

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.557 OF 2009

SAHISTAKHAN @ SHAHIDKHAN AKBAR KHAN

Appellant

VERSUS

STATE OF GUJARAT

Respondent

O R D E R

This appeal is filed questioning the concurrent judgments of the Trial Court and the High Court convicting the accused for the offences punishable under Sections 302 and 324 read with Section 34 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life.

The case of the prosecution in brief is that the appellant and co-accused Samirkhan Sarfarazkhan Pathan (since deceased) were found snatching a chain from one Gitaben Babulal near Usmanpura Garden by two constables, namely Anilkumar Govindbhai and Vishnubhai Jivabhai of Naranpura Police Station, Ahmedabad. After seeing the incident of chain-snatching, both the constables went on a scooter towards the chain snatchers with a view to nab them. However, no sooner did both the police officials reach the place of occurrence than the accused rammed their motorcycle into the scooter of the police constables, and as a result, both the constables and the accused fell down. Immediately, both the accused overpowered the police constables, and accused Samirkhan

Sarfarazkhan Pathan, upon the instigation of the appellant inflicted a knife blow on police constable Vishnubhai Jivabhai, who later succumbed to his injuries.

The accused Samirkhan Sarfarazkhan Pathan slipped away from the place of the incident. The appellant herein was overpowered by the police constable Anilkumar Govindbhai and a knife was also recovered from him.

The Trial Court as well as the High Court on an evaluation of the entire material on record concluded that the accused had committed the offences punishable under Sections 302 and 324 read with Section 34, IPC.

The judgment and order of the High Court is presently under challenge in this appeal on behalf of the appellant/accused Sahistakhan @ Shahidkhan Akbar Khan. It has been brought to our notice that accused Samirkhan Sarfarazkhan Pathan has died.

We have heard learned counsel for both sides.

Learned counsel for the appellant submitted that the prosecution has failed to establish the aspect of intention to commit murder and consequently, the appellant could be convicted at most under Section 324, IPC.

We have gone through the evidence of PW1 Anilkumar Govindbhai, who was a police constable on the date of the incident and was injured in the incident. He accompanied the deceased constable in chasing and attempting to nab the accused. We do not find any

ground to disbelieve the version of PW1 Anilkumar Govindbhai, more particularly when his presence cannot be disputed and his evidence is practically unrebutted.

The evidence specifically discloses that Samirkhan Sarfarazkhan Pathan (since deceased) stabbed the deceased with a knife and the appellant herein was with the said Samirkhan at the time of the incident. It is also clear from the evidence that there was a common intention between the accused to commit the offence of chain-snatching and they started running away from the said scene immediately after seeing the police personnel. After falling to the ground due to the collision between the scooter and the motorcycle, it seems that Samirkhan suddenly took out a knife that was in his possession and stabbed the deceased. Though it is doubtful as to whether the appellant herein shared a common intention with Samirkhan for committing the murder of the deceased, the fact remains that the appellant had instigated Samirkhan to kill the deceased by saying, "*saale ko khatam kar dalo*". Moreover, certain overt acts of the appellant have been specifically deposed to by the injured eye-witness. Since the evidence of the prosecution witnesses has been discussed by the Trial Court and the First Appellate Court in that regard, we desist from reiterating the same in its entirety in detail. However, the evidence clearly reveals that both the accused contributed to the crime in their own way. Be that as it may, having gone through the evidence and other material on record, we conclude that the incident of the killing of Vishnubhai Jivabhai was without premeditation and was in the nature

of a sudden fight in the heat of passion. In our considered opinion, in these circumstances, the offence committed by the appellant would form part of the offence punishable under Section 304 Part-II, IPC. Consequently, we reject the contention of the learned counsel for the appellant that the crime merely falls under Section 324, IPC.

It has been brought to our notice by the learned counsel that the appellant has already undergone 9 years and 7 months of imprisonment.

We deem it appropriate to conclude that the period of imprisonment already suffered by the appellant is sufficient sentence to be imposed in the facts and circumstances of the case.

The conviction of the appellant is converted from Section 302, IPC to Section 304 Part-II, IPC and he is sentenced to imprisonment for the period already undergone. Since the appellant is stated to be on bail, he need not be arrested for the present crime.

The appeal is disposed of on the aforesaid terms.

.....J.  
[MOHAN M. SHANTANAGOUDAR]

.....J.  
[INDU MALHOTRA]

NEW DELHI;  
APRIL 4, 2019

ITEM NO.105

COURT NO.13

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.557/2009

SAHISTAKHAN @ SHAHIDKHAN AKBAR KHAN

Appellant

VERSUS

STATE OF GUJARAT

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Date : 04-04-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MS. JUSTICE INDU MALHOTRA

For Appellant(s) Ms. Aparna Bhat, AOR

For Respondent(s) Ms. Hemantika Wahi, AOR  
Ms. Jesal Wahi, Adv.  
Ms. Puja Singh, Adv.  
Ms. Vishakha, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is disposed of, in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(MUKESH NASA)  
COURT MASTER

(SUNIL KUMAR RAJVANSHI)  
BRANCH OFFICER

(Signed Order is placed on the File)