**Index**

|  |  |  |  |
| --- | --- | --- | --- |
| S No | Particulars of Document | Page number of parts to which it belongs | Remarks |
|  |  | Part I  | Part II  |  |
| (i) | (ii) | (iii) | (iv) | (v) |
|  | Office report on limitation | A | A |  |
|  | Proforma of First Listing | A1-A2 | A1-A2 |  |
|  | Cover page of Paper Book |  | A3 |  |
|  | Index of record of proceedings |  | A4 |  |
|  | Limitation report |  | A5 |  |
|  | Defect List |  | A6 |  |
|  | Note Sheet |  | NS1 to |  |
|  | Synopsis/List of Dates | B- |  |  |
|  | True Copy of the final judgment and order dated 04.02.2019 of Hon’ble High Court of Gujarat at Ahmedabad in R/Criminal Appeal No 1502 of 2018 |  |  |  |
|  | Special Leave Petition with Affidavit |  |  |  |
|  | Appendix: Relevant Portion of the Indian Penal Code, 1860; The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) , Act 1989 and Gujarat Police Act, 1951 |  |  |  |
|  | Annexure P1True copy of the FIR no I/38 of 2018 registered at PS Shapar Veraval dated 20.05.2018 |  |  |  |
|  | Annexure P2True copy of the post mortem report issued by Pandit Dindayal Upadhyay General Hospital, Rajkot dated 20.05.2018 |  |  |  |
|  | Annexure P3True copy of the report of the Test Identification parade dated 25.05.2018 |  |  |  |
|  | Annexure P4True copy of the chargesheet dated 26.07.2018 |  |  |  |
|  | Annexure P5True copy of the video taken during the incident filed along with the chargesheet dated 26.07.2018  |  |  |  |
|  | Annexure P6True copy of the photographs extracted from the video  |  |  |  |
|  | Annexure P7True copy of the video taken during the incident dated NIL |  |  |  |
|  | Annexure P8True copy of the photographs extracted from the video dated NIL |  |  |  |
|  | Annexure P9True copy of the order dated 18.09.2018 passed by Session Court , Gondal in Criminal Miscelleneous Application no 574 of 2018  |  |  |  |
|  | Annexure P10True copy of the affidavit filed by the SHO before the Hon’ble High Court of Gujarat at Ahmendabad dated 01.02.2019 |  |  |  |
|  | Crl MP no \_\_\_\_\_\_\_of 2019: Application seeking exemption from filing certified copy of the impugned order.  |  |  |  |
|  | Crl MP no \_\_\_\_\_\_\_\_of 2019: Application seeking exemption from filing official translation of the Annexures P\_\_to P\_\_\_ |  |  |  |
|  | Crl MP no \_\_\_\_\_\_\_\_of 2019: Application seeking condonation of delay in filing the Special Leave Petition |  |  |  |
|  | F/M |  |  |  |
|  | Vakalatnama |  |  |  |
|  | Memo of Parties |  |  |  |

IN THE SUPREME COURT OF INDIA
[S.C.R. Order XXI Rule 3(1)(a)]
Criminal Appellate Jurisdiction
Under Article 136 of the Constitution of India
S.L.P (Criminal) No \_\_\_\_\_\_\_\_\_\_\_\_ of 2019

(Arising from impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018)

In the matter of:

Jayaben w/o Mukeshbhai Savjibhai Vaniya …Petitioner

Versus

Tejas Kanubhai Zala & Ors …Respondents

**Certificate**

Certified that the Special Leave petition is confined only to the pleadings before the Court/ Tribunal whose order is challenged and the other documents relied upon in those pleadings. No additional facts, documents or grounds have been taken herein or relied upon in the Special Leave petition. It is further certified that the copies of the documents/ annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon’ble Court. This certificate is given on the basis of instructions given by the petitioner/ person authorized by the petitioner whose affidavit is filed in support of the Special Leave petition.

Place: New Delhi SATYA MITRA

Filed on: (Advocate for Petitioner)

IN THE SUPREME COURT OF INDIA
[S.C.R. Order XXI Rule 3(1)(a)]
Criminal Appellate Jurisdiction
Under Article 136 of the Constitution of India
S.L.P (Criminal) No \_\_\_\_\_\_\_\_\_\_\_\_ of 2019

(Arising from impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018)

In the matter of:

Jayaben w/o Mukeshbhai Savjibhai Vaniya …Petitioner

Versus

Tejas Kanubhai Zala & Ors …Respondents

**Office Report on Limitation**

1. The petition is/are within time
2. The petition is barred by time and there is a delay of \_\_\_ days in filing the same against order dated 04.02.2019 and petition for condonation of \_\_\_\_ days delay has been filed.

 BRANCH OFFICER

 New Delhi

 Dated: 2019

**Proforma of First Listing**

SECTION \_\_\_\_

The case pertains to (Please tick/check the correct box):

* Central Act: (Title) \_\_\_\_\_
* Section(s): \_\_\_\_\_
* Central rule: (Title) N.A
* Rule No.(s):
* State Act (Title)
* Section:
* State Rule:
* Impugned Interim Order: (Date) N.A.
* Impugned Final Order/Decree: (Date) 04.02.2019
* High Court: (Name) High Court of Gujarat at Ahmedabad
* Name of Judges: Hon Mr Justice S H Vora
* Tribunal/Authority: (Name) N.A.
1. Name of matter: CivilCriminal
2. (a) Petitioner/Appellant no. 1: Jayaben w/o Mukeshbhai Savjibhai Vaniya
(b) E-mail ID:
(c) Mobile Phone Number:
3. (a) Respondent no. 1: Tejasbhai Khanubhai Zala

