
(1997) 08 BOM CK 0038

In the Bombay High Court

Case No : Confirmation Case No. 1 of 1997 with Criminal Appeal No. 623 of 1996

The State of Maharashtra

APPELLANT

Vs

Jahur Kamruddin Khatik

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235, 240, 313, 366

Evidence Act, 1872 — Section 3, 32, 45, 59, 8

Penal Code, 1860 (IPC) — Section 299, 300, 302, 304

Citation : (1998) 5 BomCR 93

Hon'ble Judges : R.G. Deshpande, J;A.D. Mane, J

Bench : Division Bench

Advocate : A.M. Kanade, P.P. and A.H. Kapadia, for the Appellant;

Judgement

R.G. Deshpande, J.—The present appeal filed by the accused Jahur Kamruddin Khatik, arises out of the judgment and order dated 29th November, 1996, of conviction and sentence passed against him by the 2nd Additional Sessions Judge, Dhule in Sessions Case No. 150/1995, whereby the accused is held guilty of an offence punishable u/s 302 of the Indian Penal Code, for committing the murder of his wife -Shehnazbi and father-in-law Suleman Sheikh Gamir Khatik, and is sentenced to death. The accused/appellant is also held guilty for offences punishable under sections 307, 324, 452 and 498-A of the Indian Penal Code. However in view of the death sentence awarded against the first charge u/s 302, no separate order of conviction and sentence is passed by the learned 2nd Additional Sessions Judge, Dhule.

2. Since the accused is sentenced to death, the learned 2nd Additional Sessions Judge, Dhule has referred the matter for confirmation to this Court u/s 366 of the Criminal Procedure Code. Both these matters are heard together and are being disposed of by this common judgment.

3. The facts of the case as alleged by the prosecution, are as under :-

On 12th of July, 1995, in between 11.45 a.m. and 12.00 noon, in Khatikwadi of Devpur area of Dhule, the accused committed murder of his wife Shehnazbi and father-in-law Sk. Suleman Gamir Khatik. Shehnazbi died on the spot while her father Sk. Suleman succumbed to the injuries on the next day at about 4.00 a.m. in Civil Hospital, Dhule. It is the prosecution case that in the same incident, the accused/ appellant caused grievous injuries to one Chootu @ Kamruddin Suleman Khatik; Salma d/o Suleman Khatik; Sabirabi Sk. Munaf and Chandrakant Mahadu Bagul. The accused/appellant also in the same course of incident, caused injuries to Sk. Aminabi Khatik. P.W. 1 A.S.I. Dayaram Ragho Mahajan who was, then, attached to Devpur Police Station and on duty at the relevant point of time, came to know from one Hafix Khatik, a butcher, who had gone to the police station, that one Jahur Khatik, i.e., the appellant, committed the murder of his wife Shehnazbi and injured Shehnazbi's father Sk. Suleman. P.W. 1 A.S.I. Mahajan, therefore, along with the Assistant Police Inspector Shinde and other staff, went to the spot i.e. a Country Liquor Shop of one Chandrakant Bagul situated in Khatikwadi, Devpur and saw that the dead body of Shehnazbi was lying there. In the meantime, A.P.I. Shinde (P.W. 12) informed P.W. 1 Mahajan that Sk. Suleman Khatik was taken to Civil Hospital, Dhule and P.W. 1 Mahajan, should go to the Hospital to record the statement of Sk. Suleman. P.W. 1 Mahajan, therefore, went to the Hospital and met the Medical Officer on duty and contacted Sk. Suleman. The Medical Officer examined the patient-Suleman and made certain enquiries from him. Thereupon, the Medical Officer informed P.W.1 that the patient Suleman was in a position to give his statement and, therefore, P.W. 1 Mahajan recorded the statement of Sk. Suleman, which is at Exh. 55. It is this statement which is stated as a complaint and F.I.R. on the basis of which the investigation was started.

4. Sk. Suleman Khatik was aged about 65 years at that time. It is the case in Exh. 55 as narrated by Sk. Suleman that Sk. Suleman resided at Khatikwadi in Devpur area of Dhule along with his wife Shakinabi, daughter Salma, aged 22 years; son Sk.Sharief and his wife and daughter Shehnazbi, w/o Jahur Khatik, the present appellant. Suleman stated that his other three sons, namely, Sk. Shamsuddin, Chhotu @ Kamruddin and Salim Sk. resided separately. Deceased-Shehnazbi, the daughter of Suleman was married to the present appellant/ accused Jahur at Shahada; that marriage had taken place about two and a half year prior to the incident. It is the case of Sk. Suleman through his complaint (Exh. 55) that on Monday, the 10th of July, 1995, in the morning at about 8.00 a.m., his daughter Shehnazbi had gone from Shahada to her father's house at Dhule. The complainant-Suleman questioned her as to why she had gone there; whereupon she replied that her husband was demanding Rs. 10,000/- However she had told her husband that her parents were poor and where from they could have paid the amount. Suleman states that her husband beat her with the hands and threatened her to give divorce, if the demand was not fulfilled. He threatened her that she would be murdered. It is the case of Sk. Suleman that it was because of this she had gone to Dhule and was staying with her parents.

5. In the Complaint (Exh. 55), it is further the case that on 11th of July, 1995, at about 6.00 p.m. in the evening the father of the accused, i.e. the father-in-law of Shehnazbi, Shri Kamruddin Jumma and cousin of Kamruddin, namely, Shamsuddin Jumma and other 7 or 8 persons had gone to the house of Suleman and requested Suleman to send his daughter Shehnazbi along with them. However the Panch Committee members who had gathered, namely, Bashir Master, Shamsu Hazi and Usman Vazir told Kamruddin and Shamsuddin that he would not send Shehnazbi with them, but she would be sent after about ten days and that too they should come to fetch her along with husband of Shehnazbi, namely, Jahur, the present appellant. According to the complainant, thereafter, those people went back to Shahada from where they had come.

6. Sk. Suleman, further, narrates the story in his complaint that on 12th July, 1995, while Suleman, his wife Shakinabi, daughter Shehnazbi and another daughter Salima, were present in their house, it was at about 11.45 a.m., his son-in-law Jahur, the present appellant/accused came to his house and asked them to send his wife right that time along with him. In response to this demand of Jahur, Suleman and other members in his family told the accused that they would not send Shehnazbi right then and asked the accused to come along with his parents and Panchas and only thereafter Shehnazbi would be sent. It is alleged by Sk. Suleman in his Complaint that in view of this reply of the complainant, the accused-Jahur got annoyed and he took out an iron chopper (surf) which, according to the complainant Suleman, had kept it near his left calf and rushed on the person of Shehnazbi to assault her. Seeing this, it is the case of Sk. Suleman that he and his daughter attempted to resist the accused and, therefore, the accused Jahur, assaulted with the same chopper on the left hand of Sk. Suleman. He also assaulted on the ribs of Suleman by giving 2/3 blows and also assaulted Salma, the other daughter of Suleman on her right hand, it is the case in the Complaint (Exh. 55) that Shehnazbi, the wife of the accused apprehending danger from the accused, went running out of the house. The appellant/accused followed her to chase her. Having seen that the accused was running after Shehnazbi, Suleman also started running. According to Suleman, on the way, he met his son Chhotu @ Kamruddin (P.W. 5) to whom Suleman apprised of the happening and the incident. It is further his case that complainant-Suleman and his son Chhotu also went running behind Jahur. While running, Shehnazbi went to the house of Sk. Sharief, who happened to be the nephew of Sk. Suleman. In the house of Sk. Sharief the accused assaulted Sabirabi Sk-Munaf and Aminabi Katik with the said chopper. To save herself Shehnazbi went running towards the nearby country liquor shop. However, according to the complainant, the accused followed her; he chased her in that country liquor shop and assaulted her in rapid succession by that chopper and murdered her on the spot. It is this Exh. 55 which has been treated as First Information Report (F.I.R.) from where it is further seen that in an attempt to catch hold the accused, Chhotu @ Kamruddin, was also injured on his head by the accused, whereafter the accused ran away towards the river. According to the

complainant, Shehnazbi lay dead on the spot in the country liquor shop, whereas Suleman was taken to the hospital.

7. After recording the Complaint (Exh. 55) P.W. 1 Mahajan, went back to Devpur Police Station and handed over the complaint to Thane Amaldar, P.W. 1 A.S.I. Sonar, who registered a crime vide Cr. No. 122/95 for an offences punishable under sections 302, 307, 326, 324, 506 and 552 of the Indian Penal Code, vide Station Diary Entry No. 23. This entry was taken at about 13.30 hours on 12th of July 1995. Thereafter, it is clear from the record that the investigation was taken over by P.W. 12 A.P.I. Shinde.

8. P.W. 12 A.P.I. Shinde, on 12th of July, 1995, went to the spot of incident i.e. Country Liquor Shop in Khatikwadi, Devpur, Dhule. He conducted the Inquest Panchnama in the presence of the Panchas vide Exh. 13. The Investigating Officer (P. W. 12) referred the dead body of Shehnazbi to Civil Hospital, Dhule for post-mortem. He recorded necessary panchanama of the scheme of offence in presence of panchas vide Exh. 12. The Investigating Officer collected the sample of blood from the pool of blood lying on the spot which he did with the help of cotton swab. He also attached one Odhni of purple colour, which was stained with blood. He also collected the hairs of the head of the deceased which were stained with blood, the pieces of red colour bangles, stained with blood and also the blood that was sprinkled on the ground by carving the same out. He also found rubber slipper pair stained with blood and the entry was also made of the same in the panchnama.

9. The Investigating Officer recorded the statement of five persons, that is the injured persons who happened to be the witnesses. This was done in the Civil Hospital, Dhule itself. The Investigating Officer further prepared Arrest Panchnama of the accused as also the panchnama of the clothes of the accused which was also included in the Case Diary Papers. Necessary Panchnama was also made as regards the articles which were found on the dead body of Shehnazbi, which was recorded by Head Constable-Upadhye. Same were attached along with the wearing clothes of the injured witnesses as the same were smeared with blood. The Seizure Panchnama(Exh. 22) was prepared in this respect. The Investigating Officer thereafter gave a letter of request (Exh. 33) to the Executive Magistrate, Dhule for recording the dying declaration of patient Suleman Gamir and also of Sabirabi Abdul Khalique and Aminabi Abdul Khalique.

10. It is the case of the prosecution that on the next day, early in the morning at about 4.00 a.m. Suleman expired in the Hospital. It was on 13th of July, 1995, on receiving this information, A.P.I. Shinde (P.W. 12) went to Civil Hospital and prepared Inquest Panchnama of the dead body of Suleman (Exh. 15). The dead body of Suleman was referred for autopsy and the Medical Officer was requested to issue provisional post-mortem note.

