



2024 INSC 609

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1691 OF 2023

HUSSAINBHAI ASGARALI
LOKHANDWALA

APPELLANT(S)

VERSUS

STATE OF GUJARAT

RESPONDENT(S)

**WITH
CRIMINAL APPEAL NOS. 1693-1695 OF 2023**

ASGARALI ONALI LOKHANDWALA

APPELLANT(S)

VERSUS

STATE OF GUJARAT & ORS.

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J U D G M E N T**UJJAL BHUYAN, J.**

1. This judgment will dispose of Criminal Appeal Nos. 1691 of 2023, 1692 of 2023, 1693 of 2023, 1694 of 2023 and 1695 of 2023.

2. Criminal Appeal No. 1691 of 2023 arises out of SLP(Criminal) No. 7622 of 2016 filed by Hussainbhai Asgarali Lokhandwala (appellant herein). In this appeal, challenge has been made to the judgment and order dated 06.05.2016 passed by the High Court of Gujarat at Ahmedabad ('High Court' hereinafter) in Criminal Appeal No. 29 of 2007 whereby, though the High Court modified the judgment and order of the learned Additional Sessions Judge, Panchmahal at Godhra ('trial court' hereinafter) in Sessions Case No. 292 of 2001 by altering the conviction of the appellant from one under Section 304 Part I of the Indian Penal Code, 1860 (IPC) to one under Section 304 Part II IPC but, sentenced him to undergo rigorous imprisonment (RI) for five years while maintaining the sentence of fine. Be it stated that, by the same judgment and order, the High Court had similarly altered the conviction of the co-accused (co-appellant) – Asgarali Onali Lokhandwala but restricted the sentence of imprisonment to the period already undergone by him.

3. Criminal Appeal No. 1692 of 2023 has been filed by the informant-Husseni Mithiborewala against alteration of conviction of the two accused in Sessions Case No. 292 of 2001, i.e., the appellant-Hussainbhai Asgarali Lokhandwala and the co-accused Asgarali Onali Lokhandwala by the High Court from Section 304 Part I IPC to Section 304 Part II IPC.

4. Criminal Appeal Nos. 1693, 1694 and 1695 of 2023 have been filed by Asgarali Onali Lokhandwala against the aforesaid judgment and order of the High Court in only partly allowing Criminal Appeal No. 29 of 2007 by altering the sentence but maintaining the conviction. Challenge has also been made to the aforesaid judgment and order of the High Court in dismissing Criminal Revision Application Nos. 294 of 2007 and 295 of 2007 whereby the acquittal order of the trial court acquitting Hussaini Mithiborewala and others in Sessions Case No. 171 of 2004 has been upheld.

5. All the related criminal appeals and criminal revision applications were disposed of by the High Court by the impugned judgment and order in the following terms:

22. For the following reasons, the impugned judgment and order passed by the learned Addl. Sessions Judge, Panchmahal at Godhra in

Sessions Case No. 292 of 2001 dated 07.11.2006 is modified to the extent hereunder:

(A) The conviction imposed upon both original accused No. 1 & 2 u/s. 304 Part-I IPC is altered to one u/s. 304 Part-II IPC, without disturbing the order regarding fine and default sentence.

(B) For conviction u/s. 304 Part-II IPC, original accused No. 1 is imposed the punishment of sentence for the period already undergone by him. However, the amount of fine deposited by him shall not be returned. The original accused No. 1 is on bail and therefore, his bail bonds stand cancelled.

(C) Insofar as original accused No. 2 is concerned, he is sentenced to undergo RI for five years, without disturbing the order regarding fine and default sentence imposed by the Court below for conviction u/s. 304 Part-I IPC. Original accused No. 2 is on bail. His bail bonds stand cancelled and he is directed to surrender to custody on or before 29th July, 2016 failing which appropriate action shall be taken to secure his arrest.

(D) As regards the amount of fine, it is observed that original complainant shall be at liberty to withdraw the same but, if the same is not withdrawn, on or before 31st December, 2016, then the entire amount shall be utilized for legal aid purposes by the court below.

