IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1309 of 2019
With
R/CRIMINAL APPEAL NO. 1351 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No
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RAJU @ RAJUBHAI HARIBHAI GOHEL
Versus
STATE OF GUJARAT

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Appearance:
CRIMINAL APPEAL No.1309 of 2019
MR ASHISH M DAGLI(2203) for the Appellant(s) No. 1
MR RONAK RAVAL, APP for the Opponent(s)/Respondent(s) No. 1
CRIMINAL APPEAL No.1309 of 2019
Mr. Alok Thakkar, learned counsel for Mr. K.S. Chandrani, for the complainant.
MR RONAK RAVAL, APP for the Opponent/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 09/12/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Since, the facts of the case and issue involved in the captioned appeals are identical and arise out of the same judgment, the appeals are taken up together and are being disposed of by this common judgment.

2. Vide judgment and order dated 27.03.2019, passed in Sessions Case No.167 of 2013, the Additional Sessions Judge at Rajkot convicted the appellant – Raju Gohel for the offence of murder punishable under Section 302 Indian Penal Code and sentenced to suffer life imprisonment. The learned Additional Sessions Judge while disposing the sessions case, has acquitted two accused namely Mahesh Gohel and Kiran Gohel.

3. The appellant – Raju Gohel has questioned the correctness and validity of his convicting by preferring conviction appeal being Criminal Appeal No.1309 of 2019, whereas, the original complainant – Tulsibhai Nasit, has filed acquittal appeal being Criminal Appeal No.1351 of 2019 qua the acquittal of co-accused as referred herein above.

4. The facts, leading to file the present appeals are as follows:

4.1 Three accused namely Mahesh Gohel, Kiran Gohel and Raju Gohel were prosecuted and tried by the Additional Sessions Judge, Rajkot for the offence of murder. The incident of murder took place on 01.02.2013 at about 12:00 p.m. at Rajkot. Deceased Sanjay was the nephew of complainant Tulsibhai Nasit (PW.14). The appellant – accused Raju Gohel was annoyed on the aspect of texting unwanted messages to her daughter by one Savan aged about 16 years who happened to be nephew of the complainant. On this aspect, the accused armed with knife and iron pipes, came at the Pan Shop of the complainant and raising dispute about the text message, told him that, today, we will eliminate Savan and

where he is. The complainant (PW.14) left his pan shop and went to his home situated nearby the shop. He told his family members Naran Nasit (PW.15) and others about the dispute raised by the accused. The complainant and others, in order to resolve the dispute, came at the pan shop. The heated exchange of words being taken place between the parties and fight also ensued, as a result, the appellant Raju Gohel stabbed Sanjay for twice and in that process, the co-accused no.1 and 2 caught hold the deceased. The complainant (PW.14) according to prosecution case, was also injured by Mahesh Gohel as he had inflicted a pipe blow on his leg. The people of the vicinity were gathered and due to hue and cry, the accused fled away from the spot. The deceased was taken to private hospital. His medical condition was critical as the lever was severed due to stab wound. The surgery undertaken by the doctor was unsuccessful and during the treatment, the deceased Sanjay succumbed to his injuries.

4.2 Initially, the offence of attempt to murder was being registered with Bhaktinagar Police Station, Rajkot and later on, the offence of murder punishable under Section 302 being registered. The investigation of the case being entrusted to Dashrathsinh Zala (PW.27). During the investigation, the I.O. recorded the statements of the witnesses, collected the necessary samples of blood etc. and drew the panchnama of place of incident, recover the weapon knife and pipes at the instance of the accused, obtained the P.M. Report and other medical case papers, sent the seized articles to the FSL for forensic analysis and after due investigation, the charge sheet

against the accused was being filed and case being a sessions triable case, committed to the Sessions Court, Rajkot.

