambhade (PW-12) wherein deceased Vilas allegedly made the declaration attributing the injuries to the accused and which the learned Sessions Judge has accepted as his dying declaration.

20. Indeed, this is the circumstance which needs a minute scrutiny, for, without there being any basis in the investigation and without any documents having been forwarded along with the charge-sheet, these documents in the form of extract of M.L.C. register (Exhibit-39) and the case papers (Exhibit-42) are brought on record during the testimony of Dr. Tambhade (PW-12). Dr. Tambhade was attached to the Rural Hospital Basmatnagar on 05.06.2000 . He has deposed that at about 7.05 p.m. injured Vilas was brought to the hospital and when he made enquiry for recording the history Vilas had disclosed that the injuries were caused using kahtakcha chaku (button knife) by Saheb Munjaji Ingole – son of Pahilwan. He has deposed about having recorded statement of Vilas in his own hand writing on the M.L.C.

register (Exhibit-39). He has stated about having maintained that register regularly. True it is that, such an important piece of evidence was brought on record during the course of trial and therefore one needs to be very careful in scanning it. However, we find that during the course of cross-examination of Dr. Tambhade (PW-12) nothing could be brought so as to attribute some ulterior motive on his part, except the fact that there is some over writing in mentioning the surname of the assailant named by deceased Vilas. However, on the basis of such isolated circumstance one cannot discard the evidence of such independent witness in the form of a Medical Officer.

21. Certainly, there can be no justification and even no attempt was made by the Investigating Officer PSI Munde (PW-10) as to why he failed to collect such material evidence when it was available with the Medical Officer. Some capital was sought to be made out for inaction of Dr. Tambhade (PW-12) in not informing such history recorded by him to the police. However, once we have found that the M.L.C. register (Exhibit-39) was maintained in the ordinary course of his duties and having found that he has no axe to grind in the matter, we cannot attribute any motive on his part for the inefficiency of the Investigating Officer. On the

contrary, the very same argument would demonstrate as to how independent this witness has been. If really he had some ulterior motive in falsely implicating the accused, he would have obligated the Investigating Officer by himself forwarding such clinching material instead of keeping it lying in his hospital. We are, therefore, satisfied that this piece of evidence has been brought on record at eleventh hour but it was allowed to be brought on record without any demur and there is no material to discredit it even otherwise.

22. The learned Advocate for the accused referred to the decision in the case of **State of Maharashtra vs. Ajay Dayaram Gopnarayan and anr. 2014 (1) Mh.L.J (Cri.)293**, wherein it has been laid down that the documents which are not confronted to the defense by including it in the list prepared under Section 294 of the Criminal Procedure Code could not be exhibited. According to the learned Advocate, in view of such observation, the evidence brought on record in the present case in the form of M.L.C. Register (Exhibit-39) and the case papers (Exhibit-42) through Dr. Tambhade (PW-12) should be discarded.

23. We have carefully gone through the decision but to our mind the principle laid down therein is in altogether different context. In

paragraph 28 following observations have been made:

"Let us now turn to the case at hand. The case at hand is typical example of such lapse on the part of the Presiding Officer as well as ministerial staff of the Sessions Court. The documents Exh.-87 and 88 were never included in the list Exh.-22 submitted by the prosecution under section 294 (1) of the Criminal Procedure Code that was given to the accused for admission or denial. We have carefully perused the list, which was prepared and submitted to the Court by the prosecution with a notice to the accused for admission and denial under section 294, Criminal Procedure Code but we find that the documents Exh.-87 and 88 (two pages) are not to be found in the list. Perusal of the record clearly shows that the Presiding Officer or the ministerial staff of the Court exhibited Exhs.-87 and 88 without verifying whether Exh.-87 and 88 were included in the list filed by the prosecution merely because counsel for the accused admitted Exhs.-87 and 88. Thus, there is a blatant violation of the aforesaid procedure elucidated by us above. It is said, the prosecution is a 'handmaid' of justice. In our opinion, that is not always so, as in the instant case, the provisions of section 294 (1) and (2) being mandatory. To sum up, we hold that Exhs.-87 and 88 cannot be read in evidence as contemplated by section 294 (3) and, therefore, we reject these documents Exh.-87 and 88."

