IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1149 of 2018
With
R/CRIMINAL APPEAL NO. 1004 of 2017

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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RAJESH @ RAJIYO @ CHOR S/O NARESHBHAI MALI
Versus
STATE OF GUJARAT

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Appearance:
MR HARNISH V DARJI(3705) for the Appellant(s) No. 1
MR ADITYASINH JADEJA ADDITIONAL PUBLIC PROSECUTOR 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 : 03/09/2025

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

1. The Criminal Appeal No. 1004 of 2017 is preferred by the Org. Accused No. 2-Ravi @ Pagli Son of Pavankumar Amarnath Pande whereas, the Criminal Appeal No. 1149 of 2018 is preferred by the Org. Accused No. 4-Rajesh @ Rajio @ Chor Son of Nareshbhai Mali under the provisions of Section 374(2) of the Criminal

Procedure Code against the judgment and order of conviction dated 19.04.2016 passed by the Ld. Additional Sessions Judge, Ahmedabad in Sessions Case No. 100/2014 wherein, the Accused were convicted for life imprisonment under Section 302 of the IPC and one month RI under Section 135(1) of the Gujarat Police Act. Since both these appeals arise out from the same Sessions Case being Sessions Case No. 100/2014, they are decided by this common judgment.

2. Facts in the nutshell as they appear from the record are that:-

2.1 On 28.05.2013 at around 23.00 hrs, deceased Girishsinh Narayansinh Pokhariya was sitting with his friends near Kadia Naka, CTM, national Highway No. 8, Ramol, Ahmedabad. At that time, about seven persons comprising (1)Raju @ Rajiyo Nareshbhai Mali, (2) Ravisinh @ Katelo, Babusinh Rajput, (3) Ravi @ Chhotadon @ Baccha son of Dashrathsinh Pal alongwither four other persons came into the Auto Rickshaw bearing Registration NO. GJ-27-T4678 at CTM, National High way No. 8, Near Devilal’s Tea Stall. Immediately on arriving there Ravi @ Chhota Don placed his knife on the neck of the deceased Girishsinh and warned that if anyone tries to intervene, he will be eliminated. Immediately, thereafter, one of the unknown

persons, accompanying Ravi @ Chhotadon hit Girishsinh on his head with a sword. At that time, one of the friends of Girishsinh, named Bharatbhai tried to intervene to save him, but he too was hit with stick on his right hand and buttocks. In order to save his life Girishsinh ran towards Ambika Hotel, but the assailants chased him and caught hold of Girishsinh near Jaimini Furniture, Opposite Satkar Hotel, National Highway No. 8 and they all started hitting him with swords, knives and sticks. After assaulting Girishsinh, all the assailants ran away in an Autho Rickshaw. In the mean time, Girishsinh succumbed to injuries and died on the spot.

2.2 After sometime, Krishnakant Narayansinh Pokhariya, brother of the deceased Girishsinh, while returning from his job, passed near the place of incidence and show a group of people gathered near a dead body. However, he did not pay much attention to have a close look at the same so as to find out whose dead body it was and proceeded to his residence. After reaching home, he came to know that the dead body, he saw lying on the road was of his brother Girishsinh and immediately, proceed to the place of incident with his mother and on reaching there he saw the dead body of his brother Girishsinh lying there in a pool of blood. According to Krishnakant Pokhariya, he has no information about his deceased brother having any animosity towards anyone.

He also do not know who killed his brother nor the motive for his killing.

2.3 Thereafter on 25.09.2013, Krishnakant N. Pokhariya lodged a complaint before the Ramol Police Station, Ahmedabad City narrating about the murder of his brother Girishsinh, stating the fact that the neither knew the motive of the murder of his brother nor does he know about who the assailants were. He has no information as to whether his deceased brother had animosity with anyone or not. The said complaint came to be registered on 29.05.2013 before the Ramol Police Station, whereby, the C.R. No. I-149 of 2013 under the provisions of Section 302 of the Indian Penal Code and Section 135-1 of the Gujarat Police Act. On the same date, the Investigating Officer Mr. R. D. Jadeja, Police Inspector, Ramol recorded further statement of the complainant Krishnakant N. Pokhariya, wherein, he stated that his deceased brother Girishsinh used to sit near the Devilal's Tea stall alongwith his friends namely Govind @ Lalo, Kallu, Dinesh @ Tino, and Bharatbhai and further informed that they may be knowing about the reasons of death of his brother Girishsinh.

2.4 On the basis of the complaint, and further statement of the complainant, Investigation Officer proceeded with investigation and arrested four accused namely (1)Yogesh

@ Kanio Son of Isariprasad Chhotelal Shankwar, (2)Ravi @ Pagli son of Pavankumar Amarnath Pande, (3) Dipak @ Hadi @ Kalu son of Jagdishprasad Hiralal Raidas and (4) Rajesh @ Rajio @ Chor Son of Nareshbhai Mali. However, Accused (1) Pavan@ Maya Prempal Pasi, (2) Ravi @ Katelo Babusingh Rajput and (3) Ravi @ Chhota Don @ Baccha could not be arrested. After completion of the investigation, chargesheet came to be filed before the Ld. Metropolitan Magistrate, Court No. 10 Gheekanta, Ahmedabad on 16.08.2013. The Ld. Metropolitan Magistrate, committed the case to the Sessions Court for trial and the said case was numbered as Sessions Case No. 100/2014.

2.5 During the Trial, prosecution examined following witnesses:

Witness No.	Name of Witness	Exh.
1	Dr. Manish Bachubhai Ghelani Medical Officer who examiend the Dead boy of the Deceased.	13
2	Bharatbhai @ Bhanu Bhikhabhai Gohil, Eyewitess	17
3	Govindbhai @ Lalo Vinodbhai Pathak, Eyewitness	18
4	Dinesh @ Tino Javerbhai Prajapati, Eyewitness.	19
5	Kallubhai Rajeshbhai Mali Eye witness	20
6	Krishnakant Narayansinh Pokhariya, Complainant	26
7	Manojbhai Virendrasinh Rajput Panch of panchnama regarding seizure of sticks	28

8	Rakeshsingh Rajeshbhai Rathod Panch witness of Panchanma regarding seizure of cloths of Accused Yogesh and Ravis	30
9	Narayandas Shivadas Bhajandas Panch witness of Panchanma regarding seizure of cloths of Accused Deepak	33
10	Parasbhai Rajnarayan Pande Panch witness of Panchanma regarding seizure of sword	35
11	Ashwinsinh Ganpatsinh Gohil Panch who physically investigate the Accused Ravi @ Pagla	37
12	Ravi Maheshbhai Chunara Panch of Panchnama regarding arreste of Accused Ravi @ Pagla	40
13	Rameshchandra Laljibhai Dave. PSI	41
14	Danaji Bhuraji Rajput, Executive Magistrate	42
15	Abdulsajid Abdulwahid Shaikh	46
16	Mohd. Vasim Mohd. Harun Shaikh Panch of Panchnama regarding seizure of knife recovered from the Ravi	48
17	Dr. Lakshmanbhai Kalubhai Taviyad, Medical Officer.	49
18	Nileshbhai Babubhai Rabari, Deputy Mamlatdar who making Map of place of Offence	53
19	Chandraprakash Sachidanand Mishra Panch of Panchnama who collected blood samples	56
20	Vishnubhai Naranbhai Patel, Officer who working in a permit department in the office of Commissioner of Police.	62
21	Ravirajya Dilipsinh jadeja, I.O.	70

To bring home the charges, the prosecution has also relied upon the following documentary evidence.

