

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1222 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Approved for Reporting	Yes	No

AMARATBHAI @ KEVABHAI AAHAJI (DABHI)
 Versus
 STATE OF GUJARAT

Appearance:
 MR PRATIK B BAROT(3711) for the Appellant
 MR RONAK RAVAL APP for the Respondent

CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 16/02/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. This conviction appeal is directed against the judgment and order of conviction dated 05.05.2016, passed by the learned 4th Additional Sessions Judge, Deesa at Palanpur, in connection with Sessions Case No. 54 of 2015, by which, the sole accused Amarat @ Kevabhai Aahaji (Dabhi) was convicted under Section 302 Indian Penal Code and sentenced to suffer life imprisonment and fine of Rs.1000/- and in default in payment of fine, to suffer simple imprisonment of 3 months.

2. The case of the prosecution, leading to conviction of the appellant accused is as follows:
 - 2.1 The appellant accused was tried and prosecuted by the learned Additional Sessions Judge, on the charge of killing his wife – Tinaben. According to prosecution case, on 05.01.2015, in the midnight, the appellant accused stabbed his wife Tina for multiple times, as a result, she succumbed to the injuries. The incident occurred in the house of the accused situated at village: Pathawada, Dantiwada, Palanpur. The marriage span was more than 15 years. Since last 3 years, the deceased Tina along with son Nilesh and two other kids were living in Ahmedabad at her parental home, because the appellant accused being unemployed, used to ask the wife for bringing money from her parental home, which was the ground to live separately and there was serious matrimonial dispute between the husband and wife. The deceased Tina had come to the house of the accused and she was convinced by the husband that, after sometime they will settle at Ahmedabad and for the purpose of bringing all household articles, she along with his son Nilesh agreed to come to the house of the accused. On the faithful day i.e. 05.01.2015, after completion of dinner, all went to sleep in one room. In the midnight, the accused appellant took out the knife and stabbed multiple times on the body of the deceased. The son minor Nilesh aged about 10 years heard the screaming of the mother and when he woke up, he did not find light in the house, and his father – appellant – accused was standing beside his mother. The appellant accused at that time, explained the son Nilesh that, she was having a pain in the chest and he will take care. The son after hearing the

explanation went into sleep. In the next day morning, the son Nilesh PW-9, saw the dead body of her mother – Tina and father was not found in the house. He had informed his maternal uncle and others about the incident. After arrival of the family members from the parental side, the FIR came to be lodged with Pathawada Police Station, against the appellant accused for the offence of murder, which was registered as CR No. I. 04 of 2015.

- 2.2 The investigation was entrusted to handed over to the IO and during the investigation, he drew the panchnama of the scene of occurrence, arrested the accused, seized and recovered the cloths and weapons on the basis of disclosure statement of the accused, recorded the statement of the witnesses, sent the accused for medical examination, forwarded the seized articles to the FSL, obtained the reports from the FSL and after due investigation, the chargesheet came to be filed against the accused for the offences punishable under Sections 302 and 498 of the Indian Penal Code.
3. The case was committed to the Sessions Court. The trial Court framed the charges, which the appellant accused denied the charges and claimed to be tried.
4. The prosecution in order to examine the case against the accused, examined as many as 17 witnesses and exhibited 36 documents, as per the below mentioned tabular.

Oral evidence :

PW 1 – Exh.10	Kalubhai Gomabhai Chauhan, panch witness
PW 2 – Exh.12	Natvarbhai Nenaji Bhand, panch witness

PW 3 – Exh.21	Kantilal Talkaji Pujani Koli
PW 4 – Exh.22	Baldevbhai Cheharabhai Dabhi
PW 5 – Exh.27	Hardaji Sajanji Koli
PW 6 – Exh.31	Kanubhai Chelaji Chauhan, Complainant
PW 7 – Exh.33	Kishorbhai Kanubhai Chauhan
PW 8 – Exh.34	Rohitbhai Kanubhai Chauhan
PW 9 – Exh.35	Nilesh Amaratbhai Dabhi
PW 10 – Exh.36	Dr. Sureshbhai Dajabhai Patel
PW 11 – Exh.40	Sunitraben Sonaji Punamaji Marvadi, panch witness
PW 12 – Exh.41	Ranchhodbhai Navalbhai Chauhan
PW 13 – Exh.42	Dr. Navinbhai Hemabhai Chaudhary
PW 14 – Exh.45	Faljibhai Ragnathbhai Chaudhary
PW 15 – Exh.47	Navinbhai Jivabhai Bhagora
PW 16 – Exh.50	Nanjibhai Premjibhai Chhaya
PW 17 – Exh.61	Vanrajsinh Raghuvirsinh Chavada

