

**(2012) 11 GUJ CK 0025**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 881 of 2007**

Dhaval Gopalbhai Darji

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 08-11-2012

**Acts Referred:**

Bombay Police Act, 1951 — Section 135, 135(1)  
Criminal Procedure Code, 1973 (CrPC) — Section 209, 227, 313, 357  
Evidence Act, 1872 — Section 30, 32, 60  
Penal Code, 1860 (IPC) — Section 114, 302, 498A, 506(2)

**Citation :** (2013) CriLJ 1225

**Hon'ble Judges :** Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

**Bench :** Division Bench

**Advocate :** A.D. Shah, with Ekant Ahuja, for the Appellant; K.P. Rawal, APP., for the Respondent

**Final Decision :** Dismissed

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## Judgement

J.B. Pardiwala, J.—This Appeal is at the instance of a convict accused for the offences punishable under Sections 302, 498A & 506(2) of the Indian Penal Code and for the offences punishable u/s 135(1) of the Bombay Police Act, and is directed against an order of conviction and sentence dated 21st April, 2007 passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Ahmedabad (Rural), Ahmedabad in Sessions Case No. 101 of 2004. By the aforesaid order, the learned Additional Sessions Judge found the appellant guilty of the offence punishable u/s 302, IPC and consequently, sentenced him to suffer life imprisonment and a fine of Rs. 10,000=00. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for two years.

2. The learned Additional Sessions Judge also found the appellant guilty of the offence punishable u/s 498A, IPC and consequently, sentenced him to suffer rigorous imprisonment for two years and a fine of Rs. 1,000.00. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for six months.

3. The learned Additional Sessions Judge also found the appellant guilty of the offence punishable u/s 506(2), IPC and consequently, sentenced him to suffer rigorous imprisonment for one year and a fine of Rs. 1,000.00. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for six months.

4. The learned Additional Sessions Judge also found the appellant guilty of the offence punishable u/s 135(1) of the Bombay Police Act and consequently, sentenced him to suffer simple imprisonment for three months and a fine of Rs. 1,000=00. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for ten days.

5. The learned Additional Sessions Judge also directed that from the total amount of the fine, a sum of Rs. 9,000.00 be paid to Kalaben Pravinchandra Topiwala, the mother of the deceased, by way of compensation under the provisions of Section 357 of the Code of Criminal Procedure, 1973.

6. The record further reveals that charge-sheet was filed against two persons, the accused-appellant herein and his mother named Sudhaben Gopalbhai Darji. However, the accused No. 2 Sudhaben, mother of the accused, had preferred an application for discharge u/s 227 of the Code of Criminal Procedure before the trial Court and the said discharge application was rejected by the trial Court.

7. Against the said order passed by the trial Court, the accused No. 2 Sudhaben preferred a Criminal Revision Application No. 788 of 2004 in this Court substantially on the ground that in the entire charge-sheet there was no case against her so as to put her to trial. This Court (Coram: D.N. Patel, J.), by order dated 17th December, 2004, had admitted the Revision Application and had also stayed the further proceedings so far as the accused No. 2 Sudhaben is concerned.

8. The record also reveals that the Criminal Revision Application No. 788 of 2004 is still pending before this Court and in such circumstances, the accused-appellant herein had to prefer an application on 18th December, 2004 to get his trial separated since he was an under-trial prisoner. The learned Additional Sessions Judge, vide order dated 31st January, 2005, had directed to separate the trial.

#### I. Case of the Prosecution:

9. On 25th March, 2000, the deceased named Monika had got married with the accused Dhaval Gopalbhai Darji. During the wedlock, a son was born, named Deep. After the marriage, the accused and the deceased started residing at Gandhinagar. After about one and a half years, they shifted to Ahmedabad and started residing at "Krishna" Complex, Satellite Road, Ahmedabad. The accused started a restaurant named "Tandoor" situated just opposite to "Krishna" Complex.

10. It is the case of the prosecution that the accused was addicted to liquor and

used to cause a lot of mental and physical pain to his wife, the deceased. When the deceased used to complain to her mother-in-law, the mother-in-law used to tell the deceased not to involve her in such matters and both should stay together with mutual understanding. It is also the case of the prosecution that the accused used to demand money from his parents, as a result of which, the accused got more and more addicted to liquor. The complaint of incessant harassment was made by the deceased to her mother one year prior to the incident. The mother of the accused never paid any heed to the complaint of the deceased and used to take side of her son, the accused. It is also the case of the prosecution that on one occasion the accused had no money to pay salary to the waiters working at the restaurant and, therefore, an amount of Rs. 25,000=00 was paid by his brother-in-law named Mayur i.e. the brother of the deceased. The accused had repaid the amount of Rs. 5,000.00 to Mayur, the brother of the deceased.

11. It is also the case of the prosecution that the deceased had telephoned his brother Mayur on 17th January, 2004 to wish him his marriage anniversary greetings and after wishing her brother, the deceased had spoken to her mother complaining about incessant harassment caused by the accused. At that point of time, the deceased also requested her mother to call her at Surat. The mother of the deceased had persuaded her to stay peacefully and had also contacted the elder brother of the accused named Hiral with a request to send the deceased to Surat. The elder brother of the accused had sent a railway ticket to the deceased and the deceased, on the next day morning, had left for Surat in "Shatabdi Express".

12. It is the case of the prosecution that at that point of time also the accused had slapped the deceased and had told her not to come back to Ahmedabad.

13. The deceased had stayed at Surat with her parents for about fifteen days. The father of the accused had undergone an eye operation at Surat and, therefore, the deceased and her mother had also gone to inquire about the health of the father of the accused named Gopalbhai Darji.

14. It is the case of the prosecution that even the father of the accused had asked the deceased not to keep any relation with the accused. After few days, the accused had gone to Surat and had requested the family members of the deceased to permit him to meet his son Deep. The accused stayed at Surat with his parents and during that period for two to three days, the parents of the deceased had sent Deep to the house of the parents of the accused.

15. It is the case of the prosecution that the mother-in-law of the deceased had requested the mother of the deceased to go along with the deceased to Ahmedabad and she would also join them at Ahmedabad. The deceased and her mother returned to Ahmedabad on 2nd February, 2004 and the mother stayed for about eight days thereafter.

16. It is the case of the prosecution that after two days, the accused, without

any cause, had assaulted the deceased after consuming liquor, and the mother of the deceased had to intervene and persuade the accused to live peacefully. On 9th February, 2004, the mother of the accused returned to Ahmedabad.

17. It is the case of the prosecution that the accused was enraged on complaints made by the mother of the deceased. It is also the case of the prosecution that the mother of the deceased desired to take the deceased along with her to Surat but the mother of the accused persuaded the mother of the deceased not to take such a step. On 11th February, 2004, the mother of the deceased left for Surat.

18. On 16th February, 2004, the family members of the deceased received a telephonic message at Surat that Monika, the deceased, had been admitted in a hospital and her condition was serious. On receipt of such a message, the family members of the deceased came to Ahmedabad and contacted the Satellite police officials.

19. On 17th February, 2004, at around 2:00 o'clock in the night, the accused indiscriminately inflicted knife injuries on the body of the deceased at their residence. The deceased was taken to the Jivraj Mehta Hospital by the accused and his mother with serious injuries in her abdomen and chest at about 2:15 in the early morning, and after the preliminary treatment, one Dr. Himanshubhai Pravinbhai Vyas serving at Jivraj Mehta Hospital informed the police station about the Medico-Legal case. The first telephonic message was communicated to the Satellite Police Station on 16th February, 2004 at about 3:20 a.m. It was communicated that an injured named Monika Dhavalbhai had been brought at the hospital on account of infliction of injuries by her husband Dhavalbhai with a knife. It is also the case of the prosecution that the condition of the injured was very serious and, therefore, Dr. Himanshubhai Pravinbhai Vyas immediately informed Dr. Dhirenbhai Narendrakumar Sheth, a Surgeon, who in turn, after examination, found that the injuries were of a very serious in nature and required emergent surgery.

20. It is the case of the prosecution that the deceased made an oral dying declaration before Dr. Himanshubhai Pravinbhai Vyas as well as Dr. Dhirenbhai Narendra Kumar Sheth that it was her husband, the accused, who had inflicted knife injuries in her abdomen and had requested the doctors to save her life as she didn't wanted to die. The deceased was immediately taken for sonography, and on the strength of the sonography report before the surgery could commence, Monika succumbed to injuries at about 4:30 a.m. The Satellite Police Station was informed, and accordingly, the police officer of the Satellite Police Station arrived at the hospital and recorded the complaint of Dr. Himanshubhai Pravinbhai Vyas. On the strength of the complaint lodged by Dr. Himanshubhai Pravinbhai Vyas, the investigation had commenced.

