

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 816 of 2001****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE GITA GOPI**

Approved for Reporting	Yes	No
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HASMUKHBHAI BHURABHAI VASAVA

Versus

STATE OF GUJARAT

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Appearance:

BAILABLE WARRANT SERVED for the Appellant(s) No. 1

MR VD PARGHI(568) for the Appellant(s) No. 1

MS JYOTI BHATT APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE GITA GOPI**Date : 25/03/2026****JUDGMENT**

1. The present appeal is filed by the appellant, who came to be convicted under Section 304 Part-II of the Indian Penal Code (I.P.C. for short) by the judgment and order dated 12.09.2001 passed by the Additional Sessions Judge, Panchmahal, Godhra in Sessions Case No.100 of 1998, whereby the appellant was ordered to serve sentence of five years rigorous imprisonment with fine of Rs.3,000/- and in

failure of payment of fine further three months simple imprisonment.

2. The case of prosecution, as per the charge Exh.2 is that on 31.07.1997, at about 00:30 hours, the accused-appellant at his residence situated at G.E.B. Quarter in E/2, found his wife - Dhirajben in an illicit relation with her lover, Harshadkumar R.Sharma and at that time, the deceased threatened the accused-appellant, that if he comes between them, he would not be allowed to live.

2.1 It is further alleged that the accused-appellant assaulted deceased by giving fist and kick blows, and with intention to kill dashed her with the wall, and inflicted blows with a deadly weapon like a wooden log, thereby causing bodily injuries which were sufficient in the ordinary course of nature to cause death. As a result of the said injuries, the deceased succumbed to death and thereby, accused was charged for an offence punishable under Section 302 of the Indian Penal Code.

3. Learned advocate Mr. V.D. Parghi for the appellant submitted that the judgment of conviction passed by the

learned Trial Court Judge is without appreciating the evidence on record and the law laid down by the Hon'ble Supreme Court. Mr. Parghi stated that the learned Trial Court Judge ought to have considered the evidence on record that the wife of the accused i.e. the deceased had developed illicit relation with a co-employee of accused residing in the same colony.

3.1 Learned advocate Mr. Parghi submitted that the learned Sessions Judge has failed to take into consideration the fact that it was not an offence allegedly committed by the appellant. Mr. Parghi stated that if it is to be believed without admitting, it was not a pre-mediated crime, but was out of grave and sudden provocation as per the evidence on record. Mr. Parghi stated that the appellant's wife had developed illicit relation with one Harshadkumar Sharma and were found in compromising position and when both were confronted by the appellant, the deceased wife threatened the appellant that if he comes in between them, he would not be allowed to live, and that had enraged the appellant, as a consequence he lost his self-control.

3.2 Learned advocate Mr.Parghi further submitted that after marriage, the appellant and his wife were having a son

named [REDACTED] aged about four years at the time of incident. Mr. Parghi stated that the said act on the part of his wife was in no circumstances pardonable act on the part of any man of prudence. Mr. Parghi submitted that the learned Trial Court Judge has failed to take into consideration that the act of intimate relationship witnessed by the appellant in his own house at odd hours at 12:30 at mid-night which gave grave and sudden provocation to the appellant, led him to assault his wife, who later on died.

3.3 Learned advocate Mr. Parghi stated that the learned Trial Court Judge has also failed to take into consideration the fact that all the witnesses who have been examined during the trial had stated that it was the appellant who had made extra-judicial confession of the offence committed by him. Mr. Parghi submitted that the appellant had neither any *mens rea* to commit the offence nor his conduct was questionable after the incident, thus without corroboration the evidence in the nature of extra-judicial confession cannot be believed.

3.4 Learned advocate Mr. Parghi has relied upon the case of **Raghavan Achari alias Njoonjappan v. State of Kerala** 1993 Supp. (1) SCC 719, wherein the facts were that the

appellant having seen deceased in a compromising position with his wife and deceased having caused grievous injuries to the appellant, thereupon appellant who was having the chopper in his hand used it which resulted in the death. The appellant was made entitled to get the benefit of section 100 of IPC and the conviction under section 304 Part-I and sentence of three years rigorous imprisonment was set aside. Mr. Parghi thus finding similarity in the facts of case prayed to grant the benefit in the same way to the present appellant.

4. *Per contra*, learned APP Ms. Jyoti Bhatt submitted that the judgment and order of the Trial Court convicting the present accused is just and proper and does not require any interference, as same is appropriately passed. APP Ms. Bhatt submitted that the death of the wife is in a very brutal way. The appellant had waited for the opportunity to murder his wife, thus under the pretext of the false allegation of immoral act of wife has done away with her. Referring to the injuries suffered by the deceased, learned APP Ms. Bhatt submitted that it is actually a case of murder.

4.1 Learned APP Ms. Bhatt has also relied on the judgments of (i) *Surender Kumar v. State of Himachal Pradesh*, 2025 (12)

SCR 439, (ii) Rajeshbhai Prabhatbhai Patel v. State of Gujarat, 2024 (0) AIJEL-HC 249286, (iii) Surender singh v. State (Nct of Delhi), 2024 (7) SCC 40 and (iv) Chandubhai @ Dharmendrabhai Rajibhai Tadvī v. State of Gujarat, 2024 (2) GLR 1246, to distinguish the facts of the present matter and to submit on the applicability of law.

5. Having heard learned advocate Mr. V.D. Parghi and learned APP Ms. Jyoti Bhatt, perused the record. The prosecution examined five witnesses and relied upon almost ten documentary evidence. The complainant Hasmukhbhai is accused himself, who on 31.07.1997 stated before police sub-inspector, Godhra Taluka by his complaint that he was residing with his family along with his child in Lileshra village and was serving as a Senior Clerk since last one year in GEB Lileshra. They are two brothers, his elder brother was having his job in IPCL Vadodara and was residing in the township of IPCL. The accused-complainant marriage was solemnized in the year 1992 in Muleshar Taluka, Sinor District Vadodara with daughter of Chaturbhai Chagganbhai Vasava, named Dhirajben as per custom of their community and thereafter his wife was residing with him, and out of the wedlock, they had a

son named [REDACTED] aged about four years. He had two sisters, who were already married and residing in their matrimonial house and their parents were residing in village working as agriculture labourer.

