Reserved On : 22/08/2025
Pronounced On : 27/11/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 850 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

and
HONOURABLE MR.JUSTICE J. L. ODEDRA

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Approved for Reporting	Yes	No

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STATE OF GUJURAT
Versus
ISHWARJI SURSANJI THAKOR

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Appearance:
MR MANAN MEHTA, ADDL.PUBLIC PROSECUTOR for the Appellant(s) No. 1
APURVA DAVE(3777) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**
and
HONOURABLE MR.JUSTICE J. L. ODEDRA

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE J. L. ODEDRA)

1. Present appeal has been filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.") against the judgement and order of acquittal dated 12.07.2002 passed

by the Additional Sessions Judge, Fast Track Court, Palanpur in Session Case No.63 of 2001, whereby the trial Court had acquitted the respondent (the only accused in the Trial, who may be referred to as “the Respondent” or “The Respondent Accused”, or “the Accused”, as the context may admit) for the offences under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, whilst convicting him under Section 304 (Part-I) of the Indian Penal Code and had ordered the present respondent (accused) to suffer rigorous imprisonment of 07 years and pay fine of Rs.5000/-. Moreover, the Court had provided that in default of the payment of fine, the accused shall undergo an additional (01) one year of rigorous imprisonment.

Facts in brief

2. It is the case of the prosecution that on 20.10.2000 at about 5:00 p.m. in the evening, the deceased victim (Varshaben), who was married to the present respondent accused since about 02 years, had come to her maternal house allegedly with the consent of the respondent accused, yet the respondent followed the said Varshaben to her (agricultural field) and had an argument with Vaniben

Tarsangji Thakor (P.W.No.4), (hereinafter referred to as 'Vaniben' or "the informant", as the context may admit), the mother of the victim and the victim herself. That during such argument, the accused called upon the victim to come back to her matrimonial house, to which the victim replied that she would come, albeit not on the very day, but on the day after. Thereafter, in the evening they started back from the agricultural land belonging to the family of Varshaben and whilst they were so returning, at about 5:30 p.m, on the way to the village, the accused sneaked up to the victim from behind, caught hold of the victim and inflicted her with multiple stab wounds and as a result, the said victim, in a blood stained condition collapsed down on the ground. It is the case of the prosecution that the mother of the victim, the informant, immediately started giving cries for help, whereupon, Raimalbhai Dajabhai, Pratapji Madhuji Thakore, rushed towards the spot from nearby farms. When they were so rushing towards the victim, they were also joined by one Ujabhai Dajabhai Patel (P.W.No.3). It appears that later on the respondent accused fled the place, along with the muddamal knife,i.e. the knife used for inflicting stab wounds. Subsequently, the First

Information Report at Exh.15 was registered with Diodar Police station for the offences punishable under Section 302 of the Indian Penal Code read with Section 135 of the Bombay Police Act vide CR.No.I-105 of 2000. The police, after conclusion of their investigation, (including the drawing of panchnamas, recording statements, collecting medical papers, post mortem etc.,) found sufficient material against the respondent accused and, therefore the chargesheet was filed with the concerned Court of Judicial Magistrate First Class, whereupon the Magistrate committed the case, which came to be registered as Sessions Case No.63 of 2001. The learned Sessions Judge framed charges at Exh.6 against the respondent accused for the aforesaid offences, i.e. Section 302 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. During the trial that ensued, the trial Court framed charge for section 302 of the Indian Penal Code read with Section 135 of the Bombay Police Act and recorded the plea of the Accused, wherein the Accused pleaded 'Not Guilty". The prosecution adduced a total of 32 evidences, both documentary and oral. Ultimately, after the conclusion of

the evidence by the prosecution, the trial Court recorded statement under Section 313 of the Indian Penal Code. Thereafter, the trial Court passed the impugned judgement (Exh.48) referred to hereinabove, against which the State has filed the present Appeal.

4. Heard learned advocate for the parties. Shri Manan Mehta, learned Additional Public Prosecutor has appeared for the State and Mr. Apurva Dave, learned advocate for the accused.

5. At the outset, learned Additional Public Prosecutor submitted that no appeal has been preferred by the accused, disputing the fact that there is sufficient evidence on record as regards his conviction, albeit that for commission of culpable homicide. Thereafter, the said learned Additional Public Prosecutor has methodically taken this Court to the evidence in the matter. It was submitted that the arrest panchnama in the matter indicates that the accused was arrested on the very next day after the commission of crime. That the Dhoti worn by the accused was stained with blood and ,therefore, the said Dhoti was seized by the police after giving accused the change of clothes. Similarly, the accused, at the very point

in time, had produced the knife with which he had stabbed the victim, which also bore light reddish spots. The said knife was also seized by the police.

