**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 1655 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.L.DAVE**

**HONOURABLE MR.JUSTICE N.V. ANJARIA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**LALSINH DEEPSINH ZALA - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**
MR NV GANDHI for Appellant(s) : 1,MR PRAVIN GONDALIYA for Appellant(s) : 1,MR ASHISH M DAGLI for Appellant(s) : 1,
MR RC KODEKAR APP for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**

**and**

**HONOURABLE MR.JUSTICE N.V. ANJARIA**

**Date :11/05/2012**

**CAV JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE N.V. ANJARIA)**

The present appeal under section 378(2) of Code of Criminal Procedure, 1973 is preferred against the judgment and order dated 31.08.2004 of learned Additional Sessions Judge, Second Fast Track Court, Himatnagar in Sessions Case No.96 of 2004, whereby the appellant was convicted for the offence punishable under section 302 of Indian Penal Code, 1860 and sentenced to life imprisonment and fine of Rs.1,000/-, and in default of payment of fine, to undergo simple imprisonment for further six months. He was convicted for the offence under section 324 of IPC and sentenced to undergo simple imprisonment for two years and fine of Rs.500/-, and in default of payment of fine, to undergo simple imprisonment for further 1 ½ month. For the offence under section 135 of Bombay Police Act, 1951, he was convicted to undergo simple imprisonment for one month. All the sentences were directed to be undergone concurrently.

2. The appellant Lalsinh was charged (Exh.15) for murder of his own mother Sajjanba, and for causing grievous hurt to his brother Dinusinh (PW-4). The prosecution case based on the complaint (Exh.16) lodged by Dipsinh (PW-3) who was the father of the appellant and husband of the deceased. The complainant stated that he had two sons namely Dinusinh and Lalsinh. Both were staying separately in their *chhapra* (small hut) in the agricultural field in the sim of village Vaktapur, taluka Talod, whereas he and his wife Sajjanba were also staying nearby in separate house. On 17.03.2004, which was a day of festival of Holi, at around 03.30 – 4.00 p.m. the accused-appellant picked a quarrel with his wife Gajaraba near his hut near the well. He was beating her and the children were crying. The complainant, who was

at his nearby hut, sensed the trouble and went there. He requested the accused not to beat his wife. The accused reacted that why she did not bring *Khajur* (a date fruit) and *Dhani* (parched maze) for children on the occasion of the festival. Complainant father thereupon slapped Lalsinh.

2.1 Thereafter, while the complainant (PW-3) was going to call the police, and had walked for some distance, his son Dinusinh (PW-4) came hurriedly on cycle. He was reeling under fear and stated that Lalsinh had given blows with a scythe (*Dhariya*) on the forehead of the mother Sajjanba and she had fallen down to the ground. Thereafter, the complainant catching a rikshaw took his injured wife to the hospital at Talod, but as her condition was serious, she was immediately sent to Ahmedabad for further treatment.

2.2 The complaint was registered at Talod police station. The offence was investigated and charge sheet was filed by the police before the court of learned Judicial Magistrate (First Class), Prantij, who in turn committed the case to the Sessions Court under section 209 of Cr.P.C. as the offences charged were exclusively triable by the Sessions Court. The appellant-accused was tried for the offences punishable under section 302 and 324 of IPC and for the offence under the Bombay Police Act. The prosecution examined 17 witnesses in course of the trial and led documentary evidence.

3. The evidence on record of the trial court consisted amongst other ocular evidence, the evidence of Dinusinh (PW-4, Exh.17) who was the eye witness. He deposed that on the fateful day, when he was taking rest on a coat outside his hut after taking meals, Anubha sitting below tree near his hut shouted that there was a quarrel near Lalsinh’s house. His wife

Kailashben and son Rajpasinh were there and as somebody had sprinkled colour on his son, Kailashben was telling that he should first take bath as he was to go to school. PW-4 and his wife rushed there.

