IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1296 of 2009
With
R/CRIMINAL APPEAL NO. 1357 of 2009
With
R/CRIMINAL APPEAL NO. 1569 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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PARESH @ PARYO SUMANBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:
MR PRAVIN GONDALIYA(1974) for the Appellant(s) No. 1
MR ADITYA JADEJA APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 11/09/2025

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE P. M. RAVAL)

1. Criminal Appeal No. 1296 of 2009 is preferred by the Original Accused No. 2, Paresh @ Paryo Sumanbhai Patel,

who has been convicted in Sessions Case No. 79/2007. Similarly, Criminal Appeal No. 1569 of 2009 is preferred by Original Accused No. 3, Niteshbhai Nanubhai Patel, who has also been convicted in Sessions Case No. 79/2007. Furthermore, Criminal Appeal No. 1357 of 2009 is preferred by Rajeshbhai @ Raju Sumanbhai Koli Patel, who has been convicted in Sessions Case No. 24/2008.Accused Nos. 2 and 3 have been convicted arising out of Sessions Case No. 79/2007 for offences punishable under Section 302 read with Sections 147, 148, and 149 of the Indian Penal Code. They have been sentenced to life imprisonment and a fine of Rs. 5,000/-, and in default thereof, to two years' rigorous imprisonment. Additionally, Accused No. 3 has also been convicted in Sessions Case No. 79/2007 for offences punishable under Sections 323 and 325 read with Sections 147, 148, and 149 of the IPC, and Section 135(3) of the Gujarat Police Act. For these offences, he has been sentenced to three years' rigorous imprisonment and a fine of Rs. 2,000/-, and in default thereof, simple imprisonment for six months.

2. As far as the Original Accused Nos. 4 to 9 in Sessions Case No. 79/2007 are concerned, they have been acquitted of

all the charges leveled against them. However, the State has not preferred any appeal against their acquittal. On the other hand, Accused No. 1 in Sessions Case No. 79/2007, namely Jigneshbhai Patel, who had preferred Criminal Appeal No. 1256 of 2009, has passed away, and vide order dated 12.02.2025, his appeal was ordered to be abated and disposed of accordingly. Since all the aforesaid three appeals arise from the same FIR, although they pertain to two separate Sessions Cases, they are decided together.

3. The facts of the captioned appeal arising from the FIR reveal that:-

3.1 On 31.05.2007, Bhaviniben Devabhai Prabhubhai had gone to the High School situated in Village Vasan since the result of standard 10th was to be declared, and she returned to her residence at 12.30 hrs noon. Thereafter, after having lunch at about 1 o'clock, she went to the outskirts of the village for washing clothes where the agricultural field is located and was washing clothes near the agricultural field. At about 2.30 hours from the village side, around fifteen persons riding 7 to 8 motorcycles came and stopped the motorcycles

near her. In the said crowd, Pareshbhai Sumanbhai Koli Patel, his younger brother Rajubhai Sumanbhai Koli Patel, Shankarbhai Maganbhai, and the son of Nathubhai, namely Jigneshbhai, resident of Vasan Village, in all four persons, were identified, and others can be identified on seeing them, out of which one person slapped her face and threatened not to telephone the Police or else she would be finished. He stood near her, and the rest of the accused were holding sticks in their hands, running towards the field where her father and his uncle Kantubhai were taking rest.

3.2 Thereafter, these persons surrounded her father and Pareshbhai, Rajubhai, Shankarbhai, and Jigneshbhai started hitting her father and uncle with sticks indiscriminately. Seeing this, the complainant, her younger sisters, and younger brother started shouting loudly to save her. At that time, when persons were standing beside the complainant, one hit her on the body with a stick and thereafter went on the motorcycles towards her residence. After some time, her aunt Vasantiben came, and learning of the scuffle, village people who were residing in the neighborhood also came to the place of incident. They found that the complainant’s father

and her uncle were injured and were taken to Kasturba Hospital, Valsad, where, after examination by the doctor, her uncle was declared dead. Out of the accused persons, Rajubhai, Sumanbhai, and Pareshbhai Sumanbhai had inflicted injury on the father and uncle while holding sticks in their hands, and other persons along with them instigated these two persons. Thereafter, it came to the complainant's knowledge that they had also visited her residence after injuring her father and uncle, and a scuffle occurred there as well. The reason for present incidence was that two days back, the father of the complainant, his uncle, and other persons had a beaten father and mother of Rajubhai and other persons. Holding a grudge, Rajubhai, Pareshbhai, and their friends committed the present crime. Thus, the complaint was lodged before the Police Sub Inspector, Dungri on 31.05.2007 and was registered as CR-1-31/2007.

3.3. After investigation, the charge sheet was filed before the concerned jurisdictional Magistrate, and the case was committed to the Sessions Court as a sessions triable case and numbered as Sessions Case No. 79/2007 and 24/2008 (supplementary charge sheet). In Sessions Case No. 79/2007,

charges were framed vide Exhibit 4, to which the pleas of Nitishbhai Patel and Pareshbhai Patel were recorded vide Exhibits 7 and 6 respectively. In Sessions Case No. 24/2008, charges were framed vide Exhibit 4, and the plea of Rajeshbhai Patel was recorded vide Exhibit 5. All the accused persons denied the charges and prayed for trial.

3.4 After completion of the trial, statements of the accused persons were recorded under Section 313 of the CrPC. After hearing the learned advocates for both parties and considering the documentary as well as oral evidence on record, the Appellants were convicted as stated above. Hence, the present appeal.

4. Ld. Advocates Mr. Pravin Gondaliya, Mr. Yash Nanavaty and Ld. Advocate Mr. P.P Majmudar for Appellants would submit that

(1) On going through the deposition of Bhaviniben Devabhai Patel PW 1 Exh. 26, following discrepancies are found:-

a. Not stated in FIR that "Paresh had threatened or Nilesh had caused injury"

b. Did not disclose to police that Kantubhai and Devabhai were taking rest at a distance of 20-25 ft.

C. Did not mention in FIR that she had gone to wash clothes with bicycle;

d. Did not state before doctor at Vaghaldhara that she had sustained injury;

e. Kantubhai and Devabhai had their meals at about 1200-1230 pm from the tiffin, which was lying at the time of incident;

f. Did not talk about the incident until she reached hospital with her Kantubhai and Devabhai;

g. PW:12, PSI states that Bhaviniben did not inform about her injuries.

(2) On going through the deposition of Pratik Maganbhai Patel PW 3 Exh. 33, following discrepancies are found:-

a. No history before Doctor, though took treatment;

b. Statement recorded after two days

c. Not stating in FIR that Jignesh was also present

d. No preliminary treatment at Vaghaldhara, though, Kantubhai and Devabhai had been given preliminary treatment there;

e. Mother also sustained injury. Did not inform police about the incident. Does not show injuries on his legs to doctor. Failed to identify wooden bats. Does not disclose to doctor how did he sustain injuries; Discloses that he was assaulted

on the next date only;

f. PW: 12, PSI states that Pratik was not seen in the hospital of the date of recording complaint

(3) Drawing the attention towards the deposition of injured Devabhai Jamubhai Patel PW 10 Exh. 55 and has stated that the following discrepancies are found :

a. Denies to have beengiven preliminary treatment by Pw 6 at 1440 hrs on 31.05.2007 or anything in that regard.

b. Statement before Executive Magistrate did not mention material aspects of the case.

c. Statement before TI Parade was held also did not mention names of any accused persons;

d. Contradiction with police statement about role of accused;

(4) That identification of the accused by Bhaviniben Devabhai Patel is not believable in as much as, one of the Accused, who threaten her, stood near to her throughout the incident. She cannot say how many assailants were there in the alleged Incident.

(5) That Bhaviniben and Devabhai failed to identify anyone other than Nitesh in the TI Parade.

(6) That the contents of the FIR and the statement before

the police are at variance, in the following manner:-

(1) Bhaviniben Devabhai Patel

a. "FIR was not recorded at the scene of incident, but at the hospital, and therefore, it is true that FIR was not recorded at 1720 hrs on the scene of offence", and there is no explanation for the same";

PW:12, PSI admits this in Para:3 on P.517

b. Did not disclose in the FIR that all accused went with sticks near the hut where Kantubhai and Devabhai were taking rest and cordoned them, and there is no explanation why was this written in the FIR."

C. Does not know motive for the incident, and therefore, has not stated in FIR that the incident had occurred since there was previous scuffle between Kantubhai-Dahyabhai and others on one hand and mother of Rajubhai and others."

(2) Pratik Maganbhai Patel

a. Not stated that Raju Suman, Paresh Suman and others had started beating him, and there is no reasons to give incorrect statement,

b. Para: 5 on P.353: Did not mention anything about the

first part of incident occurred at the field;

(7) That the discovery of the weapons alleged to have been recovery at the instance of the accused persons does not fall within four corners of Section 27 of the Indian Evidence Act. That they were lying in the open field accessible to al, and had not bloodstains. In such circumstances, the discovery / recovery of weapon lost its significance and cannot be attributed to the appellants.

