IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2479 of 2009

With
R/CRIMINAL APPEAL NO. 2072 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR.JUSTICE P. M. RAVAL Sd/-

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Approved for Reporting	Yes	No
		No

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STATE OF GUJARAT
Versus
CHAKUBHA ALUSINH SOLANKI & ANR.

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Appearance:
MR L B DABHI, APP for the Appellant(s) No. 1
MR VISHAL ANANDJIWALA, ADVOCATE FOR MR KB ANANDJIWALA(134) for the Opponent(s)/Respondent(s) No. 1
RULE SERVED for the Opponent(s)/Respondent(s) No. 1,2

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

Date : 03/09/2025

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Since, the facts of the case and issue involved in captioned appeals are identical and arise out of the same judgment, both the appeals are taken up together and are being disposed of by this common judgment.

2. The conviction appeal (Criminal Appeal No.2072 of 2009) is filed by the accused herein against the judgment of conviction and order of sentence dated 30.09.2009 passed by the learned Additional Sessions Judge, Nadiad, Kheda in Sessions Case No.80 of 2007, whereby the appellants – original accused no.A1 to A5, A7, A10, A11 and A12 came to be convicted for the offences punishable under Sections 323, 324 and 326 of the IPC and they were sentenced as under:

Accused	**Conviction under Section**	**Punishment**	**Fine**	**In default of fine**
Chakubha Alusinh Solanki	Section 326 of IPC	RI for 3 years	Rs.2,500/-	SI for 4 months
Chakubha Alusinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days
Bhikhusinh Kesarisinh Solanki	Section 326 of IPC	RI for 1.5 years	Rs.2,000/-	SI for 3 months
Bhikhusinh Kesarisinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days
Ranusinh Jagatsinh Solanki	Section 324 of IPC	RI for 1 year	Rs.1,000/-	SI for 3 months
Ranusinh Jagatsinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days
Kirtisinh Jagatsinh Solanki	Section 324 of IPC	SI for 1 year	Rs.500/-	SI for 15 days
Kirtisinh Jagatsinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days

Jagatsinh @Jugsinh Dalpatsinh Solanki	Section 324 of IPC	RI for 1 year	Rs.1,000/-	SI for 2 months
Jagatsinh @Jugsinh Dalpatsinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days
Kalusinh Jagatsinh Solanki	Section 323 of IPC	SI for 4 months	Rs.500/-	SI for 15 days
Kalusinh Jagatsinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days
Bhanusinh Madansinh Solanki	Section 323 of IPC	SI for 4 months	Rs.500/-	SI for 15 days
Bhanusinh Madansinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days
Kakusinh Kesarsinh Solanki	Section 323 of IPC	SI for 4 months	Rs.500/-	SI for 15 days
Kakusinh Kesarsinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days
Tirupsinh @Tersinh Dalpatsinh Solanki	Section 323 of IPC	SI for 4 months	Rs.500/-	SI for 15 days
Tirupsinh @Tersinh Dalpatsinh Solanki	Section 135 of B.P Act	-	Rs.200/-	SI for 7 days

3. The appeal (Criminal Appeal No.2479 of 2009) under Section 377 of the Cr.P.C. is filed by the State against the aforesaid sentence on the ground of its inadequacy.

4. Facts and circumstances giving rise to file these

appeals are as follows:

4.1 On 10.12.2006, there was a Gram Panchayat election for the post of Sarpanch at Village: Kherol, Tal: Virpur, Dist: Kheda. The complainant PW.1 and her family members returned back after casting their votes and they were doing their respective work in the farm. At about 6:00 p.m., the accused, in all 24 persons, came to house of PW.1, armed with deadly weapons like iron pipes, sticks and sickle and raised the dispute with PW.7 Fulsinh that why they did not caste their votes to Kalusinh Parmar of Village: Rozai who was candidate of Sarpanch and started hurled abusive and all of a sudden, they made an assault on Fulsinh, Bhemsinh, Abhesinh, Narvatsinh, Sarojben and others. In the said incident, according to prosecution case, the A1, A2 and A3 caused injuries to the PW.7 Fulsinh with iron pipe, as a result, he suffered head injury and fracture injuries over his legs, whereas, the other accused i.e. A4, A5, A7, A10, A11 and A12 had caused injuries to the witnesses who had suffered grievous hurt. It is further case of the prosecution that, after the incident, the accused had looted the household items and vandalized vehicles parked nearby the place of incident and also caused damages to the roof of the house and water pipeline. The FIR came to be lodged by PW.1 – eye witness of the incident and same came

