

**(2012) 11 GUJ CK 0042**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 1748 of 2006**

Thakore Narendrasinh Bavuji

APPELLANT

Vs

State of Gujarat

RESPONDENT

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

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313  
Evidence Act, 1872 — Section 106  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2013) CriLJ 1363 : (2013) 2 DMC 402

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

**Bench :** Division Bench

**Advocate :** Y.M. Thakore, for the Appellant; Krina Calla, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

## Judgement

J.B. Pardiwala, J.—This appeal is at the instance of an accused-convict for the offence punishable u/s 302 of the Indian Penal Code, and is directed against an order of conviction and sentence dated 24th August, 2006, passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Patan, in Sessions Case No. 4/2006. By the aforesaid order, the learned 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 and affine of Rs. 1,000/-. In default of payment of fine, the appellant was directed to undergo further simple imprisonment for 3 months. Case of the Prosecution:

The deceased Anjuben was the wife of the accused. On 4th October, 2005 at around 4 O'clock in the evening, the sister-in-law of the deceased, named Rita, received a phone call on the mobile of her brother-in-law, and was informed that Anjuben, the deceased, had died due to a poisonous bite of an animal. The sister-in-law of the deceased, named Rita, is the wife of the brother of the deceased. Ritaben immediately conveyed the message to her husband Arvindji. The brother

of the deceased, Arvindji, at the relevant point of time, was at the village Khali. On learning the demise of his sister, the deceased, the brother of the deceased Arvindji immediately came to his house and informed about the death of the deceased to his father, mother and the other family members. Thereafter, the entire family hired two jeeps and left for the village, Rampura i.e. at the matrimonial home of the deceased. They all reached at village Rampura at around 5 O'clock in the evening. Many people had gathered at the house of the deceased, and family members of the in-law's of the deceased were also sitting inside the house. The brother of the deceased saw the dead body of his sister, the deceased, which was laid on a quilt. The brother also noticed that blood was oozing from the mouth and nose of the deceased. The brother further noticed that there were abrasions on the throat and the mouth of the deceased. The brother found that the accused was not to be seen anywhere at the house. The brother of the deceased learnt through the people who had gathered that a quarrel had ensued between the accused and his wife, the deceased at their farm in the afternoon and the deceased had been murdered by her husband, the accused.

It is the case of the prosecution that first two years of the marriage were quite normal. But, thereafter, the marital relations of the accused with the deceased got strained as the accused started nurturing doubts as regards the character of the deceased. The second reason for the marital relations getting strained was that the deceased was unable to bear any child. On account of incessant harassment and torture, the deceased had to leave her matrimonial home and had returned to her parental home and stayed for around one year at her parental home. With a view to see that the relation between the accused and the wife gets normal, a compromise was arrived at between the parties and accordingly, the deceased was once again sent with the accused to her matrimonial home at village Rampura. Even thereafter, the deceased used to frequently visit the house of her parents and as and when the deceased used to come to her parents' house, she complained about incessant harassment at the hands of her husband, the accused.

2. The brother of the deceased, named, Arvindji lodged a First Information Report on 4th October, 2005 at around 22.15 hours at Chanasma Police Station for the incident in question. On the strength of the FIR which was lodged by the brother of the deceased for the offence of murder, the investigation had commenced. A detailed inquest panchnama of the dead body was drawn in the presence of the two panchas, being Exh. 30. The dead body of the deceased was sent along with A.S.I Muljibhai to Lanva Dispensary for the purpose of conducting post-mortem. A panel of three doctors had performed the postmortem of the body of the deceased and the post-mortem report revealed that there were as many as 18 contusions all over the body of the deceased. The cause of death, which was assigned by the panel of three Doctors, was asphyxia due to throttling. The panchnama of the scene of offence was also drawn in the presence of two panch witnesses, being Exhibits 28 and 29. Thereafter, the