5. The Sessions Court, Rajkot framed the charge against the accused and upon pleaded not guilty by them.

6. In order to prove the charge, the prosecution has examined as many as 29 witnesses and exhibited 64 documents:

Oral evidence

PW 1 – Exh.13	Jagdishbhai Ramjibhai Desai, Panch witness
PW 2 – Exh.22	Chandubhai Mohanbhai Pipalia, Panch witness
PW 3 – Exh.26	Vipubhai Dhirubhai Hapalia, Panch winess
PW 4 – Exh.27	Ravibhai Kanjibhai Limbasia, Panch witness
PW 5 – Exh.30	Maheshbhai Jagabhai Kachadia, Panch witness
PW 6 – Exh.33	Sanjaybhai Ranchodbhai Savalia, Panch witness
PW 7 – Exh.35	Pradipbhai Dholubhai Rathod, Panch witness
PW 8 – Exh.36	Juvansinh Mavubha Jadeja, Panch witness
PW 9 – Exh.40	Parbatbhai Raghavbhai Varu, Panch witness
PW 10 – Exh.44	Jayantilal Govindlal Sorathia, Panch witness
PW 11 – Exh.45	Jayeshbhai Hasmukhbhai Dodia, Panch witness
PW 12 – Exh.48	Hasmukhbhai Bhupatbhai Bagthalia, Panch witness
PW 13 – Exh.49	Govindbhai Hansrajbhai Parsana, Panch witness
PW 14 – Exh.53	Tulsibhai Gopalbhai Nasit, Complainant
PW 15 – Exh.56	Naranbhai Madhabhai Nasit

PW 16 – Exh.66	Dr. Ramnivas Ramlagan Sharma, Medical Officer
PW 17 – Exh.76	Nalinkant Narsibhai Vyas
PW 18 – Exh.80	Dr. Hemangbhai Harishchandrabhai Vasavda, Medical officer.
PW 19 – Exh.87	Dr. Nimeshkumar Gopalbhai Nimavat, Medical officer.
PW 20 – Exh.97	Nareshbhai Lovejibhai Nasit
PW 21 – Exh.98	Lakhabhai Mombhai Babhavani
PW 22 – Exh.99	Natvarlal Karsanji Borisagar
PW 23 – Exh.101	Ashokbhai Hansrajbhai Kachdiya
PW 24 – Exh.104	Chimanbhai Kalabhai, PSO
PW 25 – Exh.114	Umeshbhai Ravjibhai Nasit
PW 26 – Exh.115	Sirishbhai Chotalal Patel
PW 27 – Exh.119	Dashrathsinh Bahadursinh Zala, IO
PW 28 – Exh.145	Amarshibhai Karsanbhai, Panch witness
PW 29 – Exh.147	Shaileshbhai Rameshbhai Sagathiya, Panch witness

Documentary evidence -

Exh.14	Panchnama of state of body
Exh.23	Panchnama of place of offence
Exh.24	List of Articles Mark ‘A’
Exh.25	List of Articles Mark ‘B’
Exh.28	Inquest Panchnama
Exh.31	Panchnama of state of body of accused Rajubhai
Exh.32	Panchnama of clothes recovered

Exh.34	Arrest panchnama
Exh.37	Arrest panchnama
Exh.38	Panchnama of Pipe
Exh.39	Panchnama of parcel
Exh.41	Arrest panchnama
Exh.42	Panchnama of parcel
Exh.43	Panchnama of parcel
Exh.46	Arrest panchnama
Exh.47	Article parcel ‘D’
Exh.54	Complaint
Exh.67	PM note
Exh.68	PM form
Exh.69	Police Yadi for PM note
Exh.70	Final cause of death certificate
Ehx.71	Blood sample form
Exh.72	Receipt of kidney of deceased
Exh.77	FSL report of site visit
Exh.78	Yadi for site visit
Exh.81	Police Yadi for collection of blood sample of deceased
Exh.82	Occurrence of death certificate
Exh.83	Letter for investigation
Exh.84	Death certificate
Exh.85	Yadi for collection of blood sample of accused
Exh.86	Letter for collection of blood sample of injured Vivek ashok and Rajubhai