22.1 Consequently, Criminal Appeal No. 29/2007 stands partly allowed whereas, Criminal Appeal No. 45/2007 is dismissed. Criminal Revision Applications No. 35/2007, 182/2007, 294/2007 and 295/2007 stand dismissed.

6. Criminal Appeal No. 1691 of 2023, being the lead appeal, facts narrated therein (which is common to all the appeals) are referred to hereunder.

7. Onejaben is the daughter of Asgarali Onali Lokhandwala (accused No. 1) and was the wife of Abbasbhai, who is the son of Idrishbhai Fidaali Mithiborewala. On 07.11.2000, both husband and wife had come to Godhra alongwith their minor daughter to attend a marriage. Because of matrimonial dispute, the wife did not stay with her husband but came to the residence of her parents. At around 19:30 hours, husband Abbasbhai came to the residence of accused No. 1 Asgarali Onali Lokhandwala to take back his wife Onejaben. However, accused No. 1 refused to send his daughter alongwith Abbasbhai. This resulted in a heated exchange of words between accused No. 1 and Abbasbhai. On hearing the hue and cry, Arvaben, wife of the informant-Turabbhai Abdulhussain, came to the residence of accused No. 1. She asked accused No. 1 and Abbasbhai to stop quarreling. However, accused No. 1 pushed Arvaben, as a result of which she fell on the ground and sustained injuries on her hand. During this period, Idrishbhai Fidaali Mithiborewala and his other son i.e., brother of Abbasbhai, Husseni rushed to the residence of accused No. 1. At this stage, accused No. 1 caught hold of Idrishbhai Fidaali Mithiborewala and accused No. 2 Hussainbhai Asgarali Lokhandwala (son of accused No. 1) brought a knife and inflicted a knife blow on the stomach region of Idrishbhai Fidaali Mithiborewala who had to be

hospitalized because of the injuries sustained by him. In the course of his treatment, Idrishbhai Fidaali Mithiborewala succumbed to the injuries and died.

7.1. In this connection, FIR was lodged before the Godhra police station, being I-C.R. No. 314/2000. In the course of investigation, both accused No. 1 and accused No. 2 were arrested. In connection with the same incident, a cross FIR was lodged by accused No. 1, being I-C.R. No. 315/2000, against the husband and in-laws of Onejaben.

7.2. On completion of investigation, chargesheet was filed against the accused persons before the trial court. Being a sessions triable offence, the case was committed to the Court of Sessions where it was registered as Sessions Case No. 292 of 2001 whereafter trial was initiated. In the trial, prosecution examined as many as 22 witnesses and also relied upon several documentary evidence. On conclusion of the evidence of the prosecution witnesses, statement of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (CrPC). Thereafter, the trial court *vide* the judgment and order dated 07.11.2006 convicted both the accused, i.e. Asgarali Onali Lokhandwala and Hussainbhai Asgarali Lokhandwala under Section 304 Part I IPC

read with Sections 323 and 324 of the said Code. For the conviction under Section 304 Part I IPC, both the accused were sentenced to undergo RI for a period of five years and to pay a fine of Rs. 50,000.00 each with a default stipulation. It was clarified that out of total fine amount, an amount of Rs. 90,000.00 should be paid as compensation to the legal representatives of the deceased-Idrishbhai Fidaali Mithiborewala. For the conviction under Section 323 IPC, both the accused were sentenced to undergo RI for seven days and for the conviction under Section 324 IPC, they were sentenced to undergo RI for two years. All the sentences were directed to run concurrently with the period of imprisonment already undergone by the accused, given a set off.

7.3. In the related case arising out of I-C.R. No. 315/2000, Sessions Case No. 171 of 2004 came to be registered. Here, husband and in-laws of Onejaben were accused. On conclusion of the trial, all the accused in Sessions Case No. 171 of 2004 were acquitted by the trial court *vide* the judgment and order dated 07.11.2006.

8. We may mention that the judgment and order dated 07.11.2006 passed by the trial court in Sessions Case No. 292 of 2001 came to be challenged by the two accused Asgarali Onali Lokhandwala and Hussainbhai Asgarali Lokhandwala before the

High Court in Criminal Appeal No. 29/2007. In this appeal, the conviction of the accused by the trial court was challenged.