Investigating Officer recorded statements of few persons residing in the vicinity of the house of the accused including the mother-in-law and sister-in-law of the deceased and such statements revealed that a quarrel had ensued between the accused and his wife, the deceased, in an agricultural field. The sister-in-law of the deceased, named Reshamben, pointed out the place where the agricultural field was situated, and a detailed panchnama of the agricultural field was also drawn in the presence of two panch witnesses. On 6th October, 2005, the accused was arrested, and the arrest Panchnama was, accordingly, drawn in the presence of two panch witnesses, being Exh. 27. On completion of the investigation, a charge-sheet was filed against the accused in the Court of the learned Judicial Magistrate, First Class, Chanasma for the offence of murder, punishable u/s 302 of the Indian Penal Code.

3. As the case was exclusively triable by the Sessions Court, the learned Judicial Magistrate First Class, Chanasma, committed the case to the Sessions Court u/s 209 of the Criminal Procedure Code. The Sessions Court framed charge against the accused, Exh. 6, and statement of the accused was recorded. The accused did not admit the charge and claimed to be tried.

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

5. The following pieces of documentary evidence were adduced the prosecution.

6. After completion of the oral as well as the 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. The defence of the accused put forward in the statement recorded u/s 313 of the Code was that he was innocent, and had not committed the murder of his wife, the deceased. According to the accused, he was informed by the wife of his brother, named, Reshamben that the deceased had been taken ill suddenly due to consumption of a pill and, therefore, according to the accused, the deceased was brought at the house and was taken in a rickshaw to the dispensary of one Dr. Maheshbhai in the evening. Dr. Maheshbhai, on examination of the deceased, declared that the deceased had passed away. According to the accused, the marital relations with his wife, the deceased were quite normal, but the overall health of the deceased was very poor and the deceased used to frequently fall sick.

7. At the conclusion of the trial, the learned Trial Judge convicted the accused for the offence u/s 302 of IPC and sentenced him as stated herein before.

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

9. Submissions on behalf of the accused-appellant:

Mr. Yogendra Thakore, the learned Advocate appearing for the accused-appellant vehemently submitted that the entire case hinges on the circumstantial evidence. According to Mr. Thakore, the circumstances which have been relied upon by the learned Trial Judge in holding the accused appellant guilty of the offence of

murder, could not be termed as incriminating circumstances pointing only towards the guilt of the accused. According to Mr. Thakore, the chain of circumstances could not be said to have been established.

10. Mr. Thakore also vehemently submitted that there is not an iota of evidence on record to even remotely suggest that the accused had any motive to commit the crime. In a case which is based on a circumstantial evidence, according to Mr. Thakore, the motive to commit the crime, is an important circumstance and in the absence of such motive being established by the prosecution, no conviction could be based. Mr. Thakore vehemently submitted that the Trial Court committed a serious error in relying on the letter alleged to have been written by the accused in his own handwriting, being Exh. 32, to come to the conclusion that the relations of the accused with his wife, the deceased, were highly strained and that the accused had doubts as regards the character of his wife, the deceased. Mr. Thakore, also submitted that if the prosecution wanted to rely on the letter, Exh. 32, then in that event it was the duty of the Investigating Officer to obtain the specimen handwriting of the accused, and should have forwarded the specimen handwritings and the letter, Exh. 32, to the handwriting Expert for his opinion. According to Mr. Thakore, in the absence of such a report of the handwriting expert, the Trial Court should not have come to the conclusion that the letter, Exh. 32, was written by the accused in his own handwriting, in which the accused had levelled serious allegations against the deceased as regards her character. According to Mr. Thakore, the investigation which was carried out in the present case, could be termed as a perfunctory investigation. Mr. Thakore also submitted that it was the accused who had informed the family members of the deceased about the death of the deceased. This conduct, according to Mr. Thakore, points towards the innocence of the accused. Mr. Thakore, therefore, urged that the order of conviction and sentence deserves to be set aside, and the accused be acquitted of the charge of murder.

