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**(2012) 09 GUJ CK 0113**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 1365 of 2007**

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| Rajubhai Rasikbhai Datania | Vs | APPELLANT  |
| State of Gujarat           |    | RESPONDENT |

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**Date of Decision :** 06-09-2012

**Acts Referred:**

Bombay Police Act, 1951 — Section 135  
Criminal Procedure Code, 1973 (CrPC) — Section 209, 313  
Evidence Act, 1872 — Section 6  
Penal Code, 1860 (IPC) — Section 302, 307, 326, 85

**Citation :** (2013) 1 GLR 132

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

**Bench :** Division Bench

**Advocate :** P.K. Shukla, for the Appellant; K.P. Raval, APP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Honourable Mr. Justice J.B. Pardiwala

1. The present Appeal is at the instance of a convict accused for the offences punishable under Sections 302 and 326 of the Indian Penal Code, and is directed against an order of conviction and sentence dated 18th July 2007, passed by the learned 2nd Additional Sessions Judge, Sabarkantha at Himmatnagar in Sessions Case No. 28 of 2007. By the aforesaid order, the learned 2nd Court of Additional Sessions Judge found the appellant guilty of the offence punishable u/s 302 of the Indian Penal Code and consequently, sentenced him to suffer Life Imprisonment. The learned Additional Sessions Judge also found the appellant guilty of the offence punishable u/s 326 of the Indian Penal Code and consequently, sentenced him to suffer Rigorous Imprisonment for a period of three months. The learned Additional Sessions Judge also passed an order of payment of compensation to the tune of Rs. 5,000/- to the injured wife of the accused and in default of payment of such compensation, the appellant was directed to undergo further R.I. for 15 days.

## I. Case of the Prosecution :

On 24th September 2006 at 10.15 hours the father of the deceased, named Rasikbhai Kanubhai (Vaghri) lodged a First Information Report at Talod Police Station stating that he was residing at the address shown in the FIR and earned his livelihood by doing manual labour work. He had two sons and three daughters. The three daughters were residing at their respective matrimonial home. The name of the elder son was Raju (the accused) and the younger one was Ramesh (the deceased). Ramesh - the deceased was a bachelor. Both his sons were residing separately in two houses which were adjoining to each other. In the FIR it was alleged by the first informant that his younger son Ramesh - the deceased had illicit relations with the wife of his elder son Raju and therefore, on this count quarrel used to ensue between the two brothers very frequently. On 23rd September 2006 at around 7.30 hours in the evening, the first informant, after buying a bidi, returned home at around 9:15 pm and at that point of time the wife of the accused, named Kalpana, was sitting on a cot near his house. Ramesh, the deceased, was also sleeping on a cot near his house. After some time the first informant also went to sleep. At around 2 O'clock in the night, the first informant heard altercation between his two sons i.e. the accused and the deceased. At that point of time, Kalpana, the wife of the accused, came and informed the first informant that her husband, the accused, had inflicted injuries on her hand with a sickle and had also inflicted injuries on Rameshbhai, the deceased. On learning this, the first informant, immediately came near the house of Ramesh, the deceased, and saw that his son Ramesh, the deceased, had sustained serious injuries on his head and face and was lying dead in a pool of blood. In the first information report it was stated that Raju, the accused, had a sickle in his hand and was standing near his house. It is also the case of the first informant that at that point of time his son Raju, the accused, told him that if he would come towards the direction of his house, he would also be killed. At that point of time two persons named Pujaji Fulaji and Jawanji Fulaji, residing in the same locality came at the spot of occurrence with a hand-battery and in the light of the said battery saw Ramesh, the deceased, lying dead on a cot. The two persons threatened Rajesh, the accused, that if he would come towards their houses, then they would beat Raju, the accused. Since it was night hours, the first informant did not go anywhere and Kalpana, the wife of the accused also kept sitting near her house. In the early morning, the first informant went in the village at the house of one Bhalusing and informed his daughter at Himmatnagar on telephone about the incident. The first informant met few women of the village carrying milk and those women informed the first informant that the wife of Raju, the accused, had fallen in a well. The first informant went near the well and tried to see inside the well, but he was unable to see anything as there were lots of wild plants grown inside the well. However, he could hear the shouts of help. In the meantime, many people of the village gathered. In the mean time, the accused also came at that particular place where he was reprimanded by the villagers for his misdeeds. In the meantime, the police arrived and helped

Kalpanaben in getting out of the well.