Documentary evidence :

Exh.11	Inquest Panchnama
Exh.13	Panch slip A1
Exh.14	Panch slip A2
Exh.15	Panch slip A3
Exh.16	Panch slip A4
Exh.17	Panchnama of place of offence
Exh.18	Discovery Panchnama
Exh.19	Panch slip A12
Exh.20	Panch slip A13
Exh.23	Panch slip A7
Exh.24	Panch slip A5
Exh.25	Panch slip A6
Exh.26	Panchnama of deceased clothes and Knife
Exh.28	Panchnama of state of body of accused
Exh.32	Complaint
Exh.37	PM Report
Exh.39	Letter regarding handing over of blood sample for forensic investigation to the Head constable of Pathavada Police station

Exh.38	PM Yadi
Exh.43	Injury certificate of accused
Exh.44	Yadi for medical examination of accused
Exh.46	Acknowledgement of handing over of dead body of Teenaben
Exh.48	Suchipatra
Exh.49	Report of grievous offence
Exh.51	Inquest yadi to Executive Magistrate
Exh.52	Form B for PM
Exh.53	Forwarding letter
Exh.54	Acknowledgement of receiving of dead body for cremation
Exh.55	Yadi for call detail of Mobile No. 9909863645
Exh.56	Finger print report
Exh.57	Forwarding letter FSL
Exh.58	Yadi for map of place of offence
Exh.62	Receipt of articles by FSL
Exh.63	Receipt of articles by FSL
Exh.64	FSL report
Exh.65	Serological report
Exh.66	Serological report

5. After closure of the prosecution evidence, the appellant accused was examined under Section 313 Cr.P.C., and his defense was total denial and despite of the opportunity given to him, he did not adduce any evidence in his defense.
6. The learned trial Court after considering the oral and documentary evidence, as well as the submissions made on behalf of the parties, found the appellant guilty under Section 302 of the Indian Penal Code and sentenced him as indicated above.
7. Being aggrieved by, and dissatisfied with the judgment of conviction and sentence, the appellant has come up with present

appeal.

8. Evidence adduced by the prosecution:

We would like to have a cursory look at the evidence adduced by the prosecution through its witnesses:

8.1 Dr. Suresh Patel (PW.10): This witness being a Medical Officer, Pathawada CHC, had conducted post-mortem on the body of the deceased. During the post-mortem, the witness had noticed the following external and internal injuries:

External Injuries:

1. Left Hand:

- 1. Incised wound of 5x1x1 cm in inner aspect of hand*
- 2. Incised wound of 5x1x2 cm in inner aspect of hand*
- 3. Incised wound between middle and ring finger*
- 4. Incised wound of 5x1x2 cm in exterior aspect of forearm*
- 5. Small incised wound at dorsum of left hand*

2. Right Hand:

- 1. Incised wound of 5x1x3 cm on right axilla*
- 2. Incised wound of 5x1x2 cm on upper arm anterior aspect*
- 3. Incised wound of 5x1x3 cm on Right shoulder*
- 4. Incised wound of 5x1x4 cm on inner aspect of axilla weapon injury on right side of chest 'S' shaped, 15 cm deep in blood stained stabbed, 5x1x15 cm deep on the right chest in*

upper inner quadrant of the right breast in 3rd Intercostal space

Internal Injuries:

1. *# of 3rd rib & dislocation of costochondral junction in 3rd ICS*
2. *Right side skin, chest anterior, and muscle pierced*
3. *Right side pierced and pale, stained with blood*
4. *Pale & pierced incised at middle lobe*
5. *Right side filled with blood and blood clotting of 1-1.5 ltrs*

Cause of death: Death due to Hemorrhagic shock due to injury to right lung”

In the opinion of the doctor, the cause of death due to hemorrhagic shock on account of injury sustained on right lung. The weapon knife was found in the chest of the deceased and same was handed over to the police constable and accordingly, by way of panchnama, the weapon as well as blood stained clothes of the deceased being seized and recovered by the police. It is further opined by the doctor that, all the injuries found on the body of the deceased could be possible by sharp edge weapon and upon seeing the knife from the court record, the witness agreed to the suggestion asked to him that, the injuries could be possible with this weapon. Nothing material being asked by the defense to substantiate the opinion of the cause of death and the weapon knife.