Submissions on behalf of the State:

11. Mrs. Krina Calla, the learned Additional Public Prosecutor appearing for the State, vehemently submitted that the Trial Court has rightly found the accused guilty of the offence of murder of his wife, the deceased, and no interference is warranted in the present Appeal. Mrs. Calla submitted that the motive to commit the crime could be said to have been established by cogent evidence in the form of the letter written by the accused, being Exh. 32. According to Mrs. Calla, there is no merit in the contention of the defence that the Trial Court should not have relied upon the letter alleged to have been written by the accused, being Exh. 32, in the absence of the handwriting expert's opinion. According to Mrs. Calla, when the letter was being exhibited, no objection was raised by the defence at that stage. Therefore, the prosecution had reason to believe that there was no dispute as regards the author of the letter. According to Mrs. Calla, if the accused would have raised an objection in exhibiting the letter, then perhaps the prosecution would have thought fit even at that stage to seek the opinion of the

handwriting expert.

12. Mrs. Calla further submitted that the circumstances emerging from the evidence on record points only towards the guilt of the accused. According to Mrs. Calla, the defence of the accused that the deceased had consumed some medicine on account of which she fell sick, could be termed as a palpably false defence. According to Mrs. Calla, falsity of defence is an additional circumstance in the chain of circumstances pointing towards the guilt of the accused. Mrs. Calla also submitted that the defence has not been able to adduce any plausible explanation even on preponderance of probability as to how the deceased had sustained around 19 odd contusions all over her body. According to Mrs. Calla, the medical evidence on record would also suggest that the cause of death was due to throttling. Mrs. Calla also submitted that even assuming for the moment without admitting that the investigation carried out by the Investigating Officer was perfunctory, still only on such ground of perfunctory investigation, an accused is not entitled to acquittal. Mrs. Calla submitted that cogent reasons have been assigned by the Trial Court in convicting the accused for the offence of murder, and it could not be said that the Trial Court's view is unreasonable or based on mis-appreciation of evidence. Mrs. Calla, therefore, urged that there being no merit in the appeal, the same be dismissed.

13. Before we advert to the rival submissions of the parties, it will be profitable to look into the oral evidence on record.

14. The P.W. 1, Arvindji Ditaji Thakore, is the brother of the deceased. The P.W. 1, in his evidence, being Exh. 13, has deposed that the deceased was his younger sister. The deceased was married with the accused past around 4 years from the date of the incident. The P.W. 1, in his evidence, has deposed that on 4.10.2005, he was at his house at the village Khali. The wife of the P.W. 1, Arvindji, received a phone call on a mobile, wherein it was informed that the deceased had died due to a poisonous bite of an animal. The wife of the P.W. 1, immediately conveyed this message to the P.W. 1, and accordingly, the P.W. 1, informed about the death of the deceased to his parents and other family members. Thereafter, the P.W. 1, and his family members, reached village Rampura in two jeeps at around 5 O'clock in the evening. On reaching at the house of the accused, the P.W. 1 saw that many people had gathered and his sister, the deceased, was lying dead on a quilt. The P.W. 1, also noticed that the blood was oozing from the mouth and the nostrils of his sister, the deceased. The P.W. 1, also noticed that the blood which was oozing from the mouth and the nostrils was fresh. The P.W. 1, also noticed that there were abrasions on the throat and the mouth of the deceased. The P.W. 1 has deposed that he looked for his brother-in-law i.e. the accused, but the accused was not to be seen anywhere at the house. The P.W. 1, has further deposed that he learnt through the people who had gathered that the accused had a quarrel with his wife in the afternoon at the agricultural farm and the accused had murdered his wife, the deceased, keeping doubts as regards the character of the deceased. The P.W. 1 has also

deposed that the marital life of his sister with the accused was normal for the first two years of marriage. Thereafter, the accused started nurturing doubts as regards the character of his wife, the deceased, and for that reason, the accused used to frequently beat his wife, the deceased. On account of incessant harassment, the sister of the P.W. 1, i.e. the deceased, had once left her matrimonial home and had returned to her parental home, where the deceased stayed for around one year. The P.W. 1 has deposed that thereafter, a compromise was arrived at and the deceased was persuaded to go back to her matrimonial home along with her husband, the accused, and accordingly, the deceased had returned to her matrimonial home. The P.W. 1, has been extensively cross-examined by the defence, but nothing substantial could be elicited through the cross-examination of this witness so as to render the version of the P.W. 1, doubtful or improbable in any manner.

