

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL APPEAL NO. 61 OF 2014.**

Mr. Ulhas Pednekar,
s/o. Sonu Pednekar,
aged 40 years,
r/o. House No.154-E,
Murdi, Cancaulim, Goa.
Presently undergoing
sentence at Central Jail
Agauada, Through next
of friend Ms. Ujwala Pednekar
42 years of age, Wife of Ulhas
Pednekar, R/o H. No.154-E,
Murdi, Cancaulim, Goa.

.... Appellant.

Vs.

State
Through PP
High Court of Bombay
at Panaji, Goa.

.... Respondent.

**Coram:- C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.**

Reserved on:-28th July, 2017.

Pronounced on:-11th August, 2017.

Shri Arun Bras De Sa, Advocate for the appellant.

Shri S. R. Rivankar, Public Prosecutor for the respondent.

JUDGMENT (Per PRITHVIRAJ K. CHAVAN, J)

This appeal is directed against the judgment and order of conviction dated 26.8.2014 passed by the Additional Sessions Judge, South Goa, Margao in Sessions Case no.16/2013 in which the appellant has been convicted under Section 302 IPC and sentenced to undergo life imprisonment, inter alia, fine of ₹50,000/- and in

default to undergo simple imprisonment for 2 years.

2. The prosecution case, as emerged from the record, can be stated as follows:-

The deceased Distiano was a driver working on a private vehicle at hotel Park Hyatt, Uttorda Goa. He was employed on a fixed salary of ₹5000/- per month by PW2 Hitler Correia to drive his private Innova car No. GA-06-T-1409. The marriage of younger brother of deceased Distiano was to be solemnized on 20.4.2013 and, therefore, Distiano was on leave. On 19.4.2013 PW1 Natty Mascarenhas, younger sister of Distiano was on her way to Margao to purchase suit for wedding alongwith one Rosy Fernandes when a call was received by said Rosy Fernandes from Distiano that Mr. Ulhas Pednekar (appellant) had assaulted him with a knife in his abdomen and that he had fallen near a Park Hyatt Hotel. PW1 Natty immediately informed Distiano's master namely PW2 Hitler Correia, who in turn, informed Natty that they were shifting Distiano at Hospicio Hospital, Margao. Subsequently, Distiano was referred to GMC Bambolim. However despite medical attendance Distiano succumbed to serious injury caused to him by the appellant. PW1 Natty therefore, lodged a complaint with the police alleging therein that on 19.4.2013 around 12.45 hrs her brother Distiano was assaulted by the appellant with a knife. On the basis of her complaint an FIR was registered against the appellant.

3. PW21 Rajesh Kumar who was attached to Police station Verna held investigation into the crime. Initially crime bearing no. 63/2013 under Section 307 IPC was registered by ASI Anant Shirodkar-PW17, which was subsequently converted into Section 302 of IPC. The appellant was arrested on the same day at 17.40 hours. An inquest was drawn on 20.4.2013.

4. An autopsy of the dead body by PW14 Dr. Pannag Kumar revealed that cause of death was due to hemorrhagic shock consequent to damage to major abdominal arterial trunk vide incised penetrating stab injury. Investigating Officer thereafter visited the scene of offence and drew a panchanama(Exh. 41). Weapon of the offence i.e knife having green coloured handle (Exh. 44) and one more knife having steel handle and dent on one side (Exh. 43) came to be recovered under Section 27 of the Indian Evidence Act at the behest of the appellant. Investigating officer also recorded the statements of the witnesses.

5. He seized mobile phone of the appellant from the possession of his wife which was of micromax company bearing no. 8805084784. Seized material was sent to Central Forensic Scientific Laboratory at Hyderabad.

6. After investigation a chargesheet was filed in the court of

the learned Judicial Magistrate First Class, Vasco. The learned JMFC, committed the case to the Sessions Court.

7. A charge was framed against the appellant by the learned Sessions Judge on 8.8.2013 under Section 302 IPC. The appellant pleaded not guilty and claimed to be tried.

8. Prosecution has examined as many as 21 witnesses in order to substantiate the charge against the appellant. The learned Sessions Judge, after going through the evidence and hearing the prosecution and the defence, by the impugned judgment and order convicted and sentenced the appellant as above.