(b) E-mail ID: \_\_\_\_\_\_\_N.A.\_\_\_\_\_\_

(c) Mobile Phone Number: \_\_\_\_\_\_\_N.A.\_\_\_\_\_\_

 4. (a) Main category classification: \_\_\_\_\_\_\_N.A.\_\_\_\_\_\_

(b) Sub classification:

5. Not to be listed before: \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

6. (a) Similar disposed of matter with citation, if any. & case details \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

 (b) Similar pending matter with case details:\_\_\_\_\_\_\_\_\_\_\_\_\_

7. Criminal Matters:

a. Whether accused/convict has surrendered: \_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

b. FIR No. Cr No 1/38 of 2018 Date: 20.05.2018

c. Police Station: Shapar Veraval

d. Sentence Awarded: \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

e. Period of sentence Undergone including period of detention/custody undergone: \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

8. Land Acquisition Matters:

1. Date of Section 4 notification: \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_
2. Date of Section 6 notification: \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_
3. Date of Section 17 notification: \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

9. Tax Matters: State the tax effect: \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

10. Special Category (first petitioner/appellant only):

Senior Citizen>65yrs;SC/ST;Woman/Child;

Disabled; Legal Aid case; In custody

11. Vehicle Number (in case of Motor Accident Claim matters): \_\_\_\_\_\_\_\_\_N.A.\_\_\_\_\_\_\_

Date:

Satya Mitra

AOR for Petitioner(s)/Appellant(s)

Registration No. 1852

Email: satyamitra2003@yahoo.co.in

IN THE SUPREME COURT OF INDIA
[S.C.R. Order XXI Rule 3(1)(a)]
Criminal Appellate Jurisdiction
Under Article 136 of the Constitution of India
S.L.P (Criminal) No \_\_\_\_\_\_\_\_\_\_\_\_ of 2019

(Arising from impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018)

In the matter of:

Jayaben w/o Mukeshbhai Savjibhai Vaniya …Petitioner

Versus

Tejas Kanubhai Zala & Ors …Respondents

Paper Book
(For Index kindly see inside)

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| --- | --- | --- |
| Crl M P \_\_\_\_of 2019 | : | Application seeking exemption from filing certified copy of the impugned order dated 04.02.2019 |
| Crl M P \_\_\_\_of 2019 | : | Application seeking condonation of delay in filing the present Special Leave Petition |
| Crl M P \_\_\_\_of 2019 | : | Application seeking exemption from filing official translation of the Annexure P\_\_\_to Annexure P\_\_\_\_ |

Filed on:

ADVOCATE FOR PETITIONER: SATYA MITRA

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| IndexRecord of proceedings |
| S.no. | Date of proceedings | Pages no |
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**Synopsis**

1. This Special Leave Petition impugns the final order and judgment dated 04.02.2019 passed by the Hon’ble High Court of Gujarat at Ahmadabad in R/Criminal Appeal No 1502 of 2018 where the High Court of Gujarat granted bail to Respondent No 1.
2. This is a shocking case where the High Court has granted bail to Respondent no. 1 –Tejas Kanubhai Zala – in a case where Tejas and 4 others brutally assaulted the deceased with a pipe and a belt taken out from a machine and continued assaulting until he died on the spot at the factory. While grating bail the High Court observed, inter alia:

“4. …it is not legal and proper to deny bail to the appellant on such weak evidence”.

1. This is an extremely casual approach and that too in a murder case relating to a Dalit and in a situation where there are 5 eyewitnesses, the accused are all identified in the TIP, the charge sheet has been filed and there are 2 videos where the faces of 4 of the accused persons are clearly visible and the videos were taken by Tejas Kanubhai Zala, the Respondent No. 1 on his very phone.
2. As a result, in a murder case, the Respondent No. 1 has been released on bail after serving only 9 months in custody.

FIR dated 20.05.2018

1. Petitioner Jayaben is the wife of Mukeshbhai, the deceased. She and her aunt Savitaben and her husband were collecting scrap from the open space outside a factory as they normally used to do. The 5 accused persons surrounded them and initially beat all 3 of them outside the factory. They continued beating them while dragging them inside the factory. In the presence of his wife and aunt, the 5 accused persons tied the deceased to the gate of the factory. The beating continued. The accused persons then asked the wife and aunt to leave. They left and informed their relatives and friends. When they returned they found Mukeshbhai lying inert on the floor of the factory probably dead. He was taken to a hospital where he was declared “brought dead”.

FIR

1. Petitioner Jayaben, then registered an FIR dated 20.05.2018 at P.S. Shapar Veraval. The FIR registered as FIR no 38 of 2018 at PS Shapar Verval is annexed as Annexure P1 at page \_\_\_\_to\_\_\_\_. The relevant part is hereunder:

“....I, my husband and Savitakaki went to pick the scrap from factory area and when we were picking the scrap on the back side of the factory area, five persons came there and without asking us anything, they started beating us. There was a factory and they dragged us upto their factory. They tied my husband there and pulled us out of the factory

….Ishwarbhai, I and my aunty Savitaben, Dhanjibhai Bavanjibhai Vaniya, Dineshbhai Palabhai Rathod, Sukhdev Rathod, went to Radadiya factory, near Sahyog cotton and when we reached there, my husband was lying on the land and he did not speak or move and was unconscious.