15. The P.W. 2, Dr. Navinchandra Joitaram Parikh, is the Doctor who had performed the post-mortem of the dead body of the deceased. The P.W. 2, Dr. Parikh, in his evidence, being Exh. 17, has deposed that during the course of the post-mortem examination the following injuries were noticed:

1. Red contusion mark C, abrasion on right side nose around 2.5 c.m. x 0.5 c.m. x superficial skin
- (2) Red contusion mark C, abrasion on left side middle parts of cheek around 0.5 c.m. x 0.25 c.m. x superficial skin, on transverse line.
- (3) Contusion mark C, abrasion injury just laterals to No. 2 inner on oblique line around 0.5 c.m. x 0.25 c.m. x superficial skin.
- (4) Contusion mark C, abrasion on laterals to left corner of eye on transverse line around 0.5 c.m. x 0.5 c.m.
- (5) Contusion mark C, abrasion below eye lids left side around 0.5 c.m. x 0.25 c.m.;
- (6) Red contusion mark C, abrasion around 1 c.m. x 0.25 c.m. x vertical line just 1 c.m. below left ear;
- (7) Red contusion mark C, abrasion on 1 c.m. x 0.35 c.m. over left mandible joint;
- (8) Red contusion mark C, abrasion 0.5 c.m. x 0.35 c.m. vertical line left side below No. 7 inner about 1 c.m.;
- 9) Red contusion C, abrasion - 1 c.m. x 0.25 c.m. laterals left side neck below No. 8;
- 10) Red contusion C, abrasion 1 c.m. x 0.25 c.m. x vertical line over exterior part of right side neck;
- 11) Contusion mark C, abrasion 1.5 c.m. x

0.25 c.m. x horizontal over just posterior No. 10 injury;

12) Contusion mark C, abrasion - 1.5 c.m. x 0.25 c.m. x anterior, just above No. 10 injury;

13) Red contusion mark C, abrasion 1 c.m. x 0.25 x transverse on lower parts just below scar No. 10 injury; (14) Red contusion C, abrasion 0.5 c.m. x 0.5 c.m. right side chest upper parts parallel to each other;

(16) Red contusion C, abrasion 1 c.m. x 0.5 c.m. vertical line + cut over left side infra scapula region;

(17) Contusion mark C, abrasion 0.5 c.m. x 0.5 c.m. just 2 c.m. below No. 16 injury;

(18) Red contusion C, abrasion 0.25 c.m. x 0.25 c.m. just 2 c.m lateral to No. 16 injury.

16. The P.W. 2 has further deposed that the face was swollen, the mouth was semi-open, the swollen tongue was inside the mouth between the teeth; both the eyes were semi-open, some reddish colour froth from both the nostrils was oozing; both the lungs were found congested and the whole chamber of the heart was found empty. The RW. 2 has further deposed that viscera was collected and was sent to the Forensic Science Laboratory to determine the exact cause of death. The RW. 2 has further deposed that on the receipt of the report of the FSL, the panel of Doctors including the RW. 2 reached to a conclusion that the cause of death was asphyxia due to throttling.