9. We have heard the learned Counsel appearing for the appellant.

10. The main thrust of the learned counsel while assailing the impugned judgment is that the learned Additional Sessions Judge has failed to appreciate the evidence of the prosecution witnesses in its correct prospective in the sense that most of the prosecution witnesses were highly interested and had deliberately suppressed the genesis giving rise to the incident in question. According to the learned Counsel there are inherent inconsistencies, infirmities and contradictions in the testimony of the prosecution witnesses and therefore the appellant ought to have been acquitted of the charge

framed against him. He further submits that this is not the case falling under the predicates of Section 300 of IPC. He further submits that even the recovery of knives as alleged was vitiated and is not a recovery within the meaning of Section 27 of the Indian Evidence Act.

11. On the other hand Mr. Rivankar, learned Public Prosecutor has supported the impugned judgment and order of conviction.

12. Indubitably, Distiano's death was homicidal as is evident from autopsy report drawn by PW14 Dr. Pannag S. Kumar, who had noticed following external injuries at the time of conducting autopsy over the corpse of deceased Distiano.

"1) Sutured incised penetrating stab wound, measuring 7 cms. Long X 5 black sutures was seen placed horizontally obliquely over left lumbar region of the abdomen, at the level of the umbilicus, with the left lateral end placed higher than right medial end. Left lateral end was 28 cms. Below apex of left axilla and 18 cms. Below left nipple. Right medial end was 104 cms. Above heel and 13 cms. lateral to midline of abdomen. ON removing the sutures, wound was seen to be 'boat shaped' and gaping with 2 cms. width. Left lateral

end was less acute and more rounded and right medial end was sharply acute. Wound track was directed from front to back, laterally to medially and from below upwards, having a depth of about 19 cms. The lower edge of wound was beveled and upper edge is undermined. Edges were incised and cleanly cut. This injury was caused by sharp, pointed, penetrating single cutting edged weapon and was ante mortem and of age consistent with clinical records at the time of death.”

13. PW14 Dr. Pannag S. Kumar, deposed that there was a penetrating injury to the abdomen with Haemoperitoneum with injury to the Coeliac artery with junal perforation and the cause of death was due to hemorrhagic shock consequent to damage to major abdominal arterial trunk vide incised penetrating stab injury no.1 which was ante mortem. He clarified that injury could be caused by MO no.5/Knife with a green coloured handle and the length of the wound although does not correspond to the width of the blade of the knife, still injury no.1 could be caused by said knife as path of the wound track was oblique owing to the blade of the knife having entered the body of the victim at an angle and not perpendicular to the surface of the body. His evidence could not be rebutted in cross by defence.

14. There are two eye witnesses to the incident who can be said to be independent witnesses namely PW4 Anthony Fernandes and PW20 Aidan Correia-son of PW2 Hitler. PW4 Anthony Fernandes's evidence reveals that he was working for hotel Park Hyatt at Arossim, Cansaulim and knew Distiano who was working as driver at the Taxi Stand. Distiano was a driver of PW2 Hitler Correia. According to PW4 Anthony Fernandes, on 19.4.2013 when he reached hotel Park Hyatt at around 12.30 noon, he saw Distiano sitting on a Aactiva scooter outside the hotel Park Hyatt on the main road. When he was talking to Distiano, the appellant came over there on a scooter, parked it and suddenly caught hold of the neck of Distiano. He took out a knife and by seeing this PW4 Anthony Fernandes rushed to help Distiano and told the appellant to throw the knife down. He also caught hold right hand of the appellant in which he was holding the knife and that they went ahead. However, the appellant pushed PW4 Anthony Fernandes aside with his elbow and then immediately stabbed on the left side of the abdomen of Distiano by inflicting a blow due to which Distiano fell down on the road. After inflicting a blow the appellant escaped from the spot on a scooter alongwith the weapons. PW4 Anthony Fernandes helped Distiano by pressing the wound as intestines were visible. He also raised alarm and went to one shop of one Pereira which is at a distance of about 20 metres from the spot and while running he called an ambulance by dialing 108. By that time Ambulance reached the spot and Distiano was taken to Hospicio hospital, Margao. PW4

