

(2014) 03 GUJ CK 0032
In the Gujarat High Court
Case No : Criminal Appeal No. 615 of 2007

Manibhai Jethabhai Vasava

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313

Evidence Act, 1872 — Section 105

Penal Code, 1860 (IPC) — Section 154, 299, 302, 304, 323

Citation : (2014) 03 GUJ CK 0032

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

Bench : Division Bench

Advocate : Mrudul M. Barot, Advocate for the Appellant; Chetna M. Shah, Addl. Public Prosecutor, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—This appeal is at the instance of a convict u/s 302, 324 and 504 of the Indian Penal Code and is directed against an order of conviction and the consequent sentence dated 12th March 2007 passed by the learned Additional Sessions Judge, 10th Fast Track Court, Nadiad, in Sessions Case No. 111 of 2006 thereby convicting the appellant under the aforesaid sections and imposing sentence of rigorous imprisonment for life with a fine of Rs. 500/-, with a stipulation that in default of payment of fine, he would undergo further simple imprisonment for one year. No separate punishment was given for the offences punishable under sections 324 and 504 of the Indian Penal Code. Being dissatisfied, the convict has come up with the present appeal.

2. The sum and substance of the prosecution case was that on 22nd March 2006, at about 19.00 hours, the accused of this case was going through the front portion of house of complainant in the street using abusive language, and at that time, Shivabhai, an injured witness, asked him to stop using abusive language. As a result, the accused was offended and inflicted a fatal blow of knife on the

left side breast portion of Maughiben, the wife of Shivabhai Bhanabhai Koli Patel, aged about 70 years and inflicted blows of knife on witness Manjuben, wife of Bhurubhai Shivabhai Koli Patel and Shivabhai Bhanabhai Patel. A complainant was lodged by Bhurubhai Shivabhai before the Kheda Town Police Station. On the basis of said complaint, an offence was registered. The Investigating Officer had drawn panchnama of the place of offence and also the Inquest Panchnama. The Statements of concerned witnesses were taken dead-body was sent for post-mortem, muddamal and the weapon produced by accused were seized. Panchnama of seized clothes was drawn. The accused was arrested and as sufficient evidences were found against the accused, a charge-sheet was filed against the accused of this case in the Court of Judicial Magistrate First Class, Kheda, which was registered as Criminal case no. 341/2006. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions in accordance with section 209 of the Code of Criminal Procedure.

2.1. The accused denied the charges and pleaded "not guilty" and claimed to be tried.

2.2. The prosecution examined the following 11 witnesses in support of its case:-

2.3. The prosecution also produced the following pieces of documentary evidence:

2.4. The statement of the accused was taken u/s 313 of the Code of Criminal Procedure wherein he has denied the allegations of the prosecution, and according to him, a false complaint was lodged against him and he was an innocent person. According to the accused, when he was going home, the complainant and his father were standing with a stick in their hand and they dragged him and delivered stick blows on his back side and hand. As he felt that they would kill him, he took out a knife from his pocket and wielded the knife as a result of which injuries were suffered by the prosecution witnesses.

2.5. As indicated earlier, the learned Sessions found the appellant guilty of offences punishable under sections 302, 324 and 504 of the Indian Penal Code.

3. Mr. Barot, the learned advocate appearing on behalf of the appellant, had taken us through the entire deposition of the witnesses and strenuously contended that in the facts of the present case, the learned Sessions Judge should have acquitted the appellant or should have given the benefit of private defence and there was no justification of convicting the appellant for murder.

4. Ms. Shah, the learned Additional Public Prosecutor appearing on behalf of the prosecution, has, however, supported the judgment impugned and has contended that in view of the evidence given by the eyewitnesses who were all injured witnesses, the learned Sessions Judge has rightly convicted the appellant. She, therefore, prays for dismissal of the appeal.

5. Therefore, the only question that arises for determination in this appeal is whether in the facts of the present case, the learned Sessions Judge was justified in convicting the appellant for the charges framed against him.

6. Before we proceed to examine the contentions of the learned counsel for the parties, we propose to deal with the evidence given by the 11 prosecution witnesses.

7. Dharamshi Mohanbhai Gohel, PW. No. 1, is a witness to panchnama for seizure of clothes worn by the accused. He had stated that the police called him to prepare panchnama on 23rd March 2006 at about 17.30 hrs when he was passing from Kheda Town Police Station. Another Kalidas Jivabhai was also with him. The accused was present in the police station and at that time, the accused was wearing a green shirt and green pants and there were blood stains on the shirt. The police seized those clothes worn by the accused in his presence. The police also seized a knife from his waist part in his presence. The knife was about six inches long. There were blood stains on that knife at the part of about upper two inch. This witness has identified the knife.

7.1. Panchnama of the physical condition of the accused was also drawn in his presence. The accused had sustained injuries on his left hand and back. Whip-marks of beatings were seen on the left part of back and there were scars on skin. After this panchnama was written by the police, it was read over to him and his signature was obtained thereon. This witness has proved the panchnama.

7.2. In the cross-examination by the learned advocate for the accused, this witness has stated that the police called him at 5.30 hrs in the evening for the procedure of panchnama and when he reached there, panch no. 1 was present there. He has admitted that when he reached the police station, the panch No. 1 had already dictated the panchnama, which he read and he made signature after reading the same. He has denied the suggestion that he has given deposition after reading the panchnama. The police showed him the knife when he went to the police station for the procedure of the panchnama. He has also denied the suggestion that though he was not present during the procedure of panchnama, he was giving false facts.