….We immediately took Mukesh to Civil Hospital, Rajkot and the doctor in-charge has declared Mukesh as brought dead…”

Post mortem report

1. The post mortem report dated 20.05.2018 is at Annexure P2 at page \_\_\_\_to \_\_\_\_\_and the relevant parts are as under:

“19. …all injuries are ante mortem in nature, fresh prior to death and produced by hard and blunt object…

…Opinion as to cause or probable cause of death:

Died due to shock and haemorrhage on account of multiple injuries present over head and body caused by hard and blunt object…”

TIP report

1. The Petitioner herein identified the 5 accused persons in the TIP conducted and the report dated 25.05.2018 is at Annexure P3 at page \_\_\_\_to \_\_\_\_and the relevant parts are as under:

“…She put her hand on the shoulder of a person who is standing between sr no 13 and 14 and when his name is asked, he said that he is Chiragbhai Vithalbhai Vora. Then, she put her hand on the shoulder of a person who is standing between sr no 6 and 7 and when his name is asked, he said that he is Diveshbhai Kishorbhai Vora. Then, she put her hand on the shoulder of a person who is standing behind sr no 16 and when his name is asked, he said that he is Tejas Kanubhai Zala. When she put her hand on the shoulder of a person who is standing between sr no 4 and 5 and when his name is asked, he said that he is Jaysukh Devrajbhai Radadiya.”

Charge sheet

1. The police authorities conducted investigation and filed a chargesheet before the Sessions Judge under section 302,342,354,323,143,147,148 and 149 of the Indian Penal Code, 1860 and section 135 of Gujarat Police Act and section 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. All five accused persons were arrested by the police authorities. Charge sheet was filed on 26.07.2018 and is at Annexure P4 at page \_\_\_\_to \_\_\_\_ and the relevant parts of the charge sheet are set out hereinbelow:

“16. …the offence is committed u/s 302,342,354,323,143,147,148,149 of the IPC and section 3(1) (r) (s), 3(2) (5) of the Atrocity Act and section 135 of the GP Act and the facts of the case are that the complainant and the deceased (husband of the complainant), Mukeshbhai Vaniya and witness no 22 Savitaben, were picking scrap near the factory of the accused on 20.05.2018, between 6.30 to 9.30 hours and the accused 1) Chirag Vithalbhai Vora Patel, 2) Divyesh Kishorbhai Vora, 3) Jaysukhbhai Radadiya 4) Tejasbhai Kanubhai Zala Khant, 5) minor Amitbhai Merambhai Vakatar (Bharvad) have put allegation of theft on them, abetted illegal assembly, held weapons and caught the hand of the complainant, deceased Mukeshbhai and witness Savitaben and dragged them and the accused had beaten complainant, deceased Mukeshbhai and witness Savitaben and so, the witness told that “ we are poor people and are tribal. Do not beat us.” But they had taken to Radadiya factory and attacked on the complainant and the witness Savitaben and got them escaped from the place and caught the deceased Mukeshbhai, tied him with the belt below the belt with the door, illegally detained him and brutally beat with pipe and belt and sustained serious injuries and caused death and violated the weapon prohibition notification issued by the District Magistrate, Rajkot and thereby committed the offence and it is proved from the evidence produed till date…”

9 Eyewitnesses statements

1. The assaults that took place outside the factory were witnessed by the petitioner and her aunt Savitaben. The assaults that took place inside the factory which resulted in the death of Mukeshbhai were witnessed by 3 independent witnesses Rohitsingh Manusingh Rajput, Manoj Bhikhabhai Luna Gariya and Maganbhai Jadavbhai Rathod. The family members and neighbours who saw the dead body lying on the floor of the factory are Ishawarbahi, Dhanjibhai, Dineshbhai and Sukhdev Rathod
2. The relevant parts of the 161 Cr.P.C. statement of the eyewitness petitioner annexed with the charge sheet are as under:

“…one of the factory persons had caught my hand and told me to come inside and when I denied, they misbehaved with me and when I shouted, my husband and my aunt in law Savitaben had intervened and separated me from them. So, the factory persons had started beating both of them with belt and pipes and they told me and my aunt to leave the place or we will be thrown in furnace. When they were beating my husband in the room, he shouted and told my aunt to take me home first and so my aunt and I reached home and talked to our relatives.

…At that time, my husband did not speak anything and was in unconscious condition…

…the doctor in-charge told my brother in law that he is dead and take him out.”

1. The relevant parts of the 161 Cr.P.C. statement of the eyewitness Savitaben, the aunt in law of the petitioner annexed with the charge sheet are as under:

“…five persons from Radadiya factory came there and told us as to what we were doing there and Jaya replied that they are picking scrap.

….Mukesh said he would not take the scrap so, they started beating all of us with belt and plastic pipe . Then factory persons told me and Jaya to get out of here, otherwise they would throw us inside the furnace. So we left the place and they detained Mukesh inside the factory.

…I took all of them to the factory and they had throw Mukesh on a slope. Mukesh did not speak and did not move and he was unconscious.”

1. The relevant parts of the 161 Cr.P.C. statement of Ishwarbhai, a relative of the petitioner annexed with the charge sheet are as under:

“…So we went inside Radadiya factory and inside the factory, Mukeshbhai was lying on the ground. He was not moving or speaking and was unconscious.

“..we all took Mukeshbhai to government hospital, Rajkot and during the treatment, Mukeshbhai died…”

1. The relevant parts of the 161 Cr.P.C. statement of Dhanjibhai, relative of the petitioner annexed with the charge sheet are as under:

“…So we went inside Radadiya factory and inside the factory, Mukeshbhai was lying on the ground. He was not moving or speaking and was unconscious.