Anthony Fernandes made it clear that it was a kitchen knife having greenish colour handle with stainless steel blade. He had identified the knife during the trial. His evidence is quite clear which shows that before assault the appellant was brandishing the knife. This witness knew both the deceased and the appellant who were taxi drivers for hotel Park Hyatt. PW4 Anthony Fernandes is also a driver on a taxi owned by the hotel. It is reiterated in the cross examination that the appellant caught hold of neck of the Distiano with his left hand and then inflicted a blow of knife into the abdomen. It appears that despite making his fullest efforts to save the the appellant, PW4 Anthony Fernandes could not succeed as the appellant appeared to be hell bent to eliminate the deceased by inflicting lethal blow on the vital part of Distiano body. PW4 Anthony Fernandes appears to be a natural witness who was present at the spot and has no reason to depose against the appellant. He has no axe to grinde against the appellant. It is apparent that the appellant came prepared not only with one but two knives with full intention which is evident from his conduct as disclosed in the evidence of PW4 Anthony. Seizure panchanama of knives indicate that length of the knife was 36 cms and that the length of the steel blade is about 23 cms. Nature of the weapon and the part of the body chosen to inflict the lethal blow, in fact, in the given circumstances is quite sufficient to show that the appellant intended to cause the death of the deceased or knew that bodily injury which he had caused is sufficient in the ordinary course of nature to cause death. There is

no question of motive in such circumstances, when the case rest upon the direct evidence of eye witnesses. Motive in such cases loses its importance when other attending circumstances are so conspicuous and clear. The Additional Session Judge has therefore rightly placed a useful reliance on a case law reported in the case of **Central Bureau of Investigation vs. Mahender Singh Dahiya, (2011) 3 SCC 109** at paragraph 29 of the judgment reads thus:-

“In assessing the evidence, the High Court was aware of the legal principles that absence of motive may not necessarily be fatal to the prosecution. Where the case of the prosecution has been proved beyond reasonable doubt on the basis of the materials produced before the Court, the motive loses its significance. But in cases based on circumstantial evidence, motive for committing the crime assumes great importance. In such circumstances, absence of motive would put the Court on its guard to scrutinise the evidence very closely to ensure that suspicion, emotion or conjecture do not take the place of proof.”

15. The evidence of PW3 Rosy Fernandes indicates that on 18.4.2013 in the morning deceased had been to her house and informed her that he had taken leave on account of wedding of his brother and in his place he had kept appellant to drive the vehicle. Around 8.30 to 9.00p.m in the presence of PW3 Rosy Fernandes,

Distiano received a phone call from taxi stand at hotel Park Hyatt stating that "Wicket Podli" which means that Distiano had missed his turn as there was no driver upon which Distiano immediately called appellant on his mobile where upon the appellant abused Distiano in filthy language. PW3 Rosy Fernandes further testified that on 19.4.2013 around 9.30a.m. when she had been to *Our Lady of Fatima Chapel* for the purpose of cleaning the same she received a phone call of Distiano around 12.24 noon on her mobile who informed her that he was stabbed in his abdomen with a knife by the appellant near hotel Park Hyatt. When she went to GMC Bambolim she noticed Distiano lying on the stretcher in the casualty room where he was being treated by doctor. Distiano informed her that appellant stabbed him with a knife in the abdomen. This evidence of PW3 Rosy Fernandes is also relevant in the given facts and circumstances of the case.

16. PW 20 Aidan Corriea aged about 15 year is the son of PW2 Hitler Corriea, the owner of Innova car in which Distiano was employed. The sum and substance of his evidence as revealed from the record is that on the day of the incident he was fixing his work station on the terrace of his house when he heard a commotion on the road at the entrance of the hotel Park Hyatt. He went down the stairs and reached on the road at a distance of 50 mts when he saw a person holding neck of Distiano with his left hand inflicting blow with knife with green coloured handle, on the left side of Distiano

abdomen. Distiano fell near the pillar which was leading to the hotel Park Hyatt. The witness was shocked and frightened and went to his house to tell his mother. There is no effective cross examination of either PW4 Anthony Fernandes or PW20 Aidan Corriea nor defence has disputed their presence at the spot. PW20 Aidan Corriea has also identified the appellant as well as knife during the course of trial. He also corroborated the testimony of PW4 Anthony Fernandes in material particulars as regards an attempt by PW4 Anthony Fernandes to save the victim from the clutches of the appellant.

17. PW5 Arun Naik and PW6 Anant Satarkar are also the taxi drivers from Park Hyatt taxi stand. The testimony of PW5 Arun Naik is significant in the light of the fact that he was the person who had introduced the appellant to Distiano as Distiano wanted to proceed on leave for his brother's wedding which was to be solemnized on 20.4.2013. Since the appellant was unemployed at the relevant time, his mobile number was given to Distiano by PW5 Arun Naik. However, on 17.4.2013, the appellant made a phone call to PW5 Arun Naik early in the morning and asked him whether he had given his phone number to Distiano for teasing, upon which PW5 Arun Naik informed the appellant that he had given the number to Distiano not for teasing but to drive the vehicle of Hitler Correia as a replacement for few days. PW5 Arun Naik thereafter even inquired with Distiano as to whether he is making any calls to the

appellant for teasing him, to which Distiano replied that he did not tease the appellant but asked him whether he could drive the vehicle as replacement.