21. A detailed statement of the mother of the accused was recorded. Thereafter, the Executive Magistrate was called for and in the presence of the Executive Magistrate, a detailed panchnama of the scene of offence was drawn. The

weapon of offence i.e. the knife was recovered from the house of the accused placed beneath a mattress on the bed. The inquest panchnama of the dead body of the deceased was drawn. The panchnama of the Fiat Car bearing Registration No. GJ-1-HG-9019 which was used by the accused for taking the deceased to the hospital was drawn. Statement of various witnesses were recorded. The accused had surrendered himself before the police, and on his surrendering, an arrest panchnama was drawn in presence of the panch-witnesses. The clothes worn by the accused were changed and taken in possession for being sent to the Forensic Science Laboratory. The clothes of the deceased which were handed over by the Nurse of Jivraj Mehta Hospital to the police were taken into possession after drawing a panchnama.

22. On conclusion of the investigation, a charge-sheet was filed against the accused and his mother, in the Court of Judicial Magistrate, First Class, Ahmedabad (Rural), Ahmedabad.

23. As the case was exclusively triable by the Sessions Court, the JMFC, Ahmedabad (Rural), committed the case to the Sessions Court u/s 209 of the Code of Criminal Procedure. The Sessions Court framed charge against the accused (Exh. 32) and the statement of the accused was recorded. The accused did not admit the charge and claimed to be tried.

24. The prosecution adduced the following oral evidence in support of its case:

25. The following pieces of documentary evidences were adduced by the prosecution:

26. The defence adduced the following oral evidence in support of its case:

27. The following pieces of documentary evidences were adduced by the defence:

28. After completion of the oral as well as the documentary evidence of the prosecution as well as the defence, the statement of the accused u/s 313 of the Code of Criminal Procedure was recorded, in which the accused stated that the complaint was a false one and he was innocent. The defence of the accused was that on 16th February, 2004 he had reached to his Hat late in the night after winding up business at his restaurant and on opening the door of the flat with the set of keys available with him, he found his wife, the deceased, lying on the bed in a pool of blood. At that point of time, he inquired with his wife, the deceased as to what had happened, and in reply, the deceased pointed her finger towards the house which was of one Dharmraj Bablubhai Vala with whom, according to the accused, his wife, the deceased, had illicit relations. Thus, according to the accused, it was the said Dharmraj Vala who had committed the murder of his wife, the deceased.

29. At the conclusion of the trial, the learned trial Judge convicted the accused for the offences punishable under Sections 302, 498A & 506(2) of IPC and for the offence punishable u/s 135 of the Bombay Police Act, and sentenced him as stated hereinbefore.

30. Being dissatisfied, the accused-appellant has come up with this Appeal.

II. Submissions on behalf of the Accused-Appellant:

31. Mr. A.D. Shah, the learned senior counsel appearing for the accused, vehemently submitted that the trial Court committed a serious error in holding the accused guilty of the offence of murder punishable u/s 302 IPC by placing implicit reliance on the oral dying declarations alleged to have been made by the deceased before Dr. Himanshubhai Pravinbhai Vyas (PW 1), Dr. Dhirenbhai Narendrakumar Sheth (PW 2) and Hinaben Hasmukhlal Gor, a Night Supervisor at Jivraj Mehta Hospital (PW 3).

32. According to Mr. Shah, the first wardhi which was sent from Jivraj Mehta Hospital (Exh. 117) at 3:20 a.m. on 16th February, 2004 referred to the information about the injured Monikaben Dhavalbhai Darji being brought to Jivraj Mehta Hospital with injuries on abdomen, right side chest and right hand, caused by a knife, by her husband Dhavalbhai, the accused. According to Mr. Shah, this wardhi (telephonic message) nowhere refers that this information was obtained from the patient Monikaben. The evidence of Dr. Himanshubhai Pravinbhai Vyas vis-?-vis his complaint (Exh. 44) would clearly indicate that the witness gave information to the Satellite Police Station on the basis of the information conveyed by the mother-in-law of the deceased.

33. According to Mr. Shah, even reference to FIR further discloses that after sending the information, Dr. Himanshubhai Pravinbhai Vyas had inquired from the patient Monikaben. Thus, according to Mr. Shah, the wardhi (Exh. 117) was not based on the information received from the deceased, Monikaben, but the same was based on the information conveyed by the mother-in-law of the deceased who came to be charge-sheeted as the accused No. 2.

34. Mr. Shah submitted that the information (Exh. 117) could not be termed as relevant or legal evidence in view of the fact that the mother-in-law of the deceased was neither an accused in the trial nor a witness. The trial of the accused No. 2 was separated, and even if it is considered as a statement of a co-accused, it is not a confession. It being an exculpatory statement of a co-accused and not being a confession, the same would not be relevant u/s 30 of the Evidence Act as the mother-in-law was not tried as a co-accused in the case.

35. As regards the oral dying declaration, Mr. Shah submitted that the same is a weak piece of evidence and the so-called oral dying declaration suffered from many infirmities. Mr. Shah submitted that Dr. Himanshubhai Pravinbhai Vyas failed to record the history purported to have been given by the deceased in the form where history is recorded. The history recorded by Dr. Himanshubhai Pravinbhai Vyas refers to "patient is having stab wound on abdomen, chest and right hand". Thus, the contemporaneous record nowhere refers to the history. The same is referred in the Medico-Legal Certificate (Exh. 46) dated 17th February, 2004.

36. Mr. Shah also submitted that Dr. Himanshu Vyas also failed to mention about sending information and the nature of information in the case-papers prepared by him, as according to Dr. Himanshubhai Pravinbhai Vyas, the same was mentioned in the Indoor Register. According to Mr. Shah, Dr. Himanshubhai Pravinbhai Vyas has clearly admitted that except Indoor Register in no other papers there was a reference about Dhaval Gopalbhai Darji, the accused, having inflicted knife injuries on the patient or the mother-in-law of the patient having conveyed this information. Though the patient was brought to the hospital at about 2:15 a.m., the history was recorded at 3:15 a.m.

37. Mr. Shah also vehemently submitted that at 3:10 a.m. when the history was recorded, the patient was conscious but she was inside the operation theater. Dr. Himanshubhai Pravinbhai Vyas has admitted that diastolic blood pressure was not recordable. According to Mr. Shah, the medical certificate clearly indicated that "patient conscious, but drowsy with active bleeding from all the wounds. Pulse rate was 90 per minute." According to Mr. Shah, the cross-examination of Dr. Himanshubhai Pravinbhai Vyas clearly reveals that when the patient was brought and admitted in the hospital, she was found to be drowsy, meaning thereby, in a semi-conscious condition, which would clearly indicate that she was not fully conscious to make a coherent statement.

38. Mr. Shah submitted that the evidence of Dr. Dhirenbhai Narendrakumar Sheth (PW 2/Exh. 55) before whom the deceased is said to have made an oral dying declaration, would also suggest that the injured was immediately taken to a sonography room and the sonography report revealed that there was collection of blood in the cavity which necessitated emergency surgery. Dr. Dhirenbhai Narendrakumar Sheth's evidence would further suggest that during the operation, the Anesthetist had informed that the patient had died. According to Mr. Shah, this would reflect on the condition of the deceased at the relevant point of time, and with about two liters of blood collected in the cavity, the deceased could not have made any oral dying declaration.

39. According to Mr. Shah, the trial Court could not have relied on the evidence of Hinaben Gor (PW 3/Exh. 66), the Night Supervisor at Jivraj Mehta Hospital before whom oral dying declaration was made by the deceased.

40. According to Mr. Shah, the oral dying declaration purported to have been made by the deceased before the three witnesses referred to above is not fully corroborated by the contemporaneous record purported to have been made by the Medical Officer at the time of admission of the patient.

41. Mr. Shah submitted that there is no dispute as regards the fact that the incident had occurred in the residential premises of the accused. Mr. Shah submitted that there is also no dispute to the fact that the accused No. 2, mother-in-law of the deceased, who has not been tried in this case was also residing in that very house. However, there is no evidence to establish beyond reasonable doubt that it was the accused who had inflicted injuries on the body

of the deceased.