- 8.2 **Nilesh Dabhi (PW.9):** This witness is the son of the deceased as well as the appellant-accused and at the time of incident, his age

was 10 to 11 years old. The trial court made an inquiry about his competency to understand the proposed questions as well as the court proceedings on the aspect of administering the oath before recording his evidence. The trial court was satisfied about the maturity of the witness, as a result, without administering the oath, his evidence was recorded. It is not in dispute that, before the incident, the deceased and her three kids, due to matrimonial dispute, had been living at Ahmedabad with the maternal grandfather and others. As a part of compromise, it was decided between the husband and wife that, they would take the house on rent in Ahmedabad and start living independently. In order to settle at Ahmedabad, the deceased was called at Village: Pathawada to bring back the household things, as a result, on 05.01.2015, by public transport, the deceased along with present witness Nilesh reached at Pathawada in the afternoon. After completion of dinner at about 8:00 p.m., the appellant-accused and son Nilesh went into sleep together in the cot, whereas, the deceased took her position at the floor of the house and went to sleep. In these admitted background facts, now let us examine the oral evidence of witness with regard to what happened on the fateful night.

The witness Nilesh has stated in his chief-examination that, in the late night, he had heard the screaming of his mother and he woke up and tried to switch on the light, but, it could not turn on and he could visualize the face of the appellant-father who was standing near the cot and after his wake up, the father appellant told that, his mother was having a chest pain and that is why she is

screaming and he should not worry about it and asked him to sleep on the cot. The witness has further stated that, thereafter he went into sleep and in the morning, when he woke up, he saw the dead body of his mother lying on the floor with multiple injuries on her body and had seen one knife in her chest. The witness has further stated that, his uncle Mohanbhai give him solace and convinced that, his mother has been killed. The witness has further stated that, his uncle informed his maternal grandparents and others about the incident and later on, after his preliminary inquiry by the police, the FIR at the instance of his maternal grandfather (PW.6) came to be registered with Pathawada Police Station. The witness has further stated that, he had narrated the entire incident to his grandparents, maternal grand uncle and others. The witness is able to identify the knife from the court records.

In the cross-examination, it was tried by the defense that the deceased has relations with someone and living in live-in-relationship at Surat. However, the witness has not admitted the said defense and his evidence in the cross-examination on the aspect of incident has not been shaken.

- 8.3 **Kanu Chelaji Chauhan (PW.6):** This witness is the father of the deceased and he is resident of Ahmedabad. In his chief-examination, the witness has stated that, on the day of incident, his daughter had proceeded to Village: Pathawada as the appellant-accused wants to settle the matrimonial dispute and had expressed his willingness to live at Ahmedabad in a rented house. The

deceased daughter and son Nilesh for the purpose of bringing back the household things, had gone to Pathawada at the house of the appellant-accused. The witness has further stated that, since last 6 to 7 years, the marriage life of his daughter was disturbed and he had made every possible attempt to settle their lives and also helped financially to the accused. The witness has further stated that, the elder brother of the accused informed him about the incident and after receiving the information, he along with other family members came to Village: Pathawada and met his nephew (PW.9) Nilesh and being an eye witness, he narrated the entire incident to him. On the basis of such information, he being a father of the deceased, it is stated by him that, he lodged an FIR with Pathawada Police Station which he has produced at Exh.32. The witness is identifying the accused in the court. In the cross-examination, the defense has tried to establish that, the deceased does not want to live with the appellant-accused because of her live-in-relationship with third person. However, the witness has not admitted the said things. In the cross-examination, the questions were being asked, on the aspect of settlement through community leader and same replied positively by the witness. However, on the information received by him on the aspect of incident, his evidence is not shaken in cross-examination.

- 8.4 **Rohit Chauhan (PW.8) & Kishor Chauhan (PW.7):** Both these witnesses are the brothers of the deceased and sons of the complainant (PW.1). The witnesses are not eye witness of the

incident and they are deposing against the accused whatever facts disclosed by their nephew (PW.9).