11. The Investigating Officer thereafter interrogated the accused /appellant about his stay on 10th and 11th of July, 1995 and it was revealed through that

statement that on these two dates, the accused had stayed in Kirti lodge at Dhule. The Investigating Officer, therefore, went to Kirti lodge and verified the Register and attached the same in the presence of Panchas vide Panchnama (Exh. 58). In the police station the accused was asked to put on the slippers which were found on the spot in the Country liquor shop which according to the prosecution, revealed that the said rubber slipper suited to the feet of the accused and necessary Panchnama to that effect vide Exh. 23 was prepared by the Investigating Officer. Thereafter, again, the Investigating Officer recorded the statement of other five witnesses. The Investigating Officer thereafter on 14th July, 1995, referred the accused to Civil Hospital, Dhule with a request to collect the sample of blood and nail clipping of the accused. This was vide letter Exh. 40. He interrogated the accused about the weapon and the accused expressed his willingness to give memorandum statement while he was in police custody. This memorandum statement is at Exh. 59 in pursuance of which accused-Jahur led the team of the police and the Panchas to the Panjara river. The accused discovered the Sun i.e. the chopper from the dried river-bed. The said chopper was stained with blood, though in a dried condition. The Investigating Officer noticed that the front pointed portion of the said weapon was broken. The said Suri i.e. chopper was attached vide Exh.60. The said article was seated in usual manner, as per the prosecution. All the muddemal articles which were seized including the chopper, were duly registered and deposited in the police station with due receipts therefore.

12. The prosecution alleges that on 15th of July, 1995, the Investigating Officer recorded the statements of three witnesses and on 16th of July 1995 of two more witnesses. In the meantime, the post-mortem notes of both the deceased were received on 19th July, 1995. On 20th July, 1997, the Tahsildar, Dhule was requested to draw a map of the Scene of offence. This was vide Exh. 74. The Map (Exh.26) was prepared which was received by the Investigating Officer. The Investigating Officer also received the Injury Certificates of the injured persons on 3rd of August, 1995. Necessary report from Chemical Analyser in respect of all the articles was also obtained. Thus, after completion of the investigation P.W. 12 Shinde sent a charge-sheet in the Court of judicial Magistrate, first class, Dhule on 9th October, 1995. Since the matter happened to be triable only by the Sessions Court, the same was committed to the Sessions Court. The Sessions Court framed the charges against the accused vide Exh. 9 on 4th July, 1996. As many as six charges are framed against the accused who denied the charges and pleaded not guilty. It is, thus, on the basis of this investigation, the accused was tried in the Sessions Court on the charges framed against him. The case was registered as Sessions Case No. 150/95 which is dealt with the 2nd Additional Sessions Judge, Dhule.

13. In support of its case, the prosecution examined in all fourteen witnesses. Before referring to the evidence on the record as deposed by each one of the witnesses examined, it would be necessary for us to mention at this stage that most of the documents that is, exhibits to which a reference is made in this

judgment, are admitted by the accused including that of the medical reports in case of each and every injured, as also the post-mortem reports in the case of both the deceased persons, namely, Shehnazbi and Suleman. The investigation is also accepted in toto, and thus, scope of inquiry in the trial has been substantially contracted as there is no dispute about any of the step and stage in the investigation.

14. Out of the above said 14 witnesses, we would prefer to refer to those witnesses who have talked about three different incidents. So far as regards the first incident which occurred in the house of Suleman is concerned, we have got the evidence of Salma, the daughter of Suleman, who is examined as P.W. 2 at Exh. 56. She is a lady who is a witness for the subsequent two incidents, i.e., in the house of Aminabi and also in the Country Liquor shop. The second evidence will be that of P.W. 8 Sanjay Kadu Patil, who is examined at Exh. 67. Salma (P.W. 2) is the sister of deceased Shehnazbi as well as the daughter of sk. Suleman. Salma deposes that her sister Shehnazbi was married to Jahur, the accused at Shahada about 4 to 5 years before. She says that out of this wedlock between her sister and brother-in-law, her sister had a son named Manzoor who was about two and a half years then. Salma mentions that on 10th of July, 1995 her sister-Shahnazbi had gone to their house at Dhule at about 8 a.m. in the morning with son Manzoor. Her father questioned Shehnazbi as to how she had gone alone to Dhulia. Shehnazbi told to her father in the presence of this witness Salma, that her husband had asked her to bring an amount of Rs. 10,000/- and in case of her failure, Jahur would give divorce to her or else Jahur would murder her. Shehnazbi further deposes that Shehnazbi had told to her husband, as narrated by Shehnazbi that she had informed her husband as to how was it possible for her to bring Rs. 10,000/- from her parents when they were poor. Shehnazbi thereafter deposes to the incident of 11th July, 1995. She says that in the evening of 11th July, 1995, father in law of Shehnazbi with his cousin, had gone to their house at Dhule to take back Shehnazbi where on Suleman had told them that Suleman would call a meeting of Panchas of the community and the matter would be decided in that meeting. As regards taking back Shehnazbi, according to Salma, thereafter there was a meeting at the house of the uncle of Salma; of the community people in which the father of Salma i.e. Suleman and father-in-law and cousin of father-in-law of Shehnazbi were present. However, according to her, Shehnazbi was not sent with them and those people went back to their village Shahada. Salma further deposes that on the next day, i.e. on 12th of July, 1995 at about 9.00 a.m. in the morning, Salma, her mother Shakila and sister Shehnazbi were present in the house, Salma was busy in cooking food. Shehnazbi and their mother Shakila were sitting on the cot. According to Salma, at that time, the accused Jahur the husband of Shehnazbi, came there. The accused asked the mother of Shehnazbi to send Shehnazbi along with him to Shahada. Thereafter, the accused asked his mother-in-law i.e. Shakila to send Munni i.e. Salma to call for her brother Shamsuddin, who was residing separately in the same lane, near the house of Suleman. Jahur left the house informing that

he would go there after some time. Sometime thereafter, Suleman returned home and he was apprised of the happening and of coming of Jahur i.e. the accused/appellant. Salma says that it was because of that Suleman stayed at home itself thereafter on that day. According to Salma (P.W. 2), it was at about 12.00 noon, accused-Jahur again, returned to their house. At that time, Salma herself, her mother Shakila, father Suleman and sister Shehnazbi were present in the house. P.W. 2 further states that accused Jahur asked her father to send Shehnazbi along with him. Thereupon her father told Jahur that he would not send Shehnazbi with him but asked Jahur to come along with his parents and other 5/6 persons of the community and only thereafter Shehnazbi would be sent with him. Salma says that due to this refusal, the accused/ appellant Jahur abruptly got annoyed and he took out the chopper (butcher's knife) which was kept concealed by him in his left leg near the calf. He immediately rushed on the person of Shehnazbi to assault her. On seeing this, according to Salma, Salma herself, her father Suleman and mother Shakita intervened to save Shehnazbi from the assault. She says that accused assaulted with that chopper and gave 2/3 blows on the right side rib portion of father Suleman. Taking advantage of the situation, according to her, Shehnazbi went running to the house of Aminabi i.e. aunt of Shehnazbi and Salma. Aminabi is the paternal aunt of these girls. Having seen Shehnazbi running, Jahur followed her and, therefore, Salma also went running after them. Shehnazbi entered into the house of Aminabi and requested Aminabi to save her. There at that place, aunt Aminabi and cousin Shabirabi of Salma intervened to save Shehnazbi. However, according to Salma, at that time, accused Jahur also assaulted on both of them by the chopper. Shehnazbi tried to take advantage of the situation for getting herself escaped and she, therefore, started running towards the country liquor shop. According to Salma, Jahur also followed her and chased her. Salma says that she also followed them. According to Salma, Shehnazbi entered into the Country Liquor Shop. Accused Jahur caught hold of her in the country liquor shop and dealt 2/3 chopper blows on the head, chest and stomach portion of Shehnazbi. According to Salma, the shop owner Chandrakant Bagul (P.W. 4) tried to intervene and wanted the accused to desist from assault on Shehnazbi. However the accused assaulted with the chopper to Chandrakant Bagul also. Salma says that she also had gone to intervene there to save her sister. However the accused assaulted on her also with the same chopper on her right forearm on the anterior aspect where she sustained injury. After having assaulted Shehnazbi Bagul and Salma, the accused run way through the back door of the country liquor shop. She says that her sister Shehnazbi died on the spot itself, i.e. in the country liquor shop itself. She further says that all the injured persons were taken to Civil Hospital, Dhule by the persons in the locality. She says that her blood-stained clothes were attached by the Police vide Exh. 22. She identified her clothes. She also identified the clothes on the person of deceased Shehnazbi. Salma also identified the weapon Article 31. She further says that her father Suleman expired on 13th of July, 1995 in the morning in the hospital itself. No doubt, she also identified the accused sitting in the Court. Salma was cross-examined by the defence.