42. Mr. Shah also submitted that the panchnama of the scene of offence revealed that the main door of the flat could not be opened with the keys which were given by the mother-in-law of the deceased. However, one Ghemarbhai Lallubhai Desai, a person employed by the society was instructed to help the police and the narration on the part of the said Ghemarbhai as to how and in what circumstances the entry was effected clearly reflect that the entry into the flat from some other source was also possible. According to Mr. Shah, the defence has been able to clearly probablize the entry of some other person into the flat.

43. Mr. Shah submitted that the evidence of Dharmraj Bablubhai Vala (PW 20/ Exh. 120) clearly suggest that he was on inimical terms with the accused. The PW 20 Dharmraj has also admitted that people used to talk about his illicit relationship with the deceased. Mr. Shah vehemently submitted that the PW 20 Dharmraj has criminal antecedents and was also ordered to be externed once. The defence has also been able to lead evidence to show that the PW 20 Dharmraj and the deceased used to talk with each other on mobile phones. According to Mr. Shah, the PW 20 Dharmraj has admitted that he was having illicit relations with the deceased. Mr. Shah, therefore, prays for setting aside the order of conviction.

### III. Submissions on behalf of the State:

44. Mr. K.P. Rawal, the learned Additional Public Prosecutor appearing for the State, vehemently submitted that the trial Court rightly found the accused guilty of the offence of murder of his wife, the deceased by placing reliance on the oral dying declarations made by the deceased before Dr. Himanshubhai Pravinbhai Vyas, Dr. Dhirenbhai Narendrakumar Sheth and one Hinaben Gor, a Night Supervisor at Jivraj Mehta Hospital. Mr. Rawal submitted that the doctors are the best persons to opine the fitness of the deceased to make a statement. In the present case, the doctors had found that the injuries sustained by the deceased were very serious and life was ebbing fast in the patient, There was no time to call the police or a Magistrate. In such circumstances, the doctors would definitely ask the patient as to what had happened, and if the doctors had inquired with the deceased as to how the incident had occurred, then they were justified in doing so. Mr. Rawal submitted that both the doctors and Hinaben, a Night Supervisor, could be termed as disinterested witnesses and why should they make a false statement on oath as regards the oral dying declarations made by the deceased that the accused had inflicted stab wounds. Mr. Rawal also submitted that it is a settled law that if oral dying declaration is found to be reliable, true and trustworthy, it can be made the sole basis for conviction. According to Mr. Rawal, just because the history was not recorded by Dr. Himanshubhai Pravinbhai Vyas in the form by itself is no ground to discard the oral dying declaration as by discarding the same, it will lead to a serious miscarriage of justice.

45. Mr. Rawal submitted that Dr. Himanshubhai Pravinbhai Vyas has clarified in his evidence that all the relevant facts have been stated in the Indoor Register. According to Mr. Rawal even if the contemporaneous record nowhere refers to the oral dying declaration made by the deceased, the same could be relied upon as both the doctors i.e. Dr. Himanshubhai Pravinbhai Vyas as well as Dr. Dhirenbhai Narendrakumar Sheth are completely disinterested witnesses and are responsible officers. According to Mr. Rawal, there is also no circumstance or material on record to suspect that the two doctors as well as the Night Supervisor Hinaben Gor had any animus against the appellant-accused or were, in any way, interested for fabricating the dying declarations, therefore, the said oral dying declarations cannot be doubted in any manner. The doctors have deposed that the deceased was conscious when she had made the oral dying declarations. Mr. Rawal, relying on a Supreme Court decision in the case of State of Haryana Vs. Harpal Singh and Others, , submitted that the fact that the blood pressure was not recordable and there was accumulation of blood in the cavity would not necessarily show that the patient's condition was such that the patient could not have uttered a single word. On the contrary, the utterances of the deceased were very natural. The statement of the deceased was also very short. The deceased had told the doctors that she was in pain and she would not like to die and, therefore, she may be saved. At that point of time, the deceased is also said to have made a statement that it was her husband, the accused, who had inflicted the stab wounds on her abdomen and chest.

46. Mr. Rawal submitted that there is evidence on record to suggest that the marital life of the accused with the deceased was not cordial and the marital relations were highly strained. On the contrary, the accused himself has led evidence to show that his wife, the deceased, had illicit relations with one Dharmraj Vala and the defence of the accused that it was Dharmraj who had inflicted stab wounds could be termed as a palpably false defence. Mr. Rawal, therefore, prays for dismissal of the above Appeal.

47. Therefore, the only question that falls for our determination in this Appeal is, whether the learned Sessions Judge, in the facts of the present case, was justified in holding the appellant guilty and imposing the sentences as indicated earlier.

#### IV. Oral Evidence on Record:

48. PW 1, Dr. Himanshubhai Pravinbhai Vyas, Exh. 42:

The PW 1 in his evidence has deposed that he was serving at the Jivraj Mehta Hospital at Ahmedabad. On 16th February, 2004, a patient was brought at the hospital at around 2:15 hours in the morning by her husband and mother-in-law. The PW 1 has deposed that when the patient was brought at the hospital, she was completely conscious. The patient was bleeding from the right side of the stomach, right side of the chest and from the right hand. Her condition was such that she could answer if any question would have been put to her. She was

complaining about severe pain and was mentally stressed out. The PW 1 has deposed that he had asked the patient as to what had happened. In the beginning the patient did not give any reply. Thereafter, the PW 1 had inquired with her mother-in-law, saying that there were stab wounds on the body of the patient and how they had been sustained. The PW 1 has deposed that at that point of time, her mother-in-law was found to be in a state of distress. The PW 1, thereafter persuaded the mother-in-law, saying that it was a Medico-Legal case and, therefore, he must know as to what had happened. The mother-in-law informed the PW 1 Dr. Himanshubhai Pravinbhai Vyas that his son had inflicted knife injuries. Thereafter, the PW 1 inquired with the patient as to what had happened. The PW 1 has deposed that the patient replied that her husband had inflicted knife injuries. Thereafter, the PW 1 informed the police about the incident. The PW 1 has also deposed that there were three injuries on the body of the deceased; (1) CLW on right chest above the stomach below the rib admeasuring 4 x 2 x 4 cm., (2) CLW on right chest 2 x 1 cm. and 1 x 1/2 x 1/2 cm. on right side of the chest, (3) Two knife wounds on right hand 3 x 2 x 1 cm. and 2 x 1 x 1 cm. between right shoulder and right elbow.

49. The PW 1 has further deposed that thereafter he immediately called up Dr. Dhirenbbhai Narendrakumar Sheth, a Surgeon, and informed him about the condition of the patient. Dr. Dhirenbbhai Narendrakumar Sheth reached the hospital within 7 minutes. In the meantime, the PW 1 instructed the staff for an emergency surgery. Dr. Dhirenbbhai Narendrakumar Sheth immediately reached at the hospital. The PW 1 has deposed that the patient succumbed to the injuries in the operation theater. The PW 1 has deposed that all the injuries were of serious nature and were sufficient in the ordinary course of nature to cause death. The PW 1 thereafter lodged a complaint with the Satellite Police Station, which was recorded by the Police Inspector. In his cross-examination, the PW 1 has deposed that it was true that when the deceased was admitted and history was inquired as to who had caused the injuries, the same was not noted in the form. The PW 1 explained that it was not necessary to write the history in the Indoor Patient Form as such details are to be written in a Medico-Legal Case Certificate. The PW 1 has also deposed that it was true that the Medico-Legal Certificate (Exh. 46) which was issued by him was prepared on the basis of the Indoor Patient Form and also on the basis of the police wardhi. The PW 1 has also deposed that it was true that after admitting the patient, in the papers which were prepared by him, there was no reference of the wardhi because in the Indoor Register there is a reference to that effect. He has also deposed that it was true that in the medical papers except Medico-Legal Certificate and the Register which is kept at the hospital, nowhere it has been stated that Dhaval Darji, the accused, had inflicted the knife blows or the mother-in-law of the patient had stated so. He has explained that it was so because all these facts had come in the Indoor Register of the hospital. He has also deposed that it was true that when he had inquired with the patient as to what had happened, at that point of time, his staff members were also present and they were listening. He

has deposed that at 3:10 hours when he recorded the history of the patient, at that point of time, the patient was conscious but was in the operation theater. The PW 1 has also deposed that it was true that if there is excessive loss of blood from the body, the patient would go in a state of shock. He deposed that it was true that when the patient was admitted at that point of time her clothes were drenched with blood but from the clothes stained with blood one could not say as regards the extent of loss of blood from the body. He denied the suggestion that he had himself not examined the patient but the patient was examined by a nurse or a wardboy and thereafter he was informed. He also denied the suggestion that to shirk off from his responsibility he had lodged the complaint. He denied the suggestion that he knew nothing about the case and also denied the suggestion that he was giving false deposition as per the say of the appellant.