…and we all took Mukeshbhai to government hospital, Rajkot and during the treatment, Mukeshbhai died…”

1. The relevant parts of the 161 Cr.P.C. statement of Dineshbhai, relative of the petitioner annexed with the charge sheet are as under:

“…We went inside Radadiya factor and inside the factory, Mukeshbhai was lying on the ground. He was not moving or speaking and was unconscious…”

“…and we all took Mukeshbhai to government hospital, Rajkot and during the treatment, Mukeshbhai died…”

1. The relevant parts of the 161 Cr.P.C. statement of Sukhdevbhai, neighbor of the petitioner annexed with the charge sheet are as under:

“…We went inside Radadiya factor and inside the factory, Mukeshbhai was lying on the ground. He was not moving or speaking and was unconscious…”

“…and we all took Mukeshbhai to government hospital, Rajkot and during the treatment, Mukeshbhai died…”

1. The 3 independent witnesses who saw the assault taking place inside the factory leading to the death of Mukeshbhai had their 161 statements recorded by the police. The relevant parts of the 161 Cr.P.C. statement of Rohitsingh Manusingh Rajput are as under:

“…two ladies who frequently steal the scrap, lying outside the factory of Radadiya industries and have started beating them. The ladies were slapped and were asked to leave. They tied the man to the door and beat him with belt and plastic pipe. They tied him with the belt so that he could not run away. Jaysukhbhai, Chirag, Divesh and worker Tejas Kanubhai Zala beat him with plastic pipe and belt which is used in the crane.”

1. The relevant parts of the 161 Cr.P.C. statement of Manoj Bhikhabhai Luna Gariya Rajput are as under:

“I also went there and reached the compound, I have seen that Jaysukh, Chirag, his partner Divesh, factory worker and nephew of tea stall owner were beating that person and he was shouting”

1. The relevant parts of the 161 Cr.P.C. statement of Maganbhai Jadavbhai Rathod are as under:

“…In the morning, Jaysukhbhai Patel, his partner Divyeshbhai Patel and Chirag Patel of Radadiya Industries and their persons caught a person…”

“…I have seen that they all were beating him near the compound. There was a crowd at that time. They beat the thief…”

2 video recordings

1. With the charge sheet a video recording is annexed. In this video recording the faces of 3 of the accused persons namely Jaisukhbhai, Chirag Vittalbhai Vora, and Amitbhai Merambhai Vakatar can be seen assaulting the deceased. This video recording is at Annexure P5 at page \_\_\_\_ to \_\_\_\_and the photographs are at Annexure P6 at page \_\_\_\_to \_\_\_\_.
2. In respect of this video recording the SHO has filed an affidavit dated 12.3.19 at Annexure P10at page \_\_\_and the relevant part is as under:

“7. …there are witnesses working in Radadiya factory and nearby factories, who have disclosed the facts that the accused persons had tied the deceased and beaten him by pipe and belt and the said incident is video recorded in the mobile of the accused Tejas Kanubhai Zala...”

1. There is a second video recording also from the phone of Tejas – Respondent no. 1 – and this is at Annexure P7 at page\_\_\_to \_\_\_\_ and the photographs are at Annexure P8 at page\_\_\_to \_\_\_\_. Both these video recordings are done by Tejas from his mobile phone.

Sessions Court order dated 18.09.2018

1. This is at Annexure P9 at page \_\_\_to \_\_\_\_and the relevant parts are as under:

“4. …All the accused have abetted illegal assembly and caused death of the deceased. And it is prima facie, seen that the accused has active role in the said offence. Thus, on submission of charge sheet, the circumstances do not arise to grant the bail to the accused. Looking at all circumstances and gravity of the offence and provision of sentence, the bail application of the applicant may be rejected”

Grounds for impugning the High Court order

1. When 4 persons are identified in the video and Tejas (R – 1) is identified in the TIP and the assault is videotaped by Tejas, then Tejas is equally guilty for all the actions of the other accused persons under section 34 IPC. because common intention is established.
2. In any case, an independent witness Rohitsingh Manusingh Rajput an employee of the factory identifies Tejas also an employee of the factory and his role in the incident as under:

“…Jaysukhbhai, Chirag, Divesh and worker Tejas Kanubhai Zala beat him with plastic pipe and belt which is used in the crane.”

1. The second reason for grant of bail given by the High Court is that:

“5. …It is doubtful whether the provisions of the said Act (SC/ST) will come into play.”

1. This is really of no consequence. This is a murder case. The provisions of the IPC are adequate.
2. In any case, Georige Pentaiah’s case will not apply. That was a case under section 3(i)(x) of the Act relating to insult in a public place. This is not a case under that section.
3. This is a case of casual or no application of mind as to the facts of the case. The High Court has not even noticed that:
4. There were 9 eyewitnesses out of which 3 are eyewitnesses to the assaults inside the factory. These are independent eyewitnesses including an employee of the factory. The other 2 witnesses, the petitioner/complainant and her aunt were themselves assaulted outside the factory. These 2 and 4 other eyewitnesses were eyewitnesses to the fact that they saw the body of the deceased lying on the floor inside the factory. The High Court makes no reference to this clinching evidence.
5. R-1 (Tejas) was identified in a TIP conducted. There is no reference to this in the High Court order.
6. Tejas videotaped the assault from his mobile phone inside the factory. This alone is adequate for Tejas to be convicted with the help of section 34 of the IPC. as sharing a common intention.
7. Hence this Special Leave Petition.