8.1. Criminal Appeal No. 45 of 2007 was filed by the State seeking enhancement of sentence imposed on the two accused in Sessions Case No. 292 of 2001.

8.2. Criminal Revision Application No. 35 of 2007 came to be filed before the High Court by the injured witness-Husseni Mithiborewala (as the original complainant had passed away in the *interregnum*) seeking conviction of the two accused Asgarali Onali Lokhandwala and Hussainbhai Asgarali Lokhandwala under Section 302 IPC instead of under Section 304 Part I IPC.

8.3. Criminal Revision Application No. 182 of 2007 was registered *suo-motu* by the High Court on the issue of quantum of sentence in Sessions Case No. 292 of 2001.

8.4. Criminal Revision Application No. 294 of 2007 was preferred by Asgarali Onali Lokhandwala against the judgment and order of the trial court dated 07.11.2006 passed in Sessions Case No. 171 of 2004 whereby accused No. 4 in Sessions Case No. 171/2004 Samimben Idrishbhai Mithiborewala was acquitted of all the charges framed against him under Sections 452, 427,

323, 324, 504 and 498A IPC read with Section 114 IPC and Section 135 of the Bombay Police Act, 1951.

8.5. Similarly, Criminal Revision Application No. 295/2007 was filed by Asgarali Onali Lokhandwala against the judgment and order of the trial court dated 07.11.2006 passed in Sessions Case No. 171 of 2004 whereby accused Nos. 1 and 2 of that case Abbasbhai Idrishbhai Mithiborewala and Husseni @ Gopi Idrishbhai Mithiborewala were acquitted of all the charges framed against them under the aforesaid provisions of law.

9. All the above criminal appeals and criminal revision applications were heard together by the High Court and by the judgment and order dated 06.05.2016, were disposed of in the manner as indicated in paragraph 5 above. In short, conviction of Asgarali Onali Lokhandwala and Hussainbhai Asgarali Lokhandwala was altered from one under Section 304 Part I IPC to one under Section 304 Part II IPC. While the sentence of Asgarali Onali Lokhandwala was modified to the period of incarceration already undergone by him, insofar Hussainbhai Asgarali Lokhandwala is concerned, his sentence was modified to five years. Consequently, all the other criminal appeals and criminal revision applications were dismissed.

10. Mr. Nikhil Goel, learned counsel for the appellant at the outset submits that the trial court was not justified in convicting the appellant under Section 304 Part-I IPC. Though the High Court had altered the conviction from one under Section 304 Part-I IPC to one under Section 304 Part-II IPC, it was not justified in sentencing the appellant to suffer RI for five years. According to the learned counsel, it is a clear case of acquittal.

10.1. Learned counsel for the appellant has placed reliance on the evidence tendered by PW-1, PW-2, PW-3, PW-4 and PW-5, more particularly on the evidence tendered by PW-3. According to him, though they all claim to be eyewitness to the incident, they were interested witnesses. He submits that a dispassionate analysis of the evidence tendered by the aforesaid witnesses would clearly reveal that the appellant had acted in private defense. It was the deceased and the others who were the aggressors. This aspect was overlooked by the High Court while altering the conviction. In support of his submissions, as regards private defense, learned counsel has relied upon a decision of this Court reported in *Sukumaran vs. State*¹. He finally submits that Criminal

¹(2019) 15 SCC 117

Appeal No. 1691 of 2023 may be allowed and conviction and sentence of the appellant may be set aside.

10.2. Learned counsel for the appellant has also referred to the evidence of PW-16, PW-17 and PW-21 to contend that it was the informant and his family members who were the aggressors. Three members of the appellant's family had suffered knife and lathi injuries at the hands of the informant and his family members. As a matter of fact, there was recovery of lathi and knife from PW-3 and PW-5. It has also come on record that the glass door of the appellant's house was shattered due to stone pelting and that blood of both the appellant and the informant was found inside the residence of the appellant. Further, appellant had called the police twice citing apprehension of being assaulted by the family of his brother-in-law Abbasbhai as they were more in number. In order to defend himself and his father, appellant had acted in self-defense by inflicting injuries on the person of the deceased and PW-5 (only one blow each). Relying on the decision of this Court in the case of *Sukumaran* (supra), learned counsel submits that appellant had invoked his right to self-defense which aspect had been overlooked by both the courts below.