(8) Drawing attention towards the deposition of Doctor who had performed PM of deceased Kantubhai, Dr. Jaydeep Patel at Exh. 28 and preliminary treatment givenby Ajit Jerambhai Tandel at Exh. 44 has pointed out following discrepancies.

(1) Dr. Jaydeep Patel

a. Kantubhai's Stomach was empty, and therefore, if deceased had taken mealsat about 1200-1230, there must be semi-digested food in the stomach. According to him, Kantubhai must have taken his last meal at night, and it does not appear that Kantubhai died after having his last meals."

I. Bhaviniben Patel said Kantubhai had his meals at 1200-1230 hrs, few minutes before the incident;

b. Death is due to External injury No. 1 and corresponding

internal injury; Other injuries No.2 to 20, which are possible due to fall, are not sufficient to cause death.

c. "It is not true that injuries were caused with the muddamal articles"

(2) Dr. Ajit Jerambhai Tandel

[PW:6, Ex:44, P.407]

a. Preliminary Treatment to Devabhai

b. No names of assailants were given by the injured though he was conscious

(9) Drawing attention towards the panchnama and panch witnesses, more particularly, the discovery of wooden logs from the open field which is at Exh. 41 and examination of the pachwitnesses vide Exh. 40. it is argued that deposition of Harishbhai Babarbhai Patel is not reliable. It is further argued that Harishbhai Patel is also panch witness of demonstration panchnama which has not evidential value in eye of law and no reliance have been placed on the demonstration panchnama. In deposition of Mousif mahebubhai Paswal PW 7 Exh. 50 who is the panch of TI Parade does not fully corroborate the procedure carried out during the TI parade

and has admitted material loopholes in the TI parade cannot be reliable.

(10) following discrepancies are also pointed out by Ld. Advocate for the Appellant qua the police witnesses namely Hilalbhai Ratanbhai Vagh Pw 11, Exh. 59 and Vishnubhai Babubhai patel PW 12 Exh. 64.

Hilalbhai Ratanbhai Vagh

a. No investigation qua contradiction in the case history and statement before police given by Devabhai

b, No investigation qua contradiction in the case history and actual injury sustained by Pratik

c. Details in panchnama of scene of offence are missing in the FIR

d. No investigation if wooden logs were lying before FIR was registered; No gorge found near the scene of offence; No cycle found from the scene of offence; No blood stains from the scene of offence; No bloodstains clothes of victims, and therefore, not sent to the FSL.

e. Harishbhai was running a tea stall opposite the police station, and that he had been a panch witness in many panchnamas;

f. No investigation qua previous treatment before Dr. Ashok at Vaghaldhara. No statement of Dr. Ashok recorded, no case papers collected; Statement of daughters of Devabhai not recorded; No proof of injury to Pratik's mother;

g. No evidence as to who took the victims to the temple;

h. Contradictions in the evidence of Devabhai proved;

I. no procedure followed before declaring Raju Suman Patel absconding

Vishnubhai Babubhai Patel

a. Para:4 on P.517: Bhaviniben did not inform about her injuries and he did not see Pratik in the hospital of the date of recording complaint;

b. Para:4 on P.519: Contradiction with contents FIR

(11) That it would be evident from the deposition of Sureshbhai Gami, Executive Magistrate, Pw 8 Exh. 51, wherein, he has stated that Bhaviniben and Devabhai identified only Nitesh and none else. On the contrary, two other alleged accused who were identified turned out to be dummy and not the accused. Thus, it is argued that the Complainant Bhaviniben and so called eyewitness having wittness the incident is highly doubtful. Thus, in the nutshell,

it is submitted that

1) considering the evidence collected by the investigating agency the same cannot be relied upon as it is based on faulty evidence. Key witness testimonies (P.W.1, P.W.3, and P.W.10) have significant contradictions, omissions,and discrepancies that undermine the prosecution's case. These inconsistencies point to the lack of a coherent and reliable narrative, suggesting that the conviction is erroneous.
2) the alleged weapons have been recovered from the open field and the same cannot is not recovered from the present applicant.
3) The medical evidence reveals that, out of 20 injuries inflicted on the deceased, only one was fatal, there is no conclusive proof that the appellant has inflicted the fatal injury, casting serious doubt on the appellant involvement in the crime.
4) Learned Judge while convicting the applicant failed to consider that the prosecution has not established its case beyond reasonable doubt and even the evidence collected and the manner in which the same is collected was not sufficient to convict the appellant.

5) All the witness examined during the course of Trial are Interested witness and no independent witness has been examined by the prosecution.

6) The Complainant in her deposition at Page No. 277 states that the person who she identified as Nitesh was not Nitesh but one Bhupesh Kishorbhai. Further she at Page no. 281 in her deposition states that she cannot say who had given blow with stick.

7) The Injured Eye Witness PW 10 in his deposition at Page No. 473, also admits that he had identified wrong person as Nitesh (present appellant). The person he identified as Nitesh was Mr. Jaynesh.

8) The present appellant (Niteshbhai Patel) is not even named in the Complaint/FIR. It is submitted that wrong person is identified as Nitesh by the Complainant and Injured Eye Witness PW 10 and thus it clearly indicates that the case of prosecution is doubtful and has not proved its case beyond reasonable doubt.

9) Panch witness to the recovery of the weapons are not believed as it is admitted that the one of the panch is running tea stall near police station and he has been in punch in more than 200 panchnamas.

10) The Procedure under taken to identified the witness by way of T. I. Parade has failed and two dummy persons were pulled out in the same.

11) Considering the evidence of the Investigating officer it clearly indicates that the investigation is faulty and therefore also the Learned Judge ought not to have convicted the appellant on basis of such faulty investigation.

12) The Observation of the Learned Judge are without any basis and contrary to the evidence on record and the same are bad in law (the same can been read from Para No. 71 of the Judgement)

13) Even the Judgement is contrary to the law as the Learned Judge relying on the same evidence has acquitted one set of accused and has convicted another set of accused without their being any specific contrary evidence.

14) It is submitted that, going through the entire evidence on record as well as the depositions of the eye-witnesses and so-called injured eye-witnesses, the prosecution has miserably failed to establish any motive for the alleged

offence against the accused persons. Under such background of facts, the appellants ought to have been acquitted.

15) Important witness one Dr. Ashok Who has given preliminary treatment has not been examined.

16) As per the deposition of Bhaviniben and Devabhai, sister and brother of Bhaviniben were there at the spot but theyare not examined. Not only that, but as per the deposition of injured witness/complainant Bhaviniben, Vasantiben came on the spot, however she is not examined by the prosecution. Moreover, according to deposition of Bhaviniben, village people came to the spot, however, not a single person is examined by the prosecution

17) Even considering the evidence collected by the investigating agency the same cannot be relied upon as it is based on faulty evidence. Key witness testimonies (P.W.1, P.W.3 ,and P.W.10) have significant contradictions,omissions, and discrepancies that undermine the prosecution's case. These inconsistencies point to the lack of a coherent and reliable narrative, suggesting that the conviction is erroneous

18) Bhaviniben say in her deposition (Page No. 273), that the incident went on for 5 to 7 minutes and accused persons flee away. Devabhai in his deposition (Page No. 483) says that, incident went on for 30 minutes.

19) Bhaviniben says in her depositions that, the deceased and her father had their lunch at around 12:00 to 12:30 PM and were taking rest and the assault was made at 2:30PM. But the medical evidence is not supporting the say of this witness, PM doctor Jaydip Patel has specifically, says that, no food was found from intestine and deceased must have taken his meal at previous night (Para 5, Page No.311-313).

20) There is material contradiction about motive, in FIR and deposition of complainant (Page No. 343 and 345).

21) Bhaviniben categorically admits that, different facts has been narrated in the panchnama of scene of offence. The recovery of the weapon from the scene of offence is highly doubtful.

22) The alleged weapons have been recovered from the open field and the same is not recovered from the present applicant.

23) The Ld. Trial Court ought not to have relied upon the

deposition of P.W. 3- Pratik Maganbhai Patel as he is not eye-witness to the incident and not disclosing true and correct facts before the Hon'ble Court. As per his say, he says that, at around 2-2:30 PM accused paresh, raju and Jignesh came to his home and assaulted him at that point of time his mother leelaben and jinalben were at home, but both these are not examined by the prosecution. This witness Pratik went to the spot and found that, deceased and Devabhai were made to sleep near Sikotar temple and all the people of his faliya gathered there and from there they were taken to Kasturba Hospital. This witness says that, the accused Jignesh and paresh has dispute with his uncle Rajubhai and quarrel has taken place. This witness has made contradictory statement before the court and the has been admitted by him (Page No. 351). This witness says that, his mother was also beaten, however, she is not examined. This witness categorically admits that,mudamal sticks produced in the court, is not the sticks, by whom he was beaten. This witness categorically admits that, he has not stated before police that, when he, his mother and sister and other persons

went to field and found that, his uncle Kantubhai were lying in the field and Devabhai were lying at some distance in bleeding condition and they were asking to save them and raju and paresh has beaten them. This statement is specifically contradicted in the deposition of I.O. This witness in his cross specifically admitted that, he found the deceased and injured Devabhai near sikotar mata temple.