50. The entire cross-examination of the PW 1 was focused only on one aspect, that no oral dying declaration could have been made by the deceased stating that her husband, the accused, had inflicted injuries with knife, considering the condition of the deceased at the relevant point of time when the dying declaration is said to have been made before the PW 1. However, we find that the evidence of the PW 1 is quite consistent and straightforward. From the cross-examination, nothing substantial could be elicited which would render the evidence of the PW 1 Dr. Himanshubhai Pravinbhai Vyas doubtful in any manner.

51. PW 2, Dr. Dhirenbhai Narendrakumar Sheth, Exh. 55:

The PW 2 Dr. Dhirenbhai Narendrakumar Sheth in his evidence has deposed that he was having his own surgical hospital at Paldi, near Vishwakunj. He was also giving honorary service at the Jivraj Mehta Hospital since its inception. On 16th February, 2004 in the morning at around 3:15 hours, the PW 2 had received a phone call of Dr. Himanshubhai Pravinbhai Vyas from the Casualty Ward of the hospital. The PW 2 was informed that one patient having knife blows had come and was in a serious condition. The PW 2 was requested to reach the hospital at the earliest. The PW 2 had inquired about the condition of the patient on phone and had also instructed that if surgery was required, then necessary arrangements for the same be made by calling the Anesthetist and also a Radiologist for a sonography. The PW 2 had also instructed Dr. Himanshubhai Pravinbhai Vyas to arrange for blood. The PW 2 has deposed that the patient had stated that, "my husband has inflicted knife blows and stated that don't kill me and save me". Thereafter, the patient was taken to the sonography room and the sonography report revealed that there was accumulation of blood in the body and immediate surgery was required to be performed. Thereafter, the patient was taken to the operation theater. The PW 2 has further deposed that he had met the husband of the patient and had informed him that the patient's condition was very serious and her life could be saved only if surgery was performed. The PW 2 had also asked the husband of the patient i.e. the accused, to give his consent in writing. The accused is said to have told the PW 2 that he need not worry about the money but her life be saved and thereafter he had given his

consent on the case-papers in writing. The PW 2 has deposed that thereafter on arrival of the Anesthetist the surgery was commenced. The PW 2 has deposed that when the patient was taken in the operation theater, at that point of time, there were five injuries on the outer part of her body: (1) 2 cm. deep cut wound on the right side of the stomach, (2) 2 to 4 cm. cut wound on the right breast, (3) 2 cm. deep cut wound on the back side of the right side breast, (4) 2 cm. deep cut wound in between the shoulder and elbow on the right hand, and (5) 4 cm. deep cut wound near the shoulder in between the elbow and shoulder. There was active bleeding from all the wounds. The wound which was on the stomach was going deep and due to that cut wound, the liver had also started bleeding. The PW 2 has deposed that when he was trying to repair the wound which was cut deep, the Anesthetist informed him that the patient had succumbed. Thereafter, the relatives of the patient were called inside and were informed that the patient had succumbed. The PW 2 has further deposed that the mother-in-law of the patient was asked as to where the husband of the patient had gone. The mother-in-law replied that he would come. The mother-in-law was also explained that the Post-mortem of the patient would have to be carried out. He has deposed that all the injuries were serious in nature and were sufficient in the ordinary course to cause death. In his cross-examination, the PW 2 has deposed that it was true that normally the history of the patient which is taken by the doctor is required to be taken in writing. He has deposed that he had not taken down in writing as to who had inflicted knife blows on the patient. He has also deposed that when he had examined the patient, at that point of time, the blood was oozing from the wound and the patient was in a state of shock, which means the blood pressure was low and the beats were fast. He has also deposed that on opening the stomach of the patient, he had found accumulation of about two to three litres of blood. He has deposed that in his police report he had stated that the patient was conscious. He also deposed that it was true that according to the medical principles the doctors have to write, whether the patient is conscious or not. He denied the suggestion that no such statement was made by the patient and that he was deposing on the say of police or some other person.

52. PW 3, Hinaben Hasmukhlal Gor, Exh. 66:

The PW 3 is the witness who was serving at Jivraj Mehta Hospital as a Night Supervisor. The PW 3, in her evidence, has deposed that she was on duty from 8 O'Clock in the night of 15th February, 2004 to 8 O'Clock in the morning of 16th February, 2004. On 16th February, 2004 at around 3 O'Clock in the night a female patient was brought by two to three male and a female. The patient was injured and conscious. The PW 3 has deposed that the patient was able to talk. The PW 3 thereafter shifted the patient to the Casualty Ward of the hospital. The patient was answering the questions which were put to her. Dr. Himanshubhai Pravinbhai Vyas was also present along with the PW 3. The PW 3 has deposed that thereafter Dr. Himanshubhai Pravinbhai Vyas and she herself had inquired with the patient as to what was the problem. The patient had replied that she was in pain and she be saved as she didn't want to die. The patient also replied

that she was assaulted with knife by her husband. Thereafter, immediately Dr. Dhirenbbhai Narendrakumar Sheth was requested to reach the hospital. The PW 3 had administered medicines as instructed by the doctor. The lady who had accompanied the patient had stated that she was the mother-in-law of the patient and that her son had attacked her daughter-in-law. Thereafter, the patient was taken to the operation theater, and while in the operation theater, the patient had succumbed. After the patient passed away, her relatives were informed. Except the mother-in-law, there was nobody else present at the time when the patient passed away. Thereafter, the police was informed, and on being informed, the police arrived at the hospital. The dead body of the deceased was placed in a room. The clothes of the deceased were handed over to the police. In her cross-examination, she has deposed that she was unable to remember as to who had filled up the admission form. The PW 3 has deposed that she had treated the patient according to the instructions of Dr. Himanshubhai Pravinbbhai Vyas. She did not remember as to what type of treatment was given. She has deposed that an injection named "Dychloram" was administered to the patient. As the patient was screaming because of excruciating pain and with a view to subside the pain, the said injection was administered to the patient. She has deposed that she had no idea that the pain killer induces sleep in a patient. She has deposed that her statement was recorded by the police. She has deposed that the patient, on arrival, had stated that "I have severe pain. Please save me, I do not want to die". After some time Dr. Dhirenbbhai Narendrakumar Sheth had arrived at the hospital. She has also deposed that she was unable to remember whether in her police statement she had stated that the patient was screaming, "save me, save me". She has deposed that it was true that the patient had not uttered anything else except "Save me, save me". She has deposed that when she herself and Dr. Himanshubhai Pravinbbhai Vyas had inquired with the patient as to what had happened, the patient had stated that "I have pain, I do not want to die. Save me, my husband has assaulted me with a knife".

53. PW 4, Mayur Pravinchandra Topiwala, Exh. 68

The PW 4 is the brother of the deceased. The PW 4 has deposed that he resided at Surat with his mother, his wife and a daughter. He has deposed that one month after the marriage of his sister, the deceased, with the accused, when she had come to his home, the deceased had complained that the accused used to quarrel on trivial matters. His mother, at that point of time, had explained the deceased that quarrels on trivial issues were very mundane in the initial days of a marital life and had advised the deceased to live peacefully. The accused had a bad habit of consuming liquor and used to quarrel after consuming liquor. The mother of the accused was also requested to impress upon the accused to give up liquor and live a good life. However, the mother of the accused never used to say anything to the accused and used to always find fault with the deceased. The PW 4 has also deposed that once the accused had no money to pay to his staff employed at the restaurant and, therefore, he had helped him by lending him Rs. 25,000.00. The accused had repaid a sum of Rs. 5,000.00 out of Rs. 25,000.00.

The PW 4 has also deposed that on 17th January, 2004, his sister, the deceased, had called him up to wish him marriage anniversary greetings and at that point of time also while talking with her mother, the deceased had complained of incessant harassment on the part of the accused. Thereafter, the deceased was brought to Surat. The father of the accused had been operated in the eye. During that period, his mother and his sister had gone there to inquire about his health. At that time, the father of the accused had stated that, "My son has been spoiled and do not call him". Thereafter, some talks of settlement were undertaken and Monika, the deceased, was sent back to Ahmedabad. The PW 4 has deposed that they all had gone to Shirdi with the family of his maternal uncle and aunt and that point of time his maternal uncle received a phone call on his mobile from his son named Jatinbhai informing that a severe quarrel had ensued between Dhaval and Monika and Monika had been seriously injured and her condition was serious. Thereafter, his maternal uncle received a phone call from Ketan, the son of PW 4's another maternal uncle. Ketan had informed that there was a quarrel between Monika, the deceased, and Dhaval, the accused and Dhaval had inflicted injuries with knife on the body of the deceased. Thereafter, they all had immediately left for Surat. On reaching Ahmedabad, the PW 4 and others had met Mr. Jadeja, the Police Inspector at Satellite Police Station. They were informed that Dhaval had assaulted Monika with a knife and had caused her death. Thereafter, the police had recorded their statement. The PW 4 was extensively cross-examined by the defence, but nothing substantial could be elicited from the cross-examination of the PW 4 so as to render his evidence doubtful or improbable in any manner.