However but for some minor discrepancy, nothing more and material could be taken out by the defence. In short, Salma mostly stood to the cross-examination and her evidence could not be shaken even in slightest manner. However an important aspect which is stated in the cross-examination by Salma is that the profession of her father was that of a butcher and that also of the accused. She stated that her father used to use chopper for his professional work. She further states that one month prior to the incident, Shehnazbi had also gone from Dhule to Shahada to her house. She further says that even on previous occasion, Shehnazbi had been to Dhule for a period of 6 to 7 months. She says that her father at that time did not ask Shehnazbi to go to Shahada. She further says that on previous occasion Shehnazbi had gone to Shahada with her husband. She further says that accused was aware about the financial condition of her father. According to Salma as is deposed by her, when she saw Shehnazbi on 10th July, 1995, having come alone from Shahada, she thought that she had gone there as usual as Shehnazbi used to go to Dhule on many occasions. Salma for the first time says that it was on 10th of July, 1995, at about 5 to 5.30 p.m. accused-Jahur also had gone to their house at Dhule. However Salma says that she did not know if the accused Jahur had asked Shehnazbi as to how she had gone to Dhule without informing the accused. She further says that she did not know that if Shehnazbi had told the accused Jahur that she would go along with him to Shahada only if Jahur live separately from his other family members. Salma says that she did not know as to what happened when the father-in-law and the cousin of the father-in-law of Shehnazbi had gone to her place. She further says that when on 12th July, 1995, Jahur had gone to their house, at that time, her parents did not ask Jahur that how Shehnazbi would go along with him if he was demanding Rs. 10,000/-. According to Salma, at that time, Jahur took out the chopper from his left leg. She says that at that time she was standing at a distance of 2 to 3 feet from Shehnazbi. She has further stated that she knew that on the previous day i.e. on 11th July, 1995 in the evening, Shehnazbi had gone to the house of her girl-friend. Salma has mentioned in her cross-examination that she did not know if Jahur had said to Shehnazbi that Shehnazbi is not willing to go to Shahada because Shehnazbi had affairs with one person at Dhule. She further denies that she did not know if Shehnazbi had told the accused that she would not go to Shahada and that she would reside only at Dhule. She further says that she did not know if Shehnazbi had addressed Jahur as, "Iqqvj dk cPpk". She further says that she did not know that Shehnazbi had told Jahur that she would reside at Dhule only and would claim maintenance from him. She further says that it was not true to suggest that thereupon Jahur had asked Shehnazbi as to how she would claim maintenance from him unnecessarily. She further denies that Shehnazbi abused Jahur on his mother etc. She says that it was not true to suggest that due to abuses hurled by Shehnazbi and taking into consideration the background and her bad conduct, the accused/appellant got annoyed. She says that chopper (Article 31) was not from their house. She further tried to suggest that it was not true that Jahur never demanded Rs. 10,000/- from her parents. She says that she had no knowledge if Shehnazbi

had much affection for Dhule. She denied the suggestion that her sister Shehnazbi was having love-affair with some person in Dhule. From the above-said deposition of Salma (P.W. 2), it is seen that there was no suggestion that Salma did not see anything. Her presence on the spot appear to be absolutely normal and, no doubt, she happened to be an eye-witness to all the happenings narrated to, by her. But for the thing that most of the suggestions she has denied as regards the conduct and behaviour of her sister, Shehnazbi; as also as regards the abusive language used by Shehnazbi against Jahur. So far as regards causing injury to Suleman in the house as also to Shakila and to herself are concerned, we do not find any difficulty in accepting the version of this witness-Salma. There is nothing suggestive which has come on the record in the cross-examination to create any slightest doubt about the truthfulness of her deposition though there might have been certain discrepancies which are absolutely immaterial in the present case. For example, whether 7 to 8 persons had gone to their house along with father-in-law of Shehnazbi is not referred to by Salma. However her attempt appear to be to shield her sister Shehnazbi or to cover up the character of Shehnazbi, as regards her affair or as regards the language she used. Nothing material could be taken out from the mouth of Salma in her cross-examination so as to disbelieve her evidence or to shake the credibility of the same. Shri Kapadia, the learned Counsel appearing on behalf of the appellant/accused before us, tried to suggest that Salma has not deposed to the facts. He wanted to suggest that Salma was not at all witness to any of the happening particularly when she says that she was not at home when the father and uncle of Jahur had gone to the house of Suleman. Shri Kapadia, further, says that Salma was talking lie so far as regards taking out of the chopper by the accused which was tied to his leg. He, therefore, wanted us to give no credit whatsoever to the evidence of Salma. We find that Shri Kapadia wanted to suggest that Salma has referred to only 2/3 chopper blow on the head, chest and stomach of Shehnazbi. The question whether Salma happened to be an eye witness to the attack on Shehnazbi at the country liquor shop and her presence in the liquor shop is not even doubted by the defence nor is anything brought out on record in the cross-examination, to doubt her presence in the liquor shop. We, therefore, find it difficult to disbelieve this eye witness who herself happened to be an injured person in the incident. Merely because she happened to be the sister of Shehnazbi and interested in her. does not mean that her deposition has to be completely discarded on that count.

15. The second witness so far as regards assault in the house of Suleman is concerned is P.W. 8 Sanjay Kadu Patil, who is examined at Exh. 67. This witness is a resident of the same locality where Suleman resided. His house is in front of the house of Suleman and is alleged to be an eye witness to the incident of 12th of July, 1995, which happened in the house of Sk. Suleman. This witnesses, says that on the day of the incident, at about 11.45 to 12.00 noon, he was sitting in his house. According to him, a quarrel was going on in the house of Suleman. He, therefore, saw towards the house of Suleman. He saw Jahur, son-in-law of

Suleman was there. According to him after some time, alarm was raised by Shehnazbi as "Bachao, Bachao" and thereafter he saw Shehnazbi running away. He also saw Jahur running after her with Sura i.e. chopper in his hand. He further saw Shehnazbi's sister, namely Munni @ Salma also running after them. He says that he also started following them. He further states that Shehnazbi entered into the house of her cousin named Sharief. She entered in the house of Sharief. According to this witness, Jahur also went inside the house. He says that Jahur straightaway started assaulting Shehnazbi. However, Shabirabi and her mother came to save Shehnazbi. This witness further says that accused assaulted Shabirabi and her mother. He further says that he saw Shehnazbi running towards the country liquor shop and she entered the shop. Jahur followed her. This witness also went running towards the country liquor shop. There he saw Jahur assaulted Shehnazbi with the chopper on her back. This witness states that Chandu was sitting on the cash counter of the shop. He tried to intervene to save Shehnazbi. However, Chandu was also assaulted on his left hand by sura. Therefore, Chandu took himself aside. According to this witness, in the meantime, Salma, the younger sister also reached there and Jahur assaulted Salman also with the sura because of which Salma came out of the shop. According to this witness, Jahur ran away through back door of the country liquor shop. This witness tried to chase him. According to this witness, one Kailash Jagtap and some other persons also started running after the accused. This witness further says that near Jawahar Stadium, Chhotu, brother of Shehnazbi, tried to catch hold of accused. At that time, the accused also dealt blows of the chopper on the head of Chhotu. This witness says that the accused ran towards the river. According to this witness, accused was running from one side of the river whereas the people were running on the other bank of the river. According to this witness, some other persons also tried to obstruct the accused. The accused threw the sura in the shrubs. This witness thereafter says that the accused was caught hold by the people and took him to police station, Devpur, where he was handed over to the police by these people. Then this witness returned to the country liquor shop and found that Shehnazbi was dead. There is no material cross-examination of this witness. He appears to have been put only one question in the cross-examination as regards the omission in his police statement about throwing away of the sura by the accused in the shrubs. There appear to be certain discrepancies in the deposition of this P.W. 8, but since there is no specific cross-examination of this witness on any material point, we have no alternative than to accept the same as on material points he speaks in corroboration with the deposition of Salma. No doubt, this witness cannot be said to be eye-witness to what exactly happened in the house of Sk. Suleman because, according to him, he came out of his house when he saw Shehnazbi running. So far as regards that portion of happening in the house of Suleman is concerned, this witness cannot be said to be an eye-witness, however for rest of the incidents, he has to be accepted as an eye-witness and since there is no cross-examination whatsoever, the said deposition will have to be given its due weightage.

16. The third piece of evidence on the point of assault on Shehnazbi, Suleman, Salma and Shakila in the house of Suleman and as regards the happening in the house of Suleman, is the dying declaration (Exh. 66) which is recorded on 12th of July, 1995. In his dying declaration, Suleman stated that on 11th of July, 1995, his son-in-law, Jahur, the accused, had gone to his place at about 9.00 to 10.00 in the morning. Suleman told him that he should bring his father and, then, take back his wife with him. He further narrates that thereafter there was a meeting called in the house of brother of Suleman, wherein the people from their community were called. Amongst them were, Abbas Tailor, Bashir Master, Suleman Vazir, Kishan Vazir, Bashir Ibrahim and Samsoo Quazi. These people told Kamruddin, the father-in-law of Shehnazbi that they should wait for 8/10 days and after everything is settled down, they should take Shehnazbi back, after bringing Jahur. According to this statement, those people i.e. father of accused Jahur went back. Suleman in his dying declaration, further, states that on 12th of July, 1995 at 11.00/11.30 a.m., Jahur had gone to Suleman's house and he insisted on Shehnazbi to go with him. Suleman told, that as decided, Jahur should go to the place of Suleman along with his father and only thereafter she would go with Jahur. Suleman narrates that this engaged Jahur and he, therefore, attacked Shehnazbi with the chopper. He says that he tried to intervene in the matter but Jahur attacked Suleman also and hit him on his hand and also in his stomach. He says that thereafter he was admitted to Civil Hospital by the son of his brother-in-law. It would be necessary to make a specific reference at this stage to the fact that this statement i.e. dying declaration of Suleman is not challenged by the defence in any way. If we look the evidence of Salma, the complainant and the dying declaration of Suleman, we have to accept the story narrated therein by them to come to the conclusion that Jahur tried to attack first with the chopper on Shehnazbi and in that Suleman and Salma, sustained injuries. However, Shehnazbi escaped from that spot. Shri A.H. Kapadia, the learned Counsel appearing on behalf of the accused/ appellant faintly suggested that Shakila, the mother of Shehnazbi though was on the spot and could be said to be an eye-witness, is not examined by the prosecution and, therefore, an adverse inference be drawn in the matter against the prosecution. We are not ready to accept this argument of Shri Kapadia, particularly when Salma has clearly narrated the incident which finds corroboration from the complaint filed by Suleman and his dying declaration.

17. The second spot of occurrence is the house of Aminabi, i.e. the aunt of Shehnazbi. Shehnazbi ran towards the house of Aminabi to save herself from the attack of Jahur; Jahur followed her with a chopper in his hand. Shehnazbi entered the house of Aminabi. As regards the incident in the house of Aminabi, the prosecution examined Salma (P.W. 2), Sabirabi (P.W. 3) at Exh. 61, who is the daughter of Aminabi and cousin of Shehnazbi and Sanjay Kadu (P.W. 8). Salma, as regards this incident, stated that she followed Shehnazbi and Jahur as Shehnazbi was running to save herself, Shehnazbi ran towards the house of Aminabi and requested Aminabi to save her. At that time, Aminabi and Sabirabi

tried to save Shehnazbi from the assault which were tried to be inflicted by the accused. However, the accused assaulted both of them, seeing that Shehnazbi went running towards the country liquor shop. According to P.W. 2 Salma, Aminabi and Sabirabi, both sustained injuries. P.W. 8 Sanjay Patil also deposes to the same. Sabirabi who is examined as P.W. 3 at Exh. 61 also states that her mother Aminabi and she herself intervened to save Shehnazbi and in that accused assaulted Sabirabi and her mother Aminabi with the chopper. Sabirabi was assaulted on her face, on the right-side on the forehead near the eye. She says that her mother Aminabi also received injury on her right hand. She further states that Shehnazbi took the chance that time to escape and she ran towards the country liquor shop. The accused, again, followed her with the chopper in his hand. Sabirabi, further, states that then they were taken to Civil Hospital. She identified the clothes which were blood-stained and which belonged to her. She also identified the weapon as was identified by Salma. Shri A.H. Kapadia, the learned counsel appearing on behalf of the accused/appellant, tried to assail the evidence of this witness saying that she does not make reference first to the presence of Salma (P.W. 2) and Sanjay Patil (P.W. 8). He, therefore, wanted to suggest that Sabirabi cannot be of any help to the prosecution to support the story of an attempt of the part of the accused to assault Sabirabi and Aminabi. Shri Kapadia, tried to argue that Aminabi was not examined which also creates doubt about the incident in the house of Aminabi. We are not ready to accept this argument of Shri Kapadia for the reason that Sabirabi (P.W. 3) was an eye witness and injured on the spot at the hands of Jahur, the appellant-accused. There is absolutely no material in cross-examination whatsoever of this witness and, therefore, we do not find any difficulty in accepting the version of Sabirabi. Sanjay Patil (P.W. 8) also supports the story of attack on Sabirabi and Aminabi.