24) P.W. 10- deposition of injured Devabhai is absolutely untrustworthy and non-reliable. There are many contradictions, omissions and exaggeration. This witness is giving total contradictory story to the deposition of his daughter Bhaviniben (complainant). Devabhai do not disclose name of any assailants before doctor in history.This witness says that, incident went on for half an hour (Page No. 483) whereas, complainant says that, incident went on for 5-7 minutes and accused flee away (Page No.273). This witness says that, he became unconscious and he became conscious next day (Page no. 471), but the doctor P.W. 6- Dr. Ajit Tandel has in his deposition stated that, injured Devabhai was brought to

hospital on 31.05.2007 at around 4:40 PM and patient himself gave history that, somebody assaulted with sticks and sharp cutting weapon at around 2:00 PM near olgam dungri. In para 2 doctor stated that, patient was conscious (Page No.407). This witness before the executive magistrate while T.I. parade says different story of identifying the accused, who snatched the gold chain. This witness does not identifies the persons as accused persons while T.I. parade. This witness says that, Bhaviniben came to wash clothes on bore-well (Page No. 421), whereas, Bhavini says she went on field and was washing clothes at Kotar. This witness specifically admits that, the assailants had no enmity with him (Page No. 485).

25) P.W.- 11- Mr. I.O., categorically admits that, there was no blood stains on the clothes of deceased and injured Devabhai and therefore clothes were not sent to FSL, he further admits that on the sticks (Dhoka) there were no blood stains and therefore same is not sent to FSL. It is submitted that, all the three so-called injured witnesses says that, the deceased and Devabhai were in pool of blood.

26) The prosecution has not established that, how the injured and deceased found near the temple of Sikotar Mata as per the, say of witness Pratik, tough complainant and Devabhai says that, they were beaten in the field and became unconscious and lying in the field

27) As per the case of prosecution the deceased and injured Devabhai were taken to hospital in tempo however, this tempo driver is not examined by the prosecution, nor the blood samples have been taken from this tempo or any panchnama is drawn from the tempo.

28) It is submitted that, looking to the recovery panchnama, it is highly doubtful, as it is stated in panchnama itself, the alleged wood logs were found lying on the field itself, which were shown by complainant to the investigation authorities. Therefore, none of the weapons allegedly used in the alleged offence were discovered or recovered from instance of the accused persons.

29) It is humbly submitted that, looking to the medical evidence, there were 20 injuries sustained to the deceased, out of which one injury was fatal, as per the

deposition of the medical officer. It is further submitted that, for the sake of arguments, even if the case of prosecution is taken as it is and looking into the deposition of the complainant,the attack was made, indiscriminate blows were given to Y2 the deceased and the injured persons. Therefore, it becomes highly doubtful from the evidence on record that, who gave a fatal blow to the deceased, by which he died. Therefore, Ld. Trial Court ought to have give benefit of doubt in favor of the accused persons, only on the basis of presumptions, the impugned order of conviction cannot be sustained in the eye of law.

30) Learned Judge while convicting the applicant failed to consider that the prosecution has not established its case beyond reasonable doubt and even the evidence collected and the manner in which the same is collected was not sufficient to convict the appellant.

31) All the witness examined during the course of Trial are Interested witness and no independent witness has been examined by the prosecution.

32) P.W. 5- Panch witness of Panchnama of recovery of sticks from the place of incident has partly not

supported the prosecution case and same is not believed as it is admitted by him that he is running tea stall near police station and used to serve the tea in Police Station and used to be a panch in prohibition offences and police took his signature on ready panchnama. It is admitted by this panch in his cross, (Page No. 417) that he signed the panchnama without reading it and admits that, the panchnama was written in police station and signed 3 to 4 panchnamas in police station.

33) P.W. 4- Panch of Panchnama of place of incident and recovery of sticks has not supported the case of prosecution and turned hostile.

34) The Procedure under taken to identified the witness by 13 way of T. I. Parade has failed and two dummy persons were pulled out in the same.

35) The witnesses, i.e., Bhaviniben and Devabhai, puts a different story before executive magistrate when they were called to identify the accused (Page No. 441) (Accused ran away by snatching gold chain).

36) T.I. parade and deposition of executive magistrate is not believable as the guideline of the Hon'ble Apex Court for conducting T.I. parade is not followed. There is no

description about age, height or any type of body description of any of the unidentified accused either in the FIR or by any injured witness, therefore, there is no question of calling dummy persons of having similar character to the accused, therefore, the T.I. parade conducted is absolutely in mechanical manner. The witnesses are identifying wrong persons (dummy persons as accused), (Page No. 439). The distance between the office of executive magistrate and sub jail is only 25 to 30 feet and the executive magistrate portfolio of sub jail. Faces of accused were not covered when they put in guard room at the time of conducting T.I. parade. There were no curtains in the office of executive magistrate. The executive magistrate in his cross (Page No. 441) categorically admits that, in routine manner he has mentioned that, the faces of dummy and accused are similar, which shows that, T.I. parade conducted is absolutely against the guidelines of Hon'ble Apex Court and therefore, cannot be relied upon.

37) Considering the evidence of the Investigating officer it clearly indicates that the investigation is faulty and therefore also the Learned Judge ought not to have

convicted the appellant on basis of such faulty investigation. The Observation of the Learned Judge are without any basis and contrary to the evidence on record and the same are bad in law (the same can been read from Para No. 71 of the Judgment).

38) That the Ld. Trial Court has not appreciated the evidence in its perspective manner as required under section 3 of the evidence act and convicted the appellants only relying upon the chief examination of the witnesses.

39) Though the Ld. Trial Court has held guilty 5 persons, two persons, i.e., present appellants Paresh Suman and Raju Suman for the offence under section 302, whereas accused Shankar, Jignesh Nathu and Nitesh Nanu for 323 and 325 r/w. sections 147, 148 and 149 of the IPC. However, in the operative order of conviction and sentence, there is reference of only 4 persons, i.e., present appellants Paresh Suman and Raju Suman for 302 r/w. 147, 148 and 149 of the IPC for life and two accused persons Jignesh NathuPatel and Nitesh Nanu Patel for 323 and 325 r/w. 147, 148 and 149 of the IPC. There is no reference of accused Shankar in the

operative and final order of conviction. It is shocking and surprising tough the person is held guilt for the offence who is not charge-sheeted, nor his name is shown in the charge framed before the Ld. Trial Court.

40) Even the Judgment is contrary to the law as the Learned Judge relying on the same evidence has acquitted one set of accused and has convicted another set of accused without their being any specific contrary evidence and considering the recent judgment passed by the Hon'ble Supreme Court of India in case of Javed Shaukat Ali Qureshi V/s State of Gujarat reported in 2023 9 SCC 164 and Yogarani versus State by Inspector of Police reported in 2024-AIR(SC)-0-4641 the appellant may be IS acquitted.

41) It is submitted that, in the present case, the Ld. Trial Court has convicted four (4) persons, wherein, the present appellants were convicted for 302 r/w. 147, 148 and 149 of the IPC and other two co-accused persons for 323 and 325r/w. 147, 148 and 149 of the IPC. It is submitted that to invoke the provisions of sections 149 there has to be unlawful assembly of more than 5 persons as defined under section 141 of IPC and

therefore, impugned conviction cannot be sustained in the eye of law.

5. Ld. APP Mr. Aditya Jadeja would submit that the conviction passed by the learned Sessions Court is just and proper after considering both oral as well as documentary evidence on record. The manner in which the entire incident has taken place has been deposed by the complainant and the eyewitnesses, which is reliable. Mere minor discrepancies that do not go to the root of the case would not be sufficient to acquit the appellants. Thus, the Trial Court has not committed any error either in facts or in law in convicting the appellants, as the prosecution is not bound to explain each and every hypothesis raised by the accused persons before the Trial Court. What has to be proved is the case beyond reasonable doubt and not beyond a reasonable doubt. Looking at the reasoning adopted by the learned Sessions Judge, considering the deposition of the eyewitnesses, and the doctor who carried out the post-mortem of the deceased, it cannot be said that the Trial Court has erred in finding no variance between the medical evidence and the ocular evidence. The medical evidence does not discard the original evidence entirely

merely because no food content was found in the stomach of the deceased, whereas the complainant in her deposition stated that her father and uncle were resting in their field after lunch. This would be of no help to the accused persons. The role played by the accused persons in committing the offence by using weapons is clearly proved in accordance with the law. That merely no bloodstains being found on the alleged weapon is not a ground to acquit the accused persons since it is only a corroborative piece of evidence. When the eyewitnesses have deposed in favour of the prosecution and their deposition has gone unchallenged and inspires confidence, in such circumstances, it is argued to reject the appeals.

6. The present case rests upon the testimony of three injured eyewitnesses to the alleged incident, which has been executed into two parts. Regarding the first part, the key injured eyewitnesses are Bhaviniben Patel (PW-1, Exhibit 26) and Deva Bhai Patel (PW-10, Exhibit 55). For the second part of the incident, the injured eyewitness is Pratik Patel (PW-3, Exhibit 33).