2. It is the case of the prosecution that as Ramesh, the deceased, had illicit relations with the wife of his elder brother, the accused, the latter with the motive to seek revenge inflicted injuries on the head and face of the deceased causing his death.

3. On the strength of the First Information Report lodged by the father of the deceased, investigation commenced. The dead body of the deceased was sent for postmortem. The postmortem examination revealed a deep wound on the frontal bone of the head. The brain matter was visible from the scalp. The cause of death assigned, after the postmortem examination, was injury to the head and severe loss of blood resulting in cardio respiratory failure. Inquest Panchnama was drawn, Scene of offence Panchnama was also drawn. Clothes of the deceased were collected by drawing a Panchnama. On 24th September 2006 i.e. on the very next day, the accused was arrested and the Panchnama of the person of the accused was drawn. The clothes worn by the accused at the time of the incident were collected by drawing panchnama. Clothes of Kalpanaben, the wife of the accused, were also collected under a Panchnama. As Kalpanaben, the wife of the accused had also sustained injury on hands, she was admitted at Himmatnagar Civil Hospital for treatment. As the Investigating Officer felt that the accused was in an intoxicated state of mind having consumed liquor was sent for medical examination. Statements of witnesses were recorded. Muddamal articles which were seized were sent to Forensic Science Laboratory for chemical analysis. Finally, the charge-sheet was filed against the accused in the Court of Judicial Magistrate, First Class, Prantij.

4. As the case was exclusively triable by the Sessions Court, the JMFC, Prantij committed the case to the Sessions Court u/s 209 Cr.P.C. The Sessions Court framed charge against the accused Exh.8 and the statement of the accused was recorded. The accused did not admit the charge and claimed to be tried.

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

PW1

Dr. Sangitaben Devendrabhai Ninama (Doctor who treated Kalpanaben - w/o the accused.)

Exh.10

PW2

Arvindsinh Dipsinh Rathod - Panch witness of the inquest Panchnama.

Exh.13

PW3

Vadansinh Kalyansinh Zala. - Panch witness of the scene of Offence.

Exh.17

PW4

Devusinh Pratapsinh Zala. - Panch witness of Recovery of the Clothes of the deceased.

Exh.19

PW5

Dr. Amendraprasad Rajendraprasad - Doctor who performed Postmortem

Exh.25

PW6

Kanchanben Babubhai Vaghri Panch witness of recovery of the Clothes of injured Kalpanaben -w/o The accused.

Exh.29

PW7

Rasikbhai Dhanubhai Dataniya - Father of the deceased and the Accused.

Exh.31

PW8

Pujsing Fulsing Rathod. - Witness residing in the locality.

Exh.35

PW9

Baldevsing Gulabsing Rathod. Witness residing in the locality.

Exh.36

PW10

Jatiben Rasikbhai Daganiya - Mother of the deceased and the accused.

Exh.37

PW11

Kalpanaben Rajubhai Dataniya - The injured eye-witness and Wife of the accused.

Exh.39

PW12

Dashrathbhai Chhanabhai Dantani Father of the injured eye-witness Kalpanaben

Exh.40

PW13

Dr. Bipin Motilal Patel - Medical Officer at the relevant Point of time at Himmatnagar Civil Hospital.

Exh.41

PW14

Chanduji Shivaji Vihol - P.S.O.

Exh.46

PW15

Niravsinh Pavansinh Gohil - Investigating Officer.