to be registered with Virpur Police Station for the offences punishable under Sections 395, 397, 452, 427, 323, 324, 325 and 326 of the IPC and Section 135 of the B.P. Act. The investigation of the case entrusted to PW.19 – R.D. Oza, PSI. During the investigation, the I.O. had arrested the accused, seized and recovered the weapons allegedly used in the offence, recorded the statements of the witnesses, obtained medical case papers of the injured persons, drew the panchnama of the place of incident, sent the seized articles to FSL for chemican analysis and upon completion of the investigation, the chargesheet came to be filed before the Jurisdictional Magistrate and the case was committed to the Sessions Court, Nadiad.

5. After due framing of the charge and upon accused pleaded not guilty, the trial commenced before the Sessions Court, Nadiad.

6. In the course of trial, the prosecution examined in all 18 witnesses and exhibited 24 documents.

Oral evidence-18

PW 1 – Exh.41	Manguben Bhavansinh Chavda
PW 2 – Exh.43	Abhaysinh Gulabsinh Chavda
PW 3 – Exh.44	Bhemsinh Fatehsinh Chavda
PW 4 – Exh.45	Natvarsinh Fulsinh Chavda
PW 5 – Exh.54	Sarojben Fulsinh Chavda

PW 6 – Exh.57	Somiben Fulsinh Chavda
PW 7 – Exh.58	Fulsinh Chavda
PW 8 – Exh.60	Dr. Kalugar Nanga Gosai
PW 9 – Exh.65	Dr. Hardik Bipinchandra Bhatt
PW 10 – Exh.80	Ahmedshah Kalusha Diwan
PW 11 – Exh.86	Amrutlal Ramanbhai Sharma
PW 12 – Exh.87	Ratansoh Jalansoh
PW 13 – Exh.89	Danabhai Koyabhai Bharvad
PW 14 – Exh.92	Dolopsoh Kulsoh Chavda
PW 15 – Exh.93	Sitaben Badevsoh
PW 16 – Exh.97	Dr. Vikrambhai Kalidas Pargi
PW 17 – Exh.100	Dayabhai Bhanabhai
PW 18 – Exh.101	Rajeshkumar Dayalal Oza

Documentary evidence - 24

Exh.102	DD receipt
Exh.103	DD
Exh.104	List of Articles sent to FSl
Exh.105	Satta ange nu pramanpatra
Exh.106	Forwarding notes
Exh.61	Medical certificate by Dr. Kalugar
Exh.62	Medical case papers by Dr. Kalugar
Exh.66	Police yadi
Exh.67	Medical certificate of Abhasinh Gulabsinh
Exh.68	Medical certificate of Natvarsinh Kulsinh Chavda

Exh.69	Medical certificate of Bhemsinh Kulsinh Chavda
Exh.70	Medical certificate of Kulsinh Ramsinh Chavda
Exh.71	Medical certificate of Somiben Kulsinh Chavda
Exh.72	Medical certificate of Sarojben Kulsinh Chavda
Exh.88	Panchnama of place of offence
Exh.98	Medical certificate of Kulsinh Ramsinh Chavda
Exh.81	Panchnama of seizure of clothes
Exh.82	Panchnama of seizure of clothes of Natvarsinh Kulsinh
Exh.83	Panchnama of arrest of Mhabsinh Madansinh
Exh.84	Panchnama of arrest
Exh.110	FSL note
Exh.117	FSL report
Exh.118	Serological report
Exh.119	Notification of ban on weapons

7. After closure of the prosecution evidence, the appellants were questioned under Section 313 of the Cr.P.C. to which, they stated that, on the basis of false case, they have been implicated because of political rivalry and as such, they are innocent and have not committed any offence. The accused neither led oral evidence, nor produced any evidence in their defence.

8. The learned Sessions Judge, relying principally on the depositions of the injured witnesses, found guilty the

accused A1 and A2 for causing grievous hurt to PW.7 – Fulsinh and convicted them for the commission of the offence under Section 326 of the IPC, whereas, the accused no.A3, A4, A5, A7, A10, A11 and A12 found guilty for the commission of the offence punishable under Sections 323 and 324 of the IPC. The appellants-accused and others have been acquitted of the charges under Sections 395, 397, 452, 427 of the IPC and accused no.6, 8 and 9 and accused no.13 to 24 acquitted for the commission of the offences under Sections 323, 324, 325, 326 of the IPC and Section 135 of B.P. Act.