Sr. No.	Details of Document	Exh.
1	Complaint	27
2	Report under Section 157	71
3	Inquest Panchnama	22
4	Panchnama of the crime scene	58
5	Panchnama of the seizure of clothes and footwear of the deceased, handed over by the Civil Hospital doctor	23
6	Panchnama of the seizure of clothes worn by accused Dipak alias Hadi during the incident	34
7	Panchnama of the seizure of clothes of accused Ravi alias Pagla and accused Yogesh	31
8	Panchnama under Evidence Act Section 27 for accused Yogesh alias Kaniyo	29
9	Panchnama under Evidence Act Section 27 for accused Ravi alias Pagla	47
10	Identification parade panchnama	45
11	Panchnama under Evidence Act Section 27 for accused Rajesh alias Rajiya	36
12	Panchnama of body search of accused Ravi alias Pagla	38
13	Letter to FSL officer to visit the crime scene and preliminary opinion	72
14	Postmortem Note	14
15	Muddamal (seized property) dispatch record	73
16	Receipt for muddamal received by FSL	74
17	Muddamal dispatch record (dated 9-6-13)	75
18	Receipt for muddamal (seized property) received by FSL	76-77
19	Letter and opinion of FSL Officer	78
20	Letter and opinion of Assistant Scientific Officer	79

21	Serological Department’s opinion	80
22	Letter and opinion of FSL Officer	81
23	Serological Department’s opinion	82
24	Physics Department’s opinion	83
25	FSL forwarding letter and opinion	84
26	Letter requesting to prepare a map of the crime scene	54
27	Map of the crime scene	85
28	Medical certificate of accused Ravi alias Pagla	86
29	Medical certificate of accused Yogesh alias Kaniyo	87
30	Medical certificate of accused Dipak alias Hadi	88
31	Medical certificate of accused Rajesh alias Rajiya	89
32	Medical certificate of witness Bharatbhai Bhikhabhai	50
33	Letter to Executive Magistrate to allot date and time for identification parade of accused	43
34	Letter from Executive Magistrate to Ramol Police Station allotting date and time for accused identification parade	44
35	Letter to R.M.O., L.G. Hospital requesting medical certificate	51
36	Rough sketch of crime scene prepared by Circle Officer, Khokhra, Ahmedabad	56
37	Panchnamas (seizure slips)	59,60,61
38	Weapon restriction public notice from the Police Commissioner	63
39	Muddamal seizure slips	90-97

Vide Exh. 5 on 29.05.2014 charges were framed against the Accused under the provisions of Section 143,147,148,149,506(2), 302, 323 read with Section 201 of IPC and Section 135(1) of the Gujarat Police Act. Vide Exh. 98, Prosecution filed purshis declaring closing of their evidence and thereafter, under the provisions of Section 313 of CRPC, further statement of the accused came to be recorded and after hearing the Ld. Advocate for the respective parties, vide Exh. 108, passed the order of conviction against the Org. Accused No. 2- Ravi @ Pagli Son of Pavankumar Amarnath Pande and Accused No. 4 Rajesh @ Rajio @ Chor Son of Nareshbhai Mali for offence punishable under Section 302 of the IPC for life and one month RI for offence punishable under Section 135(1) of the GP Act vide judgment dated 19.04.2016. It is against this judgment of conviction that the Org. Accused Nos. 2 and 4 by way of the present two separate appeals have challenged the judgment and order of conviction before this Court.

3. Heard Ld. Advocate Mr. Harnish Darji for Criminal Appeal No. 1159 of 2018 and Ld. Advocate Mr. Vaibhav Vyas for Criminal Appeal No. 1004 of 2017.

4. The main contention of the Ld. Advocate for both the accused persons are that :-

4.1 The PW 2 Bharatbhai has admitted in his cross examination has clearly stated that person who inflicted injury have ran away and he cannot precisely tell as to who has given which blow. He has admitted that in police Station he has not stated the fact of Rajubhai @ Rajiya giving blow to Girishsinh.

4.2 That PW3 Govindbhai @ Lalo Vinodbhai Pathak has admitted in his cross examination that it was dark night at the time of incident and he cannot say as to who had given blow to Girishsinh at Satkar Hotel He also admitted that he cannot tell as to which accused was holding which weapons. He has also admitted that he has not stated in his police statement that Rajubhai @ Rajiya giving sword blow and further stated that unknown persons given sword blow on the head of the deceased. He has also admitted that he cannot witness the incident as there was far distance from where they are seating. Ld. Advocate drawn attention to the cross examination of PW 4 Dinesh @ Tino Javerbhai Prajapati and has argued that this witness in his cross examination has admitted that he has not seen three persons whom he had named were present with Girishsinh.

He is also not aware as to who has given blow to the deceased. He has also admitted in his police statement that he has not stated that Raju @ Rajio gave blow with sword. Drawing attention towards the PW 5 Kallubhai

Rajeshbhai Mali, it is pointed out that this witness has admitted in his cross examination that unknown persons had given sword blow gave to Girishsinh as stated by him before the Police. That no name was given by him. He has also admitted in his police statement that he had stated that unknown person giving blow to Girish. He has also admitted in his police statement that he has not stated that Raju @ Rajio gave sword blow to Girish.

4.3 It is further argued that PW 10 Parashbhai Pandey who is panch witnesse of discovery panchanma has not supported the case of the prosecution and has been declared hostile.

4.4. Ld. Advocate has drawn attention of this court towards Exh. 17 PW 20 Ravirajya D. Jadeja who is the investigating officer , more particularly towards the cross examianton to point out that none of the four eye witness informed with regard to the incidence to the Police namely Bhanu Gohil, Kallu Mali, Govind @ Lalo and Dineshkumar @ Tino despite of the fact that all were having mobile phones. He has also admitted that at the spot of incidence, none out of the four persons were found. He has also admitted that no witness has stated during investigation, as to who has given blow with which weapon to the deceased at Satkar hotel where the dead body was found. He has also admitted the fact that

during investigation he has recorded statement of Bhara @ Bhanu who is friend of deceased, has stated during investigation that deceased ran towards Ambika hotel.