3.1 PW-4 further deposed that Lalsinh was beating his wife pulling her hair. He separated them. When the accused was asked what was the reason, he uttered that why *Dhani* and *Khajur* were not brought and that he was going to kill everybody. He angrily uttered that 'Diplo' (Dinusinh), had slapped him. Sajjanba, who was nearby, arrived there when those events were taking place and she requested Lalsinh to desist from his acts keeping in mind that it was day of Holi festival.

3.2 Thereupon, the accused brought a scythe from the roof of his house and proceeded to hit on the head of the mother Sajjanba. Sajjanba raised her left hand to save her as a result of which the blow was suffered on the hand resulting into a cut injury from thumb to elbow. She fell down on the ground uttering 'Oh Bapre'. Immediately, the accused gave another blow on her head. The blow resulted into a crack on the head, she became unconscious and bled profusely. The accused attempted a third blow on her mother, but he intervened and held *Dhariya* under the right forearm and suffered injury below right forearm. His wife shouted '*bhachao'*, Anubha came running and the accused snatching *Dhariya* from him run away jumping the hedge.

3.3 Deepsinh (PW-3, Exh.15) deposed that he had gone to the house of Lalsinh as he was beating his wife and children and for that he had given a slap to Lalsinh to see that quarrel was stopped. When he was on his way to

police station, his son Dinusinh (PW-4) came crying and informed that Lalsinh had given *Dhariya* blows to the mother. Kailashben (PW-5, Exh.18), wife of PW-4 in her evidence deposed consistent with PW-4. She stated that Lalsinh had given *Dhariya* blows to her mother-in-law, and identified the muddammal *Dhariya* when shown to her. So did PW-4. Aanusinh (PW-14, Exh.38) who was the person sitting below the tree and upon his shouts, PW-4 had rushed the spot. Upendrasinh (PW-9, Exh.28) who was a rickshaw driver in whose rickshaw the deceased was taken to hospital was also examined by the prosecution, who testified only that injured Sajjanba was carried in his rickshaw and she was bleeding from her head at that time.

3.4 Panchnama of place (Exh.21) was drawn and was proved by evidence of Jagdishbhai (PW-6, Exh.20) being one of the two panchas. These evidence (Exh.20 and Exh.21) show that the place of incident was near the hut of Deepsinh and at the place there was a small pit of blood and the blood was found on the soil in the circumference of 2½ -3 feet. The houses of Deepsinh, Dinusinh and the accused were closely located. There was a well few feet away. Map (exh.13) was depicting the locations of the hut and the place of incident was on record.

3.5 The recovery of crime weapon being a scythe (*Dhariya*), was sought to be proved by recovery panchnama (Exh.25). Its panchas (PW-7 and PW-8) turned hostile. However, Ghanshyamsinh (PW-16, Exh.45), the Police Sub Inspector at the Talod Police Station at the relevant time, deposed that the *Dhariya* was recovered from the place shown by the accused. It had iron made blade having size of one feet eleven inches, and the handle was three feet and six inches long. It had stains of blood. The crime weapon *Dhariya*,

the clothes of the deceased and the clothes of the accused were sent to Forensic Science Laboratory and on all of them the same group of blood which was of the deceased also, was found.

3.6 Referring to the medical evidence, Manishbhai Jayantilal Gandhi (PW-2, Exh.10) Medical Officer, Talod, who treated injuries at the primary stage opined that injuries which were treated by him were possible with muddammal *Dhariya.* In cross-examination he denied that he described with the injuries were curable if immediate treatment was given. The postmortem of deceased was conducted by Dr. Bhargav Jhaveri (PW-1, Exh.7), Civil Hospital Ahmedabad who described external and internal injuries which were mentioned by him in his postmortem report (Exh.8), to be as under:

> *"(1) `C' shaped stitched wound starting from mid part of forehead extending laterally, upward & backward towards right side upto frontoperietal region & then backward & medially upto midline at midperetal regaion & then goes towards laterally & anterirly on left side upto peretal region anteriorly. Total length 28 cms.*
> *(2) Stitched wound – 15 cm over G lower forearm dorsum of hand up to proximal J.R. Point.*
> *(3) Stitched wound, 6 cm on lest writ just parellel to inj.No.2*
> *(4) Ulcer over both buttock (bed sores) about 8 x7 cm each & oral right back about 1.5 x 2 cm.*
>
> *"Presence of blood clots and haemoatema over fronto perietal region. Oval shaped # of frontal bone mid part and adjacent perietal bone with fragment of #ed bone separated with elevation of boney flap in fronto perietal region in midline.*
> – *brain tissues of the frontal lobe is contured and slightly protruded through #ed boney flap*
> – *- maniges over frontal region tear*
> – *EDH, SDH & SAH fronto peretal region."*

3.7 The cause of death according to PW-1 and recorded in the postmortem report was shock and hemorrhage following sustained head injuries and certificate to that effect was deserved. PW-1 in his evidence stated that injuries nos. 2 and 3 mentioned in col. no.17 of the report were defence injuries and the extraordinary and internal injuries were co-related. They were such which could be possible by muddammal article *Dhariya* when it was hit with force. According to him, the injuries in question were sufficient in ordinary course to cause death. The doctor described that the injuries mentioned could be possible by any sharp edged weapon other than *Dhariya*.

4. This court heard learned advocate Mr. Ashish Dagli for the appellant and learned A.P.P. Mr. R.C. Kodekar on behalf of the State.

4.1 Learned advocate for the appellant contended that the evidence of eye witnesses were not creditworthy inasmuch as all of them were family members and related to the deceased and they were interested witnesses as they were interested in getting the accused convicted. He invited attention to the statement of the accused recorded under section 313 of the Criminal Procedure Code to submit that as the father had given slap and Dinusinh had got enraged as the word ‘Diplo’ was used by the accused, hence it was Dipsinh who gave the *Dhariya* blow and in process the deceased suffered injuries. He submitted also that PW-4 was not an eye witness, whereas PW-5 knew about the incident only when Anusinh shouted. According to learned advocate, all these aspects in the evidence on record weakened the prosecution case.

4.2 Learned advocate submitted that the incident of attack was on 06.03.2004, thereafter the injured was in hospital and was treated and ultimately died after gap of 11 days on 17.03.2004 and that septic conditions were developed. On that basis, it was submitted that the death was not consequential of injuries suffered and the injuries could not he treated as serious of the nature likely to cause death in ordinary course of nature inasmuch as proper treatment would have saved the victim.

4.3 It was further contended that the act of the accused was after a scuffle and that there was a quarrel between the family members before that. PW-3 had given slap to the accused in the presence of his wife and children, and therefore, according to learned advocate angry accused acted in heat of passion. It was also submitted that there was no evidence of inimical relations between the family members. It was submitted that deceased suffered *Dhariya* blow because she intervened. Resting on all these circumstances, learned advocate submitted that there was no intention on part of the accused to cause death and Exception 4 to section 300 was applicable, and the offence punishable under section 304 Part II only was made out.

4.4 Learned advocate for the appellant in support of his various submissions relied on the following judgments (i) B.N.Kavatkara & Ors. Vs. State of Karnatat [1994 Supp. (1) SCC 304], (ii) Sundarsingh Vs. State of Rajasthan [AIR 1988 SC 2136], (iii) Dinesh Jagjivan Vadgama Vs. State of Gujrat [2011 (3) GLR 2043], (iv) State of Rajasthan Vs. Harlal [2010(3) (Crimes) 431], (v) Rakeshsingh Vs. State of Himachal Prades [1996 CriLJ

2311 (Supreme Court)], (vi) Moh. Munir Vs. State of Bihar [AIR 2010 SC 698].

4.5. On the other hand learned A.P.P. supported the conviction recorded by the trial court by emphasizing that the ingredients for offence of murder under section 300 I.P.C. were duly proved from the evidence before the trial court. He submitted that the crime committed was heinous where the accused ruthlessly attacked his own mother in a manner where death was certain. He submitted that the appeal deserved to be dismissed.