8. PW. No. 2, Kalidasbhai Jivabhai, is another panch witness. In his examination-in-chief, he has stated that when he went to give tea in the police station on 23rd March 2006 at about 17.30 hrs in the evening, the police obtained his signature in the panchnama and did not know as to what was written therein. As his tea stall was situated opposite to the police station, he just made signature thereon. He has proved his signature on the panchnama and has stated that he was alone when he made the signature and no article or clothes were seized by the police in his presence.

8.1. This witness was declared hostile, and the Court permitted the learned APP to cross-examine him.

8.2. In his cross-examination, he has stated that it is not true that when police drew panchnama in his presence of a person wearing green shirt and pant and having blackish colour, a knife was found from his waist part. He has further stated that it is not true that the knife was seized in his presence and detailed

panchnama was drawn as dictated by him.

9. Aasishbhai Manibhai Patel, who was working as a Medical Officer of General Hospital, Kheda was examined as PW. No. 3. In his examination-in-chief, this witness has stated that he was performing duty as Medical Officer in Kheda General Hospital since last four years. The dead-body of the deceased Moghiben Shivabhai Koli Patel who died in the incident that occurred within the limits of Kheda Town Police Station on 22nd March 2006, was brought to his hospital at 7.50 hrs in the evening for postmortem. He started doing P.M. of the dead-body on 23rd March 2006 at 6.00 hrs in the morning and completed the same at 8.20 hrs.

9.1. The dead-body was of a female and her age was about 70 years. There was almond colour sari, maroon blouse and blue petticoat on the dead-body and the clothes were smeared with blood. The blouse was cut of 2.5 cm on the left side. The built of the dead-body was thin and it was cold. Rigor mortis was developed all over the body. Eyes were closed. Mouth was open and tongue was inside the mouth. Skin had become pale and blood clot was found over the chest and abdomen.

9.2. Upon making the external examination of the dead-body, the following injuries were seen.

[i]. There was a single slit shape and oblique incised wound going inside the body, located over the left sided chest wall laterally, about 6 inch left to the sternum bone over the left sixth rib. It was 3 feet and 4 inch above the left heel. The length was about 1 inch. The wound was piercing the sixth rib and was going in inside the body. Upon measuring the depth with a tube, it was about 3.5 inch. The edge of the wound is clear-cut. Both the angles were sharp and there was no abrasion or bruises on the margin. This wound was going from left towards right slightly upwards. The wound was penetrating the sub-cutaneous tissues, pleura, lung tissues and was extended up to the heart, where it pierced the whole thickness of left ventricle and was going deep up to cavity of heart. (Which implies that great force was used to inflict the wound). No foreign body was found inside the wound. The margin of sixth rib was rough and it was smeared with blood.

[ii]. There was an irregular shape abrasion over the nose.

9.3. The injuries over the dead-body were ante-mortem. Upon making internal examination, the meninges and brain tissues had become pale. Hemorrhagic area was seen around the wound over the left side chest wall. Left pleura were torn. Mucosa of trachea and larynx were congested. Right lung was pale and left lung was collapsed. An incised wound was found in lung tissues on lateral surface about 3/4 inch x 1/2 inch. This wound was open. Left lung was seen pale. There was an incised wound of about 3/4 inch x 1/2 inch over the left ventricle of the heart with sharp margin. The wound was piercing the whole thickness of ventricle wall extending up to cavity of heart. Heart chambers were empty and it

was shrunken. Blood was found in the chest cavity. Abdomen wall was normal. Oesophagus was normal. Stomach, small intestine, big intestine, liver, gall bladder, spleen, kidneys were pale. Watery fluid in small quantity was found in stomach cavity. Blood sample was taken for chemical analysis, which is sent to FSL, Ahmedabad through Kheda Town Police Station.

9.4. According to the opinion of this witness, the cause of death is due to shock due to excessive internal hemorrhage following injury to internal organs (heart, lung) as a result of stab wound. According to this witness, the injuries caused were sufficient to cause death in the ordinary course of nature.

9.5. He has further stated that he prepared the postmortem note in his own handwriting and made his signature and applied the seal of General Hospital on it. This witness has proved the PM report and his signatures thereon.

9.6. This witness has further stated that thereafter, Manjuben Bhurubhai Chauhad, age 40 years came to his hospital on 22nd March 2006 at 9.30 hrs in the night for treatment without police yadi. He informed P.S.O. Sahdevsinh B. No. 1449 of Kheda Town Police Station regarding the same and he gave treatment to the patient for the injuries.

9.7. The patient stated before him in the history that opposite party has assaulted with knife on 22nd March 2006. This history was given by the patient herself. The patient was completely conscious and her temperature, pulse and respiration was normal. Upon examining the patient, there was an abrasion on the left lower abdominal wall, about 2.5 inches left from umbilicus of 1/2 cm x 1/4 cm in size. No bleeding was present thereon. The patient was clinically normal. The patient was given treatment as out-patient. The injuries were fresh. The injuries were such that can be caused with a sharp cutting weapon. The injuries were normal and were such that can heal in a week time. He has proved the certificate and his signature and the seal of the hospital.

9.8. This witness has further stated that injured Shivabhai Bhanbhai Chuhan also came to his hospital on the same day at 9.30 hrs in the night. As it was medico-legal case, he informed P.S.O. Sahdevsinh, B. No. 1640 of Kheda Town Police Station. As the patient was asked the case history, he stated that the opposite party has injured with knife at about 7.00 hrs on 22nd March 2006. The case history was dictated by the patient himself and the patient was brought by his relatives.