4.5 Ld. Advocate has further pointed out from the Cross Examination of this witness and has aruged that this witness has denied the fact that information regarding incident was given by Bharatbhai however, on his on volation states that not the witness Bharatbhai but it was some other Bharatbhai. He has also admitted that no TI Pared was carried out qua Accused No. 4 Rajesh and the arrest panchnama of Accused No. 4 was though carried out not placed alongwith the Chargesheet. It is also admitted that witness Bharatbhai in his statement had informed that unknown persons have given sword blow, however, he voluntarily states in the said statement witness has also stated that all of then hit wit sword, knife and sticks. It is argued that the accused N. 1 Yogesh @ Kanio, Accused No. 3 Deepak @ Hadi @ Kalu have been acquitted on the same set of evidences whereas, the Appellants have been convicted.

4.6 It is lastly argued that there is no credible evidence to connect the appellant in the alleged offence. There are no eyewitness of the alleged incidence and that the prosecution has failed to bring on the charge since there are no circumstances which connect the present

Appellant int eh alleged offence and thus argued to allow the present Appeal and acquit the present Appellants-Accused.

5. Ld. Advocate Mr. Vaibhav Vyas has mainly contended that:-

5.1 The Trial Court has materially erred in appreciating the evidence of so called eye witness namely PW 5 Kallubhai, PW 14 who is the Executive Magistrate and PW 21 Ravirajya Jadeja – Investigating Officer.

5.2 The Ld. Advocate for the Accused No. 2 has further aruged that the Complaint recorded on 28.05.2013 at Exh. 27 does not mentioned the name any of the assailants and the Complainant had categorically mentioned that he does not know about the motive of murder nor does he know about the assailants nor does he know about any previous enmity of the deceased with any one, however on the same date, further statement of the Complainant was recorded, wherein, the Complainant states that his brother used to sit alongwith friends near the place of incidence and names of Bharatbhai, Kallubhai, Govindbhai and Dineshbhai were stated by the Complainant and further stated that this persons may be knowing about the details regarding the murder of deceased. Surprisingly, all these persons alleged to have

present with deceased on the date of incidence, and witness the crime, however, none of them come forward to inform the police immediately about the alleged offence nor named the Accused.

5.3 Further, they have disclosed the name only after the complainant had directed the police towards them. It is further more surprising that none of them have made attempt to take their injured friend to hospital or even called an ambulance. Hence, such version of prosecution is untrustworthy, irrational and unbelievable.

5.4 It is further argued that the story of the prosecution and testimony of these witnesses raises genuine doubts about these witnesses being present at the seen of offence and such type of interested chance witnesses requires appreciation of evidence with great care and caution. Under such circumstances, Ld. Trial Court has committed gross error both on fact and law in believing the testimony of these interested chance witnesses.

5.5 That on perusal of the testimony of so called eye witnesses Bharatbhai and Dineshbhai, both have categorically stated that they are not know about the assailants out of which, Ravibhai @ Katelo and Rajubhai, Ravibhai @ Chhotadon were known to them and therefore, the rest of four including present Appellant

Ravi @ Pagli alleged to have come alongwith them in Auto Rickshaw were totally unknown to them.

5.6 So called eye witness Kallubhai is silent about the total number of assailants and does not know about the Accused namely Ravi @ Pagli. The so called eye witness Govind bhai is also silent about the number of assailants and does not know any of four unknown assailants including Ravi@ Pagli.

5.7 As per the case of the so called eye witnesses, when Ravi @ Chhotadon first came out of Auto Rickshaw and immediately, there after, Rajubhai @ Rajio inflicted the deceased with sword and thereafter, deceased ran away and all the seven assailants ran after the deceased. Therefore, the claim of these eye witnesses witnessed entire incident and also identify all four person is unbelievable and untrustworthy and they being interested witness does not repose any confidence, however, the Ld. Trial Court relied on their deposition and convicted the present Accused.

5.8 That the incident take place at 11 pm in the night and so called interested chance witness who claims to have seen the incident but also identify all the 4 unknown assailants is highly improbable and that the Trial Court has grossly erred in appreciating the evidence of these

witnesses.

5.9 That on going through the deposition of so called injured eyewitness, Bharatbhai, has stated to be present at the seen of offence when the police reached at the place of offence. It is highly improbable and unbelievable that such an eyewitness not only witness entire incident but also injured and happened to be close friend of deceased and having risk his own life to save the deceased, prefers not to utter a single word about the incidence, when the police arrived at the scene of offence. The conduct of the witness Bharat is highly doubtful and incomprehensible to any rational belief and conviction based on such testimony is bad in law and deserves to be set aside.

5.10 That the assault took place in two different places, the first assault near Devilal's Tea stall, however as testified by the so called eyewitness that the knife injury was near the Jaimini furniture and the second place of assault which is almost 200-250 m away from the first place of assulat i.e., devilal's tea stall. They also testified that they cannot say as to who hit the deceased with what weapon. Thus, the evidence amply shows that the conviction awarded to the Appellant is based on presumption.

5.11 It is argued that when circumstances of the crime leads two inference, accused to the innocence is to be believe, however, inference drawn towards the appellant which has led to conviction which is not sustainable in the eyes of law and required to be set aside. That even during the TI Parade, Kallu has identified the present Appellant Ravi @ Pagli while other three witness claiming to be present at the place of offence were unable to identify the present Appellant i.e., Ravi Pagli.

5.12 As per the evidence of the TI parade panchanama, eyewitness Kallu has identify three of the four accused including present accused, however, his testimony before the Court vide Exh. 20 has categorically stated that only the accused and not all the three as narated in the PI parade were idetified by him thus, this witness himself has not corroboted. The prosecution evidence with regards to TI parade.

5.13 That even TI parade carried out by Danaji Bhuraji Rajput, Executive Magistrate is not in accordance with settled principle of law and 50 dummy witness large in number from the same area creates reasonable suspicion.

5.14 That as per the testimony of eyewitness Kallubhai PW5 who has identify the present Appellant in TI Parade was also knowing 4-5 dummy witness including in the TI

Parade. That from the group of friend including Sailesh and Rajesh Rajput incidentally selected for team of TI parade. Thus, there is reasonable likelihood and genuine reasons to believe that dummy witness were gathered by some interested persons to show that the TI Parade is successful by hook and crook.