Exh.49

6. The following pieces of documentary evidence were adduced by the prosecution.

1)

Medical Certificate of the injuries sustained by Kalpanaben issued by Community Health Center, Talod.

Exh.12

2)

Inquest Panchnama.

Exh.14

3)

Scene of Offence Panchnama.

Exh.15

4)

Panchnama of the Clothes of the deceased.

Exh.18

5)

Panchnama of the person of the accused.

Exh.20

6)

Postmortem Report.

Exh.27

7)

Panchnama of the person of the injured

Exh.30

8)

Original Complaint.

Exh.32

9)

Medical certificate issued by Himmatnagar Civil Hospital of the injuries sustained by Kalpanaben.

Exh.44

10)

Map of the scene of offence.

Exh.55

11)

F.S.L. Report.

Exh.56

12)

F.S.L. Report (Serologist)

Exh.57 & 58.

7. After completion of the oral as well as documentary evidence of the prosecution, the statement of the accused u/s 313 of Criminal Procedure Code was recorded, in which the accused stated that the complaint was a false one and he was innocent. In his statement u/s 313 of the Code of Criminal Procedure, the accused stated that the incident occurred in the night hours when all the family members had gone to sleep. The assailant could not be identified as it was very dark. The sickle had got pierced in the head of the deceased and the accused took out the sickle from the head of the deceased. On hearing the voice of the deceased while pulling out the sickle from his head, the wife of the accused woke up and the wife of the accused might have thought that it was the accused who inflicted injuries with a sickle on the head of the deceased.

8. At the conclusion of the trial, the learned trial Judge convicted the accused for the offences u/s 302 and Section 326 of IPC and sentenced him as stated herein before. However, the trial Court acquitted the accused of the offence punishable u/s 307 IPC as well as for the offence u/s 135 of the Bombay Police Act as the prosecution was unable to produce the Notification issued under the Bombay

Police Act.

9. Being dissatisfied, the accused-appellant has come up with the present Appeal.

II. Contentions on behalf of the accused-appellant :

10. Mr. P.K. Shukla, the learned counsel appearing for the accused, vehemently submitted that the trial Court committed a serious error in convicting the accused for the offence of murder punishable u/s 302 IPC by placing implicit reliance on the evidence of a solitary eye-witness. Mr. Shukla submitted that considering the inconsistencies and improbabilities in the oral version of the solitary eye-witness, the said eye-witness could not be termed as a wholly reliable witness and in the absence of corroboration in material particulars, the trial Court ought to have disbelieved the evidence of PW11 Kalpanaben, the wife of the accused.

11. Mr. Shukla, learned counsel appearing for the accused, also submitted that the oral evidence on record would suggest that at the time of incident the accused was drunk and was in an intoxicated state of mind and, therefore, he had no idea as to what he was doing. Mr. Shukla relied on Section 85 of the Indian Penal Code.

III. Contentions on behalf of the State :

12. Mr. K.P. Raval, learned APP appearing for the State, vehemently submitted that the trial Court rightly recorded the finding of guilt of the accused for the offence of murder punishable u/s 302 IPC. Mr. Raval submitted that the trial Court committed no error in relying on the oral evidence of the injured eye-witness PW11 Kalpanaben. Mr. Raval submitted that PW11 Kalpanaben, the solitary eye-witness, could be termed as a wholly reliable eye-witness being an injured witness and her oral evidence stands amply corroborated by the medical evidence on record.

13. Mr. Raval also submitted that the original first informant i.e. the father of the accused and the deceased, though was declared as a hostile witness, still deposed in clear words that both his sons i.e. the accused and the deceased were fighting with each other as the accused had doubts in his mind as regards illicit relation of his wife Kalpanaben with his brother, the deceased.