17. The P.W. 2 Dr. Navinchandra Parikh has also deposed that the abrasion and contusions are two different types of injuries. The reason for red nerves of blood surfacing on the body was due to the pressure on blood vessels in the lower tissues of the skin. The P.W. 2, Dr. Navinchandra, in his cross-examination, has deposed that he agreed with the definition of contusion as defined in the Book of Essential of Forensic Medicine and Toxicology, written by Dr. Rediff, 16th Edition. According to the P.W. 2, a petechial haemorrhage could be seen in all cases of suffocation. In the case of suffocation when hemorrhagic shocks develop, petechial haemorrhage is to be seen. The P.W. 2 has also deposed that in the cases of strangulation by hanging, ordinarily the hyoid bone would get fractured. In the case of throttling, an invert compressed fracture could be seen. In the present case, according to the P.W. 2, the fracture of hyoid bone was not to be seen. The P.W. 2 has also deposed that if the throat of any person is pressed by two hands, then finger marks could be found in large numbers. The P.W. 2 has also explained that there is a difference between the pressure mark and abrasions. All abrasions may not be the pressure marks, and all pressure marks may not be the abrasions. The P.W. 2 Dr. Navinchandra has also deposed that in medical terminology, throttling and manual strangulation are two different things. In the case of throttling, the injury is sustained on the bones of cartilage. According to the P.W. 2, in the present case there was no fracture of any

cartilage. In the case of throttling, the victim may make efforts to get released from the clutches of the person trying to throttle, and under such circumstances, the person trying to throttle, may also sustain injury, and for that purpose the medical examination of the accused would also be necessary in a given case. The P.W. 2, in his cross-examination, has further deposed that considering the injuries which were sustained by the deceased, there was all possibility of getting skin fiber and blood skin from the nails of the accused. The injuries were found in equal proportion on the front part of the throat of the deceased. The P.W. 2, Dr. Navinchandra, denied the suggestion that if any person falls on a standing cut crop of Bajara, and if the throat portion comes in contact with such crop of Bajara, then the injuries mentioned in the Post-mortem note could be caused. The P.W. 2 also denied the suggestion that if any person consumes medicine in large quantity, and due to such consumption if falls down in a field of Bajara, then the injuries as noted in the post-mortem report could be sustained. The P.W. 2 Dr. Navinchandra also denied the suggestion that the cause of death which has been assigned, was without any basis or any foundation, and that cause of death was tentative.

18. The P.W. 3, Nandaben Jitaji, is the mother of the deceased. The P.W. 3, in her evidence, has deposed that the deceased was her daughter. The P.W. 3 has deposed that her daughter, the deceased was married with the accused at village Rampura, Ta: Chanasma. The first two years from the date of marriage were quite normal, but thereafter, the accused started harassing her daughter, the deceased, by leveling false allegations as regards the character of the deceased. The P.W. 3 has deposed that once her daughter, the deceased, due to incessant harassment, had left her matrimonial home and had come down at her house; when the deceased was at the house of the P.W. 3 for around one year. During that period, the accused had sent a note through the younger brother of the P.W. 3, Nandaben's husband. The said note was handed over by the P.W. 3 before the police during the course of investigation. The said note said to have been written by the accused was shown to the P.W. 3, Nandaben, and Nandaben identified the note to be the same which was handed over to the police during the course of investigation. However, when time came to exhibit the note, an objection was raised by the defence counsel in that regard and therefore, the note was not exhibited. The other part of the evidence of the P.W. 3 Nandaben is on the same line as that of her son, the P.W. 1, the brother of the deceased.

19. The P.W. 4, Gitaben Arvindbhai, is the wife of the P.W. 1, the complainant. The P.W. 4, Gitaben, in her evidence has deposed that on 4th October, 2005, she received phone calls on the mobile of her husband's younger brother from village Rampura. It was conveyed to the P.W. 4, Gitaben, that Anjuben, the deceased, had died due to a bite of a poisonous animal. The P.W. 4, Gitaben immediately conveyed this information to her husband, i.e. the P.W. 1, and thereafter, the entire family left for village Rampura. The evidence of the P.W. 4, Gitaben, is almost on the same footing with that of P.W. 1, and the P.W. 3.

20. The P.W. 5, Sartanji Diluji, is one of the panch witnesses of the arrest Panchnama of the accused. The P.W. 5, Sartanji failed to support the case of the prosecution, and was accordingly, declared as hostile witness. The evidence of P.W. 5 is of no significance.