5.15 Therefore, conviction based on such TI parade cannot be relied. That discovery of so called knife at the instance of present appellant is not proved. Since, both the panchanama of the discovery of weapons have been supported the case of the prosecution case. Thus, it is argued that there are material contradiction in the testimony of the eye witness, TI parade does not repose confidence, the so called eye witness and closed friend of deceased Girishsinh did not utter single word when the police reached at the place of incident, that none of the witness have tried to help the deceased or even called ambulance after so called incident and they are remaining silent and coming forward after some time creates serous doubts on their testimony. Thus, the Ld. Advocate Mr. Vaibhav Vyas has argued to allow the Appeal and acquit the present Appellant.

6. Ld. Additional Public Prosecutor Mr. Adityasinh Jadeja has vehemently opposed the present appeal and has contended that:-

6.1 No substantial damage has been brought on record from the cross examination of the witness. That minor contradiction and inconsistency are bound to happen in the testimony of the eyewitness. However, such inconsistency does not damage the case of the prosecution from the root and has stated that the Trial Court after appreciating oral as well as documentary evidence has passed the judgment and order of conviction and does not requires interference at the hands of this Court.

6.2 That the Trial Court has relied upon on four eyewitnesses which are termed as chance witness by the Ld. Advocate for the Appellant, however, the Trial Court has categorically after appreciating their evidence, has given the finding and merely because the witnesses are friend of the deceased, it cannot be said that there deposition is not reliable. Thus, when four eye witnesses have categorically stated the manner in which the incident has taken place and the Court has believed the same, no interference is required in the impugned judgment.

6.3 That the Trial Court has recorded the role attributed to the Accused Nos. 2 and 4 has given a detailed reasons for giving such conclusion which does not require

inference. More particularly, when individual role has been considered by the Trial Court, while acquitting for the offence punishable under Section 143,147,148,149 and 506 (2) of the IPC has argued to reject the present Appeals.

7. The present case rests upon the deposition of four eyewitnesses, namely Bharatbhai @ Bhanu, PW 2 Exh. 17, Govind @ Lalo Vinodbhai Pathak PW 3 Exh. 18, Dineshbhai @ Dino Javerbhai Prajapati PW 4 Exh. 19 and Kallubhai Rajeshbhai Mali PW 5 Exh. 20, whereas, PW 6 Krishnakant Narayansinh Pokhariya is the Complainant who is not the eyewitness.

8. This Court has to re-appreciate the oral as well as documentary evidence qua the original accused No. 2 Ravi Pagli son of Pavankumar Amarnath Pande, and Accused No. 4 namely Rajesh @ Rajio @ Chor son of Nareshbhai Mali since original accused No. 1 Yogesh @ Kanio Son of Isariprasad Chhotelal Shankhwar and Accused No. 3 Dipak @ Hadi @ Kalu son of Jagdishprasad Hiralal Raidas have been acquitted.

9. The Court has also been considered the evidence on record qua the individual role played by the Accused since, the Trial Court has not believed the commission of crime attracting the provisions of Section

143,147,148,149, 506(2),323 and 201 of IPC coupled with the fact that the State has not preferred any appeal qua this finding of the Ld. Trial Court.

10. Appreciation of ocular evidence is a hard task. In this regard, the judgment in the case of Shahaja @ Shahajan Ismail Mohd. Shaikh vs The State Of Maharashtra, reported in (2023) 12 SCC 558 would be relevant. In paragraph 27, it is thus held as under:-

> 27. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:
>
> I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.
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> II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.
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> III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be

> overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.
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> XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

From the aforesaid principles, what has to be seen by the Court is whether the evidence of the witness read as a whole appears to have a ring of truth or not and that is not rendered untrustworthy. It is also to be seen by the Court that minor discrepancies on trivial matters not touching the core of the case coupled with the fact that, a witness cannot be expected to recall accurately the sequence of events which took place in rapid succession or in a short time span and thereby, connecting events or mixing up when interrogated in the Court. It is also settled principle that a former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction unless the former statement has the potency to discredit the later statement.

Analysis of deposition of four eyewitness

11. While appreciating the evidence of these four

witnesses, this Court would only refer to the relevant evidence which goes to the core of the case.

(1) Evidence of Bharatbhai @ Bhanu:-

This witness has stated in his examination in chief that on 28.05.2013 at around 11 o'clock, he alongwith Tinabhai and Girishbhai were sitting and at that time I (Bharatbhai) and Govind had gone to the tea lorry of Devilal. At that time, 11 o'clock, the accused person present in the Court namely Ravi @ Katela, Ravi @ Chota Baccha and Raju @ Rajiyo with three or four unknown persons came in Rickshaw from Naroda side and had gone towards CTM and from there came back in a rickshaw on the wrong side. Rickshaw was bearing Registration No. GJ-27-T-4679. Rajio was holding sword, Ravi @ Chota Don was holding knife and one unknown person was holding sword. Ravi @ Katela whom I (Bharatbhai) know is not present in the Court. First of all, Chottadon got down from the rickshaw and placed knife on the neck of Girishbhai and threatened to kill anyone who interfered in between. One unknown person inflicted on the head of the Girishbhai, therefore, I (Bharatbhai) interfered. That unknown person inflicted on my (Bharatbhai's) second finger from the right hand side with stick. Girishbhai ran towards Satkar Hotel and after him, Rajio, Ravi@ Katelo, Ravi @ Chotta and four unknown person also rans behind him. I (Bharatbhai) ran

behind Girishbhai to save his life. When Girishbhai reached near Satkar Hotel, the person whom I (Bharatbhai) got hold deceased. Raju inflicted blow with sword to Girishbhai. Unknown persons had also inflicted injury with sword to Girishbhai. Ravi @ Chotadon inflicted injury by knife and all the persons escaped in the rickshaw from the lane near Satkar Hotel. I (Bharatbhai) reached near Girishbhai. Tinabhai and Kallubhai also reached near Girishbhai where Girishbhai was found lying bleeding and public has also gathered. Someone from the public called the police. Accused Rajio had taken away the Tap from the rickshaw of Girish Bhai, which was recovered from Naroda Police Station. However, his pen-drive was not returned, due to which there was a quarrel between them. Because of that quarrel, the present incident took place. Girish Bhai was wearing a white shirt with stripes and, at the time of the incident, was also wearing a grey nightie and coffee - Coloured sandals. The muddamal phone shown to him was identified. The muddamal shirt shown to him was the one worn by Girish Bhai. The muddamal nighty shown to him was also the one worn by Girish Bhai, and the same muddamal was confirmed to be of Girish Bhai.On going through the cross-examination of the witnesses, the defence tried to bring on record that there are a number of shops in the nearby precincts and that the place where the incident took place was also surrounded by a number

of rickshaws and loading vans, etc., and that the distance between the lorry of Devilal and Satkar Hotel is almost 100–150 metres. It was stated in the cross-examination that he does not know who was riding the rickshaw.