6. Learned Additional Public Prosecutor has also emphasized that there are three witnesses, who have supported the prosecution to the hilt. One of them being the informant (father of victim), one Ujabhai Dayaji Patel and the third, the mother of the victim. Thus, these three eye-witnesses, deposed at Exhibits 14,18 and 16 respectively, have supported the case of the prosecution. It was submitted that, the mother of the victim, Vaniben was carrying the child on her way back from the agricultural field. She was also accompanied by deceased Varshaben and the incident had taken place when they were back from their agricultural farm to the respective houses of their village.

7. It was the case of the prosecution that nothing material has been elicited in the cross-examination of the said witnesses. Thus, no fact has come to fore, which would indicate that the version, as portrayed by the said witnesses, was concocted or unbelievable. Even the version of the said Mr.Ujabhai Dajabhai Patel, prosecution witness No.3, whose deposition is at Exh.16. It was his case that he

was on his way from his agricultural field to his house. Thus, all of them were on the common road and that the said Mr.Ujabhai was slightly ahead of the victim, her mother and the child, carried by the mother of the victim. It is the case of the said witness that when he heard the shouts, he turned back and saw Varshaben being stabbed by her husband. It was also the case of the learned Additional Public Prosecutor that the said version of witness No.3 also did not turn out to be disbelieveable, despite being put to the rigors of cross-examination.

8. Learned Additional Public Prosecutor has also relied on the FIR pertaining to this offence at Exh.15. He has also extensively relied on the medical case papers being Medico-Legal Case (MLC) document at Exh.36 and the post mortem report at Exh.12. Looking at the MLC at Exh.36 and port mortem report at Exh.12, it was submitted that clearly all the stab wounds have been on the torso of the deceased victim. Total of nine wounds have been marked at Item No.17 to the Post Mortem Report Exhibit 12. Of these wounds, five wounds have been described on the very page, the other four are on the next page (page overleaf). Similar history of assault by knife is also found at Exh.36, being

the MLC case, which appeared to be consistent with detailed injuries as stated in the post mortem report.

9. The injuries as aforesaid were of ante mortem. Muddamal Article No.6, knife (Refer Paragraph No.2 at Page No.2 of deposition at Exh.37) had been recovered from the accused. It was submitted that doctor in his deposition at Exh.10 has categorically stated that the injuries at No.2 and 4 of Item N.17 and corresponding Injury No.5 and 6 at Item No.20 of the Post Mortem Report (Exhibit 12) individually were sufficient in ordinary course of nature to cause death of the deceased, the recipient of such injury. Even the prosecution witness No.1, Dr. Jaivadan Amrutlal Patel at Exhibit 10 and the PW.No.11, Dr. Ghanshyambhai N.Patel at Exh.35, the Medical Officer, Deesa was also examined, who deposed that the life threatening injuries on vital region like stomach, chest and back) sufficient in ordinary course to cause death, were inflicted upon the body of the deceased.

10. It was next submitted by the learned Additional Public Prosecutor that the trial Court has also agreed that the death was homicidal having been caused by knife blows. The witnesses P.W.No.3 and P.W.No.4, namely Ujabhai

Dajabhai Patel and Vaniben, mother of the victim respectively were found to be reliable and it was submitted that defence has failed to elicit any contradictions. Moreover, P.W.No.3 Ujabhai Dajabhai Patel was neutral witness without motive. Similarly, the judgement records that the Medical Officer has also not been discredited and that the defence of the accused were rejected with categorical reasoning. However, it was submitted by the learned Additional Public Prosecutor that the Trial Court, on mere assumption and presumptions, and on wrongly relying on the authorities being the judgement in the case of ***State of Gujarat vs. Dharsingh T. Vaghela***, reported at **2000(1) GLR 313** and that in the case of ***Sukhbirsingh vs. State of Haryana***, reported at **2002(2) GLH 313**, without there having been laid any defence apposite such authority, namely that the present case falls under the Exception 4 to Section 300 of the Indian Penal Code, has held so. It was submitted that the Court has erroneously come to a conclusion that without premeditation and in a sudden fit of anger and in heat of passion, the offender, without having taken undue advantage inflicted the said injuries and that therefore, the said crime would be an act,

which would amount to culpable homicide not amounting to murder and that it would fall under Section 304 Part-I of the Indian Penal Code. That therefore, the Court has sentenced the accused for the period of 07 years under the said Section 304 Part-I and for fine extending upto Rs.5000/- and observed that in case the accused committing default in paying the said fine, he would be further sentenced to 01 (one) year of rigorous imprisonment. It was, thus, submitted that the said findings was dehors the evidence on the record. It was submitted that the fact that the accused had brought the knife with him, indicate that there was a premeditation and that, therefore, such conviction could not have been under Exception 4 to Section 300. It was also submitted that as per the settled case law, the said Exception 4 would imply mutual provocation and blows on each side. It was also submitted that such was not the case in present matter and the act in present matter does not fall under Exception 4 of Section 300 of the Indian Penal Code and, therefore, the judgement of the learned Fast Track Court ought to be interfered with and the accused may kindly be

convicted for offences under Section 302 of the Indian Penal Code and be punished accordingly.