21. The P.W. 6, Rameshji Hariji, is the witness to whom the Note, Exh. 32, written by the accused, was handed over for being delivered to the deceased, when the deceased was at her parental home. The P.W. 6 Rameshji, in his evidence has deposed that he was carrying on business of selling fruit in a lorry at village Khali. He has further deposed that he belonged to village Rampur and the accused also hailed from village Rampura. The P.W. 6 has deposed that he knew the accused very well. The P.W. 6 has also deposed that the first two years of the marital life of the accused and the deceased were quite normal, but thereafter, the relations got strained. Due to quarrel between the accused and the deceased, the deceased had returned to her parental home at village Khali. The P.W. 6 has deposed that in the year 2002, when he was standing at the cross-road with the lorry of fruits at village Khali, at that point of time, the accused had come and had handed over a letter, requesting the P.W. 6 to deliver it to the deceased. The P.W. 6 identified the letter to be the same letter which was handed over by the accused to be delivered to his wife, the deceased. The letter was exhibited and marked as Exh. 32, in the evidence of the P.W. 6.

22. The P.W. 6, in his cross-examination, has deposed that the letter which was handed over by the accused was an open letter and was also folded. The P.W. 6 had not opened and read the contents of the said letter. The name of Anjuben, the deceased was not written on the said letter. In fact no-body's name was written on the said letter. The P.W. 6 has also deposed that the letter was not handed over to the mother of the deceased, and he had no talks in that regard with the mother of the deceased. The P.W. 6, in his cross-examination, admitted that it was true that he had not stated before the Police about the letter being handed over by the accused to be delivered to his wife, the deceased. The P.W. 6 has deposed that he had seen the accused writing before about 2 to 3 years. He denied the suggestion that he was giving false evidence as regards the accused handing over a note to him, to be delivered to his wife, the deceased.

23. The P.W. 7, Gabhaji Galbaji, is one of the panch witnesses of the arrest Panchnama of the accused. The P.W. 7, Gabhaji, failed to support the case of the prosecution, and was accordingly, declared as a witness hostile. The evidence of P.W. 7 is of no significance.

24. The P.W. 8, Balwantsinh Chauhan, is the Investigating Officer. The P.W. 8, Balwantsinh, in his evidence, being Exh. 34, has explained the manner in which the investigation was carried out. The P.W. 8, Balwantsinh was extensively cross-examined, but nothing substantial could be elicited through the cross-examination of the P.W. 8, the Investigating Officer, so as to render the prosecution case in any manner doubtful or improbable.

25. The P.W. 9, Vijaykumar Manharlal Jani, is the second Investigating Officer. The P.W. 9, Vijaykumar, in his evidence, being Exh. 35, has deposed that he had taken over the investigation of the case from Shri Chauhan. He has deposed that he had recorded statements of the concerned witnesses and had arrested the accused. The P.W. 9 has further deposed on the Note, Exh. 32, being shown that the same was produced by Nandaben, the mother of the deceased, and was collected during the course of the investigation. The P.W. 9, in his cross-examination, has deposed that the specimen handwriting of the accused, were not obtained and, therefore, the note, Exh. 32, was not sent for the opinion of the handwriting expert. He denied the suggestion that the note, Exh. 32, was not sent for handwriting expert's opinion, as the note was a fabricated piece of evidence.