6. The accused in his complaint stated that one week prior to the incident he got suspicious of his wife having illicit relation with the neighbour Harshand Sharma, a typist clerk in GEB, original resident of Nadiyad and therefore had kept an eye on his movement. On 30.09.1997, at about 8 O' clock in the evening the complainant-accused, his wife and his son were watching T.V. till 9:00 at night and thereafter all the three slept in the same room on the bed. He stated that since he was doubting the character his wife, so he pretended to be asleep, during that time, that day i.e. about 0.30 hours of 31.07.1997, his wife went to the next room, at that time, Sharma had entered the house from the rear door and both of them were engaged in intimate relation. On hearing the sound he woke up from his bed and entered into the next room where he saw both of them in compromising condition and therefore suddenly he got excited and started scolding, at that time his wife threatened him not to come in between them

otherwise they would not allow him to remain alive, so the complainant got enraged, while Sharma ran away from place. He gave fist and kick blows to his wife and in spite of that, his wife continued to retort, so he holding her dashed her to the wall; she was injured on the forehead. Thereafter, suddenly he got a chock (a wedge-shaped block of wood) from the stove in his house and gave a blow on the forehead of his wife. Thereafter both of them slept on the bed. The complainant also stated that his wife was habituated to sleep down from the bed during the night, as his wife was sleeping and therefore, he did not pay attention to her, and when he woke up at about approximately 2:45 night to drink water, at that time, he tried to wake his wife, twice to thrice moved her body, but found her dead. Thereafter, he informed his superior Deputy Engineer Jayantilal Kantilal Sariam and the neighbours about the death. An ambulance came from Civil Hospital, seeing the injuries on his dead wife, the ambulance did not carry her body and the incident was informed to police control room.

6.1 The accused has further stated in the complaint that since he was doubting the relation of his wife with neighbour

Sharma, therefore he gave fist and kick blows to his wife and dashed her on the wall and caused her to death with the chock. The accused also produced the chock with his complaint.

7. The panchnama of the place of offence was conducted on the date of the complaint i.e. on 31.07.1997 between 10:45 a.m. to 11:30 a.m. The another noticeable fact is the document at Exh.27 which is copy of the complaint by the appellant-accused against Harshadkumar R.Sharma as I-Cr.No.176 of 1997 under Sections 452 and 323 of IPC; the date of offence as 31.07.1997 and time is 0:30 hours. The offence was registered on that day at the police station at 13:00 hours.

8. The accused as a complainant gave a complaint on 31.07.1997 with the fact that Harshadkumar R.Sharma was having illicit relation with his wife and since last one week he was suspicious. Stating the same fact, of watching the T.V. along with wife and son, and going to sleep, accused stated that on 31.07.1997 at 0:30 hours accused Harshad Sharma entered their house from the rear door and, his wife also went in the rear room, hearing the sound, the present accused had

gone to the room, where he saw both of them in intimate relation, while his wife told him that, 'who are you to beat me, we would do away with you'. The complainant stated that soon thereafter his wife came and stood ahead of Sharma, at that time, there was scuffle with Sharma and exchange of abusive words. Sharma held his right hand and twisted it and dashed him to the door, he got injured in his palm which got swollen and when he started beating his wife, Sharma ran away from the place.

8.1 In wake of both the complaints, the case has to be appreciated by analysing the evidence. In the statement under Section 313 of the Criminal Procedure Code (for short 'Cr.P.C.') the accused had reiterated the facts of the complaint and had stated that seeing his wife with another man in his house in a compromising position and when his wife and her paramour assaulted him, he suddenly got excited, and lost control of his mind. He has stated that the paramour of his wife had assaulted him and his wife had threatened him that if he would come in between them, then they would not allow him to live. The accused has further stated in his statement that Harshadkumar Sharma had

beaten him with a wooden log and there was scuffle between them, he got frightened, that he would be killed therefore to protect his life, as he could lay his hand on a wooden log for his own defense, and in grave and sudden provocation he lost control and during the quarrel his wife sustained injuries, thereafter they slept, and at early morning when he woke up and tried to wake his wife at that time he felt that his wife had died and therefore he immediately informed his superior officer and informed the police. He also stated that he has also filed complaint against Harshadkumar Sharma and police had arrested him. Accused also stated that he had taken the treatment from Government Hospital. Accused had produced the counterfoil of charge sheet and a copy of the charge against Harshadkumar Sharma in his further statement.

8.2 Thus, there are three types of evidence against accused. Two complaints given by him to the police, his extra-judicial confession and his statement under Section 313 Cr.P.C. All are the accused statement. The plea of self defence and grave and sudden provocation had been taken by the accused in his statement under Section 313 Cr.P.C.. Accused states that he was suddenly provoked by seeing his wife in a compromising

condition with her paramour. The plea of self-defence is also taken on the ground that his wife has threatened, even on behalf of her paramour. Accused has in the complaint against Sharma stated that Sharma had also assaulted by holding his hand and then by twisting the hand had dashed him to the door, and in the scuffle, present accused received injury on the palm. Accused stated that because of grave and sudden provocation he had beaten his wife who subsequently died.

9. The law in regard to further statement of accused under Section 313 Cr.P.C., has been dealt with by the Hon'ble Supreme Court in the case of ***Premchand v. State of Maharashtra, (2023) 5 SCC 522***, wherein it was recorded as under:

“14. A Bench of three Hon'ble Judges of this Court in State of U.P. v. Lakhmi [State of U.P. v. Lakhmi, (1998) 4 SCC 336 : 1998 SCC (Cri) 929] has extensively dealt with the aspect of value or utility of a statement under Section 313 CrPC. The object of Section 313CrPC was explained by this Court in Sanatan Naskar v. State of W.B. [Sanatan Naskar v. State of W.B., (2010) 8 SCC 249 : (2010) 3 SCC (Cri) 814] The rationale behind the requirement to comply with Section 313CrPC was adverted to by this Court in Reena Hazarika v. State of Assam [Reena Hazarika v. State of Assam, (2019) 13 SCC 289 : (2019) 4 SCC (Cri) 546] . Close on the heels thereof, in Parminder Kaur v. State of Punjab [Parminder Kaur v. State of Punjab, (2020) 8 SCC 811 : (2020) 3 SCC (Cri) 914] , this Court restated the importance of Section 313CrPC upon noticing the view taken in Reena Hazarika [Reena Hazarika v. State of Assam, (2019) 13 SCC 289 : (2019) 4 SCC (Cri) 546] and M. Abbas v. State of Kerala [M. Abbas

v. State of Kerala, (2001) 10 SCC 103 : 2002 SCC (Cri) 1270] .

15. *What follows from these authorities may briefly be summarised thus:*

15.1. *Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.*

15.2. *Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.*

15.3. *When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.*

15.4. *The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised defences.*

15.5. *An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.*

15.6. *The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).*

15.7. *Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.*

15.8. *Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.*

15.9. *If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.*

15.10. *Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.*

16. *Bearing the above well-settled principles in mind,*

every criminal court proceeding under clause (b) of sub-section (1) of Section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him...."