9.9. The patient was completely conscious and his temperature and pulse were normal. Upon examining the patient, there was an incised wound on left gluteal region three inch far from anterior superior iliac spine. It was 3/4 cm x 1/4 cm x 1/4 cm in size. The margin was sharp. The patient was clinically normal otherwise. He was treated as an out-patient. The injuries sustained by the patient were fresh and were such that can be caused with sharp cutting weapon. The injuries were such that might get healed in 7 to 10 days. He has proved the certificate for the treatment and his signature thereon.

9.10. The injuries sustained by these patients were such that can be caused with weapon such as a sharp knife and the injury on the dead-body were also such there can be caused with weapon such as a sharp knife.

9.11. In the cross-examination by the learned advocate for the accused, this witness has denied that there was only one injury on the dead-body, whose P.M. he had done. He has admitted that the injury No. 2 was not such that can be caused with weapon such as knife but injury No. 1 was such that can be caused with weapon such as knife. He has also admitted that injury No. 2 could be sustained by a fall. He has admitted that the injury sustained by Shivabhai was superficial and normal. He has denied that upon looking at the length and breadth of this injury, it cannot be stated for sure that it was an incised wound. He has admitted that if injury is caused with force with a sharp weapon, such normal injury cannot be sustained. He has further admitted that he was unable to state exactly as to how old was the injury. He has admitted that if there is a cut by an article such as a tin-sheet, the injuries as sustained by Shivabhai can be caused. He has admitted that Manjulaben had only sustained an abrasion and that injury was superficial. He has further admitted that this injury can be caused by oneself also. He has also admitted that the injuries sustained were such that can be also caused with other substance other than sharp weapon. He has further stated that he did not see at the time of the examination as to whether the clothes of Manjulaben and Shivabhai were blood stained. He has admitted that there was no bleeding due to the injuries sustained by the injured.

10. PW No. 4 is Bhurubhai Shivabhai Koli Patel. In his examination-in-chief, he has stated that he was a resident of Thakorvas at Varsang village and he resided there with his wife and two sons. His father, Shivabhai Bhanabhai and his mother Moghiben Shivabhai were alive and were residing separately next to his house at the time of the incident.

10.1. He was going for labour work in the Laat [Saw Mill] of Pruthviraj Dhirubhai Vaghela of Vautha village. The incident occurred on 22nd March 2006. On that day, his wife and he went for labour work in the Laat of Pruthvirajbhai and returned at 5.00 hrs in the evening.

10.2. The accused, Manilal, came to the grinding mill of Somabhai Thakor situated next to their house at about six to seven hrs in the evening and used abusive words for mother and sister. His father told the accused not to speak abusive words and told him that sister and daughter were present, and therefore, asked him to use proper language. The accused thereupon told as to why he told him so, and started speaking abusive words loudly. Therefore, his father told him to go back to his house. Therefore, the accused came with a knife and at that time, his mother was seated outside in the veranda and his father was seated next to her at the side and he was standing five to six feet far from them. The accused came and inflicted a knife blow to his mother on the left side of chest. Therefore, his mother fell down and as his father and Manju, the wife of this witness, intervened and at that time, knife blow was inflicted on the left side

of abdomen to his wife Manju and knife blow was inflicted on the left side of hip to his father Shivabhai.

10.3. This witness has further stated that as knife blow was given to his mother, she started bleeding profusely and she became unconscious. Thereafter, he called the rickshaw of Hirabhai Bharvad from the village and when he, his wife and his son Manhar were taking his mother in rickshaw to Kheda Civil Hospital, his mother died on the way. This witness has proved the muddamal knife.

10.4. This witness has further stated that he lodged a complaint in Kheda Town Police Station regarding the incident. The complaint was written down by the police as dictated by him. He has proved the complaint and his signature thereon.

10.5. He has further stated that after his mother was taken to the hospital, the doctor on duty did the postmortem and thereafter, the dead-body was handed over to him. He made signature in the receipt in that regard before the police and he has identified his signature thereon.

10.6. In the cross-examination by the learned advocate for the accused, he has admitted that a grinding mill is situated after the land of Panchayat next to the place in Varsang where he resides. He has also admitted that there is road leading to the fields between this grinding mill and his house and this is the only road to go to the fields from the village and except this, there is no other road. The accused was staying on the farm of Maneklal. The accused used to come to the village from the farm if he wanted to purchase necessary articles for living. He saw the accused near his house at about half past six to seven hrs. after he returned from labour work. At that time, there was an altercation going on between the accused Manilal and one other person Jashubhai Vasava. He did not know as to why they were having altercation. Jashubhai was also speaking at that time. His wife or his father or he did not have any altercation with Jashubhai. He did not go the grinding mill, when their altercation was going on. His family members also did not go to that place of grinding mill. None felt that those persons were having false quarrel. This witness did not go to the place of grinding mill. He has denied a suggestion that as both of them were having altercation, his father rebuked them from his house not to speak abusive words as sisters and daughters reside over here. His father rebuked Manilal and told him such. He did not tell anything to Jashubhai, as he was not speaking abusive words. As his father scolded Manilal, he opposed his father. He has denied that that his father told the accused to go away from there and else, he would be beaten. Thereafter, the accused went away from this place. He has denied the suggestion that the accused went away towards village after his father scolded him but he went towards Laat. He has admitted that as the accused used derogatory language for his father, they all felt bad. He has denied that they all came on the road, when the accused returned and they were waiting for him. He has denied that his father was standing on the road with a stick at that time. He has denied that when the accused came, his father gave two stick blows to him and they all pulled him to the veranda. He has further denied that as they were