7. Analysis of deposition of Bhaviniben

7.1 In the Examination in Chief, the Bhaviniben has stated as follows:-

At her residence, her mother, younger sister, and younger brother live together with her. At the time of the incident, she was a student of Standard 10 and had gone to the High School in Vasan Village to collect her result at 10 o'clock in the morning and returned to her residence at 12:30 p.m. After having lunch at about 1 o'clock in the afternoon, she went to the agricultural field to wash clothes. While she was washing clothes between 2:00 and 2:30 p.m., 7 to 8 motorcycles of Pulsar, Hero Honda, and Karizma Company arrived, carrying Paresh Bhai, Raju Bhai, Shankar Bhai, and several other persons. These persons stopped their motorcycles near where she was washing clothes, and Pareshbhai threatened her that if she shouted, she would be finished. One person slapped her, and Nilesh inflicted an injury with a stick. Her father, Deva Bhai, and her uncle, Kantu Bhai, were resting in the agricultural field just 20 to 25 meters away from where she was washing clothes. Kantu Bhai and her father were hit with sticks by Jignesh Bhai,

Pareshbhai, Raju Bhai, Shankar Bhai, and others accompanying them. She identified Pareshbhai, Raju Bhai, and Shankar Bhai as they reside in the neighborhood, and she also knew Jignesh Bhai, who was the General Secretary of Vasan Village High School in Standard 12. Except for these four persons, she could not identify the others. These persons inflicted injuries for about 5 to 7 minutes before leaving.She went near her father and Kantu Bhai and started shouting. After the accused persons ran away, people from the village gathered. Her father and uncle were taken to Kasturba Hospital by Tempo, where Kantu Bhai was declared dead. Her father and uncle had received injuries all over their bodies due to stick blows. She was afraid and therefore did not present herself for examination by a doctor. She stated that she received an injury on the side of her waist and was hit by a wooden log by Nilesh, due to which, there were marks on the west side of the body. After reaching the hospital, she came to know that the accused persons had also gone to the residence of Kantu Bhai. She lodged her complaint at Kasturba Hospital. She does not have any enmity with the accused persons. The said complaint is exhibited as Exhibit 27. Kantu Bhai had enmity with Pareshbhai; the nature of that

enmity is not known to her. Kantu Bhai and her father were friends and used to spend time with her father. He was also beaten.She identified Pareshbhai, Jignesh Bhai, and Nilesh, who were present. Since the other accused persons were not present in court, she did not identify them. She also identified accused Nilesh during the TI parade conducted at the office of the Mamlatdar on 26-07-2007, from a group of 35-40 persons who were made to stand in a circle.She states that the person she identified as Nilesh Nanu is actually named Bhupesh, and she had identified this accused before the Executive Magistrate. The person identified as Nilesh stated that his real name is Nitesh Nanu. Her father was taken to the hospital by her, while Kantu Bhai was taken to the hospital by her aunt Leela, the complainant, and Pratik. This is the sum and substance of the examination-in-chief of the complainant.

7.2 On cross-examination of this eye- witness, the defense counsel has tried to create suspicion with regard to veracity of the deposition of eyewitness on asking various questions the answer to which are in summary. She does not know the tempo number in which her father and uncle were taken to Kasturba hospital. She has not gone to call the tempo. Doctor

did not enquire with her at the hospital. She knows that on the way to Valsa from Olgam, Dungri falls in between. She does not know as to she had taken out case papers of Kantubhai and Deva bhai. She does not remember at what time they went to police station.

It was in the evening, and she stayed at the police station until about 2:00 to 2:30 a.m. She remained at the hospital for about an hour, during which Pratik returned to the village with someone known to her. The police took her signature at Kasturba Hospital at around 5:30 p.m. No one else was present when the police took her signature. She was not given a copy of the FIR recorded at the hospital. From there, she was taken to the police station. She does not know when her father and uncle came to the agricultural field. She denied the suggestion that she had not mentioned in her complaint that her father and uncle were resting 20 to 25 meters away from where she was washing clothes. She admitted, however, that she did not state in her complaint that Jignesh Bhai was the General Secretary at Vasant High School. She denied the suggestion that she had not mentioned in her complaint that the accused had arrived on Hero Honda, Pulsar, and Karizma motorcycles.She stated that while she

had given this information in her complaint, it was not recorded by the police. She became aware of this omission only upon reading the complaint today. She confirmed having read the complaint wherein she had informed the police that Kantu Bhai and Deva Bhai were resting 20 to 25 meters away. She also clarified that there is no road passing by the place where she was washing clothes.

She stated that she did not know whether she had informed the police about the Pulsar, Hero Honda, and Karizma motorcycles. She also could not recall whether she had mentioned in her complaint that Leela Ben and Pratik Bhai had accompanied her in the tempo. She remained with her father and uncle the entire time she was in the hospital. During this period, the doctor did not inquire with either Leela Ben or Pratik Bhai.She denied that Leela had come with her to the hospital. She confirmed that she has no relationship with the complainant. After washing clothes, she took them back to her residence. She did not inform the doctor about who accompanied the injured or who had called the police. She did not call the police herself. She stated that she did not know who inflicted the injury with the wooden log.She denied

the suggestion that she was not present at the scene or that the story about washing clothes was fabricated. She denied that none of the accused were present at the time of the incident or that the accused had not inflicted injuries on her father and uncle. She further denied signing the complaint without reading it and stated that her father does not live with her.She showed her injury to the doctor, who administered an injection. She informed the doctor about the incident. The police arrived at the hospital within 10 to 15 minutes of their arrival. The complaint was given at the hospital, not at the place of the incident. She had read the complaint before signing it. She denied the assertion that the complaint was lodged at the scene at 17:20 hrs and stated she had no reason to make any false claims.She was treated by the doctor but did not know the doctor’s name. Her father and uncle also received treatment. She did not know whether the doctor spoke to her father. When her father was treated, he was conscious but unable to speak. She did not recall whether the Mamlatdar came to the hospital to take her father's statement.She admitted having provided facts and details about the place of the incident that are not mentioned in her written complaint, but she could not explain why. She

confirmed being present when her father's statement was taken at the hospital.At the time of the incident, she, her father, brother, sister, and uncle Kantu Bhai were present in the agricultural field. She did not know when the others had arrived. Her brother and sister had brought lunch (tiffin) for her father. After releasing water into the field, they rested and had lunch - rice, dal, and chapati around 12:00 to 12:30 p.m.The place of the incident is about 3 km from her residence. Her father was lying near a hole in the field. Her uncle was bleeding, and his clothes were soaked in blood. She did not see the blood while Kantu Bhai was being taken to the tempo. Both her uncle and father were bleeding. Her father was bleeding from the stomach and also had bruises. He was wearing a shirt and pants.Her father and Kantu Bhai were made to sit in the tempo near the temple, not directly from the field. The temple is about 100 feet away from the field. Villagers came and helped carry them from the field to the area near the temple. She did not inform anyone at the time because she was scared. Only one person came near her while she was washing clothes and threatened her; he stood near her.

The injury caused by a stick was inflicted by someone

else. The person who was sitting near me did not injure my father or Kantu Bhai. I cannot say how many persons inflicted injuries on my father. The person who slapped me on the cheek and the person who hit me with a stick were two different individuals. One of the two persons who were near me ran toward my father and Kantu Bhai and inflicted injuries on them. At that time, both were resting.It is not true that the accused had encircled my father and Kantu Bhai; no such fact has been mentioned in my complaint. I do not know whether the police have recorded incorrect facts in the complaint. While my father was resting, he was not attacked.It is true that I did not mention in my complaint that my father was attacked while he was taking rest. I cannot name the two or three persons who accompanied Paresh and the others and inflicted injuries on my father. Kantu Bhai and her father were resting together at that time.

That they were assaulting my father and Kantubhai at the same time, and the person who injured Kantubhai also injured my father. It is not true that anyone came to the place of incident upon hearing the shouting. My father sustained fractures in his leg and hand. The accused persons used full

force with the weapons to injure my father's hands and legs, due to which he suffered fractures and also sustained scars on other parts of his body. They inflicted more injuries on Kantubhai than on my father. The assault with sticks lasted for nearly seven minutes. My father was shouting during the incident.It is true that I did not mention in my complaint that Paresh had threatened me. I also did not state in the complaint that Nilesh inflicted an injury with a stick. I cannot give any reason why four individuals from my nearby neighborhood would injure my father and Kantubhai. It is true that I did not state in the complaint that Nileshbhai inflicted an injury on my waist.Paresh, Raju Suman, Shankar, and Magan reside in my neighborhood. There was no previous enmity before the incident. They had no apparent reason to attack us. I did not mention in my complaint that two days prior to the incident, my father, Kantubhai, and others had beaten father and mother of Rajubhai and other persons, and that due to holding a grudge, Raju, Paresh, and their friends committed the present crime. This fact was not stated by me but appears to have been wrongly attributed to me.