IV. Oral Evidence on record :

i) The prosecution has mainly relied upon the evidence of PW11 Kalpanaben Rajubhai Datania Exh.39. The evidence of PW11 Kalpanaben is a very important piece of evidence being the evidence of an injured eye-witness. PW11 Kalpanaben is the wife of the accused. She has deposed that on the date of the incident in the night, there was no food in the house to eat and therefore, her father-in-law, the first informant got some flour and asked PW11 to prepare Chapatis. In the meantime, the deceased also arrived and asked PW11 Kalpanaben to prepare Chapatis for him too. After the father-in-law and the

deceased finished their food, PW11 thereafter had his food. Her husband, the accused, came home from Himmatnagar at around 8 O'clock in the night. Thereafter, the accused went in the village to drink liquor. After consuming liquor, the accused returned home and ransacked the whole house. The deceased told PW11 Kalpanaben not to say anything as the accused was dead-drunk. The deceased asked PW11 Kalpanaben to go to sleep. PW11 Kalpanaben went to sleep and the deceased also went to sleep on a cot near his house. After about half an hour, the accused came near Kalpanaben and picked-up his son who started crying. Kalpanaben went after the accused and pleaded to handover her son. In the meantime, Kalpanaben went to the house of her father-in-law to wake him up. The father-in-law is said to have told Kalpana that he would not intervene in the fight between the two. As Kalpanaben started raising shouts, the deceased who was sleeping on a cot woke up and gave a slap to his brother, the accused, asking why the accused was harassing his own son. In the meantime, Kalpanaben saw that the accused who was dead-drunk was also trying to make his son drink liquor. With great difficulty, Kalpanaben could get back her son from the clutches of the accused. Thereafter, all of them once again went to sleep and the accused went away in the village. When everybody was fast asleep, the accused came home and picked up a sickle of his father. Kalpanaben saw the accused inflicting injuries on the head and face of the deceased. Kalpanaben tried to intervene asking the accused as to why he was acting so cruelly. At that point of time, it was around 3 O'clock in the night. In the meantime two persons from the locality came over there and inquired of the accused as to what had happened. The accused is said to have told the two persons from the locality that as he had become a father he had cut his brother believing him to be a goat. PW11 Kalpanaben has also deposed that in the night she went to the house of one Rathod. At the house of Rathod two women and two males were present. Kalpanaben informed those people that her husband, the accused, had killed her brother-in-law, the deceased. She pleaded before them to help her, but nobody was prepared to help her. When she returned home, she saw that the accused was still assaulting the deceased. PW11 Kalpanaben has further deposed that at that point of time when she intervened, the accused inflicted injuries with a sickle on her hand. Thereafter, the accused dragged her near a well and picking her up, threw her down in the well stating that if Kalpanaben would be spared she being a witness would depose against the accused. She has further deposed that she was the second wife of the accused. The first wife of the accused had sought divorce. She has further deposed that her husband, the accused, had a doubt in his mind that she had illicit relations with the deceased. In her cross-examination, few contradictions in the form of omissions were brought on record. However, the omissions were not of such a nature which Would render the evidence of PW11 Kalpanaben doubtful or improbable.

ii) We have noticed that the evidence of PW11 Kalpanaben, the wife of the accused stood fully corroborated by medical evidence on record. PW1 Dr. Sangitaben Exh.10 has deposed that on 24th September 2006 she was serving

as a Medical Officer at Community Health Center, Talod. At that point of time, Kalpanaben was brought at the hospital with a police yadi. She was examined and three injuries were found on the body of Kalpanaben. Dr. Sangitaben has also deposed that in the history of the offence, Kalpanaben stated to have been assaulted by her husband, the accused, with a sickle. PW11 Kalpanaben had sustained three injuries on her hand. All the three injuries were incised wounds. Doctor also noticed swelling on the back and noted pain in the spinal cord. As the injuries were serious in nature, PW1 Dr. Sangitaben advised that Kalpanaben should be taken to Ahmedabad for better treatment.

iii) The evidence of PW13, Dr. Bipin Motilal Exh.41, also corroborates the oral version of PW11 Kalpanaben. PW13 Dr. Bipin Motilal in his deposition has stated that Kalpanaben was brought to Himmatnagar Civil Hospital on 24th September 2006. On medical examination the following injuries were noted.