11. Ms. Archana Pathak Dave, learned counsel appearing for the State of Gujarat on the other hand supports the impugned

order and judgment. On a query by the Court, she submits that State has not filed any appeal against the altered conviction and modified sentence of accused No.1 Asgarali Onali Lokhandwala and of accused No.2 Hussainbhai Asgarali Lokhandwala (appellant herein). Contending that there is no merit in the appeal, she seeks dismissal of the same.

12. On the other hand, Ms. Meenakshi Arora, learned senior counsel appearing for the informant, has opposed the prayer made in Criminal Appeal No.1691 of 2023 and has further prayed that Criminal Appeal No. 1692 of 2023 filed by the informant may be allowed. According to her, it is a clear case of murder committed by both the accused resulting in the death of Idrishbhai Fidaali Mithiborewala. While the trial court was not justified in only convicting the two accused persons under Section 304 Part-I IPC, the High Court committed further error by altering the conviction from one under Section 304 Part-I IPC to one under Section 304 Part-II IPC. Referring to the evidence tendered by PW-1 and the other prosecution witnesses as well as the cross-examination of PW-18, she submits that the clear picture which emerges therefrom is that it was a brutal assault on the deceased by the two accused resulting in his death and hence a case of murder under Section 302 IPC is made out. She further submits that this

Court should interfere with the altered conviction as well as the modified sentence imposed by the High Court and thereafter suitably convict the appellant and the other co-accused.

13. Submissions made by the learned counsel for the parties have received the due consideration of the Court.

14. To appreciate the rival submissions, let us analyse the evidence of the material witnesses.

15. PW-1 is Turabbhai. In his examination-in-chief, he stated that his house and the house of Asgarali Onali Lokhandwala are situated just opposite to each other in the same colony. Asgarali Onali Lokhandwala is the father-in-law of the son of Idrishbhai Fidali Mithiborewala who is his brother-in-law. The house of Idrishbhai Fidali Mithiborewala is also situated opposite to the house of PW-1. He stated that Asgarali Onali Lokhandwala has one son Hussain and daughter Oneja. Oneja was married to the son of his brother-in-law Idrishbhai Fidali Mithiborewala by the name of Abbasbhai.

15.1. Oneja and Abbasbhai i.e. son of Idrishbhai were residing at Ahmedabad. Marriage of the niece of Idrishbhai was fixed on 07.11.2000 in the residence of Sakirabai, the maternal

aunt of Abbasbhai. Abbasbhai and Oneja came to attend that marriage from Ahmedabad.

15.2. On 07.11.2000, Abbasbhai came to the residence of his father-in-law Asgarali Lokhandwala to call his wife Oneja. Asgarali refused to send his daughter with Abbasbhai. Abbasbhai came out of the house and in a loud voice was heard saying that Oneja should be sent with him.

15.3. PW-1 was relaxing on his swing in the verandah when he heard a commotion in the house of Asgarali Lokhandwala. His wife then went to the house of Asgarali to impress upon the two not to quarrel. However, Asgarali pushed his wife as a result of which she fell down. PW-1 and his son Akil went to the residence of Asgarali from where son Akil took his mother to the dispensary.

15.4. PW-1 noticed that while Asgarali was holding the arms of his brother-in-law Idrishbhai, Hussain came and stabbed in the stomach portion of Idrishbhai by a knife. At that time, son of Idrishbhai, Gopi @ Husseni also arrived. Hussain, son of Asgarali stabbed Gopi @ Husseni too by that knife. On hearing the commotion, Kutubuddin Jinwala, a neighbour, came from the opposite house. Thereafter, Asgarali and Hussain went inside the house. Idrishbhai and his son Gopi also went to their house. Gopi

was taken to the civil hospital by a neighbour. Idrishbhai was also taken to the civil hospital by a neighbour in his sumo.