7.3 On analysis of the entire deposition of the eyewitness,

read with the deposition of PW-11 at Exh. 59, namely Hilal Ratan Vagh, in the cross-examination of the Investigating Officer, it has been stated that it is true that certain facts mentioned by the complainant and Devabhai in the panchnama of the place of offence were not mentioned by Bhaviniben in her complaint. However, it is important to note that not every factual detail is expected to be included in the complaint, and the specific variance between the panchnama and the complaint has not been clearly brought on record. It is a settled principle of law that the First Information Report (FIR) is not an encyclopedia. The omission of specific details in the FIR such as the allegation that Pareshbhai threatened the complainant or that Nitesh caused injury does not constitute material omissions that would affect the prosecution's case. We find no significant variance between the FIR and the statements made before the Court that would discredit the witness's deposition. Minor discrepancies between the FIR and court testimony are insufficient to conclude that the witness has been materially contradicted. It is also a settled principle that an ordinary witness cannot always accurately recall the sequence of events, particularly those that occurred in a short span of time. The power of

observation varies from person to person. Thus, what has been brought on record are only minor discrepancies of a trivial nature that do not affect the core of the prosecution case. These discrepancies ought to be ignored. Therefore, it cannot be said that the deposition of Bhaviniben is not credible or that her evidence is untrustworthy. Minor discrepancies — such as the omission in the FIR of the fact that Kantubhai and Devabhai were resting at a distance of 20–25 metres, or that Bhaviniben had gone to the place of incident by bicycle, or her failure to mention the injury before the doctor at Vaghaldhara — do not affect the credibility of the testimony regarding how the incident occurred. Even otherwise as per settled principles of law FIR is not enclyopeida whereas the deposition before the court by a witness is substantial evidence. In the entire testimony of the complainant, the role attributed to Paresh Suman, Raju Suman and Nitesh Nanubhai Patel has been clearly established and has remained unshaken.

8. Analysis of deposition of Pratik Maganbhai Patel

8.1 The incident took place on 31.05.2007 on the outskirts of the village Olgam, at the farm of Devabhai. At that time, I was

at my residence along with my mother Lilaben, Magan, and Jinal. Around 2:00 to 2:30 in the afternoon, Paresh, Rajubhai, and Jignesh came to my residence. I was taking my meal when they arrived. They got down from their motorcycles and stated that they had “finished two persons” and now it was my turn. They asked where is the aunt of Kantubhai. Rajubhai forcibly took me out of the residence while beating me. Suddenly, a phone call came, and Rajubhai left. I received an injury on my right leg. We then went to the place where my uncle Kantubhai and Devabhai were lying, near Sikotar Mata Temple. Injured persons gathered there, made a phone call, and arranged a tempo which took them to Kasturba Hospital.I accompanied them to Kasturba Hospital at Vaghaldhara. Dr. Ashokbhai treated Kantubhai and Devabhai. We reached the hospital between 5:00 and 5:30 p.m. On examination, Kantubhai was declared dead. Devabhai was given treatment. The person who injured me is not present in the Court today. However, the persons who injured me, namely Jignesh and Paresh, are present in the Court. There was some quarrel between Rajesh and Paresh, and because of this enmity, the present incident occurred. I was treated at Kasturba Hospital, where I received injections and an X-ray of my leg was taken.

I was also injured with wooden logs.

8.2 Cross-Examination of Pratik (PW-3):The witness admitted that no complaint was lodged by him immediately after the incident which took place on 31.05.2007 at Village Olgam in Sarpanch Faliyu. He stated that no police personnel met him on the day of the incident. The police took his statement regarding the incident only after two days, at his residence in Olgam Village, where he signed the complaint. However, he has not received a copy of the complaint. He admits that in statement before police he has not stated the name of Jignesh among the persons who were beating him. He denied having taken any treatment from Dr. Ashok at Vaghaldhara, though Dr. Ashok treated Kantubhai and Devabhai in his presence. The witness stated that he did not know the number of the tempo used to transport the injured. The incident lasted approximately 5 to 7 minutes. There were several houses near his residence—four to five in front and one behind. He confirmed being injured by multiple accused persons, including Rajubhai, during the assault. Rajubhai forcibly took him out of the house. When asked if more than two persons inflicted injuries on him, he denied that

statement was untrue.The witness admitted that he did not state before the police that Rajubhai, Paresh, and other persons came together and beat him. He confirmed that the police had not read over his statement to him but that the recorded information was correct. His mother, Lilaben, was also beaten and sustained visible injuries on her thighs.He received six to seven blows, mostly on his right thigh, which were given with full force and could be felt. There were five to six blows specifically on his right thigh; no other injuries were reported on his body. He noticed two to three dull scars but did not show them to the doctor as he was distressed due to the death of his uncle. The doctor did not examine his thigh injuries.He denied receiving any injury on his left leg, stating that the injury on his right thigh was not serious, which is why he did not inform the police or magistrate nor visit the hospital. He described the injuries as simple, causing swelling but no serious harm, caused possibly due to pressure.He did not inform the doctor about limping while walking. Upon reaching the field of Devabhai and Kantubhai, they were not present, and he had informed the police accordingly.He admitted that he had not stated in his police statement that when he, his mother, sister Jankhna, and others reached the

field, they saw his uncle Kantubhai lying on the field and, at some distance, Devabhai also lying in the field, bleeding and requesting help, and that they had been injured by Rajubhai and Paresh.

The police had no reason to record any false statement. I did not see my uncle bleeding. My uncle was wearing pants, but the rest of his body was naked. Both my uncle and Devabhai were lying near the temple of Sikotar Maa. If this fact is not mentioned in my police statement, I have no explanation for that.I do not know where Dr. Ashok was treating my uncle. It is true that in my statement I mentioned that at that time, a tempo came and both were taken to Kasturba Hospital at Valsad. I did not have any opportunity to meet Devabhai while I remained in the hospital. Devabhai was unconscious in the tempo, but when he was given an injection, he was conscious. I have not spoken with Dr. Ashok at Vaghaldhara. I did not discuss the incident with Bhaviniben.There was a dispute between my uncle Rajubhai and Paresh because the wife of Rajeshbhai was suspected of having an affair with Paresh. This suspicion was carried by Paresh’s wife. Due to this relationship, who would beat whom

is unknown to me. Paresh and Rajubhai had previously had a scuffle, but I do not know when it took place. It is true that if someone misbehaves with my uncle, the family would take it as a matter of reputation.

8.3 Upon reading the deposition of the aforesaid witness, the fact of Rajubhai beating Pratikbhai is established. It is also confirmed that Pratikbhai sustained an injury on the right thigh, which is corroborated both by his deposition and the testimony of Dr. Ajit (PW6, Exhibit 44). Further, the injuries he sustained are supported by medical documents, including the original injury certificate (Exhibit 46), its carbon copy (Exhibit 47), and the treatment papers (Exhibit 48). A perusal of the cross-examination of the Investigating Officer (PW11) at Exhibit 59 reveals that the defence acknowledged having collected and reviewed the injury certificate of Pratikbhai. The certificate does not mention injuries caused by a sharp weapon. However, the witness had stated before the doctor that he had received an injury with a sharp weapon. Despite this, the investigating officer did not investigate this discrepancy. Regarding the role of Nitesh Nanu, the cross-examination of PW11 further reveals that during the test

identification parade, Nitesh Nanu was identified. This corroborates the fact that Niteshbhai inflicted injury upon Bhaviniben, despite her initial difficulty in identifying the accused before the Court. She clarified that while she initially identified Bhupesh (accused No. 7) as Nitesh, the person she referred to as Nitesh Nanu subsequently confirmed his identity as accused No. 3. Thus, the identification of Nitesh Patel by the injured witness Bhaviniben during the test identification parade is established. The witness also stated that she had named four persons in her complaint, and the names of the remaining co-accused were derived from these four accused persons. While there is no direct evidence against the other co-accused apart from statements of the four named accused in the police statement, it is important to note that once the individual who inflicted injury upon Bhaviniben is identified, the absence of other names in the FIR does not materially affect the prosecution's case.

9. Learned advocate for the accused Paresh and Rajesh have argued that despite Pratik having taken treatment, has not give history before the doctor. The primary function of the doctor is to treat the injured witness brought before him and

inform the police; he is not expected to record details such as the identity of the assailant. At this juncture it would be appropriate to refer to the judgment in the case of Pattipati Venkaiah Vs. State of Andhra Pradesh reported in AIR 1985 SC 1715 wherein the Supreme Court has held that:

> *"..... A doctor is not all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person and his primary effort is to save the life of the person brought to him and to inform the police in medico legal cases. Thus, not blaming the assailants before the doctor would not mean that the present accused had not assaulted the deceased as well as the injured ..... It is well settled that Doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post mortem immediately and if they start examining the informants, they are likely to become witnesses of the occurrence which is not permissible."*

It is also argued that Pratik did not receive any primary treatment at Vaghaldhara, though Kantubhai and Deva Bhai had been given primary treatment. This argument does not hold good insofar as the absence of primary treatment at Vaghaldhara neither destroys the fact of injury to Pratik Patel nor does it vitiate the deposition, especially when the injury to Pratik is of such a nature that would not require immediate

medical attention, coupled with the fact that one of the eyewitnesses was injured and one succumbed to the injuries and the requirement of the time was to treat these two injured persons. As for not informing the police about the injury sustained by her mother, this would also not help the appellants; more importantly, it does not shake the veracity of these witnesses. Thus, minor discrepancies not going to the root of the case cannot be considered grounds to acquit the accused persons.