In cross-examination, the factum of injury to these witnesses and the fact that they had taken treatment was confirmed by the defence side. This witness was also carrying a mobile phone with him at the time of the incident; however, he did not inform the police. In cross-examination, this witness admitted that when he reached near Girish Bhai, the person who had inflicted the injury had already fled from the scene. He further stated that on the date of the incident, they had gone to their residence. He also stated that he can only say who inflicted what type of injury when he can state with precision which person inflicted which injury and with which weapon. This witness also admitted that it is not true that, before the police reached the scene of the offence, he had gone to his residence. He also admitted that when the police arrived, he did not inform them. He denied the suggestion that the police had called him three to four times to the police station. This witness was recalled, and in examination-in-chief he stated that, except for the accused persons whom he had identified earlier, he does not recognize anyone else. In cross-examination, this witness again admitted that he had not recognized those

holding weapons, out of whom one was carrying a sword and some were carrying sticks. This witness further admitted that he knew accused Raju Bhai @ Rajio even before the present incident. He stated that unknown persons had beaten deceased. He also admitted that he had not stated in his police statement that Raju Bhai @ Rajio had beaten Girish. He further stated that the incident took place at a distance of about 200 metres from where they were sitting.

On going through the entire examination-in-chief and cross-examination, what the defence side has tried to bring on record is that this witness has not seen who inflicted injury to the deceased, or with which weapon, and that in the police statement, this witness has not stated the fact of Rajubhai @ Rajio having beaten up the deceased Girishbhai. The defence also tried to create a doubt by cross-examining this witness with regard to the distance from where this witness along with another witness were sitting, i.e., Devilal Tea Stall/lorry. On the analysis of the aforesaid deposition of this witness, it cannot be said that he had not seen Rajio inflict injury to Girishbhai, more particularly because in examination-in-chief, this witness stated that accused No. 4, Rajio, was holding a sword and had inflicted injury to the deceased with that sword. This witness also identified the clothes and sandals which the deceased was wearing on the date

of the incident. In cross examination of I.O. he has admitted the fact that witness Bharatbhai in his police statement had informed that one unknown person had inflicted one blow however the I.O. on his own volition states that the said witness in his earlier part of the statement has stated to the effect that the accused persons had inflicted injuries with sword, knife and wooden sticks. Under the circumstances when the incidence has occurred in two parts the defence cannot choose and pick the second part ignoring the first part of incidence as stated by this witness which clearly established the complicity of Accused Rajesh @ Rajio.

The defence has also tried to create a doubt with regard to the deposition of this witness on the ground that, despite being present when the police came to the scene of offence, he along with other 3 witnesses did not inform the police. The defence has further argued that, despite these 4 witness having a mobile phone with him, they had not called the police. This aspect is dealt herein after in paragraph 12.

(2) Evidence of Govind @ Lalo Vinodbhai Pathak

Govind @ Lalo Vinodbhai Pathak is examined as second eyewitness at Exh. 18.

On going through the examination in chief, he has stated that at about 11 O'clock, he and Bharatbhai reached at the Tea lorry of Devilal at CTM Cross Road and at that time, Girish, Dineshbhai and Kallubhai were sitting between 11 to 11.30. One rickshaw having Registration No. GJ-27-T4678 came with three persons sitting inside namely Rajesh @ Rajio, Ravi @ Chotta Don and other unknown persons. This witness identified Rajesh @ Rajio who had got down from the Rickshaw. He states that, Ravi @ Chotta don was holding a knife and had placed it on the neck of Girishbhai and stated that if anyone interferes, he will eliminate him. Rajesh @ Rajio was holding sword in his hand. One unknown accused person inflicted injury on the head of Girishbhai. Bharatbhai interfere to save Girishbhai. Unknown persons inflicted injury on the hand of the Bharatbhai. Girishbhai Rans towards Satkar Hotel. He (Govindbhai) was standing near Tea lorry of Devilal. The persons who he named ran behind Girishbhai. He, Bharatbhai Dineshbhai and Kalubhai were reached near Girishbhai and found Girishbhai was lying in a pool of blood. People had gathered there. Rajesh @ Rajio had taken away tap from the Rickshaw of Giirshbhai, however, tap was recovered but pen-drive was not found and due to which there was some dispute. He was called for Identification Parade on 06.06.2013. He had identified three persons in the Court but the other persons were unknown to him.

The persons who he identified are not in the Court. He admitted that muddamal weapon sword was in the hand of Rajesh @ Rajio and unknown persons were holding sticks and Ravi @ Chota @ Baccha was holding Mudammal knife.

This witness has been cross-examined; mainly, he states in cross-examination that when they reached near Satkar Hotel, at that time, Girishbhai was lying in a bleeding condition and the persons whom he had named had fled away from the place of offence. He has not seen those three persons with the persons whom he named in the examination-in-chief. There are shops between Satkar Hotel and the Tea Lorry. He cannot say who inflicted injury near Satkar Hotel to Girishbhai. He cannot say which person had which weapon. This witness was recalled for examination-in-chief wherein he stated that Pavan Prempal was holding a sword. On cross-examination, he stated that in his submission before the police, he did not state that Rajesh @ Rajio had inflicted injury with a sword. He stated that unknown persons inflicted the injury on the head of the deceased Girishbhai with a sword. He further stated that he had not seen the accused earlier and saw them for the first time in the Court. He admitted that he had seen Pavanbhai on the date of the incident and, thereafter, today he has seen him in the Court.

We are unable to see any inconsistency in the deposition of this witness, more particularly, as he has identified Accused No. 4 and has already stated that he was holding a sword. Merely because when this witness reached, the deceased was lying in a pool of blood and at that time, the accused persons had fled from the place of offence, it cannot be stated that he did not witness the incidence. His deposition has remained unshaken. Merely because he stated in the police statement that he did not mention that Rajeshbhai @ Rajio had inflicted injury with a sword; it cannot be said that he did not witness the incident. More particularly, when the IO admitted in his cross-examination that witness Bharatbhai, in his police statement, stated that one unknown person who was holding a sword had inflicted injury. However, he on his own volition states that all persons were holding different weapons like swords, knives, and sticks and were beating the deceased. Further, the I.O. has admitted that in statement before police by other witnesses they have stateed that blow was inflicted by sword. However, he on his own volition states that all these witnesss have furether stated that all the accused persons were holding different weapons like swords, knives, and sticks and were beating the deceased. Under such circumstances, this witness and also Bharatbhai have remained unshaken with regards to the role played by Accused No.4 namely

Rajesh @ Rajio.