(1) Two incised wounds ventral aspect of left lower forearm 4 cm x 0.5 cm muscle deep; 3.5 cm x 0.5 cm muscle deep.

(2) Incised wound over ventral aspect of right waist 2 cm x 0.5 cm muscle deep.

(3) Incised wound over medial aspect of right lower forearm 3 cm x 0.5 cm muscle deep.

(4) Tenderness over left side spine, fracture of D9 vertebra.

iv) Thus, it is very clear from the evidence of PW11 Kalpanaben who is an injured eye-witness that her husband, the accused, was drunk on the night of the incident and as the accused had a doubt in his mind as regards illicit relations of his wife Kalpanaben with her brother, the deceased, the accused committed murder of his own brother, the deceased, by inflicting injuries on the head and face of the deceased.

v) So far as the injuries sustained by the deceased is concerned, it has been proved through the evidence of PW5 Dr. Amendraprasad Rajendraprasad Exh.25 that the injuries on the deceased were by a sharp cutting object or weapon like a sickle. There was a deep wound on the frontal bone of scalp 4" x 3". The brain mater was also visible from the scalp. There was a wound on neck about 1" x 1". The Tibia was also fractured.

vi) On 24th September 2006, the accused was arrested. Arrest Panchnama Exh.20 was drawn. This Panchnama has been proved through the evidence of PW4 Devisinh Pratapsinh Exh.19. This witness has deposed that he was called at the Police Station and was asked to act as a panch witness. PW4 Devusinh has deposed that the clothes of the accused which he had worn at the time of incident were collected in his presence and in presence of another panch witness. After changing the clothes, the clothes were collected and placed in a bag. PW4 Devusinh Exh.19 has also deposed that on the pant and the shirt of the accused, blood stains were visible. At this stage, we would like to refer to Exh.58 i.e. the Serological Test Report. As per the Serological test report Exh.58, the blood

stains of the Blood Group-B which was also the blood group of the deceased was found on the pant as well as on the shirt of the accused. This piece of evidence further corroborates the oral version of the injured eye-witness PW11 Kalpanaben.

vii) The prosecution has also examined PW6 Kanchanben Babubhai Exh.29. Kanchanben is one of the panch witnesses of the panchnama of recovery of clothes of the injured eye-witness Kalpanaben. In her evidence PW6 Kanchanben has deposed that she knew the entire family of Kalpanaben including her husband, the accused. On 25th September 2006 Kanchanben had gone to the house of PW11 Kalpanaben. This witness saw that Kalpanaben had sustained injuries on both her hands and they were covered with a bandage. She has further deposed that at that time Kalpanaben told her that her husband, the accused, had committed murder of his brother, the deceased. This witness has also deposed that at that time Kalpanaben told her that when she tried to intervene, her husband, the accused, inflicted injuries on both her hands and thereafter, threw Kalpanaben down in a nearby well. It appears that PW6 Kanchanben, though is a panch witness, also happens to be sister-in-law of the accused. In her cross-examination, she deposed that it was true that the accused had consumed liquor and had also tried to make his son drink liquor. From the tenor of the cross-examination of this witness by the defence counsel, it is apparent that the defence tried to raise a plea that the accused was drunk and as he was in an intoxicated state of mind he had no idea as to what he was doing.