18. It is pertinent to note that on 18.4.2013 during morning hours since there was no driver on the vehicle of Hitler Correia, it was out of que as the appellant did not turn up to drive the same. However on the same day at 9.30 p.m appellant appeared to have told one John that he would kill PW5 Arun Naik as well as Distiano and about 11.30 p.m he indeed had threatened PW5 Arun Naik at hotel Park Hyatt that he would kill him. This is what is evidence of PW5 Arun Naik who further testified that even on the day of the incident at around 11.00 to 11.30 a.m appellant was present at the taxi stand under the influence of liquor and started arguing with him as to why he had given his mobile number to Distiano. PW5 Arun Naik thereafter called Distiano on his mobile and put it on speaker mode and asked the appellant to listen what Distiano was saying. When he asked Distiano as to whether he had teased the appellant upon which Distiano clarified that he did not tease him but only asked about driving the vehicle. It is clear that there was no reason for the appellant to get irritated for the so called reason of teasing by the deceased. It clear from the evidence that Distiano never teased the appellant; but under misconception he appears to have carried grudge against the deceased resulting into causing his death.

19. PW5 Arun Naik has also deposed about the incident as he heard some commotion on the main road. When he reached near the spot there were about 10 taxi drivers. When he saw Distiano lying by the side of the road on the lawn with stab injury on the left side of the abdomen, on inquiry Distiano told him that appellant stabbed him with a knife and fled away. Thus, it is apparent from the record that there was no provocation, much less, grave and sudden provocation by the deceased to the appellant and therefore this would not fall within the ambit of culpable homicide not amounting to murder. It would not, by any stretch of imagination, would be a case falling under any of the exception of Section 300 of the IPC. There is no reason for PW5 Arun Naik to depose against the appellant even though in the statement under section 313 CrPC the appellant states that PW5 Arun Naik and others were jealous of him as he was driving a private car for hotel Park Hyatt. Rather it has come on record that appellant was an unemployed at the relevant time and therefore, reason of so called jealousy does not stand to reason.

20. PW6 Anant Satarkar spoke in tune with PW5 Arun Naik as he was also present at the spot at the time of incident corroborated PW5 Arun Naik in material particulars.

21. The testimonies of PW4 Anthony Fernandes, PW20 Aidan Corriea, PW5 Arun Naik and PW6 Anant Satarkar, if juxtaposed

would clearly prove that on the fateful day the appellant came prepared on the spot with a big kitchen knife with full intention to cause death of the deceased Distiano by inflicting a lethal blow on the vital part of his body.

22. As regards recovery of the weapon of the offence under Section 27 of the Indian Evidence Act it is a settled proposition of law that where there is a direct evidence as to the commission of an offence, seizure of weapon is not very much material which has been held by Hon'ble Supreme Court in case of **Pradumansinh Kalubha Vs Stae of Gujarat, AIR 1992 SC 881**. Nevertheless, PW4 Anthony Fernandes and PW20 Aidan Corriea had already identified the knife with green coloured handle with which death was caused by the appellant and this fact has also been fortified by PW4 Anthony Fernandes and PW14 Dr. Pannag Kumar, as already discussed herein before. What is required to be seen is that whether there was a proper discovery of said fact under Section 27 of the Indian Evidence Act. Two knives were recovered at the instance of the appellant on 20.4.2013. Attachment panchanama Exh.41 was conducted by PW21 Rajesh Kumar in the presence of PW12 Santan Correia and one Siddhanath Pandey. The appellant is said to have voluntarily disclosed before them that he had taken two knives, one from home and other from Eco bar. Thereafter the appellant, as per the evidence of PW12 Santan Correia, led the police party and the panchas in the vehicle towards Cansaulim circle. Appellant directed

them towards Arossim and reached near a bund. As per his instructions vehicle was stopped and thereafter he led police team with panchas by the side of the road on a low level in the paddy field. There was dry grass on the bund and some coconut trees in a line. The appellant is said to have shown one knife in the grass and small bushes. He removed the said knife and handed it over to Police Inspector Rajesh Kumar. It had a steel blade with black coloured plastic on both sides of the handle and there was dent on the handle.