(3) Evidence of Dineshbhai @ Dino Javerbhai Prajapati

This witness has stated in his examination in chief that on 28.05.2013 at around 11 o'clock, he (Dineshbhai), along with Tinabhai and Girishbhai, were sitting, and at that time Bharatbhai and Govind had gone to the tea lorry of Devilal. At that time, around 11 o'clock, the accused persons present in the Court, namely Ravi @ Katela, Ravi @ Chota Baccha, and Raju @ Rajiyo, along with three or four unknown persons, came in a rickshaw from the Naroda side and had gone towards CTM. From there, they came back in the rickshaw on the wrong side. The rickshaw was bearing Registration No. GJ-27-T-4679. Rajio was holding a sword, Ravi @ Chota Don was holding a knife, and one unknown person was holding a sword. Ravi @ Katela, whom I (Dineshbhai) know, is not present in the Court. First of all, Chottadon got down from the rickshaw and placed a knife on the neck of Girishbhai and threatened to kill anyone who interfered. One unknown person inflicted an injury on the head of Girishbhai; therefore, Bharatbhai interfered. That unknown person inflicted an injury on Bharatbhai's second finger of the right hand with a stick. Girishbhai ran towards Satkar Hotel, and after him, Rajio, Ravi @ Katelo, Ravi @ Chotta,

and four unknown persons also ran behind him. Bharatbhai ran behind Girishbhai to save his life. When Girishbhai reached near Satkar Hotel, the person whom Bharatbhai got hold of was deceased. Raju inflicted a blow with a sword on Girishbhai. Unknown persons had also inflicted injuries with swords on Girishbhai. Ravi @ Chotadon inflicted injury by knife, and all the persons escaped in the rickshaw from the lane near Satkar Hotel. Bharatbhai reached near Girishbhai. Tinabhai and Kallubhai also reached near Girishbhai, where Girishbhai was found lying bleeding and the public had also gathered. Someone from the public called the police. Accused Rajio had taken away the tap from the rickshaw of Girishbhai, which was recovered from Naroda Police Station. However, his pen drive was not returned, due to which there was a quarrel between them. Because of that quarrel, the present incident took place. Girishbhai was wearing a white shirt with stripes and, at the time of the incident, was also wearing a grey nighty and coffee-colored sandals. The muddamal phone shown to him was identified. The muddamal shirt shown to him was the one worn by Girishbhai. The muddamal nighty shown to him was also the one worn by Girishbhai, and the same muddamal was confirmed to be of Girishbhai.

On going through the cross-examination of the witness, he has stated that he cannot say who inflicted

which injury on the deceased with which weapon. It is not true that he has not seen the incident. This witness was recalled in cross-examination, where he identified the accused and stated that this accused was holding a sword. On cross-examination, the witness also stated that the police had called him 3-4 times. He knew Rajesh @ Rajio even before this incident. It is true that he did not state in the police statement that Rajesh @ Rajio inflicted injury with a sword. The deposition of this witness also remains unshaken. However, the fact of Rajesh @ Rajio holding a sword and accused No. 4 inflicting the injury with a sword was not challenged in the cross-examination. Merely bringing on record that he did not state the fact of Rajesh @ Rajio having inflicted injury with a sword in his police statement would be of no help to the appellant because in the cross examination of the the Investigation Officer it has come on record that “It is true that none of the witnesses stated that Rajesh alone had inflicted the injury with a sword.” Thus, what the Investigating officer says is that other persons were also involved in inflicting injuries to the deceased and not that Rajesh has not inflicted any injuires with sword.

(4) Evidence of Kallubhai Rajeshbhai Mali

PW 5 - Kallubhai Rajeshbhai Mali, examined vide Exh. 20, was examined as an eyewitness in examination-

in-chief and cross-examination. He stated that on the date of the incident, at 11 o'clock, he and Bharatbhai reached the tea lorry of Devilal at CTM Cross Road, where Girish was sitting. Thereafter, Govind and Dinesh also came there. They all were sitting and talking, and between 11 and 11:30, a rickshaw having Registration No. GJ-27-T4678 came, in which three persons were sitting, namely Rajesh @ Rajio, Ravi @ Katelo, and Ravi @ Chotta Don, along with some other persons. The present person in the Court, namely Rajesh @ Rajio, got down from the rickshaw at the time of the incident, and he also recognized Ravi @ Chottadon, who placed his knife on the neck of Girishbhai and stated that whoever interferes will be eliminated. One unknown person, having a sword in his hand, inflicted injury on the head of the deceased at that time. Bharatbhai also tried to hold the deceased, and unknown persons injured Bharatbhai with a stick on his hand. Girishbhai ran towards Satkar Hotel. Behind him, Kallubhai, Bharatbhai, Dineshbhai, and Govindbhai also ran. He was about 100 meters away from the deceased. At that time, unknown persons inflicted injury on Girishbhai with their swords. Also, Rajesh @ Rajio, who is present in the Court, and Ravi @ Chotadon @ Katelo were also beating him. He was also called for the Identification Parade and identified one accused who was not present in the Court that day. The Muddamal sword shown to him was the one held by Rajesh @ Rajio, and the knife was

held by Chotta Don. Rajesh @ Rajio and Chotta Don were not present in the Court.

This witness has been cross-examined. He also stated that when he reached near Girishbhai, he was lying in a bleeding condition, and the person who had inflicted the injury had fled from the scene of the offence. The place where Girishbhai was lying and the tea lorry of Devilal are approximately 200–250 meters apart. There were about 15–20 shops between Satkar Hotel and Devilal's tea stall. He cannot precisely say who inflicted which injury with which weapon near Satkar Hotel during the incident. He also stated that just opposite the road where the incident took place, the Asha Amlet lorry was running. The persons running the Chicken Fry lorry and Fish Fry lorry also met him. A person named Rajeshbhai, who was driving a rickshaw, also met him.

This witness has been recalled. Upon recalling, he was examined, during which he identified the accused, namely Pavan Prempal, who was holding a sword in his hand. During cross-examination, he stated that he had not mentioned the names of the persons who inflicted sword injuries on the deceased Girishbhai and had only stated that unknown persons inflicted those injuries. He also admitted that in his police statement, he did not state that Raju @ Rajio had inflicted a sword injury on

Girishbhai. Thus, the aspect of injury to the deceased by Raju@ Rajio as discussed herein above cannot be disbelieved. Merely by picking one or two lines from here and there and reading it out of context would amount to mockery of justice more particularly when the incidence has taken in two parts and when in the first part itself the complicity of Accused No.4 is proved picking up lacuna from the second part of incidence is of no help to the accused.

Based on the aforesaid principle stated in para 10 hereinabove, on examining the deposition of these four witnesses, we do not find any inconsistency, infirmities, variations which goes to the root of the prosecution's case, nor does it create any doubt that the witnesses were not present at the time of the incident nor it could be said that Accused No.4 has not inflicted any injury to the deceased. The deposition of four eyewitness have remained unshaken as far as proving the complicity of Accused No. 4 is concerned.