**List of Dates and Events**

|  |  |  |
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| Date |  | Events |
| 20.05.2018 | **:** | Petitioner along with her husband Mukeshbhai (deceased) and aunt-in law Savitaben went to collect scrap from the factory area around 06:00 am. When they were collecting scrap near the factory, five persons namely 1) Chirag Vithalbhai Vora Patel, 2) Divyesh Kishorbhai Vora, 3) Jaysukhbhai Radadiya 4) Tejasbhai Kanubhai Zala Khant, 5) minor Amitbhai Merambhai Vakatar (Bharvad) came and started harassing the petitioner and abusing all three of them with caste slurs. They even started beating them. They threatened the petitioner and her aunt-in law asking them to leave and took Mukeshbhai inside the factory and tied him to the gate of Radadiya factory and started beating him. The complainant, her aunt in law and other relative when they reached the factory after some time found Mukeshbhai lying on the floor unconscious. They took him to the hospital where he was declared dead. Pursuant to this, the petitioner registered an FIR vide FIR No I/38/2018 at PS Shapar Veraval. True copy of the FIR No I/38/2018 at PS Shapar Veraval dated 20.05,2018 is annexed as **Annexure P1** at page \_\_\_to\_\_\_\_ |
| 20.05.2018 | **:**  | Post mortem examination was conducted on the deceased and the post mortem report states that the cause of death is “died due to shock and hemorrhage on account of multiple injuries present over head and body caused by hard and blunt object”. True copy of the post mortem report issued by Pandit Dindayal Upadhyay General Hospital, Rajkot dated 20.05.2018 is annexed as **Annexure P2** at page \_\_\_to \_\_\_\_ |
| 25.05.2018 | **:** | A Test Identification Parade was conducted where the petitioner and her aunt-in law identified all four of the accused persons correctly. True copy of the report of the Test Identification Parade dated 25.05.2018 is at **Annexure P3** at page\_\_\_\_to\_\_\_\_ |
| 26.07.2018 | **:** | A chargesheet was filed against all five accused persons under section 302,342, 354, 323, 143, 147, 148, 149 of the Indian Penal Code 1860, section 3(1) (r) (s), 3(2) (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 135 of the Gujarat Police Act, 1951. True copy of the chargesheet dated 26.07.2018 is marked and annexed as **Annexure P4** at page\_\_\_to\_\_\_During the incident, the act of the accused persons beating the deceased was recorded vide a video which was recovered by the police authorities True copy of the video is annexed as **Annexure P5** at page\_\_\_to\_\_\_.True copy of the photograph taken from the video is annexed as **Annexure P6** at page\_\_\_\_to\_\_\_Another video of the accused persons beating the deceased was circulated in social media but was not put on record. True copy of the video is at **Annexure P7** at page \_\_\_\_to \_\_\_\_\_.True copy of the photographs of the same are at **Annexure P8** at page\_\_\_to\_\_\_ |
| 18.09.2018 | **:** | A bail application for Respondent No 1 was moved before the Sessions Court, Gondal seeking release of Respondent no 1 on bail The Sessions Court however dismissed the bail application vide its order dated 18.09.2018. True copy of the order dated 18.09.2018 passed by Sessions Court, Gondal in Criminal Miscelleneous Application no 574 of 2018 is annexed as **Annexure P9** at page \_\_\_\_to\_\_\_\_ |
| 01.02.2019 | **:** | The Deputy Superintendent of Police, SC/ST cell, Rajkot rural filed an affidavit before the Hon High of Delhi at Ahmedabad detailing the incidents True copy of the affidavit dated 01.02.2019 fied by the SHO, Gondal before the Hon’ble High Court of Gujarat at Ahmedabad is annexed as **Annexure P10** at page\_\_\_to\_\_\_\_.  |
| 04.02.2019 | **:** | Respondent No 1 aggrieved by the order of dismissal of his bail application by the Sessions Judge, Gondal preferred a criminal appeal before the High Court of Gujarat at Ahemdabad vide R/ Criminal Appeal No 1502 of 2018. The Hon High Court of Gujarat at Ahmedabad overruled the decision of the Sessions Court and granted bail t Respondent no 1 vide its order dated 04.02.2019.  |
|  |  | Hence this petition |

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL NO 1502 OF 2018

Tejas Kanubhai Zala
Versus
State of Gujarat

Appearance:

Mr YS Lakhani Sr Adv with Mr Ashish M Dagli (2203) for the Petitioner(s) no 1

HCLS Committee(4998) for the Respondent(s) No 2

Ms Nilam M Chauhan (6635) for the Respondent(s) No 2

MS Monali H Bhatt App (2) for the Respondent(s) No 1

CORAM: HONOURABLE MR JUSTICE S H VOHRA

Date: 04.02.2019

Oral Order

Admit. Learned APP waives service of notice of admission for the respondent –State and learned advocate Ms N N Chauhan waives service of notice of admission for Respondent No 2- complainant.

By way of the present appeal under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the Act), the appellant- original accused challenges the order dated 18.09.2018 passed by the learned 6th Additional Sessions Judge, Gondal in criminal Misc Application No 574 of 2018 whereby, the learned Sessions Judge refused to grant regular bail under section 439 of the Code of Criminal Procedure to the appellant – original accused in connection with the FIR being CR No 1- 38 of 2018 registered with Shapar Veraval police station for the offence punishable under sections 302,323 and 114 of the Indian Penal Code, Section 37 and 135(1) of the GP Act and 3(2)(5) of the Atrocities Act.