18. Now, we come to the third ring of this chain of incidents which happened, according to the prosecution, in the country liquor shop of Chandrakant Bagul, who is examined as P.W. 4 at an Exh. 62. Chandrakant Bagul runs a country liquor shop which is situated in Devpur (Khatikwadi), on a road leading to Ekvira Devi Mandir. He says that he is running the shop of Sultana Dada Qureshi. Chandrakant Bagul in his deposition states that on 12th July, 1995, around about 11.30 to 11.45 a.m. he was in his shop. He and his servant Anand Khandale was also present in the shop, besides there was one customer in the shop. Chandrakant says that at that time one lady came inside the country liquor shop, shouting, Bachao, Bachao. He states that the lady was followed by a man inside the country liquor shop with a chopper i.e. sura in his hand. Chandrakant says that the said man immediately assaulted that lady. The said person that is who followed the lady dealt more blows to the lady. He, therefore, stood up from the cash counter and attempted to save the lady by intervening in the scene. He says that the said person assaulted with the sura on his left forearm just above the wrist, because of which he had to retreat. Chandrakant further says that the said person dealt blows with the sura on the person of the lady on her chest, stomach and thigh portion and on her head also. Chandrakant says that one

another girl came running in the shop. According to him, the said girl attempted to resist the accused from assaulting Shehnazbi, but the said man assaulted the girl with the knife i.e. sura. Chandrakant says that the said girl was salma (P.W. 2). He further stated that due to the number of assaults dealt on the person of the first lady, the first lady died there only. He further states that then the accused ran away from the back door of his shop. Chandrakant identified the accused Jahur as an assailant. He says that the other girl which was injured was Salma the name he subsequently came to know. Chandrakant says that he was taken to Hospital and Doctor treated him. He identified his clothes which were stained. He also identified article 31, the chopper. It is to be noted that this witness is also not cross-examined. At the same time, this witness is duly corroborated by Salma as also by Sanjay Patil. So also since this RW. 4 an independent person happened to be an eye witness injured in the incident, we have no difficulty in accepting the evidence of this witness and more so when there is no cross-examination of this witness in any manner.

19. After considering the three incidences which happened in quick succession, we now, feel it appropriate to find out the medical evidence on the record as regards the injuries sustained by these various witnesses as also the two victims, namely, Suleman and Shehnazbi. Exh. 17 is the certificate issued by the Medical Officer, General Hospital, Dhule as regards the injuries sustained by Salma, which shows that Salma had sustained incised wound on right forearm 6" x 3" x 1". Exh. 18 is the medical certificate in respect of Sabirabi Sk. Munaf, who was in the hospital from 12.7.1995 to 13-7-1995. The Certificate shows that Sabirabi sustained incised wound on her left forehead extending upto eyebrow 2 1/2" x 1 1/4" and head injury. This is a Certificate issued by Medical Officer, General Hospital, Dhule. Exh. 19 is the certificate in the case of Aminabi Sk, Khalique. She received incised wound on "U" elbow 1/ 2" x 1/4" x 1/4" as also incised wound. This certificate is also given by the Medical Officer, General Hospital, Dhule. Exh. 20 is the Injury certificate in the case of Chandrakant Bagul (P.W. 4), he having sustained incised wound "U" forearm 4" x 1" x 1/2" and also incised wound. This witness was taken to the Hospital on 12-7-1995. Exh. 21 is the Injury certificate in the case of P.W. 5 Kamruddin, the brother of Shehnazbi, who sustained injuries at the hands of the accused, who was running away from the Country Liquor Shop after assaulting Shehnazbi. He has also sustained two injuries as are mentioned in the Certificate at Exh. 21. These certificates have been admitted by the defence and there is no cross-examination of the Doctor on that point. We, therefore, find no difficulty, in coming to the conclusion that those injuries referred to in the certificates were sustained by those witnesses and that too in the alleged incident. Since there is no challenge in any manner to these certificates and injuries sustained by the witnesses, we do not feel it necessary to dilate much on this point. 20. Now we come to the injuries sustained by the two victims, namely, Suleman and Shehnazbi. P.W. 13 Dr. Prakash Patil, who is examined at Exh. 75 has stated that on 12th of July, 1995, while he was on duty in Civil Hospital, Dhule as a Casualty Medical Officer, Suleman was admitted at

about 12.10 p.m. in an injured condition. A.S.I. Devpur Police Station contacted him and he wanted to record the statement of the complainant as his dying declaration. Dr. Prakash Patil therefore, examined Suleman; however he was in a condition to talk and he was conscious. His dying declaration was recorded in presence of the Doctor which was, again, read over to Suleman. Thereafter thumb impression of the patient was taken thereon. After the dying declaration was recorded, Dr. Prakash Patil, again, examined the patient Suleman and then put his endorsement at Exh. 55, observing that the patient was fully conscious at the time of dying declaration and signed it. This witness is not cross-examined by the defence. On the same day, again, Exh. 66, the dying declaration was recorded in presence of Doctor Ravindra Sitaram Wankhede by the Executive Magistrate. The Doctor says that he examined the patient; the patient was conscious to give statement. Accordingly, Exh. 66 dying declaration was recorded by the Executive Magistrate in presence of the Doctor. He says that the said declaration was read over to the patient by the Executive Magistrate and, then, obtained the thumb impression of the patient thereon. The Magistrate counter-signed the same in presence of the Doctor and the Doctor also put his endorsement at the bottom of the dying declaration together with timing of 2.45 p.m. This Doctor is also not cross-examined. On the next day, in the early morning on 13th July, 1995, Suleman succumbed to the injuries sustained by him. The autopsy was conducted by Dr. Deepakkumar Govindrao Landge, whose evidence is recorded at Exh. 70 as P.W. 10. At the time of conducting the autopsy, the Doctor has found the following external injuries on the dead body :--

- (1) Incised wound on the posterior mid-parietal region of scalp 7 cm. x 0.5 scalp deep, this injury was sutured.
- (2) Sutured wound on the left upper arm laterally in middle 1/3rd 6 cm. in length on removing sutures it was confirmed that it was incised wound 2 cm. in breadth and was muscle deep incising the lateral head of triceps muscles.
- (3) Incised wound on medial aspect of upper 1/3rd of its arm 3 cm. x 2 cm. x muscle deep. This injury was not sutured.
- (4) Sutured wound in its inframamillary region 4 cm. length oblique crossing its 4th and 5th intercostal spaces about 20.5 cm. from medial plane towards left.
- (5) Sutured wound on left lower chest on posterior lateral wall 3 cm. in length crossing 8th and 9th left intercostal spaces. The above mentioned injuries mentioned Col. 17 were ante-mortem.

On dissection, the following external injuries were found:--

By removing sutures of Injury No. 4 it is 2 cm. in breadth and it is penetrating incised wound.

Left 6th intercostal muscles were cut 5 cm. x 2 cm. in mild ancillary line through which part of left lung was protruding out.

Left lung lower lobe 1 cm. above lower border on lateral aspect was perforated through and through.

Wound of entry 3.5 cm. x 2 cm. (Lateral aspect).

Wound of exit 2 cm. x 0.75 cm. (medical aspect).

Left lung lower lobe collapsed.

Left dome of diaphragm perforated 6.5 cm. x 3 x 5 cm. through which stomach was herniated into It. thoracic cavity.

Stomach was cut near cardiac and on greater curvature 1.5 cm. x 1 cm.

Stomach contents were noticed in it. Thoracic cavity about 50 m. semi-digested food seen.

Rt. lobe superior surface of liver perforated through hand through at two places :--

(1) Wound of entry x 2.5 cm. x 0.5 wound of exit 2 cm. x 0.5 cm.

Second injury was adjacent to first injury.

(2) Wound to entry 2 cm. x 0.5 cm.

Wound of exist 1.5 x 0.6 cm.

Left lobe of liver was cut through and through 1 cm. above the lower border.

Wound of entry .. cm. 0.5 cm.

Wound of exit.. 1.5 cm. 0.5 cm.

(corresponding to Injury No. 5)

By removing sutures of Injury No. 5 it is above 2 cm. in breadth and is a penetrating incised wound.

Lt. 9th rib was cut in poster lateral aspect. 9th Lt. intercostal muscles were cut poster laterally 3 cm. x 2 cm.

Spleen cut on lateral aspect 1.5 x 0.5 cm.

Brain - Edematous and congested

Thorax - walls injured 9th rib cut

Plura - Injured on left side.

Left lung - Lower lobe collapsed and injured

Peritoneum - Injured

Cavity -

About 1 .5 lt. of blood and cloth stomach and its contended - injured containing

about 50 ml. of food.

Liver - injured.

Spleen - Injured.

The Doctor has deposed that the cause of death of the patient Suleman was haemorrhage and shock following penetrating injuries of trunk involving left lung, liver spleen and stomach and associated with him, Dr. Ruikar and Dr. Kondkar were there, who had also signed the post-mortem report and who had helped in conducting autopsy.

21. The post-mortem report given in the case of Suleman is at Exh. 70. According to the Doctor, the injuries mentioned in the post-mortem notes, were, sufficient to cause death of the patient in ordinary course of nature. He has further opined that the injuries 4 and 5 mentioned in Col. 17 of the post-mortem report and its corresponding internal injuries mentioned in post-mortem notes were fatal and sufficient to cause the death of the patient. According to the Doctors, the injuries were possible by an Article 31 like weapon. Surprisingly Dr. Deepakkumar (P.W. 10) is also not cross-examined by the defence. Taking into consideration the seriousness of the injuries and the authorship of the accused as deposed by Salma, we have no difficulty in reaching to the conclusion that the injuries were caused by the accused and the patient succumbed to the said injuries.