5. Upon examination of the evidence on record and assessing it in the context of the contentions raised by both the sides, it could not be gainsaid that the incident and involvement of the accused in the crime was established. The evidence of panchnama of place proved by the maker of it coupled with the evidence of F.S.L. Report (Exh.52) which showed the blood group on the clothes of the deceased and the victim to be one which was the blood group of the deceased reinforced the proof of commission of offence. The stains of blood on the crime weapon *Dhariya* shown to have recovered by the evidence of investigating officer (PW-16) also matched the same blood group as per the F.S.L. Report.

5.1 The contention that the witnesses were relatives and therefore their evidence was not reliable, could not be accepted. The Supreme Court in **Namdeo vs. State of Maharashtra (2007) AIR SCW 1835** observed that close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and forcibly implicate an innocent one. It was observed that a witness who is a relative cannot be

charachterised as `interested', and the term `interested witness' postulates that the witness has some direct or indirect interest in convicting the accused due to animus or oblique motive. In that case the Supreme Court also rejected the bald contention that no conviction can be recorded in case of a solitary eye witness. The evidence of eye witnesses showed clearly not only the act of assault committed by the accused but the manner in which he inflicted *Dhariya* blows.

5.2 In ***Dalip Singh & Ors. Vs. State of Punjab [AIR 1953 SC 354]***, also referred to in ***Sone Lal Vs., State of MP.P [AIR 2009 SC 760]***, it was observed,

> *"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."*

5.3 As it is the contention of learned advocate for the appellant that there was no intention on part of the appellant-accused to kill, the offence would be punishable under section 304 and not under section 302 of IPC, it would be useful to consider first the ambit of section 300 read with section 299 vis-à-vis section 304 of IPC. Explaining the scope of these provisions, the Supreme Court in **Arun Nivalaji More Vs. State of Maharashtra [AIR 2006 SC 2886]** observed that in order to ascertain whether the offence committed by an accused would fall under one of the clauses of section 304,

IPC or under section 302, IPC, it has to be seen firstly whether the offence falls within the ambit of section 299, IPC. The further inquiry would be whether any of the clauses ‘Firstly’ to ‘Fourthly’ of section 300, IPC are attracted, in which case the offence would be ‘murder’ as defined in section 300 and punishable under section 302, IPC. A reading of section 299, which defines ‘culpable homicide’, would show that it has three clauses, of which in two clauses it is the intention of the offender which is dominant and relevant, whereas in the third clause, knowledge of the offender is relevant and is the dominant factor. Culpable homicide would be a murder, if the act falls within the ambit of clauses ‘Firstly’ to ‘Fourthly’ of section 300, IPC.

5.4 In ***Willie (William) Slaney Vs. State of Madhya Pradesh***, the Supreme Court held that where the accused causing the death of another had no intention to kill, then the would be murder only if (1) the accused knew that the injury inflicted would be likely to cause death or (2) that it would be sufficient in the ordinary course of nature to cause death or (3) that the accused knew that the act must in all probability cause death. Therefore, in judging whether the offence is a murder, intention to cause death is often, but not always, a determining factor. Absence of intention will not necessarily lead to a conclusion that the offence committed is not murder, particularly in context of clause ‘Fourthly’ of section 300, IPC, which does not speak of intention. Reading section 300 through ‘Fourthly’, culpable homicide is murder ‘if the person committing the act knows that it so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid’.