It is also settled principle of law that prosecution is not required to meet any and every hypotesis. The Hon'ble Supreme Court in the case of State of Punjab Vs. Karnail Sing reported in (2003) 11 SCC 271 in Para 12, has held that the prosecution is not required to meet any and every hypothesis put forward by the accused. It must grow out of the evidence in the case. If a case is proved perfectly, it can be argued that it is artificial, and where the case has some flaws inevitable because human beings are prone to err, it is argued that it is a doubtful story. Proof beyond reasonable doubt is a guideline, not a fetish. A judge does not preside over a criminal trial merely to see that that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both

are public duties.

In criminal cases, the credibility of witnesses, particularly those who are close relatives of the victim, is often scrutinized. However, being a relative does not automatically render a witness "interested" or biased. The term "interested" refers to witnesses who have a personal stake in the outcome, such as a desire for revenge or to falsely implicate the accused due to enmity or personal gain. A "related" witness, on the other hand, is someone who may be naturally present at the scene of the crime, and their testimony should not be dismissed simply because of their relationship to the victim. Courts must assess the reliability, consistency, and coherence of their statements rather than labelling them as untrustworthy. The distinction between "interested" and "related" witnesses has been clarified in Dalip Singh v. State of reported in 1954 SCR 145 where Supreme Court emphasized that a close relative is usually the last person to falsely implicate an innocent person. Therefore, in evaluating the evidence of a related witness, the court should focus on the consistency and credibility of their testimony. This approach ensures that the evidence is not discarded merely due to familial ties, but is instead assessed

based on its inherent reliability and consistency with other evidence in the case. Though the eyewitnesses who have been examined in the present case are closely related to the deceased and injured their testimonies are consistent with respect to the accused persons being the assailants who inflicted wounds on the deceased and injured under such circumstances, merely because the eyewitnesses are family members, their testimonies cannot be discarded solely on that ground.

10. Analysis of Deposition of Devabhai Patel

10.1 The next injured eyewitness examined is PW10, Devabhai Patel (Exhibit 55). In his examination-in-chief, he stated that on 31st May 2007, at about 6:30 a.m., he, along with his friend Kantubhai, went to the field to water the rice crops. Around noon, after having lunch brought by Sushma, they rested beneath a shed, while Bhaviniben was washing clothes near the bore well. At about 2:00 to 2:30 p.m., two to three motorcycles arrived with Pareshbhai, Rajubhai, Jigneshbhai, Shankarbhai, and approximately 8 to 10 others. They proceeded to the place where the witnesses were

resting. When Kantubhai awoke, the witnesses fled into the field, while Pareshbhai and the others pursued them, carrying wooden logs. Devabhai ran from his own field toward Kantubhai's nearby field. One or two assailants chased Devabhai, while several pursued Kantubhai. Devabhai stated that he could not identify the persons who inflicted the injuries. Kantubhai was inflicted injuries with wooden logs by Pareshbhai, Rajeshbhai, Jigneshbhai, and two others, making four persons who assaulted him. The witness has further deposed that, from the place where he fell down, at a distance of about 200 to 300 feet, Kantubhai was present. After beating Kantubhai, Rajeshbhai, along with 5 to 6 other persons, came near the witness and assaulted him with sticks. They inflicted injuries on both his legs, his waist, the rest of his left hand, the middle of his forearm, and on the right knee. He also received a fracture on the small finger of his left hand. The witness has further stated that Rajeshbhai personally inflicted injuries upon him, and when Rajeshbhai attempted to assault him on the head, he raised his hand in defence, due to which he received the said injury. At that time, Rajeshbhai shouted to Pareshbhai, saying that "one is yet to be finished, so come here quickly." Before they came I became unconscious.

Thereafter, the witness has stated that he is unaware of what happened further, as he regained consciousness at Kasturba Hospital at about 6 o'clock. At the first instance, the police at Kasturba Hospital had asked, and at about 12 o'clock, the Mamlatdar had also asked into the matter. The witness further stated that he had informed the Mamlatdar about the incident. He has deposed that the wooden logs used in the assault were broken due to the beating; they were wooden logs of Babool Tree held in the hands of the assailants, though he does not know where they had procured them from. The persons identified by the witness were Rajesh and Shankar, who were not present before the Court, whereas Paresh and Jignesh were present and duly identified. He also identified Nitesh, accused No. 3; however, upon asking his name before the Court, he disclosed his name to be Jaynesh, accused No. 9.

10.2 In cross-examination, this witness admitted that he had not regained consciousness on 31.05.2007, and that the police had not visited or recorded his statement on 31.05.2007. The witness has further stated that he does not know who had taken him from the place of incident to the hospital. His police statement was recorded on 01.06.2007 at about 8 o'clock. At

that time, there was no one present with him to take care of him. When he regained consciousness in the hospital, he had conversed with Vinodbhai, Amritbhai, Ishwarbhai, Kamleshbhai, and Mukeshbhai, who informed him about the demise of Kantubhai. The witness has admitted that he had informed the police regarding the number of motorcycles involved; however, he does not know who was riding those motorcycles. He has also stated that he could not identify the persons who had inflicted injuries at the first location. He has denied the suggestion that the assailants who inflicted injuries at the first instance were unknown persons. The witness has further deposed that he and Kantubhai ran in the same direction. He has denied the suggestion that he does not know who ran behind Kantubhai. He has stated that he does not remember where, in his police statement, he had mentioned the breaking of wooden logs during the beating. He has admitted that he had not stated before the police that the accused had come armed with wooden logs. He has further stated that he does not know whether the doctor had examined him at about 4:40 hours. He has denied the suggestion that he had not informed the doctor, at the time of examination, regarding his condition of consciousness,

unconsciousness, and vomiting. He has also denied that he had given any statement in the hospital to the effect that some people armed with sticks and sharp weapons had assaulted and injured him on 31.05.2007 at about 2 o'clock near Olgam Dungari. It is true that Olgam Dungri and my field are two separate places. I had become unconscious at the place of incident. I do not know who had taken me and Kantubhai in the Tempo. After receiving injuries, I have not had occasion to talk with Suman or Bhavini after the incident. At the first instance, I did not remember after the incident to whom I had spoken. I do not know whether Doctor Ashok treated me or not. I do not know that the Executive Magistrate had visited the hospital on 31.05.2007; the Executive Magistrate did not come to the hospital between 12 and 12:30 on 31.05.2007 before the Mamlatdar. I had given the statement that Kantubhai and I fell down together separately while running. The Mamlatdar had read over the statement after recording. I had not informed the Mamlatdar about the place where we were sleeping and resting. Accused persons surrounded us. I have not stated before the Executive Magistrate that on the date of the incident, he and Kantubhai were sleeping in the field at about 2 to 2:30, and at that time, Rajesh, Paresh,

Shankar, Jignesh, and others came on motorcycles with wooden logs, and Paresh and Rajesh started inflicting injuries on me and Kantubhai, in which I sustained a fracture on my left hand and also injuries on my left leg. Other persons who came along with them surrounded Kantubhai, and Rajesh, Paresh, Shankar, and Jignesh, who were holding sticks in their hands, started inflicting injuries on Kantubhai, due to which he expired. These persons also inflicted injuries on my daughter. I know Paresh and Jignesh by name. Even the accused persons have stated before the Court the names of two persons, and the rest of the persons are not present today. I had not pointed out discrepancies in their events to the Appellant, and the police have not inquired of me on this aspect.

It is true that while the test identification parade was carried out by the Executive Magistrate, instructions were given to the effect that at about 2 to 2:30 on 31st May 2007, when water was released in my field along with Kantubhai, some persons came and started a scuffle, also started vandalizing, and snatched away a gold chain; those persons identified were present here today. The statements before the

police and the Executive Magistrate are both true that there is a deep pit near my field, about 2 to 5 feet deep. I do not know whether it was filled with water when the incident took place. It did not happen so. On the date of the incident, Bhavini had come to wash clothes in that pit, but she was washing clothes where the water was flowing out of the bore. She came at around 1 to 1:30 in the afternoon. All the accused persons were involved in inflicting injury on him. The injuries were inflicted by Paresh Bhai, Rajesh Bhai, and four other persons. These persons inflicted injuries with full force; however, on his own volition, he stated that Rajesh inflicted more injuries on him which were on my hand, leg, and back. Except for this, no other injuries were inflicted. Both I and Kantubhai were injured at the same time by the accused persons. It did not happen that these persons inflicted injuries to me and the rest were inflicting injuries to Kantubhai. It is true that I have stated in my police statement that after beating Kantubhai, Rajesh came near me and 5-6 other persons came and inflicted injuries. I cannot explain why the police wrote this aspect in the police statement. I do not remember I have stated in the police statement that Rajesh Bhai hit me and while trying to hit my head, I raised my hand due to which I

sustained fracture in hand. It is true that in the police statement I did not state that I became unconscious, therefore they left me and ran away. I have no explanation if the police wrote this aspect in the police statement.