pulling the accused, the accused drew a knife from his pocket and started wielding it. He has further denied that due to that, first his father got knife injury and thereafter, his wife sustained injury and thereafter, his mother sustained knife injury. The witness further stated that his mother did not have any quarrel with the accused. His father did not have any dispute with the accused except that his father had scolded him. This witness has stated that as he was a little far at the time of the incident, he was late for intervention and at the same time, the accused inflicted a knife blow on his mother. He has denied the suggestion that he was not present at the time of the incident. He has also denied the suggestion that he came to know about the incident from hearsay and thereafter, he lodged the complaint. He has stated that he took his mother to hospital and remained in hospital for about half an hour to 45 minutes and thereafter, he went to the Police Station. He did not know whether the doctor informed the police station over the phone. He has denied that he was in the hospital, and that the police came to the hospital. He gave complaint to the police at about half past eight hrs. in the night. He has also denied the suggestion that he gave the complaint when the police came to the hospital. This witness has further stated that he informed the fact to the doctor that his wife and father have sustained injury. He has denied the suggestion that he gave a false complaint against the accused. He has denied that the accused has not caused any injury to his wife, father and mother.

11. Shivabhai Bhanabhai Koli Patel is PW. No. 5. In his examination-in-chief he has stated that he used to reside at Varsang and his son Bhurubhai, the complainant, reside next to his house with his family and he live in his house with his wife. He has four daughters and the four daughters are married and they reside at their in-laws house. He has two sons. His son, the complainant, resided beside him and the second son, Govind had gone for labour work to Kathiyavad. His son, the complainant, used to go for labour work in the Laot of Pruthvirajsinh and his wife Manjulaben used to go with him for the labour work. His wife Moghiben, is not alive and she died in the incident in question. The incident occurred about six months back. He was illiterate. The incident occurred at about half past seven hrs. He was in the veranda at the time of the incident and his wife Moghiben was with him. His son Bhurubhai was standing in front of veranda of his house. She was sitting on the raised wall near the veranda.

11.1. The accused, Manilal, arrived there at that time and started speaking abusive words near the grinding mill of Somabhai Shakrabhai, and he told him to speak proper language and not to speak abusive words as sisters and daughters were there. The accused replied why he should not speak? This witness, therefore, told him to go back to his house and the accused told him to face consequences for the same. Thereafter, he went towards the Laot where he used to live. Thereafter, he returned with a knife. The accused gave a knife blow on the left side to his wife, as a result, his wife fell down in a bleeding condition. He went to see his wife and at that time, the accused came in front of him and gave a knife blow to him also on the left waist part. The accused also gave a knife

blow to Manjula, the wife of his son. As his wife sustained injury, his son and Manhar, his grandson brought the rickshaw of Bharvad from the village and took his wife to hospital. This witness took treatment in Kheda Hospital for the injury he had sustained. His wife was taken to the hospital, and she died on the way. The police inquired of him regarding the incident. This witness has identified the accused and the muddamal weapon.

11.2. In the cross examination of this witness by the learned advocate for the accused, this witness has stated that the accused was residing in the Laat of Vijay Vaghela. It takes about 15 minutes to go to the Laat of Vijaybhai from his house. He has admitted that one Jashubhai Vasava and the accused were having altercation near the grinding mill and therefore, he told him not to speak abusive words and to speak proper language. He has also admitted that as he told the persons to go away, they went away. He has denied that as he was told to face consequences, he felt bad. He has also denied that when the accused was going towards his house in Laat from the village, this witness stood on the road with a stick and his son was also with him at that time and he gave two stick blows to the accused. He has also denied that the accused was beaten on the road and then pulled to veranda of their house and at that time, injury was caused to him near the otlā (raised platform). He has also denied the suggestion that as the accused was dragged after beating him, he drew a knife from his pocket and started moving it fiercely, and in that process injury was caused to him, his wife and son. He has also denied that he was injured first during the incident. He has further denied that his wife sustained injury as she tried to save Rita. His son did not intervene at the time of the quarrel but after the incident, he caught the accused and snatched the knife from his hand. He has admitted that after he sustained injury, as Rita, the daughter of his son shouted that "grandfather has sustained knife injury", his son Bhuru arrived. At that time, as the accused raised knife to stab Rita, the daughter of his son, his wife intervened, therefore, his wife sustained injury with that knife. He has also admitted that when his son was trying to snatch the knife from the accused, his wife was injured with knife. He has denied that the accused did not knowingly caused knife injury to him, his wife and the wife of his son. He has also denied that as they were assaulting him, the accused drew the knife for his self defence and moved it fiercely in front of them, therefore, they all sustained injury. He has also denied that the accused was using abusive words near the flour mill. He has also stated that he did not know whether the police has written that after he rebuked the accused, he went away to the Laat.