22. As regards the injuries caused to the second victim, Shehnazbi, the autopsy was conducted on the corpse of Shehnazbi by Dr. Ramkrushna Govindrao Bhusale (P.W. 9) at Exh. 69. On external examination of deceased Shehnazbi, the Doctor found as many as 17 external injuries and three serious internal injuries which are as under :-

1. Amputation of right thumb terminal phalanx separated from joint.
2. Incised cut wound over middle part of pinna of right ear horizontally 6 x 0.75 cm.
3. Incised chop wound over right parietal region scalp horizontal 7 x 3 cm. Beneath this wound there was cut-carved fracture of right parietal bone.
4. Incised chop wound over right occipital region of scalp horizontal 8 x 2.5 cm. Through the middle part of this wound there is vertical chop wound 7.5 x 2 cm. Beneath these wound there is horizontal and vertical fracture corresponding to above injuries.
5. Incised chop wound below above wound horizontal 1.55 x 0.5 cm.
6. Incised cut wound superficial, oblique on shoulder anteriorly 5.5 x 1 cm. tailing see lateral end.
7. Incised penetrating wound over right breast obliquely vertical situated just above level of nipple 6 x 4 cm. fat exposed depth entered in Thoracic cavity.

8. Chop wound over dorsal surface of right palm oblique 7 x 3 cm. Beneath this wound there is of metacarpal bones of little finger to ring finger.
9. Chop wound over dorsal aspect of right palm above the Injury No. 8 at the base of index ring and middle finger, with cut wounds metacarpophalynge I its 6 x 4 cm.
10. Chop wound on right thumb with amputation of terminal phalli terminal 1/ 3 portion of it separated along nail obliquely.
11. A-"T" shaped chop wound in the suprapubic, in-region of abdomen on right side, length of upper horizontal part of it is 5 cm. and length of limb of it is 5 cm. Breadth is 3 cm. depth liver depth.
12. Two incised penetrating wounds over right posterior line are one below another upper 4 x 2 cm. Lower 7 x 3 cm. Beneath these wound, there are cut fracture of ribs, oblique, depth lung depth.
13. Incised wound in the mid-line in the middle part of scapula vertical 7 x 3 cm. muscle deep.
14. Incised cut wound left scapula upper part 4 x 1 cm. muscle deep.
15. Incised chop wound in left lumbar region and back 6 x 3 cm. beneath this there is fracture of posterior part rib.
16. Incised chop wound over LT gluteal region 10 x 5 x 5 cm. fat exposed.
17. Incised cut wound in It. lower chest 1 x 0.5 cm.

All the above-mentioned injuries were reddish in colour fresh and it were ante-mortem injuries. Clots seen at edges, fracture bones showed reddish in infiltration staining.

On dissection the Doctor found the following injuries :--

Head injury Nos. 3, 4 and 5.

Skull (1) cut fracture of skull in right parietal region of scalp corresponding to injury No. 3 triangular piece of bone is separated. Dura is seen.

Skull fracture in occipital region corresponding to Injury No. 5 fracture red edges reddish infiltration staining.

Thorax - fracture of manubrium sterni corresponding to Injury No. 7 as mentioned in Col. No. 17 Collection 1.5 lit. blood in right pleural cavity fracture edges shows reddish infiltration staining.

Right Lung - Incised wound and cut wound on right lung in the middle of lower lobe corresponding to Injury No. 7 4 x 2 cm. reddish mentioned in Col. No. 17.

Pericardium - Injured.

Heart with weight - cut wound right atria and heart edges regular and reddish corresponding to Injury No. 7 mentioned in Col. No. 17.

Abdomen-Wall injured. Peritoneum - injured Cavity 1 It. blood in the cavity. P.W. 9 has opined that the cause of death was hemorrhagic shock due to multiple penetrating and chop wounds involving liver, lung and heart. According to the Doctor, the Injury Nos. 3, 5, 7 and 11 mentioned by him in Col. No. 17 of the post-mortem notes were fatal injuries. Thus, the post-mortem notes were also signed by PW. 9 and also by Dr. Kondkar and Dr. Landge who had assisted Dr. Kondkar in conducting the autopsy on the body of Shehnazbi on 12th July, 1995, itself at about 3.00 p.m. The injuries as are mentioned above, according to the Doctor, were fatal. There is no doubt whatsoever as regards the author of those injuries i.e. the accused-appellant is really surprising, the defence even declined to cross-examine Dr. Patil, On the other hand, the post mortem report in the cases of two deceased persons and the medical certificates in the cases of rest of the injured, have been accepted by the defence in toto, even without slightest challenge to the same or murmur in that respect. We have, therefore, no hesitation in accepting the same to be true and correct and further in reaching to the conclusion that both the deceased, Suleman and Shehnazbi, died homicidal death.

23. This brings us, now, to the second aspect of the matter, as to whether could the accused be held guilty for causing such injuries on the person of Suleman and Shehnazbi, which could be said to be culpable homicide amounting to murder. To find out the nature of the offence committed by the accused/appellant, we will have to find out as to has the accused offered any defence through his statement Exh. 10, u/s 313 of the Criminal Procedure Code and whether did he produce additional evidence in support of his defence. At the outset, we observe that accused has not examined any one in his defence including himself. To find out the defence, we have to read his statement u/s 313 of the Cr.P.C. His defence mainly is of denial. The accused through his statement has also admitted certain facts. In fact, to most of the questions, he has answered either saying that, "he did not know" or "it was false". However we will refer to certain facts in his statement which we feel material to be considered. While answering the question No. 33, which pertains to calling of the Panch Committee meeting, the accused denied about the same saying that he did not know. As regards not sending Shehnazbi with the accused by the father-in-law Suleman, vide question No. 34, the accused replied that he did not know about the same. However the accused has answered to question No. 42 in the affirmative, saying that it was correct that the father of Shehnazbi had told him to come along with 5/6 persons and also his parents, so that Shehnazbi would be sent with him. As regards question No. 43, it would be seen that a specific question was put to him that he abruptly got annoyed and took out the chopper (butcher's sura) which was kept concealed by him near his left leg below the knee (left leg calf) and rushed on the person of Shehnazbi to assault her. The accused has replied the said Question No. 43 labelling it as false. According to

us, the other relevant questions are Question Nos.150, 151 and 152 which were answered by the accused in the affirmative, admitting the position that he assaulted Chandu @ Chandrakant; he admitted of having run away through the back door of the country liquor shop and assaulted Salma there in the country liquor shop. The accused has also admitted while answering Question No. 144 as regards the shouts given by Salma as "Bachao, Bachao" in the house of Suleman initially, to which P.W. 8 Sanjay Kadu Patil has referred to in his deposition. He has also admitted vide Question No. 146 that he assaulted Shehnazbi in his father-in-law's house. He has also admitted to have assaulted Sabirabi. He also admitted vide Question No. 147 that Shehnazbi ran towards the country liquor shop; however, he says that he did not know if he assaulted Shehnazbi i.e. vide question No. 149. The Question No. 155 is answered by the accused in the affirmative. The said question was regarding running away of the accused towards the other side of the river and the people who were following him were on the other side of the river and also regarding the attempt to obstruct the accused by the people. He also admits that the chopper which was in his land, fell down in the river in grappling. This is by way of answer to Question No. 156 on the record. The most important portion of his statement u/s 313 of the Cr.P.C. is the question No. 283 wherein the accused stated, "I murdered Shehnazbi and Suleman in annoyed mind". He stated further that he assaulted the injured witnesses in an annoyed mood. The causes of annoyance, he has narrated in his statement, which according to him, were three. Firstly, Shehnazbi left his house in the early morning at 4.30 a.m. without intimating him. Secondly, he therefore came to Dhule and from Dhule he went to Parola where his sister lives and at that time his mother was there at Parola. He says that he from Parola came to Dhule and went to the house of his in-laws. He admits that at that time, his mother-in-law and sister-in-law Salma along with Shehnazbi were present. He says that he asked Shehnazbi as to what for she had come to Dhule along with her son. He asked Shehnazbi to accompany him to Shahada whereon, according to him, Shehnazbi refused to go to Shahada with him which she uttered twice, saying that she will not go in his family. She further expressed that she would go to Shahada whenever she would desire so. The accused says that in the meantime, his son-Manzoor came near to him; another lady, an outsider, doing business in fishery, came there who asked the accused as to when did he come and the accused replied that he had just come there. Thereafter, the accused followed his mother-in-law and sister-in-law inside the house. He sat there to take water. He told his mother-in-law that he had come there to take back Shehnazbi to Shahada. He says that mother of Shehnazbi told him that there was no male member present in the house and the accused should come later on. He says that he, therefore, left the house of his mother-in-law. He further says that on the same day, he again went to the house of his in-laws after about an hour when his father-in-law was present there. The accused says that his brother-in-law was also present there. He expressed his desire to take back his wife Shehnazbi. However, according to him. The father-in-law and brother-in-law told him that they did not want to send Shehnazbi with him. Shehnazbi also told

that she would not go along with him. The accused, therefore, asked Shehnazbi the reason for not accompanying him. The accused says that then he told those people that the accused would come to them again, on Wednesday after subsiding the tense mood of Shehnazbi. Thereafter the accused left the house of his father-in-law. On 11th i.e. on Tuesday, the accused went to she-goat market, but on half-way he took turn for going back. On his way, he met his brother-in-law Salim near one hotel. Salim questioned him that whether did the accused not go to Shahada. The accused says that he did halt in the night of Tuesday in Kirti Lodge. The accused further states that on Wednesday i.e. on 12th July, 1995, he proceeded from Lodge in the morning at about 11.00 a.m. and went to the house of his in-laws. His mother-in-law told him that no male member was present at the relevant time and that he should come afterwards. He says that he, again, after about half an hour went back to the house of his in-laws. He says that he asked his father-in-law and brother-in-law to send Shehnazbi with him. He has asked his father-in-law to send Shehnazbi just then with him, which was flatly refused by the father-in-law. He says that even then he insisted for taking Shehnazbi back with him. The accused further states that on 11th i.e. on Tuesday in the evening at 7.00 p.m., he saw Shehnazbi coming out of the garden of Municipal Council along with one young boy in a chit-chatting mood. He further states that at that time, he was on the panshop. According to him, Shehnazbi did not notice him or his presence near the panshop. He further says that while going the said young boy gave a slap of his hand and on the heap of Shehnazbi. On seeing this, the accused got annoyed, however he kept mum as, according to him, it was a question of reputation. He says that all the while, he was in a tense mood on the entire night of 11th. On Wednesday morning, according to him, he insisted Shehnazbi to go with him. He says that at that time, he told Shehnazbi that at Shahada she would not get a change like yesterday's evening. On this Shehnazbi told him that she would not go to Shahada with him and according to the accused, then Shehnazbi abused him by saying, "Ja Ja Bhilke Jatke, Suwar ke Bacche, Mereko Nahi Ana Hal". Saying so, according to the accused, Shehnazbi asked him to go there from. The accused further states that Shehnazbi told him that she would recover maintenance from him. The accused asked her as to how could she claim maintenance. Shehnazbi, again, abused him by saying, that, "Teri Ma Chudake Tereku Khavati Deni Padegi. the accused says that due to that he got annoyed. He lifted the sura from the bucket. According to him, his father-in-law and sister-in-law caught hold of him, He says that thereafter the whole incident occurred.