10. In background of the law laid down, what is to be considered is that the explanation of the accused cannot be solely relied for conviction, the Court must find the connection with the evidence adduced by prosecution witness. The answers given by accused are relevant for finding truth and examining the veracity of the prosecution case. The statement of the accused has to be read as a whole to test the exculpatory nature of confession. If the accused offers defence and an alternative version of events and interpretation is put forth the Court has to analyse and consider accused statement.

11. Prosecution to prove the injuries suffered by the wife examined P.W.1 - Doctor Rameshchander Goderji Chauhan, who conducted autopsy. He as a Medical Officer along with Doctor Nagori were on duty at Civil Hospital Godhra on 01.08.1995, at that time, constable Buckle No.1030 came with dead body of Dhirajben Hasmukhbhai, he and panel Doctor

Nagori examined the dead body. Report in respect of examination of dead body was prepared by Doctor Nagori under his signature. P.W.1 also deposed that as a panel Doctor he too had put his signature in the postmortem report Exh.8.

11.1 As per the deposition of P.W.1, the deceased was a Hindu woman aged about 25 years. She was wearing purple colour skirt (Chaniyo) and white dress, which were stained with blood. Stool had passed through anus and her body was healthy and cold. From back to neck, blood clots were found, face was swollen and her closed eyes were black and mouth was closed. Her stomach was swollen and tongue was in the mouth. No fluids was seen coming out from her mouth and nose. There were no injuries on the private part, while several external as well internal injuries were found during examination.

12. The P.M. Note No.153/97, Exh.8, of deceased Dhirajben Hasmukhbhai Vasava, 23 years female, notes the following injuries:

Head: (i) abrasion over left frontal prominence 3 × 3 cm.

(ii) C.L.W. over right temporal region left to right eye 1

cm × ½ cm × bone deep

- (iii) both eyes black eye
- (iv) diffuse swelling all over scalp on palpation.

Neck: abrasion over suprasternal region 6 cm × 0.5 cm.

Chest: (i) bruise over right side above nipple 10 cm × 1.5 cm
horizontal

- (ii) bruise over right chest 8 cm below nipple parallel
to 1st bruise – 11 cm × 1.5 cm

- (iii) bruise over left side of chest 8 cm × 1.5 cm at level
of 5th rib.

Right Upper Limb:

- (i) bruise over front of shoulder 9 × 1.5 cm.
- (ii) C.L.W. over left aspect of upper 1/3 of upper arm
circular 0.6 cm diameter × bone deep.
- (iii) bruise over injury No.2, 6 cm × 1.4 cm horizontal

Left Upper Limb:

- (i) bruise over left shoulder anterolateral side 7 cm ×
1.5 cm.
- (ii) C.L.W. circular 0.6 cm diameter × bone deep at
lower 1/3 of upper arm.
- (iii) swelling over lower end of forearm - radius - ulna

lower end.

Back: (i) bruise over lumbar region 2 in number parallel to each other horizontal (1) 10 cm × 2 cm (2) 11 cm × 2 cm

(ii) bruise over right side over iliac crest 10 cm × 2 cm

Right lower Limb:

(i) abrasion over left side of right thigh vertically 13 cm × 0.5 cm

(ii) bruise over right knee above patella 5 cm × 2 cm.

Left lower Limb:

(i) abrasion at lower end of left thigh 5 × 2 cm.

(ii) bruise over left knee below patella 3 cm × 2 cm.

12.1 Doctor Rameshchander Goderji Chauhan - P.W.1 further deposed that all the injuries were before death and the injury on liver was sufficient to cause death.

12.2 The injuries, as referred were on head, neck chest, right and upper limb, back and left lower limb.

12.3 Doctor P.W. 1 has further deposed about accused Hasmukhbhai Bhurabhai, that, he had come at their hospital on 31.07.1997 with the yadi of Godhra Taluka Police Station,

who was examined by Doctor Gupta. P.W.1 identified the signature of Doctor Gupta. P.W.1 was deposing, as Doctor Gupta had gone to Karnataka and was not in a position to come shortly. The certificate was produced as Mark 4/9, and on perusing it, the Doctor has testified that there was $\frac{1}{2} \times \frac{1}{2}$ cms. size bruise and back side of right hand palm was reddish, and while pressing the same accused was feeling pain. This injury could be inflicted by solid substance. This injury was single. The accused also made complaint of pain on back side of both thighs. The certificate was produced at Exh.9.

12.4 In the cross-examination, P.W.1 could state that generally the weight of liver is $1 \frac{1}{2}$ to 2 k.g. The liver becomes abnormal due to disease. If the liver is abnormal due to disease, it can rupture even with a simple push. Doctor denied of chances of survival in cases of liver rupture and affirmed that no fracture can be caused by the muddamal wooden log. Due to kick and fist blows the ribs would be broken. Due to breakage in fifth and eighth ribs, there was possibility of liver rupture. Apart from the injuries on the ribs, the other external injuries were normal in nature and those other injuries were curable. Fracture of the bones in hand can occur due to fall or

can be caused while colliding with the wall.

12.5 In the P.M. report the cause of death was noted as shock due to internal hemorrhage due to rupture of liver and multiple injuries.

12.6 The injuries of the accused and the injuries caused to the deceased becomes a comparable factor in the plea of self-defence.

13. The prosecution has relied on the evidence of P.W.2 and P.W.3 to demonstrate accused conduct and for the evidence of extra-judicial confession of the accused before the witnesses.

13.1 P.W.2 - Vasantkumar Ratilal Suthar was examined since he was the person, who was asked to come with an ambulance in GEB quarters. The witness stated that on 31.07.1997, he was serving as an ambulance driver at Godhra Civil Hospital. On that day, early morning at 6:00, two persons had come in Jeep in his quarters and informed him that one lady was ill who was to be taken to Civil Hospital and asked him to come, therefore, he had gone to E/2 GEB quarters at Lilesra area. The witness stated that the quarter was on the ground floor. On entering the quarter he saw a woman covered with a

blanket. Her husband Hasmukhbhai Bhurabhai Vasava was present there and when he asked him as to what had happened husband informed that his wife was sick, when he removed the blanket from the face of the lady, he saw that she was hurt on the head. He further moved the blanket and saw injury on the neck and when he inquired from Hasmukhbhai, as had found that the woman had been beaten, at that time, he was told that during the night there was a quarrel between them and thereafter she died. The witness stated that Hasmukhbhai had asked him to inform the police as well as the neighbours. The witness P.W.2 stated that thereafter he returned back to the hospital and from there he dialed the police on number 100, police had replied to him.