12. Manjulaben Bhurabhai Koli Patel is PW. No. 6. In her examination-in-chief she has stated that she used to live in Thakorvas, Darji Faliya at Varsand with her husband and son, Manhar, and daughter, and her father-in-law and mother-in-law live next to them and their houses are adjoining each other and there is veranda at the outside of the house. The grinding mill of Somabhai Shakrabhai was situated next to their house near the land of panchayat. The incident occurred about six months back. She and her husband had gone for work on the

day of the incident and returned at about five hrs. Thereafter, the accused, Manilal, was having an altercation with Jashubhai at about half past seven hrs in the evening. As Manilal used abusive language, her father-in-law told him not to speak abusive words and rebuked him saying that the daughters and wives reside at that place. Therefore, the accused went back home and immediately returned with a knife. At that time, her mother-in-law was seated in the veranda and her father-in-law was seated near to her. She and her husband were in the veranda of their house. Manilal inflicted knife blow in the left side of chest to her mother-in-law and mother-in-law started bleeding and fell down and became unconscious. The accused also gave a knife blow to her father-in-law Shivabhai on his waist part and he also gave a knife blow to her near the waist on the left side. At that time, her daughter Rita was sleeping on the cot outside the veranda in the street. Thereafter, she, her husband, her son took her mother-in-law in a rickshaw to Kheda Civil Hospital for treatment and she died on the way. As she also sustained injury in the incident, she took treatment in Kheda Civil Hospital and her father-in-law also took treatment. Her husband went to the police station and lodged a complaint. The police took her statement regarding the incident. The accused came and immediately gave knife blow to her mother-in-law. She has identified the knife and the accused.

12.1. In the cross-examination, this witness has admitted that the accused and Jashubhai were speaking abusive words while having altercation, therefore, they felt bad. Therefore, her father-in-law scolded Manilal. As her father-in-law scolded, he opposed him and thereafter, he went towards village. She has also admitted that the only one way for the accused to go to the farm is passing from next to their house. She has denied that as they felt offended, her husband and father-in-law were standing on the road with stick, waiting for the accused and when the accused came, her father-in-law gave two stick blows to him and dragged him into the veranda, and at that time, the accused drew a knife from his pocket and started moving it fiercely in self-defence, and in that process, they sustained injuries. She has also denied that her father-in-law sustained injury first, but her mother-in-law Moghiben sustained injury first. She has admitted that as her father-in-law sustained injury, her daughter Rita shouted, "mummy papa, run, grandfather has sustained injury" and therefore, they came out after hearing the shouts and all of them tried to catch the accused. She has admitted that when she and her husband came out, her father-in-law and mother-in-law sustained injury. Her husband caught hold of the accused by surrounding his hands around the accused so as to snatch the knife from him. She has admitted that she went to help her husband to snatch away the knife. She has also admitted that she sustained injury at that time. She has stated that it takes about more than one hour to go to Kheda from their village in a rickshaw. She has further stated that when they reached the hospital, the police had arrived. She has denied that the accused has not inflicted any knife blows but in spite of it, she was stating false facts.

13. Ritaben Bhurabhai is PW. No. 7. She has stated in her examination-in-chief

that she used to reside in Varsang with her grandparents, parents and brother at the time of the incident. She studied till seventh standard. She does agricultural work in the Laot of Pruthvirajsinh. She had gone for agricultural labour work in the above stated Laot on the day of the incident also and returned home at five hrs in the evening. The incident occurred at about half past six to seven hrs. in that day. She, her father, mother, grandfather, grandmother were present at home on that day. She was living with her parents in one house and her grandparents lived in the adjoining house. There is a veranda at the front side of her house. On the day of the incident, Manilal came to the grinding mill of Somabhai situated near her house. He was speaking abusive words loudly. Therefore, her grandfather told him not to speak abusive words there. Therefore, the accused replied him as to why did he tell him so, and he will face dire consequences. Thereafter, the accused went back to his house in Laot where he was residing and came back with a knife. When he came, she, her parents and her grandparents were in the veranda outside. As the accused came with a knife, he first inflicted knife blow on the left hip to her grandfather. As she started shouting, he came to give knife blow to her and her grandmother came in between, and therefore, he inflicted knife blow to her grandmother. That blow was given on the left side chest part. Thereafter, as he tried to assault her father, her mother came in between, and therefore, her mother also got injured with knife on abdomen part. As her grandmother sustained knife blow, she became unconscious and fell down. Thereafter, the accused ran away. Her father, mother and brother took her grandmother to Kheda Civil Hospital and she died on the way. Her father gave complaint regarding the incident. She has identified the knife and the accused.

13.1. In the cross-examination by the learned advocate for the accused, this witness has denied that she has not dictated in her statement that the accused went back to his house and after going home, he returned with a knife. She has also denied the suggestion that she has not dictated such fact that as he tried to give a blow to her father, her mother came in between and thus, her mother sustained knife blow on abdomen part. She has stated that the house of Manubhai Ranchhodbhai is situated next to her house and the house of Bahadursinh is situated next to him. She has denied that Bahadursinh is selling kerosene in his house. She has stated that the house of Fatesinh Vaghela is situated opposite to her house. The grinding mill of Somabhai is situated at the south of her house. People reside in the houses situated in the surrounding of their house. There is road leading to Indiranargi passing from their house near the grinding mill and people pass from there. People were passing from there at the time of the incident. She has denied that as there was uproar at the time of the incident, many persons had gathered. She has admitted that it was dark at seven hrs in the evening. She has stated that there is no facility of electricity in their house and there is also no light in the surrounding of their house. She has admitted that she did not know as to where the accused went after her grandfather rebuked the accused. She has also denied that after the accused

went away, her grandfather and her father came on the road and were standing over there and her grandfather had a stick at that time. She has denied that when the accused came back again, she had seen her father, grandfather and the accused together on the road for the first time. She has denied that her grandfather gave two stick blows to the accused. She has also denied that at that time, her father and grandfather were dragging the accused towards their house. She has admitted that first her grandfather sustained injury. She has denied that her grandfather sustained injury between the veranda and road. As her grandfather sustained injury, he started bleeding and that blood fell on the road. When her grandfather sustained injury, she was sitting on a cot in the veranda. She has admitted that as her grandfather sustained injury, she started shouting, and therefore, the accused came towards her. She has stated that she was not sitting on the cot at that time, but she was standing near the cot. As the accused rushed towards her, her grandmother came in between. She has denied that as her grandmother came in between, she sustained injury. She has denied that as her grandfather and father were dragging the accused from the road, the accused drew a knife from his pocket and started moving it fiercely, therefore, her grandfather, grandmother and her mother sustained injury. She has also denied that she was not present at the time of the incident and she has not seen the incident. She has also denied that she was giving false evidence as her grandmother died.