24. The above is the statement of the accused made u/s 313 of the Criminal Procedure Code, on the basis of which, the learned Advocate Shri Kapadia, appearing on behalf of the accused/appellant, vehemently argued that in view of the very many admissions of the accused as also in view of no cross-examination to any material witness and also in view of the fact that most of the documents on the record are admitted by the defence, there was hardly any scope for him to argue that the accused was not the author of the injuries on the witnesses and

also for the injuries on the two deceased persons, namely, Shehnazbi and Suleman. In short, according to him, there was hardly any scope for him to claim acquittal in the matter or, even to claim any benefit of doubt for his acquittal.

25. However, Shri Kapadia, vehemently urged that it is not a case wherein the accused could have been held guilty for an offence punishable u/s 302 of the Indian Penal Code. In support of his argument, Shri Kapadia, suggested that the statement u/s 313 if read in proper perspective, would show that there was grave and sudden provocation to the accused and in the heat of passion, the accused acted in a bewildered manner, which has resulted into the death of two persons and injuries to many. Shri Kapadia, suggested that by no stretch of imagination, the accused could be said to be guilty of an offence punishable u/s 302. If at all the accused could be punished for any offence, that could be under sections 304-II or at the most 304-I. Shri Kapadia, further, suggested that though the death of Suleman and Shehnazbi was a homicidal death, according to him, it was culpable homicide not amounting to murder, but a case falling under exceptions as culpable homicide not amounting to murder under exception (1) to section 300. To find out what weightage we should attach to the arguments of Shri Kapadia, we feel it necessary to refer to the relevant provisions of section 299, 300 and section 304 Part I and II. Section 299 of the Indian Penal Code, (WHICH is hereinafter referred to as "I.P.C." for the purposes of brevity), teaches what is culpable homicide. It reads as under :--

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits offence of culpable homicide."

Thus, it is clear that the offence involves doing an act (which term includes illegal omissions) (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death, or (c) with the knowledge that the act is likely to cause death. If the death is caused in any of these three circumstances, the offence of culpable homicide is said to be committed. The existence of three circumstances (a), (b) and (c) in section 299, 300 I.P.C. distinguishes homicide which is culpable from homicides which are lesser offences or which are excusable altogether. The intent and knowledge in the ingredients of the section postulates the existence of positive mental attitude and this mental condition is the special mens rea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person. If we go through the above said provisions of section 299, we see that so far as regards attack on Suleman was concerned, a case could be argued by the appellant saying that the attack was not with the intention of causing death of Suleman or with the intention of causing such bodily injury as was likely to cause death of Suleman. However, the question is

could the knowledge be attributed to the accused that the act in which he exercised himself would have a likely result of causing death of Suleman. We are of the opinion that taking into consideration the seriousness of the injuries caused to Suleman though the accused might have inflicted them so as to clear the obstruction which was caused because of the intervention of Suleman in the act of assaulting Shehnazbi, was sufficient to attribute knowledge to the accused of likelihood of causing death of Suleman by causing injury by the accused to Suleman by the chopper (Article 31) and, therefore, it is not difficult to come to the conclusion that the accused at the first stage committed the offence of culpable homicide as in the case of Suleman. The case as regards death of Shehnazbi also falls within the definition of culpable homicide as, according to us, though the possibility of the intention of causing death of Shehnazbi cannot be totally ruled out but, in any case, the possibility of the knowledge to the accused, the intention of accused of causing such bodily injury as was likely to cause death of Shehnazbi could definitely be attributed to the accused. It is, therefore, not difficult for us to observe that both the victims died homicidal death and the accused was definitely involved in the offence of culpable homicide.

26. After having reached to the conclusion that the offence of culpable homicide is committed by the accused, then we come to the second facet of the story whether did that culpable homicide amounted to murder or did not amount to murder.

27. Section 300 speaks about murder. It says as to when the offence is murder and when it is culpable homicide not amounting to murder. Section 300 in the very beginning itself starts setting out the circumstances when a culpable homicide turns into murder, which is punishable u/s 302 I.P.C. and the exceptions in the same section tells us when the offence is not murder but culpable homicide not amounting to murder punishable u/s 304. There is no dispute that murder is an aggravated form of culpable homicide. The existence of one of the four conditions turns culpable homicide into murder, while the special exceptions reduces the offence of murder, again, to culpable homicide not amounting to murder.

28. The Court is aware as to what are the circumstances which turns culpable homicide into murder. For that we, again, read to section 300 which defines murder. Clauses firstly to fourthly if are seen chronologically as are given in the section, we find that under the first clause of section 300 culpable homicide is murder when the act by which death is caused is done with the intention of causing death. The clause i.e. 1stly reproduces the first part of section 299 an intentional killing is always murder unless it comes within one of the special exceptions given in section 300. If an exception applies, it is a culpable homicide not amounting to murder. It is the presence of the special exception in a given case which reduces the offence of murder to culpable homicide not amounting to murder. When the act by which the death is caused is done with the intention of causing death. The next part of section 300 i.e. 2ndly mentions about one special

circumstance which renders culpable homicide into murder. Keeping aside the exceptions in section 300 which reduce the offence of murder to culpable homicide not amounting to murder. Culpable homicide is, again, murder if the offender does the act with the intention of causing such bodily injury which he knows to be likely to cause the death of the person to whom harm is caused. This knowledge must be in relation to the person harmed and the offence is murder even if the injury may not be generally fatal but is so only in a special case, provided the knowledge exists in relation to the particular person. If the element of knowledge be wanting the offence would not be murder but only culpable homicide not amounting to murder or even a lesser offence.

29. Clause 3rdly of section 300 refers to the intention to cause bodily injury which is sufficient in ordinary course of nature to cause death. Due importance is attached in this clause to the sufficiency of the injury in the ordinary course of nature to cause death. Sufficiency can be read to be the high probability of death in the ordinary course of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and some times both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature if the intended injury cannot be said to be sufficient in the ordinary course of nature to cause death, that is to say, the probability of death is not so high, the offence does not fall within murder but with culpable homicide not amounting to murder and something less. In short, the sufficiency of an intentional injury to cause death in the ordinary way of nature is the gist of the clause irrespective of an intention to cause death. Here, again, the exception may bring down the offence to culpable homicide not amounting to murder.

30. Clause 4thly comprehends generally the commission of imminently dangerous acts which must in all probability cause death or cause such bodily injury as is likely to cause death. When such an act is committed with the knowledge that death might be the probable result and without any excuse for incurring the risk of causing death or injury as is likely to cause death, the offence is murder. This clause would encompass the cases in which there is no intention to cause death of any one in particular. The question that, now, arises as to whether the act committed by the accused wherein two injured persons succumbed to the injuries, whether it amounted to murder u/s 300 or could the accused be said to be a beneficiary of exception (1) so as to bring his act in culpable homicide not amounting to murder.

31. Before advertent to the arguments of Shri Kapadia, we feel it necessary to mention at this stage that seizure of register from Kirti Lodge (Exh. 58) where the accused had lodged himself as also Exh. 59 memorandum, as regards discovery of the chopper, is also not disputed by the defence, Discovery Panchnama of knife (Exh. 60) is also admitted by the defence to the effect that the said chopper was recovered below the babul tree on the bank of the river

Panzara. The said witnesses who were examined in support of these documents, their deposition is also not challenged. In short, most of the prosecution story, in the instant matter, including that of medical evidence and other evidence on the record, has virtually gone unchallenged. We find, therefore, no difficulty in accepting the same. Shri Kapadia, vehemently urged that the act of the accused was an immediate reaction to the grave and sudden provocation because of the abuses and filthy language used by Shehnazbee and that too in the presence of Suleman, the father-in-law of the accused and other family members. Shri Kapadia, wanted to suggest that the story of carrying of the chopper by the accused with himself well tied to his calf on the leg is not correct but, according to Shri Kapadia, because of the above-said grave and sudden provocation, the accused lifted the chopper from the sport, there in the house of Suleman and immediately, appear to have rushed towards Shehnazbi for assaulting her. Shri Kapadia wanted to suggest that the provocation was so grave that whosoever tried to obstruct him, the accused wanted to get rid of the obstruction in any manner. He appeared to have been determined to give a teaching or lesson to his wife Shehnazbi. According to Shri Kapadia, the injury caused to Suleman was in that heat of passion as Suleman wanted to obstruct him from assaulting Shehnazbi Shri Kapadia, therefore, could not dispute the injuries sustained by Suleman. However, according to him since injuries were not intended one, much less to cause such injuries so as to result in the death of Suleman, the accused cannot be held guilty for murder of Suleman and so far as regards this part of the story is concerned, the accused/appellant can be said to have been under the influence of grave and sudden provocation and, at the most, could be held guilty for an offence punishable u/s 304-II.