13.2 The fact becomes clear from the evidence of this witness that two persons had gone to Civil Hospital from the quarter to call him with the ambulance. When the witness observed the woman by removing the blanket from the face, his observation of the injury on the head and neck made him question the accused, who before him had stated about the physical quarrel and thereafter witness told the accused that the lady had died. The evidence which has come through

P.W.2 had not been denied by the accused in his further statement. It appears that P.W.2 had informed the police by dialing through number 100.

13.3 In the cross-examination of P.W.2, the fact becomes noticeable is that this witness had also given deposition on 21.01.1998 in a criminal case against Harshadkumar Sharma entering the house of accused. The witness was confronted with the question that he had not got it recorded before the police in his statement that accused had informed that his wife was ill, to that witness denied. In other words when P.W.2 had gone to the house of the accused he was informed by the accused that his wife was ill. It was on that basis actually the ambulance driver had come to that place, so would not be considered as any major contradiction. The further cross-examination suggests that when the witness had reached the room of the accused, he had seen accused sitting beside his wife, accused was terrified. P.W.2 does not recollect whether the persons who had come to call him in GEB jeep were the officers of GEB. The fact of the wife's death because of quarrel becomes evident. P.W.2 had seen the injury on the head and neck. Accused admits in his

statement under Section 313 Cr.P.C. of informing P.W.2 about his quarrel with his wife during the night.

14. P.W.3 is the officer of GEB, Jayantilal Kantilal Sariam, who on 31.07.1997 was Deputy Engineer in Godhra Gujarat Electricity Board office. At that time, accused Hasmukhbhai was serving as senior clerk in his office. The witness stated that accused was residing in E/2 quarter of the colony which was in Lilesara connected with GEB office. Along with the accused, his wife was staying with him. The witness was also residing in the same colony in C/1. The witness stated that in the morning at 4 O' clock accused Hasmukhbahi had come to his quarter and had informed him that his wife had died, and asked for a vehicle. This witness stated that when he had inquired from the accused as to how his wife died, the accused stated before him, that since her blood pressure increased she died. The witness denied to give his vehicle and asked to bring an ambulance. When he inquired about the ambulance he came to know that a driver had come with the ambulance from the Civil Hospital. He had not met the driver of the ambulance.

14.1 The witness P.W.3 stated that in his office there was a typist called Harshadkumar Ramanlal Sharma, who was staying opposite the house of the accused. The witness stated that when his police statement was recorded he had informed the police that the accused had told him that his wife was having illicit relation with Harshadbhai and the accused had also informed this witness that since his wife was having such a relation, therefore he had beaten her, and so she died.

14.2 In the cross-examination the witness does not recollect whether he had gone with his jeep for the ambulance in Civil Hospital and also does not recollect that since he had asked, so the driver of the Civil Hospital had come with the ambulance. The witness also affirmed that he had given deposition in criminal case against Harshad Sharma on 31.07.1997, who had entered the house of the accused.

14.3 The evidence of this witness would clarify, that about 4:00 in the morning the accused had gone to this witness asking for his vehicle and this witness had asked the accused to call for the ambulance. The accused had informed him of his wife having illicit relation with Harshadbhai, who was a typist in their office and he had given deposition in the

criminal case on the ground that Harshad Sharma had entered the house of the accused on 31.07.1997. The accused had also stated before this witness that because of the illicit relation he had beaten his wife, who had died. No fact of Harshad Sharma having beaten the accused is coming out in the testimony of this witness P.W.3. So before both these witnesses P.W.2 and P.W.3, accused had admitted of his beating the wife and subsequent of her death. The statement before these witnesses by accused, falls in the category of extra-judicial confession.

15. The neighbour of the accused - Abdul Sattar Ismaile Bely was examined as P.W.4. According to the witness accused was staying at the ground floor in quarter No.E/2. He was residing opposite the quarter of the accused in F/1 with his family. The witness stated that accused was residing with his wife and a small child. On 31.07.1997 police had called him to record his statement. At that time, when he was asked, he had informed that the wife of the accused is lying dead and he had come to know that accused had killed her because of their internal quarrel. According to the witness since they were sleeping in their quarter he had no information about

the incident. The witness was declared hostile by the Public Prosecutor, and in the cross-examination by the Public Prosecutor the witness affirmed that Ranjeetbhai had informed him that Hasmukhbhai had beaten his wife during night time and she died. Further, Ranjeetbhai had also told him that the deceased was having illicit physical relation with neighbour Harshadbhai and as the accused was suspicious of the illicit relation of his wife Dhirajben with Sharma Typist, at that night, by giving fisticuff he had beaten her and then by dashing her with the wall, and had beaten her with the wooden log, therefore, she died.

15.1 In the cross-examination from the side of the accused, P.W.4 had affirmed of giving deposition in the police case against typist Sharma. The witness does not know whether the accused himself had given the complaint.

15.2 The evidence of this witness-P.W.4 would suggest that Ranjeetbhai had informed him about accused beating his wife and dashing his wife with the wall and because of that she had died. The accused was suspicious of his wife having illicit physical relation with Harshadbhai. This evidence, which the witness, P.W.4, could give would only be the information given

by Ranjeetbhai. The prosecution had not examined witness Ranjeetbhai. The relevancy of the evidence of this witness would be to the extent of the information conveyed to him by Ranjeetbhai. The witness himself had come to know that the accused has killed his wife because of their internal quarrel. P.W.4's evidence would be hearsay evidence, but would be relevant to consider the corroboration.

15.3 The third set of evidence is the complaint by the accused before the police. In one, complainant is in a capacity of an accused and another as a complainant, against Harshadbhai Sharma, the alleged paramour of accused wife.

16. P.W.5 is the Police Officer before whom the accused had given the complaint. P.W.5 - Bhairavsinh Salamsinh Parmar was senior police sub-inspector at Godhra Taluka Police Station on 31.07.1997. Accused Hasmukhbhai Bhurabhai Vasava gave his complaint before him with the details. The complaint was recorded, as narrated, and was sent for registration of the offence. The witness stated that P.S.O. registered the FIR, and offence under Section 302 IPC was registered and the papers were sent to P.W.5 for further investigation.

16.1 Police witness P.W.5 further stated that for the inquest of the deceased he had sent yadi to Executive Magistrate. The place of offence was shown by the complainant in presence of panchas and at that time he had produced chock, which was seized. The clothes of the deceased sent by the doctor seized through the panchnama, were sent for FSL examination. The abstract of attendance register was seized from GEB office. Since there were sufficient evidence against the accused charge sheet was filed. The complaint was registered on 31.07.1997 at 14:00 hours and accused was produced before the Court.

17. The Investigating Officer has reiterated in the testimony the complaint which was given by the accused before him. The Investigating Officer stated that the complaint was recorded of the accused by his writer under his observation. The accused had signed the complaint in his presence and he too had signed the complaint, as given before him. The Investigating Officer stated that the facts in the complaint are true. The complaint came to be adduced in evidence at Exh.14.