- 8.5 **Dr. Navin Chaudhary (PW.13)**: This witness was posted as Medical Officer with CHC, Pathawada and being a Medical Officer, he had examined the appellant-accused after his arrest on 07.01.2015. The accused-appellant was referred to witness with Police Yadi and upon his examination, the witness has noted that, there was a cut mark on right index finger of his hand. The certificate thereof is produced by the witness at Exh.43.
- 8.6 **Nanjibhai Premjibhai Chhaya (PW.16)**: This witness had been entrusted with the investigation of the case as at relevant time, he was serving as PSI with Pathawada Police Station. The witness has stated in his chief-examination that, after registration of the offence, he came into charge of investigation of the case and during the investigation, he went to the place of occurrence and obtained necessary samples by drawing the panchnama, and also did the proceedings of P.M. of the deceased. The witness had stated that, he arrested the accused and during the custody and upon his disclosure statement, seized and recovered the blood stain clothes of the accused, recovered and seized the knife allegedly found on the body of the deceased by the doctor, recorded the statements of the witnesses, sent the seized articles to the FSL and after receiving the report, the chargesheet for the offence of murder and offence of cruelty was being filed against the accused-appellant. In the cross-examination, except denial, nothing fruitful

brought on record to substantiate the allegations made against the accused. The I.O. in the cross-examination, was not agreed with the defense theory that, deceased was having affair with someone and that is why, he was killed by her lover.

Submissions:

9. We have heard learned counsel Mr. Pratik Barot appearing for and on behalf of the appellant-accused and Mr. Ronak Raval, learned Additional Public Prosecutor for the respondent-State.
10. Mr. Pratik Barot, learned counsel while assailing the impugned judgment of conviction and order of sentence, has urged that:
 - (a) Prosecution has failed to prove the charge beyond reasonable doubt as it is fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till proven guilty. In the present case, the available witness (PW.9) though he was present in the room where the incident occurred, he did not with all certainty has stated that, his father was the author of the crime and therefore, his evidence, in absence of any corroboration from the independent source, does not inspire confidence and on the basis of his sole testimony, the conviction is not sustainable in eye of law.
 - (b) The learned trial court grossly erred while convicting the accused without appreciating the evidence in right prospective. The age of PW.9 at relevant time, was admittedly between 9 to 10 years. The child witness (PW.9) before the incident, was under influence of his maternal grandparents and maternal uncle as the witness was

living with them at Ahmedabad and in that view of the matter, his evidence shows that, the child was acting under the influence of the other witnesses and the possibility of tutoring cannot be ruled out and therefore, his testimony without independent corroboration, cannot be accepted as truthful and basis for the conviction.

- (c) That, the discovery and seizure of the clothes in terms of Section 27 of The Evidence Act has not been proved as procedure prescribed in the law. The panch witnesses of discovery of the clothes (Exh.18) have not supported to the prosecution case. The I.O. of the case failed to depose the exact words spoken by the accused about admitting the factum of clothes and also failed to prove the contents of the panchnama and therefore, the FSL evidence on the aspect of matching of blood group with respect to clothes pointing finger to the involvement of the accused cannot be relied and acted upon for corroboration to the evidence of PW.9.
- (d) The recovery of knife over the body of the deceased has also been not proved as the panchas of the panchnama (Exh.26) have not stated the contents of the panchnama and the Head Constable who had produced the knife, allegedly obtained from the P.M. Doctor, has not been examined which clearly shows that, the recovery of knife has not been proved in accordance with law and on that aspect, the FSL evidence cannot be considered and admitted in evidence.
- (e) That, in the present case, the appellant is charged with offence of murder on account of dispute and differences with his wife over his

unemployment and demand of money, which resulted into act of cruelty and harassment. The trial court acquitted the accused from the charge of cruelty. There was specific defense that, the deceased during 3 to 4 years, lived at Surat with another person and after the settlement and arrival of the deceased at the matrimonial home, the third person, as a part of revenge, committed the offence of murder. Thus, on the day of incident, there was no motive on the part of the appellant-accused to kill the deceased and therefore, in absence of motive, the charge of murder is not sustainable in law.

11. In such circumstances as referred above, Mr. Pratik Barot, learned counsel prayed that, there being merits in this appeal and same may be allowed and further requested that, the order of conviction and sentence be set aside and appellant may be acquitted of charge of murder.
12. Alternatively, it was submitted by Mr. Barot that, there was matrimonial dispute on the aspect of unemployment of the accused and on day to day household expenses, the dispute being arose between the parties and that is why, the deceased deserved the husband – appellant and used to stay at parental home. In such circumstances, when there is a single fatal injury of the lungs which shows that, the act was not intended to cause death and it was result of grave and sudden provocation and in hit of passion, without premeditation, upon a sudden quarrel, the act was done. In that view of the matter, it was submitted that, the offence committed by the appellant amounted to culpable homicide not amounting to murder punishable under Section 304 Part II Indian

Penal Code and further requested to set aside the sentence of life imprisonment and alter the conviction from Section 302 to Section 304 Part II of the Indian Penal Code.

