IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 806 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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NARESHBHAI ALIAS DHOLIO DALUSINH PARMAR
Versus
STATE OF GUJARAT

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Appearance:
VASIMRAJA A KURESHI(8609) for the Appellant(s) No. 1
MR. JAY G THAKER(9944) for the Opponent(s)/Respondent(s) No. 1
MR HARDIK MEHTA, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 11/12/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. The present Criminal Appeal is preferred by the appellant–original accused under Section 374(2) of the Code of Criminal Procedure, 1973, challenging the judgment and order of conviction and sentence dated 07-05-2016 passed by the learned Additional Sessions Judge, Vadodara in Sessions Case arising out of Karjan P.S. I-C.R. No. 181/2014, whereby the appellant Nareshbhai @ Dholiyo Kalusinh Parmar was convicted under Sections 302, 323 and 452 IPC and Section 135 of the Gujarat Police Act and

sentenced to life imprisonment with fine of Rs.100/- in default 1 month RI, for Section 302, 1 year RI with fine of Rs.100/- in default 1 month RI, for Section 323, 3 years RI with fine of Rs.100/- in default 1 month RI, for Section 452 and 1 month RI for Section 135 G.P. Act, all substantive sentences to run concurrently with set-off of the period already undergone.

2. The case of the prosecution, in brief, is that on 24-10-2014 at about 16:30 hours at House No.41, Shantiniketan Society, Karjan, District Vadodara, the deceased Rameshbhai Domaprasad Maurya was standing on the otla of his house talking on his mobile phone with his nephew Vikas. At that time, the appellant-accused Nareshbhai @ Dholiyo Kalusinh Parmar, who resides in the same society and who was nursing a grudge since April 2014 (when the deceased had allegedly looked at his wife Sangeeta while sitting on the otla), suddenly came running with an open sword in his hand. Seeing the accused, the deceased ran inside the house to close the iron grill door (jali). While the deceased was in the process of closing the grill, the accused thrust the sword through the gap between two iron bars and inflicted a single deep wound on the left side of the chest of the deceased. When the wife of the deceased, Kaushalyaben, rush and shouted “Why are you doing this? What harm have we done to you?”, the accused slapped her twice on the right cheek and attempted to throttle her. On hearing shouts, neighbours and relatives gathered, whereupon the accused fled towards his house threatening dire consequences. The injured Rameshbhai was immediately taken on a motorcycle by his son Satishbhai and one Arunbhai to Sumeru Hospital, Karjan, where he succumbed to the injury at about 17:00 hours the same day. Thus, the prosecution alleged that the accused, with the intention and knowledge that the act was sufficient in the ordinary course of

nature to cause death, committed the murder of Rameshbhai, voluntarily caused hurt to Kaushalyaben, committed house-trespass with intent to commit an offence punishable with imprisonment for life, and also violated the prohibitory order regarding possession of deadly weapons, thereby committing offences punishable under Sections 302, 323, 452 of the Indian Penal Code and Section 135 of the Gujarat Police Act.

3. Upon the oral complaint of the son of the deceased, PW-10 Satishkumar Rameshbhai Maurya at Exh.21, given before P.I. Deepakbhai Divawala at Karjan Police Station on 24-10-2014 itself, FIR was registered vide Karjan P.S. I-C.R. No.181/2014. The investigation was carried out by PW-23 P.I. Deepakbhai Mohanlal Divawala at Exh.58. He immediately rushed to the place of offence, drew the scene of offence panchnama, collected blood samples, recorded statements of material witnesses including complainant Satishbhai, eye-witnesses Kaushalyaben (wife), Sunitaben (daughter), Hiteshbhai (guest), carried out inquest of the dead body, sent the body for post-mortem, arrested the accused on the next day, recovered the blood stained sword and clothes of the accused at the instance of the accused under Section 27 of the Evidence Act from the cattle shed of the brother in law of the accused, seized the blood stained clothes of the deceased, sent all muddamal articles and samples to FSL, obtained the post-mortem report, FSL reports, and after completion of investigation filed the charge sheet before the learned Judicial Magistrate First Class, Karjan, which was subsequently committed to the Court of Sessions at Vadodara under Section 209 Cr.P.C.