17.1 The Investigating Officer received Wardhi from the control room and had reached the place at 8:00 in the morning. The complaint was recorded at the place of incident and thereafter sent to police station. The dead body was sent to the hospital and there the inquest panchnama was drawn.

17.2 The Investigating Officer has also stated that the accused had filed a complaint against Harshadkumar R. Sharma as I-Cr. No.176/97 under Sections 452, 323, 504 of the IPC. The photocopy of the complaint was placed in evidence at Exh.27. The Investigating Officer stated that as per the complaint, criminal case was filed against Sharma.

17.3 In the cross-examination of the Investigating Officer, it has come on record that the date of complaint against Sharma and the complaint in the present matter were the same and the complaints were given together. He affirmed that the case against Sharma was filed of trespassing the house of the accused from the rear door, and the statement of the witnesses of the present matter were recorded in the case against Sharma and P.W.5 too had given deposition as Investigating Officer in the case against Sharma.

17.4 The result of that case has not been brought on record of the trial Court. Admitted position now becomes clear that the same set of witnesses were examined in both the cases, however it appears that the trial were conducted separately.

18. Section 452 of the IPC would be necessary to be referred since the accused as a complainant had moved the criminal machinery on the ground that Harshadkumar Sharma had entered his house and accused had seen his wife and Harshadkumar Sharma in compromising position. The plea of the accused is of grave and sudden provocation.

18.1 Section 452 of IPC reads as under:

“452. House-trespass after preparation for hurt, assault or wrongful restraint.— Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

19. House trespassing could be proved in view of the criminal complaints filed. But, the intention and preparation for hurt, assault or wrongful restraint would have been examined in criminal trial of I-Cr. No.176/97 against Sharma. The judgment of that matter is not the part of trial. Nor the

trial in connection to that complaint was jointly dealt with the present matter.

20. Prior to the complaint to the police, the accused had met the ambulance driver of Civil Hospital, and his superior officer almost about 4 O' clock in the morning. The evidence of those witnesses became relevant to consider the aspect of confession of guilt by the accused, which would, as referred earlier, takes the form of extra-judicial confession, governed by Section 24 of the Indian Evidence Act, 1872. An extra-judicial confession, defined as a confession made outside a Court or to someone other than a Magistrate, often to private individual, it is to be proved as voluntary, and truthful. It becomes relevant under Section 24 of the Evidence Act, if made voluntarily and not induced by threat or promise, such confession cannot be presumed in law to be a weak type of evidence. It depends on the facts and circumstances of each case.

21. P.W.2 the ambulance driver was the first person, who had seen the injury on the head and neck of the deceased. Accused had informed P.W.2 of physical quarrel with his wife. P.W.2 there and then had told the accused that his wife was

dead.

21.1 Prior to P.W.2 reaching the place of the accused, P.W.3 was told on the phone by the accused, when he had asked for a vehicle, that his wife had died because of high blood pressure. The witness - P.W.3 had got it recorded in the police statement regarding accused informing him about his wife having illicit relation with Harshadbhai and that he had beaten his wife to death.

22. The 'confession' and the 'admission' of offence by the accused, before P.W.2 and P.W.3 becomes relevant evidence. Admissions and confessions are exceptions to the 'hearsay' rules. The evidence Act places them in the province of relevance, presumably on the ground that they being declaration, against the person making them, they are in all probability true. The probative value of an 'admission' or 'confession' does not depend upon its communication to another. Like any other piece of evidence, admission/confession can be admitted in evidence for drawing an inference of truth. An 'admission' or 'confession' to be relevant must pertain to a 'fact in issue' or a 'relevant fact'. The evidentiary value of extra-judicial confession must be

judged in the facts situation of each case. It would depend not only on the nature of the circumstances but also the time when the confession had been made and the credibility of the witness who testifies thereto. Evidentiary value of extra-judicial confession depends upon trustworthiness of the witness before whom the confession had been made. Law does not contemplate that the evidence of the extra-judicial confession should in all cases be corroborated. An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence.

22.1 P.W.5 is the Investigating Officer before whom the accused had given his complaint, he told the police of beating his wife to death. Here, before informing the police, the accused had told P.W.2 of his quarrel with the wife and her death and before P.W.3 had stated about his wife having illicit relation with Harshadbhai and therefore accused had beaten her to death. The information which P.W.4 had, was through Ranjeetbhai, who was not examined by the prosecution, hence, the information with P.W.4 would be hearsay witness but could be valued for corroboration. The immediate statement prior to the complaint was before P.W.3 and

thereafter before P.W.2, which becomes extra-judicial confession. The statement by the accused before P.W.3 and P.W.2 was given voluntarily, the statement of accused before P.W.2 was in his ambulance driver capacity and P.W.3 as his superior officer. The confession by accused before P.W.2 and P.W.3 early in the morning was voluntary.

22.2 As noted herein above, on the very same time, both the complaints came to be filed; one by accused of killing his wife and another by the accused against Harshadkumar Sharma giving details of the physical scuffle and exchange of words. The Investigating Officer has affirmed of I-Cr.No.176/97 under Sections 452, 323 and 504 of IPC filed against Harshadkumar Sharma. The Investigating Officer as well as P.W.4 - Abdul Sattar Ismaile Bely, who was the resident of the same colony staying opposite the house of the accused, P.W.3 - Deputy Engineer as superior officer and P.W.2 the ambulance driver all have affirmed that they had deposed in the criminal proceeding, which was filed against Harshadkumar Sharma.

22.3 The confession of accused before P.W.2 and P.W.3 about his guilt and hitting his wife to death, the evidentiary value of the extra-judicial confession depends upon the person

before whom confession has been made. The confession made by an accused could be rendered irrelevant in criminal proceeding, if the making of the confession appears to the Court to have been caused in inducement, threat or promise with reference to the charge against the accused. The confession, if it is voluntarily, truthful, reliable and beyond reproach is an efficacious piece of evidence to establish the guilt of the accused. The witnesses need not reproduced the exact word spoken by the accused. The law on this aspect has been dealt with in the case of **Ajay Singh Vs. State of Maharashtra**, AIR SC 2188, the Hon'ble Supreme Court had expressed its opinion as under:

"As regards extra judicial confession though it is not necessary that the witness should speak the exact words but there cannot be vital and material difference. It is not invariable that the Court should not accept such evidence if actual words as claimed to have been spoken by accused are not reproduced and the substance is given. It will depend on circumstance of the case. If substance itself is sufficient to prove culpability and there is no ambiguity about import of the statement made by accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. That would rule out possibility of erroneous interpretation of any ambiguous statement."