As is apparent from the facts in that case that though the documents were forwarded along with the charge-sheet and were

available on the record those were not included in the list for recording admission or denial as contemplated under Section 294 of the Code of Criminal Procedure. It appears that only during the course of evidence, documents purported to be papers to identify blood groups of the the accused persons were got admitted from defense and those were not included in the list submitted for recording admission and denial under Section 294 of the Code of Criminal Procedure before the evidence of the prosecution began. These documents were admitted by the learned Advocate for the accused and were thus exhibited. On the basis of such peculiar facts and circumstances, it was held that those documents which had not been part of the list furnished while recording admission or denial under Section 294 of the Code of Criminal Procedure could not be exhibited by causally putting the documents for admission before the Advocate for the accused.

24. With respect, the decision does not come to the aid of the accused in the matter before hand. It nowhere prohibits any additional material / evidence to be brought on record except through/ by following the procedure prescribed under Section 294 of the Code of Criminal Procedure. Section 294 of the Code of Criminal Procedure is not the only gateway for a document to come on the record during a trial. The

prosecution can in a fit case seek to produce a document on record. The only precaution that needs to be taken is that it does not cause any prejudice to the accused. As is observed earlier, in the matter before hand, the M.L.C. register (Exhibit-39) and the case papers (Exhibit-42) were brought by Dr. Tambhade (PW-12) and were duly proved by him. Accordingly those were exhibited by the learned Sessions Judge, without there being any objection raised by the defense. Therefore this decision does not come to the rescue of the accused.

25. Once we have concluded that the evidence of Dr. Tambhade (PW-12) is believable and even history recorded by him is quite natural and believable, we see no reason not to accept the observations and the conclusions of the learned Sessions Judge in convicting the accused on the basis of such evidence. The learned Sessions Judge has correctly appreciated the evidence available on record and has come to the right conclusion in convicting the accused.

26. It is true that there are certain lapses in the investigation and deficiencies in the evidence. The Investigating Officer P.S.I. Munde (PW-10) has not collected the material which was available with Dr. Tambhade (PW-12) and has not promptly recorded the spot panchnama.

The panch witnesses have turned hostile and discovery sought to be established under Section 27 of the Indian Evidence Act has also not being duly proved. The question is not as to what ideally should be the evidence. What is to be ascertained is as to whether whatever evidence that is brought on record is cogent, reliable and sufficient to attribute authorship of the crime to the accused. In the facts and circumstances, we hold that there is no illegality and infirmity in the conclusion drawn by the learned Sessions Judge in holding the accused guilty of the offence.

27. As a last resort, the learned Advocate for the accused submitted that since the incident had occurred pursuant to a scuffle between the deceased Vilas and the accused, there was no pre-determination and the incident had occurred due to sudden quarrel, the accused may be given benefit of Exception 4 of Section 300 of the Indian Penal Code by altering the sentence awarded to the one under Section 304 Part II. The learned Advocate in support of his submission referred to the decision in the case of **K. Ravi Kumar v. State of Karnataka (2015) (2) SCC 638**.

28. We have carefully gone through this decision wherein earlier

decisions of the Supreme Court on the point of extending the benefit of Exception 4 to Section 300 of the Indian Penal Code has been laid down. These earlier cases are, **Surinder Kumar V. Union Territory, Chandigarh (1989) 2 SCC 217, Ghapoo Yadav & Ors. v. State of M.P. (2003) 3 SCC 528, Sukbhir Singh v. State of Haryana (2002) 3 SCC 327, Mahesh v. State of M.P. (1996) 10 SCC 668** and recent judgment in the case of **Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770.**

29. We have gone through all these decisions. As has been observed in the matter of K. Ravi Kumar (supra) whether an accused is entitled to derive benefit of Exception 4 of Section 300 of the Indian Penal Code mostly depends upon the facts and circumstances of each case. The broad requirements for deriving the benefit can be summarized as under :

- a) It was a sudden fight,
- b) There was no premeditation,
- c) The act was done in the heat of passion
- d) The accused has not taken undue advantage or acted in cruel manner.