At the time of the incident, I, Kantubhai, my daughter Bhavini, my second daughter Sushma, and Mayur were present. It is not true that at the time of the incident, Bhavini was not present in the field. Both my daughters came with lunch in the afternoon at about 12 o'clock. Bhavini was lying at the place of the incident. I have not seen any person inflicting injuries running away. I have no enmity with the persons who had inflicted injuries.

10.3 Upon reading the aforesaid deposition of Deva Bhai and considering the cross-examination of the investigating officer Mr. Hilal Wagh, it is stated in the cross-examination that he had seen the injury certificate of Deva Bhai, in which the history given before the doctor was recorded, but he had not investigated the contradictory statements made before the doctor and in the police statement. It transpires that the Defence Counsel is referring to sharp weapons having been

used in inflicting injury as stated in the history given before the doctor; however, this has not been stated by these witnesses in their full statements. Further, a similar question was put regarding the injury certificate of Pratik. Further, the facts stated in the Panchanama of the Place of Offence as informed by the complainant and Deva Bhai are not stated in the complaint of Bhavini Ban. However, the details not stated in the FIR but stated by complainant Bhavini Ban and Deva Bhai while preparing the Panchanama of the Place of Offence have not been brought on record. He also admitted that during the investigation it was found that the injury, as well as the injured, had taken treatment at Vaghaldhara at Dr. Ashok's clinic. However, the investigating officer did not obtain any injury certificate or case papers during the investigation. He has not collected any evidence reflecting the victim status of Leela Bhai or the fact of Leela Ban having taken treatment before any doctor. In cross-examination, the investigating officer admitted that Deva Bhai did not state in his police statement that "They had run away while inflicting injuries with wooden logs."

It has not been stated in the police statement that after inflicting injuries on Kantubhai, Raju Suman came near me

and 5-6 persons inflicted injuries. Rajesh Bhai hit me, and while trying to hit my head, I raised my hand, due to which I sustained a fracture in my hand. At that time, Rajesh Bhai called out loudly to someone, stating that one was yet to be finished and to come here, and before that, I became unconscious. He also stated that Deva Bhai had admitted in the police statement that since I had become unconscious, they left me there. Considering the discrepancies between the statements made before the police and before the court, it is necessary to note that there are minor contradictions and omissions in the deposition of Deva Bhai. However, such contradictions or omissions are not fatal to the prosecution's case because the fact of Paresh Suman and Rajesh Suman inflicting injuries on the deceased Kantubhai as well as the injured witness namely Devabhai is consistent.

11. As far as the use of sharp weapons as stated in the history is exaggerated to prevent the accused from escaping criminal liability. However, such exaggerations are not so vital that they destroy the very core of the prosecution case. The fact of injuries being inflicted by a group of people, more particularly in the present case where the accused are nine in

number. It cannot be expected that the witness will describe accurately which accused person inflicted the injury as well as the injured witnesses with what weapon. In this regard, it would be profitable to refer to the judgment of the Honorable Supreme Court in the case of Shardul and another vs. State of Punjab, reported in AIR 1994 SC 672, wherein it is held that when there are a number of injuries on the deceased, each witness cannot be expected to note details in seriatim. In view of this principle, when the total number of accused are nine, it cannot be expected from the witness to state exactly what type of injury was inflicted on which part of the body of the deceased by using what type of weapon with precision.

12. Different witnesses have different capacity to grasp the scene of offence and to respond in court when cross-examined by the defense counsel at a length in a heated atmosphere. In the present case, there are minor variations and omissions; however, these do not demolish the prosecution case and it cannot be said that the witness is unreliable. It is argued that injured Deva Bhai denied receiving treatment at about 14:40 hours on 31st May 2007. However, he was indeed treated on 31st May 2007 at the stated time. It should be noted that this

fact does not negate the fact that the accused injured the witness. One of the argument is that the statement before the Executive Magistrate does not mention material aspects of the case. In this regard, what was stated before the Magistrate must be brought on record, especially if it varies from the deposition before the court. When such an exercise is not undertaken, the argument under such circumstances cannot be sustained. Not mentioning the name during the TI parade would also have no adverse consequences. Since at present we are concerned with Paresh, Rajesh, and Nitesh, as far as Paresh and Rajesh are concerned, the deposition of Deva Bhai proves their complicity. As far as role of Nitesh Nanu is concern he has been identified during TI parade and also before Court by Bhaviniben-complainant.

13. As far as the argument that the First Information Report was not recorded at the scene of the incident or at the hospital, which is admitted by PW-12, namely Vishnu, a PSI serving at Dungaree Police Station, it is required to be noted that this witness admitted in his cross-examination that he did not state while recording the FIR that it was taken at Kasturba Hospital, but it is mentioned that it was taken “at

the place." However, on his own volition, he clarified that the word "place" refers to Kasturba Hospital. This fact of recording the FIR at Kasturba Hospital is corroborated by the deposition of PW-1 Bhavini Bai at Exhibit-21. As for not disclosing the fact that all the accused went with sticks near the hut where Kantubhai and Deva Bhai were resting and cordoned them, it is important to note that an FIR is not supposed to be an encyclopedia where every detail of the crime must be provided by the first informant. In this regards it would be profitable to refer to the case of Superintendent Of Police, C.B.I. V/s. Tapan Kr. Singh reported in reported in AIR 2003 Supreme Court 4140 Hon'ble Supreme Court held thus:

> *"It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the*

information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report

> *is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."*

It is a settled principle of law that once a cognizable offence is disclosed in the FIR, the criminal machinery is set into motion. What has been stated in the deposition by the witnesses regarding the manner in which the entire incident took place would be relevant and substantive evidence. Thus, this argument does not stand good.

14. As far as Bhavini Devabai PW1 (the complainant), having knowledge of the motive behind the offence, such omission in her deposition before the court would be understandable, since the motive for committing the crime would also make the complainant's side vulnerable, as just two days before, the complainant's party had assaulted the present accused persons, and keeping grudge of the said fact, the present

crime was committed. However, the fact of such motive, though denied by Bhavini, does not destroy the prosecution's case when such motive is proved in cross-examination of the PW 12 Vishnukumar Bahubhai Patel at Exh. 64 who had registered the FIR at Kasturba Hospital. Even otherwise, it is a settled principle of law that proving motive is important in a case based on circumstantial evidence; however, when there is direct evidence, namely eyewitnesses, the absence of proof of motive is not fatal to the prosecution's case. In the case of Shivaji Chintappa Patil v. State of Maharashtra reported in AIR 2021 Supreme Court 1249 the Apex Court observed as under:-

> *"27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances……."*

Thus it is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye- witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is

clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction. Thus, motive in the present case is proved and even if the said motive is not taken in to consideration the prosecution has proved its case beyond reasonable doubt.

15. As far as the argument that Pratik Bhai does not mention anything about the first part of the incident, it is required to be noted that he was not present at the residence where the presence of the appellants, namely Paresh and Rajesh, was proved, and the assault by Rajesh was also proved to have taken place at the residence of Pratik Maganbhai Patel. It is also important to note that Pratik was present only during the second part of the incident and not the first, and therefore, not mentioning the details of the first part is neither fatal nor can it be expected from a witness who did not see the first part of the crime being committed. It is also argued that Bhavani Bhan Patel stated that one accused who threatened them stood near her throughout the incident; however, she cannot say how many assailants were there. Be that as it may, the fact of naming assailants by name and identifying one of the accused in the identification parade, though there were

some minor discrepancies, but the accused could be identified, cannot be said to be fatal to the prosecution's case, especially regarding the role attributed to Nitesh Bhai. As far as the discovery or recovery of weapons is concerned, since they were recovered from an open field accessible to all, such recovery loses its significance, particularly when the Panchnama has not been proved in accordance with law. However, this aspect, which is corroborative in nature, by itself does not lose its efficacy of deposition of eyewitnesses, and thus failure to prove the said Panchanama is not fatal to the prosecution's case. With regard to the history given by Deva Bhai before the doctor, stating that sharp weapons were also used to perpetrate the crime, whereas no such fact was stated before the police, this would make no difference, since the witness may have exaggerated to some extent to ensure that none of the assailants escape criminal liability.

16. Merely exaggeration of using sharp weapon, as stated in history before the treating Doctor though have not been utilized in committing the crime, looses its efficacy, more particularly when the deposition itself does not state the using of sharp weapon in inflicting injury to deceased as well as to

Pratik, Devabhai and Complainant Bhaviniben. With regard to the missing details in the Panchanama of scene of offense, qua the details stated in the FIR is concerned, which details are missing is not brought on record. As far as no gorge present near scene of offense, non-recovery of Tiffin from the scene of offense, no complaint having lodged as scene of offense.