11. Learned Additional Public Prosecutor has relied on various authorities which are as follows:

It was submitted that the Hon'ble Supreme Court in the case ***Birbal Nath vs. State of Rajasthan***, **AIR 2023 SC 5644** and in the case of ***Rammi Alias Rameshwar vs. State of Madhya Pradesh,*** **(1999(8) SCC 649** that minor discrepancies in a deposition are natural especially when they are subjected to lengthy cross-examination and such discrepancy cannot outweigh the core consistency of the deposition of the said witnesses. It was submitted that therefore, there was all the more reason for the learned Judge to rely on the ocular evidence of P.W.No.3 and P.W.No.4 .

12. It was submitted that in the present case, there were knife blows which were intentionally inflicted on the vital parts of the body (torso) and medical evidence confirmed that at least two of the said blows, by themselves, were sufficient to cause death and that, therefore, the offence punishable under Section 302 of the Indian Penal Code is made out, as has been defined under clause marked 'Thirdly' under

Section 300 of the Indian Penal Code. He has also relied on Paragraphs No.44 and 45 of the impugned judgement and has submitted that the said paragraphs indicate that the Judge has completely deviated from the core issue and only on the basis of assumptions and presumptions has held that the case fell under Exception 4 of Section 300, which was not warranted nor is sustainable. It was emphasized that the accused was carrying knife and, as such, has approached the victim and lured the victim, on some pretext to the agricultural field, from the maternal house of the victim, on the pretext of wanting to make some conversation and at the said place with the very knife, which he was carrying with him, all this while, inflicted 8 to 9 blows on the vital part of the body. The same completely negates the fact of the said act having committed without any premeditation in a sudden fight, or in a heat of passion and without the offender having been taken any undue advantage or acted in an unusual or cruel manner.

13. Learned Additional Public Prosecutor has relied on the decision of the Apex Court in the case of ***State of Uttarakhand vs. Sachendra Sigh Rawat***, (2022) 4 SCC

227, it was submitted that in the said case also the injuries were found to be of the similar nature dehors the manner in which the incident had happened. In that case the Trial Court had held that the same would amount to the offence of murder punishable under Section 302 of the Indian Penal Code. However, the High Court held that same would be an offence of culpable homicide not amounting to murder, solely on the ground that it was not a cold blooded murder. Thus, the High Court had invoked Fourth Exception to Section 300 of the Indian penal Code to come to the aforesaid conclusion. However, the Hon'ble Supreme Court held that the accused is not liable to get benefit of Exception 4 to Section 300 of the Indian Penal Code, rather, the case falls under clause Thirdly/ Fourthly to Section 300 of the Indian Penal Code.

14. It was submitted that in the said case, the Hon'ble Supreme Court had relied on the judgement in the case of *Dhirajbhai Gorakhbhai Nayak vs State of Gujarat*, 2003(9) SCC 322, wherein the Hon'ble Supreme Court had explained the ingredients necessary for constituting the applicability of Exception 4 to Section 300, including that as to what constituted a sudden fight. It was submitted

that in the present case, no such sudden fight had ensued. Nor, it was submitted, was there the satisfaction of the ingredients to the Exception 4 of the Indian Penal Code. On the contrary, it was submitted that the victim had not even raised her hands, nor hit the accused even once and hence, the incident did not amount to sudden fight.

15. It was also submitted that in the very judgement, the Apex Court relied on the decision of ***Pulicherla Nagaraju @ Nagaraja Reddy vs State of A.P***, **(2006)11 SCC 444** to quote/gather suit the circumstances, wherefrom intention to cause death can be inferred. It was submitted that the said ingredients clearly are satisfied in the facts of the present case and that, therefore, the conclusion of the trial Court that the case fell under Exception 4 of Section 300 and is punishable under Section 304, Part-II may kindly be set aside.