4. The learned Additional Sessions Judge, Vadodara framed charge at Exh.3 against the appellant-accused for the aforesaid

offences. The accused pleaded not guilty and claimed to be tried.

5. To prove the charges, the prosecution examined in all 23 witnesses and exhibited 33 documentary evidences.

Oral Evidences:

Sr. No.	Particulars	Exh.	Details
1	Dhavalkumar Shanubhai Parmar	8	Panch Witness
2	Nathukumar Bindrabhai Kushwah	11	Panch Witness
3	Chhaganbhai Shankarbhai Parmar	13	Panch Witness
4	Harisingh Chandrasingh Barkala	14	Panch Witness
5	Vanrajsinh Harisingh Rajput	16	Panch Witness
6	Kiritsinh Nathubhava Sindha	17	Panch Witness
7	PratikKumar Sureshchandra Shah	18	Panch Witness
8	Sirajbhai Hafijbhai Saiyad	20	Panch Witness
9	Satishbhai Rameshbhai Morya	21	Complainant
10	Sunitaben Chhaganbhai Parmar	23	Witness
11	Jagrutiben Chhaganbhai Parmar	24	Witness
12	Lilaben Khushalbhai Parmar	25	Witness
13	Indradhatiben Hariram Morya	26	Witness
14	Revaben Shanubhai Parmar	27	Witness
15	Bhagyeshkumar Shashikant Shah	28	Panch Witness
16	Bharatkumar Rameshchandra Purohit	32	Panch Witness
17	Hiteshkumar Hariram Maurya	34	Witness
18	Renuben Hiteshkumar Maurya	35	Witness
19	Dr. Anilkumar Bhagvatprasad Chaudhry	36	Medical Officer
20	Dr. Shivratan Jugalkishor Modi	40	Medical Officer

Sr. No.	Particulars	Exh.	Details
21	Dr. Ganeshbhai Bhaskarbhai Rane	45	Medical Officer
22	Kaushalyaben Rameshbhai Maurya	47	Witness
23	Dipakbhai Mohanlal Divavala	58	Investigating Officer

Documentary Evidences:

Sr. No.	Particulars	Exh.
1	Accused's Search Panchnama	9
2	Crime Scene Panchnama	10
3	Pancha's Signed Slip	12
4	Accused's Arrest Panchnama	15
5	Deceased's Clothes Seizure Panchnama	19
6	Complaint	22
7	Section 27 Panchnama	30
8	Section 27 Weapon Seizure Panchnama	31
9	Letter Written to Hospital	37
10	Examination Report	38
11	Letter Written to FSL	39
12	Letter Written to Provide PM Note Copy	41
13	PM Report	42
14	Letter Written to Provide Certificate	43
15	Blood Sample Report	45
16	Hospital Letter	46
17	Inquest Panchnama	48

Sr. No.	Particulars	Exh.
18	Letter Written for PM	49
19	Incident Site Primary Report	50
20	Letter Written by Chief Officer	51
21	Letter for Preparing and Sending Map	52
22	Crime Scene Map	53
23	Muddamal Dispatch Note	54
24	FSL Muddamal Receipt	55
25	Jahernama/ Notification	56
26	FSL Certificate	57
27	Police Report Sent with PM	59
28	List	60
29	Letter Written for Handing Over Body and Taking Samples	61
30	Body Handover Receipt	62
31	Body Custody Receipt	63
32	List Written for Treatment Certificate	64
33	Muddamal Receipt	65

6. After closure of prosecution evidence, the further statement of the accused under Section 313 Cr.P.C. was recorded wherein the accused denied all incriminating circumstances and stated that a false case has been foisted upon him. No defence evidence was led.