32. Shri Kapadia, further, argued that in the same heat of passion, the appellant/accused rushed towards Shehnazbi, chased her upto the country liquor shop and in that heat of passion, he gave blows which are referred to in the Medical Report. We reiterate that the post-mortem report in the case of Suleman as also in the case of Shehnazbi are not disputed or challenged in any manner. Shri Kapadia wanted to suggest that the effect of the provocation on the mind of appellant/accused was so heavy that till he assaulted Shehnazbi and left the spot, he was labouring under that influence. Shri Kapadia, therefore, suggested that for causing the death of Shehnazbi, the accused can be said to be guilty of an offence u/s 304-I but definitely not u/s 302. In support of his contention Shri Kapadia, relied on the decision reported in V. Sreedharan Vs. State of Kerala, , to point out that the provocation cannot be said to be discontinued, even if the accused chased the victim. In the above-said case (supra) the accused on challenge by the victim, had followed the victim for about 81 ft. from kitchen of his house as the victim had pushed lunch dish of the accused with his legs. In that situation, the accused was provoked and he followed the victim and caught him after about 81 ft. from the house of the accused. Shri Kapadia, therefore, wanted to suggest that if such a provocation is there, in that case, the accused cannot be held guilty for offence punishable u/s 302. In support of his

contention, Shri Kapadia, referred to the decision reported in *K.M. Nanavati Vs. State of Maharashtra*, , on the basis of this judgment, Shri Kapadia, wanted to suggest that whether a reasonable person in the circumstances of a particular case committed the offence under the provocation which was grave and sudden, is a question of fact for the Court to decide. Shri Kapadia, wanted to suggest that since the accused and the victims belonged to the Mohammedan community and since the words used by the wife were so utterly ugly and low in taste, then getting enraged so much by the accused could not be said to be unnatural. Shri Kapadia, therefore, wanted to suggest that if the accused lost his self-control because of the same and in that before he could regain his control if he committed the above-said acts, then the accused, according to him, cannot be held guilty for an offence punishable u/s 302 I.P.C.; but the same would fall, according to him at the most, u/s 304-Part I. Shri Kapadia, also tried to suggest that how many blows were sustained by the victims, would not be a measure for finding out the impact of provocation on the mind of the accused and the provocation, according to Shri Kapadia, could not be weighed in a golden scale. According to him, the gravity of provocation differs from person to person and it also depends on the circumstances and the situation in which the provocation was given. Shri Kapadia, further, suggested that intervention by various persons till Shehnazbi was assaulted, could not be held to be a time-gap available for the accused sufficient to get cooled or to regain his normal senses. Shri Kapadia, further, argued that Medical Report says that there was an injury on the person of the accused also and there is no explanation given by the prosecution as regards the same. By this, Shri Kapadia, wanted to suggest that the provocation could be so sudden that the accused lost his mental balance and tilt he could regain equilibrium of his mind, in that feat the incident took place. Shri Kapadia, therefore, suggested that the matter should be looked from that angle and if at all the accused is to be found guilty he can, at the most, be held guilty u/s 304-I I.P.C. or u/s 304-II I.P.C.

33. As against the above-said arguments of Shri Kapadia, Shri A.M. Kanade, the learned Public Prosecutor, vehemently urged that provocation could not be said to be so severe and grave so as to give the accused a right to do away with the lives of two persons. Shri Kanade, argued that there was enough time-gap to get the accused cooled down and instead of doing that, it appears that every next moment, the accused was still getting more furious. According to Shri Kanade, in fact, the accused had come with the intention and also well prepared when he brought the chopper with him. That showed the intention of the accused; if Shehnazbi would not go with him he would settle the matter on that day itself. Shri Kanade also argued that the injuries were so severe and the action was so brutal that there was no scope either to bring the conviction in any other section than section 302 I.P.C. and, according to him, the conviction and sentence of the accused taking into consideration the facts and circumstances of the case, deserves no interference. Shri Kanade, in support of his contentions relied on the decision reported in *AIR 1978 S.C. 1420, Rajendra Singh v. State of Punjab*,

wherein the accused was convicted u/s 302 I.P.C. only on the basis of serious injuries on the person of the victim. Shri Kanade also relied on the decision reported in Mannam Balaswamy Vs. State of Andhra Pradesh, , wherein an intervenor in the quarrel was murdered and the Court held that the conviction was u/s 302 and not u/s 304-I I.P.C. In the above-said case of Mannam v. State of A.P. (supra) the intervenor had tried to pacify the father and the son who were quarrelling among themselves. In that, the appellant got enraged, went inside the room, came with a knife and inflicted fatal injuries on the chest of the victim and the other on the left side of the abdomen of the deceased. The accused was convicted for an offence punishable u/s 304 I I.P.C. by the Court below and the same was converted into 302 I.P.C. by the High Court, which was confirmed by the Supreme Court. Their Lordships of the Supreme Court observed that on the facts of that case, in the opinion of Their Lordships, the act fell u/s 302 and not u/s 304-I. Shri Kanade, also relied on the decision reported in Morcha Vs. State of Rajasthan, . In this case also, the accused had gone to his in-law's house to fetch his wife i.e. the victim. There the accused inflicted through and through penetrating wounds as a result injuring the liver and colon. The injuries inflicted in that case were without any provocation and, therefore, in that case, it appeared that it was a pre-planned affair and the accused was held guilty of murder as that case squarely fell within the ambit of Clause 3rdly of section 300. The plea which was taken in that case as regards non-availability of immediate medical help was held to be of no avail to the accused. On the basis of this, in short, Shri Kanade, wanted to suggest that even if there could be said to be some provocation, according to Shri Kanade, the accused had enough time to realise the repercussion of his actions when he first tried to assault Shehnazbi in the house of Suleman, where Salrna, Shakila and Suleman were injured. According to Shri Kanade, when he started chasing Shehnazbi to the house of her aunt Aminabi, at least during that period he could have pacified as he had some time. Thereafter at least after having seen the injuries caused to Aminabi and Sabirabi. Shri Kanade argues, that at least thereafter, the accused could have pacified, but he still persisted in chasing Shehnazbi and in the most brutal and cruel way, assaulted Shehnazbi and in the Country Liquor Shop by injuring Chandrakant Bagul, owner of that shop who had intervened and injured and so also, Salma was injured, but nothing could pacify the accused nor was he in a mood to get himself cooled down. This shows that in any event, the accused had decided by way of revenge to do away with Shehnazbi.

34. We have looked at the matter from all angles and we have to observe that even if we accept the theory of provocation, the same can be said to be acceptable till the stage Suleman was seriously injured at the hands of the accused. However we are unable to accept the argument of Shri Kapadia that it was so grave and sudden that it had a very lengthened effect on the mind of the accused whereby he could not regain his mental balance till he had done away with the life of Shehnazbi. Undisputed facts on the record are that the injuries were so severe- both on the person of Suleman as also on the person of

Shehnazbi, which were sufficient, according to the report of the Doctor, to cause death of the victims. Looking at the matter from various angles, we feel that even in grave and sudden provocation if the accused gave repeated blows causing multiple injuries and that too of serious nature on the person of the victim causing instantaneous death, particularly when he had reasonable time to get pacified or cooled down then, such a case cannot be said to be covered by first exception to section 300 but it would fall u/s 300 Clause 3rdly and punishable u/s 302. We also rely upon the decisions reported in 1990 (Supp.) S.C.C. 611, Ghanshyam v. State of Uttar Pradesh, and Virsa Singh Vs. The State of Punjab, .

35. We also feel that whether the accused had come well-prepared with the chopper or that he lifted the same from the spot itself, would not make much difference in the instant case.

36. Shri Kapadia, suggested that the conduct of the accused on previous two days shows that patience he had because, according to Shri Kapadia, no untoward incident happened on the previous two days as it is the case of the prosecution that the accused was in Dhule and was putting up in Kirti Lodge for last two days. However, assuming that the accused lifted the chopper on the spot itself but the accused being a butcher by profession, knew the consequences of the injuries if caused by the chopper and much less when the way in which the accused made that assault. We read from the record that killing of the father-in-law Suleman was not in the contemplation of the accused. Suleman's death resulted from frustration because of the escape of the target from his hand i.e. Shehnazbi. We, therefore, do not find that accused can be convicted for offence u/s 302 for causing the death of Suleman. However, this act of the accused taking into consideration the injuries on the person of Suleman and his death on the next day morning would bring the said offence u/s 304-Part II.

37. As regards the offence as against deceased Shehnazbi, we are not in a position to concur with the arguments of Shri Kapadia. We are of the firm opinion that if we look at the incident as it occurred chronologically, we feel that after the accused tried to assault Shehnazbi in the house of Suleman, Shehnazbi escaped but the blows which were sustained by Suleman as also Shakila w/o Suleman, could be said to be time and occasion for the appellant to have tried to get himself composed or frightened, visualising the untoward happening if he would continue the same with Shehnazbi. However, the accused refused to get himself consoled or composed or cooled. In fact, his mother-in-law and other relations were also injured at his hands, but the accused did not mind it even in a slightest manner. He chased Shehnazbi to the house of Aminabi, i.e. aunt of Shehnazbi. After entering the house of Aminabi, the accused, at least, could have regained his self-control because there Aminabi as also Sabirabi intervened and wanted to ward off the blows which otherwise would have fallen on the person of Shehnazbi. At that point of time also, the accused could have regained his control if he would have really meant for it. However even after injuring Aminabi

and Sabirabi the accused did not stop there but started chasing Shehnazbi upto the spot of occurrence i.e. about 125 to 130 ft. to Country Liquor Shop. This conduct of the accused, in our opinion, definitely indicates that the accused was that time determined to do away with Shehnazbi. This opinion of our's is also supported from the subsequent incident on the spot as in the Country Liquor Shop. P.W. 4 Chandrakant Bagul tried to intervene and tried to save Shehnazbi. It clearly means that Chandrakant Bagul, in short, tried to prevent accused from giving any blows or assaulting Shehnazbi. The accused even did not listen to the same. On the other hand, he wanted to clear off the obstruction of Chandrakant also by assaulting him on his hand and when Chandrakant took himself away from the occurrence, the accused, at that time, inflicted injuries on Salma, the sister of Shehnazbi, who was constantly following the accused, must be requesting him not to behave in that way. However, the accused did not pay any heed to anybody's request and when he caught hold of Shehnazbi in the Country Liquor Shop, he had mercilessly, to have the revenge, assaulted her with the chopper in his hand, causing as many as 21 external and internal injuries. Since the post-mortem report is accepted as it is by the defence, we do not wish to refer the same in details as the injuries are so severe that in any case, the accused could have definitely said to have the knowledge that the injuries were likely to cause death of Shehnazbi. Shehnazbi died on the spot itself. Taking into consideration the above-said action of the accused, we have no slightest hesitation in reaching to the conclusion that as regards death of Shehnazbi, the accused is not entitled for the benefit of the exceptions to section 300, thereby bringing him within the ambit of section 304 I.P.C.

38. We further feel it necessary to refer to another aspect in the matter, i.e. the argument of Shri Kapadia as regards the injuries on the person of the accused. In this respect, we only observe that it is always not necessary for the prosecution to explain injury on the person of the accused, particularly when eye witnesses and the medical report concur with each other and point a finger towards the guilt of the accused. Failure on the part of the prosecution to explain the injury on the person of the accused, in such a case, would not be fatal nor can any adverse inference be drawn against the prosecution. Even otherwise it has come on the record that the accused suffered the injury while he was being chased by other persons near the river-bed.