16. It was next submitted by learned Additional Public Prosecutor that even in the case of ***Gangadhar Behera and others vs. State of Orissa***, **(2002) 8 SCC 381**, ultimately, the Apex Court held that the appeal of the accused challenging their conviction was rejected. It was submitted that from the principles relied on by the Hon'ble Supreme

Court for maintaining the conviction, namely that partisan witnesses by themselves, is no bar to them being relied on; that the principle of 'falsus in uno, falsus in omnibus" is not applicable in India, it being only a rule of caution; that unless discrepancies are material, they do not affect the credibility of the witness,and that even if majority of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused, the accused, against whom the 'credible" residue is available, be convicted; that benefit of doubt would go in favour of an accused only where the doubt is reasonable, as against an imaginary, trivial or merely a "possible" doubt, that such doubt, must arise from the evidence of the case; that hypothetical answer, elicited from a medical witness should not be accorded primarily to exclude eye witnesses account, rather the private account of a witness should be tested independently to not be kept 'variable' keeping such hypothetical answer a "constant".

17. Learned Additional Public Prosecutor has relied on the judgement in the case of ***State of Rajasthan vs. Bablu alias Om Prakash***, **(2022)14 SCC 624** and the judgement in the

case of ***State through the Inspector of Police vs. Laly alias Manikandan and other***, 2022 SCC OnLine 1424. In ***Laly*** (supra), submitted the learned APP, the incident had occurred in two stages and in the first stage, there was injury caused to the deceased, wherefrom the deceased ran over to a shed. There the very witness, who was a witness to the first part as aforesaid, was also present. He saw the deceased go inside a shed, and all of the accused following him inside the shed, albeit, the said witness remained outside the shed. Then the witness saw all of the accused, fleeing away, obviously after causing deadly injuries to the deceased. It remained a fact that the deceased died on the spot. The Hon'ble Supreme Court upheld the conviction despite other witness turned hostile or that the depositions had contradictions. Even the informant was not examined. Thus, Mr. Manan Mehta, learned Additional Public Prosecutor submitted that even one witness is sufficient to convict an accused, if his deposition is trustworthy on the basis of the ratio in ***Laly*** (supra).

18. Lastly, learned Additional Public Prosecutor has relied on the judgement of Division Bench of this Court being the decision dated 21.02.2025 pronounced in Criminal Appeal

No.1165 of 1997, wherein the Sessions Court had given the accused the benefit of Exception 1 to Section 300 of the Indian Penal Code. But the Division Bench concluded that the said accused No.1, did have the intention to cause death of the deceased and to cause such bodily injury to him as was sufficient in ordinary course of nature to cause death and, hence, the case was falling in Clause Thirdly to Section 300 of the Indian Penal Code.

19. Shri Apurva Dave, learned advocate for respondent no.1 vehemently contended that in the present case, the evidence is not sufficient to convict the accused for culpable homicide amounting to murder. He has relied on further statement of the accused at Exh.7. Referring to Question No.14 of the said statement, it was submitted that in the said case clearly, it is the case of the prosecution witness Ujabhai Dajabhai Patel that on hearing the cries of the victim, two individuals Raimalbhai Dajabhai, Pratapji Madhuji Thakore had also rushed to the said site. It was submitted that, however, none of these two individuals were actually examined by the prosecution. It was submitted that these two individuals were made witnesses in the matter and that, therefore, this raises a

grave doubt on the version o the prosecution. It was the concerned accused, who had committed the act of culpable homicide amounting to murder against the victim Varshaben. It was also submitted that the time of offence is clearly of around 5:30 p.m. in the evening and the said time was admittedly of winter season, thus in the dark, the witnesses could not have identified the accused.

20. Relying on Paragraph No.4 of the deposition of the witness Ujabhai Dajabhai Patel, it was submitted that as per the said deposition, the event had happened on a particular road, which led from the agricultural field of the family of the deceased victim to the village.

21. It was next submitted that in the cross-examination of the said witness Ujabhai Dajabhai Patel, the witness admits that on both the sides of the said road, there are trees and that from the agricultural field of the said Ujabhai Dajabhai Patel, the road cannot be seen. Thus, it was argued before this Court that as the said witness Ujabhai Dajabhai Patel could not have seen the event from his agricultural field, the question of him supporting the case of the prosecution that it was accused, who had stabbed the victim cannot be believed.

22. It was submitted that in the alternative, if it was indeed proved that it was accused, who had stabbed the victim, it may be considered that when the victim refused to accompany the accused back on the same day, the accused was enraged and in the heat of passion stabbed the victim. It was, thus, submitted that the case would squarely fall under Exception 4 of Section 300. It was also submitted that individuals of the said community, i.e. Thakor, are prone to keep weapons (knife) with them and merely because he was carrying the knife to the place of offence, does not, in itself, mean that there was a premeditation to commit such offence. It was also submitted from the conversation that the victim admittedly had her mother with her. It is clear that there was a history of the victim coming to her maternal house on and off, and most of time without prior intimation to the accused. It was also submitted that there was an altercation between the victim and the accused before the accused was enraged in terms of Exception 4 to Section 300, and indeed committing the said offence in a fit of rage. It was, thus, submitted that the case is clearly under Exception 4 to Section 300 of the Indian Penal Code. It was submitted