13. On the other hand, while opposing the appeal, learned Additional Public Prosecutor Mr. Ronak Raval, contended that, the accused-appellant called the deceased from Ahmedabad to his village and in the midnight, stabbed the deceased multiple times. At the time of incident, there was no provocation on the part of the deceased, nor any dispute arose on the aspect of household expense. In such circumstances, considering the injury which was caused on the vital part of the body and other injuries would establish that, the act was intended to done to cause death of the deceased. The weapon knife was found from the lungs of the deceased. The accused in the midnight, after the incident, when the child witness (PW.9) woke up in anxiety, he had falsely convinced the child witness that the deceased was having a chest pain. In such circumstances, the injuries found on the body are sufficient in ordinary course of nature to cause death and the accused intended to inflict that particular injury and it was not his defense that, it was intended to inflict on the other part of the body. On this aspect, the testimony of PW.9 is sufficient to prove the charge of murder as except PW.9 and the accused, no one was present in the house and so far as defense part is concerned, the accused failed to mention the name of specific person with whom the deceased was having extra marital affair. In such circumstances, it was submitted that, the evidence of child witness does inspires confidence and nothing brought on record to suggest that on account of tutoring by

someone, or with bias, he is deposing against the accused. There was no any explanation of the accused that, he was not present at the home and therefore, non-explanation of special circumstances by the accused would further strengthen the prosecution case.

14. In such circumstances, the State counsel has submitted that, the prosecution has successfully proved the charge of murder against the accused beyond reasonable doubt and as such, trial court has not committed any error while holding the accused guilty for the offence and thus, it was prayed that, there being no merits in the appeal and same may be dismissed.
15. We have heard at length learned counsel for the respective parties, perused the impugned judgment and case records.
16. The prosecution case hinges upon the sole testimony of PW.9 – Nilesh Dabhi. The witness is son of the appellant. It is not in dispute that, the death was not homicidal in nature and therefore, the prosecution in our opinion, proves and establishes that, the death of the deceased was homicidal.
17. In the facts of the present case, the relationship of the parties is not in dispute. On the day of incident, 05.01.2015, in the afternoon, the deceased Tina along with son Nilesh aged about 9 years, came to Village: Pathawada as the appellant-accused called them so that, they can settle in Ahmedabad for which the household things are necessary to transport from village to Ahmedabad and for that purpose, she had been called by the accused. The accused-appellant was having an independent house in the area of “Harijanvas” at Pathawada Village and except appellant-accused,

no one of his family members were residing with him. Admittedly, on the day of incident, the evening meal cooked by the deceased and at the time of taking dinner, no quarrel was being arise on the aspect of money matter or other things which issues were the core of the matrimonial dispute and after taking meal, all happily went into sleep. The deceased preferred to sleep on the floor, whereas the appellant and child witness (PW.9) had took their sleep on cot.

18. In the aforesaid admitted background facts as referred in para-17 of this judgment, the question that falls for our consideration as to whether the appellant-accused had caused fatal injury to the deceased or not.
19. As noted, the prosecution case hinges upon the sole testimony of PW:9 Nilesh Dabhi, who is the child witness, aged about 9 years. The Trial Court before recording his evidence, made inquiry about his competence to understand the sanctity of oath to be administered and to understand the majority level, questions were being asked to witness and after satisfying on the aspect of his maturity, recorded reasons in brief and proceeded to record evidence without administering the oath to him. Therefore, the Trial Court has followed the procedure while recording the evidence of child witness. It is settled position of law that the evidence of child witness has to be subjected to close scrutiny and can be accepted only if the Court comes to a conclusion that the child understands the question put to him and he is capable of giving rational answers. A child witness by reasons of his tender age is pliable witness. He can be tutored easily either by threat,

coercion or inducement. Therefore, the Supreme Court in its various judgments, held and observed that the Court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under threat or coercion. The evidence of child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court can rely upon his evidence. The evidence of child witness and its credibility would depend upon the circumstances of each case. The only precaution which the Court has to bear in mind while assessing the evidence of child witness is that the victim must be reliable one because the law recognizes the child is a competent witness.