14. Dr. Sanjay Vasantlal Kolte, who was working on emergency duty on 23rd March 2006 as Medical Officer in the Civil Hospital, Kheda, is examined as PW. No. 8. In his examination-in-chief, he has stated that while he was present on emergency duty on 23rd March 2006 as Medical Officer in Civil Hospital, Kheda, the officer of Kheda Town Police Station wrote a yadi to him for treatment of the accused, Manilal Jethalal Vasava. He received that yadi on 23rd March 2006 at 9.00 hrs in the night and he made his signature in that yadi for receiving the same.

14.1. As the accused was asked the history of the incident, he stated that the opposite party had attacked him on 22nd March 2006. Upon examination of the patient, the following injuries were found.

[i]. There was a contusion impressed on the left side of back of 9 x 1.5 inch long

[ii]. Second injury was 1 inch in the middle from the first injury of 1 x 1 inch size. This injury was normal.

14.2. According to this witness, both these injuries were such that could be healed in 3 to 5 days. The injuries were fresh and were sustained in about 24 hours.

14.3. He issued certificate in his handwriting regarding the treatment given by him, made his signature thereon and applied the seal of hospital thereon.

14.4. He has proved the yadi as well as the certificate issued by him.

14.5. In his cross-examination by the learned advocate for the accused, he has admitted that there was similarity between the time of injury mentioned in the police yadi and the time of sustaining injury. He has also admitted that the injuries were such that could be caused if blows are given by a stick.

15. PW. No. 9 is Sahdevsinh Juwansinh Jhala, the Police Station Officer of Kheda Police Station. In his examination-in-chief he has stated that he was present on duty as Police Station Officer in Kheda Town Police Station on 22nd March 2006 from 20.00 to 00.00 hours of 23rd March 2006. At about 20.30 hours, the complainant Bhurubhai Shivabhai Koli Patel, resi. Vardang Ta. Dist. Kheda had given complaint before Police Sub Inspector. After taking his complaint, it was sent by P.S.I. Rathod to him for registering the offence. At about 8.30 hours, he had registered the offence vide Crime Registration I-No. 51/06 for the offence u/s 302, 324, etc of Indian Penal Code with Kheda Town Police Station and entry to that effect was made in the station diary at serial no-28 on page no 86. As the offense was serious one, the report was made to concerned officers in that regard. Thereafter, for examining the complaint, further investigation was handed over to PSI Shree Rathod. The report u/s 154 was immediately sent to Judicial Magistrate First Class at Kheda.

15.1. In the cross-examination, he has admitted that after taking the complaint, P.S.I. had given him the same for registration and did not know as to whether the said complaint was taken by the P.S.I. at Hospital or not. He had written F.I.R. of this case and had obtained signature of the complainant in the F.I.R.

16. PW. No. 10 is Natubhai Budhabhai Vaghela. In his examination-in-chief he has stated that he reported for duty as PSO at about 20.00 hours in the Kheda Town Police Station on 23rd March 2006 and at around 20.30 hours, the complainant Manibhai Jethabhai Vasava, residing at-Vautha Sim gave an application before the PSI Shri Rathod against Bhurubhai Shivabhai Koli Patel as per Sections-323, 504 of the IPC. He made an entry thereof at Sr. No. 29 on the page No. 90 of the Station Diary on 23rd March 2006 and it was handed over to PSI Rathod for investigation of the application and on the basis of the said complaint, he had made an entry of the complaint of the complainant on the page No. 15 of the Public Non Cognizable Register vide PN. Co. No. 29/06 and obtained thumb impression of the complainant in the register and he put his signature as Officer of the Police Station. He has proved the complaint and his signature thereon.

16.1. Ld. Advocate for the accused has raised objection against giving it exhibit number by stating that it can not be given exhibit number as there is confession made by the complainant in this complaint but objection is overruled as he can state these facts by making submissions in arguments.

16.2. In the cross-examination, he has admitted that the complaint was reduced in writing on a plain paper and then it was registered. The complaint was also registered in Station Diary Register and L.C. Register. As the complaint was

written on a plain paper, it was registered in the Non Cognizable complaint. Thereafter, its entry was made in the Station Diary Register. He has admitted that this complaint was not taken in his presence. The facts of the complaint which were noted on a plain paper were handed over for investigation. The investigation of this complaint was also handed over to the PSI Shri Rathod. He has admitted that he had noted the complaint only on a paper.