Briefly stated, it is alleged that on the date of incident , at 6 O’ clock, the complainant alongwith her husband and aunt went into the factory area for collecting scrap and in the open place, certain scrap material was found and as they were collecting the same, 5 persons came and without asking anything, started assaulting them and thereafter, taken towards the factory of one of the persons. It is alleged that the husband of the complainant was forcibly tied up and the complainant and her sisters were asked to leave and after that, they have informed to one Mr Ishwarbhai, who was residing nearby and also informed that her husband was assaulted in the factory. It is alleged that thereafter, the person to whom, the injuries were caused was asked to pick up from the factory and the complainant alongwith other persons went to the factory and found that her husband was lying and he was taken to the civil hospital, Rajkot where he was succumbed to injuries. Thus, the complaint came to be lodged.

Heard submissions made at bar by learned Senior Counsel Mr YS Lakhan appearing with learned advocate Mr AM Dagli for the appeallant learned APP appearing for the respondent – State and learned advocates Ms NN Chauhan for respondent No 2- complainant. Considering the police papers supplied by the learned APP during the course of hearing and as well as considering the affidavit of respondent No 1, it appears that the appellant was identified in TI Parade by the complainant and one Ms Savitaben. Upon perusal of the statements of the complainant and said Ms Savitaben, it appears that they have not seen the actual occurrence of incident, which occurred inside the factory premises. In other words, except presence of the appellant, no any other role is noticed from the statement of the prosecution witnesses and also from the CCTV footage and images obtained from the mobile phone of the present appellant. Therefore, it is not legal and proper to deny bail to the appellant on such weak evidence. Further, no any past antecedent is registered against the appellant.

Section 3 of the said Act obliges the complainant in opening recital, to plead the case that the accused is not the member of the said Act. No such plea is taken in the FIR itself and therefore in view of the decision rendered in the case of Georige Pentaiah v State of Andra Pradesh reported in 2008 (12) SCC 531, it is doubtful whether the provisions of said act will come into play.

In the result, the present appeal is allowed. The impugned order dated 18.09.2018 passed by the learned 6th Additional Sessions Judge, Gondal in Criminal Misc Application No 574 of 2018 is hereby quashed and set aside. The appellant is ordered to be released on bail in connection with FIR registered as CR No I-38 of 2018 registered with Shapar Veraval police station on executing bond of Rs 10,000/- (Rupees ten thousand only) with one surety of like amount to the satisfaction of the trial Court and subject to the conditions that the appellant shall:

1. Not take undue advantage of liberty or misuse liberty;
2. Not act in a manner injurious to the interest of the prosecution;
3. Not leave the territory of India without prior permission of the Sessions Judge consent;
4. Appear before the Investigation Officer concerned as and when required for investigation purpose and attend Court concerned regularly;
5. Furnish the present address of residence along with the proof to the IO concerned and also to the Court at the time of execution of the bond and shall change the residence without prior permission of Sessions Court concerned;

The competent authority will release the appellant only of he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to take appropriate action in the matter. Bail bond to be executed before the lower court having jurisdiction to try the case. It will be open to the concerned Court to delete, modify or relax any of the above conditions in accordance with law. At the trial, the tial court shall not be influenced by the observations of the preliminary nature, qua the evidence at this stage, made by this Court while enlarging the appellant on bail. Direct service is permitted.

(SH Vohra, J.)

IN THE SUPREME COURT OF INDIA
Criminal Appellate Jurisdiction
Under Article 136 of the Constitution of India
S.L.P (Criminal) No \_\_\_\_\_\_\_\_\_\_\_\_ of 2019

(Arising from impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sn | Between | Before the Sessions Court  | Before the High Court | Before this Hon Court |
| 1. | Jayabenw/o Mukeshbhai Savjibhai VaniyaR/o Village Parnala, Tehsil Limbdi, District Surendranagar, Gujarat | Complainant | Respondent No 2 | Petitioner |
| Versus |
| 1. | Tejas Kanubhai ZalaS/o Kanubhai Zala Khant – KoliR/o Shantinagar society, opposite Railway station, somnath Veral, Gujarat | Accused | Appellant | Contesting Respondent No 1  |
|  |  |  |  |  |
| 2. | State of Gujarat Through Station House OfficerPS: Shapar Veraval, Gujarat | Prosecution | Respondent no 1 | Contesting Respondent no 2 |

To

The Hon Chief Justice and
His Hon Companion Justices
of the Hon Supreme Court of India

The Humble petition of the
Petitioner above-named

The Special Leave Petition of the Petitioner above named:

Most respectfully showeth:

* + - 1. The present Special Leave Petition impugns the order of the Hon High Court of Gujarat at Ahmedabad in R/Criminal Appeal No 1502 of 2018 dated 04.02.2019, wherein the High Court granted bail to Respondent no 1.

1A. The Petitioner states that no LPA or Writ Appeal lies against the impugned order. The Petitioner further states that she is Respondent no 2 in R/Criminal Appeal No 1502 of 2018 before the High Court of Gujarat at Ahmedabad and due to clerical error, the petitioner’s name did not appear in the cause title of the impugned order dated 04.02.2019.