54. PW 5, Kalaben Pravinchandra Topiwala, Exh. 69

The PW 5 is the mother of the deceased. She has deposed that she lived with her son at Surat and she was a widow. She had one son and one daughter named Monika, the deceased. Her evidence is almost on the same line with the evidence of the PW 4, her son. The PW 5, mother of the deceased, has deposed as regards the incessant harassment which was caused to her daughter, the deceased, by the accused. The PW 5 has categorically denied the suggestion that her daughter Monika had illicit relations with one Dharmraj Vala, and with a view to save their reputation in the community, they had falsely implicated Dhaval, the accused.

55. PW 6, Ghemarbhai Lallubhai Desai, Exh. 71

The PW 6 is the Watchman at Krishna Complex. The PW 6 has deposed that his job was to start water in Krishna Complex. He had learnt about the incident when police had knocked the door of his flat at around 7:30. He had come down through the stairs at Flat No. 101 as the police was unable to open the door of Flat No. 101. He has deposed that the door was opened by pushing the same. He has deposed that there was a urinal between the outside door and door of kitchen of 101-B and if the door of urinal and the door of the kitchen is kept open, then any person could enter. He has also deposed that it was true that from the kitchen one could enter in the hall as well as the bedroom.

56. PW 7, Batukbha Kayubha Gohil, Exh. 73

The PW 7 is a police witness, who at the relevant point of time was attached with the Satellite Police Station. On 16th April, 2004, he was in service as an A.S.I. On that day, an offence was registered vide CR. I. No. 137 of 2004 for the offence punishable u/s 302 IPC and also u/s 135 of the B.P. Act He has deposed that the investigation was thereafter taken over by Mr. A.M. Jadeja, Police Inspector, Satellite Police Station. He has deposed that the accused was produced at the police station. Mr. Jadeja had asked him to get a pair of clothes of the accused from his house and the clothes which were worn by the accused were taken in possession for the purpose of investigation. The witness had accordingly gone to Krishna Complex and had brought a pair of clothes which were given by the father of the accused. The said clothes which were brought from the flat were handed over to the accused to be worn.

57. PW 8, Manjibhai Bhikhabhai Mandli, Exh. 74

This witness is the Executive Magistrate. He has deposed that he had received a Yadi from the Satellite Police Station through Head Constable one Shri Pravinbhai Pandya at 9:15 hours asking him to reach at Jivraj Mehta Hospital for the purpose of preparing an inquest panchnama of the dead body of the deceased. This witness has deposed how the panchnama was drawn.

58. PW 9, Dr. Rohitbhai Chimanlal Zariwala, Exh. 77

This witness works with the F.S.L. Medicines Department at Sheth V.N. General Hospital. This witness had carried out the postmortem of the dead body of the deceased. The post-mortem of the deceased revealed the following injuries:

(1) Straight middle 21 cm. long margin joined with each other surgical stitches were taken and with wound 12 stitches randomly and presence of black sutured material on front part of stomach seen.

(2) Pierced deep wound of 3 cm. x 0.8 cm. upto muscles transverse pierced wound seen on right side of front side of breast that from right nipple 4.5 cm. above and 3 cm. outside part of right side seen. The above corner of wound semi lunar and lower corner both margin of acute wound sharply cut.

(3) 1.5 cm. x 0.8 cm. deep, straight, pierced wound upto muscles present on right side of breast. That from right nipple above 4 cm. and 12 cm. seen on outside of right side. The above corner of wound semi lunar and lower corner acute wound, both margins sharply cut.

(4) 2.5 cm. x 0.8 cm. inside transverse pierce wound seen on front part of stomach that was on coastal part of dead body of right side, that below 11 cm. from right nipple, above outside corner acute, inside wound corner semi gunner sharply cut of both margin, There was bleeding from outside the wound, blood dried and frozen on ages of wound.

(5) There was a shred wound of red colour of measurement of 5 cm x 0.5 cm on

neck, above 3 cm on edge of inside clavicle bone of right side.

(6) There was a shred wound of red colour of 1 cm x 0.5 cm on right side of face, below lower level of ear of right side.

(7) There was a deep transverse pierced wound upto 1.5 cm x 0.8 cm on left side of the back of body, at a distance of 3 cm till outside on from T10 to 1 spinal to left side and of above inside corner acute and outside corner of wound was semi lunar, both margins were sharply cut.

(8) A sore of red colour admeasuring 2 cm x 2 cm on nipple of middle part of front of breast.

(9) A deep straight pierced wound admeasuring 4 cm x 0.8 cm upto muscles on armpit of right side at 1/3 level, above the corner of the wound, semi lunar and lower corner was acute. Both margins were sharply cut.

(10) Presence of transverse pierced wound towards front side admeasuring 3 cm x 0.8 cm visible on right arm at 1/3 level below the above corner of wound was acute and lower corner semi lunar and both margins sharply cut.

(11) A deep, straight, pierced wound of 1.5 cm x 0.8 cm upto muscles seen on poster of medial 1/3 level of right arm. The corner of the wound was semi lunar and lower corner acute and both margins sharply cut.

(12) A scraped wound of red colour admeasuring 0.5 cm x 0.5 cm was seen on right side of breast that was lower part of 4 cm from right nipple.

59. All the above injuries No. 1 to 12 were ante mortem.

60. This witness has deposed that the internal examination revealed that there was no fracture on any part of the head. Brain was pale, both lungs were congested, heart and blood vessels were empty, and there were transverse stitches of 2.5 cm. He has deposed that stitches were taken in the abdominal wall. 2.5 cm surgical stitches were found on front part of the right lob of liver. On opening the stitches, the liver was found deep inside and margins were sharply cut. In the cavity of the stomach, there was accumulation of about 500cc of blood. This witness, in his cross-examination on being shown the muddamal knife, has deposed that one side of the knife was sharp and the other side was blunt. He denied the suggestion that if injury is caused with a sharp weapon, then the wound sustained would become wide inside.

61. PW 10, Jatinbhai Sureshchandra Berawala, Exh. 82

The PW 10 is one of the relatives of the deceased. The evidence of the PW 10 is not of any significance.

62. PW 11, Ketanbhai Harishchandra Berawala, Exh. 83

The PW 11 is also one of the relatives of the deceased. This witness has deposed that he had received a phone call from Jatin on 16th February, 2004 and was

informed that Monika, daughter of his aunt was assaulted by a knife by her husband Dhaval kumar. This witness, thereafter, had informed his relatives at Bharuch and had also informed his uncle that Kalaben, mother of the deceased, had gone to Shirdi and he would inform them about the incident.

63. PW 12, Javanji Shambhuji Thakor, Exh. 84

This witness is a panch witness of the panchnama of the scene of offence. His evidence is of no significance as he failed to prove the contents of the panchnama and was declared as a hostile witness.

64. PW 13, Rajendrasinh Ratansinh Vaghela, Exh. 93

The PW 13 is also one of the panch witnesses of the scene of offence panchnama. However, he failed to prove the contents of the panchnama and was declared as a hostile witness.

65. PW 14, Ashokbhai Ishwarbhai Patel, Exh. 98

The PW 14 is the Circle Officer. This witness has deposed that he was on duty as a Circle Officer in the office of City Mamlatdar, and while on duty, had received a Yadi from the Satellite Police Station for preparing a map of the place of offence. Accordingly, this witness had visited the place of incident and had prepared a map.

66. PW 15, Urvashi Anisha Shah, Exh. 103

The PW 15 is one of the residents of Krishna Complex. The PW 15 was residing at B/104, Krishna Complex. This witness failed to support the case of the prosecution and was accordingly declared as a hostile witness.

67. PW 16, Dr. Keyuriben Pranavbhai, Exh. 107

The PW 16 is a doctor. The PW 16 has deposed that she was on duty at Jivraj Mehta Hospital, and while on duty, one Darji Dhaval, the accused, was brought with police yadi for the purpose of drawing blood sample. Accordingly, the blood sample was drawn of the accused.