17. Dharmendrasinh Khumansinh Rathod, PSI in the office of the Superintendent of Police, Nadiad is examined as PW. No. 11. In his examination in chief he has stated that he was discharging duty as Police Sub Inspector in Kheda Town Police Station in March-2006. Meanwhile, Dr. Aasish Patel had dictated one Vardhi from Kheda Civil Hospital on 22nd March 2006, and in connection with that, he went to Kheda Hospital. The complaint of Bhurubhai Shivabhai Koli Patel was taken therein before him. Thereafter, Moghiben, the mother of complainant of this case had died, and therefore, her Inquest Panchnama was drawn before the panchas. Thereafter, he went to the place of incident, village Varsang and continued the investigation of the case. The panchnama of the place of the offence was drawn before the panchas from 9.30 to 10.00 hours on 23rd March 2006 and further investigation regarding arrest of accused was continued. Thereafter, the accused Manilal Jethalal Vasava was found from the outskirts of village Varsang. He was brought to Police Station and panchnama of body condition of the accused was drawn from 17.30 to 18.00 hours before the panchas. During the panchnama of the body condition of the accused, the knife used as weapon was seized before the panchas. Thereafter, the accused was arrested and lawful procedures were made. Thereafter, the accused had given complaint against the complainant of the aforesaid offence before him, which was noted as non-cognizable 29/06 and got his necessary medical treatment from Kheda Civil Hospital. Thereafter, statements of important witnesses were taken and further lawful investigation was carried out. As there was sufficient evidence for filing charge-sheet, charge-sheet was filed against the accused. The complainant had made signature before him and he also made signature as "before me" and panchas had put signature before him. He has identified his signature made as before him. He had also filled in the post-mortem requisition form of this case and sent the same. He has identified his signature is thereon. He has proved the note prepared for sending the muddamal for examination and analysis, F.S.L. report, acknowledgment receipt of the letter, acknowledgment letter, the report, the serological report and Physical Test Report received from Laboratory. The map of scene of offence which was drawn by Circle Officer is also proved by him. He has further stated that he had read over the complaint and Panchnama, and they were written as dictated by the Panchas and thereafter, their signatures were obtained. The complaint was also written as dictated by the complainant. The Vardhi (telephone) received in the Police Station was noted by him and he has proved the same.

17.1. In the cross-examination by the learned advocate for the accused, he has admitted that on receiving the Vardhi of Exh. 43, it came to his knowledge that a cognizable offence was committed. He has further admitted that he had not

registered any offence on the basis of telephone Vardhi. He has further admitted that the complainant had not given the complaint in the Police Station and he had taken the complaint in the Hospital and it was sent to Police Station for registration. He has also admitted that he had not gone to the Police Station from the Hospital till the Inquest panchnama was completed. At the time of Inquest Panchnama, he came to know about the C.R. Reg. number on telephone and obtained the same. He has further stated that he did not come to know through this telephone Vardhi as to whether any other person was injured or not. He has denied that panchnama of the scene of offence was drawn by him in the Police Station. He has also denied that the accused had not given any complaint with regard to sustaining the injury by him. The complaint regarding injury sustained by the accused was noted on a separate paper. He has admitted that he had sent the same complaint to get register in N.C. Register. He has admitted that complaint of the accused is not produced by him in this case but certified copy registered in N.C. Register was produced. He has also admitted that he felt that the complainant, the accused and the witnesses had sustained injuries in one incident only. He has also admitted that he did not make any inquiry during his investigation as to how the accused had sustained injury and the reasons were not found in that regard. He has also admitted that he had not taken any statement of the witnesses in regard to injury sustained by the accused or any separate investigation was also not carried out as the offence was non cognizable. He has also admitted that he has the power to carry out investigation in N.C. Offence after obtaining permission from the Court. He has admitted that Shivabhai Bhanabhai had not dictated such fact in the statement before him that after scolding, he went into Laat. He has further admitted that Ritaben had also not dictated such fact in the statement before him that thereafter the accused went to his house and returned with a knife. He has admitted that she has not also dictated such fact that while assaulting her father, as her mother intervened, she sustained the blow of knife on the portion of stomach. He has admitted that she had dictated such fact before him that as she shouted, the accused rushed towards her, her grandmother came in the middle and she was assaulted with knife.

18. After hearing the learned counsel for the parties and after going through the aforesaid materials on record including the admission of the accused in the statement u/s 313 of the Code of Criminal Procedure, we find that involvement of the appellant in the incident leading to the death of the victim is admitted. According to the defence taken in the statement u/s 313 of the Code of Criminal Procedure, while the accused was coming from his residence, he found that the husband of the victim was standing in front of his house with a stick in his hands and the moment he came near the husband of the victim, the husband of the victim dragged him inside, as a result, in self-defence, he took out a knife from his pocket and used the same.

19. After going through the evidence adduced by the three injured eyewitnesses, we find that the learned Sessions Judge was quite justified in holding that the

defence taken by the appellant cannot be accepted. It appears that there was no dispute between the husband of the deceased and the accused and the accused was quarreling with another person, and in that incident, he was using abusive language, as a result, the husband of the victim asked the accused not to utter such words and to go away. As a result, the appellant went back to his house and came with a knife and attacked the husband of the victim. Consequently, the victim, her son and daughter-in-law intervened and in the process, the husband and the daughter-in-law of the victim were injured and the deceased died. We do not find any substance in the contention of the learned advocate for the appellant that there was any scope of exercising private defence by stabbing the wife of the injured witness as it is not even the case of the accused that the wife of the injured witness dragged him into her house. Even in the complaint lodged by the accused, he has not made any grievance against the victim. Thus, the question of private defence is insignificant in this case when the victim is the mother of the complainant and it was the father of the complainant who asked the accused not to use abusive words.

20. We also do not find any substance in the contention of Mr. Barot, the learned advocate appearing on behalf of the appellant that this is a case of one blow against the victim and thus, the offence should be treated to be one u/s 304 Part I or Part II of the Indian Penal Code.