15.5. Idrishbhai was declared dead in the hospital. As the injury of Gopi @ Husseni was serious, the doctor sent him to a private dispensary whereafter he was shifted to a hospital at Vadodara.

15.6. PW-1 stated that after the incident, he lodged a complaint before the police.

15.7. As to his wife, he stated that since she fell down, she had fractured her left hand and also got a head injury. He further stated that the incident happened between seven to half past seven in the evening. He identified the knife used by Hussain (Ex.10).

15.8. In his cross-examination, he stated that the house of Asgarali was surrounded by a compound wall of six feet height. Therefore, he could not see what was happening inside the house. Referring to the knife, he stated that it was made from hex blade. Such type of knives are used to cut vegetables in the house. Though he had identified the knife, he had not placed an identification mark thereon.

16. Arvaben is PW-2. She is the wife of PW-1. In her evidence, she stated that Idrishbhai was her brother and his son

Abbasbhai was her nephew. Their house is at Bungalow No. 3 of her society. Marriage of Abbasbhai was solemnized with Oneja, daughter of Asgarali Onali Lokhandwala whose house is Bungalow No. 6, opposite to the house of PW-2. Marriage of Abbasbhai and Oneja was solemnized about five years back. They have one daughter named Natasha. Because of his business, Abbasbhai was residing at Ahmedabad. Oneja was also residing with him at Ahmedabad.

16.1. Sakirabai is the maternal aunt of Abbasbhai. Merriam is the daughter of Sakirabai. Her marriage was scheduled on 07.11.2000. Abbasbhai and Oneja came to attend the marriage from Ahmedabad alongwith their daughter four days prior to the marriage.

16.2. PW-2 stated that Abbasbhai went to the residence of Asgarali Onali Lokhandwala to take the keys in the evening of the marriage day i.e. 07.11.2000. An altercation took place between father-in-law Asgarali Onali Lokhandwala and son-in-law Abbasbhai. On hearing the hue and cry, she went to the house of Asgarali Onali Lokhandwala. At that stage, Idrishbhai and his other son Gopi @ Husseni also came there. Asgarali Onali Lokhandwala pushed PW-2 whereafter she fell down. Husband of

PW-2 i.e. PW-1 and her son came there and lifted her. As she stood up, she saw Asgarali Onali Lokhandwala holding her brother Idrishbhai by the arms. Since PW-2 was having much pain, she was taken away from the scene by her son to the dispensary where it was detected that she had fractured her left hand.

16.3. In the morning, her husband told her that her brother Idrishbhai was murdered and that her nephew Gopi @ Husseni was injured for which he was taken to Vadodara for treatment.

16.4. In her cross-examination, PW-2 stated that there was matrimonial dispute between Abbasbhai and Oneja prior to the incident but neither she nor any member of her family including her husband intervened. She further stated that when altercation took place between father-in-law and son-in-law, there was no loud outcry.

17. Abbas, son of Idrishbhai Fidaali Mithiborewala, deposed as PW-3. In his examination-in-chief, he stated that he had one more brother by the name of Husseni @ Gopi and one sister by the name of Jenamben. He was doing business in wood for which he used to stay at Ahmedabad though his original home is at Godhra. He used to frequently visit Godhra during festivals where other family members were residing. His marriage with Oneja was

solemnized in the year 1997. Oneja was also residing with him at Ahmedabad. They had one minor daughter by the name of Natasha.

17.1. PW-3 stated that his conjugal life was going on well. When he came to Godhra from Ahmedabad, his wife also accompanied him. Though she came to the residence of PW-3, she left after 10 minutes and went to the residence of her father Asgarali to stay.

17.2. Wedding of the daughter of the maternal aunt of PW-3, Merriam was on 07.11.2000. To attend the marriage, PW-3 alongwith his wife and daughter came to Godhra from Ahmedabad on 03.01.2000. Though they came to the house of PW-3 in Haidari society, wife of PW-3 Oneja stayed there for only about 10 minutes and went to her father's house alongwith Natasha. While PW-3 was residing in his house, his wife was living in her parental home.