9. Challenging the said conviction and sentence, the appellants have filed the criminal appeal, whereas the State has filed enhancement appeal against the quantum of sentence awarded qua accused no.1 and 2 only.

10. We have heard learned counsel Mr. Vishal Anandjiwala, and Mr. L.B. Dabhi, learned APP for the respective parties.

11. Mr. Vishal Anandjiwala, learned counsel appearing for and on behalf of the appellants, while assailing the judgment of conviction and sentence, submitted that, the learned trial court while convicting the accused, failed to appreciate the evidence in its true

prospective and conviction of A1 and A2 under Section 326 of the IPC is against the settled principle of law and criminal jurisprudence. In support of this submission, it was urged that, the accused no.3 – Ranusinh as per the prosecution case and evidence on record, assaulted the PW.7 – Fulsinh with the iron pipe and the allegation against the A1 and A2 made by the witnesses as well as PW.7 – Fulsinh to the effect that they have also assaulted the PW.7 – Fulsinh on his head and leg by the iron pipe. Despite of this, the A3 found guilty for voluntarily causing hurt under Section 324, whereas, the A1 and A2 convicted under Section 326 of the IPC. The role of A1 to A3 are similar and evidence is also common and the allegation for causing injuries with the deadly weapons against the convicted accused are also same. In such circumstances, Mr. Anandjiwala, learned counsel submitted that, the court cannot convict one accused under Section 326 and convict the other accused under Section 324 where there is a similar or identical evidence. In such circumstances, without entering into merits of the case, his argument is in two folds: (i) the conviction and sentence handed down by the trial court qua accused no.1 and 2 be modified and/or altered for the offences under Section 324 of the IPC and (ii) that, there is breach of mandatory provision for granting probation as provided under Section 361

of the Cr.P.C. The learned trial court while sentencing the accused, did not consider to grant the benefit of probation under The Probation of Offender Act and if the trial court do not want to extend the said benefit, then, it is mandatory for the court to assign special reasons stating inter alia, that why the case is not fit to extend the benefit and therefore, the trial court has committed serious error while not extending the benefit.

12. In such circumstances as referred to above, Mr. Anandjiwala prayed that, there being merits in this appeal and same may be allowed.

13. On the other hand, opposing the contentions, Mr. L.B. Dabhi, learned APP would urge that, the learned trial court has rightly convicted the accused A1 and A2 for the offence punishable under Section 326 of the IPC as they had caused injuries on the vital part, whereas the injury caused by A3 is not on vital part of the body and therefore, when the trial court has convicted the accused by their individual role, the question does not arise to convict the accused as prayed for. So far as alternative prayer for granting benefit of probation is concerned, Mr. Dabhi, learned APP has submitted that, the manner in which the injuries being caused with the deadly weapon by the accused, the accused are not entitled for the discretionary relief. In such

circumstances, he submitted that, the learned trial court has not committed any error of law or facts in holding the appellants-accused guilty of the offence and therefore, he prayed that, the appeal may be dismissed.

14. We have heard the learned counsel appearing for the respective parties and perused the case records and the findings of the trial court. The challenge is on two grounds: (i) the principle of parity and (ii) non-granting the benefit of probation. In such circumstances, there is no need to refer in detail the entire oral as well documentary evidence led by the prosecution. In other words, the presence of the accused at the place, the nature of injuries sustained by the witnesses and reliability of their evidence are not seriously challenged and therefore, considering the limited arguments, we deem it fit not to refer the entire evidence in this judgment.

15. In the facts of the present case, the issue is whether the accused A1 and A2 are entitled to the benefit of parity with accused no.A3 so far as the offence punishable under Section 324 of the IPC is concerned. The accused A3 – Ranusinh has been convicted and sentenced under Section 324 of the IPC for causing injuries to the PW.7 – Fulsinh. On the same footing, the A1 and A2 have been convicted and sentenced

under Section 326 of the IPC for causing injuries to the PW.7 – Fulsinh. We have examined the oral evidence of PW.7 – Fulsinh, PW.2 – Abhesinh, PW.3 – Bhemsinh, PW.4 – Natwarsinh, PW.5 – Sarojben and PW.6 – Somiben. The injured PW.7 and others as referred above, have categorically stated against the accused that, the A1 to A3, armed with iron pipes, caused injuries on the head and legs. In such circumstances, in our opinion, where the case of the accused is similar in all aspects as that of A3, then the benefit extended to one accused should be extended to the similarly situated accused. In this regard, it is beneficial to refer the observations and principle of law propounded by the Supreme Court in the case of *Ajmer Singh vs. State of Haryana (2010) 3 SCC 746*. In para-23 and 24, the Supreme Court observed thus:

> *"23. The principle of parity in criminal case is that, where the case of the accused is similar in all respects as that of the co-accused then the benefit extended to one accused should be extended to the co-accused. With regard to this principle, it is important to mention the observation of this court in the case of Harbans Singh v. State of Uttar Pradesh. In that case it was held, that, in view of commutation of death sentence of one of the accused, who was similarly placed as that of appellant, award of death sentence to appellant was unjustified and, hence, the death sentence of the appellant was stayed till the decision of the President on commutation of sentence.*
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> *24. An important observation of this Court on the point need to be noticed at this stage: (Harbans Singh case, SCC p.107, para 18)*
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> > *"18. … it will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to swing and pay the extreme penalty of death whereas the death sentence imposed on his co-accused for*

the very same offence is commuted to one of life imprisonment and the life of the co-accused is shared (sic spared).”

16. In light of the settled position of law and applying the same to the facts of the present case, it is not in dispute that the role attributed to the accused no.A1 to A3 are at par and similar in nature as the accused had caused injuries to the PW.7 – Fulsinh and that too, with the iron pipe. Thus, the trial court failed to take in to account the principle of parity while convicting the accused. Thus, therefore, in our opinion, the conviction of A1 and A2 under Section 326 require to be modified and/or altered and they are held guilty under Section 324 of the IPC and directed to undergo one year rigorous imprisonment and directed to pay fine of Rs.1,000/- and in default thereof, they have to further suffer 3 months simple imprisonment.

17. It is the next contention raised that, the learned trial court has not followed the mandatory provision of Section 360 and 361 of the Cr.P.C. The provision casts a duty upon the court to give benefit of probation and if it is not possible to do so, then, special reasons shall require to be recorded. The appellants are farmers and having regard to their age, the circumstances of the case and character of the offender and in absence of any past antecedents and during the pendency of the appeal proceedings, no any incident being

reported, the benefit of probation require to be extended which would serve the purpose of reformation.

18. Section 360 of the Cr.P.C., reads as under:

Section 360 of Cr.P.C : Order to release on probation of good conduct or after admonition:

(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years, or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour;
Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by Sub-Section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by Sub-Section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be

made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest in is appropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law;

Provided that the High Court or Court of Session shall not under this Sub-Section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under Sub-Section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his

original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders."

19. Section 361 cast upon the duty upon the court, where in any case, the court decided to exercise discretion under Section 360 of the Cr.P.C., the provision says that, in any case, where the court could have dealt with the accused under Section 360 and yet does not want to grant the benefit of the said provision, then it shall record in its judgment the specific reasons for not having done so. In the facts of the present case, this has apparently not being done, in as much as, the trial court overlooked the provisions of Section 360 and 361 of the Cr.P.C. and mandatory duty cast on the trial court has not been performed. The offence is of the year 2006 and trial concluded on 30.09.2009 and the accused admittedly, having no any past antecedents and during the pendency of the appeal, nothing adverse

reported against them. Looking to the facts and circumstances of the present case, we see no reason to apply the provision of Section 360 of the Cr.P.C. even at the appellate stage. Thus, therefore, it would meet ends of justice, the accused guilty under Section 324 and 323 are not sent to jail, but released on probation under Section 360. Thus, while upholding their conviction, we direct that, instead of sentencing them to imprisonment, the appellants-accused shall be released on probation provided they shall execute a bond in the sum of Rs.5,000/- each before the trial court and one surety of the like amount to the satisfaction of the trial court with an undertaking to appear and receive the sentence when they called upon to do so during the period of 6 months and in the meantime shall keep good behaviour and peace for a period of 6 months and shall not commit any offence during the period of probation. If the appellants-accused failed to comply with the aforesaid condition, it will result in the revocation of this order and follow the consequences.

20. For the reasons aforementioned, the conviction appeal stands disposed of in the aforesaid terms and directions.

21. In view of the disposal of the conviction appeal, the

enhancement appeal filed by the State does not survive and is disposed of accordingly.

Sd/-

(ILESH J. VORA,J)

Sd/-

(P. M. RAVAL, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 03/09/2025 14:24:17