viii) We shall now look into the evidence of PW7 Rasikbhai Datania Exh.31 - the first informant and the unfortunate father of the deceased and the accused. PW7 Rasikbhai gave the First Information Report. In the First Information Report Exh.32, in clear terms he alleged that his son, the accused, had a doubt in his mind that his wife Kalpanaben had illicit relations with his brother, the deceased and therefore, both the brothers used to frequently quarrel with each other on this issue. PW7 Rasikbhai has also stated in his First Information Report that his daughter-in-law Kalpanaben came and informed him that her husband, the accused, had inflicted injuries on her hands and had also inflicted injuries on Rameshbhai, the deceased. However, during the course of trial PW7 Rasikbhai was declared as a hostile witness. In cross-examination, by the Public Prosecutor after being declared hostile, PW7 Rasikbhai has deposed that it was true that Kalpanaben had come to him and had informed him that her husband - the accused had inflicted injuries on her hands and had committed murder of Rameshbhai. He has also deposed that thereafter he went near the house of Ramesh and found that Ramesh, the deceased, was lying dead in a pool of blood. In his cross-examination, he denied the suggestion that as the wife of the accused Kalpanaben had illicit relations with his younger son, the deceased, the accused committed murder of the deceased. However, in the cross-examination PW7 Rasikbhai deposed that it was true that both the brothers were at daggers drawn because of his daughter-in-law Kalpanaben.

We may state that PW7 Rasikbhai Datania Exh.31 could be termed as a *res gestae* witness. This principle of *res gestae* is embodied in Section 6 of the Evidence Act.

6. Relevancy of facts forming part of same transaction.- Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and place.

In the case of *Sukhar Vs. State of Uttar Pradesh*, , Supreme Court noticed position of law with regard to Section 6 of the Evidence Act thus :

6. Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of *res gestae*, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus :

Under the present exception [to hearsay] an utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car-brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided, it is near enough in time to allow the assumption that the exciting influence continued.

7. Sarkar on Evidence (Fifteenth Edition) summarises the law relating to applicability of Section 6 of the Evidence Act thus :

1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous.

2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.

3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and bystanders. In conspiracy, riot, the declarations of all concerned in the common object are admissible.

4. Though admissible " to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters

stated.

The rule embodied in Section 6 is usually known as the rule of *res gestae*. What it means is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form particular statement as part of the same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence. Section 6 of the Evidence Act, in the facts and circumstances of the case, insofar as admissibility of a statement of PW11 Kalpanaben about informing her father-in-law PW7 Rasikbhai, immediately as regards the assault by the accused on the deceased which has been admitted by PW7 Rasikbhai Kanubhai in his evidence would be attracted with all its rigour.

ix) PW11 Kalpanaben Exh.39 in her oral evidence has also deposed that on the date of incident in the night hours her husband, the accused, dragged her and threw her down in a well. It appears that for this act on the part of the accused, charge-sheet was filed for the offence punishable u/s 307 of the Indian Penal Code, i.e. attempt to commit murder. However, on overall appreciation of evidence, the learned trial Judge thought fit to convict the accused for the offence punishable u/s 326 IPC. So far as this part of the oral evidence of PW11 is concerned, it is corroborated by the evidence of PW9 Baldevsing Gulabsing Exh.36. PW9 is also one of the persons residing in the neighbourhood of the family of Kalpanaben. PW9 in his evidence has deposed that he was sleeping in the night. In the morning when he woke up, his wife told him that a lady had fallen in a well and a murder had also taken place in the village. This witness PW9 called-up the police and on arrival of the police two persons from the locality were asked to get down in the well and accordingly PW11 Kalpanaben was pulled out of the well. In this regard, it appears from the Station Diary which has been produced on record at Exh.47 that a Janwajog Entry No. 58 of 2006 was also registered. This part of the case of the prosecution is further corroborated by the intimation provided by PW9 Baldevsing Exh.36 in writing to Talod Police Station. On 24th September 2006 at around 9.15 in the morning statement of Baldevsing was recorded at Exh.50 wherein it had been stated that the wife of the accused named Kalpanaben had fallen in a well and was pulled out with the help of other persons of the locality. In the meantime police arrived and took Kalpanaben for medical treatment to Talod Civil Dispensary.