17.3. On the wedding day, PW-3 called Oneja over phone at 10'o clock in the morning whereafter she came to the residence of PW-3 at 3'o clock in the afternoon. From there, they went to the wedding keeping their daughter Natasha in the residence of the in-laws of PW-3 i.e. with the parents of Oneja. In the wedding, before PW-3 could finish his meal, his wife Oneja left the wedding venue

for her home saying that her daughter Natasha was at home. After the wedding, PW-3 came to his house at 6'o clock in the evening whereater he called his wife over phone telling her to come to his home but she refused to come. At this stage, PW-3 sent his maid Mangliben to the residence of Asgarali Onali Lokhandwala (his father-in-law) to get the keys of the cupboard of their Ahmedabad house from his wife. Mangliben had gone around 7'o clock in the evening. She came back and told PW-3 that Oneja had refused to handover the keys to her.

17.4. Thereafter, PW-3 went to the residence of Asgarali Onali Lokhandwala and from the verandah he told his wife Oneja that she should come home alongwith him but she refused. At this, PW-3 told her that if she was not coming then atleast she should handover the keys of the cupboard to him. This also she refused.

17.5. At that time, father-in-law of PW-3, Asgarali and his son Hussain came out and told PW-3 that he was very much harassing Oneja. According to PW-3, they were very angry and sensing that a quarrel would break out, he came out of their compound onto the road. His father-in-law and brother-in-law followed him to the road where an altercation took place. Hearing the hue and cry, his aunt Arvaben who was residing just in the opposite house came to the scene; so also his father and younger brother Husseni @ Gopi.

17.6. Arvaben told Asgarali that instead of quarreling, he should give them the keys of the cupboard. Asgarali then pushed Arvaben as a result of which she fell down. On hearing the commotion, her husband Turabbhai and son Akil came to the scene. Father of PW-3 i.e. Idrishbhai also came there.

17.7. It was at that stage that Asgarali caught hold of the father of PW-3, Idrishbhai Fidaali Mithiborewala, by his arms from behind and told his son (brother-in-law of PW-3) that he was harassing them a lot and that he should be finished. Then, Hussain stabbed Idrishbhai in his stomach with a knife which he was carrying. As the brother of PW-3, Gopi tried to intervene, Hussain also stabbed him in his stomach with that knife.

17.8. Hearing the hue and cry, Kutubuddin Jinwala, a neighbour, rushed out of the opposite compound and when he came, Asgarali and his son Hussain walked back towards their house.

17.9. As his father and brother suffered knife injuries, PW-3, Kutubuddin and Turabbhai brought them to their house whereafter they were taken to the civil hospital where father of PW-3 was declared dead.

17.10. PW-3 identified the knife (Ex. 10) in court which was used by the appellant in the incident.

17.11. In his cross-examination, PW-3 stated that when he had called Oneja over phone, she refused to come and had put the phone down. However, he did not ask the reason as to why she was refusing to come. Though the house of Asgarali was just about 200 footsteps away, PW-3 neither made a phone call nor went to her house prior to the incident when he had gone to collect the keys of the cupboard.

17.12. PW-3 further stated that though he had carried his injured father back home, there were no blood stains on his cloth; neither were his hands blood stained though blood was all over his father.

17.13. About the incident, PW-3 stated that after he had entered into the compound of Asgarali, he had climbed about five staircases onto the verandah. He did not ring the doorbell but shouted once. Oneja refused to go with him. Instead of going home, he came out of the compound and shouted loudly. He admitted that in the entire incident, he did not suffer any injury at all.