Exh.88	Operation note
Exh.89	Injury certificate
Exh.90	Note regarding taking of blood from Saurasthra voluntary blood bank
Exh.91	Injured Sanjaybhai Indoor paper
Exh.92	Yadi for informing of complete consciousness of injured person
Exh.93	Round Sheet of Injured person
Exh.94	Yadi for collection of blood sample
Exh.100	Copy of notice
Exh.105	Deputy order regarding investigation
Exh.106	Forwarding letter for filling of complaint
Exh.107	Copy of FIR
Exh.108	Copy of FIR
Exh.109	Special report for henious offence
Exh.110	Letter informing death of Sanjaybhai Naseet during treatment
Exh.111	Janwa Jog station diary copy
Exh.112	Bhakinagar station diary copy
Exh.113	Bhakinagar station diary copy
Exh.116	Yadi for informing of complete consciousness of Sanjaybhai
Exh.117	Yadi of collection of blood sample of Sanjaybhai
Exh.120	Yadi for visit and collection of sample from place of offence by Scientific officers
Exh.121	Yadi for charges under Section 302
Exh.122	Yadi for handing over of body of Sanjaybhai for last rites

Exh.125-130	Arrest memo and Yadi of noting in station diary
Exh.131	Yadi of collection of blood sample of accused Maheshbhai and Kiranbhai
Exh.132	Letter by doctor informing the death of Sanjaybhai
Exh.133	Yadi to circle officer for making of map of place of offence
Exh.134	Documents regarding forwarding of blood sample of deceased to police station
Exh.135	Documents regarding forwarding of report of blood sample of deceased to police stationArticle Knife
Exh.136	Letter to FSL regarding forwarding of article no.16
Exh.137-141	Receipt of article by FSL, Report, Serological report
Exh.142	Notice
Exh.143	Letter approving draft chargesheet and copy of draft chargesheet
Exh.146	Article Knife

7. After closure of the prosecution evidence, the accused were questioned under Section 313 of the Cr.P.C. to which they stated that, in the said incident, they had been beaten by the complainant party and also sustained injuries which facts being suppressed by the witnesses and the complainant party was the aggressor party. The accused had further stated that, the son of the complainant party texting unwanted messages to the daughter of accused Raju Gohel and on that ground, they have been falsely implicated in the offence of murder.

8. Though opportunity was extended, no oral evidence being adduced by the accused.

9. After hearing the parties and upon appreciation of the evidence, trial court, convicted the appellant Raju Gohel for causing death of Sanjay and sentenced him to suffer life imprisonment, whereas, the co-accused Mahesh Gohel and Kiran Gohel acquitted of all charges.

10. In the aforesaid facts, by preferring the conviction appeal being Criminal Appeal No.1309 of 2019, the original accused no.3 – Raju Gohel is before this Court, whereas, the complainant (PW.14) has preferred acquittal appeal being Criminal Appeal No.1351 of 2019.

11. Mr. Ashish Dagli, learned counsel appearing for and on behalf of the accused Raju Gohel while assailing the judgment of conviction and order of sentence, contended that, the son of complainant party texted unwanted messages to the daughter of the accused and on that ground, the accused contacted the PW.14 and after seeing the accused, the PW.14, went to his house and returned back with the witnesses armed with wooden log and assaulted the appellant and juvenile accused Vivek and due to said assault, the appellant-accused and juvenile Vivek, were admitted in the Madhuram Hospital of Rajkot and admitted for about 3 to 4 days as indoor patients because they sustained serious head injuries. The appellant Raju Gohel filed an FIR being C.R.No.33 of 2013 with Bhaktinagar Police Station for the offence of Section 323 and 324 of Indian Penal Code and pursuant to the said FIR, the