21. It appears that the accused not only injured the husband of the victim and her daughter-in-law but killed the victim by a fatal blow on the vital part of the body, the chest. After that fatal blow in the chest, there was no necessity of inflicting further blows on her. It appears that after the initial scolding by the husband of the victim, the appellant went to his house and came back with a knife from his house. The aforesaid fact, coupled with the further fact that he used the knife against three persons, there is no justification of converting the offence into one punishable u/s 304 Part I or Part II of the Indian Penal Code.

22. We now propose to deal with the decisions cited by Mr. Barot.

23. In the case of *Surendra and Another Vs. State of Maharashtra*, , the Supreme Court reiterated the well-settled law relating to private defence by making the following observations:

27. The learned courts below committed a manifest error of law in opining that the Appellants had not discharged the initial burden which is cast on them. Even such a plea need not be specifically raised. The Courts may only see as to whether the plea of exercise of private defence was probable in the facts and circumstances of the case.

28. In *State of U.P. Vs. Ram Swarup and Another*, , this Court stated the law, thus:

The burden which rests on the prosecution to establish its case beyond a reasonable doubt is neither neutralised nor shifted because the accused pleads

the right of private defence. The prosecution must discharge its initial traditional burden to establish the complicity of the accused and not until it does so can the question arise whether the accused has acted in self-defence. This position, though often overlooked, would be easy to understand if it is appreciated that the Civil Law Rule of pleadings does not govern the rights of an accused in a criminal trial. Unlike in a civil case, it is open to a criminal court to find in favour of an accused on a plea not taken up by him and by so doing the Court does not invite the charge that it has made out a new case for the accused. The accused may not plead that he acted in self-defence and yet the Court may find from the evidence of the witnesses examined by the prosecution and the circumstances of the case either that what would otherwise be an offence is not one because the accused has acted within the strict confines of his right of private defence or that the offence is mitigated because the right of private defence has been exceeded. For a moment, therefore, we will keep apart the plea of the accused and examine briefly by applying the well-known standard of proof whether the prosecution, as held by the Sessions Court, has proved its case.

29. Yet again in *Yogendra Morarji Vs. State of Gujarat*, , this Court opined:

Before coming to the facts of the instant case, the principles governing the burden of proof where the accused sets up a plea of private defence, may also be seen. Section 105, Evidence Act enacts an exception to the general rule whereby in a criminal trial the burden of proving everything necessary to establish the charge against the accused beyond reasonable doubt, rests on the prosecution. According to the section, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code; or within any special exception or proviso contained in any other part of the Code or in any other law, shall be on the accused person, and the Court shall presume the absence of such circumstances. But this section does not neutralise or shift the general burden that lies on the prosecution to prove beyond reasonable doubt all the ingredients of the offence with which the accused stands charged. Therefore, where the charge against the accused is one of culpable homicide, the prosecution must prove beyond all manner of reasonable doubt that the accused caused the death with the requisite knowledge or intention described in Section 299 of the Penal Code. It is only after the prosecution so discharges its initial traditional burden, establishing the complicity of the accused, that the question whether or not the accused had acted in the exercise of his right of private defence, arises.

23.1. In the present case, the Prosecution has established beyond reasonable doubt that the accused is guilty of murder as evidenced by the eyewitnesses. In the statements u/s 313 of the Code of Criminal Procedure, the appellant has admitted his involvement but has tried to set up a plea of private defence. We have already found that there was no justification of using the knife against the deceased, a lady aged 70 years, who did not inflict any injury to the accused. Thus, the above decision is of no avail to the appellant.

24. In the case of Jalaram Vs. State of Rajasthan, , the other decision cited by Mr. Barot, the Supreme Court after discussing the law relating to private defence, ultimately made the following observations:

22. The Appellant herein also has raised a plea of private defence. He, however, has not been able to show that the threat on the person of Sonaram and Kisana Ram was such or even threat of dispossession was such, he had to hit the deceased at such place and with such force that he would breathe his last on the spot itself. He, therefore, in our considered opinion, exceeded his right of private defence.

23. We, therefore, are of the considered view that the appellant is guilty of commission of an offence u/s 304, Part I of the Indian Penal Code and not u/s 302 thereof.

24.1. As it appears from paragraph 17 of the judgment, the court found that the accused persons were not the aggressors. According to the Supreme Court, if they were not the aggressors, the plea of right of private defence was available to them and non-explanation of injuries on the person of Sonaram and Kisana Ram, thus, gained significance. According to the Supreme Court, the injuries on the persons of the accused persons having not been explained by the prosecution gave rise to the credibility to the defence put forth by the appellant as regards exercise of his right of private defence and after taking into consideration the evidence on record, where the defence adduced evidence in support of defence, applied Section 304 part I of the Indian penal Code. By relying upon the said decision, Mr. Barot contended that we should apply the same principle to the facts of the present case. In view of our finding that it was the appellant who was the aggressor and he inflicted blow of knife upon the innocent lady and also injured two other persons, we are unable to accept such contention. There were two simple injuries on the hand and back of the accused which, according to the doctor, would be healed within 3-5 days. In the process of killing the deceased and injuring two other persons and while snatching the knife from the hand of the accused, such injuries were suffered. Thus, the above decision of the Supreme Court cannot have any application to the facts of the present case where we have found from the evidence on record that after being scolded by the husband of the deceased the accused went back to his house and wanted to settle the matter with a knife. We do not find any reason to accept the case of the appellant that the husband of the deceased was waiting for him with stick in his hand in the absence of any such evidence.

We, therefore, find no reason to interfere with the just conclusion arrived at by the learned Sessions Judge. The appeal is devoid of any merits and is dismissed. The order of conviction and sentence passed by the learned Sessions Judge is confirmed.