12. **Argument as regards not informing the police by the eyewitnesses when the Policy party reached at the place of offence:** It would be profitable to refer the judgment of the Hon'ble Supreme Court in the case of Appabhai And Anr. vs State Of Gujarat reported in AIR 19988 SC 696, wherein, in para 10 and 11 it is held as

under:-

> "10. In the light of these principles, we may now consider the first contention urged
>
> by the learned Counsel for the appellants. The contention relates to the failure of the prosecution to examine independent witnesses. The High Court has examined this contention but did not find any infirmity in the investigation. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due

regard to probability if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their, course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. In Rana Pratap and Ors. v. State of Haryana 1988 (3) S.C.C. 327 O. Chinnappa Reddy J. speaking for this Court succinctly set out what might be the behaviour of different persons witnessing the same incident. The learned Judge observed; (at p. 330).

Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

> 11. These may be some of the reactions. There may be still more. Even a man of prowess may become pusillanimous by witnessing a serious crime. In this case, the courts below, in our opinion, have taken into consideration of all those respects and rightly did not insist upon the evidence from other independent witnesses. The prosecution case cannot be doubted or discarded for not examining strangers at the bus stand who might have also witnessed the crime. We, therefore, reject the first contention urged for the appellants."

In view of the aforesaid principles, when there is no set rule of natural reaction of eyewitnesses witnessing the crime of his own friend and thereby, to discard the eyewitness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way. The deposition of these witnesses cannot be doubted or discarded merely because other rickshaws, loading vans and shops were also there near the place of incident and not examining any independent eyewitnesses or non disclosure of name of the assailants during investigation would not affect the prosecution's case, more particularly, when the deposition of these witness remain unshaken in the cross examination and their deposition is found reliable. However, it is required to be noted that these witnesses have not identified Accused No. 2 namely Ravi @ Pagli

Son of Pavankumar Amarnath Pande.

13. At this juncture, in would be profitable to refer the judgment of the Hon'ble Supreme court in the Case of Sardul Singh and another Vs. State of Punjab reported in AIR 1994 SC 672, wherein, it is held that there are number of injuries on the deceased and each witness cannot be expected to note the details in seriatim. In view of the aforesaid principle, when the total number of accused in the present case are seven, it would not be expected from the witness to depose exactly what type of injury was inflicted on which part of the deceased and with what weapon, with precision. As stated hereinabove, different witnesses have their own capacity to grasp the scene of the offence and to react in Court when cross-examined by the defence counsel. Minor variance in the deposition with the police statement not demolishing the core of the prosecution's case would be of no help to the accused and based on such minor discrepancies it cannot be said that the witnesses are not reliable.

From the deposition of the aforesaid four witnesses, the involvement of Accused No. 2 does not surface on the record. However, the Trial Court convicted Accused No. 2 mainly on the basis of the discovery panchnama at Exh. 47. On perusal of Exh. 47, the panchnama, the panch witnesses of the said panchnama namely Abdul Sajid

Sheikh Abdul Vahid (examined vide Exh. 46 as PW 15) and Mohammadvasim Mohammad Harun Sheikh (examined vide Exh. 48 as PW 16) have turned hostile and have not supported the prosecution's case. It transpires from Exh. 47 that, at the instance of Accused No. 2, the so-called knife was discovered. However, the panchnama (Exh. 47) was prepared by the investigating officer, Ravirajya Dilipsinh Jadeja (examined vide Exh. 70 as PW 21). Despite the panch witnesses turning hostile, this officer did not state the contents of the panchnama in his deposition. He only stated that Ravi, who is the accused in the present case, had said he was ready to show the knives used by the accused, namely Chotadon, and that at his instance, the said muddamal was recovered. However, as required by law, the first part of the panchnama where the accused shows willingness to reveal the weapon used to commit the crime in the presence of the panch witnesses and investigating officer, followed by proceeding to the place where the weapon is hidden, and then the discovery of the weapon was not deposed by the investigating officer in his deposition. It is also to be noted that the knife recovered at the instance of Ravi @ Pagli is not the weapon he is alleged to have used in committing the crime. Rather, the same knife is alleged to have been used by Chotadon, and that too has not been proved in accordance with law.

14. Analysis of deposition of Investigating Officer:

On perusal of the entire deposition of the Investigating Officer at Exh. 70, and more particularly page No. 1017, it is seen that the medical certificate of Bharatbhai Bhikhabhai Gohil—an eyewitness who was examined as PW 2 at Exh. 17—has been placed on record. His injury certificate has also been submitted vide Exh. 50 and proved by this Investigating Officer. Thus, the fact of injury to Bharatbhai, while trying to save deceased as stated by him in his deposition, is also established. He also states in his cross-examination that the witnesses were present at the place where the incident occurred, specifically at the tea lorry of Devilal, which was revealed during the investigation. He further admitted that it is true none of the said witnesses had voluntarily come forward to give statements regarding the incident. All four eyewitnesses—namely Bharatbhai, Kallubhai, Govindbhai, and Dineshbhai—had mobile phones and had provided their mobile numbers in their police statements. He stated that, upon receiving information about the alleged incident, when he reached the place of occurrence, none of the witnesses were present. It was also admitted that when Accused No. 2, Ravi @ Pagli, was arrested in connection with the present case, no statement had been recorded implicating him during the investigation. It is true that the panchnama prepared by the Cyber Cell Crime Branch recorded the physical

condition of Accused No. 2, Ravi @ Pagli, at the time of his arrest. It is also true that no statement was obtained from the officer explaining on what basis Ravi @ Pagli was considered an accused in the said offence, and such a statement has not been included along with the charge sheet.

It is true that after recording the statements of Bharatbhai, Govindbhai, Dineshkumar, and Kallubhai, the identity of the accused Ravi @ Pagli came to be known during my investigation. It is true that after the Cyber Cell Crime handed over the custody of Accused No. 2, Ravi @ Pagli, the eyewitnesses who had named Ravi clarified that he is not the same person as the present Ravi. It is true that the presence of Accused No. 2, Ravi, at the place of the incident is not mentioned in any of the statements given by the witnesses during the investigation, and he has not submitted any such statement along with the chargesheet. He has also admitted that none of the witnesses stated in their police statements during the investigation which accused used which weapon at Satkar Hotel, where the body of the deceased was found. It is true that the four friends of the deceased, who are witnesses in the present case, were called to the police station three to four times. It is true that the rickshaw mentioned by the friends of the deceased, i.e., the eyewitnesses, bearing registration number GJ-27-T 4670, has been verified, but the person

who was driving the said rickshaw has not been identified through the statements. It is true that he has not recovered the said rickshaw during his investigation. It is also true that the said rickshaw was submitted as muddamal by Odhav Police Station. It is true that the statements of the four eyewitnesses, who are friends of the deceased, indicated that only one person was holding a knife. It is true that two knives have been recovered during the investigation. It is true that he has not taken any statements regarding which accused used the second knife in committing the crime, and he has not investigated this aspect or included any such statement in the chargesheet. It is true that the reasons mentioned for the alleged offence in the chargesheet have no connection with Accused Nos. 1, 2, and 3. It is true that during the investigation, it was found that Accused Nos. 1 to 3 were not known to the deceased or his friends. It is also true that the investigation revealed that the deceased was involved in illegal activities related to liquor and gambling. He has further admitted that Accused No. 4 was arrested after a long delay, i.e., on 12.07.2013. It is true that none of the witnesses stated that Rajesh alone had inflicted the injury with a sword.