14. On overall reappraisal of the oral as well as documentary evidence on record, we are convinced that the trial Court committed no error in relying upon the oral evidence of the injured eye-witness PW11 Kalpanaben in convicting the accused for the offence of murder. We find the evidence of PW11 Kalpanaben Exh.39 to be absolutely reliable, cogent and convincing. Evidence of PW11 Kalpanaben is fully corroborated by medial evidence on record as well as other pieces of circumstantial evidences. The most important aspect is that the PW11 Kalpanaben Exh.39 is an injured eye-witness. PW11 Kalpanaben had the courage

to depose against her own husband, the accused. The evidence of the injured witness Kalpanaben must be given due weightage being a stamp-witness; thus, her presence cannot be doubted. The statement of an injured witness is generally considered to be very reliable and it is unlikely that an injured witness would spare the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injury at the time and place of occurrence and this lends support to his/her testimony that he or she was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his or her evidence on the basis of major contradictions and discrepancies therein, as has been held by the Supreme Court in *Jarnail Singh and Others Vs. State of Punjab*, ; *Balraje @ Trimbak Vs. State of Maharashtra*, ; and *Abdul Sayeed Vs. State of Madhya Pradesh*, .

15. Prosecution has also proved the motive behind the commission of the crime beyond reasonable doubt. It appears from the evidence of the first informant PW7 Exh.31, the father of the accused, as well as the deceased, that both the brothers were at daggers drawn due to PW11 Kalpanaben. Though PW7 Rasikbhai Exh.31 was declared as a hostile witness, still in his cross-examination by the Public Prosecutor, PW7 Rasikbhai has admitted in no uncertain terms that due to Kalpanaben both the brothers were continuously fighting with each other. It may be that PW11 Kalpanaben was actually having an affair with her own brother-in-law i.e. the deceased or it could also be possible that the accused, on mere suspicion, was entertaining doubts as regards fidelity of his wife PW11 Kalpanaben. However, the fact remains that there was misunderstanding between the accused and his brother, the deceased.

16. The learned counsel for the accused appellant also made an endeavour to convince us by relying on the oral evidence of PW11 Kalpanaben Exh.39 as well as on the evidence of PW15 Niravsinh Pavansinh Exh.49, the Investigating Officer, that at the time of incident the accused was heavily drunk and was in an intoxicated state of mind. It appears that at the relevant point of time even the Investigating Officer felt that the accused was drunk and therefore, he was sent for medical examination to Talod Government Hospital. However, it appears from the certificate that the accused was medically examined on 24th September 2006 at around 7:50 hours in the evening and the doctor found the accused in a fit state of mind. If the accused had consumed liquor the previous night then by the time he would be examined after almost 18 hours then perhaps no symptoms would exist to come to the conclusion that the accused was in an intoxicated state of mind having consumed liquor. Besides, even if it is assumed for the sake of arguments that the accused was drunk, still the accused would not get the benefit of Section 85 of the Indian Penal Code. For the sake of convenience we may quote Section 85 of IPC.

85. Act of a person incapable of judgment by reason of intoxication caused

against his will.- Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

17. Section 85 IPC makes it very clear that nothing is an offence which is done by a person who, at the time of doing any act by reason of intoxication was incapable of knowing the nature of the act. However, the proviso makes the position very clear. It is only if the person was administered anything intoxicated without his knowledge or against his will, only then the accused would be able to take the plea of Section 85 of the Indian Penal Code.

18. It is not even the case of the accused that he was administered liquor forcefully or anything intoxicating without his knowledge.

19. In the above circumstances, in our view, the learned Sessions Judge was quite justified in concluding that the death of the victim was caused due to injuries inflicted by the accused with a sickle.

20. We agree with the learned Sessions Judge that the case of murder has been proved beyond reasonable doubt. We, thus, find that the Appeal is devoid of merit and deserves to be dismissed, and is consequently, dismissed. The impugned orders of conviction and sentence passed by the learned Sessions Judge are confirmed.