No blood stains from the cloth of the deceased and therefore not sending it before the FSL is concerned, it is required to be noted that a person may name certain place by gorge and other person may call the same place where water fell from the well would not make the difference. Since there is nothing on record to prove that complainant has not seen the incident nor could it said that the injured Deva Bhai was not inflicted injuries by the present appellants namely Paresh and Rajesh. As far as non-recovery of injury certificate and recording the statement of Dr. Ashok Bhai at Vaghaldhara is concerned, it amount to lapse in the investigation.

17. As far as the lapses in the investigation as argued by Ld. Advocate for accused is considered, it would be profitable to refer the judgment of the Hon’ble Supreme Court in the case of Ram Bihari Yadav vs State Of Bihar & Ors reported in AIR

1998 SC 1850, wherein it is held that if primacy is given to design or negligent investigation, or to omission or lapses by perfunctory investigation or omission, the faith and confidence of the people would be shaken not only in the law enforcement agency but also in the administration of justice. Thus, applying the aforesaid principles, when there is defective investigation, the Court has to be circumspect in evaluating the evidence which in the present case is found to be cogent and reliable but it would not be right in acquitting the accused persons solely on the ground of defect. Thus, on account of faulty investigation, the benefit will not enure to the accused person on that ground alone, more particularly when, thee witness in the present case have specifically named Paresh Suman and Rajesh Suman and Nitesh nanu and role attributed by them and having found ring of truth coupled with the fact that their deposition have remained unshaken even in the cross examination and when deposition of these three witness taken together, there version can been seen corroborative. Under the circumstances, minor lapses on the part of the Investigating Officer is not fatal to the prosecution.

18. As far as non recovery of cycle and tiffin from the scene

of offence as already stated herein above, the prosecution is not required to meet any and every hypothesis put fowarded by the Accused. The concept of proof beyond reasonable doubt.

In the case of Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747 Hon'ble Supreme Court in paragraph 30 and 31 has stated thus (Only relevant observations are reproduced):

> *"30. An accused has a profound right not to be convicted of an offence which is not established by the evidential standard of proof "beyond reasonable doubt". This Court in Krishnan v. State ((2003) 7 SCC 56: 2003 SCC (Cri) 1577], held that the "doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case". (SCC p. 63, para 23)*
> *In Ramakant Rai v. Madan Rai [(2003)*

> *12 SCC 395: 2004 SCC (Cri) Supp 445), the above principle has been reiterated.*
> *31. In Commonwealth v. Webster [(1850) 5 Cush 295: 52 Am Dec 711 (Mass Sup Ct)] at p. 320, Massachusetts Court, as early as in 1850, has explained the expression "reasonable doubt" as follows:*
> *"Reasonable doubt... is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction.""*

Thus, on re-appreciation of deposition of all the three relevant witnesses it cannot be said that their evidence creates actual and substantial doubts which ensures acquittal based on benefit of doubt. Thus, if the deposition of eye witness if tested on the anvil of the afore stated principles the prosecution has proved its case beyond reasonable doubt.

19. Ld. Advocate for Accused Paresh and Rajesh have also submitted that Bhaviniben in her deposition has stated that the deceased and her father had lunch at around 12 to 12.30 PM and were taking rest and assult was made by the

assailants at 2.30 PM, however, the medical evidence not supporting the said facts since, the Doctor who had perform the Post Mortem specifically states that no food particles were found from the intestine. In this regard it would be profitable to refer the judgment in the case of Ram Bali Vs. State of Uttar Pradesh reported in 2004 Cri LJ 2490, Hon'ble Supreme Court in paragraph No. 10 has held as under:-

> "*10. Even otherwise, the plea that the medical evidence is contrary to the ocular evidence has also no substance. It is merely based on the purported opinion expressed by an author. Hypothetical answers given to hypothetical questions, and mere hypothetical and abstract opinions by textbook writers, on assumed facts, cannot dilute evidentiary value of ocular evidence if it is credible and cogent. The time taken normally for digesting of food would also depend upon the quality and quantity of food as well, besides others. It was required to be factually proved as to the quantum of food that was taken, atmospheric conditions and such other relevant factors to throw doubt about the correctness of time of occurrence as stated by the witnesses. Only when the ocular evidence is wholly inconsistent with the medical evidence the Court has to consider the effect thereof. This Court in Pattipati Venkaiah v. State of Andhra Pradesh (AIR 1985 Sc 1715) observed that*

> *medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second. The state of the contents of the stomach found at the time of medical examination is not a safe guide for determining the time of occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when exactly the deceased had his last meal and what that meal consisted of. In Nihal Singh and Ors. v. The State of Punjab (AIR 1965 SC 26), it was indicated that the time required for digestion may depend upon the nature of the food. The time also varies according to the digestive capacity. The process of digestion is not uniform and varies from individual to individual and the health of a person at a particular time and so many other varying factors.*"

In view of the aforesaid principles, only when the ocular evidence is wholly inconsistent with the medical evidence, this Court has to consider the effect thereof. In the present case, it is an admitted position that no food was found in the intestine of the deceased, it cannot be said that the incidence has not taken place or the time of the alleged incidence is not correct since, the process of digestion is not uniform and it varies from individual to individual, depending on the health of a

person at a particular time and many other varying factors and has nothing to do with the food either found or not found in the intestine of the deceased. Even the defense has not factually proved the quantum of food that was taken, atmospheric conditions, and other relevant factors to throw doubt about the correctness of the time of occurrence as stated by the witnesses. Thus, this argument also does not hold.

20. Lastly, it is argued that from the entire evidence on record, if the case is believed to be proved beyond reasonable doubt than also the present case falls under Section 304 Part II of the IPC and not under Section 302 of the IPC. It would be profitable to refer to the case of Anbazhagan Versus State Represented by the Inspector of Police reported in 2023 SCC OnLine SC 857 wherein paragraph 66 it is held that:

> *66. Few important principles of law discernible from the aforesaid discussion may be summed up thus:—*
>
> *(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury*

was caused. To illustrate:'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of

Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a

lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is

brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the

accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC."

Considering the facts on hand, and applying the aforesated principles in the present case, it is proved that prior to the present alleged incident, the father of the complainant i.e. Devabhai and Kantubhai, along with others had beaten mother and father of Rajubhai and other persons

and the present incident is the outcome of the grudge resulting from the said beating. In all, 20 injuries were found on the body of the deceased, out of which injury No. 1, i.e., one CLW admeasuring about 2.5 cm x 0.5 cm on the left side of the parietal region, was found to be fatal and sufficient to culminate in death and rest 19 injuries were in the nature of bruise and abrasion. Dictionary meaning of the word “contusion” is bruise. Medical meaning of the word “contusion” is an injury in which the skin is not broken and there is pain, swelling and discolouration, while meaning of abrasion . The cause of death was opined to be due to shock caused by Intracranial hemorrhage and fracture in the skull bone. From the reading of the entire evidence on record, particularly that of the complainant Bhaviniben, Pratik and Devabhai, the present incident took place to teach a lesson because of an incident involving the accused two days prior to the present incident. The weapons alleged to have been carried by the assailants were sticks. They were more than five in number and had both the time and power to kill the deceased by dangerous weapon. Thus, from the circumstances of the case on hand, nature of weapon used, the amount of force employed at the head causing injury, it can be said that

this is a case of pre-meditation to teach a lesson to the deceased and the accused had no intention or motive to murder the deceased. Thus, the accused had no intention to cause such bodily injury as is likely to cause death or such injury, attracting the provisions of Section 300 of the IPC. In the case on hand, it does not seem that the intention to cause death is clear made out. However, it has been proved beyond reasonable doubt that the appellants Rajesh and Paresh had caused death and thus, committed culpable homicide. Considering the nature of injuries and role attributed to Paresh and Rajesh, it can be said that culpable homicide of the third degree has been committed; however, the injuries were not sufficient to cause death in the ordinary course of nature. In the facts of the case it cannot be said that the accused had intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death. However, the accused inflicted the injury while the act was likely to cause death. Thus, even if the case on hand does not fall within the exceptions of Section 300 of the IPC, the accused can be held guilty of the offence punishable under the second part of Section 304 of the IPC. The injuries were inflicted while they were infuriated due to incidence of beating that took place 2

days prior to the faithful day. Under such circumstances, we are of the opinion that the present case falls under Part II of Section 304 of the IPC. Thus, the conviction of Rajesh and Paresh from 302 of IPC is altered to Section 304 part II of the IPC and are ordered to under go 5 years R.I rest of the conviction remains unaltered. However, we do not find it fit to alter the fine imposed upon them and up hold the same but in default to pay the fine they shall undergo R.I of 6 months instead of 2 years R.I as orderd by the Trial Court. We also uphold the conviction and fine imposed on Nitesh Nanu by the Trial Court.

21. Appeal Nos. 1296 of 2009 and 1357 of 2009 are partly allowed to the afore said extent, whereas Appeal No. 1569 of 2009 filed by Nitesh Nanu Patel is rejected. Bail bonds of the appellants stands cancelled. They are required to surrender before the jail authorities within 6 weeks from today to under go remaining sentence. Record and proceedings be sent back to the trial court forthwith.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

MMP

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MAHENDRA MOHANBHAI PUROHIT(HCD0074), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 11/09/2025 14:13:35