18. Husseni @ Gopi is PW-5. In his deposition, he stated that Abbas was his brother. For the marriage of Merriam on

07.11.2000, Abbas alongwith his wife Oneja and their daughter had come to Ahmedabad but Oneja stayed in her father's house alongwith the daughter Natasha. Abbas had told his father-in-law on 07.11.2000 over phone to send Oneja to his house. However, Oneja refused. Thereafter, Abbas sent his maid Mangliben to the residence of Asgarali Onali Lokhandwala after 06:00 PM to bring back the keys of the cupboard of their Ahmedabad house. The maid came back and told that Oneja had refused to handover the keys. Thereafter, Abbas went to the residence of his father-in-law Asgarali Onali Lokhandwala to get the keys of the cupboard. PW-5 stated that after some time, he heard a loud outcry from the residence of Asgarali Onali Lokhandwala. On hearing the hue and cry, father of PW-5 Idrishbhai Fidaali Mithiborewala went to the residence of Asgarali Onali Lokhandwala. PW-5 followed behind his father. At around the same time, Arvaben also arrived at the scene and sought to pacify the parties. Asgarali Onali Lokhandwala pushed Arvaben as a result of which she fell down. No sooner did his father reached the place then Asgarali said that this Idrishbhai had come and that he should be beaten. Saying so, he held the arms of Idrishbhai from behind and instructed his son Hussainbhai Asgarali Lokhandwala to finish him off. It was then that Hussainbhai Asgarali Lokhandwala stabbed Idrishbhai in his

stomach by a knife which he was carrying. As PW-5 tried to intervene in order to save his father, he was also stabbed on the left part of his stomach by Hussainbhai Asgarali Lokhandwala by the same knife.

18.1. In his cross-examination, PW-5 stated that he came to know from his relatives that his father Idrishbhai had died around 8'o clock in the night of 07.11.2000. This he came to know on the fourth day of the incident. He denied the suggestion that he, his brother and father were taunting and harassing Oneja to bring dowry.

19. Dr. Ramesh Chandra deposed as PW-12. He had conducted the postmortem examination of the deceased Idrishbhai. He deposed about the external injuries sustained by the deceased. There was one stab wound on the left side of the stomach at a distance of about 1 inch from the navel. The size of the wound was 2 inches long and 1.5 inches wide. It was deep till the abdominal cavity. It was a sharp wound with blood coming out therefrom. The injury was ante-mortem and was caused by a sharp weapon.

20. PW-22 Rayjibhai Dahyabhai Solanki is the investigating officer who had investigated the case and had submitted the

chargesheet. In his examination-in-chief, he stated that on 09.11.2000, accused Hussainbhai Asgarali Lokhandwala expressed willingness to take the police to the place of occurrence for recovery of the knife used by him. Accordingly, he alongwith the panchas were taken in a police van to the place of crime. Accused Hussainbhai Asgarali Lokhandwala led the police and the panchas to the kitchen of his house and from one of the drawers in the kitchen, he took out a knife saying that the same was used for stabbing the deceased and PW-5. That knife was seized and sealed in the presence of the panchas.

20.1. PW-22 was subjected to a long cross-examination. However, what is of relevance is what he stated in his cross-examination. He stated that the glass pane of the door of the house of the accused was found broken and pieces of glass were lying in the compound. That apart, he stated that there was blood splattered in the compound which was of both the parties. Though the blood belonged to different persons, only the sample of the accused persons was taken. That apart, he had seized one stick from Abbasbhai and one knife from Husseni @ Gopi.

20.2. PW-22 further stated that though the age certificate of the accused Hussainbhai Asgarali Lokhandwala was not obtained

but it was a fact that he was a student then, studying in the 12th standard.

21. On a cumulative analysis of the evidence of the above prosecution witnesses, the picture which emerges is that there was a matrimonial dispute between Oneja and her husband Abbas. Despite that they had come home from Ahmedabad on 07.11.2000 for attending the marriage of Merriam. However, because of the strained relationship, Oneja did not stay with Abbasbhai in his residence. Instead, she alongwith her daughter Natasha decided to stay in her father's house which was in the close vicinity of the residence of her husband Abbas. On that fateful day, despite receiving calls from her husband, Oneja refused to come to his house. A maid was sent to bring back the keys of the cupboard of the Ahmedabad house but Oneja refused to handover the keys to the maid. It was then that Abbasbhai went to the residence of his father-in-law and demanded from his wife that the keys of the cupboard should be handed over to him. At this, pandemonium broke out resulting in a hue and cry as Oneja's father Asgarali accused Abbasbhai of harassing his daughter. When aunt Arvaben went to the residence of Asgarali to diffuse the situation, she was pushed back by Asgarali as a result of which she fell down and suffered injuries. Idrishbhai went to the place of occurrence