complainant Tulsibhai, his brother Naranbhai and one Nareshbhai Nasit had been arraigned as accused and the police during the investigation, arrested them and seized and recovered the wooden log at the instance of accused. The I.O. of both the case (PW.27), has admitted the factum of cross-case and injury sustained by the appellant-accused and juvenile Vivek. The aspect of cross-case and injury sustained by the accused being specifically asked to the prosecution witnesses, but, somehow they have denied which demonstrates that, the prosecution is suppressing the genesis of crime and the complainant party being an aggressor, caused injuries to the accused. In such circumstances, as referred above, the learned counsel Mr. Dagli does not press the appeal on merits so far conviction is concerned, but, on the aspect of sentence, he submitted that, the learned trial court was not justified in sentencing the appellant-accused for life as the offence committed by the appellant amounted to culpable homicide not amounting to murder punishable under Section 304 Part I or II.

12. Mr. Dagli, learned counsel would further urge that, the act was not intended to cause death and having regard to the injury sustained by the accused and others and the manner in which the text messages were being sent to the daughter of the appellant, the incident being taken place without premeditation in a sudden fight, in the heat of passion upon sudden quarrel and therefore, it has been submitted that, when the injuries were not intended to cause death, the case does not fall under any clauses Section 300 Indian Penal Code

and at the most, the accused could have convicted for culpable homicide not amounting to murder.

13. In such circumstances referred to above, Mr.Dagli, prayed that there being merits in this appeal, and same may be allowed and further prayed that the judgment of conviction and order of sentence be modified accordingly.

14. Mr.Ronak Raval, learned Additional Public Prosecutor and Mr. Alok Thakkar, learned counsel for Mr. K.S. Chandrani, learned counsel opposing the contention, have submitted that, the appellant given a blow on the vital part of the body and as per the medical evidence, the lever severed and cut into pieces, which proves that the act was done with intention of causing death and causing such bodily injury which the accused presumed to be knew that it likely to cause death by inflicting such injury and as per the opinion of the doctor, the injuries were sufficient in ordinary course of nature to cause death and, therefore, it was submitted that the case is not one falling within ambit of Section 304 part-I, II, but the case falls within clauses 2nd and 3rd of Section 300. So far as injury sustained by the accused is concerned, it was submitted that the injuries sustained by the appellant-accused and juvenile accused were simple in nature, and, therefore, merely because the prosecution failed to explain injuries on the accused person, ipso facto, the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by the eye witnesses and their evidence is corroborated by medical evidence.

15. In such circumstances, referred to above, the State counsel as well as Mr.Thakkar, prays that there being no merits in the appeal, same may be dismissed.

16. Before adverting to appreciate the contention, we would like to have a cursory look at the evidence adduced by the prosecution through its witnesses.

(I) Tulsibhai Gopalbhai Nashit, (P.W.14) - This witness was having a pan shop near the place of incident and at the relevant time, it was run by himself as well as deceased Sanjay, who happened to be his son. The witness, in his chief-examination, has stated that on 1.2.2013, when he was at his Pan Shop, the accused came there and asked him to close his shop and further told him that where is your son Sanjay and Saavan, as we want to kill them today. The witness has further stated that he immediately left the Pan Shop and came to his house situated nearby the shop. The witness has narrated the incident to his brother Naranbhai and Nareshbhai as well as deceased Sanjay. The witness has stated that he as well as deceased and his brothers decided to convince the accused party about the dispute of texting message and, therefore, they came at their Pan Shop. The witness has further stated that the heated exchange of words had taken place between the parties and fight occurred between them and in that process, the accused Kiran caught hold of Sanjay and the appellant-accused, Raju,

stabbed Sanjay with his knife. The witness has further stated that the accused were armed with pipe and the juvenile accused was having a wooden log in his hand. The witness has further stated that the deceased Sanjay was immediately to Madhuram Hospital at Rajkot for treatment and during the treatment, he succumbed to his injuries. The motive as stated by the witness, was that his nephew Saavan was sending unwanted messages to the daughter of accused-Raju and keeping grudge of sending messages, the accused assaulted and killed his son.