23. Evidentiary value of extra-judicial confession was considered in the case of **Podyami Sukada v. Sate of Madhya Pradesh**, (2010) 12 SCC 142, it has been observed

in para 12 as under:

“12. Evidentiary value of extra-judicial confession depends upon trustworthiness of the witness before whom confession is made. Law does not contemplate that the evidence of an extra-judicial confession should in all cases be corroborated. It is not an inflexible rule that in no case conviction can be based solely on extra-judicial confession. It is basically in the realm of appreciation of evidence and a question of fact to be decided in the facts and circumstances of each case.”

23.1 In **Gura Singh v. State of Rajasthan, (2001) 2 SCC 205**, the Hon’ble Supreme Court has held as under:

“Extra Judicial Confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. That the evidence in the form extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the Court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. It is not open to the court trying the criminal to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession.”

24. Here the confession by the accused before P.W.3, who is the superior officer of the accused, was made in a natural course while the accused had gone to the officer asking for vehicle to take his wife to hospital and he had informed the superior officer of beating his wife resulting in death and also

of his wife having illicit relation with Sharma. P.W.2 was a person, who was not related to the accused but had come to the place on being called as a driver of ambulance of the Civil Hospital. P.W.2 was told that the wife of the accused was ill, but when P.W.2 saw the injury on the head and the neck and when he found that the wife of accused was dead, at that time, accused had confessed about his crime. This extra-judicial confession before P.W.2 and P.W.3 is voluntary in nature. If the evidence relating to the extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability it can solely be formed the basis of conviction. The requirement of corroboration is the matter of prudence and not an invariable rule of law. Thus, conviction can follow on the basis of the extra-judicial confession of his guilt.

24.1 The first information given by the accused would bear importance in the present matter under Section 8 of the Evidence Act to consider his conduct to appreciate the fact that accused himself has given the FIR. The inculpatory statement before the police, as laid down by the provision of evidence Act is inadmissible in evidence though voluntarily

given.

25. In the case of **Aghnoo Nagesia v. State of Bihar**, AIR 1966 SC 119, the Hon'ble Supreme Court has observed as under:

10. *Section 154 of the Code of Criminal Procedure provides for the recording of the first information. The information report as such is not substantive evidence. It may be used to corroborate the informant under section 157 of the Evidence Act or to contradict him under section 145 of the Act, if the informant is called as a witness. If the first information is given by the accused himself, the fact of his giving the information is admissible against him as evidence of his conduct under section 8 of the Evidence Act. If the information is a non-confessional statement, it is admissible against the accused as an admission under section 21 of the Evidence Act and is relevant. But a confessional first information report to a police officer cannot be used against the accused in view of section 25 of the Evidence Act.*

11. *The Indian Evidence Act does not define "confession". For a long time, the courts in India adopted the definition of "confession" given in Article 22 of Stephen's Digest of the Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. This definition was discarded by the Judicial Committee in **Pakala Narayanaswami v. King-Emperor**, (1939) LR 66 IA 66, 81. Lord Atkin observed :*

"....no statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession."

*These observations received the approval of this Court in **Palvinder Kaur v. State of Punjab** (1952) 2 SCC 177. In **State of U.P. v. Deoman Upadhyaya** (1961) 1 SCR 14, 21, Shah, J. referred to a confession as a statement made by a person stating or suggesting the inference that he has committed a crime.*

12. *Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him, the whole of it should be tendered in evidence, and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory, and the prosecution intends to use the whole of the statement against the accused.*

13. *Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.*

14. *If proof of the confession is excluded by any provision of law such as section 24, Section 25 and Section 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as Section 27 of*

the Evidence Act. Little substance and content would be left in Sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.

17. *A little reflection will show that the expression "confession" in Sections. 24 to 30 refers to the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the offence. Section 27 partially lifts the ban imposed by Sections 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that an information leading to a discovery may be a part of the confession of the accused and thus, fall within the purview of Sections 24, 25 and 26. Section 27 thus shows that a confessional statement admitting the offence may contain additional information as part of the confession. Again, Section 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only himself but the other co-accused. Section 30 thus shows that matters affecting other persons may form part of the confession.*

18. *If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27."*

26. So accordingly the confessional statement before police of the accused would not be admissible in evidence. However, if the First Information Report is given by the accused himself, the fact of his giving information is admissible against him as evidence of his conduct under Section 8 of the Evidence Act. The confessional First Information Report to a

Police Officer cannot be used against the accused in view of Section 25 of the Evidence Act.

27. The accused has raised a defence that act of beating his wife was under grave and sudden provocation, as he had seen his wife and her paramour in a compromising condition. In the case of **Vijay alias Vijaykumar Vs. State represented by Inspector of Police**, reported in 2025 (1) SCR 896, the Hon'ble Supreme Court had the occasion to consider case, where the Trial Court thought fit to give the benefit of Exception-1 of Section 300 IPC on the ground that the case was one of grave and sudden provocation and accordingly held appellant guilty of offence punishable under Section 304 Part-I of IPC and sentenced him to five years of rigorous imprisonment and fine. The fact of the case was that the appellant along with his friend including P.W.11 had gone to watch a movie. Returning home at mid-night hours after watching the movie, while sleeping beneath a bridge, they found deceased over there, in an inebriated condition. The deceased was heavily drunk who picked up altercation with the appellant and his friend, at that point of time appellant picked a cement brick which was lying at the place of

occurrence and hit the deceased on his head. The deceased succumbed to head injuries.

28. The reference of Section 300 of IPC defining murder and differentiating it with culpable homicide not amounting to murder would be relevant to be made. The accused has placed reliance on Exception-1 to Section 300 IPC. The relevant part of the definition is reproduced herein below:

***“Section 300 Murder.—** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—...*

*Exception 1. — **When culpable homicide is not murder.**— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

The above exception is subject to the following provisos:— First - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.”

29. The Hon’ble Supreme Court in the referred judgment of **Vijay alias Vijaykumar** (supra) dealt with the applicability of Exception-1 of Section 300 IPC in the following terms:

“18. Exception one of Section 300 states that a culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes death of the person who gave the provocation or causes the death of any other person by mistake or accident.

19. It is well established that Exception 1 to Section 300 can apply when the accused is shown to have deprived of power of self- control by grave and sudden provocation which is caused by the person whose death has been caused.

20. It is not each and every provocation that will reduce the crime from murder to culpable homicide not amounting to murder. The provocation must be both grave and sudden. In order to invoke the benefit of the exception, it must be established that the act committed by the accused was a simultaneous reaction of grave as well as sudden provocation which deprived him of the power of self-control. If the provocation is grave but not sudden, the accused cannot get the benefit of this exception. Likewise, he cannot invoke the exception where the provocation though sudden is not grave.”