68. PW 17, Popatji Shivaji Chavda, Exh. 111

The PW 17 is one of the police witnesses. He has deposed that on 16th February, 2004 he was on duty in the investigation squad at Satellite Police Station. He has deposed that at 3:20 hours on 16th February, 2004 he had received a written wardhi from P.S.O. that a patient named Monika had been admitted at Jivraj Mehta Hospital and the patient had a quarrel with her husband. On the strength of the said wardhi, this witness had visited the Jivraj Mehta Hospital and the Incharge Dr. Himanshubhai Pravinbhai Vyas had lodged his complaint before him regarding the patient who had died during the treatment. He has deposed that the wardhi which he had received stated that, "due to assault by her husband named Dhaval, with a knife, injuries had been caused on stomach, breast as well as on the right hand". This witness had taken down the complaint Exh. 44 lodged

by Dr. Himanshubhai Pravinbhai Vyas. This witness, in his cross-examination, has deposed that Dr. Himanshubhai Pravinbhai Vyas had declared, after coming outside from the operation theater, that the patient had passed away. This witness had taken down the complaint of Dr. Himanshubhai Pravinbhai Vyas at 4:30 in the morning. He has deposed on being shown the wardhi Exh. 113 that the same was received by him at 6 O'Clock in the morning and it was true that the wardhi Exh. 113 was given by Dr. Himanshubhai Pravinbhai Vyas.

69. PW 18, Madhusudan Madhuprasad Pathak, Exh. 115

The PW 18 is a Scientific Officer in a Mobile Investigation Vehicle of Forensic Science Laboratory. This witness has deposed that on 16th February, 2004 at 7:55 hours in the morning he was informed by an oral wardhi sent through a Jeep of Satellite Police Station asking him to reach at B-101, Krishna Complex, Satellite Road, Ahmedabad. This witness has deposed that the place of the investigation from outside was found locked and the door could not be opened. The door, besides the fiat of a water drain was also found closed. At that time, one Gemarbhai Lallubhai Desai, a Watchman of the said complex, was called by the police officer and he, by pushing the door from outside, had opened the door. By entering through that place, a door at one other place of a water drain was also found in a closed condition. By dropping a hand through a window the door was opened. Thereafter, they had entered the flat. This witness has given the description of the flat and the articles which were found inside the Hat.

71. PW 19, Babubhai Dhulabhai, Exh. 116 The PW 19 is one of the police witnesses.

The PW 19 has deposed that on 16th February, 2004 from 00:00 hours to 8 O'Clock in the morning he was on duty as P.S.O. at the Satellite Police Station. He has deposed that he had noted a wardhi at around 3:20 hours sent from Jivraj Mehta Hospital by C.M.O. Dr. Vyas. He has deposed that the contents of the wardhi were: "one patient by name Monikaben Dhaval Darji, age 26, residing at Krishna Complex, 100 feet Ring Road, Opp. Satellite Petrol Pump, has been assaulted by her husband Dhavalbhai Darji with a knife, causing injuries on right side of stomach, right breast and on the right hand. Do needful." This witness has deposed that on receipt of the Yadi, a wardhi was noted down in the Wardhi Register at Sr. No. 56 on p.2104. Thereafter, on the same day, one another wardhi from the Chief Medical Officer of the Jivraj Mehta Hospital Dr. Himanshubhai Pravinbhai Vyas was received in writing and the same read as under:

one patient by name Monikaben Dhaval Darji, age 24, residing at Krishna Complex, 100 feet Ring Road, Opp. Satellite Police Station, because beating knife by her husband Dhavalbhai Darji on right side of stomach and on right breast and on right hand, that patient during operation is expired, therefore do needful for P.M.

71. PW 20, Dharmraj Bablubhai Vala, Exh. 120

The PW 20 is a witness who was residing at Krishna Complex, a place where the accused and the deceased were residing and this is the same witness against whom the accused had levelled allegations that he had illicit relations with his wife, the deceased, and it was this witness who was responsible for causing the death of his wife, the deceased. This witness, in his evidence, has deposed that the accused was addicted to liquor and used to frequently pick up quarrel with people and once the accused had picked up quarrel with this witness also and, therefore, there was no relation between the accused and this witness. The PW 20 has also deposed that the accused used to allege that the PW 20 and the deceased had illicit relations but the PW 20 used to ignore such allegations and remarks at the end of the accused. The PW 20 has also deposed that he had read in the newspaper that the accused had murdered his wife. The PW 20, in his cross-examination, admitted that he was prosecuted for many offences and once he was also ordered to be externed under the provisions of the Bombay Police Act. The PW 20 denied the suggestion that he used to frequently talk with the deceased on a mobile, more particularly, when the deceased used to be at Surat at her parental house. The PW 20, in his cross-examination, has deposed that it was true that he had illicit relations with Monika, the deceased. However, he clarified that he had no love or affection towards Monika, the deceased. The PW 20 also denied the suggestion that on the date of the incident he had gone to the house of the deceased and had committed her murder by entering into the flat through a pipe.

72. PW 22, Aniruddhsinh Mohabbatsinh Jadeja, Exh. 138

The PW 22 is the Investigating Officer. The PW 22, in his evidence, has deposed that on 16th February, 2004 he was on duty as a Senior Police Sub-Inspector at the Satellite Police Station. At that point of time, the PSI, Shri Chavda had informed him on telephone that the accused had assaulted his wife, and during the course of the treatment, the wife of the accused had passed away at Jivraj Mehta Hospital. The PW 22 has deposed that on receipt of such information he had immediately rushed to Jivraj Mehta Hospital. One Dr. Himanshubhai Pravinbhai Vyas lodged a complaint in presence of Shri Chavda, the PSI, against the accused, which was registered as CR.I No. 137 of 2004. The PW 22 has further deposed that thereafter the investigation had commenced. A detailed statement of the mother of the accused named Sudhaben Gopalbhai Darji was recorded. Thereafter, the Executive Magistrate was informed for the purpose of drawing an inquest panchnama. The panchnama of the Fiat Car bearing Registration No. GJ-1-H-9019 was also drawn in presence of the two panch witnesses. The statement of witnesses were recorded. The PW 22 has also deposed that various other panchnamas were drawn and a report was also submitted before the Court concerned for adding Sections 498A, 506(2) read with Section 114 IPC. This witness was cross-examined extensively but nothing substantial could be elicited through the cross-examination of this witness so as to shake the case of the prosecution.

The accused had also examined four defence witnesses.

73. The Defence Witness No. 1 named Alok Omprakash was examined by the accused to prove that there was telephone number registered in the name of the accused and the said phone was a wireless phone having a range of about 25 kms.

74. The Defence Witness No. 2 named Raju Mittu Mudaliyar, an employee of Hutch Company was also examined by the defence. Through this witness, certain call details were brought on record so as to establish talks between the deceased and the PW 20 Dharmraj Vala.

75. The Defence Witness No. 3 named Gulamhusen Nurbhai Shaikh, an employee of BSNL, was also examined by the accused. This witness was examined to establish that a telephone number was registered in the name of Smt. Sudhaben Gopalbhai Darji, the mother of the accused.

76. The Defence Witness No. 4 named Rajesh Ratilal, an employee of BSNL at Surat, was also examined by the accused to bring on record the details of Phone No. 2690383 registered at Surat in the name of Pravinchandra Topiwala.

77. We have threadbare gone through the entire oral as well as the documentary evidence on record and we find that the most important piece of evidence against the accused is in the form of an oral dying declaration made by the deceased before the two doctors at the Jivraj Mehta Hospital. As a matter of fact, the entire case of the prosecution hinges on this piece of evidence i.e. the oral dying declarations.

#### V. Law on the subject of Dying Declaration:

78. In Smt. Paniben Vs. State of Gujarat, , the Supreme Court, while stating that a dying declaration is entitled to great weight, however, cautioned to note that the accused has no power to cross-examination.

Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be

acted upon without corroboration Munnu Raja and Another Vs. The State of Madhya Pradesh, .

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. State of Uttar Pradesh Vs. Ram Sagar Yadav and Others, ; Ramawati Devi Vs. State of Bihar, .

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. K. Ramachandra Reddy and Another Vs. The Public Prosecutor, .

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. Rasheed Beg and Others Vs. State of Madhya Pradesh, .

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. Kake Singh Alias Surendra Singh Vs. State of Madhya Pradesh, .

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. Ram Manorath and Others Vs. State of Uttar Pradesh, .

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. State of Maharashtra Vs. Krishnamurti Laxmipati Naidu, .