39. Thus, we now come to the point of deciding as to what offence the accused has committed as regards the death of Shehnazbi. Taking the overall view of the matter, the question of any motive in the instant matter does not arise. According to us, motive would have no relevance when the prosecution relies upon the evidence of eye witnesses to prove the incident. Motive assumes secondary role since the testimony of eye witnesses found to be acceptable. We, therefore, feel that the prosecution has proved the case beyond doubt that the act of the accused falls u/s 300 3rdly of the Indian Penal Code and punishable u/s 302 I.P.C. for committing the murder of Shehnazbi, as the act appear to have been done with the intention of causing bodily injuries to Shehnazbi and the said

bodily injuries intended to be inflicted were sufficient in ordinary course of nature to cause the death of Shehnazbi as an outcome of the revenge. Needless to mention, the accused is not entitled for the benefit of any of the exceptions to section 300. Thus, the accused, therefore, is liable to be convicted for murder of Shehnazbi.

40. As regards the other offences for which the accused was charged with, i.e., the charge u/s 498A, we find no substantial material on the record to hold the accused guilty of the offence u/s 498-A nor is there any cogent evidence on the record in that respect. We also feel that the accused cannot be held guilty for an offence punishable u/s 307 I.P.C. for causing injuries to witnesses Salma (P.W. 2); Sabirabi (P.W. 3), Chandrakant Bagul (P.W. 4); Chhotu @ Kamruddin (P.W. 5) and also the other two persons, namely, Shakila, mother of Shehnazbi and Aminabi, aunt of Shehnazbi. The evidence as discussed above, do definitely fall short to bring home the guilt to the accused u/s 307 of the Indian Penal Code. However, the accused can be held guilty u/s 326 I.P.C. for causing hurt with dangerous weapon to Salma (P.W. 2); Sabirabi (PW. 3); Chandrakant Bagul (P.W. 4) and Chhotu @ Kamruddin (P.W. 5). From the Medical Certificates which are on the record at Exhs. 17, 18, 20 and 21, clearly indicate that the injuries caused to these persons were grievous. The injuries caused to P.W. 5 Chhotu @ Kamruddin, as is seen from the certificate (Exh.21) are an incised wound on right parietal region 2" x 1/2" x 1/2" and incised wound on the left parietal region 2" x 1/2" x 1/2". The injuries appear to be, no doubt, on the vital part. However since the injuries does not appear to have been caused with the requisite intention, we do not feel that the appellant/ accused can be convicted of an offence punishable u/s 307 I.P.C. However that does not absolve him of the offence punishable u/s 326 of the Indian Penal Code, and more particularly when a weapon like Article 31 was used. We are not in a position to agree with the learned Judge of the Sessions Court on the point as regards finding the accused guilty for the offence punishable u/s 307 I.P.C. Aminabi was the only witness who had escaped on simple injury and rest of the prosecution witnesses mentioned above, the injuries appear to be serious. We, therefore, observe that the act of the accused causing grievous injuries to Salma (P.W. 2), Sabirabi (P.W. 3) and Chandrakant Bagul (P.W. 4) can definitely be covered u/s 326 I.P.C. No offence u/s 452 can be said to have been made out by the prosecution as the entry of the accused in the residential house of Suleman as also in the residential house of Aminabi could not be said to be house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any inmates; more so when both of them were closely related to the accused and when the accused had previously also, many occasions to go to their places. We, therefore, do not find that the accused can be convicted u/s 452 I.P.C. We simultaneously hold that no offence u/s 324 I.P.C. is made out against the accused.

41. Now, this brings us to the last point as regards punishment. The learned 2nd Additional Sessions Judge, Dhule has held guilty the accused of an offence

punishable u/s 302 I.P.C. for committing the murder of Shehnazbi and also the father-in-law Suleman and has sentenced the accused with death penalty. However since we have come to the conclusion that the accused cannot be held guilty for an offence u/s 302 for causing the death of father-in-law Suleman, but he is liable for punishment u/s 304-II for assaulting Suleman who succumbed to the injuries on the next day. We have also made it clear that the death of Suleman was not in the contemplation of the accused. However, we have to find out as to whether the death sentence awarded to the accused by the learned 2nd Additional Sessions Judge, Dhule, deserves to be maintained and whether the judgment and order in that respect, should be confirmed or not.

42. We have heard Shri Kapadia, on the point of sentence. Shri Kapadia, initially, argued that since there was no compliance of section 235(2) of the Criminal Procedure Code, the matter should be sent back as, according to Shri Kapadia, the learned Judge did not call upon the accused to give his say and evidence as regards the mitigating circumstances by making the accused aware of the proposed penalty. However, Shri Kapadia, at the same time, urged that if the death sentence is not to be confirmed then, in that case, no purpose would be served by remanding the matter and putting the accused again in a hanging position and constantly under tension.

43. Shri Kapadia, vehemently, urged that taking into consideration the facts and circumstances of the case and other mitigating circumstances, death sentence should not be confirmed as, according to Shri Kapadia, the act can be said to be committed by the accused under grave and sudden provocation. He further suggested that the accused has a son who, at the relevant time, was of two and a half years old and by this time must be of three and a half years old and by this time must be of three and a half years to four years. Shri Kapadia, further, suggested that the accused had gone to fetch his wife back to Shahada. However the untoward incident happened which, according to Shri Kapadia, was also not contemplated by the accused himself. Shri Kapadia, suggested that then no purpose would be served by sentencing the accused to death and more so when it is not the case of the prosecution that by allowing the accused to live he would be menace to the society.

44. Shri Kanade, the learned Public Prosecutor, vehemently urged that the act of the accused was so brutal as he mercilessly inflicted injuries on the person of his wife and that he definitely deserves the death sentence so as to deter others from such heinous crime.

45. We, therefore, to find out the appropriate sentence, had an advantage to go through the judgment reported in Baldev Singh and another Vs. State of Punjab, . We see that in the case in hand with which we are dealing, it is clear that the accused as also the victims including the two deceased, appear to be the members of the same family, i.e. they are very close relatives. We also find that the feud centered around the cohabitation of husband and wife. Thirdly, we find that son-Manzoor is the product of the wedlock of the accused and the victim

Shehnazbi. We also find that the accused had gone to his in-laws' place to bring his wife back and further that attempts were also appear to have been made at the stage of elderly persons of the community and also elderly persons of both families which, no doubt, even according to the prosecution, has resulted in a decision to send Shehnazbi (now deceased) back to the house of her husband, though after couple, of days. We further see that accused in his statement expressed the cause of provocation and the filthy language used by his wife Shehnazbi which annoyed the accused, but the gravity thereof was the sole matter to be considered.

46. We have also given due thought to the antecedents of the accused which show that he has no any previous criminal history nor was he accused of and convict of any criminal offence. His age is also a matter to be considered, which is just about 30 years.

47. However, it is seen that at the relevant time, Shehnazbi was totally helpless and defenseless and her running from place to place indicated as to how in a terrorised state of affairs she was. We also find that, in fact, it was just appellant's broaching father-in-law's house and on refusal by the father-in-law to send Shehnazbi with him, the quarrel ensued which appear to have resulted into exchange of hot words and ultimately various assaults referred to above on various persons. We, therefore, even without slightest vacillation of mind, reach to the conclusion that the evidence on the record and circumstances of the case and the frightful act of the accused could be balanced if the sentence of death is committed to sentence of life imprisonment. Our this view is duly supported by the following decisions. State of Rajasthan Vs. Vinod Malhotra, and Muniappan Vs. State of Tamil Nadu, ; and Jasu v. State of Rajasthan, 1995 Cri.L.J. 1995. All these judgments point out that if murder is committed under the influence of extreme mental and emotional disturbances out of sheer frustration without any pre-planning and if the accused cannot be said to be a menace to the Society, then, such a case cannot be said to be "rarest of rare cases" and in such a case, death sentence will not be the appropriate sentence. We are in full agreement with Shri Kapadia, on this point and we feel that the present case cannot be said to be the one wherein death sentence should be awarded.

49. However while considering the mitigating circumstances, we may also say that on all the days of hearing of the present appeal, we had an advantage of observing the accused in the Court Room and we minutely observed this behaviour in the Court Room. We find that the accused did not appear to be a person with any arrogant nature or who can be proved to be a menace to the society. We feel that the very idea and salient feature of keeping the accused persons present in the Court Room in cases of confirmation of death sentence must be to enable the Court to observe the demeanour of the accused and to see his conduct and appearance, to be one of the mitigating circumstances. Taking into consideration this aspect also, we reach to the conclusion that the present case cannot be said to be "rarest of rare" cases so as to confirm the death

sentence. The moment we come to the conclusion of not confirming the death sentence, taking into consideration the same points, we feel it appropriate to inflict the punishment of imprisonment for life.

50. Before parting with this judgment, we express our word of appreciation for the painstaking efforts by Shri A.M. Kapadia, the learned Counsel for the appellant/ accused and Shri A.M. Kanade, the learned Public Prosecutor, who have ably assisted us in deciding the present matter.

51. In the result, the Reference of Confirmation, we find it difficult to accept. The sentence of death awarded to the accused/appellant is hereby quashed and set aside. However, the accused/appellant is held guilty of the offence punishable u/s 302 I.P.C. for committing the murder of his wife, Shehnazbi, and is sentenced to suffer life imprisonment.

52. The accused is acquitted of the offence punishable u/s 302 of the Indian Penal Code, for committing the murder of his father-in-law Sk. Suleman Gamir Khatik. However, the accused is found guilty of an offence punishable u/s 304-II, for causing death of Sk. Suleman Gamir Khatik, and is sentenced to suffer R.I. for seven years.

53. The accused/appellant is acquitted of the offence punishable u/s 307, 452, 324 and 498A of the Indian Penal Code, and the order of sentence passed by the learned 2nd Additional Sessions Judge, Dhule, in that respect, is quashed and set aside. However, the accused is held guilty of an offence punishable u/s 326 I.P.C. for causing hurt with dangerous weapon to Salma, Sabirabi, Chandrakant and Chhotu @ Kamruddin and he is, therefore, sentenced to suffer rigorous imprisonment for two years.

54. Needless to mention that the sentences imposed on the accused shall run concurrently.

55. The death sentence is not confirmed and the appeal of the accused is partly allowed, in the above terms.

56. Appeal partly allowed.