



4. The charge framed by the Additional Sessions Judge in its order dated 3.5.2012 clearly reveals that on the date of incident, i.e., on 5.11.2010 at 6.30 p.m. Gordhanbhai Somabhai Rathod (deceased) was proceeding towards Navi Nagri; at that point of time he ran towards Manabhai Laxmanbhai Rathod (accused), the appellant herein and altercations took place. The accused being agitated by provocation of the deceased who started abusing, the accused immediately took out a knife and stabbed Gordhanbhai twice.

5. The aforesaid charge as well as the evidence produced by PWs.8 and 9 (the injured witnesses) would clearly reveal that the incident has taken place without premeditation and due to the provocation of the deceased. Therefore, the offence would fall under Section 304 Part-II of IPC and not under Section 302 IPC.

6. Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that justice would meet if the petitioner is sentenced to undergo imprisonment for ten years for the

**offence under Section 304 Part-II of IPC.**

**7. The appeal is accordingly allowed in part. The judgments of the trial court and the High Court are modified. The accused is hereby convicted under Section 304 Part-II and is sentenced for a period of ten years. The appellant is entitled to set off, of the period already undergone by him.**

**8. The conviction ordered upon by the trial court and the High Court with regard to other offences shall stand confirmed and all the sentences shall run concurrently.**

**9. Pending application, if any, shall stand disposed of.**

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

.....**J.**  
**[INDIRA BANERJEE]**

**New Delhi;  
12th April, 2019.**

ITEM NO.48

COURT NO.14

SECTION II-B  
REVISEDS 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

Petition(s) for Special Leave to Appeal (Cr1.) No(s).2522/2019

(Arising out of impugned final judgment and order dated 16-03-2017  
in CRLA No.701/2012 passed by the High Court Of Gujarat At  
Ahmedabad)

MANABHAI LAXMANBHAI RATHOD

Petitioner(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

Date : 12-04-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MS. JUSTICE INDIRA BANERJEEFor Petitioner(s) Mr. A. Sirajudeen, Sr. Adv.  
Mr. Karri Venkatta Reddy, Adv.  
Mrs. S. Usha Reddy, AORFor Respondent(s) Ms. Jesal Wahi, Adv.  
Ms. Puja Singh, Adv.  
Ms. Vishakha, Adv.  
for Ms. H. Wahi, AORUPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in part in terms of the  
corrected signed order.(Anita Rani Ahuja)  
Branch Officer(Sarita Purohit)  
AR-cum-PS

(Signed order is placed on the file)

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

**CRIMINAL APPEAL NO.666 OF 2019  
(Arising out of SLP(Crl.)No.2522/2019)**

**MANABHAI LAXMANBHAI RATHOD ... APPELLANT(S)**

**VS.**

**STATE OF GUJARAT ... RESPONDENT(S)**

**ORDER**

- 1. Leave granted.**
- 2. The appellant is convicted by the trial court for an offence under Section 302 IPC. The judgment of the trial court is confirmed by the High court. The correctness of the judgments of the trial court and the High Court is assailed in this appeal by the convicted accused.**
- 3. Notice was issued in this appeal on 11th March, 2019, to consider the case as to whether the matter would fall under Section 304 Part-I or Part-II of the I.P.C.**

4. The charge framed by the Additional Sessions Judge in its order dated 3.5.2012 clearly reveals that on the date of incident, i.e., on 5.11.2010 at 6.30 p.m. Gordhanbhai Somabhai Rathod (deceased) was proceeding towards Navi Nagri; at that point of time he ran towards Manabhai Laxmanbhai Rathod (accused), the appellant herein and altercations took place. The accused being agitated by provocation of the deceased who started abusing, the accused immediately took out a knife and stabbed Gordhanbhai twice.

5. The aforesaid charge as well as the evidence produced by PWs.8 and 9 (the injured witnesses) would clearly reveal that the incident has taken place without premeditation and due to the provocation of the deceased. Therefore, the offence would fall under Section 302 Part-I of IPC and not under Section 302 IPC.

6. Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that justice would meet if the petitioner is sentenced to undergo imprisonment for ten years for the

**offence under Section 304 Part-I of IPC.**

**7. The appeal is accordingly allowed in part. The judgments of the trial court and the High Court are modified. The accused is hereby convicted under Section 304 Part-I and is sentenced for a period of ten years. The appellant is entitled to set off, of the period already undergone by him.**

**8. The conviction ordered upon by the trial court and the High Court with regard to other offences shall stand confirmed and all the sentences shall run concurrently.**

**9. Pending application, if any, shall stand disposed of.**

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

.....**J.**  
**[INDIRA BANERJEE]**

**New Delhi;  
12th April, 2019.**

ITEM NO.48

COURT NO.14

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

Petition(s) for Special Leave to Appeal (Cr1.) No(s).2522/2019

(Arising out of impugned final judgment and order dated 16-03-2017 in CRLA No.701/2012 passed by the High Court Of Gujarat At Ahmedabad)

MANABHAI LAXMANBHAI RATHOD

Petitioner(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

Date : 12-04-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. A. Sirajudeen, Sr. Adv.  
Mr. Karri Venkatta Reddy, Adv.  
Mrs. S. Usha Reddy, AOR

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

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

Leave granted.

The appeal is allowed in part in terms of the signed order.

(Anita Rani Ahuja)  
Branch Officer

(Sarita Purohit)  
AR-cum-PS

(Signed order is placed on the file)