7. Learned advocate for the appellant-accused further submitted that the appellant has already undergone a substantial period of incarceration, having completed more than 10 years of

actual imprisonment till date. It was urged that in view of the nature of the incident, which occurred in a sudden heat of passion without premeditation, coupled with the prolonged period of custody already suffered, the sentence may appropriately be reduced to the period undergone, more so when the appellant is the sole earning member of his family and his continued incarceration would cause irreparable hardship to his dependents. In such circumstances referred to above, Mr. Kureshi learned advocate for the appellant, prayed that there being merits in this appeal, and same may be allowed and further prayed that the judgment of conviction and order of sentence be modified accordingly.

8. Learned APP, Mr. Hardik Mehta, while strongly supporting the findings of the Sessions court on the reliability of the ocular testimony of the injured eye-witness, the medical evidence establishing that the injuries were sufficient in the ordinary course of nature to cause death, the discovery of the weapon at the instance of the appellant and the incriminating FSL report, very candidly submitted the appellant given a blow on the vital part of the body and as per the medical evidence, which proves that the act was done with intention of causing death and causing such bodily injury which the accused presumed to be knew that it likely to cause death by inflicting such injury and as per the opinion of the doctor, the injuries were sufficient in ordinary course of nature to cause death and, therefore, it was submitted that the case is not one falling within ambit of Section 304 part-I, II, but the case falls within clauses 2nd and 3rd of Section 300. Especially when the same has been supported by the eye witnesses and their evidence is corroborated by medical evidence.

9. Having heard the learned advocate for the appellant and the learned APP for the state and has considered the entire evidence on record and the submissions advanced on behalf of the appellant, the core issue that arises for determination is whether, in the facts and circumstances of the present case, the conviction of the appellant under Section 302 of the IPC for the offence of murder is sustainable or whether the act would fall within the ambit of *culpable homicide not amounting to murder*, attracting Section 304 Part I IPC.

Factual Matrix coupled with reasoning:-

10. The record demonstrates that the quarrel arose suddenly on New Year's day over an unresolved issue relating to the accused's wife, leading to a violent confrontation. The accused did not initially arm himself but was seen holding an open sword during the incident. Evidence from witnesses indicates that the assault occurred in a fit of anger following verbal exchanges and physical altercations. This Court finds no premeditation or prior intention on the part of the accused to cause the death of the deceased Rameshbhai. However, the blow was inflicted on a vital part of the body, the chest, penetrating the heart with considerable force. This establishes that the accused had knowledge that such an act was likely to cause death, though intention to kill cannot be conclusively inferred. Therefore, while the act constitutes culpable homicide, it lacks the essential ingredient of intention to elevate it to murder under Section 300 IPC.

11. From the evidence on record, particularly the post-mortem report and the testimony of Dr. Shivratan Jugalkishor Modi who examined the deceased, it clearly emerges that Rameshbhai

sustained a penetrating injury in the middle part of the chest, measuring 3 × 2 × 2 cm, with sharp and clear margins, extending obliquely upwards to the anterior wall of the right ventricle of the heart, accompanied by 800-1000 ml of intra-thoracic bleeding. An abrasion on the right eyebrow was also noted. The doctor opined that these injuries were ante-mortem and caused by a long-edged weapon like a sword, leading to shock and massive hemorrhage as the cause of death. Additional testimony from Dr. Ganeshbhai Bhaskarbhai Rane, who first examined the deceased at Sumeru Hospital, confirmed a wound approximately 4 × 2 × 10 cm in the chest caused by a sharp object. Although cross-examination suggested possibilities like collision with an edged object, the scene panchnama and evidence rule out accidental causes such as falling on a stone or iron jali, as no such elements were present or supported by defense. The nature, depth, and location of the injuries indicate considerable force, demonstrating knowledge of likely death or serious harm, but not conclusive intention to kill.