5.5 In ***State of M.P. Vs. Ram Prasad [AIR 1968 SC 881]***, the facts were that the accused Ram Prasad had put kerosene on her wife and set her alight. The High Court in appeal took the view that the offence that culpable homicide not amounting to murder. The Supreme Court observed:

> *"We think that the matter goes a little further than this. As death has been caused the question has to be considered in the light of homicide to determine whether the action of Ram Prasad falls within culpable homicide not amounting to murder or the higher offence of murder itself. Here we see that death has actually been caused by the Criminal act; in other words, there has been homicide and since it is not accidental or suicidal death responsibility for the homicide, in the absence of any exceptions or extenuating circumstance, must be borne by the person who caused it, The High Court has apparently stopped short by holding that this was a case of culpable homicide not amounting to murder. The question is whether the offence falls in any of the clauses of S. 300 Indian Penal Code. In this connection it is difficult to say that Ram Prasad intended causing the death of Mst. Rajji although it might wolf be the truth. That he set fire to her clothes after pouring kerosene oil is a patent fact and therefore the matter has to be viewed not only with regard to the firstly of S. 300, but all the other clauses also. We do not wish to consider the second and the third clauses, because the question then would arise what was the extent of the injury which Ram Prasad intended to cause or knew would be caused to Mst. Rajji. That would be a matter of speculation. In our opinion, this matter can be disposed of with reference to clause fourthly of S. 300."*

It was explained in the following words, as to in which cases clause 'Fourthly is usually invoked.

> *"..... the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death."*
>
> *"..... No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore, it is obvious that*

*Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must be taken to fall within 4thly of S. 300, Indian Penal Code, in other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death of Mst. Rajji. He committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death. We are accordingly of the opinion that the High Court and the Sessions Judge were both wrong in holding that the offence did not fall within murder."*

5.6 In ***Santosh Vs. State of M.P. [AIR 1975 SC 654],*** it was observed that the intention to kill is not required in every case. A knowledge with the natural and probable consequences of an act would be death will suffice for a conviction under section 302 IPC. In ***Mohinder Pal Joli Vs. State of Punjab [AIR 1979 SC 577]***, the apex court held that if before application of any Exceptions of section 300, it is found that the accused was guilty of murder within the meaning of clause 'Fourthly' then no question of intention arises and only the knowledge is to be fastened on him that he did indulge in an act with the knowledge that it was likely to cause death but without an intention to cause it or without an intention to cause such bodily injury as was likely to cause death.

5.7 In ***Alister Antony Pereira Vs. State of Maharashtra [2012 (2) SCC 648]***, it was observed,

*"Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring t to what a person with reasonable prudence would have known."*

5.8 Reverting to the facts of the present case in light of the above principles, the evidence of PW-4 (Exh.17) corroborated by the evidence of PW-3, PW-5, PW-6 and PW-14 (Exh.15, Exh.18, Exh.19 and Exh.38) showed that the accused was armed with deadly weapon *Dhariya*, which was used against unarmed and old lady, to whom the accused gave a blow, and gave yet another blow even after she fell down and was unconscious, as the evidence of eye witness credibly showed. He gave successive *Dhariya* blows on the head of the victim, which was a vital part of the body. In commission of that act, the accused acted outrageously. The injuries certified by the medical evidence indicated that the accused had acted forcefully in giving the blows. He gave repetitive blows ferociously. Not only that the act was ferocious and the blows were forceful, evidence Exh.17 indicated that the accused hit first blow of *Dhariya* which was resisted by the deceased who got injured and fell down on the ground. On the next moment, the accused successfully attempted another blow on the head of the victim with *Dhariya* which resulted into breaking of head and profuse bleeding. The accused did not stop at that, but attempted third successive blow of *Dhariya* on the victim. It was a brutality at its peak when the person being assaulted was an old lady and a mother. By all means, the accused has to be posted with knowledge that he was running the risk of causing death or such bodily injury as was likely to cause death, and for which the accused had no excuse.

5.9 In the aforesaid circumstances, it needs no imagination that the accused committing such an act knew that his act was so imminently dangerous which in all probability cause death or would cause such bodily injury as is likely to cause death. The manner in which the attack with

*Dhariya* was made on the deceased, who was an unarmed person and old in age, convincingly suggested that the act was done by the appellant-accused by incurring the risk of causing death or such injury, for which he had no excuse.