29.1 The observation explains that in a case of culpable homicide not amounting to murder, to invoke the benefit of Exception-1, it must be proved that the accused was deprived of self-control because of ‘grave and sudden provocation’ and thereby causes death of the person who gave the provocation or causes the death of any other person by mistake or accident. The ‘grave and sudden provocation’ must be by the person whose death has been caused. Not every and each provocation will reduce the crime from murder to culpable homicide not amounting to murder. The provocation must be

both 'grave' as well as 'sudden'. If the provocation is 'grave; but not 'sudden' the accused cannot get the benefit of this Exception. In the same way he cannot get the benefit, where the provocation is though 'sudden' but is not 'grave'. It must be established that the act committed by the accused was a simultaneous reaction of grave as well as sudden provocation which deprive him of the power of self control.

30. Here in this case, as per the complaint the accused was suspicious of his wife having relation with Harshadkumar Sharma, typist clerk in GEB and because of that suspicion he was keeping watch on the movement. According to the complaint he became suspicious one week prior to the incident. The complaint was given on 31.07.1997 and the accused stated that on 30.07.1997 during the night hours after watching T.V. he and his wife and son all were sleeping in the same room and since he was doubting the fidelity of his wife he pretended to sleep and during that time at 0.30 hours at night of 31.07.1997 his wife stood up and entered the next room and at that time Sharma had come in his house from the rear door and he heard both of them in intimate relation, therefore he stood up from his bed, and on entering the next

room he saw his deceased wife and the other person in the compromising state and seeing so he got angry and suddenly when he confronted them, deceased wife told him that if he would come in between both of them, then he would not be left alive, therefore he got further enraged. Sharma fled away from the place.

30.1 The compromising situation, which he saw of his wife and the paramour could be considered as grave and sudden provocation, taking into consideration our Indian Society and the law. The accused was for about a week, watching the movement of his wife and when he ultimately saw wife and her paramour together on 31.07.1997 at 0:30 hours in intimate relation in his own house, the accused got angry and he suddenly confronted, and when he scolded, the wife retorted telling the accused that if he would come in between them then he would be done to death. So the accused got further enraged. As per the fact in the complaint, which led to the trial of the accused, the paramour Sharma had run away from the place. There is no mention of any physical assault by Sharma.

30.2 The facts of the case, as has come by way of complaint

on the record that it was the wife of the accused who on her own-self and on behalf of the paramour threatened to kill the husband, if he would dare to come in between them. This utterance of the wife further provoked the husband, the accused started beating his wife with fisticuffs and dashed her to wall and thereafter with the chock gave a blow on her head, which he could lay hand in the earthen stove of the house. He stated that he had beaten his wife on the forehead with the chock, thereafter, accused and his wife together slept on the bed and according to the complainant during the night time, his wife stepped down from the bed and slept on the ground, and when he woke up at about 2:45 for drinking water, he tried to wake up his wife twice or thrice by shaking her, ultimately found her dead.

31. The evidence as per the complainant was that he gave kick and fist blows, then he dashed his wife to the wall and then with chock he gave a blow on the forehead. The accused had given his wife incessant beating and she sustained injuries as described by the doctor, such injuries were made out of grave and sudden provocation. When he saw on 31.07.1997 in the wee hours, his wife with the paramour he

lost self-control, thus the case under Exception-I of Section 300 could be said to be proved, hence, the case would not be of murder but of culpable homicide not amounting to murder punishable under Section 304 IPC.

31.1 The accused is sentenced under Par-II of Section 304 IPC. If there is intent and knowledge then the same would be a case of Section 304 Part-I and if it is only a case of knowledge and not intention to cause murder of bodily injury then the same would fall under Section 304 Part-II. The intent along with knowledge to the act cannot be attributed to the accused, in the case on hand. He had suspicion on his wife's fidelity, but may not have contemplated, that his wife would establish physical relation with the neighbour, as her paramour, in his own house. The provocation cannot be said to be sought on voluntarily provoked by the offender, as an excuse for killing or doing harm to his wife, thus the Exception-1 of Section 300 would not fall under the proviso to consider it a deliberate act of killing the wife. The accused had caused injury with fisticuff and slamming his wife to the wall, then subsequently he could pick up fire wood (chock) from the room, and hit his wife. It was not that while

pretending to sleep, had any weapon in his hand awaiting to murder the wife. After the quarrel both again went to sleep. Then, when the accused woke at night for drinking water he tried to wake his wife, but found her dead. The cause of death was internal hemorrhage due to rupture of liver and multiple injuries.

31.2 In the statement under Section 313 Cr.P.C. the accused had alleged of assault by the paramour Sharma. The right of self-defence had been put forward. The complaint against Harshadkumar Sharma gives details of scuffle with Sharma and exchange of abusive words and Sharma holding accused's arm and twisted and dashing him to the door, thereby accused got injured in his palm. The doctor witness has testified accused injury.

32. In the case of **Ex. Ct. Mahadev Vs. The Director General, Boarder Security Force & Ors.**, 2022 LiveLaw (SC) 551, the Hon'ble Supreme Court has observed that the right of private defence is necessarily a defensive right which is available only when the circumstances so justify it. It was further held that such a right would be available to the accused when he or his property is faced with a danger and

there is little scope of the State machinery coming to his aid. At the same time, the courts must keep in mind that the extent of the violence used by the accused for defending himself or his property should be in proportion to the injury apprehended. It is further observed that step to step analysis of the injury that was apprehended and the violence used is not required to be undertaken by the Court; nor is it feasible to prescribe specific parameters for determining whether the steps taken by the accused to invoke private self-defence and the extent of force used by him was proper or not. The Court's assessment would be guided by several circumstances including the position on the spot at the relevant point in time, the nature of apprehension in the mind of the accused, the kind of situation that the accused was seeking to ward off, the confusion created by the situation that had suddenly cropped up resulting in the knee jerk reaction of the accused, the nature of the overt acts of the party who had threatened the accused resulting in his resorting to immediate defensive action, etc. The underlying factor should be that such an act of private defence should have been done in good faith and without malice.

32.1 In **Ex. Ct. Mahadev** (supra), the Hon'ble Supreme Court has held that Section 105 of the Indian Evidence Act, 1872 states that the burden of proof rests with the accused who takes up the plea of self defence. In the absence of proof, the Court will not be in a position to assume that there is any truth in the plea of self defence. Thus, it would be for the accused to adduce positive evidence or extract necessary information from the witnesses produced by the prosecution and place any other material on record to establish his plea of private defence, Hon'ble Supreme Court has referred to the judgment of **James Martin vs. State of Kerala**, (2004) 2 SCC 203, wherein it has been observed as under in Para (13):

*"13.An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See *Munshi Ram v. Delhi Admn.* (AIR 1968 SC 702), *State of Gujarat v. Bai Fatima* ((1975) 2 SCC 7, *State of U.P. v. Mohd. Musheer Khan* [(1977) 3 SCC 562] and *Mohinder Pal Jolly v. State of Punjab* [(1979) 3 SCC 30].... The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is*

enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.”