12. The prosecution has examined witnesses including PW-13 Indravatiben Hariram Maurya at Exh. 26, who, after being declared hostile, stated in questioning that she saw the accused Naresh holding an open sword, slapping and throttling Kaushalyaben, and fleeing with the sword after the incident. Her testimony, read with that of other witnesses like Kaushalyaben's son and medical evidence, indicates the accused's presence and assault. The manner of occurrence shows the deceased was talking on the mobile outside due to network issues, rushed inside blood soaked after being struck, and was taken to Sumeru Hospital where he succumbed after initial treatment. Eyewitness accounts from the deceased's family, including the hue and cry attracting intervention, confirm the death was not natural but resulted from

the sword blow. However, the question requiring consideration, in view of the entire evidence, is the circumstances under which the deceased died, pointing to sudden provocation without premeditated murder.

13. It transpires that the prosecution in support of its case has examined multiple witnesses, however, out of these, the key injured witness Kaushalyaben and family members like Indravatiben have narrated the incident, corroborating the accused's assault with a sword leading to the fatal injury.

14. It transpires from the entire material placed for consideration, including the F.S.L. report, that the blood group of the deceased Rameshbhai was “O”. The blood samples collected from the place of incident as well as the blood detected on the shirt and banian worn by the deceased were also of “O” group. Though only “insufficient blood” was detected on the muddamal sword, the same was recovered the next night pursuant to the disclosure statement of the accused under Section 27 of the Evidence Act, by which time the blood had dried, explaining the insufficiency. No other explanation for the presence of the deceased’s blood at the spot and on his clothes exists. The defence suggestion that the injury was caused by collision with the iron jali or any other object stands completely disproved. The prosecution has thus established beyond doubt that the sword that was recovered at the instance of the accused is the very weapon used in the crime.

15. The act of the accused in arming himself with a prohibited sword on the day the weapon ban was in force, coming to the house of the deceased, and thrusting the sword into the middle of the chest (a vital part) with such force that it penetrated up to the

anterior wall of the right ventricle of the heart, causing massive intra-thoracic haemorrhage of 800–1000 ml and instant collapse, has been proved beyond any reasonable doubt by consistent ocular evidence corroborated by prompt medical evidence and the F.S.L. report. The plea that the fatal injury could have been accidental or caused by any means other than the deliberate thrust of the sword is wholly untenable.

16. In the case on hand, the assault appears to have been triggered by a sudden quarrel on arising out of an old delusion that the deceased used to look at the accused's wife with bad intention. Though the single thrust by sword was ultimately fatal, the appellant acted under a wave of sudden anger and provocation without any pre-planning or deliberation. The learned advocate for the appellant has strenuously urged that the case is clearly covered by Exception 4 to Section 300 IPC, sudden fight in the heat of passion upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. After carefully re-appreciating the entire evidence, we do not find force in the said submission, however, the alternative submission praying for the considering the case one falls under the provision of section 304 Part I does requires consideration.

17. The medical evidence, particularly the post-mortem report and the evidence of Dr. Shivratan Modi and Dr. Ganesh Rane, establishes that a single penetrating injury was inflicted on the chest with a sharp edged sword, which was sufficient in the ordinary course of nature to cause death. However, the fact that only one blow was given, that the accused came armed only because of the immediate outburst of anger, that there was no repetition of blows, that no attempt was made to cause further

injury once the deceased collapsed, and that the accused immediately fled the spot without chasing anyone else, clearly demonstrate that although the accused had knowledge that the injury was likely to cause death, the intention to cause death is not made out beyond reasonable doubt. The consistent evidence of eye-witnesses, including complainant Satish, Kaushalyaben, Indravatiben and Hitesh, does not reflect any pre-planned design or motive strong enough to infer intention to kill.

18. This Court finds that the learned Sessions Judge failed to properly appreciate the mitigating circumstances and the fact that the incident took place in the heat of passion upon a sudden quarrel without premeditation on the ground that there was a grude with the deceased having starring at his wife therefore erred in holding the offence to be murder punishable under Section 302 IPC. The circumstances as established squarely attract and bring the case within the purview of Part I of Section 304 IPC.