* + - 1. Questions of law:

That the following questions of law arise from the present Special Leave Petition for consideration before this Hon Court:

A) Whether the High Court of Gujarat at Ahmedabad in its order dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018 erred in granting bail to Respondent No 1

B) Whether the High Court of Gujarat at Ahmedabad failed to appreciate direct evidences which clearly show Respondent No 1’s active role in committing the offence enumerated in the chargesheet

* + - 1. Declaration in terms of Rule 2(2):

The Petitioner states that no other petition seeking Special Leave to Appeal against the impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad in R/Criminal Appeal No 1502 of 2018 dated 04.02.2019 has been filed by her.

1. Declaration in terms of Rule 4:

That the Annexures P1 to P10 along with the Special Leave Petition are correct and the true copies of the pleadings/documents which form part of the record of the case in the court below against whose order, the leave to appeal is sought for in the writ petition.

1. Grounds

That the leave to appeal is sought for on the following amongst the other;

* 1. Because the accused person, Respondent No 1 was identified in the Test Identification parade by both the Petitioner and her Aunt.
	2. Because the independent eyewitness, Rohitsingh Manusingh Rajput an employee of the company who was present at the scene of crime also identified Respondent No 1 and stated that he was beating the deceased.
	3. Because the petitioner and her aunt both in the FIR and their 161 statement stated that Respondent No 1 beat the deceased outside the factory before taking him inside the factory.
	4. Because as per the affidavit filed by the SHO before the Hon’ble High Court of Gujarat at Ahmedabad dated 12.03.2019, the incident was recorded in the mobile phone of Respondent No 1.
	5. Because the whole incident was videotaped by Respondent No 1, he is equally guilty for all the actions of the other accused persons under section 34 of the Indian Penal Code, 1860 because common intention is established.
	6. Because the Post Mortem report dated 20.05.2018 states that the deceased died due to ante mortem injuries caused ‘due to shock and hemorrhage on account of multiple injuries present over head and body caused by hard and blunt object’.
	7. Because the chargesheet dated 26.07.2018 names Respondent No 1 as one of the accused persons who caused the death of the deceased.
	8. The application of George Pentaiah’s case is irrelevant because the current case is that of murder and the provision so of IPC itself is sufficient.
1. Grounds for interim relief:
	* + - 1. No interim relief is sought vide this Special Leave Petition.
2. Main prayer:

It is therefore most respectfully prayed that this Hon Court may graciously be pleased to:

Grant Special Leave to appeal against the impugned final order and judgment of Hon High Court of Gujarat at Ahmedabad in R/Criminal Appeal 1502 of 2018 dated 04.02.2019;

Pass any such further order as this Hon Court may deem fit and proper in the facts and circumstances of the case.

1. Interim Prayer:
2. No interim prayer is sought vide this Special Leave Petition.

Drawn by: Harini Raghupathy

Drawn on:

Filed on:

Filed by: Satya Mitra

(Advocate for the Petitioner)

**Appendix**

The Indian Penal Code, 1860

Section 302:

Punishment for murder:

Whoever commits murder shall be punished with death, or (imprisonment for life), and shall also be liable to fine.

Section 342:

Punishment for wrongful confinement:

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Section 354

Assault or criminal force to woman with intent to outrage her modesty: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both.

Section 323

Punishment for voluntarily causing hurt

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Section 143

Punishment

Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Section 147

Punishment for rioting

Whoever guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine

Section 148

Rioting, armed with deadly weapon

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either a description for a term which may extend to three years, or with fine or with both.

Section 149

Every member of unlawful assembly guilty of offence committed in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committeed in prosecution of that object, every person who at that time of committing of that said offence, is a member of the same assembly, is guilty of that offence.

Relevant portions of the Scheduled castes and the Schdules Tribes (Prevention of Atrocities) Act, 1989

Section 3: Punishments for offences of atrocities. – (1) Whoever, not being a member of a Scheduled Caste or Scheduled tribe.-

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled caste or Scheduled Tribe by caste name in any place within public view.

Section 3: Punishments for offences of atrocities (2) Whoever, not being a member of a Scheduled caste or a Scheduled Tribe

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property z9knowing that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 21860) for such offences and shall also be liable for fine.

Relevant portion of Gujarat Police Act, 1951

Section 135: Penalty for contravention of rule or directions under section 37, 39 or 40.

Whoever disobeys an order lawfully made under section 37,39 or 40 or abets the disobedience thereof hall, on conviction, be punished-

1. If the order disobeyed or which the disobedience was abetted was made under sub section (1) of section 37 or under section 39, or section 39, or section 40, with imprisonment for a term which may extend to one year but shall not except for reasons to be recorded in writing be less than four months and shall also be liable for fine and;
2. If the said order was made under sub section (2) of section 37, with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees, and
3. If the said order was made under sub section (3) of section 137, with fine which may extend to one hundred rupees.

IN THE SUPREME COURT OF INDIA
Criminal Appellate Jurisdiction
Under Article 136 of the Constitution of India
S.L.P (Criminal) No \_\_\_\_\_\_\_\_\_\_\_\_ of 2019

(Arising from impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018)

In the matter of:

Jayaben w/o Mukeshbhai Savjibhai Vaniya …Petitioner

Versus

Tejas Kanubhai Zala & Ors …Respondents

**Application seeking exemption from filing certified copy of the impugned final order and judgment dated 04.02.2019**

To
THE HON’BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF SUPREME COURT OF INDIA

HUMBLE PETITION OF
THE PETITIONERS HEREIN

MOST RESPECTFULLY SHOWETH:

1. By way of this Special Leave Petition, the petitioner has challenged the order of the Hon’ble High Court of Gujarat at Ahmedabad in R/Criminal Appeal No 1502 of 2018 dated 04.02.2019 where the Hon’ble High Court granted bail to Respondent No 1.
2. The copy of the impugned order dated 04.02.2019 has been obtained from the official site of the High Court of Gujarat at Ahmedabad and true copy of the same is being filed herein with the Special Leave Petition. The petitioner has no reason to believe that the same is different from the certified copy of the order/judgment.
3. The petitioner undertakes to obtain and file the certified copy of the impugned order as and when the same is supplied to the petitioner.
4. This application is made in the interest of justice.