that despite the fact that a total of 8 to 9 knife blows were given by the accused, once the matter falls under Exception 4 to Section 300, the number of blows become insignificant. He submitted that the reasoning of the trial Court is proper for the reason that the accused had first pleaded with the mother of the deceased to send the deceased back to her matrimonial house. It was submitted that it is also apparent from the record that the deceased, whilst refusing to accompany the accused to her matrimonial house, had started to walk back to her house with her mother. It was submitted that, thus, on refusal of the wife to go back to her matrimonial house, the ensuing altercation between the accused and the victim and the fact that the victim had started to walk back to her maternal house, all contributed to the accused being enraged and, therefore in a fit of such rage, the accused committed the act, which amounts to culpable homicide not amounting to murder and it fall under Exception 4 of the Indian Penal Code or even under Exception 1, as the provocation was grave and sudden. It was also submitted that the rage would also depend on the nature of the individual.

23. It was submitted that the accused was belonging to Thakor community and that they have exaggerated sense of male ego and cannot tolerate that their wife, without informing them, has left the matrimonial house to maternal house. The said provocation is good enough for the people of Thakor community to loose their temper and, therefore, such an offence had happened. It was submitted that there was no premeditation of the accused to inflict 8 to 9 injuries, but it was only because of the rage that he suffered, which is common in such community, that the accused ended up committing such crime.

24. Learned advocate also relied on ***Surinder Kumar vs Union Territory, Chandigarh***, **AIR 1989 SC 1094** as also the judgment in the case of ***Raja alias Suresh S. Kodwani vs. State of Gujarat***, **1999(2) GLH 130**. It was submitted that in both the authorities, the ratio laid down has been followed by the trial Court.

25. In the cases of ***State of Gujarat vs. Dharsingh T.Waghela***, **2000(1) GLR 313** ***Sukhbir Singh vs. State of Haryana***, **2002(2) GLH 313**, it was submitted that the trial Court is right in holding that despite stab wounds on the back of the deceased, the medical evidence indicates that owing to

such injuries on the back, both the lungs of the deceased were punctured, resulting in her death. It indicates that only when the stab wound is with great force that the death was possible and that it cannot be believed that it was with such intention that the accused had inflicted 08 blows. It was urged the same does not imply that the accused had inflicted the said injury for causing death of the deceased victim. Therefore, the same would fall under Section 304 Part-II of Section 304.

26. Having heard learned advocate for the parties, this Court shall now proceed to appreciate the evidence and the findings of the trial Court. The informant in the present case is the father of the deceased victim. It appears that as per the version of the said informant **P.W.No.2**, **deposition at Exh.14**, the victim had turned up at her paternal house in the morning of 20.10.2000 and had intimated her parents that she had come to her paternal house, having informed her husband. However, as per the informant, his wife, Vaniben, who had gone to their agricultural fields, returned in the afternoon on the very day, at about, i.e. 20.10.2000 at 2:00 p.m and had informed that his son-in-law, i.e. husband of Varshaben, Mr.Ishwarji Sursanji

Thakor, the accused herein, had come to their agricultural fields and had stated to informant's wife that Varshaben, has come to her maternal house without having informed him (the accused) and that the accused wanted his wife, Varsha, the victim herein, to return back to her matrimonial home. As per the informant, his wife, Vaniben confronted the accused by stating that their daughter, Varshaben had maintained that she was at her parental house, after having informed the accused of her intention to visit her parental house. However, accused disputed the same and urged Vaniben to call the victim (Varshaben) to the agricultural field so that the victim could have direct word with the accused and it could be deduced, if indeed, she had come to her matrimonial house after informing the husband. It is the case of the informant that his wife took his daughter and went back to the field. Later on, at about 5:30 p.m, the informant came to know that the his son-in-law has stabbed the victim, Varshaben, (daughter of informant) after which the informant went to the place of offence, wherein the informant found his daughter lying in the blood stained condition. The said informant (Tarsinghji Lalji) has stuck to his version in his deposition at Exh.15.

Albeit certain other suggestions, were made to the informant, namely that one Ishaji Mansaji, married to informant's daughter Manjula, was engaged in tilling agricultural field in Village Kotda, Taluka Diodar. This suggestion was replied to in affirmative by the Informant. But the suggestion that the said Ishaji used to frequent the house of the informant and used to put up there and that for that reason the deceased used to often come to the house of the informant, which was not liked to by the accused, was denied by the informant. Even the suggestion that the said fact was also informed by the accused to one Ms. Amata, who is maternal cousin of the accused, was also denied by the informant. Again, the suggestion indicating the version of the defence, namely that the say of the deponent that the accused was also besides the body of the injured victim, was not true, too was denied by the informant. Thus, the defence appears to be suggesting that the accused was not by the injured victim. So be it.