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. Surajdeo Ojha and Others Vs. State of Bihar, .

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. Nanhau Ram and Another Vs. State of Madhya Pradesh, .

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. State of U.P. Vs. Madan Mohan and Others, .

79. In Nallapati Sivaiah Vs. Sub-Divisional Officer, Guntur, A.P., , the Supreme Court in paragraphs 18, 19 and 20 held as under:

18. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the truth. This court in more than one decision cautioned that the courts have always to be on guard to see that the dying declaration was not the result

of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.

19. It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For example, any sanction of the oath in the case of a living witness is a thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said, would wish to die with a lie on his lips, A dying declaration has got sanctity and a person giving the dying declaration will be last to give untruth as he stands before his creator. There is a legal maxim "Nemo Moriturous Praesumitur Mentire" meaning, that a man will not meet his maker with lie in his mouth. Woodroffe and Amir Ali, in their treatise on Evidence Act state:

when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and cross-examination are dispensed with.

20. The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures. It is also a settled principle of law that dying declaration is a substantive evidence and an order of conviction can be safely recorded on the basis of dying declaration provided the court is fully satisfied that the dying declaration made by the deceased was voluntary and reliable and the author recorded the dying declaration as stated by the deceased. This court laid down the principle that for relying upon the dying declaration the court must be conscious that the dying declaration was voluntary and further it was recorded correctly and above all the maker was in a fit condition-mentally and physically- to make such statement.

80. In Laxman Vs. State of Maharashtra, , the Supreme Court passed the following observations in paragraph 3:

3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of

oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite, In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

81. In P.V. Radhakrishna Vs. State of Karnataka, , the Supreme Court passed the following observations in para-graphs 8, 9 and 10:

8. At this juncture, it is relevant to take note of S. 32 of the Indian Evidence Act, 1872 (in short "Evidence Act") which deals with cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it, if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in S. 60.

The eight clauses of S. 32 are exceptions to the general rule against hearsay just stated. Clause (1) of S. 32 makes relevant what is generally described as dying declaration, though such an expression has not been used in any statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission are; firstly, necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the ends of justice; and secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. These aspects have been eloquently stated by Lyre LCR in *R. v. Wood Cock*, (1789) 1 Leach 500. Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away, Even as a form of wax, Resolved from his figure, Against the fire? What is the world should Make me now deceive, Since I must lose the use of all deceit? Why should I then be false, Since it is true That I must die here, Live hence by truths?

(See King John, Act 5, Sect. 4)

9. The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri-a man will not meet his maker with a lie in his mouth."

10. This is a case where the basis of conviction of the accused is the dying declaration, The situation in which a person is on deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement, it is for this reason the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence.

82. In *Heikrujam Chaoba Singh Vs. State of Manipur*, , the Supreme Court passed the following observations in paragraph 3:

3. An oral dying declaration no doubt can form the basis of conviction, though the Courts seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the Court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be

taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability....

83. Bearing the aforesaid principles in mind as laid down by the Supreme Court in a catena of decisions, we now proceed to consider the evidence of the oral dying declaration of the deceased, which has been the basis of the conviction of the accused.

84. In the present case, indisputably, there is no eye-witness. Even the accused has not denied the fact that his wife, the deceased, was inflicted knife injuries inside the flat where they were residing together as husband and wife along with the mother of the accused. As stated in the earlier part of the judgment, the mother of the accused was also arraigned as an accused in the charge-sheet along with the present accused. However, the trial so far as the mother of the accused is concerned, was stayed by the High Court and thereafter the trial was separated so far as the present accused is concerned. The case is sought to be established by the prosecution from circumstantial evidence. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and these circumstances must be conclusive in nature. Moreover, all the established circumstances should be complete and there should be no gap in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused alone and totally inconsistent with his innocence.

85. The Courts have, therefore, the duty to carefully scrutinize the evidence and deal with each circumstances carefully and thereafter find, whether the chain of the established circumstance is complete or not, before passing an order of conviction.

86. In a case based on circumstantial evidence, motive assumes great significance as its existence is an enlightening factor in a process of presumptive reasoning.

87. The motive in this case is strained marital relations of the accused with his wife, the deceased, and the accused nurturing doubts as regards the character of his wife, the deceased.

88. There can be no dispute that an oral dying declaration can be the sole basis for conviction, however, such a dying declaration has to be proved to be wholly reliable, voluntary and true and further that the maker thereof must be in a fit medical condition to make it. In the present case, the PW 1 Dr. Himanshubhai Pravinbhai Vyas and the PW 2 Dr. Dhirenbhai Narendrakumar Sheth before whom the deceased had made an oral dying declaration are completely disinterested witnesses and are also responsible medical officers. No evidence worth the name has been led by the defence to disprove their statements. There is also no circumstances or materials on record to suspect that the two doctors who had attended the deceased at the Jivraj Mehta Hospital had any animus against the accused-appellant or were, in any way, interested for fabricating the dying

declaration, Therefore, the oral dying declarations made first before the PW 1 Dr. Himanshubhai Pravinbhai Vyas and the second oral dying declaration made before the PW 2 Dr. Dhirenbhai Narendrakumar Sheth cannot be doubted in any manner. Both the doctors, in their evidence, have deposed that the deceased was conscious when she was brought at the hospital by her husband, the accused, and her mother-in-law, accompanied by few other persons. The only ground on which Mr. Shah, the learned counsel appearing for the accused-appellant, wants us to discard the oral dying declarations from consideration is that in the medical case-papers the PW 1 Dr. Himanshubhai Pravinbhai Vyas had not mentioned anything about the history given by the deceased. Even this aspect has been clarified by the PW 1 Dr. Himanshubhai Pravinbhai Vyas that since every detail was mentioned in the Indoor Register maintained by the hospital, the history of the accused inflicting injuries with knife was not recorded in the other Medico-Legal case-papers. We have only one question in mind and that is, as to why the two doctors who were in no way concerned either with the family of the deceased or with the family of the accused, create a story of oral dying declarations. Immediately on being hospitalized, the deceased made a very short statement. The statement was, "I am in excruciating pain, please do not kill me, save my life, my husband inflicted knife injuries on my body". The facts that the pulse were not palpable and blood pressure unrecordable and there was accumulation of large quantity of blood in the body would not necessarily show that the condition of the deceased at the relevant point of time was such that no dying declaration could be recorded. If the condition would have been really very serious and if the deceased was not in a position to utter a single word, then in that case, the two doctors would have said so in so many words and there was no reason for them to depose that the deceased had made an oral dying declaration. The doctors are the best persons to opine about the fitness of the deceased to make the statement. The PW 1 Dr. Himanshubhai Pravinbhai Vyas, having realized the seriousness of the injuries, immediately called up the PW 2 Dr. Dhirenbhai Narendrakumar Sheth, the Surgeon, requesting him to come down to the hospital. By the time the PW 2 Dr. Dhirenbhai Narendrakumar Sheth arrived at the hospital, the PW 1 Dr. Himanshubhai Pravinbhai Vyas thought fit to inquire with the injured as to what had happened, and at that point of time, the injured is said to have made a statement that it was her husband, the accused, who had inflicted the knife injuries.

89. On arrival of Dr. Sheth, the injured was taken to the sonography room and after studying the sonography report, the PW 2 Dr. Dhirenbhai Narendrakumar Sheth decided to go for emergency surgery, and for which, the consent of the husband i.e. the accused was also obtained in writing. At that point of time, the PW 2 Dr. Sheth had also inquired with the deceased as to what had happened, and in reply, the deceased had stated in so many words that it was her husband, the accused, who had inflicted injuries with knife. The doctors had found that life was ebbing fast in the patient. There was no time to call the police or a Magistrate.

90. In our opinion, in such circumstances, the doctors were justified. Indeed they were duty bound to at least inquire with the injured as to what had happened so as to record the dying declaration of the deceased. Of course, in the present case, the doctors were unable to record the dying declaration in writing as the first priority was to save the life of the deceased.

91. We have ourselves examined the injuries and we find that there was no injury which may have affected the brain and the only serious injuries were on the abdomen, which will not make the deceased unconscious immediately. Moreover, the deceased has also given a short statement which is a proof of the manner in which the deceased was assaulted. The shortness of the statement itself appears to be a guarantee of its truth. As a matter of fact, before the deceased could make the dying declaration informing the PW 1 Dr. Himanshubhai Pravinbhai Vyas that it was her husband, the accused, who had inflicted knife injuries on the abdomen and chest, this fact was already disclosed by the mother of the accused before the PW 1 Dr. Himanshubhai Pravinbhai Vyas. However, we do agree with the submission of Mr. Shah that the statement made by the mother of the accused who is also a co-accused and not in the nature of a confession would not be admissible u/s 30 of the Evidence Act.