followed by PW-5. It appears that the very sight of Idrishbhai flared up the situation and an enraged Asgarali caught hold of his (Idrishbhai's) arms from behind, calling upon his son Hussain to finish him off. It has come on record that while asking his son to finish off Idrishbhai, Asgarali had said that these people (referring to Idrishbhai and his son Abbasbhai) had caused lot of distress to them. Therefore, he should be finished off. It was at that stage that Hussainbhai Asgarali Lokhandwala, son of Asgarali, brought a kitchen knife from inside the house and fatally stabbed Idrishbhai. When PW-5 sought to intervene, he was also stabbed in the stomach by Hussainbhai as he had stabbed Idrishbhai. That apart, there also appears to be pelting of stones aimed at the glass door of the house of Asgarali shattering the glass pane besides scuffle between the parties.

22. The trial court had convicted Asgarali and Hussainbhai under Section 304 Part I IPC as well as under Sections 323 and 324 thereof. On appeal, the High Court by the impugned judgment and order altered the conviction of both Asgarali and Hussainbhai from one under Section 304 Part I IPC to one under Section 304 Part II IPC. While the sentence of Asgarali was modified to the period of incarceration already undergone by him, that of Hussainbhai was modified to five years.

23. In so far Hussainbhai is concerned, what is discernible from the record is that he was a young man of 18 years of age at the time of the incident studying in Class 12. There was a history of matrimonial dispute between his sister and brother-in-law Abbasbhai. It is natural for a young man to be emotionally upset to see his sister allegedly ill-treated by her in-laws and when the deceased and Abbasbhai came to their residence leading to the ruckus, it is not difficult to visualize the state of mind of Hussainbhai as well of his father Asgarali. The tension was building up since morning as Abbasbhai was first insisting that his wife Oneja should come to his house and then insisting on the cupboard key of the Ahmedabad house to be handed over to him. It is important to note that the incident had taken place inside the residence of Asgarali (and then spilling over onto the street in front) and not in the residence of Idrishbhai. It is quite possible that as a young man, Hussainbhai was overcome by emotion which led him to physically attack the deceased and his son (brother-in-law). The fact that the incident was not premeditated is buttressed by the happening thereof inside the residence of Asgarali. Besides there was only a stab wound each on the stomach of the deceased and PW-5. The knife was not directed by Hussainbhai at the upper portion of the bodies of the deceased and PW-5.

24. We are in agreement with the view taken by the High Court that the entire incident had occurred in the heat of the moment and that neither party could control their anger which ultimately resulted into the fateful incident.

25. That being the position and since the High Court had brought down the charge from Section 304 Part I IPC to Section 304 II IPC, we feel that it would be in the interest of justice if the sentence of the appellant Hussainbhai Asgarali Lokhandwala is further modified to the period of incarceration already undergone by him while maintaining the conviction.

26. Much water has flown down the river by this time. The unfortunate incident leading to the loss of a precious life and sustaining of injuries by a couple of others had happened in a spur of the moment. Therefore, while concurring with the impugned judgment of the High Court dated 06.05.2016 insofar alteration of the conviction is concerned, we are of the view that the sentence imposed upon the appellant should be altered to the period of incarceration already undergone by him. That being the position, it is not necessary to delve into and elaborate upon the other contentions raised at the Bar.

27. Consequently, Criminal Appeal No. 1691 of 2023 is partly allowed. While maintaining the conviction of the appellant Hussainbhai Asgarali Lokhandwala under Section 304 Part II IPC, his sentence is modified to the period already undergone by him. All the other criminal appeals are, however, dismissed.

28. In view of the above, appellant Hussainbhai Asgarali Lokhandwala is directed to be released forthwith, if his detention is not required in any other case.

.....J
[ABHAY S. OKA]

.....J
[UJJAL BHUYAN]

**NEW DELHI;
AUGUST 14, 2024.**