27. Another important witness in the present case is the deposition of the eye-witness, Vaniben, (P.W.No.4, deposition at Exh.18) namely the mother of the deceased, who was present at the time of the incident. Her version

corroborates the FIR, namely that it was at the instance of her son-in-law, the accused, that she took her daughter to their agricultural field so that her daughter (victim Varshaben) and her son-in-law (the accused) could speak to each other and verify, if indeed the victim had come to her maternal house with the consent of the accused. The deponent further stated that when the victim came back to the agricultural field, the accused insisted that Varsha (wife of accused-the victim) must be sent with him immediately, at that very moment, to which P.W.No.4-Vaniben stated that she would send her daughter tomorrow. This happened sometime in the afternoon, as the accused had visited his mother-in-law (deponent) at about 12:00 in the afternoon of 20.10.2000. Thereafter, the deponent Vaniben visited her house in the village and brought her daughter, Varshaben, to the concerned agricultural field. It was once the victim reached the agricultural field that the accused reiterated that the victim accompany him to his house (i.e. the victim's matrimonial house). But, this request, as per Vaniben's deposition, was politely turned down, stating that she (Vaniben) would send her daughter (Varshaben), the next morning. The

accused, apparently stayed back, and when at about 5:00 p.m. the said P.W.No.4 (Vaniben) and her daughter were coming back from the said agricultural field towards the village, at which time, the said P.W.No.4 and the victim were walking behind at some distance, from one Ujabhai Dajabhai Patel, who was going on the same road and in same direction, ahead of them. At that point of time, as per the deposition, the accused sneaked up to the victim from behind and inflicted about 9 knife blows on the victim. Thus, the victim fell down. P.W No.4, therefore, gave shouts, thus Raimalbhai Dajabhai, Pratapji Madhuji Thakore and Ujabhai Dajabhai Patel rushed to the said spot. The deponent (P.W.No.4) further stated that the victim, at that instance informed the said men that as she (victim) had come to visit her maternal house, therefore, the accused has stabbed her. The accused apparently stood there till the said witnesses (Ujabhai, Raimal and Pratapbhai) arrived at the spot. Of course, the victim was taken to hospital at Diodar Government Hospital and then to Patan, but the victim succumbed to the injuries- nine knife blows. It may be noted that the said Ujabhai Dajabhai Patel is also a witness, being P.W.No.3, in the

matter. In her cross-examination, she denies that the deceased used to come to her house to meet her brother-in-law(one Jalaji), who had married sister of the deceased victim). However, the said P.W.No.4, victim's mother, admits that the victim and the accused were involved in *inter se* disputes. However, she denies of having known that the victim coming to her maternal house was a cause of such dispute. No other facts have been elicited in the cross-examination which would help the case of the accused. In her cross-examination, she admits that in her police statement she had not stated that Raimalbhai Dajabhai, Pratapji Madhuji Thakore and Ujabhai Dajabhai Patel had reached the spot of the incident.

28. The next deposition is that of eye-witness Ujabhai Dajabhai Patel. In his deposition before the trial Court he has stated that he was returning from his agricultural field to the village and that the deceased and her mother too were walking down on the very road behind him. It was when he heard the shout from behind that he turned back and saw Varshaben being stabbed by her husband. It was also his case that Raimalbhai Dajabhai and Pratapji Madhuji Thakore had also reached there. It is his case that he had

asked the injured Varshaben, as regards the said incident resulting in stabbing, wherein Varshaben, the victim, maintained that she had come to the maternal house only after informing her husband and that the husband had insisted that she (the victim) must return with him immediately to which the victim said that she would only come tomorrow and not the very day. The said witness also recognized the accused in the Court and states that the said accused was the very individual who had stabbed the victim with the knife. Again, in his cross-examination, he has also asked that from the agricultural field, he cannot see the road, as the road has trees on both its sides. Nothing material is elicited in the said deposition, which would not be of any benefit to the accused.

29. P.W.No.11 (Exh.35) is the deposition of Dr.Ghanshyam N. Patel, treating doctor, who had treated the deceased, at Diodar (Samuhik) Health Centre. He has deposed that the deceased was brought thereat at 6:00 p.m. on 20.10.2001, was semi-conscious and that her blood pressure was 110/80 and that her pulse was 110 per minute. He also lists 8 injuries, many of them were stab wounds, albeit he could not gauge the depth of some of the wounds. In the

cross-examination, he denies that the said injuries were not on the vital parts of the body. The suggestions were that if the injuries were shallow and they would not be fatal to the recipient of the injury and that if the victim was treated promptly, her death could have been avoided.