30. Applying these principles to the facts of the case before the Supreme Court, the following observations have been made in the

paragraph no.14 in **Ravi Kumar's case (supra)**:

*“14] Keeping in view the approach of this Court for giving benefit of Exception 4 to Section 300 Indian Penal Code in cases mentioned above and applying the same to the facts of this case, we are inclined to give benefit to Exception 4 to Section 300 Indian Penal Code to the Appellant by altering his sentence awarded to the Appellant punishable Under Section 304 Part II Indian Penal Code. This we say so in the facts of this case for more than one reason. Firstly, even according to the prosecution, there was no premeditation in the commission of crime. Secondly, there is not even a suggestion or we may say conclusive evidence that the Appellant had any predetermined motive or enmity to commit the offence against the deceased leave alone a serious offence like murder. Thirdly, incident that occurred was due to sudden quarrel which ensued between the Appellant-accused and the deceased-Padma on the issue of going to village Mandya to see the ailing Appellant's father. The Appellant, on receiving this news, had become upset and, therefore, his insistence to see his ailing father immediately was natural and at the same time, Padma's refusal to leave could lead to heated exchange of words between them. True, it is that it reached to its extreme inasmuch as the Appellant in heated exchange of words lost his mental balance and poured kerosene on Padma setting her to burn. However, the fact remains that it was an outcome of sudden outburst and heated exchange with no predetermined motive per se to kill her. Fourthly, no conclusive evidence was adduced by the prosecution to prove any kind of constant quarrel ever ensued in the last 9 long years between the couple and that too for a cause known to others which could lead to killing Padma or whether any unsuccessful attempt was ever made by the Appellant to kill her in past and lastly, we have not able to see from the postmortem report that any stab injury on Padma's body was caused nor prosecution was able to prove that any blood stained knief from the place of occurrence was recovered at the instance of the Appellant or of any witness.”*

Ex facie, it is apparent that in the peculiar facts and circumstances in the matter of obtaining the accused was extended the benefit of Exception 4 of Section 300 of the Indian Penal Code and his conviction was altered to Section 304 part II of the Indian Penal Code.

31. In the matter before hand, even by applying the principles laid down by the Supreme Court in the aforementioned cases, we find no sufficient and justifiable reason to follow the same course that was followed in the case of K. Ravi Kumar (supra). In the matter at hand, as is appearing from the post-mortem report (Exhibit-8), there were as many as three stab/incised injuries including on the chest and abdomen and some of which were so deep as to have punctured vital organ like lung, liver such injuries would certainly show the intensity with which these are caused and also sufficiently demonstrate the intention of causing those. We have no hesitation in holding that the accused had acted in a cruel manner. Besides unless there would have been premeditation, the accused would not have carried a weapon like the knife. At least there is no explanation coming forth from his side as to for what purpose he was carrying such deadly weapon. The learned Sessions Judge has considered all these aspects and we are satisfied that even applying the principles laid down by the Supreme Court the accused

is not entitled to seek any benefit of conversion of conviction to one under Exception 4 to Section 300 of the Indian Penal Code.

32. In the result, we find no hesitation in subscribing to the conclusion drawn by the learned Sessions Judge in convicting and sentencing the accused for the offence of murder.

33. The appeal fails and is dismissed.

34. The accused/appellant shall surrender his bail and shall appear before the trial Court on 30.10.2017.

**[MANGESH S. PATIL, J.]**

**[S.V. GANGAPURWALA, J.]**