19. Furthermore, the deceased was immediately rushed to Sumeru Hospital and was conscious enough to be shifted on a bike; death occurred only after he was taken to hospital and declared brought dead. This also indicates that the single thrust, though fatal, was delivered in a sudden fit of rage rather than with a formed intention to kill. On a cumulative assessment of the entire ocular, medical and in the light of settled proposition, we are persuaded to alter the conviction from Section 302 IPC to Section 304 Part I IPC. The conviction under Section 323 IPC for causing hurt to Kaushalyaben by slapping and throttling her and under Section 452 IPC for house trespass with intent to commit offence punishable stands confirmed.

20. In light of the principles laid down in **Rampal Singh V. State of U.P. 2012 8 SCC 289** while reiterating and drawing support from ***Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 Cri LJ 818]***, and as reiterated in the recent decision of the Hon'ble Supreme Court in **Nandkumar @ Nandu Manilal Mudaliar v. State of Gujarat (2025 INSC 1302)**, the distinction between murder under Section 302 and culpable homicide not amounting to murder under Section 304 turns upon the presence or absence of intention has been succinctly dealt with and observed as under:

> ***"19.*** *The difference was further elucidated in* ***Rampal Singh v. State of U.P.,(2012)*** *in the following words:*
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> *"**18**. This Court in Vineet Kumar Chauhan v. State of U.P. [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] noticed that academic distinction between "murder" and "culpable homicide not amounting to murder" had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] where it was observed as under: (Vineet Kumar case [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915], SCC pp. 665-66, para 16)*
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> *"16. ... that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the decisions of this Court in Virsa Singh v. State of Punjab [AIR 1958 SC 465 : 1958 Cri LJ 818] and Rajwant Singh v. State of Kerala [AIR 1966 SC 1874 : 1966 Cri LJ 1509] , speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it [would] be convenient for it to approach the problem in three stages. The question to be considered at the first*

stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to 'culpable homicide' as defined in Section 299. ... If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the First or the Second Part of Section Page 8 of 29 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative."

20. *This Court in the aforesaid case of* ***Rampal Singh*** *(supra) further explained the difference between these two offences from the perspective of the punitive provisions of Sections 302 and 304 IPC by grading the offences in three categories as follows:*

*"**21**.Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences. An analysis of these two sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is, (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10*

> *years. The first clause of Section 304 includes only those cases in which offence is really "murder", but mitigated by the presence of circumstances recognised in the Exceptions to Section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in Fatta v. Emperor [AIR 1931 Lah 63] , 1151. C. 476 (Refer: Penal Law of India by Dr Hari Singh Gour, Vol. 3, 2009.)"*

21. Considering the totality of the circumstances, single blow, sudden quarrel without premeditation, no undue advantage taken, no cruelty or unusual manner, the parties being from the same village with prior minor disputes, and the fact that the appellant has already undergone more than 10 years of actual imprisonment as on date. We are of the view that the ends of justice would be met by sentencing the appellant to the period already undergone under Section 304 Part I IPC, along with the fine already imposed.

22. The sentence of rigorous imprisonment already undergone under Sections 323 and 452 IPC is maintained; since the appellant has remained in custody for over 10 years, no further incarceration is required even under these sections.

23. In the result, the appeal is partly allowed:

(a) The conviction of the appellant under Section 302 IPC is altered to one under Section 304 Part I IPC.

(b) The sentence of imprisonment for life is modified to the period already undergone.

(c) The fine amount and default sentence imposed by the sessions court shall remain unaltered.

(d) The convictions and sentences recorded under Sections 323 and 452 IPC are confirmed, but stand satisfied by the period already undergone.

(e) The appellant is ordered to be set at liberty forthwith if not required in any other case.

(f) Bail bonds, if any, stand discharged.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Kaushal Rathod

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: KAUSHAL MAHESHBHAI RATHOD(HCD0078), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 11/12/2025 14:53:10