**Prayer**

Hence, in the view of the facts and circumstances explained above, it is prayed before this Hon’ble Court as under:

1. For an order exempting the petitioner from filing the certified copy of the impugned order dated 04.02.2019 passed by the Hon’ble High Court of Gujarat at Ahmedabad in R/Criminal Appeal No 1502 of 2018;
2. For any other order or direction that this Hon’ble Court may deem fit and appropriate in the interest of Justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Place: New Delhi
Filed on:

SATYA MITRA
(Advocate for Petitioner)

IN THE SUPREME COURT OF INDIA
Criminal Appellate Jurisdiction
Under Article 136 of the Constitution of India
S.L.P (Criminal) No \_\_\_\_\_\_\_\_\_\_\_\_ of 2019

(Arising from impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018)

In the matter of:

Jayaben w/o Mukeshbhai Savjibhai Vaniya …Petitioner

Versus

Tejas Kanubhai Zala & Ors …Respondents

**Application seeking exemption from filing official translation of the annexures**

To

THE HON’BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF SUPREME COURT OF INDIA

HUMBLE PETITION OF
THE PETITIONERS HEREIN

MOST RESPECTFULLY SHOWETH:

1. By way of this Special Leave Petition, the petitioner has challenged the order of the Hon’ble High Court of Gujarat at Ahmedabad in R/Criminal Appeal No 1502 of 2018 dated 04.02.2019 where the Hon’ble High Court granted bail to Respondent No 1.
2. The contents of the petition are not repeated for the sake of brevity but the same shall be read as part and parcel of this application.
3. The annexures P1, P3, P4 and P9 with the accompanying petition are in Gujarati and due to constraints of time, could not be translated by the official translator. They are instead translated by a person with good understanding of both English and Gujarati and has translated the annexures with deliberate efforts to avoid errors. The petitioner believes that the translations are correct to the best of his knowledge and shall produce the official translations if the Court insists on the same.
4. This application is made in the interest of justice.

**Prayer**

1. It is, therefore prayed most respectfully that Your Lordships may be pleased to:
2. Exempt the petitioner from filing the official translations of annexures P1, P3, P4 and P9 to the petition;
3. Pass any other order as it may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Place: New Delhi
Filed on:

SATYA MITRA
(Advocate for Petitioner)

IN THE SUPREME COURT OF INDIA
Criminal Appellate Jurisdiction
Under Article 136 of the Constitution of India
S.L.P (Criminal) No \_\_\_\_\_\_\_\_\_\_\_\_ of 2019

(Arising from impugned final order and judgment of the Hon High Court of Gujarat at Ahmedabad dated 04.02.2019 in R/Criminal Appeal No 1502 of 2018)

In the matter of:

Jayaben w/o Mukeshbhai Savjibhai Vaniya …Petitioner

Versus

Tejas Kanubhai Zala & Ors …Respondents

**Application seeking condonation of delay in filing the present Special Leave Petition**

To

THE HON’BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF SUPREME COURT OF INDIA

HUMBLE PETITION OF
THE PETITIONERS HEREIN

MOST RESPECTFULLY SHOWETH:

1. By way of this Special Leave Petition, the petitioner has challenged the order of the Hon’ble High Court of Gujarat at Ahmedabad in R/Criminal Appeal No 1502 of 2018 dated 04.02.2019 where the Hon’ble High Court granted bail to Respondent No 1.
2. The contents of the petition are not repeated for the sake of brevity but the same shall be read as part and parcel of this application.
3. After the Hon’ble Court passed the impugned order, the petitioner took time in taking the legal opinion and contacting the advocates in Delh for filing the instant SLP. Then, the documents were sent to the advocates I Delhi; and as many of the documents were in Gujarati, they were translated and typed. There were also inadvertent delays in the process of communication and transmissions of documents. In the entire process, the petitioner failed to file the petition within the limitation period and a delay of \_\_\_\_\_\_\_days were caused in filing the instant SLP. The delay so caused in neither intentional nor deliberate.

**Prayer**

 It is therefore prayed most respectfully that Your Lordships may be pleased to:

1. Condoning the delay of \_\_\_\_\_days in filing the instant SLP;
2. Pass any other orders which Your Lordships deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Place: New Delhi
Filed on:

SATYA MITRA
(Advocate for Petitioner)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
DIST: RAJKOT

**Memo of Parties**

Criminal Appeal no 1502 of 2018

Tejas Kanubhai Zala
Aged 21 years, Male, Occ: Labour
residing at Radadiya Industries,
Dholera Road, Opposite Railway Station
Somnath (Veraval)
(At present in Gondal Sub Jail
arrested on 21.05.2018) …Appellant

Versus

1. The State of Gujarat
(Notice to be served through
the Public Prosecutor, High
Court of Gujarat at Ahmedabad)
2. Jayaben
Wife of Mukeshbhai Savjibhai Vania
Aged 30 years, Female, Shitla Mandir
Maruti Park, Shapar
Veraval …Respondents

Place: New Delhi
Filed on:

SATYA MITRA
(Advocate for Petitioner)