30. The Doctor, P.W.No.1 (Exh.10), one Dr. Jayvadan Amrutlal Patel, had conducted the post mortem was examined. In his deposition, he describes *inter alia* the nature of wounds including the length, breath and the depth of the said wounds. He also, in detail, has described all the injuries and the nature thereof. Column No.17 of the post mortem indicates as under:-

> *"17.(1) 3cmx 1 cm; 4cm deep stab wound on right side of back, 5 cm from midline.*
> *(2) 3cmx 1 cm, 5cm deep stab wound on left scapular region.*
> *(3) 3 cm x 1 cm; 2 ½ cm deep stab wound on right lumber region. 7 cm from midline.*
> *(4) 2cm x 1 cm, 3 cm deep, stab wound, oblique on back of left thoracic region , 5 cm from midline.*
> *(5) 2cm x 1 cm deep, Incised wound on lateral aspect of left side of back.*
> *(6) 2 ½ cm x 1 cm, 1 ½ cm deep, oblique incised wound on posterior aspect of left upper arm.*
> *(7) 1 cm x 0.5 cm, 2 cm deep, oblique stab wound on upper part of left scapular region.*
> *(8) 1 cm x 0.5 cm, 1 cm deep traverse, incised wound on upper part of left side of back, 4 cm from midline.*
> *(9) 2 cm x 3 cm, bony deep CLW on right cheek with fracture of right maxilla."*

Column No.18 of the post mortem report indicates fracture of right maxilla. It also indicates the wounds are ante mortem.

Column No.20 of the post mortem reports further indicates thus:

> *"Fracture of right 7th, left 6th and left 10th rib posteriorly.*
> *(1) 2cm incision on posterior aspect of part of right pleura.*
> *(2) 2.0 cm incision on posterior aspec of upper pat of p pleura.*
> *(3) 1.0 cm incision on posterior aspect of lower part of left pleura.*
> *Right Lung (1) 2.0 cm incised wound on apical of inferior lobe with .5 cm. depth.*
> *Left Lung: (1) 2.0 cm incised woun on apical lobe with 1.0 cm depth.*
> *(2) 1. 0 cm incised wound on lower lobe with 0.5 cm depth."*

31. In his cross-examination, he denies that the injuries were not on the vital part of the body. He states that injury No.4 was on the vital part of the body and so were Injury Nos.2 and 3. He also maintained in his cross-examination that Injuries No.2,1 and 4 were on those parts of the body where vital organs like lungs were situated and that there too were injuries on vital parts of the body. He denied suggestion that knife and muddamal No.6 is not such a

weapon whereby the injuries at No.1,2 and 4 could be caused. He also denied that the Injury No.1 to 8 were such which could be caused by fall of a person on a metal road owing to somebody punishing the individual. He also denied that such injuries could be caused to a person falling on floor(dorsal side). He also denied that the injuries could be caused by a heavy stone or such other object. As per the certificate issued by the said Doctor, the cause of death is a result of hemorrhage shock with several injuries. He also submits that the Investigating Officer had conducted the investigation at Exh.37. In his deposition, the Investigating Officer, P.W.No.12 (Exh.37) has stated that he was the one, who had investigated the offence and that he had conducted the panchnamas and sent the sample to FSL for analysis including that of the knife. Such report at Exh.43 indicates that the parcels containing blouse, sari had got marks which corresponds to the knife (F-1).

<u>The Findings of the Trial Court</u>

32. The trial Court has accepted the version of the accused insofar as the offence is concerned. It has believed that the victim had died owing to the knife injuries and that the

knife was recovered from the accused and is connected to the crime, i.e. stabbing of the victim by the accused. The trial Court also believes the deposition of the mother of the deceased and that of Ujabhai Dajabhai Patel, i.e. the person who was eye-witness of the said incident. In fact, the Trial Court, after discussing the evidence in detail has concluded, and rightly so that the offence under Section 300 of the Indian Penal Code is made out. However, the Court at Paragraphs no.44 and 45 of the judgement has come up with an alternative theory that it was owing to the sudden flare of temper that the accused had ended up committing the crime. In this respect, the trial Court has categorically indicated that no such defence has been taken up by the accused during the trial. However, the Trial Court has held, despite no such defence having been taken up by the accused before the trial Court, that it is its duty to see if indeed such defence is available in law to the accused. Thereafter, on certain assumptions and presumptions, the trial Court has embarked upon a journey whereby it *inter alia* records that individuals of Thakore community are prone to have inflated ego and that they are likely to be offended by the fact that the wife of

such individual went to her maternal house without informing the husband and would not necessarily follow the dictates of the husband when the husband insists that the wife herself accompany him back to his house. It was the Trial Court's opinion that in such circumstances it is likely that the husband would loose his temper and he may start the quarrel and that in such quarrel, the victim has been stabbed and that, therefore, the case would fall under Exception 4 of Section 300 of the Indian Penal Code.