32.2 In **Ex. Ct. Mahadev** (supra), the Hon’ble Supreme Court has observed that whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the court must consider all the surrounding circumstances. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. The entire incident must be examined with care and viewed in its proper setting. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered, while determining whether right of private defence was available or not.

32.3 In **Ex. Ct. Mahadev** (supra), the Hon’ble Supreme

Court by referring the judgment of **Buta Singh v. State of Punjab**, (1991) 2 SCC 612, had observed that Supreme Court had emphasised that a person who is apprehending death or bodily injury, cannot weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. Referring to the said decision, the Hon'ble Supreme Court had extended the following observations in **James Martin** (supra):

"17. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him. Where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negated. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

XXX

20. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or

retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as a retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived."

32.4 In **Dharam and Ors. v. State of Haryana**, (2007) 15 SCC 241, the Hon'ble Supreme Court had an occasion to examine the scope of the right of private defence and had made the pertinent observations, which reads as under:

"18. Thus, the basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon a host of factors like the prevailing circumstances at the spot, his feelings at the relevant time, the confusion and the excitement depending on the nature of assault on him, etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence."

33. The situation in which the plea of a right to private defence would be available to the accused was discussed by

the Hon'ble Supreme Court in case of **Bhanwar Singh and Others v. State of Madhya Pradesh**, (2008) 16 SCC 657, wherein it was held as under:

"50. The plea of private defence has been brought up by the appellants. For this plea to succeed in totality, it must be proved that there existed a right to private defence in favour of the accused, and that this right extended to causing death. Hence, if the court were to reject this plea, there are two possible ways in which this may be done. On one hand, it may be held that there existed a right to private defence of the body. However, more harm than necessary was caused or, alternatively, this right did not extend to causing death. Such a ruling may result in the application of Section 300 Exception 2, which states that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. The other situation is where, on appreciation of facts, the right of private defence is held not to exist at all.

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60. To put it pithily, the right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. Necessity must be present, real or apparent."

34. Exception-2 to Section 300 IPC provides for exercising right of private defence of person or property, but the law does not entertain any intention of doing more harm than is necessary, for the purpose of such defence.

34.1 Exception-2 of Section 300 IPC is reproduced herein after:

“Exception 2.— Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.”

35. Learned advocate Mr. Parghi’s argument was to give benefit to the appellant-accused under Section 100 and Section 300 Exception-1, while relying upon the judgment in **Raghavan Achari alias Njoonjappan** (supra), wherein it was held as under:

“The compromising position in which the appellant found the deceased with his wife gave the appellant the grave and sudden provocation. This provocation was further aggravated when the appellant found the deceased taking further offence of causing grievous injuries, one of which was found by the trial Court and the High Court to be of serious nature, and in the circumstances the right as envisaged under Section 100 became available to the appellant. No court expects the citizens not to defend themselves particularly when they have already suffered grievous injuries. Though the appellant had a chopper in his hand he did not initially use it against the deceased and it was only when the deceased succeeded in using the oil lamp, which is described as dangerous weapon by the High Court, which caused multiple injuries including grievous injury, that the appellant's provocation got further aggravated and it cannot be said on the facts and circumstances of the case that the appellant has exceeded his right of private defence.”

35.1 The judgment of Raghvan Achari (supra) referred by learned advocate Mr. Parghi becomes distinguishable on the

facts. The deceased in that matter instead of running away, sprang at the appellant and fisted him on his forehead. There was a tussle between them. The deceased was alleged to have hit the appellant with a lamp and the appellant sustained injuries (1) a lacerated injury on the lower lip, (2) contusion above left eye, (3) contusion on the dorsum of left hand and (4) avulsion of lower lip on the lower gum margin with a lacerated injury. The Discharge Certificate of appellant disclosed multiple injuries on lower lip, left side of scalp and crack fracture on the 5th metacarpal. The injury on the metacarpal was considered serious. In the view of the injuries sustained by the appellant inflicted by the deceased, the benefit of Section 100 IPC was granted considering the death as of private defence.

36. Here in the present case, the wife died and the facts of the case shows that the wife had only orally threatened the accused. The complaint given by the appellant as accused shows that the paramour had run away from the place. He had not waited there, while the wife had come forward and stood before Sharma to confront the appellant-accused as husband.

37. The plea of self-defence is taken in accused statement under Section 313 Cr.P.C. It is not the case of accused that he killed his wife in good faith exercising the right of private defence. The complaint of the accused against Harshadkumar Sharma Exh.27 had culminated into criminal proceeding registered under Sections 452, 323, 504 of IPC. Witnesses of the present matter had testified in that criminal trial against Harshadkumar Sharma. The same Investigating Officer had deposed in both the criminal proceeding. Benefit of Exception-2 of Section 300 IPC could be claimed only against the person, who is the assailant. The person, who assaulted the appellant-accused faced the trial. It is not the accused case nor it could be brought on record, that accused murdered his wife in private defence apprehending death by any physical assault by his wife. So the case of the appellant-accused could only be weighed under Exception-1 of Section 300 IPC, of causing death of wife under 'grave and sudden provocation', having lost the power of self-control, so benefit under Section 100 IPC cannot be claimed by the accused. Thus, the case being of Culpable Homicide not amounting to murder, the punishment would be under Section 304 of IPC. The intention of causing

death of the wife cannot be attributed to the accused, hence the case would not fall under Part-I of Section 304 IPC.

38. In the result, there is no reason to interfere in the judgment of conviction and sentence passed under Section 304 IPC Part-II. The learned Trial Court Judge has considered the merits of the case and declared the judgment in accordance to the provision of law.

39. In view of the above observations and discussions, the appeal stands dismissed. The judgment of conviction and sentence dated 12.09.2001 passed by learned Additional Sessions Judge, Panchmahal, Godhra in Sessions Case No.100 of 1998 is upheld. The bail bond stands cancelled. The accused to surrender before the jail authority, within fifteen (15) days of this order to serve the sentence. In failure, to surrender within 15 days, the Trial Court concerned is directed to issue arrest warrant against the present appellant-accused. Record & Proceedings be sent back to the concerned trial Court forthwith.

(GITA GOPI,J)

Pankaj/1 (Suppl.-II)