26. The picture that emerges from a cumulative reading and assessment of the material available on record is thus:

The accused was married to the deceased and during the wedlock, the deceased was unable to bear any child. It also appears that the initial two years of the marriage were quite normal. But thereafter, the marital relations of the accused with the deceased got strained, as the accused had doubts as regards the character of the deceased. This fact is very much evident from the contents of the Note, Exh. 32, which was written by the accused in the year 2002, and was delivered to the deceased through the P.W. 6 Rameshji. The first question that arises for our consideration in this appeal is as to whether any evidentiary value could be attached to the Note, Exh. 32, in question. We have perused the contents of the Note and the contents of the Note bears eloquent testimony to the fact that the accused had doubts as regards the character of his wife, the deceased. The language, which the accused has used in the letter, Exh. 32 reflects the measure of hatredness, which he had developed for his wife, the deceased. The accused had gone to the extent of labelling and portraying his wife, the deceased, as a prostitute. The accused has also stated in so many words as to how his wife, the deceased, had ruined his life. We are not impressed by the submission of Mr. Thakore that the Trial Court should have discarded the Note, Exh. 32, and thereby should have eschewed the said Note from its consideration. The only reason why Mr. Thakore wants us to eschew the Note from consideration is that the Investigating Officer had failed to obtain the specimen handwriting of the accused so as to compare them with the handwritings of the Note, by sending the Note for the opinion of the handwriting expert. Mr. Thakore has also vehemently submitted that the Note should not have been exhibited by the Trial Court in the absence of such report of the handwriting expert. We are not prepared to accept the submission of Mr. Thakore. The Note was exhibited through the evidence of the P.W. 6, Rameshji Hariji. No objection was raised by the defence at the point of time when the trial court exhibited the Note. Having not raised any objection at the relevant point of time, and having permitted the Note to be exhibited, the defence now cannot turn around and say that the Court should have discarded the Note, in the

absence of any opinion of the handwriting expert.

27. The whole submission of Mr. Thakore is based on "the mode of proof" rather than "the admissibility of a document". Ordinarily, an objection to the admissibility of the evidence should be taken when it is tendered, and not subsequently, as held by the Supreme Court in the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, . The Supreme Court has explained the proposition of law by observing that the objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

28. We are also not impressed by the submission of Mr. Thakore that the Note, Exh. 32, is a fabricated piece of evidence and could be said to have been created only for the purpose of falsely implicating the accused in the crime. We do not find anything unusual, if a mother of a married daughter preserves such a nasty Note written by the husband of the daughter, more particularly when the mother

is fully aware of the fact that the marital relation of her daughter with that of her husband, are strained. We have minutely gone through the contents of the note, and as observed earlier, the language employed in the said Note could be termed as very foul. The Note contains the minutest details of the marital life of the accused and the deceased. We have also noticed that few facts which have been stated in the Note could be within the exclusive knowledge of the accused himself, and nobody else. In such circumstances, for a period of three years if the mother of the deceased preserved the Note, then it could not be said that it is a circumstance which creates doubt in the mind of any person. There is one more reason as to why we are not inclined to accept the submission of Mr. Thakore, namely, that the Note Exh. 32 was handed over to the Investigating Officer immediately on recording of the First Information Report. It is not the case that after a long period of time from the date of the incident that the Note was produced before the Investigating Officer, and no such suggestion was put either to the Investigating Officer or to the mother of the deceased i.e. the P.W. 3, Nandaben.

29. In the present case, the accused has, in so many words admitted in his statement recorded u/s 313 of the Criminal Procedure Code, that on the date of the incident, he was in the company of his wife, the deceased. The accused, while trying to explain as to exactly what had transpired on the fateful day of the incident, has stated that on the date of the incident, he had gone to the agricultural field along with his wife, the deceased, and his brother's wife Reshamben was also there at the agricultural field. The accused had further stated that at that point of time, Reshamben informed the accused that the deceased had been suddenly taken ill and that the deceased had consumed some pills. Reshamben is also said to have told the accused that the deceased was rolling in the agricultural field. The accused had further stated that they all got frightened and immediately, called for a rickshaw and brought Anjuben, the deceased, at the house. Thereafter, family members of the accused were called and in the evening, the deceased was taken to the dispensary of one Dr. Maheshbhai. Dr. Maheshbhai, on examining the deceased, informed the accused that the deceased had passed away, and the deceased should be taken to a Government Hospital. It was also the case of the accused that on learning about the passing away of his wife, the deceased, everyone got frightened and before taking the deceased to any other place, the accused thought fit to inform the family members of the deceased. The question is what was the information conveyed to the family members of the deceased. Whoever conveyed the message on behalf of the accused to the family members of the deceased, had not conveyed that the deceased was suddenly taken ill and had passed away, but the message was that the deceased had been bitten by a poisonous animal. Why such a misleading information was conveyed to the family members of the deceased is also not explained by the accused, more particularly when the accused has asserted to show his conduct that he had immediately informed about the death of his wife, the deceased, to the family members of the

deceased.