92. We, therefore, accept the oral dying declarations made by the deceased before the two doctors and the Night Supervisor i.e. the PW 3 Hinaben Hasmukhlal Gor, as legal and valid and we have no doubts in our mind as regards the genuineness of the said oral dying declarations.

93. We are not impressed by the submission of Mr. Shah, the learned counsel appearing for the appellant, that as the deceased had illicit relations with the PW 20 Dharmraj Vala, who was residing in the same residential complex, and with a view to save her honour, the deceased had falsely involved her husband, the accused, in the crime despite the fact that it was the PW 20 Dharmraj Vala who had committed the murder of the deceased.

94. On the contrary, we find that the relations of the deceased with her husband, the accused, were highly strained and one of the reasons was the doubts which the accused was nurturing as regards the illicit relations of his wife, the deceased, with the PW 20 Dharmraj Vala. We have also taken into consideration the explanation of the accused in his statement recorded u/s 313 of the Cr.P.C. According to the accused, on the date of the incident, after winding up at the restaurant, when he was on his way home, he had seen the PW 20 Dharmraj Vala walking down through the stairs of the block where the flat of the accused and the deceased was situated. It appears to us and such possibility could not be ruled out that the presence of the PW 20 Dharmraj Vala at that point of time in the block of the accused might have led the accused to believe that Dharmraj Vala had come to meet the deceased and probably that may have led an altercation between the accused and his wife, the deceased, resulting in inflicting of injuries on the deceased with a knife. What could be the other reason for the accused to pick up a quarrel with his wife at 2 O'clock in the night. It appears

that it is only after inflicting serious injuries on the deceased with a knife, the accused realized the consequences of his act and thereafter tried to make all possible efforts to save the life of his wife, the deceased, by taking her to the hospital. The knife which was used in the commission of the offence was also left behind on the bed placed beneath a pillow.

95. We have also found the conduct of the accused very doubtful. It emerges from the evidence of the doctor that when the doctor declared that Monika had succumbed, the absence of the accused at the hospital was very conspicuous. A specific question was asked by the doctor to the mother of the accused as to where the husband had gone, and at that point of time, the mother of the accused had replied that her son would return soon. However, thereafter, the accused was not to be seen till the time he surrendered on his own before the police station.

96. There is one another aspect of the matter. Indisputably, the mother of the accused was also residing together in the same flat, We are not ready to believe that the PW 20 Dharmraj Vala would enter the flat of the deceased, more particularly, when the mother of the accused was also present in the flat, and commit the murder of Monika, the deceased.

97. There was no motive for the PW 20 Dharmraj Vala to commit the murder of the deceased. The PW 20 Dharmraj Vala may be a man with antecedents and may also be having an illicit relations with the deceased as it appears from the telephonic record available on record and his own admission in his cross-examination, but even on preponderance of probability, the accused has not been able to establish as to what was the reason for the PW 20 Dharmraj Vala to commit the murder of the deceased as suggested by the accused. The entire defence appears to be palpably false and unbelievable. Falsity of defence is also an additional circumstance in the chain of other circumstances emerging from the record of the case.

98. We shall now deal with the decisions, which have been relied upon by Mr. Shah in support of his submissions.

99. The first decision relied upon is of Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), . Two propositions of law as laid down by the Supreme Court in the facts of that case have been relied upon in the present ease. First, that the court should safeguard itself against the danger of basing its conclusion on suspicions, however strong they may be, and the necessity for adopting that caution becomes absolute in a case in which the situation of the parties, the belated investigation of the case and the sensation it had created demands the same, and secondly, the observations made by Baron Alderson in Reg v. Hodge, (1838) 2 Lewin 227 quoted by the Supreme Court. The observations relied upon by the Supreme Court in Reg v. Hodge are reproduced hereinbelow:

The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one

connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.

100. This proposition is being relied upon by Mr. Shah in support of his submission that right from the beginning, since everyone started talking about the accused having inflicted injuries, the doctors also proceeded on the footing that it was the accused who had inflicted injuries with a knife on the body of the deceased. This proposition of law would not help the client of Mr. Shah in light of the fact that we have already found the two oral dying declarations made by the deceased before the doctors to be true, trustworthy and reliable. The facts of Palvinder Kaur (supra) were altogether different. In the said case, the deceased was administered potassium cyanide poison by the appellant and one Mohinderpal. The dead body was then put into a large trunk and kept in one of the rooms in the house in Ambala city. About ten days later, Mohinderpal, during the absence of the appellant, removed the trunk from the house in a jeep when he came there with two watermen of the Baldevnagar Camp. The trunk was then taken to Baldevnagar Camp and was kept in a store room there. Three days later, Mohinderpal accompanied by the appellant and a domestic servant, took the trunk a few miles on the road leading to Rajpura, and threw away the box into a well. After the disappearance of the deceased, his father had made enquiries from Mohinderpal regarding the whereabouts of his missing son. Mohinderpal kept on making various false statements to the father of the deceased. One month and ten days after the alleged murder and 19 days after the trunk was thrown into the well, obnoxious smell started coming out of the well and the matter was reported to the "Lambardars" of the village, and accordingly, the trunk was taken out of the well. The Supreme Court found that there was no direct evidence to establish that the appellant or the Mohinderpal or both of them had administered potassium cyanide to the deceased and the evidence regarding the murder was purely circumstantial.

101. Considering the evidence on record, the Supreme Court took the view that, whether the deceased had committed suicide or had died of poison taken under a mistake or that, whether the poison was administered to the deceased by the appellant or by Mohinderpal or by both of them, were the questions to which the answers had been left very vague and indefinite by the circumstantial evidence in the case. In that view of the matter, the Supreme Court thought fit to remind the High Court the warning given by Baron Alderson in Reg v. Hodge, (1838) 2 Lewin 227. The observations have been quoted above.

102. We are of the view that this decision of Palvinder Kaur (supra) would not, in any way, help the accused-appellant in the present case.

103. The second decision relied upon is of Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, . In Shankarlal Gyarasilal Dixit (supra), the charge against the accused was one of rape and murder of a five years old girl. The Supreme Court

took into consideration the circumstances which were relied upon by the prosecution in order to establish the charges of rape and murder. On overall appreciation of the entire evidence on record, the Supreme Court found that the cumulative effect of the circumstances failed to establish the guilt of the accused beyond the "shadow of doubt". However, Mr. Shah has placed reliance on the observations made by the Supreme Court in paragraph 33, which reads as under:

33. Our judgment will raise a legitimate query: If the appellant was not present in his house at the material time, why then did so many people conspire to involve him falsely? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions. In the instant case, the dead body of a tender girl, raped and throttled, was found in the appellant's house and, instinctively, everyone drew the inference that the appellant must have committed the crime. No one would pause to consider why the appellant would throw the dead body in his own house, why would he continue to sleep a few feet away from it and whether his house was not easily accessible to all and sundry, as shown by the resourceful Shrinarayan Sharma. No one would even care to consider why the appellant's name was not mentioned to the police until quite late. These are questions for the Court to consider.

104. We may only say that the above referred observations by the Supreme Court in paragraph 33 of the decision could not be termed as laying down any principle of law, but the observations from the court came in the peculiar facts of the case.

105. In the present case, we have direct evidence in the form of two oral dying declarations, which we have found to be true, trustworthy and reliable. Thus, in our view, this decision would also not help the accused of the present case in any manner.

106. The third decision which has been relied upon is of Subimal Sarkar Vs. Sachindra Nath Mondal and Others, . The proposition which is sought to be relied upon as laid down by the Supreme Court in Subimal Sarkar (supra) is that, even though prosecution is able to establish the motive, but that by itself, would not be sufficient to base the conviction. The other circumstantial evidence in the said case which was found to be established beyond reasonable doubt was the fact that the deceased had died of strangulation but there was no material with the prosecution to show as to who had actually committed the crime in the absence of any eye-witness to the incident. We have noticed that in Subimal Sarkar (supra), the Supreme Court has not laid down any proposition or principle of law which could be made applicable to the facts of the present case. Even the third decision of Subimal Sarkar (supra) would not be of any help to the accused in the present case. For the foregoing reasons, we do not find any merit in this Appeal and accordingly the same is dismissed. The order of conviction and

sentence imposed by the trial Court is hereby confirmed.