20. In light of the aforesaid law, and applying to the facts of the present case, we are of the opinion that the evidence of Nilesh Dabhi – PW:9 being a son of the deceased is truthful and reliable and his conduct at the relevant time and after the incident, was most natural and nothing being found that he is telling lie under the emotion or under the pressure of complainant and others. Upon close scrutiny of the evidence, it transpires that despite of his presence at the place, he could not intervene because the appellant accused was very much presence at the place and light was off and the father appellant asked him to go to sleep and he was convinced that his mother was screaming because of chest pain as told to him by the accused appellant. Even otherwise, any child being aged about 9 years, in a situation like this, would not have dared to confront the appellant father, even after knowing the alleged act of

killing. We take a notice of the fact that in the midnight, except father and PW:9, no one was present in the house. The presence of the appellant accused has not been denied by him. Even otherwise also, his presence is proved and established by the evidence of PW:9. In the midnight, if the wife would have suffered the chest pain, then the natural conduct would be to take her nearby the hospital or to seek necessary assistance from the neighbourhood. The appellant accused had pleaded that the third person with whom deceased was having relations, had come in the night and killed her. If the theory of the defence believed to be true, then why the husband appellant did not try to save her from the clutches of third person. No any complaint against the third person being lodged by him. On the contrary, leaving the dead body, the accused after the incident, putting the knife in the chest, ran away from the place of occurrence. Even he was having opportunity to inform his in-laws about causing fatal injuries by third person. In such circumstances, there is no reason why the witness son PW:9 would tell lie against the appellant accused. It is not the prosecution case that in the midnight, after hearing the hue and cry, the persons from the neighbourhood, came at the place of incident. In such circumstances, it is difficult for the prosecution to get independent corroboration to the evidence of PW:9 child witness.

21. For the reasons mentioned hereinabove, the evidence of child witness on the aspect of his presence at the place and the facts about seeing the appellant accused in the midnight in the room where the deceased was sleeping and hearing the screaming of mother as stated are truthful, reliable and does inspire confidence

that his evidence having a ring of truth and in absence of any material contradiction or improvement on the aspect of presence of the appellant and the incident of midnight, the prosecution succeeded in proving the facts that at the commission of the crime, the deceased and the appellant along with PW:9 found in the one room where the incident took place and the very house belongs to the accused appellant. In such circumstances, now the burden shift on the accused to explain how the wife received injuries. The accused failed to offer any explanation about such injuries by the deceased and the defence of killing by third person is found to be false and considering his conduct after incident, indicates that the appellant accused is the responsible for the commission of the crime.

22. Thus, therefore, the result of the aforesaid discussion would be that the prosecution has proved and established that on 05.01.2015 in the night hours, the deceased was stabbed to death by accused appellant and motive is apparent on record that there was a matrimonial dispute between husband and wife and even otherwise, when the appellant armed with dangerous weapon was present and he is found to be an author of the crime, the establishment of any motive is absolutely in consequential.
23. The next question that arises for consideration is whether the accused appellant is guilty for the offence of murder or death cause was culpable homicide not amount to murder under Section 304 Indian Penal Code ?

24. We have carefully examined the oral as well as medical evidence. Since the death of the deceased Tina is not denied and it has been proved on the basis of the record that, the appellant accused had caused death of his wife by stabbing her multiple times with the weapon knife. The blood stained cloths and the weapon knife matches with the blood of the deceased. In such circumstances, the next question for consideration, whether trial Court was justified in convicting the appellant accused for the murder as defined under Section 302 of the Indian Penal Code?
25. Before proceed further, we may refer the necessary penal provision like Section 300. Section 300 provides that culpable homicide is 'murder', if the act by which the death is caused is done with the intention of causing death or if it is done with the intention of causing such bodily injury, as the offender knows to be likely to cause death or if it is done with the intention of causing bodily injury and the said injury intended to be inflicted is sufficient in ordinary course of nature to cause death or the accused knows that, it is so imminently dangerous that it must, in all probability, caused death or such bodily injury as is likely to cause death.
26. It is the prosecution to prove the case against the accused that he has committed 'murder' as defined under Section 300 of the Indian Penal Code. It is settled position of law that, to render the conviction under murder, the case must fall within the provisions of Clauses I, II and III and IV of Section 300 and must now fall within any one of the five exceptions attached thereto.
27. In the present case, the cause of death was hemorrhagic shock due to