In the cross-examination, the factum of sending text messages to the daughter of the appellant-accused has not been disputed. The witness has also admitted that in the cross-case allegedly registered at the behest of the accused, he as well as his brother Nareshbhai and Naranbhai were arrested and during the investigation of the said case, the police seized and recovered a wooden log from them. The witness has denied that the complainant party caused injuries to the accused and in that incident, the accused and the juvenile accused sustained severe head injury. The witness has admitted that in his FIR, he did not disclose the factum of free fight amongst them. The witness has also admitted that the pipe injury, caused by the accused Mahesh, was not disclosed in his FIR and no any treatment being taken by him. The witness has also admitted that if any text message being sent to a girl, it was but natural that any father would get provoked by this act.

(II) Naranbhai Madhabhai Nashit (PW-15) – This witness being a cousin brother of the complainant, PW-14, was present at the place of occurrence and, according to his version, the deceased Sanjay, had been stabbed by the appellant herein. In the cross-examination, the witness is admitting the factum of cross case and also admitted that he was arraigned as accused and had faced the trial of Section 323, 324 of the Indian Penal Code.

(III) Dr.Ramnivas Sharma (PW-16) – This witness being a medical officer of the Rajkot Civil Hospital had conducted postmortem on the body of the deceased. During the postmortem, the doctor noticed the following external injuries,

(i) Stitch wound over the left hypochondrial region over abdomen.
(ii) Stitch wound over mid auxiliary line at left side abdomen.
(iii) Heamo peritoneum with left kidney cut and left kidney brought by a relative into the bottle.
(iv) Bruise over left side chest, back side and both the legs.

The doctor has opined about the cause of death and according to him, the cause of death was cardio respiratory failure followed by cut of the kidney due to stab injury.

(IV) Dr.Nilesh Nimavat (PW-19) - This doctor being a surgeon had undertaken surgery in his private hospital at Rajkot. The factum of injury and treatment are not in dispute and, therefore, no need to refer the entire deposition.

(V) Dashrathsinh Bahadurinsh Zala (PW-27) – This witness at the time of incident was posted as PI with Bhaktinagar Police Station at Rajkot. The witness had investigated both the cases i.e. present case as well as the cross case allegedly registered against the complainant party. The witness has admitted that the appellant-accused and juvenile accused-Vivek sustained head injury in the same occurrence and both the injured admitted in the Madhuram Hospital as indoor patients for about three to four days. The witness has also admitted that the three persons from the complainant party, including the complainant, were arraigned as accused and charge-sheet for causing voluntary injury punishable under Sections 323, 324 of Indian Penal Code came to be filed against the complainant party. The witness has also admitted that while arresting the accused-appellant and juvenile accused, he found injuries on their body and description thereof being mentioned in the arrest panchnama.

17. We have heard at length learned counsel for both the parties and perused the case records and proceedings as well as findings of the trial Court.

18. At the outset, we may mention the certain admitted facts. (i) The nephew of the complaiant-Saavan was in habit to send text messages to the daughter of the appellant-accused and prior to the incident he was cautioned by the accused party and family was knowing about the things happened between the parties. (ii) The complainant, PW-14, and his two cousin brothers Naran Nashit and Naresh Nashit were charge sheeted for the offences punishable under Sections 323, 324, 504 and 114 of Indian Penal Code and 135 (1) of the Gujarat Police Act and as per the charge-sheet and case papers, the appellant-accused Raju Gohel and juvenile accused Vivek were being assaulted by the complainant party by using wooden log and they were treated by Dr.Hemang Vasava, Madhuram Hospital, Rajkot. (iii) In the cross case, the appellant-accused sustained a head injury in the nature of CLW upto bone deep (3 X 2 cm.) and Vivek also sustained head injury on the same line. (iv) In the cross case being Sessions Case No.27 of 2014, the trial Court convicted the complainant party, including the complainant, PW-14, for the offences punishable under Section 323 of Indian Penal Code for causing injury to the juvenile accused and so far sentences is concerned, instead of sending them in jail, the trial Court extended the benefit of probation.