23. PW12 Santan Correia further testified that thereafter the appellant went some distance ahead and took out another knife from dry grass on which there were dry stains of blood and it had green coloured handle. Its steel blade was about 23 cms and the length of the knife was 36 cms. Both the knives have been duly seized under the panchanama by PW21 Rajesh Kumar. From the evidence of both pancha witness and the Investigating Officer it has been succinctly established that the fact of discovery of weapon at the instance of the appellant is pursuant to the information supplied by him in his disclosure statement which is relevant and is admissible in evidence. It is not the requirement of law that the disclosure statement must be signed by the maker or that he should put thumb impression over it. The intention of the appellant to commit murder of the deceased and his preparation to that effect as well as his previous and subsequent conduct discussed in preceding paras would be relevant in view of Section 8 of the Indian Evidence Act.

24. The evidence of PW19 Dr. Vishwanath Madkaikar is also quite important in the sense that on 19.4.2013 at 21.51 hours the appellant was referred to him by Forensic Department to see whether he had consumed alcohol or otherwise. He conducted medical examination on the appellant and also drawn an ECG. He opined that the speech of the appellant was thick, gait was normal. He could walk on straight line. Muscular coordination test was done. Finger to nose test was positive, picking of pencils from the floor was possible, eye conjunctiva was normal, pupil size was normal reaction to the light, knee reflex and ankle reflex was present. He was oriented to time and place at that time. There were no external injuries on his person. He could take care of himself and fit for police custody. This is an important factor and fortifies that appellant was not fully under the influence of liquor for raising any benefit under Chapter IV of IPC.

25. PW2 Hitler Correia had employed deceased Distiano as a driver on his innova car. According to him, on 17.4.2013 Distiano told him that appellant was driving the car of one Anthony Fernandes also engaged for hotel Park Hyatt but at that time he was unemployed and was ready to drive his car. On 18.4.2013 PW2 Hitler Correia was at home when he received a call whereby someone had informed him that his car rotation is out of que as his driver did not turn up. PW2 Hitler Corriea immediately called

Distiano to ascertain as to why the appellant did not turn up upon which Distiano informed PW2 Hitler Corriea that appellant was giving him bad words and that he would not drive his vehicle. This conduct of the appellant also speaks volumes as instead of working as replacement on the car of PW2 Hitler Corriea he abused the deceased.

26. PW7 Savio Pacheco is owner of Eco Bar and Restaurant from where appellant had stolen the weapon of offence i.e kitchen knife having green coloured handle with a steel blade. The appellant was his customer. His evidence reveals that on 19.4.2013 when he returned from marketing at 1.00p.m his cook Rajesh Lama PW15 told him that kitchen knife was missing. PW15 Rajesh Lama informed Santan Pacheco that appellant had been to the kitchen to go to the toilet as one has to pass through the kitchen. Though it is not testified by PW7 Savio Pacheco whether the knife was stolen by the appellant, while it can be safely inferred that under the pretext of going to the toilet the appellant might have picked up the said green coloured handle knife with which he had ultimately stab the deceased Distiano. However, this witness has correctly described the knife including its length. When, Exh.44 MO no.7 was shown to PW7 Savio Pacheco he states that the knife which was missing was having green coloured handle and it was cracked; perhaps declined to identify the said knife. However fact remains that similar type of knife was missing from the Bar and Restaurant of PW7 Savio

Pacheco. His employee PW15 Rajesh Lama has also turned hostile. However, he admits the fact of visit of appellant to the bar and restaurant and that he went to the toilet outside the kitchen. He also admits the fact that he informed his master PW7 Savio Pacheco about missing of kitchen knife. He also declined to identify MO no.5 when shown to him, as according to him, MO no.5 is bigger than the knife which was missing when he was cross examined by learned Public Prosecutor. It has been substantially elicited about the visit of the appellant to the bar and missing of bigger knife immediately thereafter from which it can be safely inferred that appellant himself took away the big knife in order to commit murder of deceased Distiano.

27. The report forwarded by CFSL, Hyderabad reads as follows:-

- (i) Human blood was detected in Exhibits C, D, A (1) and B (1) but blood was not detected in any of the exhibits -B(1), B(2), 1(C(1), S or T.
- (ii) "B" group blood was detected in Exhibits -B(1) and C, but for Exhibits-D or A(1) the group test was inconclusive as it was not reacting with indicator cells.
- (iii) Neither epithelial cells nor fibers were detected in any of the Exhibits-A(1) and T.