Thus, the aspect of injuries inflicted upon deceased by Accused No.4 has already been dealt with in preceding paragraphs and thus not discussed again.

15. 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. Similar view has been taken in the case of Karnel Singh vs The State Of M.P reported in 1995 SCC (5) 518, wherein, it is held that in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

In the present case, merely because minor lapses on the part of the Investigating Officer does not shake the substratum of the case of the prosecution. Minor lapses on the part of the investigating agency would not come in the way of the prosecution, more particularly in the present case, when four eye witnesses have deposed and ring of truth having been found in their testimony. In view of the aforesaid principles, it is crystal clear that on account of faulty investigation, the benefit will not enure

to the accused person on that ground alone. Thus, the accused cannot claim acquittal on the ground of faulty investigation done by the investigating agency, more particularly when all the eyewitnesses specifically named the Accused No. 4 and role played by him in the alleged crime and have remained consistent even in the cross examination and having found corroboration to bring home the guilt of the accused persons. When the oral evidences of PW 2 at Exh. 17, PW 3 at Exh. 18, PW 4 at Exh. 19 and PW 5 at Exh. 20 are taken together, their version can be seen to be corroborating each other, and when all of them are eyewitnesses, this Court has to see that there stand is consistent with regard to the role played by the accused no. 4 and was responsible for inflicting blow by sword. Thus, the version put forward by the aforesaid four witnesses inspires confidence and the deposition of these witnesses cannot be discarded on extraneous ground raised by the defence. Coupled with the fact that there is no contradiction which goes to the core of the case which shakes the credibility of the prosecution’s case.

16. Thus, upon going through the entire record, it is evident that the role of Accused No. 2 has not clearly emerged from the evidence. However, any lapses in the investigation cannot be a ground for granting benefit to the accused persons—particularly when the eyewitnesses

have clearly stated that the present accused came with a sword, chased the deceased, and inflicted injuries on him with the said weapon. The fact of the deceased's death is established from the deposition of PW-1, Dr. Manishbhai Bachubhai Ghelani, who conducted the post-mortem examination of the deceased, Girishbhai. Upon examination, ten injuries were found on the body of the deceased. As per the post-mortem report marked at Exhibit 14, the cause of death was shock and hemorrhage due to head injury.

During the deposition of Ravirajsinh Dilipsinh Jadeja PW 21 at Exh.70, Injury Certificate at Exh. 50 was shown to the Investigating Officer who has admitted that it is the same injury certificate of witness Bharatbhai Bhikhabhai who was treated by Doctor with regards to the injury sustained by him in the present incidence and was examined by Doctor at 6.45 Pm on 29.05.2013 i.e., the next date of the incident. Thus, this fact also corroborates the deposition of the Bharatbhai. As far as the discovery of sword from the Accused Rajesh @ Rajio is concerned, the Panch Witness Parasbhai Rajnarayan Pande as PW 10 vide Exh. 35 has not supported the case of the prosecution. Therefore, the discovery of weapons is not proved however, this aspect in no way can be said to be effecting the case of the prosecution since, its value is merely corroborative in nature and when the eyewitnesses have deposed with regards to manner in

which the incident has taken place and role attributed to the Accused no. 4 Rajesh @ Rajio, under such circumstances, no proving of the discovery panchnama is not fatal to the case of the prosecution.

17. As far as conviction for one month under Section 135(1) of the Gujarat Police Act is concerned, it would be relevant to point that that vide Exh. 62, Vishnubhai Naranbhai Patel working with Office of Police Commissioner, Shahibaug in Permit Department has been examined as PW 20, has stated on oath that the notification issued by the Police Commissioner, Ahmedabad City is to be sent to all the Police stations, Ahmedabad City for pasting that at appropriate places and for proclamation through loud speaker in public and also to be sent to Akashvani and Doordharshan Centre as well as Newspaper for publication and also to be sent to other officer as stated in the said notification and has further stated that notification dated 17.04.2013 issued by the Police Commissioner, Shri S.K. Sakiya in effect from 23.04.2013 to 21.06.2013 for prohibiting to carry deadly weapon was sent to all place as stated hereinabove and vide Exh. 63 has placed on record the notification. However, as per the provisions of Section 78 of the Indian Evidence Act, notification of any State Government or any department of any State Government

may be proved by records of the department certified by the head of those department or by any document purporting to be printed by any such Government. In the present case as stated hereinabove, Exh. 63 is neither certified by head of the department nor have as the said witness place on record the Notification issued in the official gazette of the State Government. Under such circumstances, the proclamation as claimed on the date of incident restricting carrying deadly weapons was in existence is not proved. In such circumstances, conviction under Section 135(1) of the GP Act cannot be be sustained and hence, set aside.

18. For the reasons stated hereinabove there is no legal evidence against Accused No. 2, Ravi @ Pagli. The Trial Court relied upon Exhibit 47, which has not been proved in accordance with law, particularly with respect to the discovery of the knife by Accused No. 2, even though the said knife was allegedly used by another accused. In the absence of any role attributed to Accused No. 2, and his presence at the scene of offence not being proved, the conviction against him is required to be set aside. However, the conviction of Accused No. 4 qua Section 302 of IPC is upheld. Appeal No. 1149/2018 is partly allowed to the aforesaid extent and Appeal No. 1004/ 2017 is allowed. It is also required to be noted that, as of today, three accused persons are still absconding namely

Pavan, Ravi @ Katelo and Ravi @ Chotadon. In the absence of an appeal preferred by the State against the acquittal of Accused Nos. 2 and 4 for the offences under Sections 143, 147, 148, 149, 506(2), and 323 read with Section 201 of the Indian Penal Code (IPC) as well as in absence of an appeal preferred by the State against the acquittal of Accused No. 1 and 3 from all the charges, we refrain from commenting on the aspect of unlawful assembly, as it may directly affect the case of either side in view of the fact that the other three accused are yet to be arrested.

19. It is informed that original accused No. 2 - Ravi @ Pagli Son of Pavankumar Amarnath Pande is on bail, his bail bonds stands canceled and surety is discharged. R&P if any 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 03/09/2025 12:16:25