19. In the case on hand, counsel appearing for the appellant does not press the appeal against the conviction but he is challenging the sentence and claim the modification of the judgment and conviction.

20. In the facts of the present case, after careful examination of the case record, we come to a conclusion that the injuries sustained by the accused have been not explained by the witnesses, and it is evident from the record that the accused and the juvenile accused sustained head injury in the nature of CLW and same was found by the doctor upto bone deep and for three days, the accused-appellant was under observation of the doctor. It is also required to be noted that, heard when the accused went to the shop of PW-14, there was no need for the complainant party to come at the place of incident with the weapon wooden log. If their intention was to convince the accused party or to make a compromise on the aspect of texting message to the daughter of the accused, then they could have come without any weapon. The evidence of three eye witnesses show that the fight between both the group had taken place. In such circumstances, none explanation of the injuries in the facts of the present case, assumes significance and necessary to determine the issue whether the accused-appellant intended to inflict that particular injury and it was inflicted with the intent to cause death. In other words, the issue falls for our consideration is whether the act of the appellant was culpable homicide not amounting to murder punishable under Section 304 of Indian Penal Code or “murder” as defined under Section 300 of the Indian Penal Code.

21. It is settled position of law that, while determining the issue of culpable homicide or murder, the courts have to keep in focus key words used in Section 299 and 300 of the IPC. The

difference between the murder and culpable homicide has been succinctly explained in the case of State of A.P. vs. Rayavarapu Punnayya (1976) SCC 382. In para-12, the Supreme Court held and observed that:-

> *"In the scheme of IPC, culpable homicide is genus and "murder" its specie. All murder is culpable homicide, but no vice a versa. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called culpable homicide of the first degree. This is the gravest form of culpable homicide, which is defined in Section 300 as murder. The second may be termed as culpable homicide of the second degree. This punishable under the first part of Section 304. Then, there is culpable homicide of third degree. This is lowest type of culpable homicide and the punishment provided for it is also the lowest amongst the punishment provided for the third degrees and same is punishable under Section 304 Part II of the IPC. Section 300, says about when the offence is murder and when it is culpable homicide not amounting to murder. Section 300 begins by stating that, the circumstances when the culpable homicide turns out into murder which is punishable under Section 302 of the IPC and exception in the same section says when the offence is not murder but culpable homicide not amounting to murder under Section 304 IPC."*

22. After referring the aforesaid decision, the difference between two terms was further elucidated in Rampal vs. State of U.P. (2012) 8 SCC 289. Paras-16 and 21 of the judgment read thus:

“16. that the safest way of approach to the interpretation and application of Section 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of the Court in Virsa Singh v. State of Punjab [AIR 1958 SC 465: 1958 Cri. LJ 818] and Rajwant Singh v. State of Kerala [AIR 1966 SC 1874 : 1966 Cri LJ 1509], speaking for the court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder, punishable under the First or Second part of Section 304, depending respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the cases come within any of the Exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 IPC. It was, however,

clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative."

"21. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences. An analysis of these two sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of Section 304 includes only those cases in which offence is really murder, but mitigated by the presence of circumstances recognized in the Exceptions to Section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in the case of Fatta v. Emperor [AIR 1931 Lah 63]"

23. Recently, in the case of Chunni Bai Vs. State of Chhattisgarh (AIR 2025 Supreme Court 2370), the Supreme

Court, after referring the observations made in the case of Rayavarapu Punnayya and Rampal Singh (supra), in Para-21, observed thus:

> *"21. From the above extracts, it can be understood that one of the criteria to determine, in any given case, as to whether the act amounts to murder or culpable homicide not amounting to murder is the presence or absence of intention of the offender. If the intention to cause death or to cause such bodily injury as is likely to cause death or the knowledge, which obviously has to be a conscious one, that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury, comes out aloud and clear in the case, it would be most appropriate to categorise it as a case of murder under Section 300 IPC in which event, penal provision of Section 302 IPC would be attracted. On the other hand, if the "intention" in causing the death or to causing such bodily injury is not so clear, the case will fall under the less stringent category of "culpable homicide not amounting to murder" as punishable under Section 304 IPC."*