28. It is apparent from the aforesaid report that there were

blood stains on both the knives, one brought by the appellant from his house and another taken from Eco bar for commission of the crime. Report of CFSL indicates that "B" blood group which was of the deceased Distiano was found on Exh.43 which is small knife whereas blood was detected on big knife also having green colour handle Exh. 44 which was actually used in commission of the offence.

29. It is apparent from the evidence that appellant took two knives one big and another small, however he used bigger one to inflict a lethal blow on the vital part of the deceased. This glaring and important fact cannot be ignored while gathering intention of the appellant. He indeed carried or nurtured some grudge against the deceased.

30. Learned Counsel for the appellant has placed reliance on a judgment of Supreme Court in case of ***Bagdi Ram Vs State of Madhya Pradesh, AIR 2004 SC 387***. The appellant in the said case was held guilty of the offence under Section 304-I of PC by the High Court of Madhya Pradesh and was sentenced to undergo rigorous imprisonment for 8 years and the fine of ₹5,000/-, in default to undergo further rigorous imprisonment for 20 months. The Hon'ble Supreme Court in the special leave to appeal observed thus:-

"When tempers ran high in the heat of passion,
upon sudden quarrel, the appellant assaulted the

deceased though unarmed, but without pre-meditation. He caused only one injury to the deceased by picking up the “gainti”(pick-axe) lying there and the fact that he did not repeat the blow is indicative of the fact that he did not intend to cause the death of the deceased. The High Court gave the appellant the benefit of Exception 4 to Section 300 and found the appellant guilty of the offence under Section 304 part I of IPC. We find no error with the finding recorded by the High Court. But in the facts and circumstances of the case we are of the view that the sentence of eight years is on the higher side. The ends of justice would be met if the sentence is reduced to three years rigorous imprisonment.”

31. It was a case of sudden quarrel and in the heat of passion, the appellant assaulted the deceased without pre-meditation and caused a single injury by means of pick axe lying over there. The Hon'ble Supreme Court therefore, reduced the sentence to 3 years of Rigorous imprisonment. In the case at hand, there was neither heat of passion nor sudden quarrel. The appellant in this case with pre-meditation and full intention assaulted the deceased on his vital part and therefore, this ratio could not be of any help to the defence.

32. Similar is the ratio of the Hon'ble Supreme Court in case of **Mahesh Vs State of M.P. AIR 1996 SC 3513**. It was also a case of single blow in a sudden fight when the deceased objected to the grazing of the cattle, there was exchange of hot words and abuses between the parties. The appellant was therefore, convicted of the offence under Section 304(I) IPC. The ratio can be accordingly distinguished even though this is also case of single blow but it stand on altogether different footing.

33. In the case of **Rajangam Vs State of T.N., AIR 1993 SC 2636**, Honble Supreme Court converted the conviction from Section 302 IPC to under Section 304-II for the reasons that the occurrence took place on 22.6.1978 and deceased died on 30.6.1978 after an operation conducted but gangrenous got set in. It is observed that under such circumstances, it would show that the accused could not have by inflicting injuries which were sufficient in the ordinary course of the nature to cause the death. In the said case also there was a single injury inflicted by the appellant.

34. In the case of **Jagtar Singh Vs State of Punjab, AIR 1983 SC 463**, it is held by Hon'ble Supreme Court that since it was a sudden quarrel which was provoked by the deceased and therefore appellant gave one blow with knife which could not be said to be attracting para 3 of Section 300 of IPC. It is further observed that there was no pre-meditation and no malice and meeting of the

appellant and deceased was a chance meeting. Here, in the case at hand there was a malice and there was pre-meditation on the part of the appellant, otherwise he would not have brought two knives or abused the deceased a day prior to the incident in filthy language. This ratio can also be distinguished accordingly.

35. After carefully considering the entire facts, evidence and circumstances on record, we are of the opinion that the prosecution has proved beyond all reasonable doubts that the appellant had a clear intention to eliminate the deceased and, therefore, inflicted lethal blow with a big knife on the vital part of the deceased with full force. Thus no case for interference is made out.

36. Consequently, appeal stands dismissed.

PRITHVIRAJ K. CHAVAN,J.

C. V. BHADANG,J.

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