30. The medical evidence on record suggests that the deceased was strangled to death. There were as many as nineteen odd contusions and abrasions all over the body. The post-mortem report reveals that the face of the deceased was swollen and the mouth was semi-open. The swollen tongue was inside the mouth between the teeth, suggestive of throttling by applying pressure on the throat of the deceased. Apart from the above, both the eyes of the deceased were semi-open and a reddish colour froth was found oozing from both the nostrils. These are all the symptoms of throttling. In the cases of throttling, ordinarily the chamber of the heart is also found empty and that is because of lack of oxygen. In column No. 20 of the post-mortem report, it has been specifically mentioned that there was petechial haemorrhage in the heart and the entire chamber of the heart was found empty.

31. At this stage, it will be profitable to quote below an extract from the Modi's Medical Jurisprudence and Toxicology, Twenty-second Edition, page 265, wherein the Appearances Due to Asphyxia have been elaborately stated.

(b) Appearances Due to Asphyxia:

The face is puffy and cyanosed, and marked with petechiae. The eyes are prominent and open. In some cases, they may be closed. The conjunctivae are congested and the pupils are dilated. Petechiae are seen in the eyelids and the conjunctivae. The lips are blue. Bloody foam escapes from the mouth and nostrils, and sometimes pure blood issues from the mouth, nose and ears, especially if great violence has been used. The tongue is often swollen, bruised, protruding and dark in colour, showing patches of extravasation and occasionally bitten by the teeth. There may be evidence of bruising at the back of the neck. The hands are usually clenched. The genital organs may be congested and there may be discharge of urine, faeces and seminal fluid.

32. There is no element of doubt in our mind that the deceased was throttled to death by the accused at the agricultural field and it is only after the deceased died that the whole drama was staged by concocting a story that the deceased had consumed some pills as a result of which the deceased was suddenly taken seriously ill and thereafter, passed away. We fail to understand that if the deceased was taken seriously ill in the morning at the agricultural field and if the accused had called for a rickshaw and had taken her to the house, then why she was taken at the dispensary of Dr. Maheshbhai in the evening. Even at the time when the deceased was taken to the dispensary of Dr. Maheshbhai, she was dead. The whole defence and the explanation put forward by the accused is not only misleading, but could be termed as a palpably false defence. The falsity of defence is an additional circumstance in the chain of circumstances. The doctor in so many words has denied the suggestion that if a person falls or rolls on a cut crop of Bajra, then under such circumstances, the injuries which were found on the body of the deceased, could be possible. It appears that the deceased had

sustained the contusions all over the body at the point of time when she might have resisted the act of throttling on the part of the accused.

33. It is no doubt true that the initial burden to establish the case against the accused would undoubtedly be upon the prosecution, but where an offence like murder is committed in secrecy at a place like an agricultural field, like in the present case, and when the accused himself has admitted to be in the company of the deceased all through out, then under such circumstances, the nature and amount of evidence to be led by the prosecution to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character on the shoulders of the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the accused as well as on the inmates of the house to give a cogent explanation as to how the crime was committed. In such circumstances, the accused cannot get away by simply keeping quiet and offering no explanation on the supposed premises that the burden to establish its case lies entirely upon the prosecution, and there is no duty upon the accused to offer any explanation.

34. The question then is, whether the cumulative effect of the guilt-pointing circumstances in the present case is such that the Court can conclude, not that the accused may be guilty, but that he must be guilty. In *Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra*, , the Supreme Court explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. For the foregoing reasons, we hold that there is no merit in this appeal and the same is, accordingly, dismissed. The order of conviction and sentence dated 24th August, 2006, passed by the learned Additional Sessions Judge, Fast Track Court No. 2, Patan, in Sessions Case No. 4 of 2006, is hereby confirmed.