24. We have noticed the conduct of the witnesses, because on the aspect of sustaining of the injury on the accused having not been explained. In 313 statement, the accused made a clear stand that their injuries having not been explained by the prosecution and due to unwarranted text messages done by the complainant party, the appellant had gone to Pan Shop of PW-14. The witnesses have categorically stated that there was

a physical fight between the parties. The complainant party held guilty for causing injuries to the accused party. The Supreme Court in its various judgments on the aspect of injuries on the accused, observed and held that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the facts of the present case, the injuries which were found upto bone deep cannot be termed to be minor or superficial injuries. In such circumstances, the reasonable inference would arise that during the free fight, the stab wound being inflicted by the accused herein and the reason on two fold, namely, the complainant party were armed with wooden log and there was a dispute about text messages sent on the mobile of daughter of the accused. Therefore, it is difficult to hold that the appellant-accused had intention to cause death nor it can be said that he intended to cause that particular injury as noticed by the treating doctor. However, while inflicting the knife blow, the knowledge on the part of the appellant-accused could be attributed that by inflicting such kind of injuries, it might result into death. Therefore, having regard to the peculiar facts and circumstances of the present case, and on appreciation of the evidence on record, none of the clauses of Section 300 are attracted, as a result, we set aside the conviction of the appellant under Section 302 of Indian Penal Code and order of sentence of life and convict the appellant under Section 304 part II of Indian Penal Code. It is reported that the accused-

appellant has undergone more than 11 years of imprisonment and still he is behind the bars. In that view of the matter, ends of justice would meet by awarding ten years imprisonment, which he has already undergone and the fine amount, whatever awarded by the trial Court, will remain the same.

25. For the reasons aforementioned, the Criminal Appeal No.1309 of 2019 filed by the appellant-Raju Gohel is allowed in part and he has been convicted under Section 304, Part-II of Indian Penal Code and directed to undergo ten years rigorous imprisonment, which he has already undergone. The judgment and conviction dated 27.03.2019 passed in Sessions Case No.167 of 2003 by Additional Sessions Judge, Rajkot, is hereby set aside and the appellant-accused is convicted under Section 304, Part-II, and sentenced, as referred above.

26. So far as acquittal appeal filed by the original complainant, PW-14, is concerned, we do not find any ground to interfere with the findings of acquittal recorded by the trial Court qua original accused nos.1 and 2. The reason behind is that the name of Mahesh Gohel, causing injury with the pipe on the leg of the complainant, has not been proved by the prosecution. The complainant did not have mention in his complaint about the role attributed qua accused Mahesh. There is no visible injury found on the body of the complainant. So far as accused-Kiran is concerned, we found that there was over implication of the accused. If the role attributed to accused-Sanjay is accepted, then the blood stains on the cloth of the accused are bound to be there. In such circumstances,

the view of the trial Court acquitting the accused nos.1 and 2 are possible, reasonable and plausible view and the conclusion of acquittal reached is based on the material on record and, therefore, in absence of any exceptional circumstances as well as compelling reasons, we do not find any grounds to interfere with the acquittal of accused nos.1 and 2.

27. In the result, the acquittal appeal being Criminal Appeal No.1351 of 2019 stands dismissed. The conviction appeal being Criminal Appeal No.1309 of 2019, as observed above, is allowed in part. The jail authority shall release the appellant-accused forthwith unless his custody is necessary in any other offence. The case records be transmitted to the trial Court.

Sd/-

(ILESH J. VORA,J)

Sd/-

(R. T. VACHHANI, J)

R.S. MALEK

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RIYAZMIYA SABIRMIYA MALEK(HC00180), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 09/12/2025 11:13:37