5.10 The argument of learned advocate for the appellant that the act committed by the accused fell under Exception 4 of section 300 and, therefore, the offence was under section 304 Part-II, was highly attractive but hardly acceptable. ***In Kikar Singh Vs. State of Rajasthan [AIR 1993 SC 2426]***, the Supreme Court held that for application of Exception 4 to section 300 of Penal Code, all the conditions enumerated therein must be satisfied, and observed that the act must be committed without premeditation in a sudden fight in the heat of passion; (2) upon a sudden quarrel; (3) without the offender's having taken undue advantage, and (4) the accused had not acted in a cruel or unusual manner.

5.11 It was observed further observed,

> *"If two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such weapon must be held to have taken an undue advantage denying him the entitlement to exception 4. True the number of wounds is not the criterion, but the position of the accused and the deceased, with regard to their arms used, the manner of combat must be kept in mind when applying exception 4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the exception 4 engrafted to Section 300 is excepted and the offences committed would be one of murder." (para 8 of the judgment)*

5.12 The Supreme Court upheld the conviction by the High Court observing,

*"Even if the fight was unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4."*

5.13 In ***Kikar Singh (supra)***, the facts before the Supreme Court was that there was an altercation between the deceased and the appellant who were the neighbouring owners of the land, due to the appellant throwing soil into the lands of deceased from 'Dali' (strip of land dividing the two fields). The deceased went to appellant to persuade him not to throw the soil and to have the matter settled amicably, yet the appellant was annoyed with the conduct of the deceased and his sons. At the instigation of his son, the appellant inflicted with Kassi (spade, shard edged cutting instrument) on the head of the deceased and with its impact the deceased fell down. Thereafter also, the appellant inflicted two more injuries.

5.14 In ***Suresh Chandra Vs. State of U.P. [2005 (6) SCC 130]***, the Supreme Court reiterated the principle that the mere fact that there was absence of premeditation and it was a case of sudden fight, was not sufficient to bring the offence within the purview of Exception 4, and the further requirement was that the offender should not have taken undue advantage and also that he acted in cruel or unusual manner should also be satisfied.

5.15 The contention on behalf of the appellant that the death resulted after gap of 11 days from the date of incident of assault, is of no avail. In ***Kikar Singh (supra)***, it was observed that it is not necessary that death must be inevitable or in all circumstances the injury inflicted must cause

death. It is the degree of probability of death which counts. The degree of seriousness of offence is measured by the action and its result anticipated in the ordinary course probabilised by the action itself, and focus is not to be on the consequences. Even section 299 recognizes this principle by providing in its Exception 2 that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented. The contention on this ground, therefore, cannot be countenanced. It was proved convincingly from the cogent evidence relating to nature of injuries caused by deadly weapon on the vital part of the deceased that they were sufficient in ordinary course to result into death, and the death did ensue.

6. When it is found and held on evidence that the act was covered under clause 'Fourthly' constituting murder, as such, further inquiry was not necessary whether it would fall under any of the Exceptions, as observed in ***Arun Nivalji (supra)***.

> "The offence may fall in any of the four clause of section 300, IPC, yet if it is covered under any of the five Exceptions mentioned in the section, it would be a culpable homicide not amounting to murder. **The inquiry in the first place however would be in the facts of a particular case whether the act of the offender is one which falls within any of the four clauses of section 300, and if it is so found, further inquiry need not be undertaken**." (emphasis supplied)

6.1 In light of evidence on record and position of law discussed above, the only conclusion is that the offence committed by the appellant was murder falling within the purview of section of 300 and in particular clause ‘Fourthly’ thereof. Therefore, the impugned judgment and order recording conviction against the appellant and sentencing him for the offence punishable under section 302, IPC does not warrant any interference. The conviction and sentence against the appellant for other offences are also confirmed. As directed in the impugned judgment, the sentences shall run concurrently.

7. The appeal, therefore, fails and stands dismissed.

**(A.L. DAVE, J.)**

**(N.V. ANJARIA, J.)**

**(SN DEVU PPS)**