33. Now, in so far as, the Trial Court's finding that the evidence pertaining to the crime, namely the involvement of accused, the nature of injuries inflicted and the consequent death of the deceased amounting to an offence under Section 300 of the Indian Penal Code, is palatable. Even the accused has not challenged this part of the evidence, accepting his involvement in the crime. However, it is the invocation of Exception 4 to Section 300 of the Indian Penal Code, which raises concern.

34. The said line of reasoning, in the view of this Court, is totally unsustainable. In this connection, the judgement of Hon'ble the Supreme Court in the case of ***State of Uttarakhand*** (supra) may be seen. In the said case, the

injuries were multiple, as is the case before this Court. At Paragraph No.9, the Supreme Court in the said judgement has cited the decision of ***Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat***, **(2003) 9 SCC 322**. The said Paragraph no.9 together with the quote of Hon'ble Supreme Court in the ***Dhirajbhai Gorakhbhai Nayak***(supra) is reproduced hereinbelow for ease of reference.

> *"9. In Dhirajbhai Gorakhbhai Nayat (supra), on applicability of Exception 4 of Section 300 IPC, it was observed and held in paragraph 11 as under:*
>
> > *"11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one*

side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"."

35. On perusal of the same, it is clear that in order to qualify

in Exception 4, the sudden fight implies "mutual provocation" and "blows" on each side. The Hon'ble Supreme Court has stated that in such an event, the homicide committed is then clearly not traceable to unilateral provocation nor could in such cases the whole blame be placed on one side. Explaining further it was stated where the fight suddenly takes place, for which both the parties are more or less to be blamed, Exception IV to Section 300 of the Indian Penal Code would come to play. It may be that one of them starts it, but if the other had not aggravated it by his own conduct, it would not have taken a serious turn, it did. For the said exception to apply as per the Supreme Court, there has to be mutual provocation and aggravation and it would be difficult to apportion share of blame which attaches to such fighter. Elucidating further, the Supreme Court states that for Exception 4 to Section 300 to be invoked, it must be proved that the death is without premeditation, in a sudden fight, without the offenders having taken undue advantage or acted in a cruel and in unusual manner and that the fight must have been with the person killed.

36. However, in the present case, the aforesaid parameters are

far from being satisfied. It is crystal clear that the first ingredient namely the premeditation is present in the case. Here, the accused had brought a knife with himself to the agricultural field, where he lures the victim by sending the a message through the victim's mother that he (i.e. the accused) wished to clarify the version of the victim, namely that she had indeed came with the consent of the husband (accused) by confrontation in person. Thus, during such time, he already has a knife with him and that, therefore, it cannot be stated that the accused did not have any premeditation.

37. Again, there was no fight, much less a sudden fight. In fact, when the victim is called at the agricultural field, she does not start any fight. At the highest, one can say that she may have replied rudely to the accused or that she may have insisted that she would only come to her maternal house the next day, as against the insistence of the accused for her to return to her matrimonial house on the same day. Upon this, the accused is said to have waited till evening, and when the victim, with her mother was returning from agricultural field to her parental house, the accused sneaked behind the victim and started giving her

knife blows, nine in number, that too, on the sensitive vital parts of the body. In all, it cannot be said that the fight was sudden fight or that the victim started any fight.

38. Thus, the accused was clearly taking undue advantage of the situation and by inflicting as many as 08 to 09 blows of knife, that too, on vital parts of the body, he has certainly acted both in cruel and in unusual manner.

39. Thus, this Court believes that there was no satisfaction of ingredients of Exception 4 to Section 300 of the Indian Penal Code. None of the ingredients of Exception 4 ought to have been proved before such Exception could be invoked to the aid of the accused. The other authorities relied on by the prosecution are of general principles of criminal jurisprudence which need not detain us for long.

40. Insofar as the authorities relied on by the defence, those are the very same authorities on which the trial Court had based its judgement. However, it is plain with the trial Court that clearly misunderstood the concepts in applying Exception 4 of Section 300 to the present set of facts.

41. In the circumstances, this appeal is liable to be allowed and we, accordingly, allow the appeal. The conviction of the accused under Section 304 Part-I is set aside and we

convict the accused under Section 302 of the Indian Penal Code.

42. On the question of sentence, however, the respondent accused is directed to remain present on the next date of hearing and, therefore, the matter shall be listed for further hearing on 10.12.2025.

(ANIRUDDHA P. MAYEE, J.)

(J. L. ODEDRA, J)

SUDHIR