injuries on the right lungs. So far as external injuries are concerned, five incise wounds found on the left hand of the deceased and five incise wounds presence on the right hand with an injury of dislocation of shoulder. So far as internal injuries are concerned, the PM doctor noted multiple ribs fractures and the rupture of lungs and the injury found deep incised upto the middle lob. Thus, it can be said that, the fatal injuries found on the vital part of the body and the lungs were completely torn up and deceased was collapsed on the spot. The injuries were sufficient in ordinary course of nature to cause death. In these background facts, the defense has submitted that, there was a single fatal blow and considering the matrimonial dispute and the financial dispute for day to day livelihood, in a hit of passion and sudden quarrel, the act was done and therefore, it was emphasized that, act was not done with intention of causing such fatal injury. In order to gathered the intention or guilty knowledge, the surrounding circumstances and the manner in which the murder was executed required to be considered. In the facts of the present case, the incident of murder occurred on 05.01.2015 in the midnight. The appellant accused and minor son PW-9 were sleeping on the cot and the deceased went into sleep and preferred a floor of the house and in the same room, all were sleeping. Admittedly, no any other persons were living in the house. The appellant was unemployed and there was a matrimonial dispute on the aspect of day to day livelihood and that is why, the deceased had deserted the husband – appellant and chosen to live with the at parental home. The appellant under the guise of settlement, called the deceased at village: Pathawada. On the day of incident in the noon, the deceased and her

minor son PW-9, came to village: Pathawada from Ahmedabad so that, for the settlement at Ahmedabad, they could bring back the household things with them. In the night hours, there was no quarrel arose on any of the issue and the deceased was not aware about the intention of the accused. The time of the offence was midnight. The appellant used the weapon knife and abruptly stabbed the deceased for multiple times and one of the blow directly hit the lungs. In such circumstances, the reasonable inference could arise that, the act was done with an intention to cause death and causing such bodily injury, which was likely to cause death and the injuries were intended to be inflicted were sufficient in ordinary course to cause death and inflicting the blow on the lungs, it can be presumed that the accused knew the probable result of his conduct and therefore, in our opinion, it cannot be said that, on the fateful night, due to matrimonial dispute, the appellant accused deprived of power of self control by grave and sudden provocation or without any premeditation in a sudden fight in hit of passion, upon sudden quarrel, the fatal injuries were being caused.

28. For the discussions as mentioned hereinabove, we come to a conclusion that, the act of the accused fall within the clause thirdly and fourthly of Section 300 of Indian Penal Code and would not fall in any exception to Section 300 of the Indian Penal Code and same is read as under:

“Section 300 : xxxxxx

Secondly,

Thirdly, : if it is done with intention of causing bodily injury

to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of action to cause death

or

Fourthly, - if the person committing the act knows that, it is so imminently dangerous that it must in all probability, cause death or such bodily injury as it likely to cause death and commit such an act, without any excuse for incurring the risk of causing death or such injuries as aforesaid.”

29. The one of the contentions raised is that, there was a single blow found on the lungs of the deceased and the admitted facts of matrimonial dispute as described in the charge, had been contributory factor and same may be considered for alteration of the sentence. We are not impressed with the submission as it is settled position of law that, there cannot be said as a rule of universal application that whenever one blow is given, application of Section 302 of Indian Penal Code will be ruled out and that, even a single blow delivered with a dangerous weapon on the vital part of the body, would make the offence of murder on a peculiar facts of the each case. In the present case, as discussed above, the act was premeditated and that is why, the accused chosen the peculiar time for committing the offence and that too, when the deceased was defenseless and was in a sleeping mode.
30. In view of the aforesaid discussions, after re-analysis and re-appreciation of the evidence and on perusal of the impugned judgment of conviction, we are satisfied that, prosecution has proved its case with sufficient oral and documentary evidence, beyond all reason-

able doubt, that the appellant was the author of the crime and the trial Court has rightly found the appellant accused guilty for act of murder punishable under Section 302 read with Section 114 of the IPC. We do not find any scope for interference with the findings of conviction and sentence recorded by the trial Court.

31. In the result, this conviction appeals being Criminal Appeal No. 1222 of 2016 stands dismissed. R&P, if any, be sent back to the trial Court forthwith.

(ILESH J. VORA, J)

(R. T. VACHHANI, J)

P.S. JOSHI